

Commercial Justice Of Intellectual Property Rights From The Perspective Of Ushul Fiqh : Analysis Of Licensing, Trade Secrets, Industrial Designs, And Integrated Circuit Layout Designs (Icld) As The Implementation Of *Hifz Al-Mal*

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Abstract : Intellectual Property Rights (IPR) have become an essential component of the modern knowledge-based economy. Through licensing, trade secrets, industrial designs, and integrated circuit layout designs, intellectual creations generate economic value and contribute to technological development. Nevertheless, commercialization practices often raise concerns regarding monopoly, unequal bargaining positions, and unequal access to innovation. This study aims to analyze the commercialization of intellectual property rights from the perspective of Islamic legal theory (ushul fiqh) and maqasid al-shariah. This research employs normative legal research with a qualitative approach through literature review and conceptual analysis. The findings indicate that intellectual property rights are consistent with the objective of hifz al-mal (protection of wealth) within maqasid al-shariah. However, commercialization must be guided by the principles of justice (adl), prevention of harm (la darar wa la dirar), public welfare (maslahah), and equitable distribution of benefits. The study concludes that intellectual property protection is permissible in Islamic law as long as it does not create injustice, exploitation, or excessive monopoly.

Keywords: *Intellectual Property Rights, Ushul Fiqh, Maqasid Sharia, Justice, Hifz al-Mal.*

INTRODUCTION

The In contemporary Islamic legal scholarship, recent studies have emphasized the importance of integrating maqasid al-shari'a into modern economic practices, particularly in understanding the ethical foundation of economic behavior and legal reasoning. Previous works by the present author highlight that Islamic economic systems are not merely legal constructs but are deeply rooted in faith-based values that shape consumption patterns, social responsibility, and economic justice.¹ Furthermore, the interpretative approach to Islamic sources, particularly through classical exegetical traditions, plays a crucial role in constructing adaptive legal responses to contemporary issues.²

¹ Rina Susanti Abidin Bahren, "Pengaruh Iman Terhadap Konsumsi Barang atau Jasa," *Al-Ikhtisar: The Renewal of Islamic Economic Law* 1, no. 1 (2020): 55–56, <https://jurnal.idaqu.ac.id/index.php/al-ikhtisar/article/download/21/13>.

² Rina Susanti Abidin Bahren and Sabil Mokodenseho, "Metode dan Corak Penafsiran Ath-Thabari," *Mushaf Journal: Jurnal Ilmu Al-Qur'an dan Hadis* 3, no. 1 (2023): 155–158. <https://www.researchgate.net/publication/371233848>.

Building upon this foundation, the present study extends the application of Islamic legal theory into the domain of intellectual property rights, particularly in addressing the challenges of commercialization and distributive justice in a knowledge-based economy.

The evolution of the global economy in the contemporary era reflects a structural shift toward a knowledge-based economy, in which Intellectual Property Rights (IPR) have become a strategic instrument in fostering innovation, investment, and economic growth. Within this framework, IPR functions not only as a legal mechanism for protecting intellectual creations, but also as an economic incentive capable of enhancing research and development activities and facilitating cross-border technology transfer. Empirical studies indicate that the strengthening of IPR regimes is positively correlated with increased foreign investment and economic growth, although its impact varies between developed and developing countries.³

Nevertheless, beneath its strategic role, the implementation of IPR also generates serious challenges, particularly in the form of knowledge monopolies and unequal access to technology. The modern IPR system often creates economic domination by developed countries and multinational corporations, thereby widening the gap between innovation-producing nations and technology-consuming countries. This condition affects access to basic needs such as medicines, agricultural technologies, and education, ultimately giving rise to academic critiques concerning the injustice embedded in the global IPR system.⁴

This tension between the protection of individual rights and the demand of distributive justice necessitates a more comprehensive normative approach. In Islamic legal thought, IPR is increasingly understood as part of *haq al-ibtikar*, namely the right to intellectual creativity that encompasses both moral and economic dimensions. This perspective suggests that Islam does not reject the concept of IPR; rather, it recognizes it as a form of property that must be protected, if it does not violate the principles of justice (*‘adl*) and public welfare (*maslahah*). In this regard, IPR in Islam is positioned not merely as an economic instrument, but also as part of an ethical framework of ownership oriented toward social balance.⁵

³ Sharmila Ahlawat, “Intellectual Property Rights and Economic Growth: A Comprehensive Analysis,” *International Journal of Commerce and Economics* 5, no. 3 (2023): 36–37. [7014.pdf](#)

⁴ Khagendra Kumar and Salim Jawed, “Emerging Issues of IPR in Developing and Under Developed Countries,” *International Journal of Social Science Research and Review* 7, no. 10 (2024): 203–205. <https://doi.org/10.47814/IJSSRR.V7I10.2379>

⁵ Asmuni, YUSDANI, and Januariansyah Arfaizar, “Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights,” *Ulumuna* 27, no. 2 (2023): 876–880. <https://doi.org/10.20414/ujs.v27i2.749>.

