



Analysis to ownership innovation modern on patents from the perspective of Positive Law and Fiqh Muamalah

Afif Khalid

Law Studies Program, Islamic University of Kalimantan MAB, Banjarmasin, Indonesia.

Email: afif85fhuniska@gmail.com

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ABSTRACT

The rapid advancement of science and technology has given rise to various forms of modern innovations that hold significant economic and strategic value. In this context, patent rights function as a crucial legal instrument to protect intellectual creations. This study aims to analyze the legal construction of ownership over modern innovations within the framework of Indonesian positive law and to compare it with the principles of Islamic jurisprudence (fiqh muamalah). Utilizing a normative juridical method with statutory, conceptual, and comparative approaches, this research reveals that both legal systems recognize intellectual ownership but rest on different epistemological foundations. While Indonesian law emphasizes formal registration and exclusive rights, fiqh muamalah stresses ethical considerations, public benefit (maslahah), and distributive justice. The novelty of this study lies in its proposed integration model that harmonizes national patent law with Islamic legal values. This conceptual synthesis contributes both theoretically and practically by offering a foundation for regulatory reform and the development of a hybrid intellectual property regime that is more just, spiritually grounded, and contextually relevant for Indonesia's Muslim-majority society.

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Corresponding Author:

Afif Khalid,
Law Study Program, Faculty of Law
Islamic University of Kalimantan MAB Banjarmasin
Adhyaksa Street No. 2, Sungai Miai, North Banjarmasin District,
Banjarmasin City, South Kalimantan 70123, Indonesia
Email: afif85fhuniska@gmail.com

1. Introduction

Development technology and science knowledge in the modern era has push creation various form inventions and innovations that have mark economy high. Innovation the No only covers material and physical aspects, but also ideas, methods, formulas, and systems technical nature intellectual (Direktorat Jenderal Kekayaan Intelektual, 2020). Along with development said, appears need urge For give protection law to results work intellectual man through system Right Riches Intellectual Property (IPR), in particular patent rights. Patent rights become instrument important that gives recognition and rights exclusive to individual or legal entity on inventions in the field technology, use prevent exploitation without permission by another (Sophar Maru Hutagalung, 2022).

In Indonesia, protection patent rights are regulated in Constitution Number 13 of 2016 concerning Patents which defines a patent as right an exclusive grant given by the state to top inventors results his inventions are of a nature technical and can implemented in industry (Undang-Undang Nomor 13 Tahun 2016 Tentang Paten , 2016). Right This nature exclusive and binding time, and play a role as a stimulus for improvement creativity and productivity national.

However, in context Muslim society, arose question normative about suitability draft ownership on results innovation in the form of a patent with perspective Islamic law. Is it right exclusive rights granted by the state through patents in accordance with with principles jurisprudence muamalah which emphasizes principle expediency (masalah), justice (' adl), and prohibition take the rights of others without permission (ghasb)? Question This important remember Muslims need to comply state regulations without ignore provision sharia in activity transactions and ownership property.

In tradition fiqh, the concept of al- milkiyyah (ownership) is not only covers object physical (maddi) but also non-material rights (huquq) ma'nawiyyah) which gives benefits (manfa'ah). Several fatwas and decisions institution jurisprudence international, such as Majma ' al- Fiqh al- Islami , stated that right on riches intellectual , including patent rights , are form legal ownership in a way sharia and must protected equivalent with treasure object other (Al-Zuhaily, 1989).

From the perspective law positive, patent rights are regulated in a way details with objective push innovation at a time protect interest patent owners and the public. For example, patent law reform in Indonesia accommodates innovation simple but useful confirm state efforts to balance protection innovation with welfare public (Waspiyah et al., 2023). Protection law is also very important face risk of misappropriation (abuse) by parties foreign , as discussed by Anggraeni (2023) in context regulations international , which underlines the need harmonization law national and international For guard ownership innovation in the global market.

Progress technology, especially in the field of intelligence artificial intelligence (AI), giving rise to challenge new related patents and liability answer law on works produced by AI systems . Studies by Ngoc (2022) and Picht & Thouvenin (2023) highlight complexity law this and the need for it adaptive policies so as not to hinder progress innovation .

Besides that aspect business and commercialization innovation like utilization confidential trade and know-how to become element important in protection riches intellectual , as described by (Darázs & Darázs, 2022). In global context , competition in the field pharmaceuticals and biotechnology demand balance between patents and access public to technology health , with challenge Serious related sustainability health world (Bicudo et al., 2022) society .

