

Professional Zakat in Modern Society Life: Provisions Regarding Intellectual Property Objects, *Nisab*, and Zakat Level

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Abstract: In the modern era, scholars have determined some of wealth that must be issued zakat beyond what has been stipulated in the text of the Al-Qur'an and as-Sunnah, and one of them is intellectual property. This article examines the opinions and arguments of the scholars regarding the inclusion of intellectual property rights as objects of zakat and both the *nisab* and zakat levels. This article is based on library data, both primary and secondary. Using a normative and historical approach and by utilizing modern zakat theory, this article concludes that intellectual property is part of wealth, which has both, benefits and economic value. Based on this fact, intellectual property is part of the object of zakat, namely the object of profession zakat. This is based on the general meaning of lafadz infaq in QS. al-Baqarah [2]: verse 267; the generality of the meaning of "wealth" (*al-māl*) for which zakat is obligatory in QS. at-Taubah [9]: 103, and also the practice of Muslim society in the past. In addition, this article also concludes that the calculation of the *nisab* for intellectual property is the same as the *nisab* for agricultural products. In the Indonesian context, it is equivalent to 653 kg of grain. While the level of zakat is the same as the level of gold zakat, which is 2.5%. Thus, this article at the same time proves that Islamic law, especially the teachings on zakat, is not static, but changes and develops according to the dynamics and development of human life.

Keywords: *professional zakat; intellectual property rights; objects of zakat; nisab; zakat level*

Abstrak: Di era modern, para ulama menetapkan sejumlah harta kekayaan yang wajib dikeluarkan zakatnya di luar apa yang telah ditetapkan dalam nash Al-Qur'an dan as-Sunnah, dan salah satunya adalah kekayaan intelektual. Artikel ini mengkaji pendapat dan argumen para ulama mengenai dimasukkannya hak kekayaan intelektual sebagai objek zakat dan sekaligus penentuan *nisab* dan kadar zakatnya. Artikel ini didasarkan pada data-data kepustakaan, baik yang bersifat primer

maupun sekunder. Menggunakan pendekatan normatif dan historis dan dengan memanfaatkan teori zakat modern, artikel ini menyimpulkan bahwa kekayaan intelektual merupakan bagian dari harta kekayaan, yang memiliki manfaat dan nilai ekonomi sekaligus. Atas dasar kenyataan itulah maka kekayaan intelektual merupakan bagian dari objek zakat, yakni objek zakat profesi. Hal ini didasarkan pada keumuman makna lafadz *infaq* dalam QS. al-Baqarah [2]: ayat 267; keumuman makna “harta kekayaan” (*al-māl*) yang wajib dikeluarkan zakatnya dalam QS. at-Taubah [9]: 103, dan juga praktik masyarakat muslim di masa lampau. Selain itu, artikel ini juga menyimpulkan bahwa penghitungan *nisab* atas kekayaan intelektual adalah sama dengan *nisab* dari hasil pertanian. Dalam konteks Indonesia, ia sepadan dengan 653 kg gabah. Sedangkan kadar zakatnya adalah sama dengan kadar zakat emas, yakni 2.5%. Dengan demikian, artikel ini sekaligus membuktikan bahwa hukum Islam, khususnya ajaran tentang zakat, tidaklah bersifat statis, tetapi berubah dan berkembang menyesuaikan dinamika dan perkembangan kehidupan manusia.

Kata Kunci: *zakat profesi; hak kekayaan intelektual; objek zakat; nisab; kadar zakat*

Introduction

Zakat is one of the pillars of Islam with a socio-economic. The role of zakat is very significant in the distribution of income among people.¹ In addition to the monotheistic pledge (shahadat) and prayer, zakat is also considered part of one's Islamic legality.² Zakat has specificity, namely from muslims by muslims and for muslims with specific targets, as stated in the QS. at-Taubah (9) verse 60, that those who are entitled to receive zakat wealth (mustahik) are: the poor (*fakir*), poor (*miskin*), *amil*, *mu'allaf*, *gharimin*, *riqab*, *sabilillah*, and *ibnu sabil*.³

Indonesia as a country with the largest muslim population in the world has a large zakat potential. Based on research by the National Amil Zakat Agency (BAZNAS), Bogor Agricultural University (IPB), and the Islamic Development Bank (IDB), the potential for national

¹Abd Salam Arief, “Zakat, Tanggung Jawab Sosial, Dan Pemberdayaan Ekonomi Umat,” *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 2 (2016): 342-353, <http://asy-syirah.uin-suka.com/index.php/AS/article/view/234>.

²Yusuf Qardhawi, *Hukum Zakat Studi Komparatif Mengenai Status dan Filsafat Zakat Berdasarkan Quran dan Hadis*, Translated by Salman Harun dkk., (Bogor: Litera Antar Nusa, 1993), p. 3.

³T. Muhammad Hasbi ash-Shiddieqy, *Pedoman Zakat*, 2nd Printing (Semarang: Pustaka Zikri Putra, 1999).

zakat is IDR 217 trillion. However, the reality of zakat management nationally in 2017 is at 2.9% of the potential of 217 trillion rupiah. Of this 2.9%, zakat still dominates collection nationally with a range of 67.4%, and the remaining 32.6% is infaq, alms and other religious social funds.⁴ The Secretary General of the Ministry of Religion, Nur Syam, at the Chief Executive Officer (CEO) meeting of the 2018 Indonesian Zakat Awakening Forum held by the Directorate of Empowerment of Zakat and Waqf Directorate General of Islamic Community Guidance of the Ministry of Religion, said that several Indonesian Muslims reaching around 87.13% of the total population of Indonesia, the government is not fully able to manage the potential for zakat. Therefore, according to him, a solutive formula is needed to awaken muzakki (zakat payers) to pay their zakat through BAZNAS or LAZ. Thus, there must be an accurate strategy to increase public understanding, in order to be able to pay zakat through zakat institutions. The strategies that can be pursued include socialization and public education activities, strengthening the functions of zakat management institutions, and distributing zakat in accordance with shari'a provisions and transparent modern financial principles.⁵

Zakat has an important role in the economy. In ancient times, zakat was a form of guarantee by the Islamic government for the condition of poor people. Zakat is the right of the poor who are "attached" to the rich. Historically, almost all caliphs carried out the functions and duties of amil, namely collecting and distributing zakat to those who were entitled to receive it.⁶ A Muslim who saves wealth, has an obligation to issue zakat at least 2.5% annually. This can reduce

⁴BAZNAS, "Statistik Zakat Nasional 2017," accessed on December 10, 2018, <https://pid.baznas.go.id/wp-content/uploads/2018/08/Statistik-Zakat-Nasional-2017>.

