



Intellectual Property Synergies: Merging Halal Certification with Indonesian Communal Intellectual Property Rights Laws

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Article	Abstract
Keywords: Communal Intellectual Property; Halal Certification; Sharia Compliance Article History Received: Nov 12, 2023; Reviewed: Nov 13, 2023; Accepted: Jan 30, 2024; Published: Feb 02, 2024	<i>Indonesia possesses significant potential to enhance and expand its halal industry, leveraging its unique cultural assets from many of its indigenous communities. One of the ways to ensure the growth of the halal industry is the facilitation of IPR protection through the legal framework. Using a normative method supported by a statutory approach, this research analyzed the challenges and potentials of integrating halal certification into the communal IPR system in Indonesia. The analysis found many restrictions within the existing positive laws which can prevent the integration of halal certification into the communal IPR system. This research proposed a model of communal IPR according to the challenges identified, along with the normative construction needed to establish it. This model mainly focused on providing normative spaces for the integration of sharia compliance while also making sure that the purposes of IPR protection are fulfilled.</i>



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INTRODUCTION

Indonesia's identity as a nation is inextricable from Islam, with the religion's principles having significant influences on the multifaceted society of Indonesia, while also having the biggest Muslim population in the world (Riany, Meredith, & Cuskelly, 2017). The influence of Islam is particularly evident in the marketplace, where the demand for halal-certified products reflects the devout nature of the Indonesian consumer base (Vanany, Soon, Maryani, & Wibawa, 2020). This demand spans across multiple sectors, including food, pharmaceuticals, cosmetics, and lifestyle products (Sudarsono & Nugrohowati, 2020). The concept of halal, denoting what is permissible

and lawful in Islam (Butt, Muflih, Jan, Masood, & Ali, 2021; Susilawati, 2023; Zulfa, Ismail, Hayatullah, & Fitriana, 2023), governs a wide array of consumer choices and preferences. Such a pervasive cultural and religious influence naturally extends to the legal and regulatory frameworks within which businesses and markets operate, necessitating a sensitive approach to legal compliance and market strategy that aligns with these religious tenets. Therefore, analysing this issue can be challenging, as Islamic influences in Indonesia have made it common to think that most products in the market are halal, even without certification.

In parallel, traditional knowledge in Indonesia, characterized by the wisdom and practices developed over centuries by indigenous and local communities, contributes significantly to the country's cultural and economic fabric (Disemadi & Sudirman, 2023; Gultom & Wartini, 2023; Kasih, Santosa, Dharmawan, & Atmaja, 2023; Palar, Sukarsa, & Ramli, 2018). This vast landscape of knowledge includes agricultural practices, herbal medicines, handicrafts, and food preparations, all of which are closely tied to the specific regions and communities that created and nurtured them (Chuah, Manurung, & Naming, 2014). Such knowledge is not only a legacy passed down through generations but also a living practice that evolves and adapts over time (Foo & Krishnapillai, 2019). It provides a distinctive identity to local products, linking them to the narratives, land, and people of Indonesia (Mora, 2016). Recognizing and preserving this traditional knowledge is vital, as it underpins the unique characteristics and superior quality of Indonesian products, distinguishing them from others in the global market.

Intellectual property (IP) is a term used to refer to creative works and ideas generated by the human mind (Adhiyatma & Roisah, 2020; Al-Fatih, 2021; Disemadi, 2022a; R. Saputra, Tioline, Iswantoro, & Sigh, 2023). It encompasses various forms of intellectual expression, associated exclusive rights, and the works produced, providing their owners with legal rights to control the use and distribution of those works (Lu & Disemadi, 2021). IP involves legal protection for the creations of the mind, ensuring that creators and owners can derive economic benefits from the works or innovations they produce (Aulia, Nugraha, & Parlindungan, 2023; Muzakki, Roisah, & Prananda, 2018; Purwaningsih, 2020). The legal recognition of geographical indications (GIs) in Indonesia is a testament to the country's commitment to safeguarding communal intellectual property (Dirkareshza & Simanjuntak, 2023; Kusuma & Roisah, 2022; Simatupang, 2023). GIs serve as a certification that a product has specific qualities, is made according to traditional methods, or enjoys a certain reputation, which is essentially due to its place of origin (Gultom & Wartini, 2023; Kusuma & Roisah, 2022). Another important communal IP in Indonesia is traditional knowledge, which is inseparable from many different cultures in Indonesia (Emilda, Thohir, Yuliaty, & Rachmad, 2020). The interplay between halal certification and traditional knowledge is particularly prominent in the case of GIs, where the intrinsic value of a product is closely linked to its compliance with Islamic law and its geographical origin. The potential for communal IP to encompass halal certification is a strategic avenue that could open new markets and add layers of value to Indonesian

