



## **INTELLECTUAL PROPERTY RIGHTS AS AN OBJECT OF WAQF FROM AN ISLAMIC LEGAL PERSPECTIVE (Review of Law Number 41 of 2004 Concerning Waqf)**

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### **Abstract**

*Waqf is one of the recommended and acceptable actions special position in Islam. Because waqf provides benefits and benefits is one way to provide welfare for society. Waqf which initially only consisted of immovable objects such as land and buildings. Now, through the times, the objects of waqf have become broader, such as objects one example of this is intellectual property rights. In this article the author raises the topic of the validity of intellectual property rights as objects of waqf. The research is normative juridical research. By using two types of approaches, namely the state approach and conceptual approach. The results of this research indicate that intellectual property rights which are the object of waqf can be said to be valid from a legal perspective in Indonesia. This is proven by the existence of law number 41 of 2004 concerning waqf. And related to the categorization of intellectual property rights as assets. Imam Shafi'i classifies intellectual property rights as a category of assets that can be used as objects of waqf.*

**Key words:** *Intellectual Property Rights, Object of Waqf, Waqf*

### **INTRODUCTION**

One of the ways of moving nearer to God. Waqf is related to property. Waqf has been laid out and has been drilled by Muslims all around the world since the hour of Prophet Muhammad. Until presently remembered by the Islamic people group for Indonesia. The act of waqf is exceptionally enormous it implies for financial, social and strict life. In this way, Islam sees the act of waqf as one of the main types of love encouraged. Islam gives opportunity to its disciples to gather property abundance on the rule that piece of the property has a place with others. After all man should comply with the desire of irrefutably the proprietor. In Islam not known by the presence of outright possession (outright), however proprietorship majazi (relative). Allah swt alone owns the absolute owner (Nissa, 2017). While people are as it were simply an impermanent proprietor. As a legal administrator, and that implies the property some of them are disseminated to the right gatherings. These assets can be distributed through

a variety of channels, including the waqf (Hardianti, et al., 2021).

Waqf is a training that has a significant incentive for economic public activities, culture, and religion. Accordingly, Waqf is essential for great deeds as depicted in the Qur'an with the expression gift of property (infāq). Because it encompasses both the religious and socioeconomic dimensions simultaneously, waqf is an Islamic requirement for worship. Aspect of religion on the grounds that the gift is a strict consolation that should be carried out in the existence of Muslim people group, so that the provider of waqf will get a compensation from Allah SWT for submitting to his orders. The financial aspect on the grounds that the arrangement of gifts will have an effect on the social and financial prosperity of society (Hardianti, et al., 2021).

Waqf is an Islamic strict lesson that intends to fabricate government assistance also, the improvement of cutting edge human advancement, the advancement of Islamic civilization previously can't be isolated from the job of Waqf. Indeed, even the Waqf figured out how to subsidize the undertaking Islamic human advancement over the long run and in the social and financial turn of events, the Waqf assumes a decent part in accomplishing the government assistance of an equitable society and prosperity (Diana and Permana, 2020). Waqf is the continuous collection of wealth for worship, religious purposes, and charitable acts. Waqf is one wellspring of assets that have the expected in the turn of events individuals' economy. Notwithstanding Waqf there are likewise different wellsprings of social assets like zakat, infaq, furthermore, donations (Naim, 2017). Muslims in Indonesia have long known and applied Waqf, that is, since Islam entered Indonesia. Waqf is firmly connected with social exercises as well as other social exercises. Indeed, even Waqf can be utilized as an unending asset of individuals who give benefits in the government assistance of society.

Waqf is an entirely important resource being developed. In addition, it is an effort to shape a Muslim's character and personality to be willing to give away some of one's assets for the benefit of others, which is also a high-value investment. Without taking into account the time span and material advantages for the people who give. In the interim, waqf has a monetary capability individuals are exceptionally striking, on account of the land or capital that is overseen in a coordinated way. Useful will assist society with satisfying life for individuals who are not fit for hard working attitude inspiration (Julyono and Sulistyawan, 2019). Waqf is likewise a training that has extraordinary prizes in the lessons of Islam, since practically all human practices will be interfered with when the human passes on to the world. However, the compensations for waqf

practice proceed to stream and are as yet acknowledged by the wakif despite the fact that he has passed on. Waqf objects typically take the form of land and buildings, also known as immovable objects. Notwithstanding, the advantages of waqf. The land for the structure is just appreciated by individuals living around the land the structure is found. In the meantime, there is an increase in the number of poor people. New funding options that aren't just tied to building and land endowments are needed (Julyono and Sulistyawan, 2019).

