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Legal Protection of Small and Medium Industry Products Through Trademark from an Islamic Law Perspective

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Abstract

Brand regulations in Law Number 20 of 2016 concerning Marks and Geographical Indications emphasize that a brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in goods and/or services trading activities. Brands are important in the business world of trading goods and services. Brand as a means to introduce a product to consumers. In reality, many products can deceive and confuse consumers in choosing products. Islam views brands as assets whose ownership must be protected. This article will analyze the legal protection of small and medium industrial products through trademark registration from the perspective of Islamic law. This research is a normative legal research study by conducting library research and using a statutory approach to the primary, secondary and tertiary legal materials used. The research results found that trademark rights in Islamic law are assets whose ownership rights must be protected from things that are detrimental to the brand owner. In Islamic law, plagiarizing, counterfeiting and duplicating a product brand, including small and medium industrial brands, without the owner's permission are prohibited acts. So, the protection of trademark rights in Islamic law is based on the principle of mu'amalah, namely eliminating injustice, avoiding danger, and realizing the public benefit.

Keywords: *Small and Medium Industry, Brands, Islamic Law, Protection*

INTRODUCTION

Small and medium industrial product protection is an effort to protect products produced by small and medium enterprises from various threats and risks that can affect the quality, safety and integrity of the product.¹ This protection aims to support the growth and sustainability of small and medium industries and to maintain consumer confidence in the products produced by this sector. Small and medium industrial products involve innovation or unique technology, consider applying for a patent or protecting other intellectual property rights.² This will provide legal protection against acts of intellectual theft by other parties.

Small and medium industrial products can protect other intellectual property rights. This will provide legal protection against acts of intellectual theft by other parties. With any trademark associated with your product, be sure to protect it by registering it with an authorized trademark registration office.³ Protection of small and medium industrial products is an important aspect in ensuring business success and building a strong reputation in the market.⁴ Protection of small and medium industrial products through branding is an important strategy to differentiate small and medium industrial products from competitors, build reputation, and protect brand value.

¹ Anis Mashdurohatun and M. Ali Mansyur, 'Product Capabilities Dynamic on Industrial Design Carved Wood in Small and Medium Enterprises (SMES) Jepara Furniture in Promoting the Protection of Intellectual Property Rights', *International Journal of Applied Engineering Research*, 12.19 (2017).

² Guasman Tatawu and others, 'Legal Protection of Intellectual Property Rights for Micro, Small and Medium Enterprises (MSMEs) Products in Kendari City', *Journal of Politics and Law*, 15.2 (2022) <<https://doi.org/10.5539/jpl.v15n2p13>>.

³ Edison Hatoguan Manurung and Ina Helianny, 'Forms Of Legal Protection Against Indonesian Msmes In The Field Of Intellectual Property Rights', *International Journal of Economy, Education and Entrepreneurship*, 1.1 (2021).

⁴ Tri Handayani and Rini Arvika Sari, 'Ekonomi Kreatif: Pemetaan Kendala Dan Analisis Strategi Kebijakan Pemerintah Studi Kasus Pada Kota Bengkalis', *Jurnal EMT KITA*, 4.1 (2020) <<https://doi.org/10.35870/emt.v4i1.126>>.

Registering a trademark with an authorized trademark registration office is the first and key step in protecting your brand.⁵ This gives you the exclusive right to use the mark in your business and protects the mark from unauthorized use by others. Brand protection through trademarks is an important step in ensuring small and medium industrial products remain superior in a competitive market.⁶ A strong brand can be a valuable asset and help small and medium industries build a good reputation in the eyes of consumers.

A trademark that has been registered becomes authentic evidence for its owner, as a basis for rejecting the same mark in its entirety or in substance which is requested for registration by another party for similar goods or services, and as a basis for preventing other parties from using the same mark in its entirety or in substance.⁷ Therefore, trademark registration is an important thing that must be done in businesses, including small and medium industrial players and startups. This registration provides legal protection for small and medium industry players so that their trademarks are not used by other parties.⁸ Through trademark registration, small and medium industry players can gain strategic bargaining positions both nationally and internationally.⁹ Apart from that, there are opportunities for business development through the franchise principle because it has legality.

