

MAQĀSID AL-SHARĪ'AH AND COPYRIGHT PROTECTION: A CRITICAL EXAMINATION OF COPYRIGHT REGULATION IN INDONESIA

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Abstract

This article examines the integration of *maqāsid al-Shari'ah* as a theoretical framework in the protection of Intellectual Property Rights (IPR), with particular reference to copyright, focusing on the alignment between Islamic *Shari'ah* values and Law No. 28 of 2014 on Copyright (the Copyright Act) in Indonesia. The central issue identified is the imbalance between the Western utilitarian approach to IPR, which prioritises individual rights, and the principle of collective *maṣlahah* in *maqāsid al-Shari'ah*, which often neglects ethical and communal dimensions such as the prevention of *madarrah* and the redistribution of wealth through *zakat* on intellectual property. This imbalance has contributed to weak law enforcement in the digital era and restricted public access to knowledge. The research adopts a normative legal methodology, employing both a statute-based and a conceptual approach. The analysis highlights the strengths of the Copyright Act in supporting *hifz al-māl* and *hifz al-'aql* through the economic and moral rights of authors, as well as its fair use exceptions, which correspond with the principle of general *maṣlahah*. However, it also identifies weaknesses, including inadequate implementation, long-term monopolies, and insufficient integration of communal values, all of which conflict with the objectives of *Shari'ah* in promoting holistic welfare. The article concludes that *maqāsid al-Shari'ah* can strengthen the protection of IPR by recommending amendments to the Copyright Act, including the incorporation of *zakat* on intellectual property, the reinforcement of Collective Management Organisations, and the promotion of ethical education within society. These measures would contribute to the realisation of *falāh* both temporal and spiritual through a balanced approach to innovation, justice, and social welfare in Indonesia.

Keywords: *Maqāsid al-Shari'ah*, Copyright, Indonesian Regulation, Islamic Law

Abstrak

Artikel ini mengeksplorasi integrasi konsep *maqāṣid al-Syari‘ah* sebagai kerangka teoritis dalam perlindungan Hak Kekayaan Intelektual (HKI), khususnya hak cipta, dengan fokus pada keselarasan antara nilai syariah Islam dan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta (UUHC) di Indonesia. Permasalahan yang diidentifikasi adalah ketidakseimbangan antara pendekatan utilitaris Barat dalam HKI yang menekankan hak individu dengan prinsip *maṣlaḥah* kolektif dalam *Maqāṣid al-Syari‘ah*, yang sering kali mengabaikan dimensi etis dan komunal seperti pencegahan *maḍarrah* serta redistribusi kekayaan melalui zakat atas harta intelektual, sehingga menyebabkan lemahnya penegakan hukum di era digital dan akses publik terhadap pengetahuan. Metode penelitian yang digunakan adalah penelitian hukum normative dengan pendekatan perundang-undangan (statute approach) dan pendekatan konseptual (conceptual approach). Pembahasan menyoroti kekuatan UUHC dalam mendukung *hifz al-māl* dan *hifz al-‘aql* melalui hak ekonomi dan moral pencipta, serta pengecualian *fair use* yang selaras dengan *maṣlaḥah* umum, namun mengkritisi kelemahan seperti implementasi lemah, monopoli jangka panjang, dan kurangnya integrasi nilai komunal, yang bertentangan dengan tujuan syariah untuk kesejahteraan holistik. Kesimpulan menyatakan bahwa *maqāṣid al-Syari‘ah* dapat memperkuat perlindungan HKI dengan merekomendasikan revisi UUHC untuk inklusi zakat HKI, penguatan Lembaga Manajemen Kolektif, dan edukasi etis masyarakat, sehingga mewujudkan *falah duniawi-ukhrawi* melalui keseimbangan antara inovasi, keadilan, dan kesejahteraan sosial di Indonesia.

Kata Kunci: *Maqāṣid al-Syari‘ah*, *Hak Cipta*, *Regulasi Indonesia*, *Hukum Islam*

A. Introduction

This research is motivated by the pressing necessity to examine the relationship between Indonesia's positive law and the foundational principles of Islamic jurisprudence. Copyright regulation in Indonesia, as set out in Law No. 28 of 2014 on Copyright (the Copyright Act), affords explicit protection to the moral and economic rights of authors. Nevertheless, in practice it continues to encounter significant challenges, including deficiencies in enforcement mechanisms, restricted public access to creative works, and the absence of a clear equilibrium between individual rights and the public interest.¹ By

¹ Sofia Sofia, Hari Sutra Disemadi, Agustianto Agustianto. "Penegakan Pelanggaran Hak Cipta di Era Revolusi Industri: Studi Putusan". PAMALI: Pattimura Magister Law Review 4 no. 3 (2024), 334-350. <https://doi.org/10.47268/pamali.v4i3.2336>; Jihan Abya, Muhamad Abas, Yuniar Rahmatiar, Adyan Lubis. "Penegakan Hukum terhadap Pelanggaran Hak Cipta: Studi

contrast, Islamic law, through the framework of *maqāṣid al-shari‘ah*, emphasises the preservation of property (*hifz al-māl*), knowledge and intellect (*hifz al-‘aql*), and religion and morality (*hifz al-dīn*) as essential objectives to be safeguarded. While previous scholarship has addressed copyright within an Islamic paradigm, the majority of studies have remained limited to the normative recognition that Islam acknowledges intellectual property rights, without undertaking a critical appraisal of how *maqāṣid* may be employed to evaluate, refine, and enrich copyright regulation in Indonesia.² This study seeks to fill this lacuna by offering a comparative and critical analysis between positive legal provisions and *maqāṣid al-shari‘ah*, while also advancing policy recommendations that are more equitable, practicable, and contextually relevant for Indonesian society, the majority of which adheres to Islam.