However, studies integrating modern IPR with the approaches of *ushul fiqh* and *maqasid al-sharia* remain relatively limited. Most existing research focuses on formal legal aspects or normative compatibility between IPR and Islamic law, without thoroughly examining the implications of justice in its commercialization practices. In fact, the development of digital technology and economic globalization has expanded the complexity of IPR, including issues related to data ownership, artificial intelligence, and the increasingly uneven distribution of technology.⁶

Against this backdrop, this study aims to fill the existing academic gap by offering a comprehensive analysis of the commercialization of IPR from the perspectives of *ushul fiqh* and *maqasid al-sharia*, particularly in assessing the extent to which IPR practices are capable of realizing economic justice. Through this approach, the study seeks to formulate a conceptual model of IPR that not only ensures the protection of individual rights but also promotes a more equitable and sustainable distribution of benefits for society at large.

METHOD

This study employs a normative legal research approach, focusing on the analysis of legal norms, concepts, and principles within the framework of the prevailing legal system. Normative legal research, also referred to as doctrinal research, aims to examine law as a system of norms encompassing legal rules, principles, and doctrines in order to provide prescriptive solutions to legal issues.⁷ The approaches applied in this study include the conceptual approach and the statutory approach, which constitute the primary characteristics of doctrinal legal research.⁸

In the context of contemporary legal developments, normative legal research remains highly relevant, as it enables the analysis of legal dynamics in relation to social, economic, and technological changes.⁹ This approach allows researchers to examine law systematically as a coherent system of norms, while also evaluating its effectiveness and implications in practice.¹⁰

Data collection was conducted through library research, encompassing primary, secondary, and tertiary legal materials, including legislation, classical *ushul fiqh* texts, and recent scholarly journal

⁶ Ramlan Mustapha and Siti Norma Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," *International Journal of Islamic Theology and Civilization* 3, no. 3 (2025): 5–7. <https://doi.org/10.5281/zenodo.15381828>.

⁷ I Komang Surya Wibawa, "Karakteristik Ilmu Hukum sebagai Norma Sosial dalam Menjalankan Kehidupan Bermasyarakat," *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha* 4, no. 3 (November 2021): 951, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/43195>.

⁸ Mahmud Marzuki, *Penelitian Hukum*, edisi revisi (Jakarta: Prenada Media, 2017), 133–136.

⁹ Afni Aisyah Amalia and Sri Damayanti, "Analisis Hukum Pendukung Ekonomi Nasional dalam Era Smart Society," *Jurnal Syntax Imperatif* 6, no. 5 (2025): 2–4. <https://doi.org/10.54543/syntaximperatif.v6i5.855>

¹⁰ Sidi Ahyar Wiraguna, "Metode Normatif dan Empiris dalam Penelitian Hukum: Studi Eksploratif di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 3, no. 3 (November 2024): 8–10, <https://doi.org/10.59818/jps.v3i3.1390>.

articles relevant to the topic. Data analysis was carried out qualitatively using both interpretive and critical approaches. The interpretive approach is employed to understand the meaning of legal norms contextually, particularly within the perspective of *ushul fiqh*, while the critical approach aims to evaluate their conformity with principles of justice and public welfare (*maslahah*), as well as to identify structural weaknesses within the legal system. This analytical model aligns with contemporary trends in legal research that integrate normative analysis with critical perspectives in order to produce more comprehensive and socially relevant legal scholarship, particularly in addressing global challenges such as unequal access and economic domination.¹¹

RESULTS AND DISCUSSION

Intellectual Property Rights as Property in the Islamic Perspective

This conceptualization aligns with contemporary studies in Islamic economic law which demonstrate that economic behavior and wealth management are inherently connected to ethical and theological dimensions. In particular, prior research emphasizes that the regulation of wealth in Islam is not solely oriented toward ownership, but also toward ensuring balance, moderation, and social responsibility within economic life.¹² Accordingly, intellectual property as a form of intangible wealth must also be understood within this ethical-legal framework, where ownership is conditioned by its social implications.

In the development of the modern economy, Intellectual Property Rights (IPR) constitute a strategic asset with significant economic value, thereby requiring a normative framework capable of ensuring legal certainty while also promoting distributive justice. From the perspective of Islamic law, this phenomenon necessitates a reinterpretation of the concept of property (*al-mal*) in order to accommodate the evolution of non-physical forms of ownership that characterize knowledge-based societies. Contemporary studies indicate that Islamic law possesses the flexibility to respond to such transformations through *ijtihad* and the framework of *maqasid al-shari'a*, allowing the concept of ownership to extend beyond tangible objects to include the economic value derived from intellectual creations.¹³

Within this framework, IPR may be categorized as *al-mal al-ma'navi* (intangible property), referring to assets that lack physical form yet possess economic value and are legitimately

¹¹ Salim Ibrahim Ali, Zuryati Mohamed Yusoff, and Zainal Amin Ayub, "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development* 4, no. 1 (January–February 2017): 493. <https://www.ijtrd.com/papers/IJTRD6653.pdf>

¹² Bahren, "Pengaruh Iman Terhadap Konsumsi Barang atau Jasa," 58–60.