Trademark infringement occurs when a person or other entity uses a trademark owned by another person or business without permission or approval.¹⁰ This violation can damage the rights of the brand owner, create confusion among consumers, and harm the business that owns the brand. Therefore, this article will examine the protection of small and medium industrial products through brands from the perspective of Islamic law.

⁵ Charles A. McMellon, 'Defending the Brand: Aggressive Strategies for Protecting Your Brand in the Online Arena', *Journal of Product & Brand Management*, 2005 <<https://doi.org/10.1108/10610420510583798>>.

⁶ McMellon.

⁷ Mark Methenitis, 'Intellectual Property 2.0: Revisiting The Copyright And Trademark System For A Digital Reality', *Cybaris An Intellectual Property Law Review*, 3 (2012).

⁸ Fajar Sugianto, Ellora Sukardi, and Tomy Michael, 'COMPARISON OF LEGAL CONSUMER PROTECTION SYSTEMS IN E-COMMERCE TRANSACTIONS TO SUPPORT DIGITAL ECONOMIC GROWTH IN INDONESIA', *Dalat University Journal of Science*, 2021 <[https://doi.org/10.37569/dalatuniversity.12.1.814\(2022\)](https://doi.org/10.37569/dalatuniversity.12.1.814(2022))>.

⁹ Siti Rofikhok and Abraham Ferry Rosando, 'PERLINDUNGAN HUKUM PEMILIK MEREK TERDAFTAR TERHADAP PRAKTEK USAHA CURANG', *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance*, 2.2 (2022) <<https://doi.org/10.53363/bureau.v2i2.42>>.

¹⁰ Ade Hidayat, 'Konsep Haki Dalam Hukum Islam Dan Implementasinya Bagi Perlindungan Hak Merek Di Indonesia', *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, 8.1 (2020), 163-84 <<https://doi.org/10.15575/adliya.v8i1.8626>>.

RESEARCH METHOD

This research uses a normative juridical approach, namely research that refers to legal norms contained in various legal documents such as statutory regulations and judge's decisions. This research uses a statutory approach to find out all legal regulations as basic reference material for the research to be studied. The data sources used are legal materials in the form of statutory regulations, Islamic Law Studies and journals. Data analysis was carried out by collecting legal materials through reviewing library materials which included primary legal materials, secondary legal materials and tertiary legal materials. To analyze the legal materials that have been collected, we use qualitative data analysis methods which are presented descriptively, namely by describing related policies.

TRADEMARK SCOPE AND TRADEMARK REGISTRATION

Trademarks are one of the areas of Intellectual Property Rights which are regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications. Article 1 number 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications. The law defines a brand, namely as a sign in the form of an image, logo, name, word, letter, number, color arrangement in 2-dimensional and/or 3-dimensional form, sound, hologram or a combination of 2 or more of these elements as a distinctive feature. Trademark or services products that have been produced by individuals or legal entities in goods and/or services trading activities. A brand is a differentiator that can be seen from its origin, quality, and guaranteed originality of the product or service.

Then, in Article 1 number 5 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it is stated that “The right to a trademark is an exclusive right granted by the state to the owner of a registered trademark for a certain period of time by using the trademark himself or giving permission to the party others to use it”. Basically, brand rights are exclusive rights that give the brand rights holder the authority to prohibit other people from using, reproducing and selling without permission from the brand rights holder¹¹.

¹¹ I Fahrizal, *Perspektif Prinsip-Prinsip Syariah Terhadap Peraturan-Peraturan Terkait Hak Merek*, Repository.Uinjkt.Ac.Id, 2018

Brands consist of two types, namely trademarks and service marks. A trademark is an identification mark used for a product, while a service mark is an identification mark for a service product. Trade or service marks will be protected if they have been registered with the Directorate General of Intellectual Property, namely by submitting an application through the formality examination process, announcement process, and substantive examination process as well as obtaining the Minister's approval for a certificate to be issued.¹²

Trademark registration is carried out using a first to file system, that is, the party who first submits a registration application is given priority in obtaining trademark registration and is recognized as the legal trademark owner.¹³ This first to file system can be seen from the provisions of Article 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications which states “The right to a Trademark is an exclusive right granted by the state to the owner of a Mark registered in the General Register of Trademarks for a certain period of time with use the mark yourself or give permission to other parties to use it.” With this system, brand protection is given to the party who first registers it.

