Et-Tijarie: Jurnal Hukum dan Bisnis Syariah
Vol. 10, No. 02 (2025), page 65 - 79
p-ISSN: 2442-2932 e-ISSN: 2549-6794
Journal homepage: https://journal.trunojoyo.ac.id/ettijarie/index



Research Paper

Implementation of Imam Al-Shaṭibi's Maqaṣid al-Shariah in the Development of Intellectual Property Rights Waqf Policies

Syaiful Anam
Institut Darul Ulum Banyuanyar Pamekasan

Corresponding email: anamghazalicr7utm@gmail.com

ARTICLE INFO

Keywords:
Maqāṣid al-sharīʿah; intellectual property rights; policy development.

Article history:
Received: 02-09-2025
Revised: 15-10-2025
Accepted: 30-10-2025
Available online: 06-12-2025

To cite in APA style:

ABSTRACT

This study aims to elaborate the implementation of Imam al-Shaṭibi's maqaṣid al-shariah in formulating policies related to the waqf of Intellectual Property Rights (IPR). Although Law Number 41 of 2004 on Waqf recognizes IPR as a legitimate waqf object, no technical regulations have been established to ensure its implementation. As a result, the potential of IPR waqf has not been optimally realized as an instrument for empowering the Muslim community. This research employs a qualitative normative method through a comprehensive literature review. The findings reveal that IPR waqf policies must be grounded in the principles of *ḥifẓ al-māl*, *ḥifẓ al-ʿaql*, and *ḥifẓ al-dīn* in order to ensure sustainability of benefits, legal certainty, and long-term public welfare. Thus, al-Shaṭibi's maqaṣid al-shariah serves as a pivotal paradigm in designing IPR-based waqf policies within the contemporary legal framework.

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Introduction

Waqf in Indonesia has historically been known and widely practiced through material objects such as land, buildings, and cash waqf. According to the Waqf Information System (SIWAK) of the Ministry of Religious Affairs as of December 2024, waqf land is distributed across 440,512 locations with a total of 57,550 hectares, representing approximately 0.03% of Indonesia's land area. Of this vast amount, only 53% has been certified by the National Land Agency (BPN). Likewise, cash waqf has shown measurable development although it remains far below its actual potential. SIWAK data reports that the total accumulation of cash waqf reached approximately 3.02 trillion rupiah, managed by 51 LKSPWU and 472 nazhir (Dr. Ir. Imam T. Saptono MM., n.d.)

These data demonstrate that material-based waqf receives strong attention from the government in terms of regulation, institutional development, and supervisory mechanisms. For example, the normative framework governing cash waqf has been built systematically and hierarchically from statutory regulations to detailed technical provisions. The legal basis begins with Law No. 41/2004 on Waqf, elaborated through Government Regulation No. 42/2006, later refined by Government Regulation No. 25/2018 to strengthen institutional mechanisms and governance of cash waqf.

The Ministry of Religious Affairs also issued several derivative regulations that reinforce administrative and managerial aspects, including Ministerial Regulation No. 4/2009 on the Administration of Cash Waqf Registration, and Ministerial Regulation No. 73/2013 on the Procedures for Waqf of Immovable and Movable Property Other Than Money. These are complemented by regulations from the Indonesian Waqf Board (BWI), such as PBWI No. 1/2007 and PBWI No. 1/2009, which together form a solid legal architecture for nationwide implementation of cash waqf.

This strong regulatory framework has positioned cash waqf as the most ready to implement waqf instrument nationally. By contrast, IPR waqf despite being normatively acknowledged in Law No. 41/2004 still lacks technical guidance, a designated managing institution, standard procedures, and legal certainty, particularly considering the temporal nature of intellectual property rights. The regulatory strength of cash waqf demonstrates the success of maqāṣid al-sharīʿah in safeguarding wealth (*ḥifẓ al-māl*) through robust institutional instruments. A similar approach should be applied to IPR waqf to ensure that intellectual assets of the Muslim community are not neglected and can be optimally utilized for social, educational, and economic development.

The absence of derivative regulations ensuring the execution of IPR waqf presents several substantive and practical problems. First, there are no technical provisions concerning registration mechanisms, issuance of waqf deeds, fund placement procedures, or specific management institutions. Second, the professionalism of nazhir remains relatively low. Third, legal certainty concerning ownership and management status is lacking, especially given the limited protection period of IPR. Fourth, there is no standard template for IPR waqf deeds. These issues demonstrate that IPR waqf has not yet been optimized to achieve social welfare, even though it possesses immense potential as an unlimited economic resource (Jumena et al., 2017). In this context, maqāṣid al-sharīʿah becomes a crucial framework for addressing these gaps.

