INTERPRETATION OF BENEFIT SHARING ON ECONOMIC RIGHTS OF INTELLECTUAL PROPERTY (IP) IN ISLAMIC LAW PERSPECTIVE

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ABSTRACT

Objective: Intellectual Property (IP) in the current era plays a vital role in world trade, both nationally and internationally. It has important functions to give protection, and guarantee and provide legal certainty for an invention created by inventor. In addition, it is an effort to prevent unfair business competition and to minimize product plagiarism on the market. The invention needs to be appreciated by providing economic benefits for what has been produced, to provide the widest possible welfare and economic benefits to the inventors for their achievements.

Method: This research was conducted with the aim of analyzing and making comparisons related to the interpretation of benefit sharing of intellectual property (IP) inventions from different perspectives, positive law and Islamic law, in Indonesia. The approach used in this study was normative research method with supporting data from primary and secondary legal materials related to regulations in IP, Al-Qur’an, and Al-Hadith.

Results: Based on the analysis, it shows that there are different interpretations of the economic benefits of intellectual property (IP) inventions between positive law and Islamic law. Positive law interprets that economic benefits are regulated according to a mutual agreement between parties, while Islamic law has two madhhabs, Maliki and Jumhur. The Maliki madhhab provides a limit on the interpretation of economic benefits with a maximum limit of one-third. In contrast, the Jumhur madhhab provides a limit of one hundred percent of economic benefits. So, it is necessary to form an ideal law that can provide justice, benefits, and legal certainty for the community.

Conclusions: An interpretation of the economic right to profit on the invasion of intellectual property (IP) in Indonesia is different in perception of positive laws and islamic law. The terms of the great triumph of economic rights in the invention intellectual property of positive laws turned out that there was no rule either discussing or regulating any nominal gain of the intellectual property (IP). In contrast with islamic law, which already has a preset in determining economic rights gains on the one-third intellectual property (IP) from the madhhabs Maliki perspective and one hundred percent from the one in madhhabs Jumhur.

Keywords: benefit sharing, economic benefits, intellectual property, islamic law.

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INTERPRETAÇÃO DA PARTILHA DE BENEFÍCIOS SOBRE OS DIREITOS ECONÔMICOS DA PROPRIEDADE INTELECTUAL (PI) NA PERSPECTIVA DO DIREITO ISLÂMICO

RESUMO

Objetivo: A propriedade intelectual (PI) na era atual desempenha um papel vital no comércio mundial, tanto nacional como internacional. Tem funções importantes para dar proteção, e garantir e proporcionar segurança jurídica para uma invenção criada por inventor. Além disso, trata-se de um esforço para evitar a concorrência desleal das empresas e minimizar o plágio de produtos no mercado. A invenção tem de ser apreciada proporcionando benefícios econômicos para o que foi produzido, para proporcionar o mais amplo bem-estar possível e benefícios econômicos aos inventores para as suas realizações.

Método: Esta pesquisa foi realizada com o objetivo de analisar e fazer comparações relacionadas à interpretação da partilha de benefícios de invenções de propriedade intelectual (PI) de diferentes perspectivas, direito positivo e lei islâmica, na Indonésia. A abordagem utilizada neste estudo foi o método de pesquisa normativa com dados de apoio de materiais legais primários e secundários relacionados a regulamentos em IP, Al-Qur’an e Al-Hadith.

Resultados: Com base na análise, mostra que há diferentes interpretações dos benefícios econômicos das invenções de propriedade intelectual (PI) entre o direito positivo e o direito islâmico. A lei positiva interpreta que os benefícios econômicos são regulados de acordo com um acordo mútuo entre as partes, enquanto a lei islâmica tem dois madhhabs, Maliki e Jumhur. O Maliki madhhab fornece um limite para a interpretação de benefícios econômicos com um limite máximo de um terço. Em contraste, o madhhab Jumhur fornece um limite de cem por cento de benefícios econômicos. Portanto, é necessário formar uma lei ideal que possa proporcionar justiça, benefícios e segurança jurídica para a comunidade.