⁵Abdullah Nurudin, "Potensi Dana Zakat Rp217 Triliun Sulit Tergali. Ini Sebabnya," accessed on December 10, 2018, <http://kabar24.bisnis.com/read/20180419/79/786101/potensi-dana-zakat-rp217-triliun-sulit-tergali-ini-sebabnya.html>.

⁶F. Fuadi, "Urgensi Pengaturan Zakat: Evaluasi Zakat Sebagai Pengurang Pajak Penghasilan Terhutang (Taxes-Credit) dalam Undang-Undang Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 48, no. 2 (2014): 425–49.

social inequality that occurs in society. Thus, zakat becomes one of the many means used by Islam to achieve this goal.⁷

Islam has regulated the wealth for which zakat is obligatory. However, economic management in the modern era has developed rapidly so that wealth can be obtained from various sources. One of them is that comes from intellectual property. This intellectual property can be a source of economic income for rights holders, namely by selling or licensing it. In this way, the right holder will receive royalties from the work produced. In addition, intellectual property can also be a passive income for the state.

Several countries such as the United States recorded receipts from intellectual property reaching 128.3 billion US Dollars, Japan received revenues from intellectual property worth 41.7 billion US Dollars, and the Netherlands received receipts from intellectual property worth 26.7 billion US Dollars. Meanwhile, Indonesia only recorded receipts worth US\$49.8 million.⁸ However, the government appears to be proactive, eager to make intellectual property a national strategic issue. Efforts to encourage the existence of Intellectual Property come with the formulation of a National Intellectual Property Strategy (SKNI). There are several strategic issues in the preparation of the SNKI, namely encouraging the initiative of various parties to develop intellectual property, enforcing laws against copyright infringement, encouraging the commercialization of intellectual property so as to generate economic benefits, and applying the concept of intellectual property in harmony with Indonesia's natural wealth.⁹

Given the importance of the intellectual property position for the economy of society and the state, the Ministry of Agriculture has been working with business or industrial actors to transfer technology commercially (licences). Until 2017, the Ministry of Agriculture claims that there have been 103 Balitbangtan (Agricultural Research and Development Agency) inventions that have been licensed by 93 private

⁷Nurul Huda dkk., *Zakat Prespektif Mikro-Makro Pendekatan Riset*, 1st Printing (Jakarta: Prenada Media, 2015).

⁸World Bank, "Charges for the Use of Intellectual Property, Receipts (BoP, Current US\$)," accessed on June 27, 2019, <https://data.worldbank.org/indicator/BX.GSR.ROYL.CD>.

⁹DJKI, "Seminar Nasional Strategi Nasional Kekayaan Intelektual," accessed on June 27, 2019, <https://www.dgip.go.id/artikel/detail-artikel/djki-gelar-seminar-nasional-strategi-nasional-kekayaan-intelektual?kategori=liputan-humas>.

partners and BUMN (State Owned Enterprises). Within three years, the generated royalties have reached IDR 14.7 billion.¹⁰ The problem here, did intellectual property include the wealth that must be paid zakat?

Intellectual property itself includes two main things, namely Copyright and Industrial Property Rights. Industrial Property Rights cover seven aspects, namely Patents, Trademarks, Geographical Indications, Industrial Designs, Layout Designs of Integrated Circuits, Trade Secrets and Plant Variety Rights. It's just that the problem, can intellectual property be categorized as a wealth for which zakat is obligatory (object of zakat)?, and if it is categorized as an object of zakat, then what is the standard and calculation of the *nisab* and the amount of zakat?

The Indonesian legal system treats intellectual property as part of intangible wealth, which is a material right in the field of property law. These intellectual property rights have a certain monetary value.¹¹ Therefore, intellectual property rights are important to discuss in terms of their position as objects of zakat and also how to formulate and implement income zakat in the form of intellectual property.

A several of scholars have studies and research on the issue of professional zakat. Imam Agung Prakoso in his research entitled, "Zakat Intellectual Property Rights in a Review of Yusuf al-Qardhāwī's Zakat An-Nama' Theory" explained that intellectual property is a new type of zakat object when viewed from Yusuf al-Qardhāwī's zakat *an-nama* theory. The calculation of the *nisab* and its levels is analogous to that of gold and silver, namely 85 grams of gold/595 grams of silver. The *nisab* level is 2.5 percent.¹²

The research of intellectual property rights as the object of zakat in this article is based on literary sources, both primary, namely the Al-Qur'an and the Prophet's traditions, as well as secondary legal

¹⁰Robi Setiawan, "Kerja Sama Dengan Peneliti, Kementan Catat Royalti Rp14,7 M," accessed on June 27, 2019, <https://finance.detik.com/berita-ekonomi-bisnis/d-4160927/kerja-sama-dengan-peneliti-kementan-catat-royalti-rp-147-m>.

¹¹Tim Penulis Pusat HKI FH UII, *Wakaf Hak Kekayaan Intelektual* (Yogyakarta: Pusat HKI FH UII Press, 2016).

