



## An Overview of Intellectual Property Rights as *Waqf* in Indonesia and Malaysia

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### ABSTRACT

*This paper aims to get an overview of Intellectual Property Rights as waqf in Indonesia and Malaysia. To achieve these goals, the research uses a normative legal writing method with descriptive-analytical specifications. The findings reveal, both Indonesia and Malaysia permit IPR being waqf. Unfortunately, there are no implementing regulation or specific guidelines regarding how and what to waqf from IPR in both states. The absence of implementing regulation or guideline will have implication not only for confusion in the community, but also for the lack of applicability of IPR being waqf in the community.*

**Keyword:** *Indonesia; Intellectual; Malaysia, Property; Waqf.*

### ABSTRAK

Tulisan ini bertujuan untuk mendapatkan gambaran mengenai Hak Kekayaan Intelektual sebagai wakaf di Indonesia dan Malaysia. Untuk mencapai tujuan tersebut, penelitian ini menggunakan metode penulisan hukum normatif dengan spesifikasi deskriptif-analitis. Temuan mengungkapkan, baik Indonesia maupun Malaysia membuka kesempatan HKI untuk diwakafkan. Sayangnya, tidak ada peraturan pelaksanaan atau pedoman khusus mengenai bagaimana dan apa yang harus diwakafkan dari HKI di kedua negara bagian tersebut. Ketiadaan peraturan atau pedoman pelaksanaan akan berimplikasi tidak hanya menimbulkan kebingungan di tengah masyarakat, namun juga akan berakibat kurangnya penerapan HKI yang diwakafkan di masyarakat.

**Keyword:** *Indonesia; Intelektual; Malaysia; Property, Wakaf.*

## 1. Introduction

Philanthropy or charity is the desire and personal commitment to donate wealth to address social problems such as poverty and improve the standard of life of people in various areas of life. (Republika.co.id, 2018) The term philanthropy may be foreign to the ears of Muslims, but the spirit and soul of philanthropy have long been in the teachings of Islam, contained in the Qur'an and Hadith. One is recorded in Al Baqarah verse 215: "They ask 'O Prophet in' what 'way' they should donate. Say: "Whatever donations you give are for parents, relatives, orphans, the poor, and needy travelers. Whatever good you do is certainly well known by Allah". (Al-Baqarah:215).

Islam introduces philanthropy to its people using zakat, infaq, alms, and waqf (ZISWAF). (Kasdi, 2016) Therefore, ZISWAF is the official form of Islamic philanthropy, where the implementation of these activities, such as the kinds of wealth, minimum rates, amounts, and other rules stipulated in the Qur'an and Hadith.

The Qur'an and the Hadith indicate that worship is the purification of the treasures of God and the help of others. When Indonesians talk about waqf, we still believe the valuables that can be given as waqf are restricted to high-value items like land, buildings, or wells to take their water. (Suganda, 2014) Over time, the types of

assets that can be waqf also vary, ranging from cash to Intellectual Property Rights such as Copyright, Patents, or Trademarks.

Indonesia has the Council of Indonesia Ulama (“Majelis Ulama Indonesia”). One of the functions of the Council of Indonesian Ulama is to provide fatwas and advice, both to the government and to Muslims in Indonesia regarding issues of religion, including how perspective of Islamic law regarding Intellectual Property Rights is. The Fatwa of the Council of Indonesian Ulama (MUI) No. 1/MUNAS VII/MUI/5/2005 (“MUI Fatwa No. 1/2005”) quoted *Majma' Al-Fiqh al-Islami Decree No 43 (5/5) Mu'tamar V of 1409 H/1988 AD* that explaining Intellectual Property Rights have economic value that is recognized as property. Therefore, violating Intellectual Property Rights is a prohibited act.

Moreover, Indonesia is a country that allows Intellectual Property Rights to be an object of waqf. It is stated in Article 16, paragraph 3, of Law No. 41 of 2004 concerning Waqf. Some Intellectual Property Rights regulations in Indonesia, such as copyright and patents, also support and strengthen that copyright and patent can be transferred as a waqf.

Nevertheless, the minimum amount of articles explaining the procedures for transferring Intellectual Property Rights as waqf in Indonesia and the lack of specific implementing regulations related to this point raises many questions that must be answered carefully. Therefore, it is essential to compare to regulation in another country that open up possibility of Intellectual Property Rights as waqf. This comparison will be helpful for getting point of view of weakness and strength of another country’s regulation.