Conclusões: Uma interpretação do direito econômico de lucrar com a invasão da propriedade intelectual (PI) na Indonésia é diferente na percepção de leis positivas e leis islâmicas. Os termos do grande triunfo dos direitos econômicos na invenção da propriedade intelectual de leis positivas mostraram que não havia nenhuma regra discutindo ou regulando qualquer ganho nominal da propriedade intelectual (PI). Em contraste com a lei islâmica, que já tem uma predefinição na determinação de ganhos econômicos na propriedade intelectual de um terço (PI) da perspectiva madhhabs Maliki e cem por cento da de madhhabs Jumhur.

Palavras-chave: partilha de benefícios, benefícios econômicos, propriedade intelectual, direito islâmico.

INTRODUCTION

The development of Intellectual Property (IP) in Indonesia started in 1840. At that time, the Dutch colonial government introduced regulations regarding legal protection for IP inventions in Indonesia. The first regulation issued regarding the IP protection was a copyright regulation issued in 1982. In addition, in 1985 the government issued a regulation on the protection of trademark-specific inventions. Due to the existence of
regulations related to this matter, 1986 was considered the first year of the modernization of the IP system in Indonesia. (Jannah, 2018) Furthermore, in 1910 other invention rules emerged, such as patents, industrial designs, and etc. They have the objectives of encouraging and protecting the creation and the spreading of cultural products in the fields of science, art, and literature as well as accelerating the growth of intelligence in the life of the nation. The year of 1986 can be called the beginning of the modern era of the IP in Indonesia. (Wauran-Wicaksono, 2015)

IP in Indonesia is actually developing quite fast amid the increasingly fierce and apparently limitless business competition. There is no distance between the international and national markets, so the businesses actors must be ready to compete in the current era (free market). (Siregar & Sinurat, 2019) This condition can provide a great opportunity for regional business actors in Indonesia to be able to compete in the global market. (Arif & Rosni, 2018) However, it must be realized that most of them are not fully ready for foreign business challenges and competition, considering that there are still many varied problems faced. The problems include the limited or traditional infrastructure, the weak marketing with limited areas, the financial factors that are lacking in supporting business activities, the simple or perfunctory product packaging, and no legality of law for business actors’ inventions that becomes the vital problem. Legal awareness regarding the legal protection for products is still low, so it can prevent their participation in foreign market competition. (Kirana & Hadi, 2019)

The problems above are almost experienced by business actors in various regions in Indonesia. In addition, another factor is human resources (HR) which are limited in managing the business properly. An important factor causing business actors in Indonesia to not be able to fully compete in the market is that many of them do not receive legal protection for their inventions through the IP legality. (Sukmadewi, 2018) The IP role as a tool that is able to provide guarantees and legal certainty for the products of inventors or business actors plays a vital role in the market. This is because now we have entered the era of smart consumers where users are selective in buying products. (Novitasari1, 2020) However, if a product produced by a business actor or inventor does not yet have legality of law, it can reduce consumers’ purchasing power to use or buy the product.

It cannot be denied that IP has an important role in supporting and making a successful business competition in national and international markets. (Alfons, 2017) It is able to provide a special magnetism among the general public and consumers. IP not only
provides protection for inventions but can also anticipate unfair business competition, minimize product plagiarism, avoid product claims, and provide guarantees for users in the market. (Nizwana & Rahdiansyah, 2019) So, no matter how good the products produced by business actors or inventions on the market, if they do not have lawful business legality, will still be less attractive, and the consumers will be reluctant to look at or even buy the products. In the era of smart consumers, it is time for business actors in Indonesia to be more open and have high awareness by building legal awareness from an early age that legal protection for IP inventions is very important and needed in the national and international markets.