Waqf in conventional form is only limited to objects that are not move. But based on the principle of the benefits that you want to spread through waqf, then there are many new waqf objects such as share waqf. The main spirit in waqf is how to maximize the benefits that will be felt by the recipients, so that the aim of waqf to improve the welfare of Muslims can be realized. According to scholars, the validity of waqf is determined by the objects donated, so that there are conditions that must be met for these objects are Waqf assets must be has value (valuable), clear shape, the property rights of the person making the endowment (wāqif), the objects donated are immovable objects, such as land or other objects adapted to existing waqf customs (Syahbibi and Faisol, 2020). Seeing that the object of the waqf is property according to law, then the object exists which have the classification of tangible objects and some are intangible objects.

In the law number 41 of 2004 about waqf, it is expressed that the objects of waqf comprise of two types: 1) waqf for unfaltering articles, and 2) waqf for portable items. Next in Unofficial regulation no. 42 of 2006 concerning Execution of Regulation no. 41 of 2004, it is resolved that the objects of versatile article waqf are separated into two: 1) versatile article waqf other than cash, and 2) waqf of versatile articles as cash. Arrangements for portable items other than cash can be separated into two: 1) moving articles due to their inclination (can be moved), and 2) objects moving in light of the fact that it is expressed in the regulation as a portable article. The clarification above is as expressed in Article 16 (3) of law number 41 of 2004. Concerning, it is made sense of that "mobile articles are resources that can't be spent since it is consumed, including: a) Cash; b) Valuable metals; c) Protections; d) A car; e) Freedoms on Protected innovation (IPR); f) Right to Rent; what's more, g) Other moving articles as per sharia arrangements and pertinent regulations and guidelines. Provisions pertaining to waqf Because IPR is a provision for waqf objects that has never been regulated before, it is interesting to learn more about how IPR waqf provisions can be a solution to its development. The purpose of waqf is to provide the community with welfare.

Protected innovation Privileges are material freedoms, the right to an article which starts from crafted by the mind, the consequence of crafted by reason. Aftereffects of proportion work thinking human. That is, there is also the result of emotional labor on the other hand. The consequence of the heart's work in a theoretical structure is known as a feeling of the mix of the outcomes level headed and close to homework brings forth a work called work scholarly. Protected innovation additionally incorporates brand names and topographical signs, copyright, licenses, modern plans, proprietary innovations, incorporated circuit formats. Concerning abundance. Protected innovation is an abundance of the relative multitude of consequences of insight, thinking power, for example, innovation, information, workmanship, writing, tune structures, composed works, cartoons, and so on (Abdullah et al., 2021). Last but not least, intellectual property rights (IPR) are rights to act on something related to intellectual property that are governed by applicable standards or laws.

One more issue then, at that point, emerges with respect to the legitimacy of waqf versatile items as licensed innovation privileges as indicated by the viewpoint of Islamic regulation, deliberate fiqh has not raised logical copyrights, for example, licenses on brand names or business marks as individual or gathering property freedoms that are dependent upon regulation insurance. Products used in science, either with or without the discoverer's permission.

Based on what was just said, researchers are interested in studying waqf intellectual property rights from the point of view of Islamic law, specifically how to waqf intellectual property rights. Consequently, to answer these exploration issues, this examination was directed with the point of comprehending the waqf of licensed innovation privileges according to a legitimate viewpoint. This examination can advance the fortunes and complete the investigation of privileges waqf regulation protected innovation, as well as reference material for ensuring analysts examine the law of waqf licensed innovation privileges. Practically, the findings of this study are expected to be a contribution of information, thought, and input material to scientific discourse that will benefit observers, researchers, and legal practitioners in general.

## **METHOD**

This type of research is library research (liberal research) which searches for materials literature to be used as research analysis, the aim is to build theoretical concepts based on reading material. legal research carried out using how to research or study problems in terms of legal regulations, researching

materials literature or secondary data regarding intellectual property rights endowments. The data collection method that researchers use is by study library, namely searching for data, either in the form of books, articles or scientific journals related to the waqf of intellectual property rights. In this research, the law used is Islamic law which is linked to waqf law. Normative is research that seeks to examine juridical rules and regulations regarding waqf in Indonesia. Data processing is carried out by reviewing, organizing, conceptualizing or arranging data, synthesizing, analyzing, editing, and concluding.

