

The Application of The Basic Principles of Waqf to Intellectual Property Rights (IPR) in Indonesia

by

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Abstract

Intellectual Property Rights (IPR) are rights owned by a person or legal entity to protect their work. The basic principles and arrangements of IPR come from the western world, among others regulated in various international treaties, while the basic principles and arrangements of waqf come from Islam. The purpose of this study is to examine and analyze the basic principles of waqf and the basic principles of Intellectual Property Rights (IPR). Conducting a comparison between the two principles which then results in the application of the basic principles of waqf to intellectual property rights. This research uses a normative juridical research method with a problem approach including a statutory approach, an analytical approach and a conceptual approach. Research specifications are focused on researching legal principles and legal synchronization. The result of this research is that the basic principles of IPR can be applied to the basic principles of waqf. The principles that can be applied include: authority rights, private and market rights, sustainability, TRIPs binding, as well as the principle of natural justice, the economic argument, the cultural argument, and the social argument.

Keywords: IPR, Waqf, Legislation.

INTRODUCTION

The development of science and technology has brought great changes in the development of daily life, so that it also affects the industrial world. The advancement of the development of the industrial world will affect Intellectual Property Rights (IPR), because it will increase research, discovery and development of science and technology, art, literature and productivity from society. Intellectual Property Rights (IPR) are currently developing following the development of science and technology and international trade. Intellectual Property Rights is a translation of Intellectual Property Rights (IPR). In addition to the term Intellectual Property

Rights, there are also those who use the term Intellectual Property Rights (IPR), both terms refer to the word property which can be interpreted as wealth, it can also be interpreted as ownership.¹

The basic principles and arrangements of IPR originated in the western world, among others, are regulated in various international treaties, starting from the 1886 Berne Convention, namely the International Convention for the Protection of Literary and Artistic Work, signed in Bern, Switzerland. The Paris Convention for the Protection of Industrial Property, which in short is commonly referred to as the Paris Convention. "The Hague Arrangement Concerning the International Deposit of Industrial Patterns and Designs", otherwise known as the 1925 Hague

¹ Etty S. Suhardo, 2012, *Intellectual Property Rights and IPR Licenses*, Semarang: Master of Law Sciences Diponegoro University, p. 10.

Convention, and many others, and all are the result of western world agreements.

WIPO's opinion in General Information is as follows: "No international treaty defines these concepts, and the various countries differ from each other on several important points. It is not possible, therefore, to give universally accepted definitions of the various forms of international property"². IPR or Intellectual Property Rights are obviously part of our daily activities. We often do not realize that many of our activities are related to IPR.³ The books we use have copyright, brands of clothes, pants, cigarettes, computer programs, traditional dances, folk songs, kuda kepang, reog, to telephone ringtones, all related to IPR.

The legal aspect of Intellectual Property Rights (IPR) begins with the results of the ability of human thinking that has creative power in the form of creative ideas that are unique or exclusive of the creator or inventor which is realized in a form of creation or certain inventions.⁴ Intellectual Property Rights (IPR) consist of 2 (two) fields, namely: 1. Copyright, as well as Neighboring Rights, consisting of: science, art and literature; 2. Industrial Property Rights, consisting of: Patent, Trademark, Industrial Design, Layout Design of Integrated Circuit, Trade Secret.⁵

Unlike IPR, which originated in the West through international agreements made in various countries, the provisions on Waqf and the basic principles of waqf originate from the teachings of Islam. The provisions of waqf are regulated in the Qur'an, the Hadith of the Prophet Muhammad SAW, and the books or writings of the Ulama' as a basis for doing waqf in everyday life. One of the purposes of regulating IPR is to protect a person's rights to his work and creation, if someone wants to own or utilize it, he must get permission and can even be asked to pay a sum of money to the owner of the right. The basic principle of waqf is in stark contrast to the principle of IPR. When a person has donated his property, the property will be released from his rights and can be fully utilized for the benefit of people in need.