Maqāṣid al-sharīʿah is a fundamental concept in Islamic legal theory that aims to realize collective welfare. For this reason, classical and contemporary scholars have recognized its importance as a necessary foundation for ijtihād responsive to societal realities. The essence of maqāṣid al-sharīʿah is the realization of benefits and prevention of harm (*jalb al-maṣāliḥ wa dar' al-mafāsid*). Thus, maqāṣid is not merely a complementary

interpretive tool but a holistic paradigm for constructing a substantive Islamic legal system (Febriadi, 2017).

Among classical scholars, Imam al-Shāṭibī stands out for systematizing maqāṣid al-sharīʿah. His framework rests on two pillars: *taʿlīl al-aḥkām* (legal reasoning based on causation) and considerations of public benefit and harm (*al-maṣāliḥ wa al-mafāsid*). He further developed several methodological tools such as: aligning legal rulings with public welfare, balancing textual and causal reasoning, distinguishing primary and secondary purposes of the law, interpreting divine silence (*sukūt al-shāriʿ*) as legal flexibility, and employing inductive reasoning (*al-istiqrāʾ*) to derive overarching legal principles (Moh. Toriquddin, 2014).

Applied to IPR waqf, al-Shāṭibī's maqāṣid framework becomes highly relevant to resolving policy deficiencies. Through a maqāṣid-based approach, the formulation of IPR waqf policies can produce derivative regulations that are not only functional but also aligned with public welfare. Moreover, maqāṣid reasoning can redefine the concept of wealth (*al-māl*) to include intellectual creations as *māl mutaqawwam* (legally recognized property), ensuring sustainability of benefits despite the temporal nature of IPR protection. It also encourages collaboration among key institutions such as the Ministry of Religious Affairs, Ministry of Law and Human Rights, and BWI to construct an integrated administrative system for IPR waqf.

Thus, implementing al-Shaṭibi's maqaṣid al-shariah in IPR waqf policy development offers not only a methodological solution to regulatory gaps but also contributes to the reconstruction of Islamic law in line with contemporary developments (Moh. Toriquddin, 2014). Through this paradigm, IPR waqf functions as a modern instrument for realizing collective welfare, empowering community activities, and ensuring that knowledge and innovation become a form of perpetual charity (*ṣadaqah jāriyah*) for societal well-being.

Research Method

This study employs a qualitative approach using a library-based research design. The primary focus of the inquiry is directed toward the thought of al-Syatibi concerning *maqāṣid al-sharī'ah*, which constitutes the fundamental epistemological framework for the development of Islamic legal theory oriented toward public welfare (*maṣlaḥah*). The ideas of al-Syatibi on *maqāṣid al-sharī'ah* are further analyzed and contextualized within contemporary issues related to the waqf of intellectual property rights (IPR waqf). Through this analytical process, the study seeks to identify both normative and methodological relevance that can provide a foundational framework for formulating policies governing IPR waqf development in Indonesia.

Results and Discussion

Maqāṣid al-Sharī'ah According to Imām al-Syatibi

Etymologically, *maqāṣid al-sharī'ah* is a compound term consisting of *al-maqāṣid* and *al-sharī'ah*. *Maqāṣid* is the plural form of *maqṣūd*, *qaṣd*, or *quṣūd*, derived from the verb *qaṣada–yaqṣudu*, which carries a wide range of meanings such as intending toward a direction, purpose, moderation, justice, uprightness, and the middle ground between excess and deficiency (Ahmad Imam Mawardi, 2010). *Sharī'ah*, etymologically, denotes "the path to a water source," signifying the way leading to the origin of life. Terminologically, *sharī'ah* refers to *al-nuṣūṣ al-muqaddasah*—the sacred texts of the Qur'an and the *mutawātir* Sunnah—untainted by human interpretation. Within this meaning, *sharī'ah* encompasses the domains of theology (*'aqīdah*), practical law (*'amaliyyah*), and ethics (*khuluqiyyah*) (Asafri Jaya Bakri, 1996).