¹²Imam Agung Prakoso, "Zakat Hak Atas Kekayaan Intelektual Dalam Tinjauan Teori Zakat An-Nama' Yusuf Qardāwī" (Yogyakarta, Fakultas Ilmu Agama Islam, UII Yogyakarta, 2018).

materials, which include the opinions of scholars and research results related to the object of this research. The approach used is normative-historical. The collected data were then analyzed descriptively-qualitatively using the modern zakat theory, or more precisely the professional zakat theory. Thus, answers to the problems that are the focus of this study will be obtained.

Professional Zakat: Understanding and Legal Basis

Zakat in terms of language has many meanings, but has the same purpose, namely to purify wealth and soul. Zakat is *isim masdar* from the word *zakā-yazku-zakah* which means blessing, growing, and good.¹³ In terms of terminology, zakat means giving out a portion or amount of (certain) wealth that are given to those who are entitled to receive them, with certain conditions.¹⁴ Imam al-Mawardi in the book *al-Hāwī al-Kabīr* said that zakat is a name for taking certain things from certain wealth, according to certain characteristics to be given to certain groups. While asy-Syaukani defines zakat as giving a part of the property that has reached the *nishab* to the needy and so on, which is not accompanied by any *syara'* obstacle that does not allow us to give it to him.¹⁵

The profession in terms of means works with special expertise as a livelihood.¹⁶ Yusuf al-Qaradhawi defines a profession as a job or business that generates money or wealth by doing it alone, or by depending on other people, such as the government, private companies, or individuals by obtaining wages, salaries, or honoraria.¹⁷ The limitations of the definition above can be used as a reference for formulating a new zakat object model. In today's modern era, the most conspicuous and high-value form of income, one of them is wealth derived from job or profession.

An important note regarding the principle developed in the actualization of the concept of zakat is that the mapping of the object of zakat depends on the characteristics of goods whether it can grow

¹³al-Qaradhawi, *Hukum Zakat*.

¹⁴M. Ali Hasan, *Masā'il Fiqhiyyah (Zakat, Pajak, Asuransi Dan Lembaga Keuangan)*, 3rd Printing (Jakarta: Raja Grafindo Persada, 2000).

¹⁵ash-Shiddieqy, *Pedoman Zakat*, 2nd Printing.

¹⁶Mas'ud Khasan Abdul Kohar, *Kamus Istilah Ilmu Pengetahuan* (Surabaya: Usaha Nasional, 1988), p. 200.

¹⁷al-Qardhawi, *Hukum Zakat*, p. 487.

and develop or not, so that the object of zakat is not only fixed on what the Prophet Muhammad said, but it develops and is always in line with the flow of civilization and community economy.¹⁸ As a response to this, Yusuf al-Qaradhawi was motivated to analyze and come to a legal conclusion (fatwa) to enforce one type of zakat which became popular with the term profession of zakat.

Yusuf al-Qaradhawi is of the opinion that the most appropriate legal equivalent of professional zakat is zakat *al-māl al-mustafad* (assets obtained through a new and lawful type of ownership process). The types of *al-māl al-mustafad* include: 1) *al-'amalāh*, namely income earned in the form of wages or salaries for certain jobs; 2) *al-'athiyah*, which is a kind of fixed bonus or incentive that soldiers of the Islamic State receive regularly from the baitul mal; 3) *al-maẓālim*, namely the type of property that was illegally confiscated by the previous ruler, and considered lost by the original owner. If the property is returned to its original owner, then the property is categorized as property acquired with new ownership because it must be zakat.¹⁹

The reason for the obligation of professional zakat is based on the general content of the meaning of QS. al-Baqarah [2]: 267 and QS. at-Tauba [9]:103.

O you who believe, spend some of what you have earned (*mā kasabtum*) that is good and some of what we have removed from the earth for you. Do not choose what is bad for you to spend except by narrowing your eyes (reluctantly) towards it. Know that Allah is Rich and Most Praised.²⁰

Sayyid Qutb in his *Tafsir Fi Zilalil Qur'an*, as quoted by Amir Syarifuddin, interpreted the letter al-Baqarah verse 267, that the text includes all the results of good and lawful human efforts and includes all that Allah has issued from within and on the earth, both that existed at the time of the Prophet and in the era that followed. Meanwhile, according to Syarifuddin the use of the word *mā* in the verse (*mā kasabtum*) includes everything that is obtained through the results of business or services, and also anything that is removed or cultivated

¹⁸Asmuni Mth, "Zakat Profesi Dan Upaya Menuju Kesejahteraan Sosial," *La_Riba* 1, no. 1 (2007): 43–56.

¹⁹al-Qardhawi, *Hukum Zakat*, p. 487.

²⁰QS. al-Baqarah [2]: 267.

from the earth. The argument that the strength of the general pronunciation for all units of meaning included in it is certain, as the designation of special pronunciations for the meaning contained therein. The use of a general pronunciation for all units of this meaning is valid until there is another argument that limits it.²¹

Meanwhile, in QS. at-Tauba verse 103 stated:

“Take zakat from them as sadaqah (to) cleanse and purify them, and pray for them because your prayer is peace for them. Surely Allah is All-Hearing, All-Knowing.”²²

The terminological meaning of the verse refers to wealth and does not indicate which wealth was obtained (business) that has economic value. Because the spectrum is more general, it also includes services/salaries which are rationally part of the wealth so it is obligatory to pay zakat.²³

In addition, in a hadith the prophet also indicates the existence of professional zakat. In a hadith narrated by al-Bukhari the Prophet said,

'Every Muslim is obliged to give charity.' The Companions asked, 'If he doesn't have something to give in charity?', He said, 'Let him work with his hands so that it is useful for himself, then he has given charity.' ?' He said, 'He commands good.' The companions asked, 'If he is unable? Let him recommend good.' A Companion asked, “If he is unable?” He said, "He refrains from evil, then that is alms for him.”²⁴

In the book *Fathul Bāri*, Ibn Hajar explains that the recommendation referred to in the hadith means highly recommended or broader than that. In addition, the hadith also contains sentences indicating obligatory and preferred jobs.²⁵ Yusuf al-Qaradawi interprets the generality of the meaning of the hadith above that zakat is

²¹Amir Syarifuddin, *Pembaharuan Pemikiran Dalam Hukum Islam* (Jakarta: Logos, 1987), p. 130.