## RESULT AND DISCUSSION

### 1. *Islamic concept of waqf*

Waqf comes from Arabic in the form of mashdar (waqafa) whose synonym is *habs*, means to stop or restrain property. In fiqh terms, waqf means handing over a long-lasting property right to someone or a Nazir (waqf custodian or administrator) or to a management body, provided that the results or benefits are used in accordance with Islamic teachings. The object that was donated is no longer there becomes the property of the wakif and does not belong to the nazir but is the right of Allah SWT. Thus, waqf means giving someone's property to an institution Islam is a form of servant service for the benefit of the people in accordance with Islamic teachings (Naim, 2017).

As indicated by syara', waqf implies holding an item or property that can be taken the advantages are to be utilized in the way supported by Allah SWT. In another definition, waqf implies holding the beginning (head) of resources and giving the returns too use it in the method of Allah. Abû Hanifah considers waqf to be a form of containment effort that entitles the person who is waqf to its benefits, which are then donated to beneficial goals for the present and the future. According to Imam Syafi'î and Ahmad Ibn Hambal, waqf is the transfer of ownership from the person who is waqf as well as the retention of assets from beneficence and the giving of the proceeds as charity to individuals who get waqf and should not go about as they wish *mauquf alaihi*.

In another sense, waqf implies giving over property privileges whose substance is secure long to the *nazdir* (caretaker or executive of the waqf) or to one of the administration bodies, given that the outcomes as well as advantages are utilized as per Islamic lessons (Maskur and Gunawan, 2018). After the waqf interaction, the articles gave are at this point not the property of the wakif nor does it have a place with *nāzir*, however it has a place with Allah (the freedoms of individuals). In Regulation no. 41 of 2004 concerning waqf, it is made sense

of that waqf is a demonstration wakif regulation to isolate and additionally hand over piece of his property to utilized perpetually or for a specific timeframe as per the interests of the local area many, the two for strict purposes and additionally broad government assistance in view of arrangement sharia.

As indicated by the Aggregation of Islamic Regulation, waqf is an activity regulation did by an individual or gathering or an element regulation which is then alluded to as wakif, by isolating or on the other hand regulate part of the resources he possesses in a never-ending timeframe for the motivations behind strict exercises or public interest whose execution is as per strict lessons Islam. According to the definition provided above, waqf is the act of a person, group, or body under the law known as waqif that surrenders or separates part or all of one's assets to be used in accordance with the interests of religious activities or the general welfare, among other purposes carried out in accordance with sharia guidelines (Diana and Permana, 2020).

Obviously, waqf doesn't simply happen unexpectedly very much like that, obviously there should be a legitimate premise or establishment the law is to explain the execution of waqf. Concerning the contention, it is a fundamental rule for people to do what they do. The demonstration of waqf, which starts from the sections of the Qur'an, specifically: QS. QS, Al-Hajj 77 Ali Imran 92, QS. Al-Baqarah 261. The preceding verses generally explain that infaq serves a useful purpose. For this situation, waqf is likewise a giving of property to ultimately benefit individuals. In this manner the section in above can be utilized as a lawful reason for waqf. So profound For this situation, waqf capabilities as a sought love action so that individuals who are waqf (wakif) can have capital in the following life, to be specific in eternity (Amriah, 2023).

Apart from explanations from the four sects of scholars, in Article 6 Law Number 41 of 2004 concerning Waqf as well mentions the conditions for waqf, including the existence of a party who donates his property (wakif); the recipient of the property waqf (Nazhir); waqf assets; endowment pledge; property allocation endowments; and the term of the waqf. You need to know about waqf objects with immovable objects in the form of land only used as an object of waqf for a perpetual period, but is excluded for land bound by building use rights, business use rights, use rights on State land, building use rights or use rights over management rights or other people's rights used as an object of waqf for a certain period or until the validity period of the land rights mentioned as the exception expires.