¹³ Hani Sholihah, "Intellectual Property Rights from an Islamic Legal Perspective," *Al-Afkar: Journal for Islamic Studies* 9, no. 1 (2026): 1307–1308. <https://doi.org/10.31943/afkarjournal.v9i1.2833>.

exchangeable. This interpretation aligns with contemporary developments in Islamic jurisprudence, which recognizes *manfa'ah* (benefit or utility) as a valid object of ownership under Sharia. Accordingly, IPR fulfills the criteria of *mutaqawwam*, namely something that has value, is capable of ownership, and can be utilized in modern economic transactions such as licensing, franchising, and rights commercialization.¹⁴

This perspective is further supported by academic scholarship asserting that, in the modern context, rights themselves can represent a legitimate form of ownership insofar as they conform to the principles of justice and public welfare (*maslahah*). In this regard, IPR is not merely understood as a legal instrument but also as an integral component of an economic system that provides incentives for innovation and creativity. Consequently, the recognition of IPR in Islamic law can be viewed as an adaptive response to global economic dynamics that position knowledge as a primary commodity.¹⁵

However, the recognition of IPR as a form of property is not without academic debate, particularly concerning its exclusive nature, which poses the risk of creating knowledge monopolies. Several studies suggest that modern IPR systems tend to confer substantial power upon rights holders, potentially obstructing the dissemination of knowledge and access to technology. This situation generates a fundamental tension between the protection of individual rights and the public interest, an issue that, within the Islamic perspective, must be addressed through the principles of justice and social equilibrium.¹⁶

Furthermore, critiques of IPR also emerge from the standpoint of global justice, where developing countries frequently occupy a disadvantaged position within an IPR-based economic system. The dominance of developed nations in the production and control of technology indicates that IPR does not always function as a mechanism for economic equality, but may instead deepen structural inequalities. Therefore, the legitimacy of IPR cannot be assessed solely from a normative perspective; it must also consider its impact on the distribution of welfare.¹⁷

In this context, the *maqasid al-shari'a* approach becomes a crucial instrument for evaluating the legitimacy of IPR. One of the primary objectives of Sharia is *hifz al-mal* (the protection of property), which encompasses both safeguarding individual ownership and regulating its

¹⁴ Asmuni, YUSDANI, and Januariansyah Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," 878–880.

¹⁵ Aang Asari, Theo Aditya Pradhana, Muhammad Faruq Averro, and Muhammad Irkham Firdaus, "Theory of Rights in Islamic Economic Law and Its Relation to Intellectual Property Rights," *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (November 2022): 170-172, <https://doi.org/10.21111/al-iktisab.v6i2.8384>.

¹⁶ Kumar and Jawed, "Emerging Issues of IPR in Developing and Under Developed Countries," 204–206.

¹⁷ Harsh Vardhan and Mahewash Mariyam Alam, "The Impact of IPR on Developing Countries," *International Journal of Law Management & Humanities* 7, no. 5 (2024): 1802–1804. <https://doi.org/10.10000/IJLMH.118429>.

distribution to prevent inequality. As a form of intangible property, IPR can be justified within this framework insofar as it maintains a balance between the rights of the owner and the interests of society at large.¹⁸

The *maqasid* approach also emphasizes the principle of *maslahah* (public welfare), requiring that every legal instrument generate broader societal benefits. Accordingly, IPR should not function merely as a tool for capital accumulation, but must also contribute to the advancement of knowledge and social progress. If IPR instead restricts access to knowledge, its moral legitimacy becomes questionable from the perspective of *maqasid al-shari'a*.¹⁹

In addition, the principle of *la darar wa la dirar* (no harm and no reciprocation of harm) serves as an essential foundation in evaluating IPR practices. Excessive exclusivity may produce negative consequences such as price monopolies and restricted access to essential goods, thereby contradicting the principles of distributive justice. Therefore, from an Islamic perspective, IPR systems must be designed in such a way as to prevent harm at both the individual and societal levels.²⁰

In conclusion, the legitimacy of IPR within Islamic law is conditional rather than absolute. Its recognition as property depends on the extent to which it fulfills the principles of justice, public welfare, and social balance. Within this framework, IPR cannot be separated from social responsibility; rights holders are not only entitled to exclusive rights but also bear moral obligations to ensure that the benefits of their intellectual works are accessible to society in a proportional manner.²¹

Based on the foregoing discussion, it can be concluded that IPR, as *al-mal al-ma'nawi*, possesses legitimacy within Islamic law, provided that its implementation is governed by the principles of *maqasid al-shari'a*. Through this approach, IPR serves not only as a mechanism for protecting individual rights, but also as an instrument for achieving economic justice and a more equitable distribution of benefits. Therefore, the development of an IPR system grounded in

¹⁸ Asmuni, YUSDANI, and Januariansyah Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," 890–892.

¹⁹ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 6–8.

²⁰ Noorlila Ahmad, et al., "The Islamic Ethical Principles and Maqasid al-Shariah to Enhance Digital Competency Among Adolescents," *UMRAN – International Journal of Islamic and Civilizational Studies* (2025): 45–46. <http://jurnalumran.utm.my>.