products. In this context, the alignment of halal certification with the communal IP legal framework is not just a collaboration of cultural and religious dimensions; it represents a strategic economic asset in the global marketplace, where consumers increasingly seek authenticity, ethical production, and traceability. Analysis regarding the feasibility of an IP system that allows for the integration of halal certification is also fueled by the acknowledgement of traditional knowledge as a communal IP, making Indonesia the first country in the world that protects communal IP through data integration and inventory, while also supported by a legal framework (Ramadhan & Dewi Siregar, 2022).

The current body of literature underscores the multifaceted nature of halal certification and its growing importance in consumer trust and behaviour. Products with halal certification are increasingly seen as a symbol of quality and reliability, which significantly influences consumer choices, as highlighted by Sufiyan et al. in a study (Sufiyan, Haleem, Khan, & Khan, 2019). Soon et al. have pointed out the necessity of maintaining halal integrity throughout the food supply chain (Soon, Chandia, & Regenstein, 2017), while Zailani et al. have discussed the opportunities and challenges within halal logistics, emphasizing the growing demand as a key driver for the industry (Zailani, Iranmanesh, Aziz, & Kanapathy, 2017). Ab Talib et al. brought forth the institutional theory in the context of halal certification, highlighting the need for a global understanding of halal logistics (Ab Talib, Md. Sawari, Abdul Hamid, & Ai Chin, 2016). The study also added that the implementation of halal certification is influenced by market competition, demand from Muslim consumers, and government regulations, underlining the complexity of halal certification as it interfaces with broader market and regulatory frameworks. Furthermore, research conducted by Prabowo et al. identified specific barriers to halal certification in Indonesia, particularly within the food service industry, suggesting the need for targeted policy interventions (Prabowo, Abd Rahman, Ab Rahman, & Samah, 2015). However, none of the research mentioned identified IPR as an important part of halal products, despite other research highlighting the benefits of integrating IPR to strengthen protection and foster growth in the halal industry (Mohamed, 2017).

The literature on communal intellectual property is primarily linked with natural resources that an indigenous community has control over, as explained by a bibliometric analysis conducted by Mishra et al. in their research (Mishra et al., 2021). A study conducted by Wibisono et al. noted that one of the most common products of traditional knowledge, traditional food, has a wealth of diversity which needs to be put into an advanced database built with machine learning, as a way of protecting ancestral culture (Wibisono et al., 2020). However, the limitation of that study is that it does not explain the legal implications of such a database, along with those of its further development as the model continues to be developed.

METHODS

This research utilized the normative legal research method, by analyzing the existing positive laws (Disemadi, 2022b; Tan, 2021). To propose an IPR system that has halal certification integration, this research built its normative analysis on the support of secondary data, in the form of primary law sources, namely Law No. 33 of 2014 on Halal Product Assurance, Government Regulation No. 39 of 2021 on Maintenance of Halal Product Assurance, Law No. 20 of 2016 on Trademarks and Geographical Indications, and Government Regulation No. 56 of 2022 on Communal Intellectual Property. Literature analysis was also used to analyze the development of the halal industry and its issues, relative to the Indonesian legal framework for halal certification and communal IPR. This legal research constitutes a qualitative inquiry that involves the interpretation of legal materials (Al-Fatih & Siboy, 2021).