From a terminological perspective, Prof. Dr. Al-Yasa' Abu Bakar explains that *maqāṣid al-sharī'ah* refers to the aims and objectives intended by God in revealing the rules of the *sharī'ah*, as contained in His divine revelations (Al Yasa' Abubakar, 2016). Al-Syatibi divides *maqāṣid al-sharī'ah* into two categories: Qashd al-Shāri' and Qashd al-Mukallaf.

Qashd al-Shāri' has a several units, qashd al-Shāri' in establishing the Sharī'ah, *qashdu al-Syar'i fi wadl'i al-syari'ah lil al-ifham, qashdu al-Syar'i fi wadl'i al-syari'ah li al-taklif bi muqtadlaha, qashdu al-Syar'i fi dukhuli al-mukallaf tahta ahkami al-syariah*. According to al-Syatibi, God's establishment of legal rulings aims at realizing the welfare (*maṣlaḥah*) of humankind in both worldly and spiritual dimensions. In *al-Muwāfaqāt*, al-Syatibi asserts that the obligations of the *sharī'ah* fundamentally serve to preserve the *maqāṣid*—the objectives oriented toward the preservation and sustainability of life. He classifies the *maqāṣid* into three hierarchical levels: *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt.* First, *maqāṣid al-ḍarūriyyāt* constitute primary necessities indispensable for the survival of individuals and society. Their absence would cause severe disorder in worldly and hereafter affairs. These consist of five essential values: preservation of religion, life, lineage, property, and intellect.

Second, the *maqāṣid al-ḥājiyyāt* encompass secondary needs intended to ease the burdens of the *mukallaf* in carrying out the requirements of the *sharī'ah*. Although these needs are not as vital as the *maqāṣid al-ḍarūriyyāt*, their absence may result in considerable difficulty in observing Islamic law (Al Yasa' Abubakar, 2016). Examples of *maqāṣid al-ḥājiyyāt* include the provision of *rukhsah* (legal concessions) in acts of worship and *salam* transactions in commercial dealings (Imam Abu Ishaq al-Syatibi, 2005). Third, the *maqāṣid al-taḥsīniyyāt* represent tertiary needs that serve to perfect the two preceding levels. This category incorporates the reinforcement of ethical values, virtuous character, and commendable social customs, all of which contribute to a more harmonious and civilised way of life (Imam Abu Ishaq al-Syatibi, 2005).

As-Syatibi articulates two essential points in the context of understanding Islamic law and its underlying objectives. First, comprehension of the rulings of the *sharī'ah* cannot be separated from mastery of the Arabic language, given that the Qur'an the primary source of Islamic law was revealed in that language. Second, Islamic law consistently takes into account the social, cultural, and psychological conditions of human societies. This means that every legal provision revealed by Allah is inherently relevant and adaptable to the circumstances and needs of the community in its respective era. This principle reflects the nature of the *sharī'ah*, which is not rigid but rather dynamic and responsive to societal development. (Ahmad al-Raisuni, 2008).

As-Syatibi emphasizes that the primary intention of the *Shāri'* (the Lawgiver) in establishing the *sharī'ah* is that its rulings be implemented in accordance with their prescribed demands. In his monumental work, *al-Muwāfaqāt*, he discusses two fundamental issues that form the core of this section. The first is that *taklīf* (legal obligation) which lies beyond the legitimate capacity of human beings is considered invalid from a *shar'ī* standpoint, even if it may appear rationally conceivable. (Moh. Toriquddin, 2014). In his view, whenever a formulation within a *shar'ī* text appears to demand something beyond human capacity, the verse or ḥadīth must be analyzed contextually by considering its linguistic elements, its preceding context, or the intended meaning behind it. For example, the words of Allah in Sūrat Āl 'Imrān, verse 102:

وَلَا تَمُوْتُنَّ اِلَّا وَ اَنْتُمْ مُسْلِمُوْنَ

"*And do not die except in a state of submission (as Muslims).*"

This verse does not mean a prohibition against dying, for death is undoubtedly beyond human control. Rather, the intended meaning of this prohibition is a command not to abandon Islam during one's lifetime, since death may come at any moment without prior knowledge. Likewise, the Prophet's saying:

لَا تَغْضَبْ

"*Do not become angry.*"

This prohibition is not intended to negate anger as a natural human disposition that cannot be entirely avoided. Rather, its meaning is that a person should be able to restrain their anger or avoid circumstances that may provoke it.