## 2. Method

This article used normative legal research, i.e. the law is conceived as what is written in the law-in-books or law as a law or norm, a standard of human behavior considered appropriate. (Amiruddin & Asikin, 2012) This normative legal research is based on the material of primary and secondary law, namely research that refers to the norms contained in the statutory regulations. (Soekarto, 1984). The problem approach used in this research is a statute approach and a comparative approach. The statute approach examines statutory regulations that are still deficient in their norms or even nurture abnormal practices. (Irwansyah & Yunus, 2022) Meanwhile, a comparative approach is carried out by comparing the legal regulations or judgments of courts in one country with the laws of another country. (Irwansyah & Yunus, 2022). This paper uses a comparative approach to identify the advantages and weaknesses of legislation in comparative countries and also to find points that possibly to adopt to Indonesian *waqf* regulations.

## 3. Result and Discussion

### 3.1 An Overview of Waqf

Waqf comes from the Arabic language, namely *waqafa-yaqif-waqfan* and *awqafa-yuqif-iqafan* which means standing still, holding, wristband, and silent. (Hidayat 2017) In Islam, fiqh scholars have differences in defining waqf due to the way of interpretation in look at the nature of waqf. However, it is agreed that the meaning of waqf is to retain the substance of an object and use the results/give away the benefits. (Sesse 2010)

Regarding the differences in interpretation by the scholars, it can be conveyed as follows:

- a. The Hanafi school interprets waqf as retaining an object that legally still belongs to the giver of waqf to empower the benefits of the object for good. From this definition, the waqf property remains the property of the waqf giver, and is even allowed to withdraw and sell it. If the giver of waqf dies, the property becomes an inheritance for his heirs. So what arises from waqf according to this school is only a contribution of benefits. (Sesse, 2010)
- b. The Syafi'i school defines waqf as retaining assets that can provide benefits and the eternal material object (al-'ain) in which the ownership rights of the waqf giver of the property are severed or ultimately released to be managed by the nadzir/recipient of the waqf based on sharia principles. (Suganda, 2014) In the Syafi'i school, there is a change in ownership of assets, which originally belonged to the giver of waqf to belong to the ummah managed by the nadzir. This interpretation is different from the views of the Hanafi

- school. According to the Syafi'i school, even the waqf giver dies, the heirs and their descendants are not allowed to inherit the waqf property. (Sesse, 2010)
- c. The Hambali school interprets waqf as completely cutting off the freedom and control of the owner of the property as the giver of waqf, where the benefits of the property are intended for the people and goodness to gain the pleasure of Allah. This school's definition is similar to the Syafi'i school, where waqf assets cannot be inherited, donated, or sold to anyone. (Juanda, 2022)
  - d. The Maliki School argues that waqf is someone giving the benefit of the property he owns (even if the ownership is by way of leasing) to the person entitled to a *sighat* contract where in the contract is explained how long the benefit of the property can be enjoyed by the *nadzir* or the beneficiary of the waqf, according to the wishes of the waqf giver. (Hidayat, 2017)

Based on the opinion mentioned by most scholars, contemporary Islamic finance experts in Indonesia also define waqf. One of the experts in Islamic finance is Jafril Khalil. He defined waqf as donating a long-lasting property (i.e., building or land) to *nadzir* (waqf keeper) under the agreement's provisions; the benefits of waqf are manifested for mankind's welfare under Islamic values. The property in the waqf act is 'tied up' forever to Allah in terms of public rights. It means the property does not belong to the previous owner or *nadzir*. (Lita, 2020) At first impression, the definition above tends to be the definition put forward by the Syafi'i school of thought. This tendency is understandable because historically, the first Islam that entered Indonesia was Islam with the Syafi'i school of thought. Therefore, it is normal and natural for most Muslims in Indonesia to belong to the Syafi'i school and agree to Imam Syafi'i's opinions.

Furthermore, based on the definitions mentioned above, there are 4 (four) pillars of waqf. They are *waqif*, *mauquf*, *mauquf 'alaih* or beneficiary, and *shighah* or expression.