In the world of waqf, the subject of waqf is one harmonious in waqf procedures. As for the subject of waqf. What is meant here is wakif and nazir. *Waqif* is individuals, organizations and legal institutions that submit (donate) the assets he owns to another party for utilized for the public interest and sharia (Maskur and Gunawan, 2018). Meanwhile, Nazir is an individual, organization or legal institution receiving and being given trust for waqf assets to be developed so that waqf assets are used in accordance with its purpose, function and purpose is for the benefit of the people.

The development of the times has led to legal regulations. One of them is the formation of laws Number 41 of 2004 concerning waqf which is in Article 16 Paragraphs (1) to (3) have stated that moving objects and objects immovable is an object (object) of waqf. Immovable objects include land rights as regulated in regulations applicable laws that have been registered or not yet registered, a building or part of a building that stands on land as referred to in letter a, plants and other objects related to land, ownership rights to apartment units as stipulated in applicable laws and regulations, other immovable objects in accordance with sharia provisions (Islamic law) and applicable laws and regulations (Maskur and Gunawan, 2018). Meanwhile, for moving objects which have been explained in laws and regulations including Money, Precious Metals, Securities, Vehicles, Intellectual Property Rights, Rental Rights, other movable objects in accordance with Sharia provisions and regulations (Hardianti et al, 2021).

Waqf management basically has the following principles that must be implemented to support the progress of waqf in Indonesia. Therefore, there is a need for good management in the process implementation of waqf carried out by companies or institutions waqf manager. According to the concept of good governance as stated above regulated by the National Committee on Governance Policy The principle of waqf management by waqf institutions is the first principle of openness (transparency), in this principle the institution Waqf managers must prepare appropriate information can lead to punctuality, adequate, clear and definite, measurable, can be used as a comparison and can be done easily easy to find out and accessed by interested managers according to the rights he has (Fauzi, 2022). So according to principle openness, interested managers will easily view or access important information in decision-making steps.

The second principle is the principle of accountability, in this principle the waqf management institution is required to be accountable for performance

results that have been implemented transparently and fairly to achieve performance sustainability in waqf management institutions.

The third principle is the principle of accountability, in this principle the management institution. Waqf has a responsibility to maintain continuity long-term management, so that it is trusted and recognized as a good and responsible manager of waqf institutions responsible to society, the environment and statutory regulations.

The fourth principle is the principle of independence, in this principle the waqf management institution must be managed independently without being tied to other parties so each organ of the waqf management institution can dominate each other, and any party cannot intervene with the management agency waqf so that it does not cause integrity defects in the institution. With the principle of independence, institutions will demonstrate to a waqif that in the decision-making process carried out by waqf institutions have gone through a fair and fair process objective (Fauzi, 2022).

The fifth principle is the principle of justice, in this principle the waqf management institution when. The process of carrying out activities requires always paying attention to the interests of parties who have other interests based on the principles of fairness and equality for all (Amriah, 2023). Apart from that, it also provides equal opportunities and treatment in terms of convey suggestions, input and criticism to the owner interests, so as one of the stakeholders allows the wakif to become interested again and intend to donate assets to the object through a waqf institution that he has trusted.

## **2. *The Concept Of Property And Property Rights According To Islamic Law And Civil Law***

Treasure is linguistically defined as al-mal which is interpreted as everything that makes humans happy and able to be maintained by them, whether in material or form benefit. According to Hanafi scholars, what is meant by al-mal/treasure is everything a person has of gold, silver, objects, animals and others (Maskur and Gunawan, 2018). Thus, what is meant by property according to Hanafi scholars is only something that is tangible and can be used to save, so that something is intangible and cannot be saved not classified as property. And the benefits are classified into property rights. According to Hanafi scholars, there are two elements of wealth, namely 'Ainiyah, something must have a substance or material that has its real form, and 'urf (habit) is a good human habit by some people or in general whether it is property or not property.



According to a number of scholars, including Imam Syafi'i, it is defined as assets as follows. First, it is not referred to as property except has value that can be bought and sold and if someone damages it then he replaces the value of the property even if it is a little, and everything that people do not leave behind from their possessions such as money and the like. Second, everything that is useful is owned and halal the price is like renting a house and what it means wages are justified. Thus, according to Imam Shafi'i, wealth is something of value, the benefit of an object, can be bought and sold and have consequences for the person who ruins it (Maskur and Gunawan, 2018).