²¹ Sidra-Tul-Muntaha Nadeem and Shahzadi Pakeeza, "Intellectual Property Rights in Pakistan: Compatibility and Conflict with Shariah Perspectives," *Al-Qamar* 8, no. 2 (April–June 2025): 84–86. <https://doi.org/10.53762/alqamar.08.02.e04>.

maqasid al-shari'a constitutes an urgent necessity in addressing the increasing complexity of global economic challenges.²²

Ushul Fiqh Analysis of the Commercialization of IPR Licensing

a. *Al-Ashl fi al-Mu'amalat al-Ibahah* (الأصل في المعاملات الإباحة)

This argument is further strengthened by studies on the interpretative foundations of Islamic law, which underline that legal rulings in economic transactions must be derived through a comprehensive understanding of textual sources and contextual realities. The flexibility of Islamic legal interpretation allows contemporary contractual forms to be accommodated, provided that they fulfill principles of justice, proportionality, and ethical balance.²³ Therefore, licensing practices within intellectual property rights should be evaluated not only through formal legality, but also through their capacity to realize equitable outcomes.

The legal maxim *al-ashl fi al-mu'amalat al-ibahah* (الأصل في المعاملات الإباحة) establishes that the *الأصل* (default ruling) in all forms of transactions is permissibility, unless there exists explicit evidence prohibiting them. In the context of the commercialization of Intellectual Property Rights (IPR), this principle serves as the foundational basis for legitimizing licensing practices as a form of modern contractual arrangement that enables the lawful utilization of intellectual rights within an economic system. IPR licensing, including royalty mechanisms, may thus be understood as a contemporary form of *mu'amalat* that aligns with the principle of contractual freedom in Islam, provided that it does not violate core Sharia values.²⁴

However, such permissibility is not absolute; it is conditional upon the fulfillment of principles of justice and equilibrium. In global practice, IPR licensing frequently reflects an asymmetric bargaining position between rights holders and users, particularly within the context of developing countries. This indicates that the formal validity of a contract does not necessarily guarantee substantive justice. Consequently, licensing practices must be examined more critically within the framework of *ushul fiqh*.²⁵

Therefore, the application of this maxim must be understood contextually by incorporating the objectives of *maqasid al-shari'a*. The permissibility of IPR licensing should be constrained by the principle of *maslahah* (public welfare), ensuring that it does not evolve into an instrument of economic domination. Within this framework, contractual freedom in IPR licensing must not

²² Titis Thoriquttyas and Nita Rohmawati, "Maqasid al-Sharia and Digital Data Ownership," *Journal of Islamic Law on Digital Economy and Business* 1, no. 2 (2025): 12–14. <https://doi.org/10.20885/JILDEB.vol1.iss2.art5>.

²³ Bahren and Mokodenseho, "Metode dan Corak Penafsiran Ath-Thabari," 158–160.

²⁴ Sholihah, "Intellectual Property Rights from an Islamic Legal Perspective," 1308–1310.

²⁵ Kumar and Jawed, "Emerging Issues of IPR in Developing and Under Developed Countries," 204–206.

disregard social responsibility, particularly in ensuring a fair distribution of benefits for society at large.²⁶

b. *La Darar wa La Dirar* (لا ضرر ولا ضرار)

The legal maxim *lā ḍarar wa lā ḍirār* (لا ضرر ولا ضرار) constitutes a fundamental principle in Islamic law, which stipulates the prohibition of causing harm, *سواء* itu terhadap diri sendiri maupun terhadap pihak lain. In the context of Intellectual Property Rights (IPR), the potential for *ḍarar* may arise in the form of knowledge monopolies, restricted access to technology, and contractual exploitation through unbalanced licensing arrangements. Accordingly, this maxim serves as an essential evaluative instrument in assessing the social impact of IPR commercialization.²⁷

Contemporary research indicates that overly protective IPR regimes may hinder access to public goods such as medicines and basic technologies, particularly in developing countries. This demonstrates that the protection of exclusive rights, when left unchecked, can generate collective harm that contradicts the principle of distributive justice. Consequently, an academic debate emerges between the necessity of protecting innovation and the demand for broader public access.²⁸

From the perspective of *ushul fiqh*, the resolution to this dilemma lies in the application of a balanced approach between *jalb al-maslahah* (the promotion of public benefit) and *dar'u al-mafsadah* (the prevention of harm). This implies that IPR licensing must be structured in such a way that it does not produce structural disadvantages for society, but rather generates broader benefits. Within this framework, the principle of social justice becomes the primary parameter in determining the legitimacy of IPR practices.²⁹

c. *Al-Ghunmu bi al-Ghurmi* (الغنم بالغرم)

The legal maxim *al-ghunmu bi al-ghurmi* (الغنم بالغرم) stipulates that gain must be commensurate with the risk incurred. In the context of Intellectual Property Rights (IPR), this principle provides the basis for legitimizing the payment of royalties to rights holders, as the creation of innovation generally involves substantial investment in research, development, and

²⁶ Hari Sutra Disemadi, et al., “Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective,” *Al-Istinbath* 9, no. 2 (2024): 630–632. <https://doi.org/10.29240/jhi.v9i2.11039>.