Andri Soemitra explained in detail relating to the four pillars of waqf: (Suganda, 2014)

1. *Waqif* (owner of property or giver of waqf)  
Waqif requirements are: a) Ideally, the waqif wholly owns the property; b) Reasonable and healthy spiritually, not in a state of compulsion or under pressure; c) Baligh; d) People who can act legally (*rasyid*).
2. *Mauquf* (property to be donated)  
*Mauquf* requirements are: a) Assets must be clear in form or substance and are eternal; b) the amount/level is precise; c) wholly owned by the *waqif*; d) the property stands alone.
3. *Mauquf 'alaih* (Recipient of waqf)  
Terms of *mauquf 'alaih*: can be used by *waqf khairy* and *waqf dzurri*. In *Waqf Khairy*, *Waqif* opens opportunities for anyone to be able to receive the benefits of waqf assets, as long as they are used for the public interest. Meanwhile, in the *Waqf Dzurri*, the *Waqif* determines the limits of the target of the waqf or the beneficiaries of the waqf only for certain parties, such as the *Waqif's* descendant of the family.
4. *Shighah* (waqf contract)  
Requirements are: a) A statement on granting waqf is made with *lafadz*, either in writing or in a gesture; b) Speech contains words that show the practice of the waqf forever (*ta'bid*); c) Speech is realized immediately (*tanjiz*); d) Speech is definite; e) These remarks may not be followed by terms and conditions whereby waqf practices can be cancelled at a later date.

### 3.2 An Overview of Intellectual Property Rights

Many scholars are still debating the definition of Intellectual Property Rights (hereinafter referred to as "IPR"). However, there are three pillars of IPR from all definitions: human intellectual ability, property, and rights. Humans are the first element of IPR because humans, with all their intellectual abilities, produce works in the fields of science, literature, and technology to the formation of new varieties of plants. All of them are works produced by human intellect. (Kesowo, 2021)

Despite the absence of a standard definition of IPR, Indonesia had taken on the role of a World Trade Organization (WTO) member. It also ratified Trade Related Aspects of Intellectual Property Rights (TRIPs). Indonesia's involvement in the WTO and TRIPs encouraged Indonesia to pass Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. (Asfiah, 2015) The consequence for Indonesia by becoming a member of the WTO is accepting the obligation as a member of the

WTO to develop and enforce a framework domestic law of the country to support and protect IPR. (Brewster, 2011)

Therefore, Indonesia immediately ratified and had laws and regulations related to IPR, namely:

- a. Trademark and Geographical Indication: Law No. 20 of 2016 *juncto* Law No. 6 of 2023
- b. Copyrights: Law No. 28 of 2014
- c. Patent: Law No. 13 of 2016 *juncto* Law No. 6 of 2023
- d. Plant Variety Protection: Law No. 29 of 2000 *juncto* Law No. 6 of 2023
- e. Trade Secret: Law No. 30 of 2000
- f. Industrial Design: Law No. 31 of 2000
- g. The Integrated Circuit Layout Design: Law No. 32 of 2000

The brief definitions of each IPR above are:

- a. Trademark and Geographical Indication  
 Trademark is any distinguishing sign that is used in the trading of goods and/or services and can be displayed graphically in the form of an image, logo, name, word, letter, number, or color arrangement in two-dimensional and/or three-dimensional form, sound, hologram, or a combination of these elements. (Undang-Undang No. 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis, 2016)  
 Geographical indications are labels that identify the region of origin of goods and/or products that, as a result of geographical, environmental factors including natural factors, human factors, or a combination of the two, give the goods and/or products produced a reputation for quality and distinctive characteristics. (Undang-Undang No. 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis, 2016)
- b. Copyright  
 Copyright is an exclusive right that is only given to the creator, and this right arises without the need for registration or application. Copyright will automatically be owned by a creator when the creation is embodied in a tangible medium. (Chazawi, 2019)
- c. Patents  
 Patent is an exclusive right that an inventor can receive for his technological creation for a specific amount of time, allowing the inventor to use the invention himself or approve its use by another party. (Undang-Undang No. 13 Tahun 2016 Tentang Paten, 2016)
- d. The Right of Plant Variety Protection  
 Breeders and/or holders of plant variety protection rights can receive special rights that allow them to use their varieties as a result of their breeding or to grant permission to other people or legal organizations to use them for a specific amount of time. (Undang-Undang No. 29 Tahun 2000 Tentang Perlindungan Varietas Tanaman, 2000)
- e. Trade Secret  
 Trade Secret Rights are information rights in the business and/or technology fields that are unknown to the general public, have economic value because they are relevant to business operations, and are maintained in confidence by the trade secret owner. (Undang-Undang No. 30 Tahun 2000 Tentang Rahasia Dagang, 2000)
- f. Industrial Design  
 Industrial Design Right is an exclusive right given by the state to the designer over the creation of a three-dimensional or two-dimensional shape, configuration, composition of lines or colors, or lines and colors combined, that conveys an aesthetically pleasing impression and can be realized in patterns. Both two- and three-dimensional methods can be utilized to create products and everyday items, industry, or handicrafts, for a certain period carried out on their own or give their approval to other parties to carry out a said thing. (Undang-Undang No. 31 Tahun 2000 Tentang Desain Industri, 2000)
- g. The Integrated Circuit Layout Design Right  
 The Integrated Circuit Layout Design Right is an exclusive right given by the state to designers for works that take the form of a three-dimensional layout design of various elements, at least one of which is an active element, as well as part or all of the interconnections in an Integrated Circuit and the laying of three these dimensions are intended to prepare for the creation of an Integrated Circuit, for a specific period to carry out on their own, or to give approval to other parties to exercise this right. (Undang-Undang No. 32 Tahun 2000 Tentang Desain Tata Letak Sirkuit Terpadu, 2000)