In the rapidly evolving digital era, copyright protection has emerged as a critical issue, encompassing not only economic considerations but also the cultural and moral dimensions of society. As a branch of Intellectual Property Rights (IPR), copyright grants creators exclusive rights over their works, including artistic, literary, musical, and technological creations.³ In Indonesia,

Kasus Re-Upload Video Konten Kreator Sosial Media untuk Kegiatan Komersial (Studi Putusan Mahkamah Agung Nomor 41 Pk/Pdt.Sus-Hki/2021)". Jurnal Ilmu Hukum, Humaniora dan Politik 4, no. 6 (2024): 2306-2318. <https://doi.org/10.38035/jihhp.v4i6.2533>; Noviriska. "Perlindungan Hak Kekayaan Intelektual Terhadap Pelaku Ekonomi Kreatif Berdasarkan Undang-Undang Hak Kekayaan Intelektual Nomor 28 Tahun 2014 Tentang Hak Cipta". Jurnal Ilmiah Publika 10, no. 2 (2022): 298-306. <https://doi.org/10.33603/publika.v10i2.7630>

² Ibnu Bahruddin. "Konsep Kepemilikan Dan Hak Cipta Dalam Perspektif Hukum Positif Dan Hukum Islam". Al-A'mal Jurnal Manajemen Bisnis Syari'ah 3, no. 1 (2023): 30-47. <https://ejournal.an-nadwah.ac.id/index.php/Al-amal/article/view/509>; Achmad Baihaqi, Said Abadi. "Konsep Masa Berlaku Perlindungan Hak Cipta Perspektif Hukum Islam". Islamic Science, Culture, and Social Studies 1, no. 2 (2021): 284-293. <https://doi.org/10.53754/iscs.v1i2.278>; Sutisna, Mukhtar. "Pandangan Hukum Islam Terhadap hak Cipta". MIZAN: Journal of Islamic Law 5, no. 1 (2021): 1-16. <https://doi.org/10.32507/mizan.v5i1.927>; Ahmad Ropei. "Formulasi Hukum Perlindungan Hak Kekayaan Intelektual Dalam Kerangka Maqoshid As-Syari'ah". Jurnal Hukum Ekonomi Syariah 4, no. 2 (2020): 165-179. <https://doi.org/10.26618/j-hes.v4i02.4259>

³ David Edyson, Dikjaya, Muhammad Rafi. "Perlindungan Hukum Mengenai Hak Atas Kekayaan Intelektual". Jurnal Kewarganegaraan 8, no. 1 (2024): 930-939. <https://doi.org/10.31316/jk.v8i1.6438>

home to the world's largest Muslim population, copyright regulation is intrinsically linked to Islamic values that emphasise justice, the protection of property, and the advancement of the public good. Law No. 28 of 2014 on Copyright,⁴ together with subsidiary instruments such as Government Regulation No. 56 of 2021 on the Management of Copyright Royalties,⁵ seeks to establish a robust legal framework for safeguarding creators against infringements including piracy, unlawful reproduction, and unauthorised use. Despite these provisions, copyright violations remain prevalent, particularly in digital platforms, causing significant economic harm to creators and the creative industries.⁶ Such practices not only erode incentives for innovation but also contravene the foundational principles of Islamic law, which regard copyright as a form of property (*al-māl*) that must be preserved.⁷ Against this backdrop, the application of *Maqāṣid al-Shari‘ah* assumes particular relevance in the analysis of Indonesia's copyright regime, as it offers a holistic framework that integrates spiritual values with the practical demands of society.⁸

As a philosophy of Islamic law, *Maqāṣid al-Shari‘ah* seeks to realise *maṣlaḥah* (benefit) and to prevent *mafsadah* (harm) in human life. The concept

⁴ Republik Indonesia. Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 266, Tambahan Lembaran Negara Republik Indonesia Nomor 5599).

⁵ Republik Indonesia. Peraturan Pemerintah Nomor 56 Tahun 2021 tentang Pengelolaan Royalti Hak Cipta Lagu dan/atau Musik (Lembaran Negara Tahun 2021 Nomor 86. Tambahan Lembaran Negara Nomor 6675).

⁶ Maeverick Zoe Mories Margana, Anak Agung Angga Primantari. "Perlindungan Hukum Hak Kekayaan Intelektual Bagi Pencipta Konten Digital Dalam Konteks Komersil". *Jurnal Media Akademik (JMA)* 3, no. 8 (2025): 1-20. <https://share.google/50NpKoI5eY0jutwOa>; Fenny Wulandari. "Problematika Pelanggaran Hak Cipta di Era Digital". *Journal of Contemporary Law Studies* 2, no. 2 (2024): 99-114. <https://doi.org/10.47134/lawstudies.v2i2.2261>

⁷ Moh Holilur Rohman, Abd Rosid, Afifah Alfiyanti. "Legal Protection Of Copyright Owners For Error In Persona In Decision No.33/PDT.SUS-Copyright/2018/PN Niaga Jakarta Pusat". *Istinbath: Jurnal Hukum* 18, no. 1 (2024): 71-103. <https://doi.org/10.32332/istinbath.v20i02.5680>

