



MAZAHIBUNA: Jurnal Perbandingan Mazhab

Volume 5 Number 1, June 2022; 17-34

P-ISSN: 2685-6905; E-ISSN: 2685-7812

DOI: 10.24252/mh.vi.33009

<http://journal.uin-alauddin.ac.id/index.php/mjpm>

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A Comparative Analysis of Trademark Rights Protection: Perspectives from Islamic Law and Positive Law in Indonesia

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[Received: November 07, 2022] [Reviewed: December 31, 2022] [Revised: May 01, 2023] [Accepted: May 14, 2023]
[Published: May 21, 2023]

How to Cite:

Shuhufi, Muhammad, and Firdayanti. 2023. "A Comparative Analysis of Trademark Rights Protection: Perspectives from Islamic Law and Positive Law in Indonesia". *Mazahibuna: Jurnal Perbandingan Mazhab*, 5 (1), June. <https://doi.org/10.24252/mh.vi.33009>.

Abstract

This study aims to identify the premise and types of legal protection for trademark rights, comparing Islamic and positive law to explore their roles in safeguarding these rights. Information technology, while aligned with business advancements, can create loopholes for mark violations. Irresponsible acts such as brand piracy pose a significant threat to brand proprietors, making trademark rights a major source of civil disputes and illegal acts. This study conducts a comparative analysis of legal literature, focusing on books about Trademark Rights as the primary data source. Data were collected, analyzed, categorized, and conclusions are drawn. The findings showed two forms of legal protection for trademark, which included preventive and coercive. Preventive measures involve government or institutional warnings and restrictions on obligations, while coercive aspects impose penalties on counterfeiters. In Islamic law, forgery is considered the prohibited action of *tazyif*, resulting in the infringement of rights of others.

Keywords: Legal Protection; Trademark Rights; Islamic Law; Positive Law.

Abstrak

Penelitian ini bertujuan untuk mengidentifikasi premis dan jenis perlindungan hukum atas hak merek, membandingkan hukum Islam dan hukum positif untuk mengeksplorasi peran mereka dalam menjaga hak-hak tersebut. Teknologi informasi, sejalan dengan kemajuan bisnis, dapat menciptakan celah untuk pelanggaran merek. Tindakan yang tidak bertanggung jawab seperti pembajakan merek merupakan ancaman yang signifikan bagi pemilik merek, menjadikan hak merek sebagai sumber utama sengketa perdata dan tindakan ilegal. Studi ini melakukan analisis komparatif literatur hukum, dengan fokus pada buku-buku tentang Hak Merek sebagai sumber data primer. Data dikumpulkan, dianalisis, dikategorikan, dan ditarik kesimpulan. Hasil temuan menunjukkan adanya dua bentuk perlindungan hukum merek, yaitu preventif dan koersif. Tindakan pencegahan melibatkan peringatan pemerintah atau institusional dan pembatasan kewajiban, sementara aspek koersif memberikan hukuman pada pemalsu.

Dalam hukum Islam, pemalsuan dianggap sebagai tindakan tazyif yang dilarang, yang mengakibatkan pelanggaran hak orang lain.

Kata Kunci: Perlindungan Hukum; Hak Merek Dagang; Hukum Islam; Hukum Positif.

Introduction

Islam recognizes ownership freedom and private property as the foundation for economic growth (Hanic & Smolo, 2022). According to Islamic law, if you adhere to the legal framework and Allah's provisions, the property must be acquired through legal means (Al-Bawwab, 2023). Similarly, the construction must be conducted legally and in accordance with regulations. Islam binds this wealth to a number of different commands and obligations, such as the obligation to pay zakat, provide for loved ones, assist the needy and those in need, participate in solving various social problems, such as jihad against wealth and cooperation to achieve the spirit of shared responsibility (Mustafida et al., 2020).

Trademark rights are a real problem in the modern era (Sáiz & Castro, 2018) and they are becoming increasingly complex because they no longer solely provide protection for individuals, but have also become entangled with political and economic issues (Wagner, 2019). As the law provides for the protection of trademark rights, Islam also recognizes and protects intellectual property rights, including trademarks, as they are assets that must be protected (Mukhtar, 2018).

Consequently, the need to protect Intellectual Property Rights grows alongside the need to safeguard goods or services as trade commodities (Nath Saha & Bhattacharya, 2011). The need to protect goods or services from potential counterfeiting or unjust (fraudulent) competition necessitates the protection of the Intellectual Property Rights used in or to produce the goods or services in question. Intellectual Property Rights do not exclude trademarks. Trademark is a tradition that provides protection for recovery efforts if a trade mark is used by parties without authorization, so a mark can be wider or narrower than a stamp (Samosir & Mustafa, 2020). As an intellectual property right, a trademark is essentially a symbol used to identify and differentiate the products of one company from those of another (Çela, 2015). A brand identifies the origin (an indication of origin) and a feature differentiator (a distinctive character) of a company's goods and services relative to those of other companies' goods and/or services.