IPR shall receive legal protection from WTO members because creator's rights need to be protected. The rights received by a creator are moral rights and economic rights. (Abduh & Fajaruddin, 2021) These moral and economic rights are entitled to be received by the creator as an award because the creator has successfully utilized his brain or intellect to produce a work. By granting moral and economic rights, creativity will be developed internationally and nationally.

Moral rights and economic rights granted by the State to a creator are intangible assets. Even though IPR is abstract and intangible, it still does not reduce the valuable contained therein. Therefore, for parties who violate the moral rights and economic rights of a creator can be subject to punish.

In Indonesia, the protection of IPR is not only protected by the State, but also supported by MUI Fatwa No. 1/2005 which represents the view of Islamic law. This MUI Fatwa follows the view of majority ulama from madzhab Maliki, Syafi'i, and Hambali that stated Copyright for original and useful creations is considered as valuable property as well as object if it can be utilised in accordance with Shara'. From above explanation, both the State and Islamic law in Indonesia agree that Copyright and other IPRs are valuable objects and should be protected.

### 3.3 Comparative Study of the Transfer of IPR as Waqf in Indonesia and Malaysia.

Satjipto Rahardjo revealed that there are 5 (five) large and developing legal systems, namely 1) the common law system adopted in England and its former colonies; 2) the civil law system originates from Roman law, adopted by continental Western Europe, which was then inherited by its colonial countries; 3) the customary law system in Asian and African countries; 4) the Islamic legal system is adhered to by Muslims wherever they are, whether in an Islamic state or a country with a majority Muslim population; and 5) a communist/socialist legal system implemented in communist countries such as Russia and North Korea. (Ali, 2022)

The consequence of the enormous Muslim population in this world makes Islam not only a ritual worship activity but also makes Islam a source of law in State life in Indonesia. Malaysia is even a step ahead of Indonesia by positioning Islam as the only official religion of the State. Therefore, Islamic law has become part of the applicable law in Indonesia and Malaysia.

Even though they both apply Islamic law in their constitution, the colonial history in Indonesia and Malaysia also influenced the legal system they adhered to. As a former Dutch colony, Indonesia has implications for making Indonesia a country adhering to the Civil Law System amidst the traditions of Islamic law and customary law. While Malaysia, as a former British colony, affected it under the common law system amid Islamic legal traditions and customary law. (Umar, 2013)

Therefore, Indonesia, together with Malaysia, both have a plural legal system. Indonesia's law sources integrate civil, Islamic, and customary law. On the other hand, Malaysia's law sources are national law from the common law system, Islamic law, and customary law. (Somadiyono, 2020)

As a member of civil or continental law, Indonesia places statutory law as the main framework in its legal system. In contrast, Malaysia as a member of common law, puts jurisprudence as the main framework in their legal system. (Zuliyah, 2021)