⁸ Kawthar Bayoumi, Arief Salleh Rosman. "Framing an Islamic Vision of Intellectual Property: Maqasid - Based Approach". *UMRAN - International Journal of Islamic and Civilizational Studies* 5, no. 3 (2018): 25-40. <https://doi.org/10.11113/umran2018.5n3.220>

was first developed by scholars such as al-Juwainī and al-Ghazālī, and later refined by al-Shāṭibī, who categorised it into three levels: *darūriyyāt* (primary necessities), *hājiyyāt* (secondary needs), and *tahsīniyyāt* (complementary needs).⁹ In relation to copyright, *Maqāṣid al-Shari‘ah* emphasises the preservation of property as one of its fundamental pillars, whereby copyright is recognised as *haqq al-ibtikār* (the right to innovation), equivalent to tangible property.

In Indonesia, copyright regulation has developed since the colonial era, beginning with the first Copyright Law in 1912 and continuing through post-1998 reforms that aligned with international standards such as the Berne Convention and the TRIPS Agreement. Nevertheless, the implementation of these regulations has often been ineffective due to limited public awareness, weak enforcement mechanisms, and technological challenges such as blockchain and artificial intelligence, which complicate the monitoring of infringements.¹⁰ Studies indicate that copyright violations in Indonesia remain high on an annual basis, particularly in the music and graphic design sectors, causing not only economic harm to creators but also undermining the preservation of intellect (*hifz al-‘aql*) through the degradation of intellectual works.¹¹ The *Maqāṣid al-Shari‘ah* approach can serve as a bridge to strengthen copyright regulation by underscoring that copyright protection is not merely an economic concern, but also relates to the preservation of life (*hifz al-nafs*) and progeny (*hifz al-nasl*) through the support of a sustainable creative industry.¹²

⁹ Fahrur Rozi, Tutik Hamidah, Abbas Arfan. "Konsep Maqasid Syari'ah Perspektif Pemikiran Al-Juwaini Dan Al-Ghazali". *IQTISODINA: Jurnal Ekonomi Syariah Dan Hukum Islam* 5, No. 1 (2022): 53-67. <https://doi.org/10.35127/iqtisodina.v5i1.5807>

¹⁰ Muhammad Marzuki. "Urgensi Dunia Hukum Mengejar Kecepatan Transformasi Siber". *Pancasila Law Review* 2, no. 1 (2025): 1-21. <https://share.google/CJUEK4M79ge2FdI3F>

¹¹ International Intellectual Property Alliance (IIPA) 2025 Special 301 Report On Copyright Protection And Enforcement. <https://www.iipa.org/files/uploads/2025/01/INDONESIA-2025-Copyedited-012325.pdf> diakses pada Tanggal 09 Agustus 2025 Pukul 13.00 WIB.

¹² Muhammad Ziyad Rif'ati. "Efektivitas Hukum Kewajiban Pembayaran Royalti Atas Live Performance Perspektif Maqasid Syariah". Skripsi: UIN Maulana Malik Ibrahim (2024).

The application of *Maqāṣid al-Shari‘ah* to copyright protection has been discussed across various strands of contemporary Islamic scholarship. From an Islamic perspective, copyright is recognised as *ḥuqūq māliyyah* (financial rights) that must be safeguarded, as affirmed by the fatwas of the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), including Fatwa No. 1 of 2003 on Copyright and Fatwa No. 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property Rights. These rulings stipulate that copyright infringements, such as piracy or unauthorised use, constitute acts of injustice (*zulm*) and are prohibited (*ḥarām*), as they contravene Qur’ānic injunctions, notably QS. al-Baqarah: 188, which prohibits the unlawful appropriation of another’s property. At the international level, the *Maqāṣid al-Shari‘ah* framework has been employed to critique the global intellectual property regime, which is often utilitarian and Western-oriented, and frequently neglects considerations of social justice and accessibility for disadvantaged groups.

A *Maqāṣid*-based approach offers an Islamic vision of intellectual property that balances the rights of creators with the interests of the public, conceiving intellectual property as a trust (*amānah*) from Allah SWT to be utilised for the benefit of the wider community. In Indonesia, this discourse carries particular significance given that the majority of the population is Muslim, thereby necessitating that copyright regulation be aligned with Shari‘ah values to strengthen both legitimacy and compliance. Nevertheless, challenges persist, notably the dualism between secular-based positive law and Islamic law oriented towards divine objectives.¹³

Based on the identified research gap, this study specifically aims to analyse the areas of convergence and divergence between the normative provisions of Law Number 28 of 2014 on Copyright and the foundational principles of *Maqāṣid al-Shari‘ah*, as well as to develop a *maqāṣid*-based

¹³ Kawthar Bayoumi, Arieff Salleh Rosman. *Op., Cit.*

evaluative framework for assessing the effectiveness of copyright protection in Indonesia. This research employs an interdisciplinary approach that integrates *Maqāṣid al-Shari‘ah* theory with an analysis of Indonesian legal regulations an approach that has seldom been undertaken critically in existing scholarship. In contrast to previous studies, which have largely adopted a descriptive orientation, this research offers a novel evaluative framework whereby *Maqāṣid* is utilised as an analytical tool to measure the effectiveness of copyright law within the cultural context of Indonesian Islam. Accordingly, this study not only contributes to the strengthening of contemporary Islamic legal discourse but also provides a conceptual foundation that may enrich national copyright law reform so that it aligns more closely with the objective of promoting public welfare (*maṣlahah*), which stands at the core of the *Maqāṣid al-Shari‘ah* framework.