The application for trademark registration is submitted by the applicant or his/her Proxy to the Minister electronically or non-electronically in Indonesian.¹⁴ The application must include: date, month and year of application; applicant's full name, nationality and address; full name and address of the proxy if the application is submitted via proxy; color if the mark for which registration is requested uses color elements; the name of the country and the date of the first trademark application in the case of an application submitted with Priority Rights; and class of goods and/or class of services as well as description of types of goods and/or types of services. The application is signed by the applicant or his attorney.¹⁵ The application is accompanied by a brand label and proof of payment of fees. Trademark registration application fees are determined per class of goods and/or services. If the Mark is in 3-dimensional form, the Brand label attached is

<http://repository.uinjkt.ac.id/dspace/handle/123456789/44234%0Ahttp://repository.uinjkt.ac.id/dspace/bitstream/123456789/44234/1/IMAM_FAHRIZAL-FSH.pdf>.

¹² Hidayat.

¹³ Manurung and Helianny.

¹⁴ Sujana Donandi S. and Pandu Adi Cakranegara, ‘The Implementation of Well-Known Trademarks Doctrine in Indonesian Commercial and Supreme Court’, *Fiat Justisia: Jurnal Ilmu Hukum*, 15.2 (2021) <<https://doi.org/10.25041/fiatjustisia.v15no2.2016>>.

¹⁵ Donandi S. and Cakranegara.

in the form of the characteristics of the Mark. However, if the brand is in the form of sound, the brand label attached is in the form of a notation and sound recording. The application must be accompanied by a statement of ownership of the trademark for which registration is requested.¹⁶

Based on the first to file system, brand owners, including well-known brands, must register their brand with the Directorate General of Intellectual Property to obtain exclusive rights to their brand and legal protection. Exclusive rights cannot be obtained by the brand owner just by showing evidence of being the first user of the mark in Indonesia. So, trademark registration will provide legal certainty and legal protection for trademark rights.

Trademark Infringement

Trademark infringement occurs when another person or business uses a trademark that is identical or similar to a trademark that has been registered by the trademark owner. This causes consumer confusion and damages the reputation of the original brand. Brand infringement can be seen in many forms:

- a. Trademark Piracy: when someone produces or sells a counterfeit product that uses a valid and recognized trademark. These counterfeit products are often of low quality and can harm consumers.
- b. Domain Infringement: Brand infringement can occur in internet domains when someone registers a domain that uses a particular trademark without permission. This can damage a brand's reputation and lead to consumer confusion.
- c. Trademark Infringement in Advertising: use of a trademark in misleading or deceptive advertising may also be considered trademark infringement. This includes using a competitor's brand to damage their reputation.
- d. Product Imitation: if another person or business tries to imitate a product or service with a brand that is similar or identical to a well-known brand, this can also be considered brand infringement.
- e. Use of a Trademark in a Business Name: using an existing trademark in a business name without permission may constitute trademark infringement.

¹⁶ Iffan Alif Khoironi, 'Implementasi Pendaftaran Merek Sebagai Bentuk Perlindungan Hukum Pada Home Industry Eggroll', *UNNES Law Journal*, 2.2 (2013).

- f. Use of the Brand in Social Media: use of the brand in social media without permission or in a damaging context may constitute brand infringement.

The Concept of Brands as Intellectual Property in Islamic Law

Intellectual property rights that receive Islamic Law protection as intended are intellectual property rights that do not conflict with Islamic Law.¹⁷ Intellectual property rights can be used as the object of contracts, both mu'awadhah (exchange, commercial) contracts and tabarru'at (non-commercial) contracts and can be donated and inherited.¹⁸

The concept of intellectual property rights in Islamic Law includes protection of the creative and intellectual results of individuals or companies. This includes copyright (rights to works of art and literature), patent rights (rights to technological inventions), and brand rights (rights to trademarks).¹⁹ In Islamic Law, property rights are recognized as a basic principle that protects the ownership rights of individuals or companies over their assets, including brands. The concept of property rights is a basic principle in Islamic Law. These property rights include the right to own, control and use assets legally.²⁰ Therefore, brands owned by individuals or companies are considered assets that must be respected and protected.²¹ Islamic law recognizes property rights as legitimate and respected rights. Property rights include the right to own, control and use assets legally.²²