Indonesia is one of the nations targeted for market share globally (Samosir & Mustafa, 2020). This makes Indonesia a nation highly susceptible to violations in the

industrial sector. This is evidenced by the numerous counterfeit products of well-known brands, such as clothing, shoes, watches, and other fashion items that are widely available on the market with varying prices and qualities. Every year, the number of Intellectual Property Rights (IPR) violations increases.

In Constitution Number 20 of 2016 on Marks and Geographical Indications ([Law No. 20 of 2016, 2016](#)), it is stated that the use of a registered mark in Indonesia by a licensee is regarded as identical to the use of a brand in Indonesia by the brand proprietor. In the implementation of Constitutional this moment, there are still numerous violations, particularly criminal acts of trademark piracy. This occur precisely during the middle implementation of the activity. This type of national growth has increased, particularly in the disciplines of science, arts, and literature.

In Islamic law, Hanafi scholars contend that Intellectual Property (IPR) is anything that has property value in the eyes of society because it can be used and those who injure it must pay compensation ([Meirison & Nazar, 2021](#)). Thus, trademarks and the like have the status of private property because they have benefits and can be privately owned, have value, circulate in the community and become the subject of transactions between communities, and there is a right to sue through legal channels. for the proprietor. So that it can prevent others from using it without the owner's permission.

Currently, trademark rights issues are becoming more complicated because they no longer solely provide protection for individuals ([Abdillah et al., 2022](#)), but have become entangled in political and economic issues. Intellectual Property Rights (IPR), which include trademarks, can be proposed and protected in Islam because they are assets that must be respected and protected. Trademarks are a modern concept that did not exist during the time of the Prophet Muhammad. Consequently, previous fiqh scholars have not described the legal basis for protecting trademark rights explicitly and plainly. Everything is permissible to possess under Islamic law, with the exception of useless objects, such as maize kernels, and prohibited objects and benefits, such as carrion. In the meantime, brand is advantageous and not prohibited because it can be owned. A brand can also be possessed as a property. Consequently, the brand proprietor has the legal right to obtain brand protection as follows: He is permitted to commercialize and socialize it by selling,

renting, or licensing it to third parties. Any violation of the trademark in the form of plagiarizing, imitating, pirating, or counterfeiting is deemed haram because it falls under the category of consuming the property of others for personal gain.

Literature Review

Trademark rights are the exclusive rights granted to individuals or legal entities by laws and regulations for trademarks they own (Senftleben, 2022). Registration of trademark rights becomes a legal requirement related to the preservation of reputation issues in the commercial field as well as actions in commercial services. The Trademark Law establishes three categories of trademarks: trade marks, service marks, and combination marks (Murbiantoro et al., 2020). A trademark is a brand that is used to distinguish goods sold by an individual, a group of individuals, or an entity from other similar goods. A service mark is a mark used to distinguish services that are traded by an individual, a group of individuals, or an entity from other similar services. In the meantime, a combination mark is a mark used for identically characterized goods and/or services that are transacted by one or more persons or entities to distinguish them from other similar goods and/or services.

The registration of trademarks by commercial business entities is essential for the protection of the products sold, legal protection of the business entities, and consumer protection. Trademark registration provides protection against fraud, poor faith, and unfair competition for commercial products, so that registered marks are safe from counterfeiting and unfair competition. The purpose of trademark registration is to obtain legal certainty and legal protection of intellectual property rights. This indicates that new trademark rights arise if the owner has registered the mark with the trademark office, in this instance the National Intellectual Property Office. Thus, the essence of trademark registration is an obligation that must be fulfilled by the owner; consequently, the right to not be registered will arise, as this right is granted by the state on the premise of "registration." There are two mark registration systems in Indonesia, namely the declaration system and the constitutive system, according to Law No. 15 of 2001 Concerning Marks (Atikah, 2019). The registration system adheres to the structural system

established by the Constitution, namely Law 19 of 1992 and Law 14 of 1997 pertaining to Trademarks.

The legal consequence of an unregistered trademark is that it lacks state protection. In addition, if the first party to encounter a brand has not registered it, other parties can register a mark with the same name and obtain legal protection because Indonesia adheres to the first applicant system. Legal protection for the mark will be granted to the business owner who first trademarked his product, and applications for comparable marks from other business owners will be denied. In Indonesia, trademark protection refers to multiple concepts. First, there is preventive protection, which involves protecting well-known marks and marks before a crime or law violation occurs. The brand proprietor must register their brand for legal protection in this instance.

Methods

This is a type of descriptive qualitative research that employs qualitative research techniques with library research methods derived from books, journals, and non-book sources. The approach used is a juridical one, outlining legal aspects in providing legal protection for trademark rights, both from positive law by explaining the legal components used as the basis for protecting trademark rights and from Islamic law via fiqh studies that are closely related to trademark rights or ownership rights to an item. Utilization of primary sources by reviewing trademark-protection-related statutes, regulations, and their derivatives.