B. Research Method

This study employs normative legal research, focusing on the examination of Indonesia's positive legal norms and the principles of Islamic law. Normative legal research is chosen because the primary objective of this study is to analyse copyright protection under Law No. 28 of 2014 on Copyright (the Copyright Act) through the lens of *Maqāṣid al-Shari‘ah* values. Normative legal research is generally grounded in library-based inquiry, which entails the review of primary, secondary, and tertiary legal materials relevant to the subject.¹⁴

The approaches adopted are the statute approach and the conceptual approach. The statute approach is employed to examine the provisions contained in the Copyright Act and its subsidiary regulations, and to connect them with copyright protection principles recognised within the national legal

¹⁴ Soerjono Soekanto & Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Jakarta: Rajawali Pers, 2015, hlm. 13.

system. The conceptual approach, meanwhile, is utilised to explore the foundational principles of *Maqāṣid al-Shari‘ah* as articulated by al-Juwainī, al-Ghazālī, and al-Shāṭibī, and to assess their relevance in the context of protecting intellectual works in Indonesia.¹⁵

The sources of data in this study consist of primary and secondary materials.¹⁶ Primary data include official legal documents such as Law No. 28 of 2014 on Copyright, Government Regulation No. 56 of 2021 on the Management of Copyright Royalties, as well as Shari‘ah sources including Qur’ānic verses (e.g. QS. al-Baqarah: 188 prohibiting the unlawful appropriation of others’ property) and fatwas issued by institutions such as the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), particularly Fatwa No. 1/MUNAS VII/MUI/5/2005 on Intellectual Property Rights. Secondary data comprise academic literature, journals, books, and research reports addressing the integration of *Maqāṣid al-Shari‘ah* with intellectual property regulation.

Data collection is conducted through library research, involving the retrieval of literature from both national databases (e.g. Sinta, Garuda) and international databases. The collected data are subsequently examined using juridical-qualitative analysis. This process involves legal interpretation and comparison between the provisions of positive law and the principles of *Maqāṣid al-Shari‘ah* to identify points of convergence, divergence, and normative recommendations that may enrich the discourse on copyright protection in Indonesia. To ensure data validity, this research employs source triangulation by comparing findings from statutory law, Islamic legal doctrine, and academic scholarship. Accordingly, the results of this study are expected to be not merely descriptive, but analytical and critical, thereby contributing to the development

¹⁵ Jasser Auda. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: International Institute of Islamic Thought, 2008, hlm. 15–21.

¹⁶ Johnny Ibrahim. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia, 2006, hlm. 57.

of legal scholarship, particularly in the fields of intellectual property law and Islamic law.

C. Results and Discussion

1. The Concept of *Maqāṣid al-Shari‘ah* as a Theoretical Framework for the Protection of Intellectual Property Rights

Maqāṣid al-Shari‘ah, derived from the Arabic root *qaṣd*, meaning purpose or intention, was developed as a methodology for discerning the underlying wisdom (*ḥikmah*) of Islamic legal rulings.¹⁷ As the objectives of the *Shari‘ah*, *Maqāṣid al-Shari‘ah* constitute the philosophical foundation of Islamic law, seeking to realise *maṣlahah* (public benefit) and to prevent *mafsadah* (harm or corruption). The concept was first systematically articulated by scholars such as Abū Ḥāmid al-Ghazālī, and was subsequently refined in the fourteenth century by Abū Iṣhāq al-Shāṭibī, who classified it into three hierarchical levels: *darūriyyāt* (fundamental necessities), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (refinements or embellishments). Within the framework of intellectual property rights, particularly copyright, *Maqāṣid al-Shari‘ah* underscores the preservation of five essential elements: *hifz al-dīn* (protection of religion), *hifz al-nafs* (protection of life), *hifz al-‘aql* (protection of intellect), *hifz al-nasl* (protection of lineage), and *hifz al-māl* (protection of property).¹⁸

Intellectual Property Rights (IPR), as a legal instrument for safeguarding intellectual creations, are frequently approached from a Western perspective that emphasises individual rights and economic incentives, as reflected in instruments such as the Berne Convention of 1886 and the TRIPS Agreement of 1994. From an Islamic perspective, however, IPR are not merely economic tools but form part of the preservation of property (*hifz al-māl*) and intellect (*hifz al-*

¹⁷ Ahmer Bilal Soofi, Muhammad Masud. “International Law and Maqasid Al-Shariah”. (August 26, 2024). <http://dx.doi.org/10.2139/ssrn.4937103>

¹⁸ Kawthar Bayoumi, Arieff Salleh Rosman. “Framing an Islamic Vision of Intellectual Property: Maqasid - Based Approach”. *Op. Cit.*

‘aql), two of the five principal objectives of *Maqāṣid al-Shari‘ah*.¹⁹ The protection of property constitutes a central pillar of IPR discourse, since copyright is regarded as a form of intangible property equivalent to tangible assets, as recognised in the principle of *haqq al-ibtikār* (the right to innovation). Within the Islamic framework, property is not viewed as absolute private ownership but as a trust (*amānah*) from Allah, which must be safeguarded to encourage creativity and promote social justice. This perspective diverges from the predominantly utilitarian Western approach, where IPR are largely directed towards economic incentives, whereas *Maqāṣid* introduces ethical and spiritual dimensions, including the prohibition of injustice (*zulm*), as articulated in Qur’ānic verse al-Baqarah: 188.