During the COVID-19 pandemic, the discourse about release right riches intellectual For overcome inequality global access becomes very relevant, as confirmed by Amin & Kesselheim (2022) as base encouragement more global policies fair For preparedness and resilience future pandemics.

Perspective new about utilization indication geographical as a global commons of knowledge is also put forward by Mazé (2023), which highlights importance see ownership intellectual as asset collectively for the common good together, not just right exclusive individual or company.

With background behind said, the article This aim do analysis comprehensive to draft ownership modern innovation in patent rights of two perspective: law positive Indonesia and fiqh transactions , use build integration between system state laws and values Islamic law . This is expected can give understanding holistic strengthening protection right riches intellectual at a time uphold justice and ethics in Muslim society in the digital era.

Thus, this article formulates two main questions: (1) How are ownership rights regulated for modern innovations from the perspective of Indonesian positive law and Islamic jurisprudence? and (2) Where are the fundamental points of intersection and differences between the two? The purpose of this study is to provide an explicit comparative analysis of the concept of innovation

ownership in the national legal system and Islamic law, while also proposing the integration of Islamic jurisprudence values into national regulations related to patents. This study makes a scientific contribution in enriching the discourse on intellectual property law with an Islamic ethical perspective, and offers a normative-integrative approach that has rarely been the focus of previous studies, which generally only discuss formal legal aspects or partial Islamic jurisprudence studies. Therefore, this research fills the research gap in the literature regarding the need to formulate a patent law model that is in line with the principles of distributive justice and maqashid al-syari'ah in Indonesia as a country with a Muslim majority population

2. Method

Method study law normative, that is study which done with examine material library or secondary data. Research law normative aim for study norms law positive that applies as well as compare it with doctrine Islamic law, specifically in aspect jurisprudence transactions, for identify principles ownership on results innovation in system patent.

Type the approach used is approach statute approach, approach conceptual (conceptual approach), and approach comparative approach (Mamudji, 2003).

1. Approach legislation used for analyze provision law positive regarding patents, as stated in Constitution Number 13 of 2016 concerning Patents.
2. Approach conceptual used for explore draft ownership intellectual according to jurisprudence muamalah and relevant Islamic principles with modern innovation.
3. Approach comparison done for observe point meeting point different between view law positive with Islamic law in set ownership and protection on patent.

Source the law that used in study This consists of on:

1. Material primary law, namely regulation legislation related patent, including Constitution Patent and source law Islam like the Qur'an, Hadith, and works of classical and contemporary scholars in field jurisprudence transactions.
2. Material law secondary, namely books law, journal scientific, and results study relevant previous.
3. Material law tertiary, such as dictionary law, encyclopedia, and index bibliography.

Data collected through studies literature (library research), then analyzed in a way qualitative-descriptive, with emphasize interpretation to norm laws and regulations jurisprudence in a way systematic (Abdussamad, 2021).

In determining literature sources, inclusion criteria included relevant primary legal documents (such as Law No. 13 of 2016 concerning Patents), classical and contemporary fiqh books discussing ownership and intellectual property rights, and scholarly articles published in the last 10 years from databases such as HeinOnline, Scopus, and Google Scholar. Exclusion criteria included sources that had no direct relevance to the substance of the study or did not meet academic and scientific standards. The search was conducted systematically using keywords such as: "patent ownership," "fiqh muamalah," "Islamic intellectual property," and "comparative legal analysis." The validity of legal interpretation was maintained by referring to established rules of positive legal interpretation and qawa'id fiqhiyah, as well as triangulation of the opinions of scholars and legal experts. The synthesis between the two legal systems was carried out through a hermeneutic-comparative approach to find objective and comprehensive normative intersections.

3. Analysis and Results

Ownership Innovation on Right Patent in Perspective Law Positive Indonesia

In system law positive Indonesia, innovation modern which nature technical, new, and can implemented in a way industry including in patent category. This is arranged in Constitution Number 13 of 2016 concerning Patents, which defines a patent as right exclusive grant given by the state to top inventors results his inventions in the field technology.

Right exclusive the give authority to patent holder for forbid other parties use, make, sell, or distribute his creation without permission during term time certain (20 year for patent normal

and 10 years for simple patents). With Thus , the system law positive in a way firm confess ownership individual on results innovation technological as part from right riches intellectual property protected by law (Marzuki, 2021).