Result and Discussion

Juridical Basis and Forms of Legal Protection of Trademark Rights in National Law

Juridical Basis for Legal Protection of Trademark Rights

Legal protection is given to legal subjects in the form of preventative and coercive legal instruments, both written and unwritten. In other words, legal protection as an image and function of law, specifically the notion that law can provide justice, order, certainty, benefits and tranquility (Alfons, 2017).

In Indonesia, trademark counterfeiting is on the rise, and those who violate registered marks are explicitly governed by the law (Weriansyah & Ramadani, 2022). As previously described, trademark protection is as follows: Government-provided legal protection aimed at preventing potential violations. This is also included in laws and regulations for the purpose of preventing a violation and providing warnings or restrictions on an obligation.

As stated in articles 70 and 71, the government must take action to prevent infringements of registered trademarks in cases where Geographical Indications have been supervised and promoted by both the central and regional governments (Kurniawan et al., 2022). Where the government has made prevention efforts by educating the public on the significance of protecting Intellectual Property Rights (IPR), where trademarks trade including into (IPR) which is protected by the government and there are laws that regulate those who violate it.

Repressive Legal Protection is the ultimate protection given in the form of sanctions such as fines, imprisonment, and other penalties when a dispute or violation has occurred. As stated in articles 100-103, those who violate, and counterfeit well-known trademarks are subject to sanctions and fines.

Article 100 explains that, in principle, anyone who uses the same mark as a registered brand owned by a third party is infringing on that brand. Possible sanctions and penalties. Therefore, "equality in essence" refers to resemblance caused by the presence of prominent elements between one brand and another brand, which may give the impression of a resemblance regarding the form, method of placement, method of writing, or a combination of elements or similarities in the sound of speech contained in the brands.

The Directorate General for Intellectual Property Rights must reject the application for registration if the mark is similar in principle or in its entirety to a previously registered mark for similar products and/or services belonging to a third party. Claim for compensation and/or cessation of all actions related to the use of the mark may be asserted in a litigation filed by the brand owner against third parties who illegally use a mark that is similar in essence or in its entirety for similar goods or services.

The infringement or plagiarism of registered trademarks or well-known marks may result in imprisonment and/or monetary penalties. According to Lucky Setiawati, the Trademark Law can also ensnare parties who trade goods of which it is known or should be known that they are the result of Article 100 violations. This is in addition to the Trademark Law's ability to ensnare parties with the intent to produce and/or trade counterfeit goods. If the type of products sold resulted in distraction to health, disorder to the environment, and the potential to cause death, the offender will face a maximum of 10 years in prison and/or a fine of Rp. 5 billion.

As an illustration of the Adidas brand case, the proprietor of the adidas AG brand won the infringement case of his 3-STRIP brand in the Central Jakarta Court. Adidas obtains a decision ordering Zul Achyar BH Bustaman, the defendant for 3-STRIP trademark infringement in Indonesia, to cease all violations and pay damages and court costs. Perkarannya registered with No. 111/ Brand /2011/ PN. Niaga. Jkt. Pst. adidas party lodged a claim based on Constitution Brand No. 15 of 2001, which is based on the provisions on trademark infringement, particularly on the unauthorized use of similar marks that cause confusion. "This case is since the stripe on the defendant's shoe resembles adidas' 3-STRIP branding so closely that consumers would be readily confused. In accordance with WTO regulations, this is protected by trademark law in Indonesia. Adidas will inevitably comply with act law for the purpose of safeguarding their legal rights, the Commercial Court has reached the correct conclusion ([Muru, 2005](#)).

In Law No. 20 of 2016, there is also a provision regarding Geographical Indications, and there is a provision in the TRIPS Agreement requiring member nations to provide special protection ([Law No. 20 of 2016, 2016](#)). For Geographical Indication. Geographical indications are essentially analogous to trademarks. The distinction, about Geographical Indication, a mark designating the origin of a good based on geographic environmental factors, including natural factors, human factors, or a combination of both. In trademark registration, there are two recognized systems: the declarative system and the constitutive system. In accordance with Law No. 20 of 2016, it follows a constitutive registration system. This is a fundamental alteration to the original Trademark Law in Indonesia's declarative system. In the constitutive system, trademark rights are obtained

through registration, which means that exclusive rights to a mark are granted because of registration. Therefore, it is possible to say that trademark registration is absolute, as unregistered marks do not receive legal protection. Protection of a brand includes not only piracy that resembles or matches an existing mark registered on the market, but also registration of marks that are similar in concept or in their entirety.

According to Articles 100 to 103 of the Trademark Law, the criminal act of counterfeiting a mark is a complaint offense, as opposed to an ordinary offense, which is also emphasized in the Trademark Law, so a criminal case for counterfeiting a mark must be reported directly by the aggrieved party or brand owner. or authority. Consequently, investigators who handle trademark counterfeiting cases, namely police investigators and civil servant investigators at the Directorate General for Intellectual Property Rights, typically handle it in a more thorough manner. The trademark law is a specific statute and regulation that, in essence, supersedes all other laws.