The application of *Maqāṣid al-Shari‘ah* to IPR has become a significant theme in contemporary Muslim scholarship. For example, the integration of *maqāṣid* with communal property rights in Indonesia illustrates that *Shari‘ah* principles can revitalise the IPR system, rendering it more inclusive by respecting indigenous collective knowledge while continuing to protect individual rights.²⁰ This reflects the level of *darūriyyāt*, in which the preservation of intellect through the protection of intellectual works prevents the degradation of knowledge and innovation. Studies further demonstrate that *maqāṣid* may function as a critical lens for evaluating the global IPR regime, such as the TRIPS Agreement, which has frequently been criticised for privileging developed countries and disregarding considerations of social justice integral to Islamic law. In Indonesia, as the world’s most populous Muslim-majority country, this discourse assumes particular importance in adapting national regulations to *Shari‘ah* values, thereby enhancing both legal

¹⁹ Mohd Izzat Amsyar Mohd Arif, Hisham Hanapi. “The Concept of Intellectual Property As Al Mal: An Islamic Perspective Approach”. International Journal of Educational Best Practices (IJEBP) 1, no. 1 (2017): 102-108. <https://doi.org/10.31258/ijebp.1.1.102-108>

²⁰ Hari Sutra Disemadi, et.all. “Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective on Communal Ownership”. Al-Istinbath: Jurnal Hukum Islam 9, no. 2 (2024), 625-648. <https://doi.org/10.29240/jhi.v9i2.11039>

legitimacy and public compliance. Nonetheless, theoretical challenges persist owing to divergent interpretations: whether copyright should be treated as absolute, akin to physical property, or subject to limitations in light of the public interest, such as free access to education. A *maqāṣid*-oriented approach offers a resolution by striking a balance protecting the rights of creators while ensuring that such protection does not impede the attainment of communal welfare (*maṣlahah*).

Maqāṣid al-Shari‘ah provides a holistic theoretical framework for Intellectual Property Rights (IPR) by linking intellectual protection to the higher objectives of Shari‘ah. First, *hifz al-‘aql* (the preservation of intellect) is particularly pertinent, as IPR safeguards intellectual innovation and prevents plagiarism, which erodes incentives for creative thought. For instance, in bioethics, *Maqāṣid al-Shari‘ah* supplements conventional ethics by underscoring the protection of medical discoveries as an integral aspect of preserving intellectual capacity.²¹ Secondly, *hifz al-māl* (the preservation of property) recognises intellectual creations as economic assets that must be shielded against misappropriation. This is consistent with international law, where *Maqāṣid al-Shari‘ah* resonates with the property rights enshrined in human rights instruments, including the right to intellectual property.²² Thirdly, other elements such as *hifz al-dīn* (the preservation of religion) support IPR frameworks insofar as they do not conflict with Islamic values, while *hifz al-nasl* (the preservation of lineage) ensures that cultural heritage is protected for future generations. In practical application, *Maqāṣid al-Shari‘ah* operates as a normative benchmark for assessing IPR policies, ensuring an equilibrium between individual and collective rights. Within the global legal order, this

²¹ Shaikh Mohd Saifuddeen, Noor Naemah Abdul Rahman, Noor Munirah Isa & Azizan Baharuddin. "Maqasid al-Shariah as a Complementary Framework to Conventional Bioethics". *Sci Eng Ethics* 20 (2014): 317–327. <https://doi.org/10.1007/s11948-013-9457-0>

²² Ahmer Bilal Soofi, Muhammad Masud. "International Law and Maqasid Al-Shariah". *Op.Cit.*

approach accords with international law, as *maqāṣid* objectives such as the preservation of intellect and property resonate with established human rights conventions.²³

Studies on the reform of IPR in Indonesia demonstrate that *Maqāṣid al-Shari‘ah* can integrate Islamic values into the national legal framework, thereby addressing tensions with Western individualistic principles.²⁴ For example, the protection of the economic rights of songwriters may be construed as the fulfilment of *maṣlahah*, by embedding Islamic ethical values to foster broader societal awareness. Western IPR frameworks are predominantly founded upon utilitarian reasoning, epitomised by John Locke’s labour theory of property, which prioritises individual rights as a mechanism for encouraging innovation. By contrast, *Maqāṣid al-Shari‘ah* emphasises collective welfare, reflecting broader critiques of Western intellectual property monopolies.²⁵ Nonetheless, both approaches converge in recognising the necessity of economic incentives. The salient distinction lies in the Islamic framework, which is underpinned by *maṣlahah* and is thereby more accommodating of communal rights.