IP is actually not only limited to providing legal certainty regarding the inventions, but also provides appreciation in the form of rights attached to the inventor. The rights include moral rights and economic rights. (Hapsari, 2012) They are given as a form of appreciation for their achievements of the invention of works in order to obtain the extensive possible benefits. In this case, inventors have great potential in managing the resulted inventions in the future. They are given the rights to use and manage what is given by the government optimally in order to provide prosperity and improve the economy in their business activities. The rights can be managed properly for the continuity of their business in the future by collaborating with other parties through various forms of efforts that can be taken together. (Suhayati, 2014)

Based on the conditions above, it shows that the role of IP is very important in making business competition successful in international and national markets. However, the rules regarding the IP regime regarding the interpretation of clear economic benefits have not been stated in the current law. So, the inventor can not know with certainty about the amount of benefit determination for the IP invention been produced. It raises an interesting polemic to study and analyze regarding the scale of the benefits of IP inventions so far with Islamic law in Indonesia. The purpose of this problem analysis is to examine and find out more about the extent of the interpretation of IP benefits and to make comparisons with other perspectives seen from Islamic law and positive law in Indonesia today.

2 RESEARCH METHODS

The approach used in examining issues related to the interpretation of taking advantage of economic rights over IP inventions in the perspective of positive law and
Islamic law was normative legal research method. (Efendi & Ibrahim, 2020) It is an activity to find a rule of law, legal principles or legal doctrine to answer the legal issues being studied. (Dewata & Achmad, 2013) The materials used in this study were supporting data from secondary and primary data. (Soekanto & Mamudji, 2015) The data included legal regulations regarding personal IP and communal IP regimes in Indonesia. Several legal journals and law books became reference sources in the analysis of these problems. In addition, they were supported by other study sources based on the Al-Qur'an and Al-Hadith as materials for analysis in the perspective of Islamic law.

3 RESULTS AND DISCUSSION
3.1 THE ESSENCE OF ECONOMIC RIGHTS OVER IP INVENTIONS

In its development, the purpose of legal protection for IP inventions is an effort to anticipate product plagiarism and to prevent unfair business competition in both national and international trade. (Suwadi et al., 2023) Every invention needs legal protection because there are several things that are very vital in the long run. Legal protection for the inventions becomes an effective means to make the products enter the market. A product invention is not only able to attract consumers, but there is a legal ‘umbrella’ that provides guarantees and certainty. (Arif & Rosni, 2018)

In the era of smart consumers, it is undeniably that one of the new tasks for business actors is offering their products which are not only unique or different, but also legal through IP protection. (Roy et al., 2019) Every IP invention must be protected because there are several things attached to the inventor for what they have given. So, it would be agreeable for the good future and the success of business activities to register and protect the invention through IP legal protection. The benefits derived from inventions are not only limited to the invention owners but on the surrounding environment and the region.

In principle, IP has its own privileges where there are rights that can be owned by inventors. They are already attached to the inventors when they succeed in obtaining or inventing something, which consists of moral rights and economic rights. Economic rights are special rights for inventors to get benefits from their creations and to publish or reproduce his works. Some of economic rights include reproduction rights, adaptation rights, and distribution rights. (Rokan, 2017) Meanwhile, moral rights are rights attached to the inventor automatically. They relate to the act of prohibiting other people from
changing their creations, the title, and the name of the creator. Besides, they include rights for the creator/inventor to make changes to his works. (Sundara Rajan, 2019)

The government appreciation for IP inventions for the inventors is very necessary because it not only provides appreciation for the achievements but has other positive impacts on future sustainability in business competition in national and international markets. Some of the benefits that inventors obtain from their inventions protected through IP are as follows:

1. As a legal protection for inventions;

Invention is an intellectual activity that is neither easy nor economical to implement. It requires not only energy but also an open mind in carrying out this new work. Economic aspects are also needed as a form of support in the success of an invention created. Invention activities not only require a short time but also a long process that must be taken to produce a new thing that is different and has never existed before. A balanced combination of thinking and economy is an important factor in the invention created by an inventor. Long process and expensive cost are significant things that must be understood and known in the invention for the general public regarding the process of an IP invention. (Zulfikri & Zulkarnaini, 2022)

Due to its process and costs, it is not surprising that an inventor needs to be given a great appreciation. The invention is not only different but also has a novelty and be useful thing for users or consumers. (Suwadi et al., 2021) So, the central or regional government should give an appreciation for the invention appropriately, because its future existence plays an important role in providing great economic potential for the region and building a good regional image in the external market. (Swenson, 2020) Having legal protection for IP inventions is the right thing for the sustainability and success of these inventions in future business competition.

