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Revitalizing the Indonesian Ulema Council's Fatwa on the Protection of Intellectual Property Rights

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Abstract

Intellectual Property Rights (IPR) protection in Indonesia is largely operationalized through conventional statutory instruments. Since 2005, however, the Indonesian Ulema Council (MUI) has issued Fatwa No. 1/MUNAS VII/MUI/5/2005, which frames IPR infringement as an act of ẓulm and deems it ḥarām. This article examines the fatwa's continuing relevance within Indonesia's contemporary IPR regulatory landscape and identifies pathways to enhance its practical effectiveness as a normative complement to state-driven protection and enforcement. The study employs doctrinal (normative-juridical) research grounded in pragmatic truth theory and deductive reasoning. Legal materials are collected through library research and analyzed qualitatively using a conceptual approach to connect Sharia-ethical reasoning with positive-law structures. The findings show that legislative reforms across key IPR regimes have created misalignments between the fatwa's statutory references and the current legal framework, thereby weakening its legal-formal coherence. The analysis further indicates that the fatwa would be more effective if its prohibitions and categories are reformulated using nomenclature corresponding to the KUHP and/or KUHPerdata and explicitly linked to existing administrative, civil, and criminal enforcement mechanisms within Indonesia's national legal system.

Keywords: intellectual property rights; MUI fatwa; revitalization; legal nomenclature; law enforcement

Abstrak

Perlindungan Hak Kekayaan Intelektual (HKI) di Indonesia pada umumnya dioperasionalkan melalui perangkat peraturan perundang-undangan yang bersifat konvensional. Namun sejak tahun 2005, Majelis Ulama Indonesia (MUI) menerbitkan Fatwa No. 1/MUNAS VII/MUI/5/2005 yang memandang pelanggaran HKI sebagai perbuatan zalim dan menetapkan hukumnya haram. Abstrak ini mengkaji relevansi fatwa tersebut dalam lanskap regulasi HKI kontemporer sekaligus mengidentifikasi arah penguatan efektivitasnya sebagai norma pelengkap bagi upaya perlindungan dan penegakan hukum oleh negara. Penelitian menggunakan pendekatan yuridis normatif (doktrinal) berbasis teori kebenaran pragmatik dengan penalaran deduktif. Bahan hukum dikumpulkan melalui studi kepustakaan dan dianalisis secara kualitatif dengan pendekatan konseptual untuk menghubungkan nalar etik-syariah dengan struktur hukum positif. Temuan menunjukkan adanya ketidaksinkronan rujukan regulasi dalam fatwa akibat pembaruan rezim HKI, sehingga melemahkan koherensi legal-formal fatwa terhadap kerangka hukum yang berlaku. Efektivitas fatwa diproyeksikan meningkat apabila rumusan larangan dan kategorisasi pelanggaran diselaraskan dengan nomenklatur KUHP dan/atau KUHPerdata serta dihubungkan secara eksplisit dengan

mekanisme perlindungan dan penegakan administratif, perdata, dan pidana dalam sistem hukum nasional Indonesia.
Kata kunci: *hak kekayaan intelektual; fatwa MUI; revitalisasi; nomenklatur hukum; penegakan hukum*

Introduction

Intellectual Property Rights (IPR) protection constitutes an essential instrument within modern legal and economic systems. In Indonesia, IPR regulation has evolved alongside the country's engagement in the international trade regime through membership in the World Trade Organization (WTO) and the implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) framework (Dar et al., 2025; Moschini, 2004). Within this setting, IPR is positioned as a form of private, intangible property that may be transferred, licensed, and economically exploited.

Nevertheless, within Muslim communities the concept of IPR has not always been fully accepted. Several studies indicate that IPR is often perceived as a Western legal product lacking a clear normative foundation in Islamic teachings, thereby generating doubts and resistance toward its application (Ardian, 2008; Pranadita, 2018). This perception contributes to low legal awareness and weak compliance with IPR protection, particularly among groups that prioritize religious norms as the primary reference for social and economic conduct.

At the same time, developments in Islamic law and the Sharia economy in Indonesia demonstrate an increasing tendency to integrate Islamic values into the national legal system. Sectors such as Islamic banking, Sharia investment, and Sharia-based economic activities have grown alongside conventional systems and have been recognized within the positive-law framework. This phenomenon suggests that differences between normative systems are not necessarily dichotomous, but may be complementary as long as interests and objectives can be aligned (Hafizd, 2020; Nugraha et al., 2023; Otoritas Jasa Keuangan, 2020).