Waqf is a form of worship that originates from the teachings of Islam and is further regulated in Indonesian legislation. The provisions of waqf in Indonesia are currently regulated by Law Number 41 of 2004 concerning Waqf. Prior to the birth of the Law, waqf in Indonesia was regulated in Government Regulation Number 28 of 1977 concerning waqf land owned and regulated several articles in Law Number 5 of 1960 concerning Basic Agrarian Regulations.

² WIPO, 2008, *WIPO Intellectual Property Handbook*, Geneve WIPO Publication No. 489 (E), p. 56.

³ Budi Santoso, 2009, *Copyright Deconstruction: A Reflection on Thinking Globally Acting Locally in the Field of Copyright*, Scientific

Oration, delivered at the 52nd Anniversary of Fak. Law Diponegoro University Semarang January 8, 2009, p. 1.

⁴ Ibid, Etty S. Suhardo, p. 1.

⁵ Ibid. p. 11.

The difference in basic principles between IPR and Waqf turns out to be unified in Indonesia. In the provisions of Article 1 number 1 of the Waqf Law, the definition of waqf is a waqif's legal action to separate and / or transfer part of his property to be utilized forever and within a certain period of time in accordance with his interests for the purposes of worship and / or public welfare according to sharia. In the provisions of Article 16 paragraph 3 letter e of Law No. 41 of 2004 concerning Waqf, it is explained that one of the Assets that can be waqfied is Intellectual Property Rights. The purpose of this paper is to examine and analyze the basic principles of waqf and the basic principles of Intellectual Property Rights (IPR). Conducting a comparison between the two principles which then results in the application of the basic principles of waqf to intellectual property rights.

RESEARCH METHODS

The approach method used in this research is the statute approach, carried out by examining all laws and regulations related to the legal issues being addressed. analytical approach. The analytical approach is used to determine the meaning contained by the terms used in the legislation conceptually, as well as to determine their application in legal practice. The approach used next is a conceptual approach.⁶

By studying the views and doctrines that develop in law, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issue at hand. Understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issue at hand.

RESEARCH RESULTS AND DISCUSSION

1. Basic Principles of Intellectual Property Rights (IPR)

Intellectual property rights are increasingly developing following the development of science and technology. One of them is the protection of microelectronic technology, especially the manufacture of "microchips" or semi-conductors began to be regulated with the birth of Topography Rights.⁷ Then followed by the development of biotechnology which led to the need to protect the results of biological engineering which subsequently gave rise to a convention governing the protection of plant varieties.

Intellectual property rights now no longer only regulate the protection of individual rights, but have expanded to become part of international political and economic issues. The United States as a developed country, for example, asks developing countries to streamline their intellectual property rights

⁶ Johny Ibrahim, 2006, *Theory and Methodology of Normative Legal Research*, Malang: Bayumedia Publishing, pp. 300-308.

⁷ Muhamad Djumhana and R. Djubaedillah, 2003, *Intellectual Property Rights, History, Theory, and Practice in Indonesia*, Bandung: PT Citra Aditya Bakti, p. 8.

arrangements and make such conditions a reciprocal concession in the making of economic agreements.⁸ Conversely, developing countries are not willing to agree to greater protection if the United States and European countries do not provide or open their markets for their textiles and agricultural products.⁹

So, here we can see that international trade is not just about trade. But also various "pressures" that have been carried out in areas that are not actually the field of trade, for example Intellectual Property Rights (IPR), such as trademarks, patents and copyrights, human rights issues, and so on. At the end of the 20th century and the beginning of the 21st century, an agreement was reached by countries to raise the concept of intellectual property rights to a common agreement in the form of the Agreement Establishing the World Trade Organization (WTO Agreement) and all international agreements that become its attachments, including those concerning intellectual property rights.¹⁰

Intellectual Property Rights have become a very important part for a country to maintain its industry and trade. With the development of a country's industry and trade, economic growth

will increase. Protection of a country's products becomes very important, so the regulation of Intellectual Property Rights becomes a very strategic element in the country's economic activities.