Legal protection provided by the government can be in the form of legalization of inventions through IP legal protection. It is very important because it has a big role in the long term. The urgency of protecting IP is not only as a means of guaranteeing legal certainty but also provides other benefits, such as: avoiding product plagiarism on the market, anticipating unhealthy business competition, maintaining the long-lived product existence on the market, and building branding for the product invention. (Ilias & Fergusson, 2010) Efforts to legally protect IP inventions actually not only have a good impact in the long term, so that protected products can last a long time on the market and
be accepted in domestic and foreign markets. It becomes a major requirement in the current era because business competition no longer has cross-border boundaries, so that, as an initial form, an invention must be protected with IP.

The existence of legal protection for IP inventions can also have a direct impact on an inventor. For products that have received IP legal protection, the inventor has full economic rights which provide a great opportunity for the inventor to obtain the widest possible economic benefits. This condition shows that the appreciation of an IP invention not only has an impact on the local area but really helps the inventor in increasing large income because of the rights attached to the IP legal protection. (Pratama, 2020)

2. As an appreciation for new findings produced by inventors;

IP inventions protected by legality of law is not only a form of guarantee of certainty about the product, but also economic rights attached to inventors over IP inventions which can help business actors survive in the future. These conditions are several forms of the existence of an IP invention that is appreciated by the central and local governments. Government appreciation towards a new work of IP invention is very much needed as a form of gratitude and support for the achievements of the invention created. (Nguyen et al., 2021) Besides, it becomes a form of encouragement and concern from the government, stakeholders, and local communities for the works produced by business actors and the community through IP inventions.

Basically, appreciation for new inventions in the IP aspect does not result from economic rights obtained and attached to the inventor. When an IP invention is directly appreciated by the government, stakeholders, and local communities, it shows that the economic potential possessed by the inventor is becoming clearer and greater. The economic rights given to the inventor to determine the maximum possible benefit can be obtained when full appreciation is given to the inventor himself. This appreciation eventually has a big impact on the sustainability of IP inventors in obtaining and managing economic rights in the future. These benefits are not only able to provide an increase in income for the inventor but are also able to provide per capita income for the local area. (Atikah et al., 2022)

Appreciation for IP inventions shows government’s concern for new works and it can maintain the existence of the invention so that it is not claimed or imitated by other parties. These efforts need to be carried out with high legal awareness from various parties, both the government and the outside community. Giving true appreciation also
directly helps build awareness among the wider community, both business actors and the
general public, which shows that legal protection for IP inventions is very necessary in
the current era.

3. As an effort to increase the economic value of products for the inventors;

The economic rights attached to inventors over the IP inventions not only requires
legal protection and appreciation from the government, stakeholders, and the general
public, but can also increase the economic value of the products. Every IP invention needs
valid legality as a guarantee and legal certainty. The legal protection can provide great
economic potential for inventors,(Maskus, 2000) because every invention that is created
and registered not only has moral rights but also economic rights that the inventor obtains
indirectly. The economic rights owned by the inventors are one of the benefits that they
obtain from the IP inventions.

The economic rights over IP take many forms including the rights to produce,
adapt, and distribute the invention. This condition indirectly shows that the inventor of IP
has maximum ability to use these rights. The inventor’s economic rights means the ability
to utilize and manage the invention as widely as possible.(Ilie, 2014) The rights can
provide inventors with economic potential in gaining large benefits in increasing regional
per capita income and obtaining large benefits in obtaining benefits for business
continuity and welfare for their employees. In principle, increasing economic value is
obtained from added value to the legality of law registered through legal protection of the
IP invention.(Waspiah et al., 2020)