²⁷ Mustapha and Aisyah Malkan, “Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles,” 6–7.

²⁸ Daniel Benoliel, “Intellectual Property Inequality Alleviation,” *Chicago-Kent Journal of Intellectual Property* 24, no. 2 (2025): 70–72. <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1388&context=ckjip>

²⁹ Asmuni, YUSDANI, and Januariansyah Arfaizar, “Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights,” 890–892.

creative processes. Accordingly, economic returns generated through licensing represent a logical consequence of the risks borne by innovators.³⁰

However, in practice, the distribution of benefits within the IPR system is often imbalanced, particularly when rights holders obtain excessive profits without adequately considering the social contribution of the innovation. Studies on patent licensing indicate that royalty determination frequently becomes a subject of dispute, as it does not always reflect principles of justice and proportionality.³¹ This condition highlights a tension between capitalist economic logic and the principles of justice embedded in Islamic law.

Therefore, the application of this maxim necessitates regulatory mechanisms that ensure proportionality between profit and risk. From the perspective of *maqasid al-shari'a*, economic gain should not be oriented solely toward capital accumulation, but must also take into account its contribution to social welfare. Consequently, IPR licensing should be directed toward achieving a balance between innovation incentives and the fair distribution of benefits.³²

d. *Al-Kharaj bi al-Dhaman* (الخراج بالضمان)

The legal maxim *al-kharaj bi al-daman* (الخراج بالضمان) asserts that entitlement to profit is justified only when accompanied by liability. In the context of IPR, this principle legitimizes the receipt of royalties by rights holders, as they bear legal responsibility for the validity and protection of such rights. In other words, economic benefit cannot be separated from the obligation to maintain and be accountable for the rights possessed.³³

Nevertheless, in global practice, the phenomenon of excessive royalties has frequently attracted criticism, particularly when it fails to take into account the economic capacity of users or the broader public interest. The adoption of FRAND (Fair, Reasonable, and Non-Discriminatory) licensing principles represents one effort to address this issue by establishing standards of fairness in royalty determination.³⁴ However, its implementation remains contested due to differing interpretations of what constitutes “fair” and “reasonable.”

From the perspective of *ushul fiqh*, this maxim emphasizes that every right must be accompanied by social responsibility. Accordingly, the commercialization of IPR should not be driven solely by profit considerations, but must also account for its impact on public welfare

³⁰ Sharmila Ahlawat, “Intellectual Property Rights and Economic Growth,” 37–38.

³¹ Enrico Siniväli, “FRAND Licensing Controversies in the Internet of Things” (Master’s Thesis, Tallinn University of Technology, 2024), 7–10, <https://digikogu.taltech.ee/et/Download/6745c41e-6737-4837-9471-4e607306f5ff>

³² Kumar and Jawed, “Emerging Issues of IPR,” 207–208.

³³ Sholihah, “IPR in Islamic Legal Perspective,” 1312–1314.

³⁴ Siniväli, “FRAND Licensing Controversies in the Internet of Things,” 11–12.

(*maslahah*). This principle positions responsibility as the primary parameter in determining the legitimacy of economic gain, thereby contributing to the development of a more just and socially oriented IPR system.³⁵

Justice Analysis of Trade Secrets and Industrial Designs from the Perspective of *Maqasid al-Shari'a*

Trade secrets and industrial designs constitute integral components of Intellectual Property Rights (IPR) instruments that play a crucial role in protecting innovation and maintaining competitive advantage within modern economic systems. In this context, Islamic law, through the framework of *maqasid al-shari'a*, provides a normative foundation that explains both their legitimacy and the limitations of their application. Conceptually, these two instruments are closely related to the objective of *hifz al-mal* (حفظ المال), namely the protection of property, including intangible assets derived from human creativity and innovation.³⁶

Within the *maqasid al-shari'a* framework, the protection of the economic value of intellectual works forms part of a legitimate system of property rights protection. Trade secrets, for instance, safeguard economically valuable information that is not publicly disclosed, while industrial designs protect the aesthetic and innovative aspects of products. Both instruments play a significant role in creating incentives for economic actors to continuously innovate, thereby aligning with the objectives of Sharia to promote societal progress and productivity.³⁷

However, the *maqasid* approach does not stop at the dimension of protection; it also requires the realization of *maslahah 'ammah* (المصلحة العامة), or public welfare. In this regard, critiques arise concerning overly exclusive trade secret practices, which may hinder public access to knowledge that holds significant potential for broader societal benefit, particularly in fields such as technology and healthcare.³⁸

Such critiques reveal an inherent tension between the protection of innovation and the need for knowledge dissemination. From the *maqasid* perspective, this issue can be analyzed through the principle of *jalb al-maslahah wa dar'u al-mafsadah* (جلب المصلحة ودرء المفسدة), which entails

³⁵ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 10–11.

³⁶ Sholihah, "IPR in Islamic Legal Perspective," 1309–1311.