The legal substance in trademark rights infringement cases can also be pursued in civil court. In paragraph 1 of article 21 of Law No. 20 of 2016 on Trademarks and Geographical Indications, it is stated that:

"Similarity in essence" refers to a similarity caused by the presence of a dominant element between two brands, creating the impression of similarities in terms of shape, method of placement, method of writing, or a combination of elements, as well as similarities in the sound of speech." (Law No. 20 of 2016, 2016)

The owner of a registered mark and/or the licensee of a registered mark may file a claim with the Commercial Court for the unauthorized use of a mark with the same principal or in its entirety for similar goods and/or services, in the form of a claim for compensation and/or the cessation of all acts of using the mark. If there are no complaints, the legal process is not applicable. Precisely because of this, the aggrieved parties should actively seek out authentic evidence demonstrating that they have been injured, so that it can be used to file a lawsuit against the responsible party and have it processed in accordance with applicable law. This lawsuit can only be presented to an individual or a legal entity, in accordance with the use of the word "whoever" in the Act, which indicates that this term can refer to both humans and non-humans (legal entities).

Forms of Trademark Legal Protection in National Law

The operational definition of legal protection is the availability of material and formal legal instruments that can be used by the state and its citizens to resolve every dispute that arises in the life of the nation and state.

Traditionally, brands strive to enable consumers to distinguish between manufacturers, allowing them to make purchasing decisions based on prior experience. In addition, brands provide incentives for companies to produce quality products and/or services and to safeguard their reputation-building investments.

Protection law is something that protects legal subjects through applicable laws and regulations and is enforced by a sanction (Ali et al., 2022). The two types of legal protection are 1) preventive legal protection and 2) repressive legal protection. In the context of litigation, the issue of annulment of a tort based on the use of real or declaratory judgment arises. In instances of trademark infringement, trademark infringement occurs, as in Avian vs Avitex. Because there are so many letters and letter combinations, the brand Avitex, which is like the Avian brand in essence, was selected.

Civil law protection allows the owner of a registered mark to file a lawsuit against a person or legal entity that uses the mark which has the same, (Hussein, 2020) either in principle or entirely without rights, in the form of a request for compensation by stopping the use of the mark (article 76 paragraph (1) b of the Law -Law No. 15 of 2001 regarding trademarks) was filed through the commercial court.

Articles 253-262 of the Criminal Code (KUHP) govern (Nahak, 2017), among other things, the criminal law protection applicable to prohibited acts involving trademarks. Criminal sanctions are also outlined in Law No. 15 of 2001 regarding trademarks. Article 90-95, the provisions of Article 90 condemn anyone who intentionally and without authorization uses a mark that is identical to a registered mark belonging to another party for identically produced and/or traded goods and/or services to a maximum of five years in prison and a fine. Article 91 stipulates that any person who intentionally and without rights uses a mark that is substantially identical to a registered mark belonging to another party for goods or services of the same type produced or traded is punishable by imprisonment for a maximum of four years and/or a maximum fine of 800,000,000 IDR.

If there is a violation of intellectual property rights, the state typically employs its administrative law power to prosecute. Protect the legitimate proprietor. Usage State authority exemplified by means of customs, industry standards, broadcasting agency authority, and an advertising standard monitor (Djumhana & Djubaedillah, 2014).

The Fiqh Foundation of Legal Protection of Trademark Rights

Legal Protection of Trademark Rights in Islamic Law

It is not contrary to Sharia for the international community to recognize and respect a person's intellectual property, including trademark ownership. This recognition results in numerous benefits for humanity. Thus, according to the researchers, the identification of property encompasses intellectual property, such as trademarks, because trademarks are intellectual property that provide numerous benefits and have economic value and are therefore also classified as property.

In terms of proprietorship or use of a material, Islam recognizes two types of substances, namely: First, for instance, the document is a trademark, product, or industrial commodity. Second, an expert's brain also stores abstract materials, such as scientific theories and innovative ideas. If the property is of the first type, such as a trademark, then it can be owned by one person and protected against infringement by others. As for treasure of thought, the second form of property, which is viewed from the perspective of unwritten knowledge, is the owner's right. He may sell or teach it to others, and whoever acquires it will be free to manage it without restrictions from the original proprietor.

Islam recognizes private property rights and bases economic development on them (Haq & Arif, 2020). This will occur if he pivots and refrains from exceeding God's boundaries, including acquiring wealth legally as determined by the law and developing it legally and lawfully. As the Islamic tarekat teaches the principle *lā dharara wa lā dhirār* (do not damage yourself and do not harm others), Islam prohibits the owner from using it to harm the land and people. Islam prohibits its adherents from investing in moral corruption. And Islam prohibits the sale of all commodities that are harmful to human health, whether

it be the health of reason, religion, or morality, including carving, winemaking, pig farming, and drug dealing. Finally, Islam prohibits the fraudulent consumption of wealth.