²²QS. at-Taubah [9]: 103.

²³Syarifuddin, *Pembaharuan Pemikiran Dalam Hukum Islam*, p. 108.

²⁴Abi ‘Abdullah Muhammad bin Ismail al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bab ‘Ala Kulli Muslim Ṣadaqah Famanlam Yajid, Nomor 1376 (Beirut: Dār ibn Kaṣīr, 2002).

²⁵Ibnu Hajar al-Asqalani, *Fathul Bari*, Translated by Amiruddin (Jakarta: Pustaka Azzam, 2007).

obligatory on income by Islamic guidelines which instill the values of goodness, willingness, sacrifice, mercy, and love to give in the soul of a Muslim. For this reason, the Prophet required every Muslim to sacrifice part of his income or whatever he could sacrifice.²⁶

Apart from being based on the texts of the Qur'an and the hadith of the Prophet, the zakat profession can also be based on the actions of the caliph Mu'awiyah and the caliph Umar Ibn Abdul Aziz. Caliph Muawiyah reportedly imposed zakat on gifts according to the standards prevailing in Islamic countries. Meanwhile, the caliph Umar Ibn Abdul Aziz collected zakat on gifted wealth (*u'tiyat*) and gifts. Apart from that, he is also reported to have collected zakat from his employees after receiving a salary, as well as withdrawing zakat from people who received confiscated goods (*mazalim*) after they were returned to him.²⁷

Intellectual Property Position as Property

Intellectual property is a term used in Anglo-Saxon jurisdiction to protect the results of human creativity. In the Microsoft Encarta Dictionary, it is stated that intellectual property is included as a noun with the meaning of property or original work protected by law with the criteria of original creative work that can be realized in tangible form, whether through patents, brands, copyrights, and other forms of intellectual property. Meanwhile, in the Big Indonesian Dictionary (KBBI), intellectual property is interpreted as the result of a creation that is owned by someone.²⁸

McKeough and Stewart define intellectual property rights (IPR) as rights that provide legal protection for the results of human creativity that have economic benefits. Meanwhile, Lyle Glowka defines IPR as a private legal right that rewards intangible human contributions that will be used to produce a specific technology.²⁹

Intellectual property rights are private rights and have their privileges compared to other civil rights. Its specialty lies in its

²⁶al-Qardhawi, *Hukum Zakat*, p. 459.

²⁷al-Qardhawi, p. 72.

²⁸Surahno, *Hak Kekayaan Intelektual*, HKUM4302/Modul 1 (Tangerang: Universitas Terbuka, 2016).

²⁹Andrian Krisnawati and Gazalba Sakeh, *Perlindungan Hak Varietas Tanaman Baru Dalam Perspektif Hak Paten Dan Hak Pemuliaan Tanaman* (Jakarta: Raja Grafindo Persada, 2004).

exclusivity. Intellectual property rights are only granted to and apply to the owner, namely the creator, inventor or holder of the intellectual work. Some party is prohibited from imitating, using, and using intellectual work in trade without the permission of the owner. The exclusivity of intellectual property rights gives the owner the most superior rights.

Intellectual property rights are basically part of objects, namely intangible objects.³⁰ Based on Article 499 of the Civil Code, objects (*zaken*) are each item (*goederen*) and each right (*rechten*) that can become the object of property rights. The goods in question are material objects that exist. It can be seen as well as touched, like a vehicle. Whereas what is meant by rights are material objects that do not exist, and cannot be seen and touched, such as unbilled debts and other bills in the form of rent money, tribute money, installment money, or interest money, including intellectual property.³¹ Both tangible and intangible objects (rights) can become rights objects. The right to a tangible object is called an absolute right to an object, while the right to an intangible object is called an absolute right to a right. Intellectual property falls into the intangible category.

In Arabic, rights are called *al-haq*, which means "property and ownership", or "rights and obligations".³² In terms, rights are defined as a provision used by *syara'* to establish a power or legal burden.³³ In Islam, rights are divided into two, namely the right to property (*mal*) and the right to something that is not property (*ghair al-mal*). Property is defined as something related to property, such as ownership of objects or debts, while *ghairul mal* is the right to something that is not property. The rights of *ghairu al-mal* are divided into two, namely the rights of *syakhsbi*, namely a guidance that is determined by *syara'* from

³⁰In civil law, objects are categorized into two groups, namely tangible objects (material) and intangible objects (immaterial). See Afrillyana Purba et al, *TRIPS-WTO Dan Hukum HKI Indonesia (Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia)* (Jakarta: Rineka Cipta, 2005).

³¹Abdulkadir Muhammad, *Hukum Harta Kekayaan* (Bandung: Aditya Bakti, 1994).

³²Ahmad Warson Munawir, *Al-Munawir: Kamus Arab-Indonesia* (Yogyakarta: Pustaka Progresif, 1997), p. 283.

³³Hendi Suhendi, *Fiqih Muamalah* (Jakarta: Rajawali Pers, 2014), p. 32.

one person to another, and the rights of '*aini*', namely the rights of adults with their objects without the need for a second person.³⁴

The Malikiyah, Syafi'iyah, and Hanabilah jurists, in general, are of the opinion that *al-māl* or property is something that has value (*qimah*) and is subject to compensation for those who destroy or lose it. According to them, wealth is not only material but also non-material things, such as benefits from objects.³⁵ In other words, benefits are also included in the scope of the meaning of property (*al-māl*), so that the legal provisions that apply to "wealth" also apply to "benefits".

