

Legal Analysis of Trademark Rights Violations Against Business Logo Imitation from the Perspective of Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 (Study Between Mie Gacoan and Mie Kacoan)

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Introduction

Just like copyright and patents, as well as other intellectual property rights, trademarks/logos are also part of intellectual property rights. Brand/logo, as one form of intellectual work, plays an important role in the smoothness and enhancement of the trade of goods or services in trade and investment activities. Brand/logo (with its "*brand image*") can fulfill consumers' needs for identification marks or distinguishing features that are extremely important and serve as a guarantee of product or service quality in a free competition environment (Saidin, 2018).

The use of trademarks or logos is one of the important aspects in the business world that not only reflects the company's identity but also becomes a valuable asset that must be protected from misuse (Nabhan, 2017). Protection of intellectual property rights, particularly trademark rights, is crucial in maintaining the sustainability and success of a business. In Indonesia, trademark abuse often leads to complex legal issues, considering the differing views between the perspective of positive law and the prevailing social, cultural, and religious values.

The frequent trademark infringement is the imitation of well-known business brands or logos. In this case, producers exploit the weakness of consumers who are less discerning when purchasing products by creating products that have brand similarities with well-known brands. Consumer discomfort becomes an opportunity for these business actors to disguise themselves by creating designs, color compositions, letters, or numbers that resemble well-known products, hoping to deceive consumers so that their products sell well in the market. This causes other entrepreneurs who have painstakingly created quality products and built a good reputation in society to be at a disadvantageous position. The desire to reap large profits within a short timeframe and without requiring a long process, because they are already known to the public and have existing customers, becomes the main factor for using brands without permission to imitate famous brands with other modifications.

In Indonesia, legal protection for trademark rights is specifically regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This law provides a clear legal framework for the registration, protection, and enforcement of trademark rights in Indonesia. However, the implementation of this law does not always go smoothly, especially when cases of trademark abuse involve religious aspects or certain social values (Rifai, 2019).

In addition, the Indonesian Ulema Council (MUI) issued Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 on Intellectual Property Rights Protection, which has become a central point in assessing legal protection of trademark rights from the

perspective of Islam in Indonesia (*Indonesian Ulema Council*, 2005). In the *fatwa*, it is stated that forms of violation against Intellectual Property Rights (IPR), including but not limited to using, disclosing, creating, using, selling, importing, exporting, distributing, delivering, providing, announcing, reproducing, copying, counterfeiting, and pirating the IPR of others without rights are considered oppression and are deemed *haram*.

The case study presented in this journal article focuses on the comparison between the brands Mie Gacoan and Mie Kacoan. Both brands have similarities in their names that can cause confusion among consumers, but they have significant differences in terms of identity, product quality, and commercial value. The case between Mie Gacoan and Mie Kacoan illustrates a conflict arising from similarities in name and logo, which can mislead consumers and harm the original brand owner. Mie Gacoan, as the brand that became popular first, claims that Mie Kacoan unlawfully imitates their identity to exploit the popularity and reputation they have built. On the other hand, Mie Kacoan argues that their business is a small-scale operation, so it will not affect the already large business of Mie Gacoan.

In this case, there are several relevant previous studies, such as a similar study conducted by (Himayah, 2019), which shows that trademark imitation is a violation as regulated in the Trademark Law Number 15 of 2001 Article 6. The law prohibits the use of imitated trademarks because it is equivalent to taking someone else's property. The trademark owner can file a lawsuit against another party who unlawfully uses a trademark that is similar in its entirety or in its essential aspects on similar goods. The lawsuit can take the form of a request for damages or an injunction to cease the use of the trademark. In Islamic law, imitation of trademark rights is also not permitted because it is equivalent to taking someone else's property.

A similar incident has also occurred, as seen in Court Decision Number 3/Pdt.Sus-HKI/Merek/2020/PN Niaga Makasar, this trademark dispute occurred between Aliuyanto as the owner of the Solaria trademark as the plaintiff and Erwin Munandar as the owner of the Solaris trademark as the defendant. This dispute began with the plaintiff, who had been using the Solaria trademark for various goods and services that were well-known to the Indonesian public. The Solaria trademark was also registered in Indonesia and in various countries around the world, where it was known that there was a Solaris trademark owned by the defendant. This made the plaintiff object to the existence of the Solaris brand, as it has fundamental similarities with the Solaria brand owned by the plaintiff. The panel of judges, in deciding the case, observed that the plaintiff's brand Soliria and the defendant's brand Soliris have

substantial similarities, noting that both brands share similarities in form (similarity of form), pronunciation (phonetic similarity), and sound (sound similarity).