The protection of trademark rights in Islam is predicated on an explanation of the concept of wealth in Islam, particularly as it pertains to legal protection, which is explained as follows: property or wealth (wealth) in terms of experts. *fiqh* (*jumhur ulama*) is something with values, a destroyer-imposed change that results in even a small loss, and everything that humans do not discard. Definition *Jumhur Ulama*'s statement, "something of value," demonstrates that services include assets. Therefore, it can be deduced that everything of value can be classified as an asset.

Then, to ascertain the legal status of brand counterfeiting by equating law and theft, as outlined in Law No. 20 of 2016, specifically by employing the *qiyas* method. *Qiyas* compares the law to a case that has not yet been determined. Whereas there is no law in Islam that specifically addresses trademark counterfeiting. The author employs the *qiyas* method to equate the law of theft as intended by the Trademark Law with the *qiyas* method. Below is the academic consensus regarding the legality of trademark infringement.

According to Imam al-Shafi'i about *al-māl* (Syatar & Mundzir, 2021), is devoted to something of value that can be traded and possesses repercussions for those who demolish it. If a brand's rights can be conceptualized as a treasure, then the proprietorship of an asset has repercussions.

Ibn Taimiyah explains that Allah is the true proprietor of everything in the universe (Fanani, 2021), but that humans may exercise property rights so long as it is permissible under the sharia. In Islam, there are also methods to transfer wealth, in addition to ways to acquire it.

As a result of the analogy of a trademark right being an asset according to an Islamic perspective, if the property is hijacked or imitated, plagiarized, and taken by a person who does not have the right, then it is already included in imitation based on the interpretation of Law No. 20 of 2016 Concerning Mark Rights and Geographical Indications. In Islamic law, the term for criminal law is *jinayat* (Khaerunisa, 2021). According to jurists, *jinayat* is an act that is forbidden.

The most appropriate comparison for trademark infringement is imitation or *syaraqah*. According to Muhammad Abu Syahban, theft is the secret taking of another person's property if the stolen goods reach the *nisāb* (minimum limit) and the site of deposit without any doubt in the taken goods.

In determining the punishment for thieves, imitators, and plagiarists, among others: first, *aşl* refers to cases specified in the Qur'an or hadith. Some academics contend that the condition *aşl* must exist. There is evidence/guidance in the Qur'an or hadith, as well as a consensus among scholars, that *aşl* has a cause/ *illat*. That according to the Quran and hadith. Actions performed by trading business actors, specifically regarding brands doing trade imitation of well-known brands, such as Adidas, Nike, cosmetics, etc., and selling them as genuine.

In Islamic law, there are multiple sources for determining a law or policy, such as the Quran and Hadith (Nurma Fitriani et al., 2022). Nevertheless, Islam does not explicitly regulate everything because of course in a legal determination, no governing law is described chapter by chapter or even point by point.

As previously explained, Allah has prohibited his people from taking the rights of others without their permission, which is equivalent to theft. Taking something that is not legitimately yours without the owner's consent constitutes theft. Theft is a state and Islamic law-prohibited offense. Where Islam itself prohibits its followers from taking what is not theirs. As stated by Allah in Qur'an surah al-Maidah 5/38, which translates as follows: "*As for men and women who plunder, cut off their hands as retribution for their actions and as punishment from Allah. And Allah is All-Mighty and All-Wise.*"

Second, *far'un* refers to laws that have not yet been enacted based on Qur'anic and hadith-based directives that you wish to equate with *aşl* (Sanseverino, 2022). According to *jumhur* ulama, *far'un* and physical defect *aşl* must have something in common, and there must be a common law. Actions taken by trading business actors, namely, specifically regarding brands doing trade imitation to famous brands such as Adidas, Nike, cosmetics and so on and selling them as if they were genuine, is an act of imitation that hasn't been regulated and mentioned in text on qur'an and hadith.

Third, the law *aşl* must be Sharia law. Shari'a law is the word of Allah that regulates the deeds of the face-to-face in the form of commands, prohibitions, and recommendations. Where law is frequently used shara's is law *taklīfī*. These include orders, prohibitions, and suggestions.

Finally, *illat* legislation. Because of the nature contained in *far'un*, *far'un* equated the law with *aşl* based on the basis upon which the determination is made (Ahmad & Shāfi'ī, 2014). As for *illat*'s conditions, it must contain knowledge that encourages the implementation of a law, be accessible to human reason, be observable by humans, and be perceptible to humans. In accordance with the MUI fatwa (Ibrahim & Salam, 2021), counterfeiting trademark rights is therefore prohibited under Islamic law, as fabrication or imitating someone's work without permission is not permitted by Islam and is a form of tyranny, making the law haram. As neither the hadith nor the Qur'an explain, Allah forbids usurping the rights of others without their permission.

Forms of Legal Protection of Trademark Rights in Islamic Law

Allah has created Islam as a religion that encompasses all aspects of a good human existence and the Qur'an as a manual for practicing Islam (Naro et al., 2020). Obviously, Allah guides his creatures to the benefit of the world and the hereafter, namely by providing guidance regarding right and wrong, consistent with the Qur'an's function as a delineator between good and evil for humans.