3.2 THE INTERPRETATION OF BENEFIT SHARING ON ECONOMIC RIGHTS OF
IP IN POSITIVE LAW

IP development started with Dutch government in 1982. IP existed in the midst of
market competition among business actors and had become a special attraction. It means
IP has an important role in national and international trade competition, that provide legal
protection for inventions created by inventors or business actors.(Agreement on Trade-
Related Aspect of Intellectual Property Right, 1994) Besides, IP can provide guarantee
and legal certainty for the inventions, minimize product plagiarism which is increasingly
common on the market, anticipate unfair business competition, and be able to increase
the economy for inventors of the IP inventions.
The rise of IP was initially only limited to the IP regime of personal or individual ownership. It means that the creation or invention can only be owned by individuals, not for a group simultaneously. The ownership can only be granted and owned in the name of an individual or one inventor’s name. There are several types of personal IP regime ownership, including patents, brands, industrial designs, trade secrets, plant variety protection, and integrated circuit layout designs. (Direktorat Jenderal Kekayaan Intelektual, 2020) Each personal IP is ruled by different laws and has different arrangements between one regime and another. Each rule that functions as a guideline in the IP protection has been described in detail and clearly regarding its essence and use. So, the provision of legal protection for inventions is given according to needs and the invention results are adjusted to a regime that complies with these rules.

It can not be denied that the development of IP is increasingly settled, with a variety of regimes to provide protection for new inventions. At the beginning of its appearance, the IP regime was only limited to the protection of personal (individual) ownership, but now the protection of communal or group ownership of IP has emerged. (Sulistianingsih et al., 2021) This ownership is more focused on protection that can be registered and owned jointly in a group. It means, the invention must be registered and owned in group. There are various types of communal IP regime, which include; geographical indications, genetic resources, cultural expressions, and traditional knowledge. (Direktorat Jenderal Kekayaan Intelektual, 2019) The rules related to each of the communal IP regimes are regulated individually and differently. Each of these regimes has principle and explanatory description as the basis for its legal protection, regulated by law which differs from one another.

The arrangements related to IP, among others, are regulated in different laws. For the personal IP regime, it consists of Law Number 13 of 2016 concerning Patents, Law Number 16 of 2020 concerning Trademarks and Geographical Indications, Law Number 31 of 2000 concerning Industrial Designs, Law Number 30 of 2000 concerning Trade Secrets, Law Number 29 of 2000 concerning Plant Variety Protection, and Law Number 32 of 2000 concerning Integrated Circuit Layout Designs. Meanwhile, the communal IP regime is regulated by different rules, such as: Law Number 16 of 2020 concerning Trademarks and Geographical Indications, Law Number 4 of 2006 concerning Genetic Resources, Law Number 28 of 2014 regarding Copyright, Law Number 5 of 2017 concerning the Advancement of Culture, and Regulation of the Minister of Law and
Human Rights Number 13 of 2017 concerning Data of Communal Intellectual Property. In principle, the regime of each IP is regulated in laws that differ from one to another.

Based on various IP regulations that have existed so far, there are several regime articles discussing economic rights for IP inventions. In the personal IP regime, the rules about economic rights can be found in the Patent and Plant Variates Protection regime. The patent regime is in Article 74 of Law Number 13 of 2016 while Plant Variety Protection regime is in Article 6 Paragraph (5) of Law Number 29 of 2000. In addition, for the communal IP regime, there is a regime regulating economic rights to inventions, that is in the Traditional Cultural Expression regime. In this regime, there are Articles 8 and 20 in Law Number 28 of 2014 concerning Copyright. So apart from this regime, there is no rule that regulates economic rights for IP inventions, both from personal IP and communal IP regimes.

The explanation of the articles containing economic rights above is not regulated in a complete and clear manner regarding the rights in taking advantage of IP inventions. The articles in the IP regime regulations only provide a division and explanation that economic rights are exclusive rights given to inventors of works produced or created in order to obtain economic benefits from the invention. So, in this case, inventors are given the widest possible rights to get benefit from what has been produced/created through the IP legal protection. The economic rights can be several forms which include; reproduction rights, adaptation rights, and distribution rights. So, the inventors have freedom to manage what they find or produce towards IP inventions in accordance with the inventors’ policy. And, the size of the benefit will be fully determined by the owner’s rights to the IP invention without interference from other parties. (Purwaningsih, 2012)