Second is *taklīf* that involves *mashaqqah* (hardship). According to al-Syatibi, the aim of the Sharia is not to impose burdensome obligations upon human beings; rather, such obligations inherently contain benefits (*maslahah*) for the *mukallaf*. For instance, the

obligation of jihad is not intended to push a person toward destruction, but instead serves as a means to uphold *amr bi al-ma'rūf* and *nahy 'an al-munkar*. Similarly, the legal punishment of cutting the hand of a thief is not meant to harm the body, but to protect public safety and communal property.

In this regard, al-Syatibi distinguishes between hardship that remains within normal human capacity and hardship that is unusual and excessively burdensome. The first is termed *mashaqqah mu'tādah*, referring to ordinary difficulties encountered in fulfilling religious obligations, such as fatigue from work, fasting, or performing acts of worship. Such hardship is considered a natural part of life and thus does not constitute valid grounds for waiving religious duties. The second is *mashaqqah ghayr mu'tādah*, namely hardships that are abnormal, excessive, or, if imposed, would result in an unbearable burden. Examples include the obligation to fast for individuals who are gravely ill or elderly. In such cases, Islam provides a solution through the concept of *rukhṣah* (legal concession), reflecting divine mercy and the inherent flexibility of the Sharia in its application (Moh. Toriquddin, 2014).

This section is the longest discussion within the framework of *maqāṣid al-sharī'ah*, encompassing twenty issues that all focus on one central question: why does a mukallaf carry out the laws of the Sharia? According to the summary presented by Abdullah bin Daraz, there are two primary answers to this question. First, the implementation of Sharia law is intended to establish a set of rules that can lead humans to happiness in this world and the Hereafter. Second, every individual who is *mukallaf* is required to submit and adhere to the regulations of the Sharia rather than follow the desires of their own whims.

Al-Shatibi adds that the primary objective of the Sharia in establishing laws is to liberate the *mukallaf* from the domination of base desires (*hawā*) so that the person becomes a servant of God both *ikhtiyāran* (consciously and willingly) and *idṭirāran* (compelled by the natural disposition of submission to Allah) (Imam Abu Ishaq al-Syatibi, 2005). Therefore, every action driven by base desires (*hawā*) is considered invalid and holds no benefit. This is because every deed must possess a *qaṣd* (purpose/intention) and a motivating factor behind it. If that motivation is not grounded in the laws of the Sharia, then by default the action is based solely on personal whims (Ahmad al-Raisuni, 2008).

After qashd al-Syari' there is also exist qashd al-mukallaf. Qaṣdu al-mukallaf refers to the purpose intended by a legally responsible person (*mukallaf*) when performing an action. It plays a crucial role in determining whether an act is valid or not. Within the framework of *maqāṣid al-sharī'ah*, an important principle applies: the objectives of the mukallaf must align with the objectives of the Sharia itself**.** This means that if a person performs an act with an intention that deviates from the primary purpose of its legislation, then that act is considered inconsistent with the values of the Sharia

(Febriadi, 2017).

The next issue concerns the relationship between the *'illat* (legal rationale) and the purpose of the Lawgiver (*Syāri'*). In this regard, it must be understood that the purpose of the Sharia does not lie in the legal acts themselves, but in the *maslahah* (benefit) intended to be achieved through their legislation. Therefore, if someone performs an act without paying attention to or aligning themselves with the objectives of the Sharia, then in essence they have not fulfilled the Sharia substantively, even if they have carried it out formally (Ahmad al-Raisuni, 2008).

The Problems of Intellectual Property Waqf in Indonesia

The waqf of Intellectual Property Rights (IPR) presents complex issues that are not simple to resolve. More specifically, there are at least five major problems that pose significant challenges and must be addressed so that the implementation of IPR waqf can truly function as an instrument for public welfare. First, Law Number 41 of 2004 on Waqf has recognized Intellectual Property Rights as one of the permissible objects of waqf. However, this regulation has not been followed by implementing rules that explain technical procedures on how IPR may be endowed. This differs from cash waqf, which has clear technical arrangements through Article 22 of Government Regulation Number 42 of 2006. That regulation systematically explains the procedures for cash waqf, starting from the registration mechanism, issuance of the waqf pledge deed, fund placement procedures, and the appointment of cash waqf recipient institutions designated by the Minister of Religious Affairs upon the recommendation of the Indonesian Waqf Board (BWI). In fact, as of 2023, 42 LKS-PWU (Sharia Financial Institutions Cash Waqf Recipients) have been inaugurated, providing tangible institutional and administrative certainty for cash waqf (Ditzawa, 2023).