Next is about rights. Rights come from the Arabic word *al-haqq*, which has the meaning of *tsubut* is fixed, firm and obligatory. And rights can also be interpreted as objects, possessions, forms of determination, obligations or certainty. The definition of rights in terms of terminology, according to fiqh scholars, defines rights which include owned objects, benefits and *maslahah* and *maslahah-maslahah* which are determined by sharia (Syahbibi and Faisol, 2020).

Mustafa Ahmad Zarqa defines rights as something special provisions which, because of sharia, determine a power or a legal burden. From this definition, rights do not cover objects' concreteness that is owned because of the absence of power and burden. According to *jumhur fuqaha'*, rights are the equality of objects if they are rights that relate to objects. Between the distribution of one of the rights, that is, it is a human right, is a benefit or power intended for its owner, whether it is the right to maintain health, guarding wealth, fighting evil and injustice, and enjoying State-owned public facilities (Maskur and Gunawan, 2018).

Viewed from the perspective of the object of the right, namely relating to objects or not divided into two, namely the first Maliyah rights, namely rights relating to property and benefits. The maliyah rights are divided into two, namely:

- a. *Syakhsi* rights, according to Mustofa Ahmad Az-Zarqa, are demands set by the sharia' for a person towards a person other. This right is sometimes related to the implementation of something which is worth the good of the right owner, such as buying and selling, agreements and others. *Syakhsi* rights relate to a person's responsibilities, and this right cannot be revoked because this right exists within a person, unless the owner of that right grants it a waqf.

- b. These rights are rights that arise because of relationships between a person and a particular object. Therefore, it is within rights There are two elements, namely the owner of the rights and the object. But if the object is not a concrete object (a real object can be sensed) is not an *aini* right but a *syakhsi* right.

The Second is the right of *ghairu maliyah*. *Ghairu maliyah* rights, namely rights that are not related to objects, such as guardian rights on behalf of children or people under them guardianship, political rights such as voting and being elected, and rights independence (human rights).

Next is ownership from the perspective of Islamic law. Ownership comes from the word belonging which means someone who has the authority to use the property he has (Nissa, 2017). So that the authority, rights, duties and obligations are related to assets is a collection of authorities then known as ownership. Arrangement ownership has been regulated in the rules of rights and obligations, where The first rule that regulates ownership relationships is everything creator, including humans who belong to the creator who creates natural resources to meet humad life needs.

The definition of objects in the Civil Code is divided into two. The first is that objects do not move. Immovable objects in the law are described as objects which by their nature cannot move (Art 506 Civil Code). Land and things on the land, whether in the form of buildings, trees, pipes, water channels and other existing things on that land. Then the objects are categorized as immovable objects due to the purpose of their use (Art 507 Civil Code). In this case it becomes one unit with the land if the object is attached or attached, such as an existing machine in factories so that they become one unit, home furnishings, pools which contain fish in it, the remains of the building will be reused and other related matters as in examples mentioned (Amriah, 2023).

Furthermore, material rights over immovable objects and lawsuits over immovable objects are categorized as immovable objects move, which has been determined by law in Article 508 of the Civil Code.

Next are moving objects. Movable objects in the law are described as an object moves according to the properties of the object can move or the place can be moved (Article 509 Civil Code) such as cars, motorbikes, animals, books and others can be moved. Then the right to use the proceeds of use of the object movables, rights to promised interest, claims regarding movable objects, copyrights, share rights and securities, rights brands, author's rights,

etc., according to Article 511 of the Civil Code, these objects are categorized as movable objects which have been determined by law.

Property rights arise when there is a relationship between people with objects. This is what is meant by property rights is absolute power obtained by legal subjects or the owner of the object is a person or institution with direct control wherever the object is. Property rights are absolute (*droit de suite*), which means that the property rights follow the object yourself, whether or not where the object is held or by whom it can be held maintained by anyone (Abdullah et al, 2021). Regulation of property rights is regulated in Article 528 Book II Civil Code, which explains that everyone can have rights material goods which include positions of authority, property rights, inheritance rights, usufructuary rights, servitude rights, lien rights, mortgage rights, use rights building/reef building, business use rights, use rights and inhabit, and interest rights over land.