RESULTS AND DISCUSSION

Halal Certification in Islamic and National Laws

Halal is a concept introduced by the religion of Islam, which has its own set of principles and even laws, under the concept of *Sharia* Law (Atiah & Fatoni, 2019; Hidayatullah, 2020). In Islamic law, the consumption of alcohol is forbidden, as indicated in the Quran surah 5:90 (Afifi, Mohsin, & Farouk, 2021). However, certain halal standards permit alcohol if its concentration in the final product is less than 0.1%, provided the alcohol is not derived from *khamr* (fermented or distilled beverage) (Abdallah, Rahem, & Pasqualone, 2021). Regarding permissible animals, meats like those of goats, camels, buffaloes, sheep, and cattle are allowed, as are certain birds like chickens, ducks, and turkeys. However, pork, boars, and carnivorous animals, including birds of prey, are prohibited (*haram*). Consequently, not only food, but goods that use ingredients or materials from some forbidden animals are also haram. This principle does not use the same rule as the prohibited animals for consumption as a part of Islamic dietary principles but rather uses the broader concept of *najis* (impurity), which prohibits people from having any physical interaction with animals such as dogs and pigs and all kinds of materials made from these animals (Alias & Zabidi, 2021). The possible contamination of haram materials into a product that threatens the integrity of a halal product is what is often referred to as halal hazard, which can also go back to being against Islamic dietary principles in the food industry (Othman, Shaarani, & Bahron, 2016).

It is also important to note that *Sharia* compliance extends further than just food and the source of goods. The Islamic *Shariah* prescribes specific conditions for ritual slaughtering (*dhabihah* or *zabiha*), necessitating that the meat comes from permitted animal species and is slaughtered by a Muslim, invoking Allah's name during the act. The method ensures rapid and complete blood draining, facilitating the quickest possible death of the animal to cause the minimum amount of suffering (Bouzenita,

Kirsten, & P. Wood, 2019). In addition to these requirements, *Shariah* law also emphasizes the ethical treatment of animals throughout their life, advocating for humane livestock farming practices (Sarwar, Ashfaq, & Raza, 2023). This moral and holistic approach ensures that animals are not only slaughtered humanely but also raised in environments that do not cause them unnecessary suffering. Moreover, *shariah* principles extend to the avoidance of wastefulness and the promotion of sustainability in food production, which is based on the concept of *Maqasid Al-Sharia* (Amin et al., 2023; Disemadi, Al-Fatih, & Yusro, 2020; Rofiq & Hasbi, 2022). The implementation of these principles is a reflection of the broader Islamic values of compassion, responsibility, and respect for all of Allah's creations, integrating ethical considerations into every stage of the food production and consumption process (Rofiq & Hasbi, 2022).

Indonesia as the country with the biggest Muslim population in the world, facilitates the growth of halal industries, by providing a legal framework for halal products. Through Law No. 33 of 2014 on Halal Product Assurance (Halal Product Assurance Law), the Indonesian government hopes to support the growth of halal industries which is not growing fast despite the massive number of the Muslim population (Mirsa, 2020). This law establishes the obligation of halal certification, setting up a Halal Product Assurance Organizing Body and Halal Inspection Agency. It also lays out the procedures for obtaining a halal certificate and supervises halal product assurance, including criminal provisions for non-compliance. Other regulations include Government Regulation No. 31 of 2019 on Halal Product Guarantees, which was later revoked by Government Regulation No. 39 of 2021 on Maintenance of Halal Product Assurance. This government regulation provides detailed explanations on the implementation of halal product assurance, as governed generally by the Halal Product Assurance Law (Aziz, Ghofur, & Hidayati, 2021; Yusuf, Rangkuty, Krisna, & Raditio, 2022). These regulations outline the cost of halal certification, and obligation stages based on product type, and emphasize institutional cooperation in the implementation process.

Normative Potentials and Challenges in Integrating Halal Certification Process into Communal IPR

The existence of halal industries in Indonesia presents a huge potential for the Indonesian economy, especially considering that Indonesia has the largest Muslim population (Hamid, Said, & Meiria, 2019). In the constantly evolving global market, the integration of halal certification into communal intellectual property rights (IPR) is influenced by many factors, namely religious compliance, cultural heritage, and legal frameworks, all of which are important for Indonesian society. The rich landscape of

traditional knowledge and practices intersects with the Islamic principles governing halal products. Islamic influences are so synonymous with Indonesian society that most products are not halal-certified, as people normally assume that they are indeed halal unless notified otherwise. This is the complete opposite of what the *Sharia* compliance for halal certification should be, as successfully delivered by Malaysia which also has a massive Muslim population (Sa'adan & Pauzi, 2017).