Recognition of ownership is one of the prerequisites for the validity of a property transaction. According to the Qur'an, the ultimate owner of everything in this world is Allah. However, Allah has made humans His caliphs on earth, and Allah has given them

¹⁷ Khoirul Hidayah, 'Kajian Hukum Islam Terhadap Hak Merek', *Jurnal Syariah Dan Hukum*, 6.1 (2014), 1-9.

¹⁸ Hidayat.

¹⁹ I Himayah, 'Tinjauan Hukum Islam Terhadap Hak Merek: Studi Kasus Pelanggaran Atas Hak Merek Jenang Mubarak Di PT. Mubarakfood Cipta Delicia Kudus', 2007 <http://eprints.walisongo.ac.id/11854/%0Ahttp://eprints.walisongo.ac.id/11854/1/2102100_skrpsi_lengkap.PDF>.

²⁰ Nurul Huda, Dan Rohmah, and Miftahul Jannah, 'Perlindungan Hak Merek Dagang Menurut Hukum Islam', *Suhuf*, 24.1 (2012), 1-13 <<http://publikasiilmiah.ums.ac.id/handle/11617/2909>>.

²¹ Lilis Kayawati and Esa Kurnia, 'Membangun Citra Merek Sesuai Konsep Syariah', *Economic and Business Management International Journal (EABMIJ)*, 3.3 (2021), 46.

²² Mufliha Wijayati, 'Hak Kekayaan Intelektual Dalam Perspektif Hukum Islam', *El-Qist: Journal of Islamic Economics and Business (JIEB)*, 4.2 (2014), 822-36 <<https://doi.org/10.15642/elqist.2014.4.2.822-836>>.

“power” to control the resources of this universe.²³ At the same time humans are referred to as “owners” of this world. Islam recognizes ownership of a person's property that is in his hands and under his control.²⁴ This recognition of ownership rights applies to both private and public property. In these two cases we should continue to remember that humans have a mandate of power to hold ownership.

Islam recognizes private property rights and makes them the foundation of economic development. And this will be realized if private property rights are implemented in accordance with God's provisions.²⁵ For example, acquiring property in a halal way in accordance with the Sharia and developing it in a halal way in accordance with the Sharia. Islam forbids owners of property from using it to cause damage to the earth and endanger humans, because Islamic Law teaches the principle of not endangering oneself and not endangering others.²⁶

Islamic law prohibits counterfeiting or imitation of brands, because counterfeiting and imitation are considered violations of property rights.²⁷ Legitimate brands have economic and social value, and respecting brand property rights is part of the principles of justice in Islamic Law. Property rights to brands are recognized in Islamic Law, brand owners are expected to use their brands ethically and in accordance with Islamic principles.²⁸ This includes conducting business with integrity, not misleading consumers, or engaging in unethical practices. Any form of violation of intellectual property rights, including without limitation using, disclosing, making, using, selling, importing, exporting, circulating, handing over, providing, announcing, reproducing, plagiarizing, counterfeiting, pirating other people's intellectual property rights without rights constitutes injustice and the law is haram.²⁹

²³ Is Susanto, 'Analisis Hukum Islam Dan Hukum Positif Terhadap Money Politics Pada Pemilu', *Istinbath : Jurnal Hukum*, 15.2 (2018), 157 <<https://doi.org/10.32332/istinbath.v15i2.1218>>.

²⁴ Wijayati.

²⁵ Yusniar, 'Tinjauan Kepemilikan Merek Dalam Perspektif Islam (AN EXAMINATION OF BRAND OWNERSHIP IN ISLAMIC PERSPECTIVE)', *Jurnal MEDIASAS: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyyah*, 5.1 (2022), 62–72.

²⁶ Zainil Ghulam, 'Relasi Fiqh Muamalat Dengan Ekonomi Islam', *Iqtishoduna*, 8.2 (2016).