Property rights as described in the Civil Code are a right to enjoy an item and do anything with it the goods freely, as long as they do not conflict with regulations legislation and do not interfere with the rights of others, all of which does not reduce the possibility of revocation of rights for the sake of public interest and appropriate compensation based on existing regulatory provisions. In civil law, ownership rights to goods or objects cannot be obtained other than by taking possession, with adhesion, by passage of time, by inheritance, either according to by law or through a will, and through appointment or transfer of property rights, carried out by the person who has the right to it the item.

### **3. *The Concept of Intellectual Property Rights As Intangible Movable Objects.***

Intellectual Property Rights are the legal recognition that gives the holder the rights intellectual property (IPR) to regulate the use of ideas and expressions created for a certain period of time. The term 'intellectual property' reflects (Abdullah et al., 2021). This is the result of thought or intellect and is an intellectual property right that can be protected by law like other forms of property rights. It could be said that Intellectual work represents the result of human thought and intelligence, which can take the form of invention, design, art, written work or the practical application of an idea that contains economical value (Amriah, 2023).

The creation of these works requires a sacrifice in the form of energy, time, mind, even the cost is not small. These sacrifices make the work produced have value that deserves to be appreciated, in addition to the benefits that can be

enjoyed so has high economic value. Therefore, protection is needed on someone's intellectual creativity so that the work is not easily copied and imitated freely. Property legal protection of intellectual property rights is very much needed to avoid unfair competition and ensure continuity development of intellectual property rights (Hardianti et al., 2020). Thus, the creator or discoverer (creators in the field of copyright and inventors in the field of patent rights) receive legal protection and monopoly rights over certain intellectual work products.

Several legal sources for the implementation of IPR provisions in Indonesia come from International Agreements that have been ratified include: a) United Nation Convention on Biological Diversity (United Nations Convention on Biodiversity) was ratified by Law no. 5 of 1994. b) Agreement The World Trade Organization (WTO) was ratified by Law no. 7 of 1994 concerning Formation World Trade Organization. c) Paris Convention of the Protection of Industrial Property and Convention Establishing the World Intellectual Property Organization (WIPO), both conventions. This was ratified by Presidential Decree of the Republic of Indonesia No. 24 of 1979 which has been amended by Decree of the President of the Republic of Indonesia No.15 of 1997. d) Patents Cooperation Treaty and Regulations (PCT) was ratified by Presidential Decree No.16 1997. e) Trademark Law Treaty was ratified by Presidential Decree No. 17 years 1997. e) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). f) Bern The Convention for the Protection of Liberty and Artistic Works was ratified by Decree President of the Republic of Indonesia No. 18 of 1997. g) Convention Establishing The World Intellectual Property The Organization Copyright Treaty was ratified by Presidential Decree No. 19 of 1997 (about the WIPO Copyright Treaty). The legal regulations above are the basis for legal protection as well as being a legal umbrella for intellectual works in Indonesia, both in the field of copyright, patent rights and trademark rights. Intellectual Property Rights are legal recognition that gives the holder of intellectual property rights (IPR) to regulate use of ideas and expressions created for a certain period of time.

The term 'intellectual property' reflects that it is the result of thought or intellect and that intellectual property rights can be protected by law as are forms of property rights. It can be said that Intellectual Work represents the result of thought and intelligent humans, which can take the form of inventions, designs, art, written works or practical applications ideas that contain economic value. Therefore, it is considered a commercial asset. Intellectual

Property includes Copyright and Industrial Property Rights, which consist of patents, trademarks, industrial designs, layout designs, integrated circuits, trade secrets and plant varieties.

#### **4. *Waqf for Intellectual Property Rights According to Islamic Law***

Treasure (al-mal) has the origin of the word mala (leaning or turning away from the middle to one side), is interpreted as everything that pleases humans and they look after, good in material form and in the form of benefits. Hanafi school scholars define wealth is everything that humans love and can provide when needed, or everything that can be owned, stored and utilized. Meanwhile, most scholars define property as anything that has value and is subject to compensation for the person who destroys or eliminates it (Maskur and Gunawan, 2018).

For *Jumhur Ulama*, wealth is not only material, but also includes the benefits of an object. This is different from the Hanafi school of thought scholars who argue that understanding assets are only material in nature, while benefits are included in the definition of property. According to Hanafi scholars, property itself is something whose owner can invest in it specifically and not interfered with by others. Meanwhile, according to Ahmad Azhar Basyir, property is control over something, which the ruler can exercise himself actions towards something that he controls and can enjoy its benefits if there are no sharia obstacles'. According to *Jumhur Ulama*, inheritance rights do not only concern material things, but also relate to rights and benefits, because all of them contain the meaning of wealth (Lubis, 2020).