However, the complex nature of this process of integration also presents a significant challenge for the Indonesian legal system, as it needs to strike a balance between the authenticity and marketability of products on a global scale, while also ensuring adherence to religious and cultural norms. Furthermore, there are also other challenges, such as supplier cooperation and formula ownership issues in third-party manufacturing to the complexities of adapting existing quality infrastructures to meet halal standards. These issues also need to be integrated into the relevant IPR regimes that are governing many IPR issues in Indonesia. Understanding these challenges and exploring potential solutions is crucial for successfully merging the realms of halal certification and communal IPR, thereby creating a harmonious synergy that respects both religious injunctions and communal intellectual legacies. It is also important to analyse the feasibility of integrating the process of halal certification with the existing IPR regimes, as normative disharmonies will only cause legal problems and further complicate the already complex nature of this issue.

Indonesia mainly uses Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark and GI Law) to govern geographical indications (GIs), which is the first form of communal intellectual property to be recognized by the Indonesian legal system (Kusuma & Roisah, 2022; R. Saputra, 2020; Taufitra & Kurniawan, 2023). One of the reasons for the development of the Trademark and GI Law is indeed to accommodate communal IPR which is an inadequate aspect of the previous law, Law No. 15 of 2001 on Trademark (Simanjuntak, 2021). Overall, the legal framework for communal IPR is built not only to support equal economic development but also to strengthen the social purpose of communal IPR, which is the empowerment of indigenous communities (Mashdurohatun, Ul Haq, & Zulhuda, 2018). Through the provision of Article 53 paragraph (3) letter b, it can also be identified that Trademark and GI Law is also made to boost the local government's role in protecting intellectual properties belonging to its communities, which has been more than lacking, as identified in a study (M. B. B. Saputra, Heniyatun, Praja, & Hakim, 2021).

Furthermore, the Indonesian government also expanded the capability of its IPR legal framework, through Government Regulation No. 56 of 2022 on Communal Intellectual Property (Communal IP Government Regulation). This regulation was passed as Indonesia pushed to enhance the protection of its communal IPS in the face

of many interactions with the global network (Nuraeni & Putri, 2017). Interestingly, the Communal IP Government Regulation includes “potential geographical indication” but provides no explanation of its difference compared to “geographical indication” as governed by the Trademark and GI Law. Not only the Trademark and GI Law, this government regulation is also normatively connected with Law No. 28 of 2014 on Copyrights (Gorda, Artami, Antari, Sudharma, & Moisa, 2022), by making traditional expression one of the many forms of copyrights, but with communal ownership (Kurniawan, 2023).

From the Trademark and GI Law, there are important points that need to be addressed when analysing the legal feasibility of such complex integration between the *Sharia* compliance and national regimes of IPR.

Table 1: Normative Issues for Halal Certification Integration in Trademark and GI Law

Article	Description
Article 56 paragraph (1) letter c	Registration as a geographical indication is not allowed for specific plant varieties or species unless additional words indicate a different geographical factor. Halal certification, which encompasses broader principles of ethical sourcing and production, might not necessarily include geographical factors to make a case for the uniqueness of a product. In other words, simply adding the halal tag might not be enough for a geographical indication registration. One proposed issue to tackle this is also rather complicated, as explained by a study examining canine biomarkers (biomarkers of dogs) in examining halal integrity (Rahman, 2015). This issue is also not covered by the Halal Product Assurance Law.
Article 53 paragraph (4) jo. Article 19 paragraph (2)	Anyone can request the withdrawal of a geographical indication from registration. This is particularly relevant if it affects existing trademarks or businesses in the region, where the legitimacy of the trademark usage must be verified. In the context of halal certification, the withdrawal of geographical indications could impact trademarks or businesses and create uncertainty about halal regulations. There is a normative void in explaining what happens to halal products whose geographical indication is withdrawn.