³⁷ Asmuni, YUSDANI, and Januariansyah Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," 882–884.

³⁸ Disemadi, et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective," 633–635.

the promotion of benefit and the prevention of harm. Accordingly, excessively restrictive trade secret regimes may be categorized as a form of *mafsadah* when they obstruct the public interest.³⁹

Similarly, industrial design protection as a form of IPR also carries dual implications. On one hand, it fosters creativity and innovation in product design with high economic value. On the other hand, the strengthening of exclusive rights in industrial designs may create market exclusivity and reduce healthy competition.⁴⁰ This condition has the potential to generate economic inequality, which contradicts the principles of justice in Islam.

In this context, the *ushul fiqh* maxim *al-'adl asas al-mu'āmalah* (العدل أساس المعاملة), which asserts that justice constitutes the foundation of all economic transactions, becomes highly relevant. This implies that the protection of industrial designs must not result in market domination that disadvantages other parties or restricts public access to essential goods.⁴¹

Furthermore, within the global economic order, trade secrets and industrial designs are frequently associated with structural inequalities between developed and developing countries. Economically advanced countries, which dominate technological production, tend to utilize IPR systems to sustain their competitive advantage, while developing countries face significant limitations in access. This demonstrates that the IPR system is not always neutral but may instead reinforce structural inequalities.⁴²

From the perspective of *maqasid al-shari'a*, such conditions must be addressed through a distributive justice approach. The principle *tasarruf al-imam 'ala al-ra'iyah manūtun bi al-maslahah* (التصرف على الرعية منوط بالمصلحة) underscores that public policy must be oriented toward the common good. Accordingly, IPR regulations should be designed to ensure a balanced relationship between the protection of innovation and public access to its benefits.⁴³

In conclusion, justice in the domains of trade secrets and industrial designs cannot be assessed solely based on formal legality but must also consider their impact on the distribution of economic benefits. An overly protective IPR system risks fostering inequality, whereas an excessively open system may undermine incentives for innovation. Therefore, a balanced approach grounded in *maqasid al-shari'a* is essential.⁴⁴

³⁹ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 8–9.

⁴⁰ Georgios Effraimidis, et al., "Determination of FRAND Royalty Rates," *Journal of Intellectual Property Law & Practice* 19, no. 1 (2024): 66–68. <https://doi.org/10.1093/jiplp/jpad112>.

⁴¹ Kumar and Jawed, "Emerging Issues of IPR," 206–207.

⁴² Benoliel, "Intellectual Property Inequality Alleviation," 72–74.

⁴³ Thoriquttyas and Rohmawati, "Maqasid al-Sharia and Digital Data Ownership," 13–14.

⁴⁴ Disemadi, et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective," 640–642.

Based on the foregoing analysis, it can be concluded that trade secrets and industrial designs are legitimate within Islamic law as components of *hifz al-mal*. However, their implementation must be governed by the principles of justice and public welfare. By integrating *ushul fiqh* principles with *maqasid al-shari'a*, the IPR system can be developed into a framework that not only protects individual rights but also promotes economic justice and sustainable social welfare.⁴⁵

Integrated Circuit Layout Design (DTLST) and the Challenge of Global Technology Access Justice

Integrated Circuit Layout Design (DTLST) represents a form of Intellectual Property Rights (IPR) that holds a strategic position in the development of modern technological industries. Its role is particularly critical in sectors such as semiconductors, artificial intelligence, and digital technologies, which constitute the foundation of the global knowledge-based economy. In this context, control over DTLST not only reflects a country's technological capability but also determines its position within the global economic structure.⁴⁶

Empirically, the control of DTLST-based technologies remains concentrated in developed countries, particularly those with advanced research and industrial capacities. This condition has resulted in significant disparities in the distribution of technology between developed and developing countries. Within the global IPR system, exclusive rights over integrated circuit designs tend to reinforce this dominance, thereby limiting access to technology for countries lacking independent innovation capabilities.⁴⁷

This disparity is not merely an economic issue but also a matter of distributive justice within the global system. Several studies indicate that overly protective IPR regimes may hinder technology transfer and widen developmental gaps. Consequently, DTLST as a component of IPR cannot be separated from broader critiques of a global system that tends to favor capital- and technology-owning entities.⁴⁸

From the perspective of *maqasid al-shari'a*, such conditions contradict the principles of *al-'adl* (العدل) and *al-maslahah* (المصلحة), which require a fair distribution of benefits. Islam not only recognizes individual property rights but also emphasizes the social responsibility attached to the

⁴⁵ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 10–11.

⁴⁶ Sholihah, "IPR in Islamic Legal Perspective," 1310–1312.

⁴⁷ Disemadi, et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective," 635–637.