There is actually no specific and complete regulation regarding economic rights in taking advantage of IP. Article 20 of Law Number 28 of 2014 concerning Copyright describes exclusive rights in IP including moral and economic rights for business actors, and economic rights for producers and institutions. So, the rules regarding taking advantage of economic rights over IP have not been clearly regulated. The regulation just explains that an inventor of an IP invention can have the privilege of being given moral rights and economic rights that are automatically attached to him. So, inventors are given rights that can be used optimally in obtaining benefits from IP inventions in various ways, such as licenses for IP inventions. And, it can be grants, inheritance, agreement letters, and others. (Sulasno, 2019)
In accordance with applicable legal arrangements in Indonesia, legal protection for IP inventions is regulated separately and differently. Not all regulations of economic rights are systematized in IP laws. Only a few regulations related to IP contain rules for economic rights over IP inventions for an inventor. The regulation is limited to discussing the definition, explanation, and various forms of economic rights. So, up to now, the determination regarding the interpretation of the benefits of economic rights over an IP invention is not regulated by the IP regime law. So far, the implementation of taking advantage of IP inventions for inventors is based on written mutual agreements. This means, the determination of taking advantage of IP inventions is in accordance with the mutual agreement of the two parties, due to the fact that all regulations regarding IP do not yet regulate the amount of benefit that inventors must obtain from their inventions. The amount of the benefit is based on mutual agreement with its terms and conditions. One of the things that needs to be paid attention to in the agreement is that it must fulfill the requirements for making the legal terms of the agreement in Article 1320 of the Code of Civil Law.(Meliala, 2015) The nominal amount is returned to the inventor in full, whatever benefit he wants to obtain from the IP invention.

3.3 THE INTERPRETATION OF BENEFIT REGULATION ON ECONOMIC RIGHTS OF IP IN ISLAMIC LAW

Determining the benefits of economic rights in Islamic law clearly differs on the basis used as a source for determining material by inventors or business actors. In Islamic law, the determination of benefit is based on the verses in Al-Quran and Al-Hadith.

Taking benefit of economic rights in Islam is an important topic in the context of finance and business activities. So far, there have been two opinions regarding the interpretation of the different benefits of inventions in business activities. First, the regulation of benefit interpretation in Islam has limited the maximum benefit to one third. So, getting benefits above this limit would be against the law. On the other hand, the majority of Ulama (Islamic scholars), including the four madhhabs (schools of thought within Islamic jurisprudence), are of the opinion that Sharia does not limit benefit margins, although it has provided some general rules.(ur Rahman & Zada, 2010) The following is about two madhhabs in Islam in determining the benefits of economic rights in business activities and IP inventions;
3.3.1 Maximum benefit limit is up to one third

In Maliki *madhhab*, taking benefits has a limit of one third. So, any amount greater than one third will be considered *ghabhan* or excessive benefit, and will be prohibited. As a result, making benefits in excess of this amount is illegal. (Faruk, 2020) This opinion is based on the principles of justice and avoiding excessive exploitation. In *Malikiyah* view, limiting benefits to one third of invested capital aims to prevent practices that exceed limits or take advantage of other parties unfairly. (Ghori, 2020) Based on the words of the Prophet Muhammad *sallallaahu 'alaihi wa sallam* narrated by Bukhari,

\[ \text{“The Prophet sallallaahu 'alaihi wa sallam said: One-third, yet even one third is too much.”} \]

On the other hand, there is an opinion that says that there is no evidence in the Qur'an or Sunnah that benefits should be limited to one-third, one-quarter, or any other proportion. (Ayub, 2007) The hadith above discusses wills, so it has nothing to do with benefit making in a business. However, there are Islamic scholars who agree with Maliki that taking excessive benefits in buying and selling transactions falls into the category of *ghabn fahisy*. *Ghabn fahisy* generally refers to blatant fraud or exploitation that harms another party in a business transaction. (Nasution, 2018)

According to (Shifa & Mutho’am, 2021) the scholars, the limits of *ghabn fahisy* are indeed varied as stated by Wahbah Az-Zuhaili:

\[ \text{كيمتها، أوب liệuص الثلث كان واختلف في حد البيب الفاحش فقال بعضهم: إذا بيعت السلعة بزيادة} \]

\[ \text{الثلث عن قيمتها، أو بنقص الثلث كان غبنا} \]

Meaning: “Some scholars have different opinions regarding the limitations of *ghabn fahisy*. Some say, if goods are sold 1/3 more expensive than the normal price (market price) or 1/3 cheaper, then *ghabn* occurs.”