International IPR arrangements are contained in various international agreements, including the Paris Convention, Berne Convention, Rome Convention, Washington Treaty, Dispute Settlement Understanding and TRIPs. Based on the regulation of IPR in various international treaties, IPR contains five types of basic principles, namely:¹¹

- a. Authority Rights
- b. Private Rights and the Market
- c. Sustainable Principle
- d. One Unit
- e. TRIPs Binding

The main principle of Intellectual Property Rights is that the creation of work using intellectual abilities, the person who produces it gets ownership in the form of natural rights. This is how the Roman legal system referred to it as natural acquisition in the form of specifications, i.e. through creation.¹²

At the highest level of the ownership relationship, the law goes further, and

⁸ WR. Cornish, 1989, *Intellectual Property*, 2nd Edition, London: Swett & Maxwell, p. 255. See Ibid, Muhamad Djumhana and R. Djubaedillah, pp. 9.

⁹ Peter Groves, 1991, *Copyright and Design Law*, First printing, Londok: Graham & Trotman, p. 212. See Muhamad Djumhana and R Djubaedillah, *Loc. Cit*, pp. 9.

¹⁰ Achmad Zen Umar Purba, 2005, *Intellectual Property Rights After TRIPs*, Bandung: PT Alumni, p. 1.

¹¹ *Ibid.*, p. 12.

¹² Roscoe Pound, 1983, *Introduction to the Philosophy of Law* (Translation Drs. Mohamad Radjab), 3rd Printing, Jakarta: Bharatara Karya Aksara, pp. 119-120, See Muhamad Djumhana and R. Djubaedillah, *op. cit*, p. 25.

guarantees every human being exclusive control and enjoyment of the object or creation with the help of the state.¹³ This picture shows that legal protection is in the interest of the owner, both individuals and groups who are legal subjects. To limit the prominence of individual interests, the law also guarantees the preservation of individual interests and the interests of society. The guarantee of the maintenance of these interests is reflected in the Intellectual Property Rights (IPR) system.

The current Intellectual Property Rights system tries to balance between 2 (two) interests, namely between the rights owner and the needs of the general public. These two sides of the same coin regarding Intellectual Property Rights can be seen in Article 27 of The Declaration of Human Rights, namely:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

As a way to balance the interests and role of the individual with the interests of society, the

Intellectual Property Rights system is based on the principle of:¹⁴

- a. The principle of natural justice
- b. The economic principle (the economic argument)
- c. The cultural argument
- d. The social principle (the social argument)

Of all the principles inherent in Intellectual Property Rights (IPR), the emphasis is always different in each country.¹⁵ Different legal systems, political systems, and philosophical foundations, then different views on the principle. The history of independence of a former colony country, with its industrialized developed countries is very different in the way it views the issue of the principle of Intellectual Property Rights.

2. Basic Principles of Waqf

Etymologically, the word *waqf* comes from the Arabic *waqf*, the verb is *waqafa yaqifu*, meaning to stand, stop¹⁶, hesitate¹⁷, hold back or prevent.¹⁸ The phrase *waqafu*, means I stand, I stop, I hesitate, I prevent and I hold back. Furthermore, the word *waqf* is more popularly used for the meaning of *mauquf*, meaning (something) that is withheld, stopped or doubted, than it is used for the meaning of a transaction. For example, the phrase: *hadza*

¹³ Ibid, Muhamad Djumhana and R. Djubaedillah, *pp.* 25.

¹⁴ Ibid, p. 26.

¹⁵ Ibid

¹⁶ Ibn Mandzur, 1999, *Lisan al-Arab*, Volume 15, Bairut: Dar Ihya al-Turats al-Arabi, p. 373.

¹⁷ Atabik Ali and Ahmad Zuhdi Muhdlar, 1996, *Al-Alshrie Dictionary*, Yogyakarta: Ali Ma'shum Foundation, p. 2034.