⁴⁸ Benoliel, "Intellectual Property Inequality Alleviation," 70–73.

use of wealth, including technological assets. Therefore, technological control that results in unequal access may be categorized as a form of structural injustice.⁴⁹

This analysis is further reinforced by the *ushul fiqh* maxim *tasarruf al-imam 'ala al-ra'iyah manūnun bi al-maslahah* (التصرف على الرعية منوط بالمصلحة), which asserts that public policy must be oriented toward the public interest. In the context of DTLST, IPR regulations should thus be designed to ensure that technological protection does not obstruct global societal interests, particularly regarding access to essential technologies.⁵⁰

Moreover, the principle of *lā ḍarar wa lā ḍirār* (لا ضرر ولا ضرار) is also relevant in analyzing the impact of IPR systems on global inequality. Excessive restrictions on access to technology may cause *ḍarar* (harm) to developing countries that depend on such technologies for economic and social development. Accordingly, unchecked exclusivity in DTLST may conflict with the Islamic legal principle of preventing harm.⁵¹

Nevertheless, it must be acknowledged that legal protection of DTLST remains necessary to promote innovation. Without such protection, incentives for companies and individuals to invest in research and development would likely diminish. Therefore, the IPR system plays a critical role in maintaining a balance between innovation and the distribution of benefits, although its implementation still requires significant refinement.⁵²

The central issue, therefore, lies in how to reconcile exclusive rights with public access. In this regard, the maxim *al-ghunmu bi al-ghurmi* (الغنم بالغرم) provides a normative basis, asserting that gains must be proportionate to risks. This implies that while technology owners are entitled to economic benefits, they must not disregard the broader societal need for access to technology.⁵³

Furthermore, the DTLST system requires more inclusive reform, particularly in the context of developing countries. Global policies governing IPR should incorporate mechanisms for technology transfer, more flexible licensing frameworks, and support for local innovation. Such an approach is consistent with *maqasid al-shari'ah*, which emphasizes sustainability and social welfare as the ultimate objectives of law.⁵⁴

⁴⁹ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 7–9.

⁵⁰ Thoriquattyas and Rohmawati, "Maqasid al-Sharia and Digital Data Ownership," 13–15.

⁵¹ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 9–10.

⁵² Effraimidis, et al., "Determination of FRAND Royalty Rates," 66–67.

⁵³ Sharmila Ahlawat, "Intellectual Property Rights and Economic Growth," 37–38.

⁵⁴ Disemadi, et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective," 640–642.

In conclusion, DTLST as an IPR instrument is legitimate within Islamic law as part of *hifẓ al-mal*. However, its implementation must be governed by the principles of justice and public welfare. Accordingly, a just regulatory framework for DTLST must balance the protection of innovation with equitable global access to technology, ensuring that its benefits are not confined to specific actors but are widely shared across the international community.⁵⁵

A Model of IPR Commercialization Based on *Ushul Fiqh* and *Maqasid al-Shari'a*

The following presents a systematic model of Intellectual Property Rights (IPR) commercialization constructed by the researcher.

Table

A Model of IPR Commercialization Based on *Ushul Fiqh* and *Maqasid al-Shari'a*

IPR Instrument	<i>Ushul Fiqh</i> Maxim (Arabic)	<i>Maqasid al-Shari'a</i>	Principle of Justice	Normative Implication
Licensing	الخارج بالضمنان (<i>al-kharāj bi al-ḍamān</i>)	حفظ المال (<i>hifẓ al-māl</i>)	Proportional royalties	Profit must be commensurate with legal responsibility
Trade Secrets	لا ضرر ولا ضرار (<i>lā ḍarar wa lā ḍirār</i>)	المصلحة العامة (<i>al-maslahah al-'ammah</i>)	Limited transparency	Protection must not hinder public welfare
Industrial Design	الأصل في المعاملات الإباحة (<i>al-aṣl fī al-mu'āmalāt al-ibāḥah</i>)	حفظ المال (<i>hifẓ al-māl</i>)	Access openness	Protection is valid insofar as it does not excessively restrict access
DTLST	التصرف على الرعية منوط بالمصلحة (<i>taṣarruf al-imām manūṭun bi al-maṣlahah</i>)	حفظ المال (<i>hifẓ al-māl</i>)	Global technology access	Regulation must ensure justice and equitable technology distribution

The above model of IPR commercialization grounded in *ushul fiqh* and *maqasid al-shari'a* demonstrates that each IPR instrument is supported not only by positive law but also by universal principles of Islamic legal thought. Within this framework, IPR should not be understood merely as an exclusive individual right, but rather as part of an ethical economic system that integrates the protection of rights with social responsibility. This approach aligns with contemporary scholarship emphasizing that IPR must operate within a balance between innovation incentives and the equitable distribution of benefits.⁵⁶

⁵⁵ Mustapha and Aisyah Malkan, "Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles," 10–11.

⁵⁶ Disemadi, et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective," 638–640.