Article 56 paragraph (1) letter a	A geographical indication cannot be registered if it goes against morality, ethics religious values, and public interests. The aspect of public interest is an especially relevant normative restriction, as the legal framework for halal certification (Halal Product Assurance Law and its implementing regulation) does not govern anything regarding public interests, which conceptually ignores the importance of <i>Maqasid Al-Sharia</i> . This is also a missed opportunity as halal industries have the potential to be a solution to climate challenges (Attwood, Jameel, Fuseini, AlKhalawi, & Hajat, 2023).
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Source: Primary Law

Limitations also exist within the Communal IP Government Regulation:

Table 2: Normative Issues for Halal Certification Integration in Communal IP Government Regulation

Type of Regulatory Element	Article	Explanation
Administrative Requirements	Articles 16, 17, 18, 19, 20	The provision overall consists of a good and fairly detailed framework of an administrative process for traditional knowledge registration. However, the requirement for permission from the local government may create bureaucratic delays as the local government does not have any authority to issue halal certificates. A further decentralized system is needed from the halal certification framework to support and ensure a seamless registration of communal IP with an integrated halal certification.
Verification of Administrative Requirements	Article 22 paragraph (1)	This provision restricts the process of verification only to government bodies, which makes halal certification a significant challenge. Halal certification in Indonesia is mainly issued by the <i>Indonesian Council of Ulama</i> (MUI) which is not a government body, but

		rather a key partner in ensuring halal integrity in many products.
Prohibition and sanctions of Communal IP infringements	Not governed.	While geographical indication as a form of communal IP can be protected using the norms regarding the prohibition and sanctions of communal IP infringements within the Trademark and GI Law, other forms of communal IP cannot be protected in the same way, as the Communal IP Government Regulation does not support such protection.

Source: Primary Law

The limitation regarding the lack of prohibition and sanctions of communal IP infringements within the Communal IP Government Regulation is particularly relevant, considering its normative connection with the Trademark and GI Law, which recognizes the TRIPs Agreement. Conceptually, this is against the provision of Article 22 (2) of the TRIPs Agreement, which requires member countries to offer legal ways for interested parties to prevent certain actions regarding geographical indications. These actions include (a) using any method in labelling or presenting a product that falsely suggests it originates from a different geographical area, misleading the public about the true geographical origin of the product; (b) any use that amounts to unfair competition as defined in Article 10bis of the Paris Convention (1967). This essentially mandates protection against misrepresentation of a product's geographical origin and unfair competitive practices related to geographical indications. This normative loophole shows that the protection of communal IP is not holistic, despite being more developed when it comes to data integration and information systems.

The lack of prohibition and sanctions for communal IP infringements in the Communal IP Government Regulation is particularly relevant to the potential integration of halal certification. This gap in regulation could lead to challenges in ensuring the authenticity and proper labelling of halal products, potentially misleading consumers regarding their true origin and adherence to halal standards, contrary to the principles outlined in the TRIPs Agreement. When it comes to administrative requirements and the issuance of relevant certificates, the TRIPs Agreement is less stringent by only mentioning "competent authority" in Article 4 D (2) and (3). However, as evident in the analysis, the regulatory framework in Indonesia provides a narrower provision, which makes it harder to associate halal certification, even with a completely separate regulation.