The general opinion of the ulama is that "people who damage property are obliged to bear it," give a signal about their view of the value (qimah) of something. That means, everyone has value, then it has benefits, because everything that has value is certain to provide benefits. Therefore, something that has no value and no benefit is seen as treasure. Thus, it can be understood that value is a basis for something that is seen as a treasure and the value itself is essentially a benefit (Naim, 2017). So that it can be concluded that benefits are the origin of giving value and viewing something (Lubis, 2020).

Ibn 'Arafah argued that "natural wealth includes objects ('ain) that can be obtained sensed and objects ('arad}) that cannot be sensed (benefits). He defines al-'arad} as benefits that are logically impossible to point to (physically). This includes creative works that are actually human thoughts that cannot possibly be utilized except attributing it to a creator and source that takes material form, such as books and so on (Lubis, 2020). If benefits are

categorized as assets, the nature of assets applies to objects, then property rights also apply to benefits as to objects, as long as its use is permitted according to sharia'. Discourse on the theory of property ownership relating to intellectual property rights is emphasized in Ulama Fatwas such as: *Majma' al-Fiqhi al-Islami* Decree number 43 (5/5) *Mu'tamar V* Year 1409 H/1988M regarding *al-Huquq al-Ma'nawiyah* and the Fatwa Decree of the Indonesian Ulema Council number 1/Munas VII/MUI/15/2005 concerning protection of intellectual property rights.

Even strictness regarding intellectual property rights in the form of authorship (haq al-ta'lif) explained by Wahbah al-Zuhaili, as copyright. The Muslim scientist argued that authorship rights are protected by Islamic law. Hence, reprinting or copying a book without permission is a violation or crime against the author's rights (Maskur and Gunawan, 2018). Apart from that, Islam also provides criminal sanctions against people who take property other people illegally, for example punishment for theft (sariqah) and disturbing security (hirobah). Damage to other people's property in any form can result in a claim for compensation losses in the form of repairs, replacement with similar goods, or payment of the price purchase, depending on the type of item damaged. Intellectual property is property which is protected. Anyone who destroys or takes without permission can certainly do so sanctioned.

The object of waqf is property which according to the waqf law is called waqf property which is defined as property that has long durability and/or benefits long-term and has economic value according to sharia which is donated by the waqif (Amriah, 2023). If you look at the treasures of Islamic fiqh, wealth (al-Mal) is interpreted as everything please humans and they keep them. Both in material and internal form of benefit. According to the Hanafi madzhab, wealth is defined as everything that is loved by humans and can be provided when needed, or everything that can be owned, stored and utilized. Meanwhile, according to Jumhur Ulama defines property as anything that has value and is subject to compensation for the person who destroys it.

In Indonesia, the scope of waqf objects has broadened after the issuance of Law Number 41, 2004 concerning waqf then followed by PP Number 42 of 2006, in PP It is stated that the types of waqf assets include:

1. Objects do not move,
2. Movable objects other than money, and
3. Moving objects in the form of money

Intellectual Property Rights (IPR) are included in the category of movable objects other than Money. Copyright in the juridical distribution of objects including objects without bodies or intangible (immaterial) because of the provisions of the law, namely Law Number 19 of 2002 concerning Copyright, then copyright is called a movable object based on provisions of the Law, however, in terms of its form, copyright remains in the form of immaterial objects.

The object of waqf according to mazhab scholars as read in fiqh books classics must meet the following criteria:

1. Must be a material object;
2. Has useful value.
3. Can last for a long period of time

The criteria for waqf objects like this were conveyed by the Shafi'i and Hanbali Mazhab Ulama. Both do not limit whether the object is an immovable object such as land, houses, buildings and so on or movable objects, such as cars, livestock, books, and the like.