¹⁸ Musthofa Salabi, 1957, *Muhadlarat al-Waqf wa al-Washiyyah*, Iskandariyah: Dar al-Ta'lif, p. 18.

al'iqrar mauquf (this land is that which is waqf).¹⁹

In terminology, the word *waqf* was known in early Islam as *habs* and *shadaqah*. The explanation of waqf has different formulations according to the views of each scholar. Imam Abu Hanifah defined waqf as holding property in the possession of the waqif and donating its benefits to others like a loan.²⁰ His two disciples, Imam Muhammad and Imam Abu Yusuf, defined waqf as holding property and distributing its benefits to a person or institution that is favored by Allah.²¹

In principle, waqf is a benevolent charity (*tabarru'at*) that is sustainable, not a consumptive charity that is only temporary. The meaning of sustainability is very relative, depending on the nature and quality of the object being waqfied. For scholars who accommodate temporary *waqf* (*mu'auqqat*) as a valid waqf, the sustainability of waqf, apart from depending on the nature and quality of the object being waqfied, also depends on the transaction pledged by the waqf donor, whether for a certain period of time or forever. The basic difference between the above *ta'rif*s is firstly related to the issue of whether the act is an act of relinquishing rights or not. The second issue is whether it is only for an indefinite period of time (*mu'abbad*) or

whether it can be for a certain period of time (*mu'auqqat*).

So in principle, waqf is a waqif's legal action to separate and/or transfer part of his property to be utilized forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia. Although each scholar has his own view on the meaning and limits of waqf, Indonesia has accommodated all of them and adjusted to the conditions and legal system in Indonesia so that a conclusion can be reached regarding the meaning and limits of waqf and then used in Law Number 41 of 2004 concerning Waqf.

By referring to the thoughts of Islamic scholars and looking at positive law in Indonesia, namely Law No. 41/2004 on Waqf, as well as Government Regulation No. 42/2006, the principles of waqf are as follows:

1. Waqf is valid when implemented according to sharia.
2. Waqf that has been pledged cannot be canceled.
3. Waqf aims to utilize waqf assets in accordance with their functions, namely
4. Waqf is implemented by fulfilling the following elements of waqf:
 - a. Wakif
 - b. Nazir
 - c. Waqf Property

¹⁹ Wabbah Zuhaili, 1989, *Al-Fiqh al-Islami wa Adillatuh*, Juz VIII, Damasqus: Dar al-Fikr, p. 18.

²⁰ Ibn al-Humam al-Hanafi, 1995, *Syarah Fath al-Qadir*, Volume 6, Bairut: Dar al-Kutub al-Ilmiyah, p. 190.

²¹ Ibn Abidin, Muhammad Amin, 1994, *Radd al-Mukhtar*, Juz VI, Bairut; Dar al-Kutub al-Ilmiyah, pp. 520-521.

- d. Waqf Pledge
- e. Designation of Waqf Property
- f. Waqf Period

Article 1 of Law No. 41 of 2004 concerning waqf stipulates that: Waqf is a waqif's legal action to separate and / or hand over part of his property to be utilized forever or for a certain period of time in accordance with his interests for the purposes of worship and / or public welfare according to sharia. Article 27 of PP No. 42 of 2006 concerning the Implementation of the Waqf Law: In the event that the Waqif wishes to carry out a legal act of cash waqf for a certain period of time, then when the period ends, the Nazir is obliged to return the principal amount of cash waqf to the Waqif or his heirs / successors through the LKS-PWU. Article 17 paragraph 2: If the waqf as referred to in paragraph (1) letter c is intended to be a waqf in perpetuity, it is necessary to relinquish the rights of the holder of the management right or property right".