In the context of IPR protection, the Indonesian Ulema Council (Majelis Ulama Indonesia / MUI) in 2005 issued Fatwa No. 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property Rights. The fatwa asserts that IPR infringement constitutes an act of ظلم (ẓulm) and is ḥarām under Sharia. Normatively, the fatwa is intended to provide an ethical and religious foundation for Muslims to respect and protect IPR (MUI, 2005).

In practice, IPR protection and enforcement in Indonesia are primarily carried out through positive-law channels—administrative procedures (registration/recordation), civil remedies (such as injunctions and damages), and criminal sanctions for certain forms of infringement—each of which is anchored in Indonesia's sectoral IPR statutes and their enforcement design.

(ASEAN Secretariat, 2020) At the same time, because MUI fatwas are not classified as legislation within Indonesia's formal hierarchy of laws under the framework of Law No. 12/2011 and therefore do not generally carry direct, general binding force as statutory norms, their function in governance tends to remain ethical–persuasive rather than institutionally enforceable within state adjudication and enforcement pathways (Munawaroh, n.d.). Consequently, when statutory reforms update definitions, concepts, and enforcement architecture in the positive-law IPR regime, a fatwa that is not correspondingly synchronized may be read mainly as a moral norm and may have limited practical usability as an operational reference within the modern IPR protection system.

This situation indicates the need to reassess the relevance and effectiveness of the MUI IPR fatwa within Indonesia's current positive-law framework (Elly, 2022; Nurcahyanti, 2023). In this regard, the study is anchored in the pragmatic theory of truth, which evaluates the "truth" of a normative statement by its functional value—namely, whether and to what extent it works effectively in a given time and context. Applied to the present topic, the pragmatic perspective serves as an analytical lens to examine whether the fatwa remains workable as (i) a norm whose legal references remain coherent with contemporary IPR statutes, and (ii) an ethical guideline that can be meaningfully connected to existing administrative, civil, and criminal protection mechanisms.

To date, research that specifically addresses the disharmony between the MUI IPR fatwa and national IPR regulations and that proposes a structured framework for strengthening the fatwa's operability remains relatively limited. Yet, harmonization between religious norms and state law is strategically important for strengthening legal awareness, improving compliance, and supporting the integration of Sharia values within Indonesia's IPR protection regime. This study is expected to contribute academically to the development of Sharia economic law scholarship and to strengthen the integration between Islamic law and positive law in protecting IPR in Indonesia.

Methods

This study employs normative juridical (doctrinal) legal research, relying on library-based materials/secondary data. The research focuses on legal-formal and legal-material (Sharia perspective) issues concerning the protection of Intellectual Property Rights (IPR) and the enforcement of law against IPR violations (Darmalaksana, 2022; Efendi, 2022). The primary legal materials analyzed include the Indonesian Ulema Council (MUI) Fatwa No. 1/MUNAS VII/MUI/5/2005 on the Protection of IPR (MUI, 2005), along with relevant statutory

regulations as the positive-law framework, while secondary legal materials consist of scholarly literature (books, journal articles, and academic works). The analysis is conducted qualitatively (qualitative juridical analysis) through sentence-based explanations without numerical calculation, using a conceptual approach to organize key concepts as analytical guides and as a bridge between theory and its context of application.

In its normative reasoning process, this study applies pragmatic truth theory (Ibrahim, 2006), namely an orientation that assesses a norm or statement based on whether it functions or not within a particular time and context. The conclusion-drawing technique employs deductive reasoning, deriving conclusions from general rules/conditions to specific implications, particularly to assess the utility and operational applicability of IPR protection norms in the fatwa and their coherence with contemporary regulatory developments. Legal materials were collected through library research, using inventory and classification techniques based on three themes: (1) the scope of IPR objects, (2) the legal basis for protection and enforcement mechanisms, and (3) the coherence/relationship between the fatwa and current regulations.

Regulatory Framework and Protection Mechanisms for Intellectual Property Rights in Indonesia

Regulation essentially constitutes a set of legal norms established by the state to regulate, direct, and limit the conduct of legal subjects in order to achieve order and legal certainty (Braithwaite, 2002; Ogus, 2004). In the context of Intellectual Property Rights (IPR), regulation functions to provide standards of protection for the products of human intellect—such as creative works, inventions, distinctive signs, designs, and business secrets—so that they are not misused by others without lawful entitlement. Legal protection itself may be understood as the measures provided by the legal system to prevent violations, resolve disputes, and restore the rights of injured parties, whether through administrative, civil, or criminal mechanisms. Accordingly, IPR protection is not merely a technical matter of registration; rather, it is a state instrument to maintain fairness in business competition, stimulate innovation, and safeguard the interests of the creative economy and the sustainable development of knowledge.

