



# Proceeding of the 3<sup>rd</sup> Malikussaleh International Conference on Law, Legal Studies and Social Sciences (MICoLLS) 2023

## LEGAL PROTECTION OF RIGHTS HOLDERS OF REGISTERED MARKS FROM ISLAMIC LEGAL PERSPECTIVE

### 1<sup>st</sup> Yulia

1<sup>st</sup> Faculty of Law, Universitas Malikussaleh  
yulia@unimal.ac.id

### 2<sup>nd</sup> Sofyan Jafar

2<sup>nd</sup> Faculty of Law, Universitas Malikussaleh  
sofyanjafar@unimal.ac.id

### 3<sup>rd</sup> Novita

3<sup>rd</sup> Faculty of Law, Universitas Malikussaleh  
[novita.180510073@mhs.unimal.ac.id](mailto:novita.180510073@mhs.unimal.ac.id)

### ABSTRAK

*Trademarks are valuable assets for companies and individuals, therefore, legal protection of brand rights is very important. In the Trademark Law, it is stated that a brand is a sign that can be displayed graphically in the form of an image, logo, name, letter, word, number, color arrangement in 2 (two) dimensions, or 3 (three) dimensions, hologram sound. or a combination of 2 (two) or more to differentiate between goods and services trading activities. There are provisions that regulate the rights and obligations of registered trademark holders. Famous or unknown brands must be registered. Protection of this brand is not only regulated in positive law but also Islamic law. This research is empirical juridical research by conducting field research. Deep data collection methods.*

*This research uses documentation, and the data obtained is then analyzed descriptively qualitatively through data reduction, presentation and drawing conclusions or verification.*

*From the results of the research that has been carried out, it can be concluded that trademark rights for goods/services in Islam are seen as assets whose ownership rights must be protected from things that are detrimental to the brand owner. Brands that have been protected in Islam must also comply with the provisions of the Koran and Hadith as well as the ijihad of ulama. This is similar to the provisions stated in MUI Fatwa Number 1/MUNAS VII/MUI/5/2005 concerning the protection of Intellectual Property*

*Rights (IPR) including the protection of brand rights. Under Islamic law, counterfeiting, plagiarism or duplication without the permission of the brand owner is haram.*

**Keywords: Legal protection, brand rights, Islamic law**

## **1. INTRODUCCION**

Business is an activity that leads to increasing added value through the process of providing services, trading or processing goods (production). According to Wijayakusuma, a more specific definition of Islamic business is a series of business activities in various forms that are not limited to the amount of property ownership (goods/services) including profits, but are limited in how to obtain and utilize assets due to halal and haram rules.

Intellectual property rights (IPR) play a key role in the world of trade because they can help differentiate the origin of goods and services. Brands are also used in advertising and marketing, which can help promote businesses and products. Many people believe that the quality, image and reputation of a product is associated with a particular brand, which can make the product seem expensive or even important. Additionally, brands can be of great help to consumers because they help them find products they are likely to like based on their reputation.

The importance of trademark registration in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UUMIG hereinafter referred to as the Trademark Law), if someone has registered a mark that is similar or similar to another person, then the brand owner cannot register the mark with the Director General of Intellectual Property (DJKI). Thus, brand owners must register their marks with the authorized government agency, such as the Department of Intellectual Property (DIP). DJKI will then ask the brand owner to fulfill certain registration requirements. The existence of a policy regarding the minimum requirements for applications will also make it easier for applicants to meet the registration requirements, namely: (1) Trademark Etiquette/Label, (2) Trademark applications are submitted in writing to the Director General of Intellectual Property by including their full name and address, applicant, nationality, date, month and year. (3) Petitioner's Certificate because it can include one person or several individuals together or a legal institution, (4) Power of Attorney or signature of the application, (5) Pay off the Application Funds. By fulfilling the completeness of the application requirements, a trademark application will include a date of receipt.

## **2. RESEARCH METHODOLOGY**

The method used in this research is an empirical juridical method, namely the assessment includes empirical studies in order to obtain a theory regarding the mechanisms by which law operates in society. In order to complete the required data,

this study was carried out using a technique of combining literature review, namely by reading journals, books and policies related to the problem, and in order to obtain optimal results.

### **3. DISCUSSION**

Brand is one of the important attributes of a product, where a product brand can provide added value to the product. A brand is not only a name for a product, but more than that, it is an identity to differentiate it from products produced by other companies.

Brands play an important role in business trading activities. They provide intellectual property protection to help make it easier for businesses to trade with each other. This protection is also a recognition of the importance of business work.