The word *al-Manāfi'* (plural of *al-Manfa'ah*) according to Ibn Arafah is abstract, but it becomes *al-māl* which means object. With this confirmation, it can be said that *al-mal* according to Ibn Arafah is not only in the form of material, but also non-material, such as the benefits of intellectual work, whether in the form of books, graphic designs, or the likes. According to Ibn Arafah, these works have fulfilled the '*illat*' on which the law depends. More emphatically he said that *al-māl* includes *al-'ain* and *al-'ard*. The word *al-'ard* is interpreted as a word of benefit which according to reason cannot be touched and seen or designated by the senses. This means that the essence of "benefits" (*al-manāfi'*) cannot be rationally indicated by the senses, unless it is mentioned together with the source, such as the benefits of a car, the benefits of a house, and so on. However, according to Ibn Arafah, a person's intellectuality cannot be called *al-māl* because it cannot be separated from its owner and cannot be seen or touched unless it is already in the form of an object.³⁶ The same opinion was expressed by ash-Syathibi, although with a different editorial. According to him, ownership is the principle in *al-mal*.³⁷

According to the jurists, wealth in an Islamic perspective is based on two elements; '*aniyyah*' and '*urf*'. The element of '*aniyyah*' is that the treasure exists in reality (*a'yun*). The benefits of a house occupied

³⁴Suhendi, pp. 34-35.

³⁵Sa'di Abu Jayib, *Al-Qamus Al-Fiqh Lughatan Wa Istilahān* (Damaskus: Dār al-Fikr, 1988), p. 344.

³⁶Dairobi, "Kedudukan Hak Kekayaan Intelektual (Hak Cipta) Sebagai Harta Peninggalan Waris Dalam Perspektif Hukum Islam". *Thesis* Program Pascasarjana IAIN Antasari, Banjarmasin (2016), p. 111.

³⁷asy-Syathibi, *Al-Muwāfaqāt fi Ushūl asy-Syar'ah* (Beirut: Dār al-Ma'rifah, 1994), II: 17.

by humans are not called assets, but include property or rights. While the element of '*urf*' is everything that is considered property by all humans or by some humans.³⁸

Some theologians from the Hanafī Mazhab of thought have the view that wealth (*al-māl*) only includes everything that is material in nature. However, their earlier generations included "benefits" (*al-manāfi'*) in one type of property, namely properties that can be utilized according to syara' (*amwāl mutaqaḥḥimāh*). Their reasons are partly because the lease agreement applies to "benefits" (*al-manāfi'*) based on the *istisna* (exception) principle of general *qiyas*. According to them, exceptions can be made for something that is really needed by society. Exceptions like this are allowed by '*urf*' and are in accordance with the objectives of the sharia (*maqāshid asy-syarī'ah*), because they are intended to realize the benefit of society. In cases like this, leaving '*urf*' can bring difficulties and difficulties for people in meeting their daily needs. This is the argumentation of previous generations of Hanafiyah scholars who included "benefits" (*al-manāfi'*) into the category of assets (*al-māl*).³⁹

About the discussion of "benefits" as part of wealth (*al-māl*), as-Suyuthi argues that '*urf*' has an important role in determining the existence of the properties of property (*al-māl*) in an object. This conclusion is based on the words of as-Suyuthi that "the term *al-māl* is only for something that has value, which can be traded or subject to compensation for anyone who damages or loses it, and that something is not [possibly] thrown away by humans".⁴⁰ Here it is very clear that as-Suyuthi places '*urf*' as a principle in establishing the existence of "treasure" (*al-māl*). In other words, the value that makes property (*al-māl*) a valid transaction object is determined by the '*urf*' of society. In As-Suyuthi's opinion, it can be seen that "value" (*al-qimah*) becomes part of the benefits of wealth (*al-mālīyah*) or it becomes a place where property law (*al-māl*) depends according to '*urf*'. Meanwhile, the value of the treasure depends on how big and small the benefits are in it. In this case, benefits (*al-manfa'ah*) become a benchmark in determining the value or price. This is what is meant by that benefit is the goal of all wealth.

³⁸Suhendi, *Fiqih Muamalah*, p. 9.

³⁹Jalaluddin Abdurrahman as-Suyuti, *Al-Asybah wa al-Nazā'ir* (Beirut: Muassasah al-Kutub as-Šaqifiyah, 1994), p. 204.

⁴⁰as-Suyuti, p. 197.

As-Suyuti's opinion is not different from the concept of wealth (*al-māl*) in the Hambali school, which defines wealth as something that contains benefits (*al-manfa'ah*). The value of wealth depends on its use, not on the existence of the object. Thus, benefits form the basis for determining value though. From this, it can be concluded that in Hambali's fiqh, "the useful value of an object lies in its use, not in its form."⁴¹

From the description above it can be concluded that the concept of "property" (*al-māl*) was put forward by the fuqaha, it can be said that intellectual work is part of the property (*al-māl*). This is because intellectual property has fulfilled the two elements that make it up, namely value (*al-qimah*) and benefits (*al-manfa'ah*). The existence of these two elements in wealth is based on *'urf*, and as stated by the theologian that the reference to *'urf* itself benefits (*al-maslahah*). In terms of intellectual property rights, the benefit lies in the existence of special rights (*al-haq al-khaslah*) and general rights (*al-haq al-'ammah*). The lawmaker's recognition of a right, of course, coincides with the law that will protect it. The sources and basis of the Islamic law that protect these rights, among others, are *urf* and *maslahah mursalah*. Because intellectual property is categorized as property (*al-māl*), it can become property (*al-milk*); in the sense that the owner can take action on something he has control over and that he can also enjoy its benefits.⁴²

Intellectual property from an economic standpoint is defined as an asset, namely an intangible asset so that it is treated the same as other assets. The Indonesian Ulema Council (MUI) explains that there needs to be special protection for intellectual property rights because it is the same material right as other material rights as regulated by *syara'*. In this case, MUI cites the results of the decision of Majma' al-Fiqih al-Islami regarding material rights which states that the owner of non-material property rights, such as trade names, copyrights, and other rights which have characteristics as the result of human works has a novelty value has the right not to be disturbed and its ownership rights are reduced. More clearly, the MUI fatwa on intellectual property rights states:

⁴¹Mth, "Zakat Profesi Dan Upaya Menuju Kesejahteraan Sosial."