Proposed Communal IPR System with Integrated Halal Certification

To create a communal IPR system with an integrated halal certification process, it is important to underline the important aspects that could shift the balance between the purposes of an IPR system and the purposes of *sharia* compliance. Concepts such as *Maqasid Al-Sharia* (Marwa, Al-Fatih, Hussain, & Haris, 2023)(Al-Fatih, Aditya, Fuadi, & Nur, 2023) are ever-so-relevant in this case, as it ensures that a process for *sharia* compliance does not defeat the general public interests and cause harm, particularly to indigenous communities (Purwanto, Supriadi, Sularno, & Rokhimah, 2022). It is also important to note that *Sharia* compliance may end up rooting out some indigenous practices and claims that are not up to the standards of *Sharia* compliance. While this can be perceived as a potential challenge to longstanding traditions, religious influence can offer the community of interest to enhance many aspects of its heritage, as opposed to looking at this as a potential threat of cultural erosion. The integration of Halal standards stands as a pivotal aspect in this endeavour, seamlessly incorporating certification criteria to ensure that communal products adhere to both religious and cultural authenticity. Halal itself encompasses the communal economy, making conceptual integration not just feasible, but also necessary in enhancing ethical practices (Tayob, 2021). Furthermore, prioritizing the protection of traditional knowledge and practices, aligning them with Halal standards, serves to amplify the value and uniqueness of communal products, safeguarding them from dilution. To uphold the integrity of products originating from specific regions with unique cultural or production practices, there must be a harmonious integration between traditional knowledge and Halal certification. Stakeholder engagement is crucial in this process, necessitating the active involvement of community members, religious scholars, and legal experts to comprehensively address communal intellectual property rights (IPR) and Halal certification. Clear documentation processes within the communal IPR framework are paramount, fostering transparency and traceability in the Halal certification. Additionally, the system's adaptability to evolving market demands and global consumer preferences is imperative, ensuring its relevance and efficacy in the dynamic market landscape.

Normative Construction:

Table 3: Proposed Normative Construction for Communal IPR System with Integrated Halal Certification

Component	Description
Halal Standard Integration	Incorporation of halal certification criteria in the IPR system, aligning with religious principles and practices; this needs to start at the legal framework for halal products, namely the

	Halal Product Assurance Law and its implementing regulation, by first integrating the concept of <i>Maqasid Al-Sharia</i> to prevent further normative disharmony with the legal framework of communal IPR. This goes back to the fact that the law itself cannot be separated from public participation; therefore it has to be in line with the public order (Sofyan, 2015).
Communal Knowledge Protection	Safeguarding traditional knowledge and practices, ensuring they are recognized and valued in halal certification; there is also a need to revise the Communal IP Government Regulation, particularly the provision limiting the verification process to government bodies unless the government can create its own body to supervise halal certification in Indonesia. Halal certification itself is only issued by MUI as a nongovernment body (Chairunnisyah, 2018). There needs to be a normative space that allows this body and its auditors to be a part of the verification, as long as the government does not issue halal certifications themselves.
Geographical Indication Synergy	Linking GIs with halal standards to highlight the unique origin and practices of communal products; creating a provision explicitly addressing halal certification may be helpful, but it is much better to delegate this issue using the proposed enhancement of the provision regarding verification of communal IPR in the Communal IP Government Regulation.
Stakeholder Engagement	Involving community, religious, and legal entities in the development and implementation of the integrated system; the proposed system should be first introduced to communities of interest during the <i>Prolegnas</i> process.
Documentation and Transparency	Establishing clear and accessible documentation processes for the certification and protection of communal IPR.
Market Adaptation	Ensuring the system is flexible to respond to global market trends and consumer preferences.

Source: Primary Law

This normative construction is built upon the potentials and challenges identified previously, with key aspects of changes needed to be made throughout multiple primary legal sources analysed. These changes, while not guaranteeing the growth of the halal industry in Indonesia, can be key in shifting the focus from a largely generalized approach in economic legal politics in Indonesia to a more specific and goals-driven focus of legal politics, by leveraging the potential that the Indonesian society has with its big Muslim population and diverse cultural backgrounds. The changes made should not disrupt the harmony between Islamic and cultural influences, which have a massive influence on Indonesian society.

CONCLUSION

The analysis underlines significant normative restrictions that prevent the integration of halal certification into the communal IPR system with its existing legal framework. These issues are addressed in the proposed model of a communal IPR system with integrated halal certification, by focusing on striking the balance between *sharia* compliance and the purposes of IPR protection. The proposed model is also equipped with normative construction to tackle the previously mentioned normative restrictions, while also creating spaces for *sharia* compliance by treading carefully under the guiding principles of *Maqasid Al-Sharia*. Limitation of this research is the lack of qualitative data to test this model under any metric of qualitative analysis, and the rather technical issues of halal integrity as mentioned by the literature cited. Further research is needed in addressing these issues to improve the model.

ACKNOWLEDGMENTS

We extend our heartfelt acknowledgements to all those who have contributed to this work, particularly the Faculty of Law and the Research and Community Service Institute (LPPM) at Universitas Internasional Batam for their valuable support, both materially and morally.

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