Islamic Sharia is a teaching about the system of life, which includes the relationship between the Creator (*Al-Khāliq*) and all His creation, as well as between creation itself. The instructions listed in the Al- Qur'an and Al- Hadith, these two sources serve as moral regulations for all facets of human existence, including economics.

Protection of the correct brand in commerce Islam according to explanation of manuscript treasure Riches in Islam, particularly its legal protection as explained in the following explanation This that assets or wealth (wealth) in terms of para expert jurisprudence (*jumhūr cleric*) is something that has value, the destructor-imposed schange makes a loss, albeit a small one, and all things that are not discarded by man. The definition of *jumhūr scholar* includes the phrase "something that has value" including treasure as well. Therefore, it can be concluded that everything of value can be classified as a treasure.

The fiqh specialists also categorize the categories of assets based on the protection aspect: (Rohman, 2021) First, *al-māl mutaqaawwim* (value), which refers to treasures that are permitted for use by sharia and have characteristics of exclusivity according to shara's law, such as housing, food, livestock, vehicles, and clothing. This type of property is legally protected from destruction or annihilation, and those responsible for their destruction or eradication are subject to a monetary penalty. Second, *al-māl gair mutaqaawwim* (no value), i.e., treasure Which No can be used except under forced circumstances (*darūrah*) such as wine and pig, and treasures that do not yet have the nature of exclusivity (*al-mubāh*) such as fish in the river, birds in the air, gold in the earth, and other *al-mubāh* treasures. This type of property is not protected by the law; it may be destroyed without recompense. But when no-value treasure is in the possession of a Muslim, it is protected because people are obligated to value anything in which they believe.

As for proportional aspect, treasure is divided into two, namely: first, treasure can be measured (*al-miśli*) like wealth that can be weighed, enumerated; and second, treasure can be measured appropriately, such as grains, milk, and oil. Second, treasure No can be measured appropriately, and there are no identical types in the public unit (*al-qiyāmi*) such as antique products, animals, and trees.

Existence treasures *al-mutaqaawwim* has a close relationship with the concept of brand trade in Islam (Paramole & Sanni, 2022). according to which a trademark is regarded to be property or something of economic value that can generate profit. Trademark also regarded as a treasure whose use is permitted by sharia and whose exclusivity complies with sharia'. With this protection, Islamic protection against treasure also applies to trademarks that have been acknowledged as property and must be protected against.

Implement maqāṣid shari'a in protection brand commerce that is associated with protection right owned or treasure (*mukhāfadhah al-māl*) in Islamic law (Zaprul Khan, 2018), so that Islam gives recognition and appreciation to only those who work legally. Ability to operate effectively with physical or mental capital (including brand ideas). trade) become his property right/ This is reasonable because everyone who screamed "sucks" while working on him was so attached to him, i.e., exactly on target. And protect the set-in level *sadd al-zarī'ah* (closing way) right (Lapatantja & Bakry, 2021). Because this is the basis for

prudence in charitable giving when *mafsadat* and benefit conflict. The commerce of trademark rights is known as *sadd al-ẓarī'ah*. Can close the door on damaging *maṣlahah* by plagiarizing a famous brand, which pertains to other people.

Humans are social beings who are intimately involved in worldly affairs; therefore, Allah has regulated this with the principle of *muamalah* so that all forms of activities associated with worldly affairs can be conducted in accordance with Islamic law. Forms of justice in law Islam in the matter of be happy stipulate custody or protection of property (property) in level *sadd al-ẓarī'ah* (Sujoko, 2017), but enforcement of the Constitution in the matter of absolute property protection exists because of the existence of absolute property protection. If the opposite occurs, that is, if there are no rules regulating the protection of property rights, then the world will descend into chaos.

Conclusion

Because a trademark is a protected asset, according to Article 20 of the Constitution of 2016 concerning Marks and Geographical Indications, any violation or plagiarism of a well-known brand may be subject to prison time and penalties. The government has also made an appeal or publicized the significance of Right Riches Intellectual Property Rights (HKI) and brands comprising the (IPR) in the future. In Islam, it is also explained that brand counterfeiting is forbidden by Allah and is against the law. The author concludes that in Islam, those who perpetrate violations/plagiarism may be subject to a chopping penalty, as counterfeiting brands is equated to theft in Islam, and theft is expressly forbidden and prohibited in Islam. A comparison and contrast of the distinctions and similarities between legal protection right brand commerce Good from a positive aspect of law nor Islamic law. Positive law and Islamic law prohibit the illicit act of counterfeiting a brand because this act usurps the ownership and Intellectual Property Rights (IPR) of others. There is a similarity in that both are lawful under Islamic law. Because it is a prohibited conduct, you are welcome to trade in counterfeited brand names. The difference lies in the time limit of the sentence, which is explicitly spelled out in the law in regards to penalties and fines. In contrast, Islamic law does not specify specific penalties and fines for those who violate its provisions..