However , there are debate philosophical about whether innovation based on knowledge , which is of a nature No visible eyes (intangible), worthy owned in a way exclusive , especially if innovation the concerning need public (for example in field health or agriculture). Therefore that, the law also regulates exception And license must for the sake of ensure balance between right individuals and interests general (Al-Zuhaily, 1989).

Ownership Innovation in Patents in Perspective Fiqh Transactions

In Islamic law, ownership (al- milkiyyah) includes all Something that can utilized in a way halal by man , Good object physique and non- physical . Classical scholars Not yet in a way explicit discussing " patent rights " as known moment this, however principles ownership in jurisprudence transactions can used as base approach.

According to al- Zuhaili , Islam recognizes right owned by on results Work or creation someone who is born from effort and ijihad, as long as No contradictory with sharia (Al-Zuhaily, 1989). This matter in line with the rule of "al- kharaj bi al- dhaman " (profit comparable with the risks borne). Therefore, innovation is results from Work hard and intellectual a individual can owned in a way legitimate (Khallaf, 1996).

Several contemporary scholars , such as Yusuf al- Qaradawi and Wahbah al- Zuhaili , stated that right riches intellectual including patents can recognized as a mall (property) because own mark benefits (manfa'ah) and can traded (Al-Qardhawi, 1995). Even, there is analysis that violation to right patents can categorized as form ghasab (robbery) rights), because take benefit without permission the owner (Choirunnisak, 2017).

However thus , Islam emphasize importance balance between right individual and welfare general . Therefore that , in condition emergency or For interest society , the state can limit or take over right exclusive mentioned , as known in the concept of al- mashalih al- murlah (benefit general that is not arranged in a way explicit in nash) (Sabil, 2022).

As a critical synthesis that emphasizes the novelty of this study, the following is a comparative table of key elements in the Indonesian positive legal system and Islamic jurisprudence (fiqh muamalah) related to patent rights:

Aspect	Indonesian Positive Law	Fiqh Muamalah
Legal Source	Law No. 13 of 2016 concerning Patents	Al-Qur'an, Hadith, Ijtihad of scholars, Maqashid al-Shari'ah
Recognition of Rights	Based on registration and official certification system	Based on the principle of ownership (<i>milkiyyah</i>) and lawful benefit (<i>manfa'ah</i>)
Nature of Rights	Exclusive, time-limited, transferable or licensable	Valid as long as it brings lawful benefit; can be restricted for public interest
Purpose of Protection	To promote innovation and provide legal certainty for rights holders	To ensure justice, prevent usurpation (<i>ghashb</i>), and uphold public welfare
Ethical Limitations	Not always explicitly regulated	Strongly emphasized: rights must not harm others or be unjustly monopolized
Public Interest Override	Through compulsory licensing and certain statutory exceptions	Through the concept of necessity (<i>darurah</i>) or public benefit (<i>maslahah mursalah</i>)

Through this table, the analysis shows an important meeting point between the two systems, namely the recognition of intellectual works as rights worthy of protection, but with different epistemological bases. This is the novelty of this study: it offers a conceptual synthesis between the legal-formal approach and the ethical-normative approach of Islam.

This article's theoretical contribution lies in its proposed formulation of an intellectual property legal system that integrates positive law and Islamic jurisprudence (fiqh muamalah), a concept

that has not been extensively studied in previous literature. As an applicable normative solution, this study recommends the implementation of a hybrid legal model based on the principles of maqasid al-Shari'ah (Islamic principles) in national legislation, particularly emphasizing the principles of distributive justice, ethical patent use, and public protection mechanisms against excessive exploitation of innovation. This aligns with the development of a national legal system that is not merely legalistic but also rooted in the spiritual values and social justice of the Indonesian nation.

Analysis Comparison and Reconstruction Conceptual To Modern Innovation Rights Patent in Positive Law and Fiqh Perspectives Transactions

Comparison between system law positive Indonesia and fiqh transactions in matter ownership innovation modern show existence convergence normative, although originate from base epistemological Which different. Law positive sourced from regulation codified legislation in a way systematically by the institution legislative, whereas jurisprudence transactions sourced from nash (al-Qur'an and Hadith), ijihad ulama, as well maqashid al- syari'ah (goals) Islamic law).

In system law positive Indonesia, innovation that meets condition novelty, steps inventive step, and can implemented in a way industry (industrial applicability) given status ownership through patent mechanism . Rights This nature exclusive , which provides power full to the inventor for control use results his invention during time protection determined by law . Protection This justified by the principle utilitarianism and economic incentive theory , namely that giving right exclusive will push development knowledge knowledge and technology , at the same time give compensation on effort creative si creator (Fisher, 2001).