Thus, this research aims to determine how the brand or business logo affects consumer purchase interest, as well as to conduct an in-depth legal analysis of logo or brand imitation cases from the perspective of positive law and the Fatwa MUI perspective.

Methodology

This research uses the empirical juridical research method, also known as field research, which examines the applicable legal provisions and what actually happens in society (Arikunto, 2012). The data collection techniques used in this research are primary data and secondary data. Where the main data of the research, namely primary data, is obtained directly from the source. Primary data was obtained by conducting direct interviews with several parties, namely the Manager of Mie Gacoan, located on Jl. Willian Iskandar, Medan Pancing, and Mie Gacoan consumers. As well as the owner of Mie Kacoan, Jl. P. Dipenogoro, Seantis. Secondary data is also used in this research. Where secondary data is obtained by conducting library research, in order to acquire legal theories and doctrines, legal principles and conceptual thinking, as well as previous research related to the object of this research, which can include legislation, literature, and other scientific writings (Marzuki, 2005). The secondary data used in this research is obtained from data sources such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights, books related to intellectual property rights, and previous research related to the topic. This research uses a case approach. The case approach is an approach that involves examining cases related to legal issues that are the topic of discussion in a writing. In this research, the case being studied is the trademark imitation carried out by Mie Kacoan against Mie Gacoan as the original brand owner.

Results and Discussion

The Impact of Similarity in Business Logos from a Legal Perspective

A brand is one of the important aspects in the business world, not only reflecting the identity of the company but also becoming a valuable asset that must be protected from misuse. The utilization of a brand is closely related to a product offered by business actors, including those in the micro, small, and medium enterprises (MSMEs) sector. However, it is unfortunate that many violations of trademark rights are found in MSMEs businesses. The most common forms of trademark infringement are "*playing*

with" the brand name, similarity in business logos, and even business concepts. One of them occurred with Mie Gacoan, where there were MSMEs actors who imitated the brand or business logo and changed it to Mie Kacoan. The owner of Mie Kacoan himself believes that, *"In business, there is the ATM concept (observe, imitate, modify), and so far that concept is perfectly fine. Moreover, the business I own is still small, so it definitely won't be a problem with them"*.

Based on the above opinion, it appears there is a lack of legal knowledge regarding business brands, leading to the belief that the ATM concept in business is correct. In fact, the ATM concept is only intended to provide opportunities for businesses to continuously create fresh, creative, unique, and competitive products or strategies. However, the statement that says well-known brands will not mind what small entrepreneurs do in imitating their brands is incorrect and unjustifiable.

This is because a trademark is an intellectual property right, so the trademark receives legal protection. In Indonesia, Law Number 20 of 2016 concerning Trademarks and Geographical Indications serves as the main legal basis for trademarks, which clearly and firmly provides legal protection to parties who have registered their trademarks and have officially registered them as trademark rights or exclusive rights.

According to Article 1 paragraph (1) of Law Number 20 of 2016, it is explained that a trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color combinations, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities in the trade of goods and/or services.

Meanwhile, in Article 1 paragraph (5), it is explained that trademark rights are exclusive rights granted by the state to the registered trademark owner for a certain period, allowing them to use the trademark themselves or grant permission to others to use it. The duration of trademark protection is 10 years from the date of receipt.

From the wording of the article that regulates trademark rights, it can be understood that other parties are prohibited from using a trademark without the permission of the registered trademark owner. Trademark protection is granted if a trademark infringement occurs by a party that does not have the right to the trademark.

In the case of trademark infringement by Mie Gacoan, the researcher noted that Mie Gacoan, a restaurant franchise, was established in early 2016 in the city of Malang and is under the auspices of PT Pesta Pora Abadi, which registered its trademark with the Directorate General of Intellectual Property with Registration Number

IDM000785799 on October 30, 2018. Therefore, the imitation by Mie Kacoan constitutes a legal violation because the resulting trademark is fundamentally similar to Mie Gacoan, whose trademark is already registered.