²⁷ Ramadhan Razali, 'PERILAKU KONSUMEN: HEDONISME DALAM PERSPEKTIF ISLAM', *Jurnal Ekonomi Syariah, Akuntansi Dan Perbankan (Jeskape)*, 4.1 (2020) <<https://doi.org/10.52490/Jeskape.V4i1.774>>.

²⁸ Sutisna Sutisna and Mukhtar Mukhtar, 'Pandangan Hukum Islam Terhadap Hak Cipta', *Mizan: Journal of Islamic Law*, 5.1 (2021) <<https://doi.org/10.32507/mizan.v5i1.927>>.

²⁹ Yoghi Arief Susanto, 'PERLINDUNGAN HUKUM HAK ATAS MEREK DALAM PERSPEKTIF MASLAHAH AL MURSALAH Yoghi', *AKTUALITA, Vol. 3 No. 1 2020 Hal. 416 - 427 PERLINDUNGAN*, 3.1 (2020), 7–12.

Islam's recognition and attention to matters of property, freedom of ownership and personal property rights shows that Islam provides protection against problems related to property and ownership.³⁰ In the matter of protecting a trademark, the brand is an asset of material value and produces profits whose ownership is recognized in Islamic law.³¹ The existence of a trademark as a form of trade that is permitted in Islamic law means that protection must be given to the ownership of the trademark rights.³² This protection is based on assets as something that must receive protection, both in Islamic law and state law.

Protection of Small and Medium Industry Products Through Brands in Islamic Law

Islamic law encourages fair and honest trade.³³ Muamalah principles in Islamic Law which include business ethics, justice, and protection of property rights. These principles underscore the importance of recognizing and protecting property rights in Islamic Law.³⁴ In the context of trademarks, this means there is no fraud, counterfeiting, or fraudulent conduct in trademarks and services. Business actors must strive to protect their brands and conduct trade with integrity and honesty. Mu'amalah is a part of Islamic Law which regulates the relationship between two or more parties in a trade transaction.³⁵ Mu'amalah principles are divided into two, namely general principles and specific principles.

³⁰ Luthfi Hasan and others, 'Tinjauan Terhadap Hukum Islam Terhadap Penggunaan Software Tak Berlisensi Pada Komputer Persewaan Jasa Internet Di IN-TECH Surakarta', *Jurnal Aplikasi Bisnis*, 6281619887.1 (2014).

³¹ Yandi Maryandi, 'SANKSI PELANGGARAN HAK CIPTA MENURUT HUKUM PIDANA ISLAM DAN HUKUM POSITIF DI INDONESIA', *Tahkim (Jurnal Peradaban Dan Hukum Islam)*, 2.2 (2019) <<https://doi.org/10.29313/tahkim.v2i2.5113>>.

³² Abd. Rochim Al-Audah, 'Hak Cipta Dan Perlindungan Hak Kekayaan Intelektual Dalam Perspektif Hukum Islam Dan Perundang-Undangan', *Al-Mashlahah Jurnal Hukum Islam ...*, 2017, hlm. 15 <<http://jurnal.staialhidayahbogor.ac.id/index.php/am/article/view/163>>.

³³ Dr. Malik Muhammad Hafeez, 'An Analysis of Corporate Governance in Islamic and Western Perspectives', *SSRN Electronic Journal*, 2016 <<https://doi.org/10.2139/ssrn.2736740>>.

³⁴ Che Mohd Zulkifli and Che Omar Ana Siti Sarpina Saripuddin, 'Concept of Business Ethics in Islam - Approach to the Entrepreneur', *Journal of Asian Business Strategy*, 5.1 (2015) <<https://doi.org/10.18488/journal.1006/2015.5.1/1006.1.13.18>>.

³⁵ A.N.M. Asaduzzaman Fakir, Ruzita Jusoh, and Nurliana Md. Rahin, 'Board of Directors' Characteristics, Internal Control Mechanisms and Corporate Sustainability Performance: A Theoretical Framework', *World Review of Entrepreneurship, Management and Sustainable Development*, 15.6 (2019) <<https://doi.org/10.1504/wremsd.2019.104869>>.