The typology of the legal system and form of the state adopted by Indonesia and Malaysia certainly contributes to the specificity of waqf arrangements within the legal framework of each country. While there are differences, of course, there are also similarities between Indonesia and Malaysia, namely that the majority of the people of these two countries are adherents of the Syafi'i school of thought. The Syafi'i school is indeed the majority, but there are still opportunities for the Hanafi and Maliki schools to become part of Islam in Indonesia and Malaysia. (Islamiyati et al., 2020)

#### 3.3.1 Transfer of IPR as Waqf in Indonesia

Indonesia is an adherent of the unitary state type, as stated in Article 1, paragraph 1 of the 1945 Constitution of the Republic of Indonesia (UUD 1945). This design of the unitary state was addressed to unify a high diversity in Indonesia, which consists of a vast archipelago of more than 13,667 islands, around 300 ethnic

and sub-ethnic groups, and more than 668 languages and dialects that are native to Indonesia. (Bertrand, 2007) A unitary state implies that the central government conducts all regions and provinces in Indonesia, and all national policies implemented nationwide are made in Jakarta. Local regions are not permitted to have various regulations or policies from those made by the central government. (Sung & Hakim, 2019) Thus, the central government and all regions in Indonesia apply the same regulations regarding waqf.

As a country with the most immense Muslim majority in the world, Indonesian people have long known and practiced waqf. However, before 2004, legal regulations related to waqf still needed to be more comprehensive and scattered in various laws and regulations. (Shomad, 2012) This occasion has encouraged ulama, leader of Islamic mass organization, and academics to meet and discuss the importance of forming a waqf Law, noting that waqf objects are expanding. Before 2004, waqf objects in Indonesia were still limited to immovable objects such as owned land. (Wakaf, 2006) Therefore, there is expectation that the law regarding waqf will allow movable objects to become waqf objects.

This hope was grounded because in 2001, Mannan, an Islamic economist from Bangladesh, introduced cash waqf, which impacted a shift in waqf practices among Indonesian Muslim communities. At the beginning of this shift in waqf objects, the status of cash waqf became hotly debated. (Fahham, 2015)

The reason for that debate is that there is a provision in Islamic Law that states that waqf should be in the form of land or buildings. Therefore, the assets being donated shall be eternal in material terms, such as land or buildings. It is the opinion of the Syafi'i school of thought. Historically, the first Islam to enter Indonesia was the Syafi'i school. Therefore, it makes sense if the object of waqf in Indonesia is land and building waqf because it refers to the opinion of Imam Syafi'i.

Because most Muslims in Indonesia adhere to the Syafi'i school of thought, the practice of cash waqf became a matter of debate among the public. To stop this confusion, MUI also answered regarding the legal status of cash waqf through a fatwa on the permissibility of cash waqf (2002). Since then, people have begun to carry out cash waqf massively. (Fahham, 2015)

In order to provide legal certainty for implementing cash waqf and also accommodate the concerns of Islamic scholars who wish to expand waqf objects, in 2004, the Government issued Law No. 41 of 2004 concerning Waqf ("Law No. 41/2004"). This Waqf Law not only regulates the management of waqf of immovable objects such as land but also regulates the management of waqf of movable objects. Even movable objects are permitted by Article 16, paragraph 3 of this Law is not limited to cash waqf, but extends to precious metals, i.e., jewelry, securities, and IPR. In addition, the Government also enacted Government Regulation Number 42 of 2006 ("PP No. 42/2006") *juncto* Government Regulation Number 25 of 2018 ("PP No. 25/2018"), which these PP are implementing regulation for Law No. 41/2004.

It is worth appreciating the expansion of waqf objects carried out by the government because the more diverse waqf objects indicate, the more excellent the opportunity for waqf to be utilized for the welfare of the *ummah*. In addition, the opportunity for IPR as an object of waqf indicates that Indonesia is not an absolute adherent of the Syafi'i school of thought but is also open to the Hanafi and Maliki schools of thought.