The completeness of the technical instruments for cash waqf proves that when the state prepares administrative tools, operational standards, and managing institutions, public participation and waqf management can operate optimally. This condition stands in contrast to IPR waqf, which to this day has not received similar technical treatment. There is no designated institution to manage IPR waqf, nor is there a standard procedure for its registration and documentation. As a result, the great potential of IPR waqf is hindered simply because of the absence of technical mechanisms that should have been prepared by the state.

Second, ideally waqf having been legally recognized for more than two decades should function as a strategic instrument in promoting the socio-economic welfare of the Muslim community. However, the vast potential of waqf has not been optimally realized. One of the primary causes is the low level of professionalism among *nazhir* in managing waqf assets (Zulfadli Hamzah, 2016). According to Law Number 41 of 2004 on Waqf,

nazhir is the party that receives waqf property from the *wakif* to be managed and developed according to its designated purpose. Muhammad Aziz, as quoted by Zulfadli Hamzah, states that a *nazhir* is a person who manages waqf, develops it, increases its productivity, and distributes the resulting benefits to the *mustahik*.

Several definitions of *nazhir* above show that *nazhir* holds a very important role in managing waqf assets. For waqf property to function according to its intended purpose, it must be protected, maintained, and optimally developed. The duties of *nazhir*, which include collecting, managing, and utilizing waqf assets, indicate that the success or failure of waqf implementation is largely determined by the role and level of professionalism of the *nazhir* in fulfilling their responsibilities. However, in practice, many *wakif* endow their assets mainly due to trust in religious figures such as *kyai*, *ustaz*, *ajengan*, or *tuan guru*—without conducting adequate assessments of the managerial capability of the prospective *nazhir*. This pattern often results in suboptimal waqf management and, in some cases, leads to waqf assets being abandoned (Achmad Djunaidi dan Thobieb al-Asyhar, 2007).

According to Supriyadi, the lack of professionalism among most *nazhir* stems from two factors. First, *nazhir* often assume that waqf belongs to Allah and therefore needs only to be managed with sincerity. Such an understanding leads to a management pattern in which waqf becomes a secondary task, causing waqf assets to be neglected and poorly managed. Second, although *nazhir* is not formally a pillar (*rukun*) of waqf from a theoretical perspective, in modern practice the role of *nazhir* is actually the key to successful waqf management. A professional *nazhir* should treat waqf management as a primary profession, possess managerial expertise, and receive appropriate compensation to sustain their duties (Nawawi, 2013). Thus, low professionalism among *nazhir* not only results in stagnation of waqf development but also creates serious governance problems in the waqf sector in Indonesia, such as low asset productivity, lack of transparency, and the failure of waqf to contribute optimally to public welfare.

Furthermore, the issue of *nazhir* professionalism becomes more complex when the endowed asset is Intellectual Property Rights, as its management requires technical skills that conventional *nazhir* typically do not possess. Managing IPR waqf involves a series of complex activities, including registration with the Directorate General of Intellectual Property (DGIP), licensing arrangements, drafting commercial agreements, marketing strategy planning, legal protection, and monitoring royalty recipients. All of these processes require interdisciplinary expertise, including intellectual property law, creative economy, and digital infrastructure management. Without these competencies, IPR assets risk being underutilized or even misused.

Third, IPR waqf in Indonesia also faces serious obstacles regarding legal certainty. In the context of copyright, legitimate proof of ownership typically in the form of a certificate is needed as the legal basis for determining a waqf object. However, under Law No. 28 of 2014 on Copyright, registration of a creation is not mandatory, as legal

protection arises automatically once a creation is manifested in tangible form (the declarative principle). A copyright certificate only functions as strong evidence in case of disputes. This situation creates a dilemma: on one hand, copyright is legally protected even without registration; on the other hand, waqf practice requires valid ownership documents to ensure the legitimacy of the waqf object. This misalignment results in confusion and legal uncertainty because without a certificate, administrative processes particularly the issuance of the Waqf Pledge Deed (*Akta Ikrar Wakaf*, AIW) become difficult to carry out (H.OK.Saidin, 2013).

It should be noted that one of the requirements for the validity of waqf property is that the *wakif* must be able to guarantee full ownership of the object being endowed. Therefore, copyright intended for waqf must, in practice, be accompanied by proof of registration with the Directorate General of Intellectual Property (DGIP), Ministry of Law and Human Rights, as an authentic document. This registration is not merely a formality but an administrative requirement necessary for the issuance of the Waqf Pledge Deed (AIW), since the deed must include official ownership documents (H.OK.Saidin, 2013).