3. Application of Waqf Principles to IPR

Intellectual Property Rights were born and originated outside Indonesia. In the framework of the discussion of Intellectual Property Rights (IPR), from a substantive point of view, the legal norms governing Intellectual Property Rights are not only limited to legal norms issued by one particular country, but are also bound by

international legal norms. Here we see the living nature of the legal system. It grows and develops in line with the demands of society, in the field of intellectual property rights based on the demands of the development of world civilization.²²

Countries that participate in international agreements must also adjust their laws and regulations to the international provisions they follow. Indonesia is one of the countries included in the GATT/WTO framework (1994) and has signed the Trade Related Aspects of Intellectual Property Rights (TRIPs) agreement, as one of the Final Act Embodying The Uruguay Round of Multilateral Trade Negotiation, which was signed in Marrakech, in April 1994 by 124 countries and one representative of the European Economic Community.

Indonesia ratified the regulation by making Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. This causes Indonesia to be unable to make extra-territorial regulations concerning the protection of intellectual property rights, and all issues contained in the WTO framework, Indonesia must accommodate or at least must meet the minimum standards.²³ Thus Indonesia inevitably has to readjust all regulations relating to the protection of intellectual property rights and add some

²² OK. Saidin, 2004, *Legal Aspects of Intellectual Property Rights*, Mold IV, Jakarta: PT Raja Grafindo Persada, p. 23.

²³ *Ibid.*

regulations that have not been covered in the existing regulations.

TRIPs also suggests that member countries adapt their national regulations to the Paris Convention (1967), Bern Convention (1971), Rome Convention (1961), and Treaty on Intellectual Property in Respect of Integrated Circuit (1989) (Article 2 and Article 3, TRIPs Agreement 1994). The signal certainly requires that Indonesia ratify the four conventions in addition to the WTO that has been ratified.²⁴ Until now, Indonesia has only ratified two of the four conventions required, namely the Paris Convention (1967) and the Bern Convention (1971).

As a system, the law governing Intellectual Property Rights is very much influenced by the development of world trade. Therefore, the influence of Continental European and Anglo Saxon legal systems is evident in this field of law. Both approach and influence each other. For example, it can be seen in terms of its legal structure in terms of dispute resolution. The GATT/ WTO (1994) established a special body to handle dispute settlement, called the Dispute Settlement Body (DSB). This body has the role of resolving all disputes arising from each agreement contained in the Final Act (including TRIPs).

The stages of dispute resolution are consultation, panel formation, appeal hearing and enforcement of the decision. If the consultation stage fails, other means of settlement will be pursued, namely through good offices, conciliation or mediation.²⁵ These methods of dispute resolution are common in Anglo Saxon countries, although Continental European countries also use arbitration.

The protection of Intellectual Property Rights (IPR) no longer solely refers to the local regulations of a particular country, but has become a world commitment (international) to create a climate of protection that is more equitable, has legal capacity and brings benefits to people throughout the universe for the protection of intellectual work.²⁶ One of the legal instruments reached in the Uruguay Round negotiation agreement is the agreement relating to the protection of Trade Related Aspect of Intellectual Property Rights (TRIPs) which is one of the main agreements produced by the Uruguay Round negotiations that have been running since 1986 to 1994.

The birth process of international Intellectual Property Rights (IPR) actually cannot be separated from the interests of industrially developed countries, especially the United States. In fact, it can be said that the role of Uncle Sam's country is very large in the birth

²⁴ *Ibid.*

²⁵ Agus Brotosusilo, 1995, *Analysis of the Juridical Impact of Ratification of the Agreement Establishing the World Trade Organization OPD/WTO*, Cooperation of the Ministry of Trade of

the Republic of Indonesia and the UI Postgraduate Program, Unpublished, Jakarta: UI, p. 33, See. OK. Saidin, p. 24

²⁶ OK. Saidin, *Op. Cit*, p. 28.

of the International IPR rules.²⁷ They want to rely on their economic and trade activities on products that are produced on the basis of human intellectual abilities such as research that produces inventions in the field of technology. For example, the giant software company Microsoft, Intel microprocessors, and Mc'Donald food products and so on, all based in the United States, have now enjoyed many benefits in the form of royalties, fees and other forms of licenses from the sale of patents to partners spread across many countries including Indonesia.