At a theoretical level, *Maqāṣid al-Shari‘ah* offers a hermeneutical framework for reinterpreting Shari‘ah texts in light of contemporary contexts. Al-Shāṭibī affirmed that Islamic law is inherently dynamic, oriented towards ultimate objectives (*maqāṣid*) rather than confined to rigid literalism. In the domain of IPR, this suggests that infringements such as digital piracy may be classified as mafṣadah (harm) that undermines both *hifz al-māl* and *hifz al-‘aql*, since they deprive creators of incentives and diminish the quality of knowledge.²⁶ International scholarship increasingly acknowledges that the

²³ *Ibid.*,

²⁴ Hari Sutra Disemadi, et.all. “Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective on Communal Ownership”. *Op. Cit.*

²⁵ *Ibid.*,

²⁶ Rahmadany, Pagar, Nispul Khoiri & Imoh Emmanuel Uwem. “Implementation Of Intellectual Property Rights Waqf In The Urban Society Of Medan Based On Maqasid Shariah”.

Islamic vision of IPR, grounded in maqāṣid, is more holistic, integrating ethical and economic considerations, in contrast to the predominantly secular models advanced within the WTO framework.²⁷ In Indonesia, this conceptual framework has been operationalised through fatwas issued by Islamic scholars, thereby reinforcing the proposition that IPR constitutes an integral and adaptive component of Islamic law.

2. A Critical Analysis of Copyright Protection under the Copyright Act from the Perspective of *Maqāṣid al-Shari‘ah*

Copyright protection represents one of the fundamental pillars of the intellectual property law system, designed to safeguard human intellectual creations such as artistic, musical, literary and software works. The regulation of copyright in Indonesia has undergone a protracted evolution, beginning with the Dutch colonial Auteurswet of 1912, progressing through post-independence reform under Law No. 6 of 1982, and culminating in the current Law No. 28 of 2014 on Copyright (UUHC). This most recent statute extends the scope of protection to encompass digital works such as software, graphic designs and online content, thereby aligning Indonesia's legal framework with its international obligations under the Berne Convention (1886) and the TRIPS Agreement (1994).²⁸

As an integral component of the WTO framework, TRIPS establishes minimum standards of intellectual property protection, including copyright terms of up to seventy years post mortem auctoris and enforcement

²⁷ Sana Ullah, Abzahir Khan, and Sohail Anwar. "A Comparative Study of the Intellectual Property Rights in Perspective of the Islamic & Western Law". *Journal of Islamic and Religious Studies* 3, no. 2 (2018): 97-105. <https://doi.org/10.36476/JIRS.3:2.12.2018.06>.

²⁸ Dewi Sulistianingsih, Raden Muhammad Arvy Ilyasa. "The Impact Of The Trips Agreement On The Development Of Intellectual Property Laws In Indonesia". *Indonesian Private Law Review* 3, no. 2 (2022): 77-88. <https://doi.org/10.2504/iplr.v3i2.2579>

mechanisms embracing both criminal and civil sanctions.²⁹ In Indonesia, implementation is administered by the Directorate General of Intellectual Property within the Ministry of Law and Human Rights, while collective management organisations (LMKs) oversee the administration of royalties. A critical examination of this regime cannot be separated from ethical and philosophical considerations, particularly within a society that is predominantly Muslim such as Indonesia. Within this context, the concept of *Maqāṣid al-Shari‘ah* the objectives of Islamic law provides a pertinent theoretical framework for evaluating whether copyright protection genuinely promotes human welfare (*maṣlahah*).

The provisions of Article 1(1) of the Copyright Act define copyright as the creator's exclusive right, which arises automatically in respect of works in the fields of science, the arts and literature. The Act emphasises both the creator's moral rights being inalienable rights such as authorship recognition and protection of the integrity of the work and economic rights, including reproduction, distribution and rental, together with royalties derived from commercial exploitation.³⁰ Government Regulation No. 56 of 2021 strengthens these provisions by establishing a system of royalty collection and distribution administered by Collective Management Organisations (LMKs), such as ASIRI in the musical sector. The protection of moral rights under Article 5 of the Act aligns with *hifz al-‘aql* (the preservation of intellect), as it encourages creativity through the recognition of authorship and deters plagiarism, which undermines intellectual integrity. Jasser Auda highlights that modern *Maqāṣid al-Shari‘ah* encompass the development of human resources, for which copyright serves as a vital instrument. Furthermore, the integration with

²⁹ Bayu Abdillah. "TRIP'S Agreement in Legal Protection of Intellectual Property Rights in Indonesia". *Rechtenstudent Journal* 5, no. 2 (2024): 142-153. <https://doi.org/10.35719/rch.v5i2.306>

³⁰ Rizqi Izrul Alamsyah, Rita Rahmawati. "Perlindungan Hukum Terhadap Hak Cipta Karya Seni Digital Perspektif Hukum Islam". *El Hisbah: Journal of Islamic Economic Law* 3, no. 2 (2023): 191-204. <https://doi.org/10.28918/elhisbah.v3i2.1204>

Government Regulation No. 56 of 2021 ensures the equitable distribution of royalties, advancing *maṣlahah mursalah* (public benefit) by helping to alleviate poverty among artists.