According to Qardawi, the prohibition of taking too much benefit is part of the *mu‘awadhah* contract, namely the exchange contract. It means, when you take a large enough benefit, it can be compared to the act of taking other people’s property through vanity, as Allah says in surah Annisa verse 29. (Sulong & Asni, 2018)
On the other hand, Qardawi warned that there is major confusion in what Maliki and other scholars are saying in this case. He argues that there is no evidence in the literature to support this claim. Therefore, it is incorrect to claim that they have limited the maximum benefit by one third. It may be the result of their attitudes about ghaban or exorbitant gains. (Mubarokah, 2020) They argue that taking benefits above a third would be too high. But it doesn’t mean that they have limited the benefit to a third. Many passages show that Islam places a high value on fairness in the distribution of benefits, but does not strictly regulate the levels at which benefits are earned, which vary depending on product, location, and time. (Ika & Suryani, 2022)

3.3.2 Benefits can be taken more than 100%

The second point of view is based on “Jumhur” or the majority of Islamic scholars. They argue that Islam does not limit benefit margins in a transaction. (Jamin, 2018) After providing some basic rules on this matter, Islam has left it to the parties to decide what is in their best interests. The most famous hadith in this regard is that narrated by Urwah Al Bariqi.

Meaning: Has told us ‘Ali bin Abdullah has told us Sufyan has told us Syabib bin Gharfadah said: I heard people from my qabilah who told stories from Urwah that: The Prophet sallallaahu ‘alaihi wa sallam gave him a Dinar to buy a sacrificial animal or a sheep. He bought two sheep with it, sold one of them for a Dinar and came back to him with a goat and a Dinar. So he invoked blessings on him in his business dealings, and he was such that if he had bought soil (of the earth) he would have made profit from it. (Bukhari)

This hadith gives a strong argument for the basis that getting 100% benefit has been approved by the Prophet himself. The event stated in the hadith is too obvious and do not need more explanation. The Prophet not only agreed to this transaction, but he also expressed his happiness and prayed for the companion. (ur Rahman & Zada, 2010) In another story, from Abdullah Bin Zubair ra., he said that he bought a piece of land for
170,000 then his son Abdullah Bin Zubair ra. resold the land for 1,600,000, meaning that Abdullah bin Zubair sold more than 9 times as much.

وَكَانَ الزُّبَيْرُ اشْتَرَى الْغَابَةَ بِسَبْعِينَ وَمِائَةٍ ألفٍ ، فَبَاعَهَا عَبْدُ اللَّهِ بِأَلْفِ أَلْفٍ وَسِتِّ مِائَةِ ألفٍ

Meaning: "Zubair once bought forest land for 170,000, then the land was sold by his son, Abdullah bin Zubair for 1,600,000".

The hadith shows that getting an amount of benefit in excess of capital is permissible under Islamic law. (Yusnaidi, 2022) Otherwise, the companions would not be involved in it. In principle, in Islamic legal arrangements related to the interpretation of benefits in economic rights, it provides two different perspectives. For the first madhhab, it is clearly explained that there is a limit of a maximum of one third for determining benefit. In addition, another explanation provides a rule that the determination of the benefits of economic rights in business activities can be given one hundred percent in the interpretation of these benefits and IP inventions.