In general, the principles of mu'amalah are: first, the ability to carry out aspects of mu'amalah, whether selling, buying, renting or other. The basic principle of mu'amalah is that a trade transaction may be carried out unless there is an argument that prohibits it.³⁶

Second, mu'amalah is carried out with the consideration of bringing goodness. The essence of benefit in Islamic law is all forms of goodness and benefits that have integral dimensions, worldly and spiritual, material and spiritual, as well as individual and collective. In Islamic law, it contains benefits if it fulfills two elements, namely compliance with the Sharia and is beneficial and brings goodness to all aspects in an integral manner, which does not cause harm or harm to any one aspect.³⁷

Third, this concept in the Sharia covers various aspects, including, among others, a balance between material and spiritual development; utilization and conservation of resources. Sharia economic development is not only aimed at developing the corporate sector, but also developing the small and micro business sector which sometimes escapes efforts to develop the economic sector as a whole, a balance between the transcendent and the immanent; and fourth: justice by setting aside injustice.³⁸

Fourth, mu'amalah is carried out by maintaining the values of justice and avoiding elements of injustice. Any form of mu'amalah that contains elements of oppression is not permitted. Justice is putting things only in their place and giving things only to those who are entitled to them, and treating things according to their position. Implementation of justice. in economic activities in the form of mu'amalah principles which prohibit elements of usury, unjust, maysir, gharar, and unlawful transaction objects.³⁹

Specifically, the principles of mu'amalah are aimed at things that are prohibited in the practice of mu'amalah and things that are ordered to be done.⁴⁰ The things ordered in mu'amalah are as follows:

³⁶ Hasan and others.

³⁷ Abdul Munib, 'HUKUM ISLAM DANMUAMALAH (Asas-Asas Hukum Islam Dalam Bidang Mu'amalah)', *Al-Ulum: Jurnal Penelitian Dan Pemikiran Ke Islaman*, 5.1 (2018) <<https://doi.org/10.31102/alulum.5.1.2018.72-80>>.

³⁸ Muhmmad Ahsan, 'Memahami Hakikat Hukum Islam', *TASAMUH: Jurnal Studi Islam*, 11.2 (2019) <<https://doi.org/10.47945/tasamuh.v11i2.161>>.

³⁹ Syamsiah Nur and Muftiha Aulia Rahmah N, 'Investasi Emas Online Pada Aplikasi Marketplace Tokopedia Dalam Perspektif Fikih Mu'amalah', *AL-KHIYAR: Jurnal Bidang Mu'amalah Dan Ekonomi Islam*, 2.2 (2022) <<https://doi.org/10.36701/al-khiyar.v2i2.652>>.

⁴⁰ Elfia Elfia, 'Resistensi Ulama Terhadap Konsep Takharuj Dalam Fikih Hanafiyah', *Al-Istinbath: Jurnal Hukum Islam*, 3.1 (2018) <<https://doi.org/10.29240/jhi.v3i1.420>>.

First, the transaction object must be halal.⁴¹ This means that it is prohibited to carry out business or economic activities related to haram. For example, Islamic law prohibits selling liquor, unclean goods, gambling equipment, etc. In this regard, investment in companies that mix halal and haram goods is also not permitted in Islamic law.

Second, there is the consent of the parties to the mu'alahamah.⁴² The basic principle is "an taradhin minkum" which means "mutual willingness between you" (QS. AnNisa: 29). This principle states that all transactions carried out must be based on mutual consent between each party. Willingness between the contracting parties is considered a prerequisite for the realization of all transactions.

Third, trustful management of funds.⁴³ Trust has the same root as the words faith and security, so that believer means one who believes, who brings security, and also who gives and receives trust. Believers are also called al-mukmin, because believers receive a sense of security, faith and trust. If people do not carry out their trust, it means they do not have faith and will not provide a sense of security for themselves and their fellow citizens in their social environment. In a hadith it is stated "there is no faith for people who do not act in a trustworthy manner."