The definition of similarity, in essence, according to the explanation of Article 21 paragraph (1) of Law Number 20 of 2016, is the resemblance caused by the presence of dominant elements between one trademark and another, resulting in the impression of similarity, whether in terms of shape, placement, writing style, or combination of elements, as well as similarity in pronunciation found in the trademark. Therefore, when connected with the definition of a trademark, it can be interpreted that the prominent elements in this case refer to the entirety of elements such as images, logos, names, words, letters, numbers, color arrangements, or combinations thereof as a unity.

In determining whether the Mie Kacoan brand imitates the Mie Gacoan brand with substantial similarity, three criteria can be considered, namely: (1) From the similarity of form, the Mie Gacoan brand, which consists of 8 letters with a configuration of white color on the word Mie with a red circle, and the word Gacoan in blue. Meanwhile, Mie Kacoan consists of 8 letters and also uses a color configuration with white for the word Mie, a red circle, and blue for the word Kacoan. The font used between Mie Gacoan and Mie Kacoan has the same letter shape and also uses capital letters; (2) Phonetic similarity, the pronunciation between the words Mie Gacoan and Mie Kacoan, when pronounced, will produce almost the same sound, where the only difference is the letter "G" for the word Gacoan and "K" for the word Kacoan; (3) Sound similarity the sound produced by the word in the Mie Gacoan brand and the sound produced by the word in the Mie Kacoan brand, according to the researcher, if pronounced, will produce almost the same sound.

Based on the criteria of similarity mentioned above, it can be seen that the Mie Kacoan brand has similarities both visually and phonetically at its core with the Mie Gacoan brand.

In the case of trademark infringement, Mie Gacoan as the aggrieved party can take several actions. *First*, civil dispute resolution. In the event that another party unlawfully uses a mark that is similar in its entirety or in its essential aspects for goods and/or services that are similar to those of the Registered Trademark Owner and/or the Registered Trademark Licensee, the trademark owner may file a Civil Lawsuit with the Commercial Court. This is regulated in Article 83 paragraph (1) of Law Number 20 of 2016 which states: (1) The owner of a registered trademark and/or the recipient of a registered trademark license can file a lawsuit against another party that unlawfully uses a trademark that is similar in its entirety or in its essential part for

similar goods and/or services; (2) Lawsuit for damages; and/or (3) Cessation of all actions related to the use of the trademark.

Second, criminal dispute resolution. Other parties who unlawfully use a trademark that is fundamentally similar for similar goods and/or services may also be held criminally liable, as stipulated in Article 100 paragraphs (1) and (2) of Law Number 20 of 2016, as follows, *“Anyone who unlawfully uses a trademark that is fundamentally similar to a registered trademark owned by another party for similar goods and/or services that are produced and/or traded, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of up to IDR 2.000.000.000,- (two billion rupiah)”*.

Third, arbitration or alternative dispute resolution. In addition to civil and criminal dispute resolution, according to Article 93 of Law Number 20 of 2016, the parties can also resolve disputes through arbitration or alternative dispute resolution, in which case Law Number 30 of 1999 applies. Currently, there is a special body that handles alternative dispute resolution in the field of Intellectual Property Rights (IPR), namely the Intellectual Property Arbitration and Mediation Agency (IPR BAM). Basically, IPR BAM is a private dispute resolution institution that helps parties resolve disputes in the field of Intellectual Property Rights (IPR). IPR BAM can also be appointed as a mediator to help the parties resolve their disputes.

With this, the researcher concludes that the trademark imitation carried out by the owner of Mie Kacoan occurred due to a lack of legal knowledge regarding trademark protection regulations. Therefore, the government needs to play a role in providing education and understanding to MSMEs actors about the importance of brand protection. They should not think that imitating a famous brand is acceptable because their business is still small, so it will not affect the party being imitated. In fact, the imitation they engage in will lead to trademark disputes that will ultimately harm them, resulting in compensation claims or even imprisonment.