References

- Abdillah, Sukmawati, & Syah, M. F. (2022). Legal Protection Against Peer-to-Peer Lending-Based Financial Technology Losses; An Analysis of Islamic Law Contracts and Positive Law. *Mazahibuna: Jurnal Perbandingan Mazhab*, 4(2), 212–235. <https://doi.org/10.24252/mh.vi.32022>
- Ahmad, M. M., & Shāfi‘ī, I. M. b. I. al-. (2014). Reviewing Imām al-Shāfi‘ī’s tafsīr Āyāt al-aḥkām for developing principles of contemporary tafsīr literature. *IIUC Studies (Research Journal of the International Islamic University Chittagong (IIUC))*, 10–11(December), 9–38.
- Al-Bawwab, R. A. (2023). Zakat: changing the framework of giving. *Islamic Economic Studies*. <https://doi.org/10.1108/ies-08-2021-0026>
- Alfons, M. (2017). Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum. *Legislasi Indonesia*, 14(03), 1–10. <https://doi.org/10.54629/jli.v14i3.111>
- Ali, M., Wahanisa, R., Barkhuizen, J., & Teeraphan, P. (2022). Protecting Environment through Criminal Sanction Aggravation. *Journal of Indonesian Legal Studies*, 7(1), 191–228. <https://doi.org/10.15294/jils.v7i1.54819>
- Atikah, N. (2019). Pierre Cardin Trademark Dispute. *Mulawarman Law Review*, 4(1), 1–15. <https://doi.org/10.30872/mulrev.v4i1.51>
- Çela, M. (2015). The importance of Trademarks and a review of empirical studies. *European Journal of Sustainable Development*, 4(3), 125–134. <https://doi.org/10.14207/ejsd.2015.v4n3p125>
- Djumhana, M., & Djubaedillah, R. (2014). *Hak Milik Intelektual*. T. Citra Aditya Bakti.
- Fanani, A. (2021). The Hanbalite Theology: A Critical Study of The Hanbalite Theological Creeds and Polemical Adversaries. *Afkaruna: Indonesian Interdisciplinary Journal of Islamic Studies*, 17(1), 1–27. <https://doi.org/10.18196/afkaruna.v17i1.11353>
- Hanic, A., & Smolo, E. (2022). Islamic approach to corporate social responsibility: an international model for Islamic banks. *International Journal of Islamic and Middle Eastern Finance and Management*, 16(1), 175–191. <https://doi.org/10.1108/IMEFM-07-2021-0284>
- Haq, H., & Arif, A. A. (2020). Al-‘Alāmah al-Tijāriyyah wa Ḥimāyatuhā fī al-Qānūn al-Indūnīsī: Dirāsah Fiqhiyyah Taqwīmiyyah. *Al-Ahkam Jurnal Pemikiran Hukum Islam*, 30(2), 119–140. <https://doi.org/10.21580/ahkam.2020.30.2.5293>
- Hussein, S. F. (2020). Civil protection of the trademark: A comparative study. *International Journal of Innovation, Creativity and Change*, 13(1), 755–765.
- Ibrahim, A., & Salam, A. J. (2021). A comparative analysis of DSN-MUI fatwas regarding murabahah contract and the real context application (A study at Islamic Banking in Aceh). *Samarah*, 5(1), 372–401. <https://doi.org/10.22373/sjhc.v5i1.8845>
- Khaerunisa, F. E. (2021). Adultery in the Perspective of Islamic Religious Law and Positive Law in the Indonesian Community. *HUNAFa: Jurnal Studia Islamika*, 18(2), 158–174. <https://doi.org/10.24239/jsi.v18i2.614.158-174>
- Kurniawan, F., Taufiqurrohman, M. M., & Nugraha, X. (2022). Legal Protection of Trade Secrets over the Potential Disposal of Trade Secrets Under the Re-Engineering Precautions. *Jurnal Ilmiah Kebijakan Hukum*, 16(2), 267. <https://doi.org/10.30641/kebijakan.2022.v16.267-282>
- Lapatantja, N. A., & Bakry, M. (2021). Comparative Analyses of Maliki and Hanbali Thought on Waqf Istibdal. *Mazahibuna: Jurnal Perbandingan Mazhab*, 3(1), 49–60.