Normatively, IPR protection in Indonesia is implemented through a sectoral statutory framework that regulates specific categories of rights. This framework includes: (1) Law of the Republic of Indonesia No. 29 of 2000 on Plant Variety Protection; (2) Law of the Republic of Indonesia No. 30 of 2000 on Trade Secrets; (3) Law of the Republic of Indonesia No. 31 of 2000 on Industrial Designs; (4) Law of the Republic of Indonesia No. 32 of 2000 on Layout

Designs of Integrated Circuits; (5) Law of the Republic of Indonesia No. 28 of 2014 on Copyright; (6) Law of the Republic of Indonesia No. 13 of 2016 on Patents; and (7) Law of the Republic of Indonesia No. 20 of 2016 on Trademarks and Geographical Indications (Law, 2000a, 2000b, 2000c, 2000d, 2014, 2016a, 2016b). Of these seven statutes, four were enacted in the early reform era, while the other three represent more recent updates. These updates may be understood as part of Indonesia's legal policy in forming new laws deemed necessary to support the state's constitutional objectives as articulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), particularly in relation to protecting citizens, promoting the general welfare, and advancing education for the nation.

At the institutional level, the operational mechanism of IPR protection is carried out by state bodies that possess administrative authority and provide registration/recordation services, while also supporting law enforcement processes when violations occur. In practice, most IPR regimes—trade secrets, industrial designs, layout designs of integrated circuits, copyright, patents, trademarks, and geographical indications—are administered by the Directorate General of Intellectual Property under the Ministry of Law (DJKI Kemenkum, 2025). Meanwhile, plant variety protection constitutes a specialized regime under the Plant Variety Protection and Agricultural Licensing Center within the Secretariat General of the Ministry of Agriculture (PPVTPP Kementan, 2025). This division of authority shows that IPR protection is not only "recognition of rights" through registration, but also includes administrative governance that determines requirements, procedures, and evidentiary documents for proving ownership. Conceptually, the mechanism of IPR protection can be mapped into three layers: (1) administrative protection (registration/recordation and data management), (2) civil protection (compensation, cessation of infringement, and rights disputes), and (3) criminal protection (the imposition of sanctions for certain violations classified as criminal offenses).

Indonesia's IPR regulatory framework also cannot be separated from the country's constitutional character as a religious nation while still guaranteeing freedom and equality among religions and beliefs. The framers of the 1945 Constitution are understood to have positioned "Belief in the One and Only God" as a foundational principle of state life without elevating one particular religion over others, so that popular sovereignty and government administration operate within a constitutional framework that respects the divine value (UUD, 1945). In the context of lawmaking, this religiosity becomes an ethical horizon that reasonably influences legal policy orientations, including when the state formulates IPR protection

touching upon morality, justice, and the prohibition of unlawfully taking another person's rights.

From a socio-religious perspective, Indonesia's demographic composition has long been dominated by Muslims. Statistics Indonesia (BPS), through the 2010 Population Census tabulation, records 207,176,162 Muslims out of a total population of 237,641,326—approximately 87.18% at the national level (BPS, 2010a). This composition helps explain why Sharia-based ethical considerations often remain salient in public legal consciousness, including in matters of rights protection. In the IPR context, the Sharia dimension strengthens the demand for religious–normative legitimacy so that the public understands IPR infringements not only as economically harmful conduct, but also as morally and ethically wrongful acts that should be avoided and prevented within a rights-respecting legal order (BPS, 2010b).

In line with this, Indonesia currently has a religious-normative reference in the form of the Indonesian Ulema Council (MUI) Fatwa No. 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property Rights (IPR) (MUI, 2005). In its general provisions, the fatwa defines the scope of IPR by referring to the statutory definitions and regimes applicable when the fatwa was issued, namely: plant variety protection (Law No. 29 of 2000), trade secrets (Law No. 30 of 2000), industrial designs (Law No. 31 of 2000), layout designs of integrated circuits (Law No. 32 of 2000), patents (Law No. 14 of 2001), trademarks (Law No. 15 of 2001), and copyright (Law No. 19 of 2002). However, regulatory developments indicate that some of these references have been replaced or updated, making certain definitions in the fatwa no longer aligned with the current positive-law framework. In addition, the protection of geographical indications has not been explicitly accommodated within the fatwa's scope, even though geographical indications constitute an important component of the contemporary IPR regime. This situation underscores the urgency of revitalizing the MUI fatwa on IPR protection through synchronization with updated statutory references and an expansion of scope to incorporate geographical indications within the relevant dicta, so that the fatwa remains operational and coherent with developments in national law.