IPRs originating from outside Indonesia, including the principles in international IPRs, also need to be adapted to Indonesian culture which prioritizes togetherness with a spirit of mutual cooperation. There are many local people who still think that by passing on their knowledge and experience, as well as their work and crafts, it will be more useful. They don't think about protecting their work, let alone asking for royalties if someone is going to use or copy their work.

Intellectual Property Rights (IPR) on the other hand are also useful for protecting the work of the Indonesian people. Especially lately, the works of the Indonesian people have been copied and even recognized by other countries. This is certainly very detrimental to Indonesia, not only in terms of culture but also in terms of economy. The majority of Indonesian

people are Muslims. Laws, norms, habits and ways of thinking in society are certainly strongly influenced by the culture of the community as well as the influence of religion that entered Indonesia. Religions that teach about worship, togetherness, giving and loving each other and many more teachings from religion and community culture that ultimately shape the system and culture, as well as the paradigm of Indonesian society about togetherness and the spirit of mutual cooperation.

Intellectual Property Rights (IPR) did not originate in Indonesia. IPRs grew and developed well in Western societies, which are ruled by very prominent individual interests. Indonesia inevitably had to ratify these rules. The rules regarding Intellectual Property Rights in Indonesia, ranging from Copyright, Patents, Trademarks, Trade Secrets, Industrial Designs, Integrated Circuit Layout Designs (DTLST), Plant Varieties are indeed of Western origin. Indonesia is only authorized to ratify. But when we look at each of these branches of IPR, there are rules / clauses regarding the transfer of rights in Intellectual Property Rights.

IPR can be utilized by the right owner or can also be transferred. Based on the laws and regulations on IPR, IPR can be transferred and transferred to other parties, either in whole or in part by:

- a. Inheritance;
- b. Grants;

²⁷ *Ibid.*, p. 30.

- c. Testament;
- d. Written agreement;
- e. Other reasons justified by laws and regulations.

The transfer of IPR, one of which is due to other reasons justified by statutory regulations, is the transfer of IPR due to waqf. In the provisions of Article 16 paragraph 3 letter e of Law No. 41 of 2004 concerning Waqf, it is determined that one of the Assets that can be waqfed is Intellectual Property Rights. Intellectual property rights are movable and intangible objects which are assets that can be waqfed. The provisions of Perwakafan in Indonesia are currently regulated by Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf. Prior to the birth of the law, waqf in Indonesia was regulated in Government Regulation No. 28 of 1977 concerning Perwakafan Tanah milik and regulated by several articles in Law No. 5 of 1960 concerning Basic Agrarian Regulations.

Furthermore, Article 16 of Law No. 41 of 2004 concerning Waqf determines that the Waqf Property can consist of immovable objects and movable objects. The immovable objects referred to include land rights in accordance with the provisions of applicable laws and regulations, both those that have and those that have not been registered, buildings or parts of buildings that stand on land, and plants and other objects related to land, property rights for

apartment units in accordance with the provisions of applicable laws and regulations, other immovable objects in accordance with the provisions of sharia and applicable laws and regulations.

Whereas what is meant by movable objects is property that cannot be used up due to consumption, which includes money, precious metals, securities, vehicles, intellectual property rights, lease rights, other movable objects in accordance with the provisions of sharia and applicable laws and regulations. International Intellectual Property Rights (IPR) do not regulate the waqf of IPR. But in Indonesia it becomes valid when there is a transfer of rights to IPR. One of the transfers of rights to IPR is with the provisions of the applicable legislation. Furthermore, it is very clear that Law No. 41 of 2004 concerning Waqf explains that one of the assets that can be waqfed is Intellectual Property Rights. Even in PP No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf, the seven branches of Intellectual Property Rights are described as assets that can be waqfed.