Furthermore, if the copyrighted work being endowed is not registered, the potential for ownership disputes or infringement by third parties becomes even greater. This situation hinders the utilization of the waqf and reduces the benefits for the wider community. In other words, although copyright protection arises automatically (Dina Widyaputri Kariodimedjo, 2010), registration remains a practical and normative necessity in the context of waqf. Here lies the fundamental challenge: the declarative principle of copyright does not fully align with the administrative needs of waqf, which require written proof of ownership. This gap demands clearer regulatory arrangements so that IPR waqf—particularly copyright waqf—can develop optimally while maintaining legal certainty.

Fourth, IPR waqf also encounters problems in the mechanism for creating the Waqf Pledge Deed (AIW). As is known, the AIW is an authentic document whose form and substance have been formally standardized by legislation and can only be issued by a Waqf Pledge Deed Official (PPAIW). However, until now, the available AIW formats only cover immovable property and cash waqf, while an AIW format specifically for IPR waqf has not been provided at all. This legal vacuum creates normative problems and slows down the implementation of IPR waqf in Indonesia (Henry Soelistyo Budi dan Margaret Gozali, 2016).

In practice, the creation of an AIW for IPR waqf remains difficult to realize because there is no clear implementing regulation regarding procedures for transferring copyright as a waqf object. This situation leaves PPAIW whether from the Religious Affairs Office (KUA) or notaries without a definite reference in preparing an AIW for IPR waqf. Provisions in Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006, while regulating movable waqf property other than cash, do not detail a specific AIW

format for non-conventional waqf objects such as copyright. As a result, PPAIW are expected to make independent adjustments based on the nature of the endowed asset. Yet IPR has its own legal characteristics that differ from other movable property. This condition results in most PPAIW lacking comprehensive understanding of the mechanism for transferring copyright through waqf, which in turn leads to confusion among the public (H.OK.Saidin, 2013).

Fifth, some forms of Intellectual Property Rights, especially copyright have a temporal nature because their legal protection is limited to a specific duration. This characteristic creates a fundamental difference from the concept of waqf in Islamic law, which is essentially permanent and intended to provide continuous benefit. This difference raises both technical and conceptual issues: whether the object of waqf refers to the economic rights of the copyrighted work, which only last during the protection period; and what becomes of the waqf once the protection period ends and the copyrighted work automatically enters the public domain.

These questions are crucial because they directly impact the validity and continuity of copyright waqf. If the waqf pertains only to economic rights, then its duration is limited to the statutory protection period, unlike immovable waqf property whose benefits may continue indefinitely. In other words, there is a potential contradiction between the principle of waqf which requires continuous, sustainable benefits and the legal nature of copyright, which is time-bounded. If this issue is not adequately regulated, waqf based on royalties risks losing its value once the copyright term ends. In such circumstances, the purpose of waqf as a long-term welfare instrument becomes difficult to achieve (Dwi Hardianti dkk, 2021).

The Implementation of Imam al-Syatibi's Maqashid al-Sharia as a Solution for Developing Intellectual Property Rights (IPR) Waqf Policies

The recognition of Intellectual Property Rights as waqf objects in Law No. 41 of 2004 concerning Waqf is a progressive step that demonstrates an expansion of the concept of waqf assets from material assets to non-material ones. However, from the perspective of *maqashid al-sharia*, there remain conceptual and practical issues that hinder the realization of the objectives of sharia, particularly *hifz al-mal*, *hifz al-'aql*, *hifz al-nafs*, and *hifz al-din*. Without comprehensive regulatory instruments and policies, the potential of IPR waqf is difficult to optimize and may even lead to ownership disputes or misuse of benefits, which in fact contradicts the values of *maqashid* itself.

IPR, as non-material assets, intrinsically carry significant economic value. Therefore, they require proper legal instruments to ensure certainty of ownership, registration, transfer, and protection of the waqf in line with the objectives of sharia. Imam al-Syatibi emphasizes that the formation of new legal norms is permissible as long as they

promote *maslahah* and prevent *mafsadah*. In this context, technical regulations for IPR waqf serve the function of ensuring legal certainty, preventing disputes, and enabling the utilization of IPR for public benefit. Thus, the formulation of technical regulations for IPR waqf constitutes a form of realizing *maqashid* by safeguarding community assets, strengthening the waqf legal system, and ensuring that IPR waqf contributes meaningfully to public welfare.