Below is a synchronization table comparing the statutory references cited in MUI Fatwa No. 1/MUNAS VII/MUI/5/2005 with the current/applicable laws, along with the implications of those changes (without entering the discussion on revitalization). The focus is placed on what has changed and the normative consequences of those changes at the level of legal references.

Tabel 1. Synchronization Fatwa's Statutory References vs Current Laws and Practical Implications

IPR Object (as listed in the fatwa)	Law cited in the fatwa	Current / applicable law	Implication of the change (practical note)
Plant Variety Protection (PVP)	Law No. 29 of 2000 on Plant Variety Protection	**Still Law No. 29 of 2000**	The reference can be retained; ensure the fatwa's terminology/definition remains consistent with the statute's wording.
Trade Secrets	Law No. 30 of 2000 on Trade Secrets	**Still Law No. 30 of 2000**	The reference can be retained; maintain consistency of terms and scope used in the fatwa with the statute.
Industrial Designs	Law No. 31 of 2000 on Industrial Designs	**Still Law No. 31 of 2000**	The reference can be retained; correct terminology consistency (e.g., "industrial design," not mixed English/Indonesian variants).
Layout Designs of Integrated Circuits	Law No. 32 of 2000 on Layout Designs of Integrated Circuits	**Still Law No. 32 of 2000**	The reference can be retained; clarify object naming so it is not confused with industrial designs.
Patents	Law No. 14 of 2001 on Patents	**Law No. 13 of 2016 on Patents** (replacing Law 14/2001; later amended via the Job Creation law package)	The fatwa's reference needs updating: (a) replace the statutory basis, (b) adjust definitions/terminology that changed, and (c) avoid citing article numbers from the repealed law because the structure differs.
Trademarks	Law No. 15 of 2001 on Trademarks	**Law No. 20 of 2016 on Trademarks and Geographical Indications** (replacing Law 15/2001)	The fatwa's reference needs updating: (a) replace the statutory basis, (b) update trademark terminology/definitions, and (c) clearly distinguish "trademarks" from "geographical indications" to avoid category overlap.
Copyright	Law No. 19 of 2002 on Copyright	**Law No. 28 of 2014 on Copyright** (replacing Law 19/2002)	The fatwa's reference needs updating: (a) replace the statutory basis, (b) align key definitions with the updated regime, and (c) correct spelling/term consistency (e.g., "copyright," not erroneous variants).
Geographical Indications (not explicitly included in the fatwa's IPR scope list)	—	**Law No. 20 of 2016** expressly regulates Geographical Indications together with Trademarks	At the regulatory-mapping level: (a) GI is now clearly established as a distinct IPR regime; (b) it should be treated explicitly as separate from trademarks to prevent conceptual/subject-matter confusion.

Sources: Processed data, 2025

The regulatory framework for the protection of Intellectual Property Rights (IPR) in Indonesia is structured through a set of sectoral statutes, each governing a distinct type of right, thereby providing legal certainty regarding the scope of protected subject matter, registration/recordation requirements, and available enforcement mechanisms. MUI Fatwa No. 1/MUNAS VII/MUI/5/2005 originally mapped the scope of IPR by referring to the statutes in force at the time, covering plant variety protection, trade secrets, industrial designs, layout designs of integrated circuits, patents, trademarks, and copyright. A synchronization review of

these references shows that several core statutes cited in the fatwa remain applicable (Law No. 29/2000 on Plant Variety Protection; Law No. 30/2000 on Trade Secrets; Law No. 31/2000 on Industrial Designs; and Law No. 32/2000 on Layout Designs of Integrated Circuits), so the regulatory linkage for these categories can generally be maintained by ensuring terminological consistency. However, the statutory basis for patents, trademarks, and copyright has changed through legislative renewal: patents are now governed by Law No. 13/2016 (replacing Law No. 14/2001), trademarks are governed by Law No. 20/2016 (replacing Law No. 15/2001), and copyright is governed by Law No. 28/2014 (replacing Law No. 19/2002). These shifts matter not only because the cited laws were repealed, but also because definitional structures, legal concepts, and article numbering have been reorganized, meaning that continued reliance on outdated statutory references can create interpretive ambiguity when aligning ethical-religious guidance with the current positive-law framework. In addition, Law No. 20/2016 expressly incorporates Geographical Indications as part of the modern IPR regulatory landscape; therefore, at the level of regulatory mapping, Geographical Indications should be treated as a distinct category from trademarks to avoid conceptual overlap and to accurately reflect the contemporary structure of IPR protection in Indonesia.