<https://doi.org/10.24252/mh.v3i1.21129>

- Law No. 20 of 2016. (2016). *Law of the Republic of Indonesia Number 20 of 2016: Marks and Geographical Indications*.
https://internationalipcooperation.eu/sites/default/files/arise-docs/2019/Indonesia_Law-on-Marks-and-Geographical-Indications-20-2016.pdf
- Meirison, M., & Nazar, Z. (2021). Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence. *Al-Ahkam*, 31(1), 49–68.
<https://doi.org/10.21580/ahkam.2021.31.1.6656>
- Miru, A. (2005). *Cara Mudah Mempelajari Undang-Undang Merek*. Raja Grafindo Persada.
- Mukhtar, S. (2018). Islamic Law and Trademark Protection. *Malaysian Journal of Syariah and Law*, 6(1), 1–28. <https://doi.org/10.33102/mjssl.vol6no1.56>
- Murbiantoro, A. O., Safa, R., & Law, F. (2020). Adopting Passing off Concept of Unfair Competition Into Indonesia 's Trademark Law. *Open Journal for Legal Studies*, 3(2), 133–142. <https://doi.org/10.32591/coas.ojls.0302.05133m>
- Mustafida, R., Kurnia, Z. N., Fauziah, N. N., Subri, N. S. B., & Faiz, F. A. B. A. (2020). the Implementation of Maqashid Shariah in Zakat Institution: Comparison Between Indonesia and Malaysia. *Jurnal Ekonomi Dan Bisnis Islam (Journal of Islamic Economics and Business)*, 6(2), 317. <https://doi.org/10.20473/jebis.v6i2.23532>
- Nahak, S. (2017). Criminal Law Policy on Land Functions Impacting Climate Change in Indonesian National Law Perspective. *International Journal of Social Sciences and Humanities*, 1(3), 28–39. <https://doi.org/10.29332/ijssh.v1n3.50>
- Naro, W., Syatar, A., Amiruddin, M. M., Haq, I., Abubakar, A., & Risal, C. (2020). Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia. *International Journal of Criminology and Sociology*, 9, 572–586. <https://doi.org/10.6000/1929-4409.2020.09.5>
- Nath Saha, C., & Bhattacharya, S. (2011). Intellectual property rights: An overview and implications in pharmaceutical industry. *Journal of Advanced Pharmaceutical Technology and Research*, 2(2), 88–93. <https://doi.org/10.4103/2231-4040.82952>
- Nurma Fitriani, S., Ochtorina Susanti, D., & Efendi, A. (2022). Perlindungan Hukum Pemegang Hak Merek yang Sesuai dengan Karakteristik Hak Merek. *Jurnal Rechtsens*, 11(2), 239–256. <https://doi.org/10.56013/rechtsens.v11i2.1783>
- Paramole, K. O., & Sanni, M. O. (2022). Islamic Legislation on Wealth Acquisition: A Critical Examination of Crypto-Currency. *Millah*, 21(3), 771–796. <https://doi.org/10.20885/millah.vol21.iss3.art6>
- Rohman, M. M. (2021). The Benefit Principles of Istibdāl on Wakaf Objects (Analysis of Dhawābith al-Mashlahah Sa'īd Ramadhān al-Būthi). *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 6(1), 17–36. <https://doi.org/10.25217/jm.v6i1.1246>
- Sáiz, P., & Castro, R. (2018). Trademarks in branding: Legal issues and commercial practices. *Business History*, 60(8), 1103–1124. <https://doi.org/10.1080/00076791.2018.1497765>
- Samosir, P. O., & Mustafa, A. (2020). Legal Protection Implications on Trademark in Indonesia by Comparing the First to Use and First to File Principles. *International Conference on Law Reform (INCLAR 2019)*, 121(20), 143–146. <https://doi.org/10.2991/aebmr.k.200226.029>
- Sanseverino, R. V. (2022). Theology of Veneration of the Prophet Muḥammad. In *The Presence of the Prophet in Early Modern and Contemporary Islam*. BRILL.

https://doi.org/10.1163/9789004466739_008

- Senftleben, M. (2022). Robustness Check: Evaluating and Strengthening Artistic Use Defences in EU Trademark Law. *IIC International Review of Intellectual Property and Competition Law*, 53(4), 567–603. <https://doi.org/10.1007/s40319-022-01182-x>
- Sujoko, I. (2017). Hujjiyah Nazariyah Saddi az-Zarāi' fī al-Fiqh al- Islāmy wa tatbīquhā fī Qadāyā al-Ma'kûlāt wa al- Mashrûbāt wa al-Malbûsāt. *Insaniyat: Journal of Islam and Humanities*, 2(1), 71. <https://doi.org/10.15408/insaniyat.v2i1.6591>
- Syatar, A., & Mundzir, C. (2021). TOKOH DAN KETOKOHAN IMAM MAZHAB (Kontribusinya terhadap Pengembangan Fikih di Indonesia). Alauddin University Press.
- Wagner, R. E. (2019). Governance within a system of entangled political economy. *Forest Policy and Economics*, 107. <https://doi.org/10.1016/j.forpol.2019.05.004>
- Weriansyah, A., & Ramadani, A. P. (2022). The Analysis of Corporate Crime in Indonesia's Intellectual Property Laws. *Global Legal Review*, 2(1), 53. <https://doi.org/10.19166/blr.v2i1.5139>
- Zaprul Khan. (2018). Maqāsid Al-Shariah in the Contemporary Islamic Legal Discourse: Perspective of Jasser Auda. *Walisongo: Jurnal Penelitian Sosial Keagamaan*, 26(2), 445. <https://doi.org/10.21580/ws.26.2.3231>