The primary step the government must take to achieve this is issuing implementing regulations whether in the form of Government Regulations (PP) or Ministerial Regulations (PMA) that detail the technical procedures for IPR waqf. The technical components that must be regulated include: Scope, Administrative Requirements for IPR-Waqf AIW, Procedures for Dual Registration and Documentation, Post-Protection Provisions, Administrative Sanctions and Remedial Mechanisms.

The implementing regulations must explicitly define the types of IPR that can be endowed, such as copyrights, certain trademarks, patents, industrial designs, and trade secrets. This clarity is crucial because not all forms of IPR are compatible with waqf principles. The issuance of an IPR Waqf Pledge Deed (AIW) must be based on valid proof of ownership. This includes certificates issued by the Directorate General of Intellectual Property (DGIP), or other official registration documents. Furthermore, the IPR AIW must be recorded in two institutionst, the Indonesian Waqf Board (BWI) as the supervisory authority of waqf, and the DGIP to officially mark the IPR asset as waqf property.

This dual-recording mechanism ensures legal certainty in both sharia and state administrative systems. Technical regulations must outline a systematic workflow for the creation and recording of an IPR AIW, such as: a) The *wakif* declares the IPR waqf pledge before a Waqf Pledge Deed Official (PPAIW), either a notary or a KUA official, b) The validated AIW is then registered with BWI, c) The waqf status of the IPR is subsequently recorded in the DGIP database so that it officially appears in the national IPR system.

Since IPR has a temporal protection period, it is necessary to regulate what happens when the legal protection expires. Several options include: Asset Conversion, Royalties or income generated during the protection period are converted into other sustainable assets such as cash waqf or productive investments. Then Waqf assets may be transferred into other forms of waqf, such as cash waqf or productive waqf instruments. This prevents the loss of waqf benefits when the IPR protection period ends.

Technical regulations should also provide administrative sanctions for violations involving IPR waqf, such as misuse of royalties, misappropriation of benefits, or negligence in registration. These sanctions may include: Written warnings from BWI, temporary suspension of the *nazhir*, Revocation of the IPR *nazhir* certification if serious violations occur. In addition to sanctions, remedial mechanisms are needed to ensure that the benefits of the waqf are not lost—for example, appointing a replacement *nazhir* or temporarily transferring the management of IPR waqf to an official institution.

Furthermore, the absence of a dedicated management institution for intellectual property waqf (wakaf HKI) has become a significant structural barrier to its development. A managing institution with expertise in intellectual property and the creative economy is needed to protect, develop, and monetize IP assets lawfully and in accordance with sharia principles. Based on the maqasid principles particularly the protection of wealth (hifz al-māl) and the promotion of public benefit (maslahah) the establishment of such an institution should be initiated by the state. Its model could take the form of a special unit within the Indonesian Waqf Board (BWI), making it easily integrated with the national waqf system, or a sharia-bank-affiliated institution similar to cash waqf administrators (LKS-PWU**),** namely the Intellectual Property Waqf Management Institution (LPW-HKI)**,** which would be mandated to receive, manage, commercialize, and distribute the proceeds from IP waqf.

The establishment of an institution such as LPW-HKI represents a strategic step to overcome the structural problems of IP waqf, which until now has lacked an adequate institutional mechanism. A comparison can be drawn with LKS-PWU, which has proven highly effective in promoting the growth of cash waqf in Indonesia. The effectiveness of the LKS-PWU model is reflected in data from the Ministry of Religious Affairs, which records that as of 2024, there are 50 LKS-PWU institutions that have collectively succeeded in mobilizing cash waqf amounting to Rp 2.3 trillion. (Tatang Astarudin, 2024). This achievement proves that the existence of a dedicated receiving and managing institution is a key factor in the success of any waqf instrument. By adopting this successful model, the LPW-HKI will fill the structural gap in the governance of intellectual property waqf.

Regarding the competence of nazhir, Article 12 paragraph 2 of Law No. 41 of 2004 on Waqf affirms that nazhir has the right to receive guidance from the Minister and the Indonesian Waqf Board (BWI) (Republic of Indonesia, 2004). Such guidance includes training, capacity building, and certification. As the authorized official institution, BWI has the mandate to provide training and certification to nazhir so that they possess competencies that meet contemporary demands, including the management of IP waqf assets. Therefore, certification for IP waqf nazhir is not a new idea but a detailed implementation of the legal rights of nazhir guaranteed by law.