Analytical Framework for Revitalizing the MUI Fatwa on IPR Protection

Legal protection essentially constitutes a series of efforts to safeguard legal subjects through available legal instruments. Philipus M. Hadjon defines legal protection as an act of protecting or providing assistance to legal subjects by using various legal tools (Hadjon, 2011). Satjipto Rahardjo emphasizes that legal protection is a form of guardianship afforded to society so that people may enjoy their rights when harmed by others (Raharjo, 2000). Legal protection comprises all legal efforts provided by law enforcement authorities to ensure a sense of security—both mentally and physically—from interference and threats by any party (C. S. T. Kansil, 1989). Within this framework, legal protection presupposes the existence of legal subjects whose rights must be protected and the existence of legal mechanisms that can be applied lawfully and effectively to ensure that those rights are genuinely secured.

The urgency of substantive reconstruction may be grounded in the principle of al-maṣlaḥah and the principle of inclusivity, so that any changes are not merely administrative but constitute part of contextual ijtihād (Rizani et al., 2024). With reference to the Indonesian Ulema Council (MUI) Fatwa No. 1/MUNAS VII/MUI/5/2005 on IPR Protection, the need for revitalization can be mapped onto two dimensions: alignment of regulatory references and the

operational strength of the norm. On the regulatory-reference side, the fatwa's general provisions cite definitions of patents, trademarks, and copyright based on statutes that have since been replaced, meaning that some of the fatwa's positive-law references are no longer consistent with the current IPR legal framework. On the operational side, the fatwa characterizes IPR infringement as an act of *ẓulm* and assigns it the status of *ḥarām*. However, for the fatwa's norms to be more readily understood and meaningfully connected to the protection and enforcement mechanisms applicable in Indonesia, the terminology and prohibitive formulations need to be refined by employing nomenclature with clear counterparts in positive-law terminology.

An MUI fatwa is essentially a religious-normative guideline that operates within the realm of ethics, legal consciousness, and social compliance among Muslims, particularly by directing conduct to align with Sharia principles. Within Indonesia's broader normative governance, a fatwa is not positioned as a formal source of statutory law with binding force comparable to legislation or government regulations; rather, it carries an important function as a moral reference and a form of religious legitimacy for socio-economic practice. Consequently, when IPR is debated as an "intangible" right and often perceived merely as an administrative or business matter, a fatwa may strengthen public understanding that IPR constitutes a right that should be respected, protected, and not violated. From this standpoint, revitalizing a fatwa should not be read as an attempt to "replace" positive law, but as an effort to recalibrate the fatwa so it remains normatively relevant and coherent with existing rights-protection mechanisms, thereby enabling its ethical message to function more effectively within the public sphere.

To make the revitalization agenda measurable and systematic, an essential first step is to inventory the key dicta contained in MUI Fatwa No. 1/MUNAS VII/MUI/5/2005. Broadly, the fatwa comprises general provisions defining the scope of IPR, followed by legal provisions that affirm the normative status of IPR infringement and the Sharia position toward acts that harm right holders. In the general provisions, the fatwa includes several IPR categories by referring to statutory definitions in force at the time, making its scope "legal-referential" (i.e., based on statutory references). Meanwhile, in its legal provisions, the fatwa positions IPR infringement as morally blameworthy and sinful, and it emphasizes the prohibition of various forms of unauthorized use, piracy, counterfeiting, or appropriation of benefits without right. This inventory is necessary so that the revitalization discussion does not remain at the level of general statements, but instead clearly identifies which dicta require updated regulatory

references, which require strengthened subject-matter coverage, and which require reformulation to improve communicability within the prevailing legal system.

One of the most fundamental issues in updating the fatwa concerns the synchronization of its statutory references (Anwar, 2024). Because the fatwa formulates the scope of IPR by referring to specific statutes, changes and reforms in Indonesia's IPR legislation directly affect the accuracy of the fatwa's normative-legal references. In some categories, the statutes cited in the fatwa remain relevant because the regimes have not changed. However, in strategic categories such as patents, trademarks, and copyright, the regulatory frameworks have been renewed, making older statutory references misaligned with the contemporary positive-law structure. This misalignment is not merely an administrative matter; it can affect definitional clarity, certainty regarding subject-matter categories, and the coherence of argumentation when the fatwa is used as an ethical reference in policy contexts or public education. Therefore, the revitalization discussion should place regulatory synchronization as a prerequisite for ensuring that the fatwa remains "connected" to developments in the national legal system, particularly in relation to infringement prevention and the strengthening of IPR compliance literacy.