Legal Protection of Trademarks Based on Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 on Intellectual Property Rights (IPR)

Islam recognizes private property rights and makes them the foundation of the economic structure. It will be realized if it operates on its axis and does not exceed the limits set by Allah Swt., including acquiring wealth through lawful means as prescribed and developing it through lawful and prescribed methods as well. Islam prohibits the owners of wealth from using it to cause corruption on earth and endanger humanity, because the Islamic order teaches the principle of *laa dharara wa laa dhirara* (not harming oneself and not harming others). Islam also prohibits its followers from investing money in sectors that cause moral damage.

The protection of trademark rights in Islamic law is considered as a form of wealth or something of economic value that can generate profit. Trademarks are also considered as property whose utilization is permitted by sharia and possess exclusivity according to Islamic law (Huda, 2012). Thus, Islamic protection of property also applies to trademarks, where trademarks are recognized as valuable assets and must be protected.

In Indonesia, the basis for trademark protection under Islamic law is found in the Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 on Intellectual Property Rights (IPR), which explains that IPR is one of the *huquq maliyyah* (property rights) that receives legal protection (*ma'sun*) just like wealth (*mal*), and all types of IPR will receive protection as long as they do not contradict Islamic law. In other words, IPR that is entitled to legal protection must comply with Islamic sharia. Not only that, intellectual property can be made the object of a contract (*al-ma'qud 'alaih*), whether it is a *mu'awadhah* contract (exchange, commercial) or a *tabarru'at* contract (non-commercial), and it can also be endowed as waqf and inherited (MUI, 2005).

Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 on Intellectual Property Rights (IPR) also stipulates that any form of violation against IPR, including but not limited to using, disclosing, creating, employing, selling, importing, exporting, distributing, delivering, providing, announcing, reproducing, plagiarizing, counterfeiting, pirating someone else's IPR without rights is considered oppression and is deemed *haram* (MUI, 2005).

From the explanation above, it can be concluded that trademarks, which are part of intellectual property rights, clearly receive legal protection. Therefore, the imitation of the business logo by Mie Kacoan of the Mie Gacoan brand without permission from the brand owner is wrong. This is because violations of trademark rights or imitation of business logos in Islam are considered actions that can harm others, both the logo owner and consumers.

The legal basis for the protection of business trademarks is explained in the word of Allah Swt. in Al-Qur'an surah An-Nisa' verse 29 and surah Asy-Syu'ara' verse 183.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۖ وَلَا تَقْتُلُوا أَنْفُسَكُمْ
إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who have believed! Do not consume one another's wealth unjustly, nor give it to the judges in order that they might aid you to consume a portion of the wealth of the people in sin, while you know (it is unlawful). And do not kill yourselves. Indeed, Allah is Most Merciful to you".

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ

"And do not harm humans by reducing their rights and do not cause damage on earth".

Based on the explanation of the verse above, it can be understood that Islam pays great attention to and protects the property that belongs to an individual. Directly, Islam has emphasized the prohibition of taking someone else's property without permission, including what is contained in trademark rights. According to Ibn Kathir, this verse is one of the prohibitions against committing fraud and dishonesty by imitating the logos of other people's businesses.

The theory of *maqashid sharia* underpins the principle of trademark protection in Islam, which is related to the objectives of Islamic law, namely creating justice in various aspects of life, including commercial activities. The application of *maqashid sharia* for brand protection is closely related to the protection of property rights (*mukhafadhah al-mal*) in that recognition is granted by Islam to those who work legally, whether through physical labor or intellectual efforts. Every effort made by someone is entitled to the right to avoid the act of plagiarizing the famous brand owned by others (Huda, 2012).

Imitating a business logo without permission from the trademark owner, if it causes harm to the owner, may be subject to *ta'zir* punishment. *Ta'zir* is a punishment for a crime that does not have a clear text in Al-Qur'an and Hadith, so it must be determined by the government or *waliyul amri* through *ijtihad*. All its provisions are returned to them to impose sanctions or punishments on the perpetrators of crimes subject to *ta'zir* (Novalia, et. al., 2024).

According to Wahbah Zuhaili, the imitation of a business logo without the owner's permission is subject to compensation (*ta'widh*), which is an effort to cover the losses that have occurred due to mistakes or violations. He also explains that compensation can take the form of general provisions aimed at covering losses in the form of harm (*dharar*) as an effort to protect the aggrieved party (Az-Zuhaili, 1998). To the parties involved, as a service and subjects, they are protected by all means that can guarantee legal certainty to realize legal protection.