IPR can become a waqf object indicating that the exclusive rights in IPR are equivalent to property rights. The definition of property rights, according to Article 570 of the Civil Code, is the right to use an object as freely as possible. However, the freedom that exists remains with restrictions that the use of rights does not conflict with the law and does not violate the rights of others. (*KUHPerdata Buku II Tentang Benda*, 2010)

Based on the above definition, property rights are the highest rights compared to other material rights because those with the rights can enjoy and control them freely. The object's owner is entitled to sell, donate, exchange, endow, or even damage it. Property rights are rights that cannot be disturbed by anyone. If parties want to limit property rights, then there must be compensation and fulfill the specified conditions. (Takdir, 2015)

Furthermore, IPRs can be transferred as waqf because it is categorized as property law (law of wealth). The rights that exist in Intellectual Property are private property which are intangible. (Dharmawan et al., 2016) Abstract and the intangibility of IPR does not dwarf the valuable value attached to IPR. This reason is based

on OK Saidin's opinion that there are material rights, rights to an object that originate from human reasoning abilities, and the results of reasoning produce immaterial objects. Still, according to OK Saidin, regarding the ability to reason and produce something intellectually, not all humans are endowed with this. Therefore, humans who can employ their brains properly to produce work are entitled to Intellectual Property Rights. (Saidin, 2001)

In line with the view of Indonesian law that IPR is a form of property rights (*huquq maliyyah*) and can be donated or even inherited, MUI Fatwa No. 1/2005, as a representative of the views of Islamic law in Indonesia also agreed on this matter. However, with the addition of the condition that IPRs that are protected by Islamic law and can be donated are IPRs that do not conflict with Islamic law. (M. U. Indonesia, 2005)

Due to IPR being seen as property under Islamic law, the MUI Fatwa also agrees that parties who commit IPR violations, piracy, and using IPR without the owner's permission are unjust, so they are justified in receiving punishment from the State.

The explanation above explains that IPR is property rights. The questions that arise when talking about IPR as waqf are what challenges arise from making IPR waqf? Also, what rights from IPR are donated? Because as we know that IPR contains moral rights and economic rights. Are the moral rights in the IPR that are donated? Or is the economic right in an IPR that is donated? Or both?

#### a. Challenges for IPR as Waqf Objects

Indonesia provides opportunities for IPR to be used as waqf objects, which is legitimized in Article 16 of Law No. 41/2004. Meanwhile, in the waqf implementing regulations, the regulation on intellectual property rights can be waqf seen in Article 21 PP No. 42/2006. (Peraturan Pemerintah No. 42 Tahun 2006 Tentang Pelaksanaan UU No. 41 Tahun 2004 Tentang Wakaf, 2006) Several articles in PP No. 42/2006 has been amended in PP No. 25/2018, but Article 21 above is not included in the amended PP. PP No. 25/2018 focuses more on exchanging waqf assets for land with an area of up to 5,000 m<sup>2</sup>, so this PP does not mention the IPR endowments in Indonesia at all.

Based on the explanation above, the first challenge in making IPR an object of waqf in Indonesia is the need for more detailed regulations regarding the procedure for IPR waqf. There is only 1 (one) article each in Law No. 41/2004 and PP No. 42/2006, which regulates IPR waqf. The minimal number of articles and not accompanied by further explanation regarding the existing articles creates the impression that the government only states that IPR can be donated. It is just a statement, not an implementation guideline regarding IPR endowments in Indonesia.

Similar in nature to the 2 (two) special regulations related to waqf above, Indonesian laws and regulations related to IPR are only in the form of statements or acknowledgments that IPR can be donated as waqf. The transfer of IPR as waqf is only stated explicitly in the Copyright, Patent, and Trademark Law. (Praja et al., 2019) Meanwhile, other IPR regime laws do not expressly state that IPR can be transferred as waqf.

The second challenge is that the government should provide a particular institution that accepts IPR waqf, just as the government provides Islamic financial institutions that receive cash waqf. The existence of an IPR waqf-receiving institution will undoubtedly make it easier for waqf candidates who want to donate their IPRs. (Niswah, 2018)

The two challenges stated above are the reasons for the unpopularity of IPR endowments in Indonesia. Indonesian people are still inclined to conventional waqf, such as land or building waqf, because the legal rules of conventional waqf are more precise than IPR waqf.

#### b. Which rights in IPR are donated?

In the above explanation, it is explained that someone who has utilized his intellect is blessed with IPR, which consists of moral rights and economic rights. Further explanation regarding the two rights, moral rights belong to the creator and cannot be revoked, even though the copyright or other related rights have been transferred. This right includes the right to always include the author's name in each of his creations and the right to the integrity of his work. (Iman et al., 2021)

In addition, according to Komen and Verkade, the moral rights that the creator possessed are as follows: (Paserangi, 2011)

- 1) The prohibition against altering the creation;
- 2) The prohibition against changing the title;
- 3) The prohibition against changing the determination of the creator;
- 4) The right to make adjustments.