Within the maqashid al-shariah framework of al-Shatibi, nazhir certification falls under the category of *hifz al-māl* (protection of wealth). This is because certification ensures that the intellectual property being endowed does not lose its value due to mismanagement. Competent managers are able to sustain the asset, maximize its economic potential (royalties, licenses), and prevent losses that could harm the community. Thus, certification is not merely administrative; it is an instrument for ensuring public benefit through competence. By reinforcing capacity, the objectives of maqashid are achieved because management is carried out by qualified and trustworthy professionals.

With regard to a special AIW (Deed of Waqf Pledge) template for IP waqf, the government, BWI, and relevant authorities (DJKI, notaries, and the Religious Affairs Office/KUA) need to formulate an official AIW template for IP waqf. This template will serve as a guideline for Waqf Pledge Deed Officials (PPAIW) when administering IP waqf. The AIW template must accommodate the specific characteristics of IP, such as moral rights, economic rights, duration of protection, licensing, and arrangements for the post-protection period of the IP. In the context of maqashid al-shariah, the existence of a specific AIW template for IP functions as a tool for the protection of wealth (*hifz al-māl*) and affirmation of contractual certainty (*hifz al-dīn*). Al-Shatibi emphasizes that the formal structure of instruments may be adapted as long as the objectives of sharia (the realization of public benefit) can be attained.

Furthermore, the issue of the temporal nature of IP waqf—particularly copyright—can be addressed through the maqashid al-shariah approach. Within the framework of *qasd al-shāriʿ fī waḍʿ al-sharīʿah*, al-Shatibi affirms that every rule of sharia is established to realize continuous and sustainable benefit (Shaban Muhammad Ismail, 1998). This principle provides normative legitimacy that although the economic rights of intellectual property have a limited protection period, this does not negate their validity as an object of waqf. From the perspective of *hifz al-māl*, the economic rights of IP are still categorized as *māl mutaqawwam* (valuable property) that can be managed and endowed, because during the period of legal protection they generate real benefits through royalties, licenses, and the distribution of works. Thus, IP waqf functions as an instrument of social empowerment in which its economic returns can be directed to support education, healthcare, research, da'wah, and public welfare throughout the protection period.

When the copyright protection period ends and the work enters the public domain, maqashid al-shariah requires the establishment of a mechanism for converting the benefits so that the waqf remains sustainable. Practical implementations that can be formulated include: 1) Managing derivative assets through reprints, digitization, open-access publication, or establishing an IP waqf museum. 2) Establishing a reserve fund from royalties during the protection period to finance waqf programs after the copyrighted work enters the public domain. 3) Diversifying productive waqf by investing royalty income into permanent assets (land, buildings, or endowment funds) so that the continuity of benefits remains preserved even after the economic rights of the IP expire.

With this implementation framework, the temporal nature of IP is not seen as a weakness, but rather as part of the dynamics of public benefit (*maslahah*) that can be institutionally engineered to maintain the principle of *istimrār al-manfa'ah* (continuity of benefits). This concept affirms that the essence of waqf does not lie in the permanence of the asset's physical form, but in the sustainability of the social benefits produced by that asset. Furthermore, al-Shatibi emphasizes that maqashid serves as the spirit of shariah; therefore, even though positive law determines the temporality of copyright, maqashid

provides theological and normative justification for making it an object of waqf, provided that mechanisms for converting benefits are prepared to ensure continuity.

Conclusion

The waqf of Intellectual Property Rights (IPR) in Indonesia holds great potential as an instrument of public welfare, but it has not yet developed optimally due to five major problems: The absence of technical regulations, low professionalism of nazhir, limited legal certainty, the absence of a specific Waqf Pledge Deed (AIW) format for IP waqf, the temporal nature of IP. From the perspective of al-Shatibi's maqashid al-shariah, all these problems reflect the lack of realization of the values of protecting wealth (*hifz al-māl*), protecting intellect (*hifz al-'aql*), protecting life (*hifz al-nafs*), and protecting religion (*hifz al-dīn*). Therefore, solutions aligned with al-Shatibi's maqashid include: Establishing comprehensive implementing regulations for IP waqf, strengthening nazhir certification through BWI, establishing an Intellectual Property Waqf Management Institution (LWP-HKI), creating a specific AIW format for IP waqf, converting IP waqf benefits to ensure sustainability.

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