⁴²Aunur Rohim Faqih et al., *HKI, Hukum Islam Dan Fatwa MUI* (Yogyakarta: Graha Ilmu, 2010), p. 23.

1. In Islamic law, IPR is seen as one of the *huquq māliyyah* (property rights) which is protected by law (*ma'sum*) as *māl* (wealth);
2. IPR that is protected by Islamic law as referred to in number (1) is IPR that is not contrary to Islamic law.
3. IPR can be used as an object of contract (*al ma'qud 'alaih*), both *mu'awaddah* contracts (exchange, commercial), and *tabarru'at* contracts (non-commercial), and can be donated and inherited;
4. Every form of violation of IPR, including but not limited to using, disclosing, making, using, selling, importing, exporting, distributing, handing over, counterfeiting, pirating other people's IPR without rights is an injustice and the law is unlawful.⁴³

Majma' Al-Fiqhi Al-Islami Decree No. 43 in the 5th Congress of 1988 concerning *Al-Huquq Al-Ma'nawiyah* emphasized several things: creations are special rights owned by their owners, in the modern age such rights have economic value that people recognize as wealth. Therefore, such rights may not be violated. Second, owners of non-material rights such as trade names, addresses and brands, and copyrights have authority over those rights and can be transacted with a certain amount of money provided that they avoid various uncertainties and deception, as is the case with someone's authority over rights. material. Third, copyrights, essays and other copyrights are protected by *syara'*. Its owner has authority over it and may not be violated.

Theologians from the Maliki, Shafi'i and Hanbali schools agree on the inclusion of rights in the category of assets, as can be seen in the following statement:

الجمهور من المالكية والشافعية والحنابلة على أن المنافع أموال متقومة في ذاتها، كالأعيان سواء بسواء إذا كان مباحا لا تنفع بها شرعا.⁴⁴

Based on the consensus of the madhhab scholars above, it is very clear that rights that have material value fall into the category of

⁴³Ketentuan Hukum Fatwa MUI NO.1/ MUNAS/ VII//MUI/15/2005

⁴⁴Zaher Fuad Muhammad Abu Saba', "Al-Huquq al-Ma'nawiyah, Maliyatuha wa Wujub az-Zakatu Fiha Dirasah Fiqhiyyah Muqaranah," *Haulia : Kulliyah ad-Dirasat al-Islamiyyah wa al-'Arabiyah Libanat al-Iskandariyah* 35, no. 3 (2012), p. 191.

property that can be used, inherited, or sold. Wahbah az-Zuhaili describes that one form of intellectual property rights is a written work which is a right that should be protected. Thus, duplicating or adapting other people's written works, whether in the form of scientific books, letters, manuscripts, and so on without the permission of the author or the compiler directly, is a violation of the law. This opinion is to the objectives of the Shari'ah, one of which is to protect property (*hifz al-māl*).⁴⁵

Still with regard to the opinion above, MUI also cites the opinion of Sayyid al-Bakri in his book *I'ānatu At-Talibin* regarding *tirkah* (inheritance), that "*tirkah* is anything left by a deceased, both in the form of property and rights".⁴⁶

In this MUI fatwa, what is meant by intellectual property is wealth that arises from the brain's thinking that produces a product or process that is useful for humans and is recognized by the state based on applicable laws and regulations. Therefore, intellectual property is property that can be enjoyed economically as a result of human intellectual creativity. As a form of appreciation for the work of intellectual creativity, the state grants exclusive rights to the registrant and/or the owner as the legal right holder where the right holder has the right to prohibit other people who, without their consent or rights, trade or use these rights in all forms and methods. The purpose of recognizing this right by the state is that everyone is encouraged to produce works that are beneficial to society at large.⁴⁷

Intellectual Property as an Object of Professional zakat

According to Yusuf al-Qaradhawi, a profession is a work done by relying on brain performance. When integrated with the definition of intellectual property, the scope of the meaning of brain performance fulfills the definition of the word profession, because intellectual property is work that result from the creativity of human thinking (product of mind). Furthermore, the determination of the profession as an object of zakat refers to "acquired assets" (*al-māl al-mustafad*),

⁴⁵Wahbah az-Zuhaili, *Al-Mu'amalah al-Maliyat al-Mu'asirah* (Damaskus: Dār al-Fikr, 2008), p. 862.

⁴⁶as-Sayid al-Bakri, *I'Anah at-Talibin* (Beirut: Dar al-Fikr, n.d.), III: 223.

⁴⁷Ahmad Fauzan, *Perlindungan Hukum Hak Kekayaan Intelektual* (Bandung: Yrama Widya, 2004), p. 5.

namely assets obtained through a new and lawful type of ownership process. This implies that the formulation of the object of zakat can be seen from the source of the assets that a person has earned.

Al-Qaradhawi defines professional zakat as zakat that is collected from professional work, namely work based on certain expertise, skills, or abilities.⁴⁸ Thus, according to al-Qaradhawi, income derived through his own intelligence and skills or work that is subject to a company or individual receiving a salary or honorarium such as employees, doctors, authors, and others is classified into professional zakat.⁴⁹ This is because the income generated from non-zakat professions undertaken or assets obtained unexpectedly are included in *al-māl al-mustafad*, namely new income wealth.⁵⁰

If these definitions are further interpreted, then the intellectual property is part of the professional zakat because it results from a research process that devotes time, energy, thought, creativity, taste, and intention. This also differentiates intellectual property from other types of wealth that can be owned by humans but are not produced from human intellect.