The Copyright Act also provides for exceptions such as fair use for educational or critical purposes, designed to strike a balance between the rights of creators and public access. These fair use provisions support *hifz al-nasl* and *hifz al-dīn* by facilitating access to works for educational and religious dissemination, thereby ensuring the preservation of cultural heritage without excessive monopolisation. This reflects a balance between individual and collective rights, consistent with Islamic principles prohibiting *iḥtikār* (harmful monopolies). Moreover, Articles 113–114 of the Copyright Act prescribe criminal sanctions of up to ten years' imprisonment and fines of up to IDR 4 billion for copyright infringement. This corresponds with *hifz al-māl* (the preservation of wealth), as it protects intellectual property against violations such as piracy, which is deemed a form of theft (*sariqah*) in Islamic law. These provisions further contribute to the prevention of *maḍarrah* (harm) and the safeguarding of creators' property. From the perspective of *Maqāṣid al-Shari‘ah*, such measures fulfil the *darūriyyāt* (essential needs) by ensuring that creators receive royalties, thereby promoting their economic and social welfare, as reflected in the resolutions of the International Islamic Fiqh Academy.

The Copyright Act extends the scope of protection to encompass digital works, including graphic design assets and live performances, with royalties managed by Collective Management Organisations (LMKs). Nevertheless, implementation is frequently ineffective; the regulation continues to attract criticism for weak enforcement, particularly in the digital era where infringements such as illegal streaming and AI-based duplication are easily carried out. Furthermore, in the context of live performances in cafés, royalty payments are rarely made due to a lack of transparency and awareness. A case study of Mie Gacoan in Bali illustrates that business operators often disregard

these obligations, thereby violating not only positive law but also the principle of *ḥifẓ al-māl* within *Maqāṣid al-Shari‘ah*.³¹ A comparable incident in a café in Purwokerto, where live music without royalty payment was perceived as minor due to humanitarian intent yet nonetheless harmed economic rights, underscores the necessity of integrating *Maqāṣid* into enforcement for a more ethical approach.³²

Studies reveal a high incidence of copyright infringement of musical works in Indonesia, reflecting a paradox between Islamic values and social practices, in which public unawareness results in *bāṭil* (invalid) transactions.³³ The Copyright Act has proved inadequate in enforcement, as it relies primarily on complaint-based mechanisms rather than proactive prevention, contradicting *Maqāṣid* principles that emphasise the prevention of *maḍarrah* (harm). Furthermore, theoretical analysis shows an imbalance whereby regulation is largely oriented towards individual protection while neglecting communal aspects, such as the rights of indigenous communities over traditional knowledge.³⁴ This emphasis on individual economic rights has led to the marginalisation of communal dimensions, such as the concept of *zakāt* on intellectual property. From a *Maqāṣid* perspective, copyright as a form of property should be subject to *zakāt* to facilitate wealth redistribution; however, the Copyright Act does not incorporate such a mechanism, thereby

³¹ Willa Wahyuni. "Mie Gacoan Bali Tersandung Kasus Royalti, Ini Aturan Pemutaran Musik di Tempat Usaha". Diakses melalui <https://www.hukumonline.com/berita/a/mie-gacoan-bali-tersandung-kasus-royalti--ini-aturan-pemutaran-musik-di-tempat-usaha-lt688991d196739/> pada tanggal 09 Agustus 2025 Pukul 17.00 WIB.

³² Ahmad Subekti, Eva Mir'atun Niswah. "Perlindungan Hukum Hak Cipta Terhadap Pemutaran Lagu dalam Live Music Performance Perspektif Undang-Undang Hak Cipta dan Hifz Al-Mal di Kafe Purwokerto". *El-Uqud: Jurnal Kajian Hukum Ekonomi Syariah* 2, no. 2 (2024): 75-89. <https://doi.org/10.24090/eluqud.v2i2.12107>

³³ Irfan Zuhdi. "Perlindungan Hak Ekonomi Pencipta Lagu dalam Perspektif *Maqāṣid al-Syari‘ah*". *Op. Cit.*

³⁴ Simona Bustani. "Perlindungan Hukum Terhadap Traditional Knowledge di Indonesia". *Jurnal Hukum Prioris* 1, no. 2 (2007): 105-116. <https://doi.org/10.25105/prio.v1i2.317>

perpetuating social injustice.³⁵ The Indonesian Council of Ulama (MUI) Fatwa No. 1 of 2009, issued on 20 January 2009, affirms that income derived from intellectual property falls within the category of wealth liable to zakāt. Nonetheless, the absence of supporting national regulation undermines *hifz al-nafs* (the preservation of life) for zakāt beneficiaries (mustahik), resulting in a further misalignment with the ethical imperatives of *Maqāṣid al-Shari‘ah*.³⁶

Furthermore, the seventy year extension of copyright protection has the potential to foster monopolistic practices and restrict public access to knowledge, thereby conflicting with *hifz al-‘aql* (the preservation of intellect), which prioritises the dissemination of knowledge. This critique aligns with the views of scholars such as Yusuf al-Qaradawi, who emphasises that knowledge constitutes a collective asset rather than an individual monopoly. Moreover, while integration with the TRIPS Agreement has necessitated regulatory adjustments, it is frequently perceived as a Western imposition insufficiently compatible with local values, including Islamic principles. This protection should ensure that songwriters receive equitable economic rights, as stipulated in Government Regulation No. 56 of 2021, which governs the distribution of royalties through Collective Management Organisations (LMKs). From a *Shari‘ah* perspective, this arrangement is consonant with the principle of *maṣlahah mursalah*, under which rules not explicitly addressed in the revealed texts may be formulated to advance the public interest. However, weak enforcement particularly the complaint-based mechanism, which relies upon reports from creators results in numerous infringements going unpunished, thereby undermining the preservation of both property and intellect within society.