Beyond the question of legal references, the fatwa also faces an issue of completeness in its IPR subject-matter coverage, especially regarding Geographical Indications. In the evolution of Indonesia's modern IPR regime, geographical indications have become an important component of IPR protection, as they relate to products whose quality, reputation, or characteristics are linked to their place of origin and often carry communal economic value (Elly, 2022; Kurniawan, 2024). When geographical indications are not explicitly included within the fatwa's scope, a gap may arise in the fatwa's normative mapping, affecting the consistency of its ethical message across the full spectrum of IPR as regulated today. Conceptually, geographical indications also differ from trademarks because their protection is not purely individual-commercial, but may attach to a community of producers in a particular region. Accordingly, the revitalization discussion should underscore the urgency of completing the IPR category mapping so that the fatwa can address contemporary protection realities, while also strengthening the fatwa's role in providing a comprehensive ethical guide for respecting rights, preventing unauthorized exploitation, and reinforcing fairness in the utilization of intellectual property.

Beyond statutory synchronization, the central challenge in revitalizing the fatwa is norm operability—whether its formulations can be understood and connected to Indonesia's enforceable protection mechanisms. In the MUI Fatwa, IPR infringement is framed as

ẓulm/ẓālim and ruled *ḥarām*; ethically this is powerful, but linguistically *ẓulm* functions as a broad moral category rather than a technical positive-law label: in Arabic lexicography, *ẓulm* is defined as "الظلم وضع الشيء في غير موضعه… وهو الجور" (placing something out of its proper place; injustice), and *ẓālim* is linked to "جَوْرٌ… اِنْتِهاكُ حَقِّ الآخَر عُدْواناً، عَدَمُ الإنْصاف" (injustice; violating another's right; lack of fairness) (Al-Jurjani, 2025). In Lane's Arabic–English Lexicon, the root carries the sense of acting "wrongfully, unjustly, injuriously, or tyrannically," underscoring its wide semantic scope in English as wrongdoing/injustice/oppression (Lane, 1876). Consistent with Indonesian usage, KBBI defines *zalim* as "tidak adil; kejam" and *menzalimi* as "menindas; menganiaya; berbuat sewenang-wenang," which again signals a general ethical label rather than a single legal-technical term (KBBI, 2025). Therefore, maintaining *ẓulm/ḥarām* as ethical framing needs to be complemented by communicable positive-law equivalents (e.g., infringement/unlawful act/specific offenses) so the fatwa can "work" more clearly across administrative, civil, and criminal pathways.

Within the framework of fiqh jināyah, *ẓulm* is understood as a form of violation that entails injustice and the unlawful encroachment upon another's right (*iʿtidāʾ ʿalā al-ḥaqq*), thereby providing an ethical basis for treating piracy, counterfeiting, or the unauthorized appropriation of IPR benefits as blameworthy conduct and, in Sharia terms, prohibited (*ḥarām*). However, for this ethical judgment to have practical usefulness within national legal governance, the prohibition should be accompanied by communicable equivalents in positive-law terminology and be explicitly linked to available protection and enforcement routes (administrative–civil–criminal) through the instruments of the KUHP/KUHPerdata and the applicable sectoral IPR statutes.

Revitalizing the fatwa should rest on an argumentative foundation that is both normatively defensible and rationally acceptable. From a Sharia perspective, updates in formulation can be justified through the principle of al-maṣlaḥah, namely an orientation toward securing public benefit and preventing harm (mafsadah) in social life, including in the protection of rights over works, inventions, and business identity (Furqani et al., 2024; Kamma, 2014). In the IPR context, maṣlaḥah manifests in protecting right holders, preventing unauthorized appropriation of benefits, and creating a fair environment for innovation and creativity. Meanwhile, the principle of inclusivity provides the basis for formulating the fatwa in language that is communicable and compatible with national legal governance, so that its ethical message can operate in the public sphere without creating terminological exclusivity or categorical ambiguity. In other words, changes in nomenclature and updates in statutory

references are not merely administrative adjustments, but part of a contextual ijtihād aimed at strengthening the fatwa's social usefulness.

Based on the foundations above, the direction of reform can be mapped systematically into several focal points: (a) updating IPR statutory references to align with the laws currently in force, especially for categories that have undergone legislative renewal; (b) clarifying the scope of IPR subject matter so it reflects the structure of contemporary IPR regimes; and (c) refining the formulation of infringement norms so they can bridge Sharia ethical reasoning with terminology that has recognizable equivalents in positive law. At a conceptual level, enforcement against IPR infringements should be framed so that it is understood as an issue carrying civil and/or criminal consequences, depending on the type of infringement and the regime of rights involved, thereby giving readers a fuller picture of the available protection spectrum.