Al-Qaradhawi further stated that contemporary theologians, such as A. Rahman Hasan, Abu Zahrah, and Abdul Wahab Khalaf, found similarities between professional zakat and leasing zakat discussed by Ahmad Ibn Hanbal. Someone who rents out his house and earns quite a lot of income is obliged to pay zakat when he receives the rent. The equation in question is in terms of income wealth, namely the wealth obtained by a Muslim through a form of business that generates wealth. Because the profession is a form of business that generates wealth, the same as renting out something, the wealth generated from this profession must be subject to zakat as zakat is obligatory on the proceeds of the rental.⁵¹

In the Qur'an, the statement regarding the obligation of zakat is also stated in general and globally that zakat "must be taken from every property owned" as stated in QS. at-Taubah [9]: 103. Likewise,

⁴⁸Abdullah Kelib, *Hukum Zakat Profesi, Pelaksanaan Pada Kalangan Profesional Muslim Di Kota Madya Semarang* (Semarang: Universitas Sultan Agung, 1996), p. 70.

⁴⁹al-Qaradhawi, *Hukum Zakat*, p. 459.

⁵⁰al-Qaradhawi, p. 34.

⁵¹Fuad Riyadi, "Kontroversi Zakat Profesi Pesrpektif Ulama Kontemporer," *ZISWAF: Jurnal Zakat Dan Wakaf* 2, no. 1 (2016), pp. 109–32.

"take wealth from every good and lawful result of your business" as described in QS. al-Baqarah [2]: 267.

When interpreting verse 103 of QS. at-Taubah, Imam al-Qurtubi in *al-Jāmi' li Ahkām Al-Qur'an* stated that zakat is taken from all the assets owned, although later the Sunnah of the Prophet set out the details of the assets for which zakat is obligatory.⁵²

The principle in actualizing the concept of zakat is that the object of zakat can grow and develop. Therefore, zakat is not obligatory on wealth owned for personal gain. As confirmed in the hadith: "A Muslim is not obliged to pay zakat from his horse or slave."⁵³

In the realm of intellectual property that becomes the object of zakat are exclusive rights owned by creators/inventors/designers, either in the form of moral rights or economic rights. Moral rights are inherent rights that protect the reputation of the creator or inventor. Meanwhile, economic rights are rights to obtain economic benefits from intellectual property. Intellectual property is said to have economic rights in it because it is an object that can be valued in money. The economic right is in the form of an amount of profit obtained due to its use, or due to use by another party based on a license.

Concerning intellectual property rights as objects of zakat, the I International Conference on Zakat which was held in Kuwait on April 30, 1984 AD, mentioned the existence of several zakat objects that were not specifically mentioned in the hadith, including zakat for professions, companies, and other business activities.⁵⁴ If you look at the definition of intellectual property, it can be categorized as a new zakat object because it arises or is born from human intellectual abilities. This intellectual ability produces works that have economic value or benefits for human life so that they can be considered commercial assets.⁵⁵

In several types of intellectual property, a license agreement is a method commonly used in the process of transferring technology. In

⁵²Al-Qurthubi, *Al-Jāmi' li Ahkām Al-Qur'an* (Beirut: Dār el-Kutub al-'Ilmiyyah, 1993), IX: 37.

⁵³Muhammad Habibullah, *Zādul Muslim, Fima Ittifaq 'Alaihi al-Bukhārī wa al-Muslim*, No. 733 (Beirut: Dar al-Fikr, 1981), II: 225.

⁵⁴*Halqah-ad-Dirasah al-Ijtima'iyah*, p. 248.

⁵⁵Sujdana Sudaryat and Rika Ratna Permata, *Hak Kekayaan Intelektual* (Bandung: OASE Media, 2010), p. 15.

a patent licensing contract, for example, the licensee will pay royalties for the use of the technology based on sales or production. In addition, there is an obligation of confidentiality on the part of the licensee and there is also a requirement that requires the licensor to preserve (maintain) certain quality control standards.⁵⁶

If these economic rights are utilized, they will continue to generate profits. Therefore, a common thread can be drawn, the economic benefits of intellectual property can be used as a criterion for developing assets in property objects that must be zakat because they have been commercialized.

Based on the explanation above, it is clear that wealth is part of the object of zakat in professional zakat. So, when is the intellectual property issued zakat? In this regard, the scholars require that the intellectual property must have reached haul (one year). In this regard, al-Qardhawi argues that one of the requirements in professional zakat is that the assets must have reached the haul (one year), and the zakat is issued at the time it is received. This is based on the calculations of modern taxation experts who argue that salary payments by the private sector or the government are basically regulated on the basis of one year, only payments are given in monthly calculations. Therefore, zakat is taken based on calculating the employee's net income accumulated for one full year. However, in order to prevent the muzakki from taking actions that make the wealth obtained not reach the nisab so as to avoid the obligation of zakat, professional zakat is applied to every amount of income or income received.⁵⁷

Zakat Measure and Nisab Intellectual Property

Nisab is the minimum limit or minimum amount of assets that are subject to zakat obligations. In the context of discussing professional zakat, *nisab* is assigned to zakat objects that already have legal provisions. However, there are several opinions that arise regarding the *nisab* and levels of professional zakat:

1. Professional zakat is analogous to zakat on agricultural products, both *nisab* and zakat levels. Thus, the *nisab* for

⁵⁶Lena Griswanti, *Perlindungan Hukum Terhadap Penerima Lisensi Dalam Perjanjian Lisensi Paten Di Indonesia* (Universitas Gadjah Mada, 2005), p. 20.

⁵⁷al-Qardhawi, *Hukum Zakat*, pp. 483-484.

professional zakat is equal to 653 kg of unhulled grain and the zakat content is 5 to 10%.