³⁵ Supangat. "Zakat Hak Kekayaan Intelektual (Hki) Dalam Perspektif Maqasid Asy-Syari‘ah". Disertasi: UIN Wali Songo Semarang (2024).

³⁶ *Ibid.*,

Indonesian scholarship has extensively examined the integration of *Maqāṣid al-Shari‘ah* with copyright regulation. Analyses of copyright protection for online graphic design assets, for example, highlight that *haqq al-ibtikār* (the right to innovate) constitutes a private right equivalent to property, and its infringement is treated as theft prohibited under *Shari‘ah*.³⁷ The integration of *Maqāṣid al-Shari‘ah* with copyright regulation in Indonesia thus offers an interdisciplinary framework that synthesises Islamic legal theory with positive law. This approach is reinforced by the Indonesian Council of Ulama (MUI) Fatwa No. 1/MUNAS VII/MUI/5/2005 on Intellectual Property Rights, which declares that intellectual property, including copyright, is a form of wealth that must be protected and that infringement is prohibited (*ḥarām*) as a form of theft (*sariqah*).³⁸ The fatwa further affirms that such rights may be inherited, endowed (*waqf*), or employed as contractual objects, in line with the objective of preserving wealth (*hifż al-māl*). Grounded in *maqāṣid*-based reasoning, it underscores *hifż al-māl* while simultaneously recognising *hifż al-‘aql* through its support for innovation.

Within the regulatory context, this suggests that the Copyright Act (UUHC) may be reinterpreted through a *Shari‘ah*-based framework, in which royalties are conceived not merely as economic remuneration but as the fulfilment of a legitimate proprietary entitlement (*haqq mālī*). The protection of musical works and graphic designs, for example, corresponds to the preservation of life and lineage, insofar as the creative industries contribute to wider social welfare. Indonesia’s Islamic legal response to intellectual property also demonstrates an adaptive fiqh dynamic: organisations such as Nahdlatul Ulama and Muhammadiyah advocate for robust protection to promote

³⁷ M. Syauqi. “Analisis Perlindungan Hak Cipta Terhadap Asset Graphic Design Pada Media Internet dalam Perspektif Haq Ibtikar”. Skripsi: UIN Ar-Raniry Aceh (2023).

³⁸ Nugraha Pranadita. “Revitalization Of Indonesian Ulema Council Fatwa About Intellectual Property Protection”. IJLR: International Journal of Law Reconstruction 4, no. 2 (2020). <http://dx.doi.org/10.26532/ijlr.v4i2.9875>

professionalism and avert moral and economic harm. Yet this integration remains suboptimal because national regulation is still largely secular in character and lacks explicit *Shari‘ah*-based mechanisms.³⁹

Viewed in its entirety, a critical examination of copyright protection under the UUHC from the standpoint of *Maqāṣid al-Shari‘ah* reveals that, although the legislation has partially fulfilled *Shari‘ah* objectives such as the preservation of wealth (*hifz al-māl*) and intellect (*hifz al-‘aql*) through its recognition of authors' economic and moral rights serious shortcomings persist in implementation, enforcement, and the balancing of individual rights against the public interest (*maṣlahah ‘āmmah*). A deeper integration of *Maqāṣid al-Shari‘ah* principles into the national legal framework would not only strengthen distributive justice and the prevention of harm (*mađarrah*) but also ensure that copyright protection advances the holistic welfare of Muslim society, as emphasised by contemporary scholars engaged in modern *ijtihād*. Consequently, recommendations for legislative reform and the enhancement of ethical awareness are imperative if copyright law is to function not merely as an economic instrument but as a central pillar in realising the enduring objectives of *Shari‘ah* namely, the attainment of *falāh* (worldly and spiritual prosperity) for all, whilst simultaneously reinforcing protection, ensuring communal welfare, and promoting distributive justice.

D. Conclusion

An examination of *Maqāṣid al-Shari‘ah* as a theoretical framework for the protection of intellectual property and the analysis of copyright regulation under Law No. 28 of 2014 reveal both meaningful alignments and continuing challenges in integrating *Shari‘ah* values with Indonesia's contemporary legal

³⁹ Asmuni, Yusdani, Januariansyah Arfaizar. "Dynamics Response Of Indonesian Islamic Law To The Protection Of Intellectual Property Rights". *Journal of Islamic Studies* Published by State Islamic University Mataram 27, no. 2 (2023): 876-904. <https://doi.org/10.20414/ujis.v27i2.749>

system. While the Copyright Act supports key *maqāṣid* objectives particularly the preservation of property (*hifz al-māl*) and intellect (*hifz al-‘aql*) its weaknesses in enforcement, its limited accommodation of communal values such as the potential application of *zakāt* to intellectual property, and the risk of excessive monopolisation indicate that the law has yet to achieve a balanced realisation of *maṣlaḥah*. A *maqāṣid* oriented approach offers a constructive path forward through more inclusive policies, strengthened royalty governance, enhanced ethical awareness, and regulatory integration of socio-religious considerations. By adopting systemic thinking in the manner proposed by Jasser Auda, future reforms to Indonesia’s copyright regime can become more responsive to digital challenges and the protection of traditional knowledge, while aligning innovation with justice and social benefit. Further research may involve empirical studies on public compliance, comparative analyses with other Muslim majority jurisdictions, and the exploration of emerging technologies such as blockchain and AI for supporting *maqāṣid* based copyright governance.

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