The above is different from the opinion of the Hanafiyyah Ulama, they require an object Waqf must be an immovable object. The Ulama' from these three schools of thought argue that the waqf must be forever (*ta'bid*), therefore *mauquf* (the object of the waqf) must also have strict criteria so that the intention of the waqf is to be used forever or at least within a long period of time can be realized. The Maliki Mazhab has another opinion regarding the object of waqf, they state that the object of waqf does not have to be a material object (tangible) but can also be an immaterial object (intangible). If we refer to the opinion of the Maliki school of thought, through the pattern of *Ilhaq Masail bi Nadhairiha* (similarity of a problem to a crime) Copyright can be used as an object waqf. Because, Ulama' Maliki allows waqf with the object of remaining rental rights, the problem of people renting houses. In this problem, it appears that the object being donated is not in the form of material objects, but the benefits of these objects are immaterial and limited by a certain period of time. This problem is similar to waqf with copyright objects that only have benefits but do not have material properties and are limited by a certain period of time. Hence, determination the validity of Copyright as an object of waqf, referring to the opinion of the Maliki school of thought, is based on 2 (two) things as follows;

First, look at the benefits contained in Copyright in the form of economic aspects where the creator is entitled to receive compensation in the form of

honorarium/royalty due to publication or duplication of his creations in a certain amount for business purposes. This economic aspect is what places copyright in the category of meaningful assets. Categorization of Rights Creation as a meaningful treasure is based on the formulation of ulama' fiqh regarding wealth.

The Ulama' have different opinions about the definition of mall. The Hanafi School sets criteria double in determining the definition of a mall. First, it can be stored/placed. Second, you can take advantage according to custom. From these two criteria, it can be concluded that wealth is according to the school of thought Hanafi must have an observable material form (Hardianti et al., 2021). The Maliki school of thought believes that wealth not only in the form of objects (material), but also in the form of benefits (immaterial). Shafi'i School does not limit assets to tangible objects only, but also includes tangible objects intangible in the form of benefits. So, what is used as a benchmark is the value of the benefits There is. The Hanbali School states that the criteria for something to be called wealth are not based on 'ain (objects), but on the value of the benefits contained in them, so that objects Even intangible things can also be called treasures if they are useful. From the definition above, it can be It is understood that the majority of Ulama'fiqh do not limit wealth to tangible things only, but it can also be something intangible such as rights and benefits. Categorization mal (treasure) is based on the value of the benefits that exist in something, therefore assets can be in the form of tangible objects or intangible objects, including Copyright (Abdullah et al., 2021).

Second, the Maliki school of thought allows waqf for a certain period of time. IPR Waqf This automatically includes *muaqqat* waqf (limited period), because of the IPR period limited by law. First, the term of IPR in the form of: a). Books, pamphlets, etc all other written works; b). Drama or musical, dance, choreography; c). Deep fine arts all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, and applied arts; d). Batik art; e). Songs or music with or without text; f). Architecture; g). Lecture; h). Props; i). Map; j). Translations, interpretations, adaptations and anthologies; is as long as the creator is still alive, and continues for 50 (fifty) years after the creator died. Second, the term of Copyright is in the form of; a). Computer program; b). Cinematography; c). Photography; d). Databases; and e). Works resulting from conversion; valid as long as 50 (fifty) years since it was first published/announced. Making Copyright as an object of waqf, thus, has received philosophical support (cause supported by Ulama'), juridically



(because it is recognized and regulated in statutory regulations) and sociologically.

## CONCLUSION

In general, Intellectual Property Rights are included in the category of assets that receive protection law. Among the *fuqaha*, the waqf adheres to the principle that objects What is essentially donated is the preservation of the benefits of the object, so that its position Intellectual Property Rights as an object of waqf are the same as other assets donated. According to scholars Malikiyah, mauquf (waqf objects) do not have to be tangible objects, but also objects that are not tangible. Although some scholars such as the Shafi'iyah, Hanabilah, and Hanafiyah sects state that *mauquf* (waqf objects) must be tangible.

Meanwhile, "according to legislation, Intellectual Property Rights are seen as one of the assets (huquq maliyat) which receives legal protection as wealth (mal), and Islam too organizes it into one of the concepts of *maslahah*, namely protecting assets (mal)." The principle of usefulness of Intellectual Property Rights which can provide economic benefits in the form of payment of royalties and technical fees, is the most relevant basis for existence, the object itself is a waqf asset. Moreover, the waqf worship by the ulama is categorized as a charity of *shadaqah jariyah* which has rewards that continue to flow even though the person who did it has died.

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