Based on the explanation above, as a form of legal protection in this matter, it can be done by paying compensation. The compensation for actual losses that must be paid by the party committing the violation to the aggrieved trademark owner.

The Influence of Brand on Consumer Purchase Intention

The survey was distributed to 25 informants randomly. The number of survey informants, when viewed by gender, consists of 5 men and 20 women. The number of informants based on age shows that the majority of informants are aged 21-30 years,

with a total of 16 people or 64%, followed by the age category of 15-20 years or 36%. If viewed based on occupation, the majority of informants are students at 30%, entrepreneurs at 14%, housewives at 12%, university students at 36%, and employees at 8%. Data collection through questionnaires was conducted by the researcher to identify the factors that influence consumers in purchasing Mie Gacoan products. The results of the survey conducted by the researcher with 25 informant consumers of Mie Gacoan can be seen below.

Table 1. Factors Considered by Consumers in Purchasing Products

Consideration Factors	Point
Price	40%
Brand	36%
Flavor	20%
Quality	4%

Source: Processed Data

Based on the research and studies conducted on Mie Gacoan consumers, it can be seen that a strong brand can create consumer trust and loyalty as well as increase purchase interest, aside from the product price offered. From this, we can understand that consumers tend to be more interested in buying products from brands they know and trust. In addition, brands with a positive image and good reputation can also increase consumer purchasing interest.

There are several factors that influence the impact of brand on consumer purchase intention, among them, *first*, brand image, is the perception or image that consumers have of a brand. Brand image encompasses what consumers think, feel, or associate when they hear or see the name of a product. The factors that influence brand image are brand awareness, quality, price, promotion/advertising, consumer experience, and company reputation. *Second*, product quality, the influence of brand on product quality is one of the factors that can affect consumer perception of the product. A strong and well-known brand can signal to consumers that the product has good quality. Consumers tend to trust and prefer products with reputable and well-known brands (Amilia, 2017). Thus, the influence of the brand on product quality can affect consumer perceptions of the product and their purchasing decisions. *Third*, quality of service, the influence of the brand on service quality can be an important factor in affecting customer satisfaction and customer loyalty. Several studies show that service quality, customer satisfaction, and brand trust are interrelated factors that influence customer loyalty. Brands with good service quality can enhance customer

satisfaction and customer loyalty. *Fourth*, product design, the influence of the brand on product design can be an important factor in affecting consumer perception and purchase interest in the product. Several studies show that product design and brand image have a significant influence on consumer purchase decisions and buying interest (Niar, 2019). In addition, brands that have attractive product designs and align with their brand image can influence consumer perceptions and purchase intentions towards those products.

From the explanation above, the researcher can conclude that the Mie Gacoan brand has met all the criteria. Where the Mie Gacoan brand is well-known for its brand image in the culinary field, famous for its distinctive noodles with a spicy and savory taste, good product quality, affordable prices, and good service, as well as good product design, can make consumers aware of its existence and gain their trust to be consistently purchased.

Conclusion

Based on the researched facts, the researchers concluded that a brand is one of the important aspects in the business world, not only reflecting the company's identity but also becoming a valuable asset that must be protected from misuse. However, there are now frequent instances of logo imitation, one of which is the violation of the Mie Gacoan brand with Mie Kacoan. Where the researchers found that the use of the Mie Kacoan brand was declared guilty of imitating the business logo that had similarities in essence with Mie Gacoan, due to the fulfillment of three criteria of similarity, namely in form (visual), pronunciation, and sound. Fatwa MUI Number 1/MUNAS-VII/MUI/5/2005 concerning Intellectual Property Rights (IPR) serves as a guideline for the protection of trademark rights in Islam. Which explains that any form of violation of Intellectual Property Rights (IPR), including but not limited to using, disclosing, creating, using, selling, importing, exporting, distributing, delivering, providing, announcing, reproducing, copying, counterfeiting, and pirating someone else's IPR without permission is considered oppression and is deemed *haram*. In addition to Fatwa MUI, trademark rights are also protected by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. With the rampant violations of trademark rights cases regarding business logo imitation, researchers strongly recommend that the government and related institutions provide education and understanding to MSMEs actors about the importance of a brand. Don't let them think that imitating a famous brand is acceptable because their business is still small, as this can lead to trademark disputes that could result in criminal charges.

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