Due to differences in determining the benefits of economic rights over IP inventions, it is necessary to study them using a legal theory approach in order to provide appropriate study results. For analysis, this approach uses the theory of legal objectives by Jeremy Bentham and Gustav Radbruch. Jeremy Bentham (utilitarian theory) stated that law aims to achieve utility or usefulness. It means that the law can guarantee contentment for as many people or society as possible. (Pratiwi et al., 2022) This condition is correlated with the rules for interpreting benefits from IP inventions which have not been clearly regulated in the IP regime. So, the existing rules have not fully provided benefits to the community and business actors, because there is still a legal vacuum in the regulations for determining the benefits of economic rights over IP inventions which have not been fully included in these regulations. The regulations have not been able to fully provide full benefits to society because there are still clauses that have not been included, giving rise to evolving interpretations in society regarding the interpretation of benefits from IP inventions.

Apart from that, another analyst, Gustav Radbruch, provides the view that the objectives of law include three things which include justice, legal certainty, and benefit. If the existing law in society has fulfilled these three elements, it can be said that the purpose of the law has been achieved. All three work together to create an ideal law. (Alexy, 2021) The law is fair if it has legal certainty and is useful. The law has legal
certainty if it is fair and useful. And, the law is beneficial if it is fair and has legal certainty. (Leawoods, 2000) This condition, if correlated with the existence of a legal vacuum in the regulations regarding the interpretation of the benefits of economic rights over IP inventions, shows that in terms of legal certainty there is still no full guarantee. This is because the interpretation of benefits is still not clearly regulated and included in the IP regime regulations in Indonesia. As a result, people choose to take other measures regarding determining benefits from IP inventions based on mutual agreement between both parties.

In contrast, the aspect of justice is stated in the fifth principle of Pancasila, that is justice for all Indonesian people. As the philosophy of the Indonesian nation, Pancasila has guaranteed justice for the Indonesian people without exception. So, it must always be realized in various aspects including Indonesian law. (Erwinsyahbana & Syahbana, 2018) The essence of justice is the basis of every law formation and enforcement. The existence of a legal vacuum regarding the rules for interpreting the benefits of economic rights over IP inventions has so far means that justice for the Indonesian people has not been fully received. It is due to the fact that there are no legal regulations governing the determination of economic rights benefits from IP inventions. (Latifah, 2015) However, it is necessary to make changes or add legal clauses to the law regarding the interpretation of benefits from IP inventions in order to produce ideal legal rules. This effort has to be in harmony with Indonesia, which has legal objectives covering three aspects, namely legal certainty, legal justice, and legal benefits as stated in article 1 paragraph 3 of the 1945 Constitution. (Erwinsyahbana & Syahbana, 2018)

4 CONCLUSION

Economic rights to IP inventions are important as appreciation for the works produced or created by the inventors. But, determining the amount of benefit in economic rights for inventors of IP inventions has not been regulated clearly and completely in several regulations regarding the IP regime. There are only a few articles in the IP regime regulations containing economic rights but are limited to explaining the definition and do not regulate in detail the amount of benefit for them. Based on analysis regarding the interpretation of benefits from IP inventions in positive law in Indonesia and Islamic law, it turns out that there are some different views. Indonesian positive law does not regulate the size of benefits from IP inventions for inventors and the determination of benefits is
based on a mutual agreement between both parties. Meanwhile, Islamic law regarding benefit has two madhhab, Maliki and Jumhur. The Maliki sets a limit that determines benefits with a maximum limit of one third while the Jumhur provides one hundred percent benefit for inventors. So, it can be concluded that there are differences in the interpretation of benefits from economic rights in positive law which is based on the rules of IP law and does not explain the amount of benefit that can be taken by inventors. Meanwhile, Islamic law with its sources, Al-Quran and Al-Hadith, clearly provides limits on making benefits from inventions and business activities. For this reason, various efforts are needed to produce comprehensive legal rules through approaches, such as disseminating the importance of legal awareness regarding the urgency of legal protection for IP inventions. In addition, changes are needed in each IP regime rules in positive law concerning clear benefit amounts. As a consequent, it can improve the legal vacuum in the interpretation of the benefits of economic rights to IP inventions in the legal regulations, especially the IP regime, to be ideal.
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Interpretation Of Benefit Sharing On Economic Rights Of Intellectual Property (IP) In Islamic Law Perspective

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