Based on the provisions of the IPR and Waqf regulations, it can be concluded that IPR can be transferred by way of waqf. There are no normative obstacles related to the transfer of IPR by way of waqf. This means that the basic principles of IPR can be applied to the principles of waqf, including the following:

- a. Authority rights

IPR is a right to intangible objects and one of the objects of waqf includes intangible objects. IPR is essentially an exclusive right to monopolize with a certain period of time and conditions and is transferable. Waqf does not allow the exclusive right to monopolize privately by the right owner, but after IPR is endowed, the exclusive right turns into a monopoly of the Nadzir waqf, while the moral right remains with the creator or inventor.

b. Private and Market Rights

IPR is a right for the owner of intellectual work, which is individual, private. However, the results of his intellectual work can be enjoyed by the public with the market mechanism (demand and supply). After being transferred by way of waqf, the moral rights of IPR remain attached to the owner of the intellectual work individually and privately. Only the rights to the management of intellectual works are transferred to the Nadzir waqf, the results of intellectual works can be enjoyed by the community still with market mechanisms. The profits from the management of IPR waqf are handed over to the people in need by accommodating the provisions on the 8 (eight) groups entitled to receive zakat.

c. Sustainable

IPR has a sustainable element, namely the holder of intellectual work must publish the

results of his intellectual work. The results of the intellectual work are realized in the form of products that can be enjoyed by the public. The community can also develop existing intellectual work, but not create the same intellectual work (pirating), so creativity must continue to be developed.

d. One entity

IPR is a unified system that covers a broad field. There may be several intellectual works in one product. IPR is transferred through waqf as a unified system so that it can be managed by Nadzir Wakaf.

e. TRIPs binding

IPRs are bound by the provisions of TRIPs. After IPR is transferred through waqf, the provisions of TRIPs remain binding on IPR managed by the waqf Nadzir.

In addition to these principles, the Intellectual Property Rights system is also based on the principle of:²⁸

a. The principle of natural justice

The creator of a work or other people who work to produce the results of their intellectual abilities, deserves both material and non-material rewards, such as a sense of security because they are protected and recognized for their work. The law provides such protection for the benefit of the creator in the form of a power to act in the context of his interests, which we call rights. By transferring IPR through waqf, the creator or

²⁸ *Ibid.*, p. 26.

inventor of intellectual property is ready not to receive compensation and give it to society, but his name is still recognized for his work.

b. The economic principle (the economic argument)

Intellectual property rights are a form of wealth for the owner. From its ownership, a person will get benefits, for example in the form of *royalty* payments and *technical fees*. By transferring IPR through waqf, the creator or inventor of intellectual property is ready not to get monetary benefits and give it to the benefit of society, but to get spiritual benefits from Allah SWT and still be recognized by his name for his work.

c. The cultural argument

Human works are of great significance for improving the standard of living, civilization, and human dignity. In addition, it will also provide benefits for the community, nation, and country. The recognition of human creations, works, deeds, and copyrights standardized in the IPR system is an effort that cannot be separated from the realization of an atmosphere that is expected to generate enthusiasm and interest to encourage the birth of new creations. After IPR is transferred through waqf, the intellectual work whose rights have been waqfed can still be developed, either by the creator/inventor or by others.

d. The social principle (the social argument)

Any right recognized by law and granted to an individual or an association or other entity, should not be granted solely to meet the interests of that individual or association alone, but the granting of rights to individuals, associations or entities is granted, and recognized by law, because by granting these rights to individuals, associations or legal entities, the interests of the entire community will be fulfilled.²⁹ After IPRs are transferred through waqf, the social principle is increasingly attached to these IPRs.

CONCLUSION

The basic principles of IPR can be applied to the principles of waqf. The IPR principles that can be applied to the principle of waqf include: authority rights, private and market rights, sustainability, TRIPs binding. In addition to these principles, the application of Intellectual Property Rights principles to waqf is also based on the principle of justice (the principle of natural justice), the economic principle (the economic argument), the cultural principle (the cultural argument), the social principle (the social argument).

²⁹ Soenarjati Hartono, 1982. *Indonesian Development Economic Law*, First print, Bandung:

Binacipta, p. 124., See Muhamad Djumhana and R. Djubaedillah, *Op. Cit*, p. 27.

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