2. Professional zakat is analogous to trade or gold zakat, the safe thing is 85 grams of gold and the zakat rate is 2.5%.
3. Professional zakat is analogous to the *nisab* of zakat income from agricultural products, but the level of zakat is equal to the level of gold zakat. Thus, the *nisab* for professional zakat is equal to 653 kg of unhulled grain, while the zakat rate is 2.5%. This is based on *qiyas* on the similarity to the characteristics of existing zakat assets, namely: (a) the model of obtaining income assets (profession) is similar to crop yields, and (b) the form of wealth received as income is in the form of money so that it can be distributed with zakat wealth (savings/wealth), in which case the zakat rate is 2.5%.

From several opinions regarding the *nisab* and the level of zakat in zakat on intellectual property, the authors argue that the third opinion is more appropriate and rational because it is by the model of acquiring wealth (intellectual property) and both more able to ease the burden on the owner of the property. To prove this, the following will give an example of calculating intellectual property zakat payments in the form of royalties for book publication.

In the license agreement, the amount of royalty payments is based on the total sales of the licensee. The royalty payment mechanism is conducted based on contract agreement clauses. To simplify the calculation, it is described in the form of a formula that has been adapted to the contents of the contract. The amount of royalties given by publishers to authors can be calculated simply as follows:⁵⁸

Honorarium/Royalties = Net Price x (Manufacturing – 10% Promotion) x 10% - Income Tax Article 23

Information:

Net Price : The selling price of the book after being deducted by the rebate given to the book seller, which is 25%

⁵⁸Bona Panduwina, "Perlindungan Hukum Hak Cipta Bagi Pengarang Buku", *Thesis*, Magister Kenotariatan Universitas Hasanuddin, Makassar (2013), p. 88.

Oplah	:	Number of prints for each issue
Promotion	:	Prints for promotional purposes
10%	:	Percentage of the share received by the author
Income Tax Article 23	:	Income tax imposed on authors is 15%

When illustrated in the form of an example, it can be described as follows;

- | | | |
|------------------------|---|------------------------------|
| 1. Print circulation I | : | 5,000 copies |
| 2. Promotion 10% | : | 500 copies |
| 3. Price | : | Rp. 110.000,- |
| 4. Net Price | : | 110,000 – 25% = Rp. 82.500,- |

$$\begin{aligned}\text{Honorarium/Royalties} &= 82,500 \times 4500 \times 10\% - 15\% \\ &= \text{Rp. 31,556,250,-}\end{aligned}$$

Royalty payments in the example above are made in 2 (two) stages with a period of 6 (six) months based on the books sold. When the Publisher pays royalties to the Author, the Publisher will deduct the Author's income tax (PPh) of 15% (fifteen percent) or by applicable government regulations. In addition, for promotional purposes, the publisher also increases the number of prints by 10% (ten percent) of the circulation/number of prints and the Author does not get the additional printing royalty. However, the Author will receive 10 (ten) copies of the book free of charge as proof of publication.⁵⁹

This process is conducted for a single print/issue, while for subsequent publications it will be governed by a new contract/agreement which includes, among other things, provisions regarding the number of copies of the book to be printed in the next edition and the royalty amount. In this contract/re-agreement process, the author is usually able to apply for an increase in royalties that he wants considering his best-selling book has even become a best seller, although publishers may also have different considerations.

In the license agreement between the author and the publisher, zakat can be analogous to the nisab of zakat on agricultural products and the amount is assigned to zakat on gold/silver. Based on the several

⁵⁹Panduwinata, pp. 88-89.

royalties received, the author is given royalties in stages so that the *nisab* is the same as the farmers who earn after harvesting their fields, namely 653 kg of unhusked rice with the assumption that the price of dry harvested unhusked rice (GKP) is Rp.4356, -/kg. While the levels are equated with trade or gold/silver zakat because royalties are received in the form of money which is the result of book sales. The zakat rate of 2.5% can make it easier for authors because they have previously been subject to a 15% income tax.

The following is an example of the application of intellectual property zakat in a book author's copyright license agreement.

Gross Royalty Income	= Rp. 37,125,000
Nisab for agricultural zakat (653 kg of grain x Rp. 4356,-/kg)	= Rp. 2,844,468
Subtraction:	
- PPh Article 23 (Amount of Royalties received – 15%)	= Rp. 31,556,250
- Zakat (Net Royalty Income x 2.5%)	= Rp. 788,906.25
The payment is made in 2 (two) stages	
Phase I payment/semester	= Rp. 15,778,125
Subtraction:	
- Zakat rate of 2.5%	= Rp. 394,453.125
Phase II payment/semester	= Rp. 15,778,125
Subtraction:	
- Zakat rate of 2.5%	= Rp. 394,453.125

From the calculation above, it can be concluded that zakat is collected on each royalty payment by the publisher to the author. Zakat estimation at the beginning of the calculation follows the calculation of the several royalties multiplied by income tax (PPh). However, if there is an advance payment for royalties, this does not follow the Zakat estimate because the money received is not the total amount of royalties. This is because one of the obligatory conditions of zakat is that the property must be the full property of the *muzakki*.

Conclusions

Based on the study and analysis of intellectual property rights above, it can be concluded that intellectual property is property, namely wealth that is intangible, which has both benefits and economic value. On this basis, intellectual property is part of the object of zakat, in the sense that it is a property whose zakat is obligatory. This intellectual property is included in the category of professional zakat, namely zakat on every source of income obtained from a particular profession. Scholars include wealth as part of the object of zakat based on the general meaning of *lafadz infaq* in QS. al-Baqarah [2]: verse 267 and the general meaning of "property owned" for which zakat is obligatory as stated in QS. at-Taubah [9]: 103. In addition, this article also concludes that the calculation of *nisab* on intellectual property is the same as the *nisab* of agricultural products. In the Indonesian context, it is equivalent to 653 kg of unhulled rice. Meanwhile, the level of zakat is the same as that of gold zakat, which is 2.5%. Thus, this article at the same time proves that Islamic law, especially the teachings on zakat, is not religious. static, but changing and developing according to the dynamics and development of human life.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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