Based on Article 1 of Law Number 14 of 1997 in conjunction with Law Number 15 of 2001, a brand is a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements which has distinctive and distinctive power. used in the world of trading goods or services. Brands that receive protection are brands registered with DJKI, Depkumham. A registered mark is a mark that is valid and recognized by law and has a registration number, so that it obtains protection from the State through the Court Office. Meanwhile, brands that have not been registered or are not registered do not receive legal protection from the State. Because trademark infringement is a complaint offense, if a party who legally owns the trademark makes a complaint, the court office will process it.

In Law Number 20 of 2016 concerning Marks and Geographical Indications, Article 2 types of marks, namely

1. Trademark
2. Service Marks
3. Collective brand

In Article 6 of the Trademark Law (UUMIG), special conditions have been required to apply for trademark registration, namely:

1. brand label
2. statement letter
3. special power of attorney

In accordance with Article 21 of Law Number 20 of 2016 concerning Trademarks and geographical indications, they have similar characteristics both in substance and overall. A trademark registered by another party or previously applied for by another party can be qualified as a geographical feature. Violations of brand rights can often occur, such

as counterfeiting, imitation, and use of a brand without the right to use the brand. This can be detrimental to brand owners and consumers, who may end up with products that are not authentic or associated with the correct brand. According to Muhammad Djumhana Brand infringement is a form of trademark infringement where a business tries to gain profit from imitating a well-known brand. This is often done to gain profits in the market. Brand rights violations can be grouped into 3 (three), namely:

1. Brand Hijacking
2. Brand Counterfeiting
3. Brand Imitation

#### Islamic Law Discussing Brands

According to scholars, there are four characteristics of property, namely (1) it must have value; (2) it must be an item that can be used; (3) must be owned, and (4) can be saved. Things that are free to use, such as light and air, cannot be seen as treasures. According to al-Mujallah, wealth or wealth is something that human nature desires and that can be kept as a supply. So services do not fall under this criterion. However, Imam Syafii and Ibn Hanbal consider it a treasure because it has monetary value.

#### 1. Hadith in Trademark Rights

The evidence from the hadiths of Rosulullah SAW shows that benefits/services generally have property value (maaliyatul manfaah). Therefore, violating the rights (al I'tida') of a brand by counterfeiting/imitation (imitation, taqliid) is haram, because it is cheating/fraud (al Ghisy) which is prohibited by Islam. We must not violate other people's rights without permission, including in trademark matters. In the rules of jurisprudence it is stated,

لا يجوز لأحد أن يتصرف في ملك الغير بلا إذن

"No one should take advantage of another person's property without his permission." (See Ad Durul Mukhtaar fii Syarh Tanwirul Abshor in the Book of Ghoshob, by Alaud-din Al Hashkafiy). Among the evidence for this rule is the following hadith, where the Prophet sallallaahu 'alaihi wa sallam said,

#### 4. CONCLUSION

The government absolutely provides legal entity protection for brands, both trademarks and service marks, for users and holders of brand rights to ensure business certainty for producers and it is hoped that one day they will be able to develop widely internationally. Recently, many parties/individuals have committed violations against

well-known brands, such as selling counterfeit or counterfeit products of lower quality and irresponsibly, giving rise to different perceptions in society. Banda Aceh is one of the locations with the most registered trademarks in Aceh province. With the various conveniences provided by the government to register brands in Banda Aceh City, there are still people who are reluctant to register their trademarks or service marks to obtain legality, and many parties/individuals who commit violations against well-known brands such as selling counterfeit products, and do not deny that there are and many in Banda Aceh. Similar cases are not only in Banda Aceh, they can also occur in various cities and districts in Indonesia. This often occurs and there are many such individuals.

### REFERENCES

- Direktor Jenderal HKI, Buku Panduan Hak Kekayaan Intelektual, Direktorat HKI Depkeph dan HAM, Jakarta, 2000.
- Faturrahman Djamil, Hukum Ekonomi Islam Sejarah, Teori dan Konsep, Sinar Grafika, Jakarta, 2013.
- Kotler, Philip, Manajemen Pemasaran. Indeks, Jakarta, 2009.
- Krissantyo Wordpress, Merek Logo Dalam Produk HKI, Diakses melalui <https://krissantyo.wordpress.com/2015/02/06/merek-logo-dalam-produk-hukum-hki/>. Diakses pada Tanggal 8 April 2023. Pukul 11.45 WIB.
- Muhamad, alimin, "Etika Perlindungan Konsumen Dalam Ekonomi Islam", BPFE Yogyakarta, 2004.
- Muhammad Djumhana, Hak Milik Intelektual, Sejarah Teori dan Prakteknya di Indonesia, Citra Aditya Bakti, Bandung, 2003.
- OK. Saidin, Aspek Hukum Hak Kekayaan Intelektual, Raja Grafindo Persada, Jakarta 2004.
- Yulia, Modul Kekayaan Intelektual, Unimal Press, Lhokseumawe, 2015.