Substantively, each *ushul fiqh* maxim in the table functions as an evaluative tool for assessing IPR commercialization practices. The maxim *al-keharāj bi al-damān* asserts that profit is legitimate only when accompanied by responsibility, implying that royalties must be proportional and non-exploitative. Meanwhile, the principle *lā ḍarar wa lā ḍirār* reinforces that the protection of trade secrets must not lead to public harm. At the same time, the maxim *al-aṣl fi al-mu‘amalāt al-ibāḥah* opens space for economic innovation through industrial design, albeit within the limits of public interest (*maslahah*). This indicates that IPR in Islamic law embodies a strong ethical dimension that extends beyond mere formal legality.⁵⁷

Furthermore, the integration of *maqasid al-shari‘a* within this model underscores that the ultimate objective of the IPR system is the realization of *hifẓ al-māl* in its broader sense, not only safeguarding individual property but also ensuring a fair distribution of benefits within society.⁵⁸ In the global context, the maxim *taṣarruf al-imām ‘ala al-ra‘iyyah manūṭun bi al-maṣlahah* necessitates regulatory frameworks that guarantee more equitable access to technology, particularly in the case of DTLST, which has far-reaching implications for the digital economy. Therefore, justice in IPR is measured not solely by the protection of exclusive rights, but also by the system’s capacity to prevent monopoly practices and promote collective welfare.⁵⁹

This study offers both theoretical and conceptual novelty by integrating the analysis of IPR not only within the framework of positive law and general *maqasid al-shari‘a*, but more specifically through *ushul fiqh* as an operational normative analytical tool for assessing IPR commercialization practices. Previous studies have largely focused on the legitimacy of IPR as *haq al-ibtikar* or as part of *hifẓ al-māl*, without systematically elaborating how *ushul fiqh* maxims can function as evaluative instruments in areas such as licensing, trade secrets, industrial design, and DTLST. Accordingly, this study contributes by reconstructing a normative IPR framework grounded in *ushul fiqh* principles that is both applicable and relevant within the context of the contemporary economy.⁶⁰

In addition, this study contributes to addressing a significant research gap by foregrounding the dimension of distributive justice in IPR commercialization, an aspect that has received limited attention in Islamic legal scholarship. Recent studies indicate that the global IPR system remains

⁵⁷ Mustapha and Aisyah Malkan, “Maqasid al-Shariah in the AI Era: Balancing Innovation and Islamic Ethical Principles,” 9–10.

⁵⁸ Disemadi, et al., “Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective,” 626–628.

⁵⁹ Benoliel, “Intellectual Property Inequality Alleviation,” 72–74.

⁶⁰ Erna Tri Rusmala Ratnawati and Rizqi Samera Al Farizi, “Protection of Intellectual Property Rights in the Perspective of Islamic Law,” *Millah: Journal of Religious Studies* 22, no. 2 (2023): 340–342. <https://doi.org/10.20885/millah.vol22.iss2.art4>.

predominantly oriented toward the protection of individual rights and has not fully addressed the issue of unequal access to innovation and technology. Indeed, the global literature highlights the existence of structural inequalities, commonly referred to as intellectual property inequality, which restrict participation and access for developing countries within innovation systems. In this context, the present study advances a model of IPR commercialization grounded in *maqasid al-shari'a*, emphasizing the balance between rights protection and the equitable distribution of benefits.⁶¹

Finally, this research introduces novelty through the development of an integrative model combining *ushul fiqh* and *maqasid al-shari'a* as a conceptual framework for articulating economic justice within IPR, an approach that has not been extensively formulated in prior scholarship. While recent research demonstrates that *maqasid al-shari'a* has been widely applied across various fields, its implementation often remains normative and has yet to be fully institutionalized within modern legal policy design.⁶² This study addresses this gap by formulating a systematic conceptual model that connects *ushul fiqh* principles, *maqasid al-shari'a*, and IPR practices, thereby offering a new paradigm of IPR grounded in social justice and global responsibility.

CONCLUSION

This Intellectual Property Rights (IPR), from the perspective of Islamic law, can be constructed as a form of property (*al-mal*) that must be protected within the framework of *maqasid al-shari'a*, particularly under the dimension of *hifz al-mal*. This interpretation affirms that intellectual creations possess legitimate economic and moral value within the Islamic legal system. However, such legitimacy is not absolute but conditional, as the commercialization of IPR must be governed by the fundamental principles of Sharia, namely justice (*al-'adl*), public welfare (*maslahah*), and the prevention of harm (*la dārar wa la dīrār*).

In this context, an ideal IPR system should not merely prioritize the protection of exclusive individual rights but must also ensure a balance between the interests of rights holders and the broader distribution of benefits to society. Accordingly, justice in IPR commercialization, from the perspective of *ushul fiqh*, cannot be measured solely in terms of formal legality, but must also be evaluated based on its capacity to generate collective benefit and to prevent the emergence of economic inequality within the global system.

⁶¹ Elodie Carpentier et al., "Closing Innovation and Intellectual Property Diversity Gaps: A Global Literature Review," *WIPO Economic Research Working Paper* No. 86 (2024): 5–7. <https://doi.org/10.34667/tind.49284>.

⁶² Andi Marwah, Nasrullah bin Sapa, and Abdul Syatar, "Integrating Maqasid al-Shariah into Islamic Economic Practices: A Contemporary Analytical Framework," *El-Kahfi: Journal of Islamic Economics* 6, no. 1 (2025): 38–40. <https://doi.org/10.58958/elkahfi.v6i01.456>.

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