In the Indonesian context, strengthening the fatwa's practical utility can also be understood as positioning Sharia norms within a pluralistic and constitutional rule-of-law system. Masdar Farid Mas'udi argues that Indonesia's constitution is, in essence, aligned with Islam's fundamental teachings—those that distinguish truth (ḥaqq) from falsehood (bāṭil), and the praiseworthy (maḥmūdah) from the blameworthy (madhmūmah) (Mas'udi, 2013). On this basis, reform can be directed toward greater compatibility with the national legal system without altering the fatwa's ethical substance.

At the theoretical level, revitalizing the IPR fatwa enriches discourse on the relationship between Sharia norms and positive law in contemporary issues that are technically complex yet morally significant. It reinforces the idea that a fatwa can function as an ethical instrument encouraging compliance and respect for rights, while also being formulated to remain coherent with regulatory developments. At the practical level, refining the fatwa's formulation is expected to enhance its function and usefulness , not merely as moral affirmation, but also as a more communicable reference for preventing IPR infringements and strengthening public compliance literacy.

Moreover, although Indonesia is not an Islamic state—and the term "Islamic state" (*Dār al-Islām/Dawlah Islāmiyah*) is not found in the Qur'an or Hadith and is estimated to have emerged only in the twentieth century (Mas'udi, 2013)—there remains institutional space for the implementation of Islamic norms within certain domains of Indonesia's legal system. For instance, Islamic criminal law is applied in the Aceh region, and Islamic civil law (particularly Sharia economic law) may be adjudicated within the Religious Courts. Normatively, the

Religious Courts are authorized to examine, decide, and resolve first-instance cases between Muslims in the field of Sharia economics (Law, 2006). This framework indicates an institutional space for Sharia norms to contribute to rights governance and dispute resolution; accordingly, revitalizing the IPR fatwa may be understood as strengthening religious-normative guidance in a manner that aligns with the evolution of legal protection in Indonesia.

Procedural Model for Revitalizing the MUI Fatwa on IPR Protection

A Procedural Model for Revitalizing the MUI Fatwa on IPR Protection is formulated as a structured roadmap to strengthen the fatwa's relevance and practical utility within Indonesia's evolving intellectual property regime. Revitalization is positioned not as a merely editorial exercise, but as a systematic effort to ensure doctrinal coherence, regulatory alignment, and institutional workability while preserving the fatwa's ethical–Sharia orientation. Within this perspective, the fatwa functions as a religious-normative instrument that can complement positive law by reinforcing compliance, shaping legal consciousness, and providing moral guidance against infringement.

The model is guided by the pragmatic theory of truth, which evaluates normative statements through their functional performance in a specific legal and social context. Accordingly, revitalization is framed as a sequence of stages—from clarifying objectives and auditing the fatwa's dicta, to synchronizing statutory references and confirming the completeness of protected subject matter, and then improving norm operability through communicable legal nomenclature and clearly mapped enforcement pathways. The process culminates in drafting and internal consistency checks, optional limited validation, and an implementation strategy, thereby connecting conceptual reform with feasible application within the national legal system. The procedural revitalization of the MUI Fatwa on IPR Protection can be undertaken through:

1. Objectives: set revitalization goals.
2. Audit: inventory the fatwa's dicta.
3. Synchronization: synchronize statutory references.
4. Functionality testing: test norm operability (pragmatic truth).
5. Reformulation: reconstruct infringement nomenclature.
6. Enforcement mapping: map enforcement pathways (administrative–civil–criminal).
7. Drafting: draft revised dicta and conduct an internal consistency check.
8. Validation: conduct limited stakeholder validation (optional).

9. Implementation: finalize an implementation strategy.

The procedural model is structured into sequential stages: objectives, audit, synchronization, functionality testing, reformulation, enforcement mapping, drafting, validation, and implementation. It begins by setting objectives so the fatwa remains ethically Sharia-grounded while being compatible with Indonesia's positive-law framework, then proceeds to an audit by inventorying the fatwa's dicta to identify provisions to retain, revise, or supplement. The next stage is synchronization, aligning the fatwa's statutory references with the laws currently in force and verifying subject-matter coverage, including Geographical Indications as a distinct regime. Functionality testing is then conducted using the pragmatic theory of truth to assess whether the fatwa's norms can operate effectively in the current legal context, which supports reformulation through reconstructing infringement nomenclature by retaining ethical-Sharia characterizations while adopting communicable equivalents in positive-law terminology. Enforcement mapping subsequently clarifies available protection and remedies across administrative, civil, and criminal routes. The drafting stage produces revised dicta and applies an internal consistency check to ensure coherence, non-ambiguity, and Sharia consistency. Where needed, validation is carried out through limited stakeholder input to assess implementability and reduce interpretive gaps, and the process culminates in implementation through dissemination, legal literacy, and practical support mechanisms so the revitalized fatwa can function as an effective normative complement to Indonesia's IPR protection system.