According to the explanation mentioned above, the moral rights cannot be transferred by waqf. Although IPRs had been transferred, moral rights, inherent in the creator or perpetrator (of art, a recording, or a broadcast), cannot be removed for any reason. The implementation of moral rights is evident in the fact that, even if the IPRs had been transferred through waqf, the name of the creator shall still be included if the waqif wants to. (Praja et al., 2019)

Meanwhile, economic rights are owned by creators to benefit from their work. Therefore, the transfer of IPRs as waqf is only limited to economic rights. This economic right is regarding the usage or exploitation of the work under IPRs norms. For instance, someone who carries out his book's copyright as waqf, the science is listed as a charity waqf, and books with copyrights that can be used by waqf recipients are labeled as waqf. (Praja et al., 2019)

In addition, a creator is able to maximize the economic rights of his IPR through licensing. Generally, license agreement is in written form. Thus, this license agreement of IPR is something that a creator can give as waqf because in the agreement stated how many royalties received by a creator.

### 3.3.2 Transfer of IPR as Waqf in Malaysia

Malaysia is a country in Southeast Asia that implements a federal type of state with a democratic monarchy government system. Geographically, Malaysia consists of the mainland, namely West Malaysia, Peninsular (Peninsula) Malaysia, and East Malaysia. (K. J. R. Indonesia, n.d.)

The Federal Government of Malaysia consists of thirteen states, namely eleven states and two federal territories. The eleven states are Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Panang, Perak, Perlis, Selangor, and Terengganu, while the two federal regions are Kuala Lumpur and Putrajaya. The thirteen states are in Peninsular Malaysia or Western Malaysia. Meanwhile, Sabah, Sarawak, and the Labuan Federal Territory are in East Malaysia.

In Malaysia, each state's government sets its waqf laws. This condition happens because nine out of Malaysia's thirteen states are sultanates, with the sultan serving as the head of local administration. The federal government governed waqf and other Islamic religious rules in states without sultans, such as Sabah, Sarawak, and Malacca, as well as federal territories, such as Kuala Lumpur and Putrajaya. Therefore, waqf law may vary from one state to another in Malaysia. (Islamiyati et al., 2020)

According to Zubaidah and Hilal, the Federal Constitution of 1957 (section 3.4.1, article 3), the National Land Code of 1965 (NLC), the Administration of Islamic Law (Federal Territories) (Act 505 of 1993), the Selangor Waqf Enactment, Malacca Waqf Enactment, and the Trustee Act of 1949 (Act 208) served as the legal foundation for waqf law in Malaysia. (Islamiyati et al., 2020) This paper will be limited to Selangor Waqf Enactment No. 15 of 2015 ("Selangor Waqf Enactment").

Selangor Waqf Enactment is one of the states in Malaysia that expands the varieties of property and mentions IPR as property for waqf. (Selangor Enactment No. 15 of 2015 Wakaf, 2015) However, there are none of implementing regulations or articles related how Malaysia, especially Selangor, applies IPR as waqf.

In addition, Malaysia faces the same issue like Indonesia. The issue is whether to waqf the IPR itself or merely the advantages or usufruct from the IPR. In case the IPR is waqf, the waqf beneficiary shall utilize the IPR through licensing. However, if the advantages or usufruct of the IPR is waqf, the IPR stays with the original owner, but the profits or usufruct from the IPR, for example, through licensing, will be waqf. (Raji et al., 2015)



#### 4. Conclusion

Both Indonesia and Malaysia permit IPR as the waqf object. It indicates the exclusive rights in IPR are equivalent to property right. However, Indonesia and Malaysia, in this case Selangor, do not have specific implementing regulations related how to apply IPR as waqf object. Both states also have same issue related what the core of IPR to waqf. The issue is whether to waqf the IPR itself or only the benefit or usufruct from the IPR. Indonesia and Malaysia should draft implementing regulation regarding IPR as waqf. Giving the opportunity for IPR being waqf is a point that should be appreciated. It is due to the more diverse waqf objects, the more excellent the opportunity for waqf to be utilized for the welfare of the *ummah*. However, without clear regulation or guideline, IPR as waqf will not be applicable and certainly confuse the community.

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