Temporary that , in jurisprudence transactions , even though No there is terminology special regarding patents, the principles base ownership can implemented in a way analogical (qiyas). Innovation Which born from effort intellectual And give the benefits that real to man including in category mall mutaqaawwim (treasure which is valuable and permissible in a way sharia), so that in a way law can owned and protected . Views This based on the principle of " man istahaqqa " shay'an fa huwa lahu " (who has the right on something , then something That his), and principles al- kharaj bi al- dhaman (profit compared with burden risk)(Andiko, 2016).

Although there is point meeting , there are also differences paradigmatic between both of them . Positive law tend emphasize legal-formal aspects , where innovation become object protection only after done registration and obtaining certificate from the country. Meanwhile in jurisprudence muamalah , confession right No always depending on formalities administrative , but rather on the existence of element ownership benefit (milkiyyah al- manfa'ah) Which nature legitimate in a way sharia , although Not yet registered in a way official . In other words, fiqh more inclusive in confess moral rights and benefits something creation although Not yet own formal legal basis .

Interesting things other is that in Islamic law, aspects ethics own role dominant in arrange use right For example , someone who has right on something innovation No may abuse it For harming others or hoard benefit public . This is where the concept of " maslahah " ' mother ' (benefit general) And " la blood wa la dirar " (No may dangerous and not may endangered) to be moral controller of practice ownership . Matter This different with system law positive Which often times giving room more wide for exploitation right exclusively for the benefit of economy without limitation explicit ethics .

From the comparison this , appears urgency For do reconstruction conceptual , in particular in the context of Indonesia as a country of law that upholds Pancasila values and have resident Muslim majority . Protection right patent should No only based on on interest private and commercialization technology , but also consider values justice distributive , ethics use , and responsibility answer social . With integrate values jurisprudence transactions to in framework

regulations national , system law will more contextual and responsive to moral demands of society.

Reconstruction the can done through three approach :

1. Integrative-normative, namely enter principles jurisprudence to in interpretation law positive in a way progressive , especially in policy license mandatory , state -owned patents, or patent exceptions for need health public .
2. Ethical-regulative , namely add dimensions Islamic ethics in regulations riches intellectual, such as supervision on patent monopoly that can impact on inequality access public .
3. Systemic-cultural , namely build awareness public that right riches intellectual No only question legality , but also about not quite enough answer social , moral and balance between rights and obligations.

With approach this, it is hoped system protection innovation in Indonesia is not only become system positive law, but also soulful Islamic and just social, as principle maqashid al- syari'ah that is guard treasure (hifzh al-mal), guarding reason (hifzh al-' aql), and guarding welfare general.

4. Conclusion

Ownership on modern innovation in form patent rights are form protection law to results work intellectuals who have mark economy And benefit social. In perspective law positive Indonesia, patent rights provide right exclusive to the inventor above his invention during term time certain, based on formal legal principles stated in Constitution Number 13 of 2016 concerning Patents. Temporary that, in perspective jurisprudence muamalah, innovation that was born from legitimate intellectual processes and provide benefit for man recognized as right protected property Sharia. Principles like al -' adl , maslahah , and milkiyyah give legitimacy to recognition and protection on right intellectual the , although with approach moral And ethical more thick compared to law positive.From results analysis comparative, can concluded that there is point meeting between both of them, especially in matter confession on results business creative human beings. However, the law positive more focusing on legal-formal aspects and interests economy, whereas jurisprudence transactions more emphasize on values justice, welfare general and ethics utilization right. Therefore that, reconstruction conceptual is very necessary use create system protection right the patent that No only legalistic but also soulful Islamic And responsive to need justice social. Integration between values Islamic law and regulations national will produce system more laws comprehensive and appropriate with teak self the Indonesian nation as a state based on law and belief in God. Theoretically, the findings of this study enrich the discourse on harmonizing the national legal system with the principles of *fiqh muamalah* in the context of intellectual property protection, particularly patents. Practically, this analysis can serve as a basis for policymakers to reformulate national patent regulations by integrating values of distributive justice, public interest (*maslahah*), and ethical proportional use of rights. Therefore, it is recommended that legislators and stakeholders consider revising the current Patent Law using a *maqashid al-shari'ah* approach, and develop a national ethical guideline to ensure that patent utilization is fair, balanced, and not exploitative.

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