Operationalizing the pragmatic theory of truth in revitalizing MUI Fatwa No. 1/MUNAS VII/MUI/5/2005 can be strengthened by translating "workability" into explicit assessment parameters that can be applied consistently across the fatwa's normative content. Four parameters are proposed: (i) clarity of the protected subject matter, assessing whether the scope and categories of IPR are clearly defined and consistent with the current legal regime; (ii) clarity of prohibitions, examining whether the prohibited conduct is formulated in specific, non-ambiguous terms; (iii) positive-law terminological equivalents, evaluating whether ethical terms such as *ẓulm/ḥarām* are accompanied by communicable nomenclature with clear counterparts in positive-law concepts (for example, infringement, unlawful acts, or offense categories); and (iv) linkage to available protection pathways within Indonesia's national legal system, determining whether each normative directive can be meaningfully connected to administrative, civil, and criminal mechanisms.

These parameters should then be applied briefly but systematically to each key dictum of the fatwa so that the analysis remains transparent and reproducible. One practical format is a compact matrix that maps each dictum to its subject matter, prohibition formulation, positive-law equivalents, and the relevant enforcement pathway. Alternatively, the analysis may be organized through sub-headings that mirror the successive tests—Test 1: Clarity of Protected Subject Matter, Test 2: Clarity of Prohibitions, Test 3: Positive-Law Terminological Equivalents, and Test 4: Linkage to Protection and Enforcement Pathways (Administrative–Civil–Criminal)—so that the reader can readily identify which portions of the fatwa remain adequate, which require updated legal references, and which require reformulation to ensure the fatwa genuinely "works" within Indonesia's contemporary legal context.

All stages in the revitalization procedure are normatively important because they operationalize core Sharia principles of justice (*ʿadl*)**,** trustworthiness (*amānah*)**,** protection of property rights (*ḥifẓ al-māl*), and prevention of harm (*dafʿ al-ḍarar*) in a contemporary regulatory environment (Antonio, 2001; Auda, 2008; Mufid, 2019). Updating references, completing subject-matter coverage, and reformulating enforceable terminology aim to prevent the unjust appropriation of others' rights and benefits, in line with the Qur'anic prohibition against consuming wealth wrongfully (Qur'an 2:188) and the broader command to uphold justice and fairness (Qur'an 4:58**,** 5:8**,** 16:90). Strengthening operability and enforcement mapping reflects the Sharia commitment to removing harm and securing public benefit (*al-maṣlaḥah*) through contextual ijtihād, while maintaining the ethical condemnation of wrongdoing (*ẓulm*) and reinforcing legal consciousness that violations of rights are not merely technical breaches but moral wrongs. This direction is also consistent with Prophetic guidance that forbids taking another's property without lawful basis or genuine consent (ḥadith: "لا يحل مال امرئ مسلم إلا بطيب نفس"), and condemns deceptive and harmful practices ("من غش فليس منا"), thereby grounding the procedural steps in authoritative dalīl while ensuring the fatwa remains workable within the national legal system.

Conclusion

Amendments and legislative renewals in Indonesia's intellectual property (IPR) regime have rendered MUI Fatwa No. 1/MUNAS VII/MUI/5/2005 on IPR Protection less relevant within the current statutory framework and enforcement mechanisms. This misalignment reduces the fatwa's practical utility as an operational normative reference, particularly where it relies on statutory bases for patents, trademarks, and copyright that have since been replaced.

Consistent with the author's position, the fatwa is projected to be more effective if it employs nomenclature that corresponds to the Penal Code (KUHP) and/or the Civil Code (KUHPerdata) and can be operationalized through the legal instruments, institutions, and enforcement facilities available within Indonesia's national legal system, thereby allowing its ethical prohibitions to connect more coherently with existing administrative, civil, and criminal protection pathways.

Several limitations remain. The analysis is confined to a normative-juridical examination of the fatwa text and the statutory framework, and therefore does not yet measure social effectiveness, levels of compliance among creators and business actors, or institutional practices in IPR protection and enforcement. In addition, the discussion has not elaborated in detail the institutional design required to support "Sharia-based IPR services," including facilitation of IPR registration grounded in the fatwa. Further research is recommended to: (1) conduct empirical studies on the reception and use of the fatwa among creators, business communities, and relevant institutions; (2) develop a more applicable model for synchronizing fatwa norms with positive law, including mapping nomenclature equivalents within civil and criminal regimes; and (3) assess institutional readiness to facilitate registration and assistance services for IPR consistent with Sharia principles, so that normative updates can be followed by realistic and measurable implementation pathways.

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