The things that are prohibited from doing are:

First, usury, which is any additional loan originating from the excess principal value of the loan given by the debtor. The prohibition of usury is understood as an activity that causes exploitation and injustice which economically has a very detrimental impact on society. Islamic law prohibits transactions that contain elements of usury (additional value by exceeding the nominal amount of the loan when repayment is made) and "gharar" (excessive uncertainty). In trade in trademarks and services, this means avoiding practices that involve cheating or deception or obtaining goods or services in ways that are prohibited in Islamic Law.⁴⁴

Second, "gharar", namely danger (al mukhatarah), tends to damage (al ta'ridh li al halak), deception (alkhida'), obscurity (jahalah) or something that is outwardly liked but

⁴¹ Armiadi Musa, Teuku Zulfikar, and Bismi Khalidin, 'Digital-Based Information System of Zakat Management in Indonesia: Strategies for Increasing Revenue in Fiqh Muamalah Perspectives', *Samarah*, 6.2 (2022) <<https://doi.org/10.22373/sjhk.v6i2.11960>>.

⁴² Witry Octasary Aritonang, 'Tinjauan Fiqh Muamalah Terhadap Pemakaian Sistem Paylater dalam Aplikasi Jual Beli Online Shopee', *Ekonomi Syari'ah*, 3.02 (2022).

⁴³ Aritonang.

⁴⁴ Widy Hastuty Hs and Andri Soemitra, 'Fiqh Muamalah Sharia Pawnshop', *Social Science, Entrepreneurship and Technology (IJESET)*, 1.3 (2022).

inwardly hated. Gharar that are considered large are objects that are not bought or sold or are not owned, such as birds flying in the air. A small “gharar” is an object whose nature is not clear except after looking at it. For some scholars (Hanafiyah), this small “gharar” is permissible. As for medium “gharar”, it is included in those which tend to have the least “gharar” or the most “gharar”.⁴⁵

Third, “tadlis” (fraud), namely fraud due to defects in goods being traded. Tadlis is sometimes from the seller and sometimes from the buyer. Tadlis from the seller in the form of keeping defects in goods a secret and reducing the quantity or quality of goods but as if they have not been reduced. Tadlis to buyers in the form of unauthorized means of payment.⁴⁶

Fourth, other prohibitions that can cause the contract to be canceled, such as due transactions the issue of the competence of the person making the contract, such as buying and selling by crazy people, small children, forced people, selling other people's goods without their permission; or it could also be due to “shigat” issues such as incompatibility between consent and acceptance; in terms of objects such as items that do not exist or are feared to not exist.⁴⁷ The brand used on the product must be clear and not misleading. Islamic law encourages the use of good and ethical names in trade.⁴⁸ This means that the trademarks and services used must be in accordance with Islamic values and must not damage morals or harm society.⁴⁹

To obtain legal protection for a brand as property rights, the brand owner must fulfill the requirements stipulated in Islamic Law or the laws applicable in that country.⁵⁰ This includes having to register the mark in accordance with the provisions applicable in

⁴⁵ Ika Atikah and Maimunah Maimunah, ‘PERLINDUNGAN NASABAH EKONOMI SYARIAH MELALUI TRANSAKSI GADAI DALAM PERSPEKTIF FIQH MUAMALAH’, *Hukum Islam*, 21.2 (2022) <<https://doi.org/10.24014/jhi.v21i2.10774>>.

⁴⁶ Fathia Nur Khusna, Andi Rio Pane, and Rifkah Mufida, ‘Tinjauan Fiqh Muamalah Terhadap Pelaksanaan Akad Murabahah Pada Perbankan Syariah’, *Kunuz: Journal of Islamic Banking and Finance*, 1.2 (2021) <<https://doi.org/10.30984/kunuz.v1i2.49>>.

⁴⁷ Alvian Chasanal Mubarroq and Luluk Latifah, ‘ANALISIS KONSEP MUAMALAH BERDASARKAN KAIDAH FIQH MUAMALAH KONTEMPORER’, *Tadayun: Jurnal Hukum Ekonomi Syariah*, 4.1 (2023) <<https://doi.org/10.24239/tadayun.v4i1.101>>.

⁴⁸ Selamet Hartanto and Devid Frastiawan Amir Sup, ‘Konsep Hybrid Contract Di Indonesia Dalam Perspektif Fatwa DSN-MUI’, *Journal of Islamic Economics and Finance Studies*, 3.1 (2022) <<https://doi.org/10.47700/jiefes.v3i1.4277>>.

⁴⁹ D Faroha and D S Milah, ‘Analisis Fiqh Muamalah Tentang Penggunaan Brandfranchise Yang Telah Putus Kontrak Pada Akad Syirkah: Analisis Kasus Pada Bisnis Franchise Jujur Cheese ...’, ... *Hukum Ekonomi Syariah*, 2022.

⁵⁰ Titin Setyaningsih, ‘PENGARUH ISLAMIC BRANDING, BRAND IMAGE, DAN LIFESTYLE TERHADAP KEPUTUSAN PEMBELIAN PRODUK ZOYA OLEH MASYARAKAT PONOROGO’, *Skirpsi*, 14.1 (2021).

a country to obtain legal protection for the rights to the mark. Islamic law also pays attention to the legal protection of brand rights and cannot be branded in a misleading manner, and does not violate Islamic principles. The Indonesian Ulama Council through Fatwa Number: 1/MUNAS VII/MUI/5/2005 concerning Protection of Intellectual Property Rights prohibits any form of infringement of brands, such as using, reproducing, plagiarizing, counterfeiting and pirating other people's brands without permission. According to the MUI fatwa, a brand as an intellectual property is a "huquq maliyyah" which has legal protection according to Islamic law. Brands that are protected according to Islamic Law, namely brands that do not conflict with Islamic Law.⁵¹ Furthermore, the protection of brands is based on the prohibition on taking other people's property through false means as explained in QS Al-Nisa: 29 as stated in the MUI Fatwa. Surah an-Nisa verse 29 is a strict prohibition against consuming other people's property or one's own property in a false way.⁵² Devouring one's wealth in a false way is spending one's wealth in an immoral way.

Brands for small and medium industrial players are attached to products which are used as identification marks for their products to the public.⁵³ Apart from that, brands can also be used as the identity of a product. Therefore, registering a brand is very important for small and medium industry players so that their businesses can develop competitively. Products owned by small and medium industry players can be protected from fraudulent actions by other parties which cause losses to the brand owner, especially economic losses. Brand protection is recognized in Islam as a person's property that cannot be treated fraudulently by others, so it becomes an opportunity and strength for small and medium industries in developing marketing funds for goods and services.

CONCLUSION

Islamic law recognizes brands as property rights that must be respected and protected. The position of an unregistered brand has no legal force and no legal protection because

⁵¹ Fachrul Marasabessy, 'ANALISIS FATWA MUI TENTANG PERLINDUNGAN HAK KEKAYAAN INTELEKTUAL', *I-BEST: Islamic Banking & Economic Law Studies*, 2.1 (2023) <<https://doi.org/10.36769/ibest.v2i1.329>>.

⁵² Iva Faizah and Zulfa Ahmad Kurniawan, 'INTERROGATING ISLAMIC LAW AND POSITIVE LAW AGAINST COUNTERFEIT PRODUCTS IN THE CONSUMER SOCIETY', *Al'Adalah*, 25.2 (2022) <<https://doi.org/10.35719/aladalah.v25i2.311>>.

⁵³ Tien-Chin Wang, 'Marketing Public Relations Strategies to Develop Brand Awareness of Coffee Products', *Science Journal of Business and Management*, 5.3 (2017) <<https://doi.org/10.11648/j.sjbm.20170503.15>>.

based on Law Number 20 of 2016 concerning Trademark Rights and Geographical Indications, trademark rights in Indonesia are constitutive, which means they need to be registered to guarantee legal protection and certainty.

In Islamic law, it explains that counterfeiting or imitating a brand is an act that is prohibited and haram, because a brand is a property right. In Islamic law, property rights are a right that gives authority over something so that it has the absolute right to use and benefit from it. Therefore, even though there are no explicit provisions regarding trademark issues, you can use the legal source “*maslahah murlah*”. Everything or action that is in accordance with the objectives of Islamic Law, and has the value of causing and eliminating damage, but does not have an explicit argument, the law must be carried out and enforced. This is a strength for small and medium industries by registering brands so that they receive legal protection for the products being marketed.

AUTHORS' CONTRIBUTIONS

Yulia Yulia, Herinawati Herinawati, Malahayati Rahman are a research team that has collected research data and carried out data analysis in preparing reports and research outputs. Team members have participated in the draft article which was then finalized by the head researcher as the first author.

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