



MISUSE OF THE SARDINE FISH CRACKERS BRAND WITHOUT THE BUSINESS OWNER'S PERMISSION IN TEMBUNG VILLAGE, DSN FACT PERSPECTIVE NUMBER 1/MUNAS/VII/5/2005

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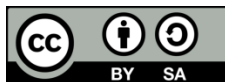
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ABSTRACT

Brands are an important part of Intellectual Property Rights (IPR) that function not only as product identity, but also as a strategic instrument in marketing and legal protection. This study examines the practice of entering the brand "Sardine Fish Crackers" without permission in Tembung Village, Medan, and assesses its legal liability from the perspective of Law Number 20 of 2016 and Fatwa DSN MUI Number 1/MUNAS/VII/2005. The research method used is empirical juridical through interviews with business actors and analysis of related legal documents. The results of the study indicate that brand competition occurs due to low legal literacy, cost and time constraints in brand registration, weak supervision, and the motive of instant profit. From a positive legal perspective, this action violates the exclusive rights of brand owners and can result in civil and criminal sanctions. Meanwhile, from an Islamic legal perspective, this action is categorized as unjust and haram because it violates the principle of property rights protection (huquq maliyyah). This research emphasizes the urgency of increasing legal awareness, enforcing regulations, and educating small business owners to prevent the practice of brand-sharing and to create a fair and ethical business climate.

Keywords: Trademark abuse, Industrial Property Rights, Trademark Rights, Business Owners, DSN MUI Fatwa Number 1/MUNAS/VII/2005

1. INTRODUCTION

In the Indonesian food industry, trademarks play a crucial role in product identity and appeal. However, as business competition intensifies, practices that use trademarks to the detriment of legitimate businesses have emerged. This phenomenon occurred in Tembung Village, Medan, where a counterfeit business used a trademark identical to the legitimate business's without the owner's knowledge or permission. The trademark used was labeled "Sardine Fish

Crackers," while the product actually marketed was "Banana Chips." This practice not only harms legitimate businesses but also harms consumers and creates unfair competition.



In the modern business world, brands play a fundamental role as an identity that distinguishes one product from another and as an asset with high economic value. Brands not only make it easier for consumers to recognize a product but also serve as symbols of quality, trust, and the image inherent in a business (Saidin, 2019). Amid increasingly fierce business competition, the existence of a brand provides a competitive advantage and legal protection for its owner. However, the practice of unauthorized trademark misuse remains widespread, particularly among micro, small, and medium enterprises (MSMEs), which often face limited legal literacy and obstacles in officially registering a brand (Effendi, 2022).

The phenomenon of trademark misuse also occurred in Tembung Village, Medan, where a business owner used the brand "Kerupuk Ikan Sardine" without the permission of the original owner. This practice not only violates positive law but also causes economic losses for the legitimate brand owner and creates unfair business competition (Tarigan & Nurzannah, 2024). From an Islamic legal perspective, this action is categorized as a form of taking another person's rights without permission, which is clearly prohibited in the Qur'an, as emphasized in Surah An-Nisa' [4]:29 concerning the prohibition of consuming another person's property in a wrongful manner (MUI, 2005).

The MUI's National Council of Islamic Scholars (DSN MUI) Fatwa Number 1/MUNAS/VII/2005 explicitly states that Intellectual Property Rights (IPR), including trademark rights, are *huquq maliyyah* (legally protected) and enjoy the same legal protection as private property. Violation of IPR without permission is considered unjust and unlawful, and has implications for the destruction of the social and economic order (Badroen et al., 2016). Thus, trademark misuse is not merely a business violation but also an ethical, moral, and religious issue that requires serious attention.

The basic principle of social interaction is to foster a life of mutual assistance, as recommended by Islam. This principle is emphasized in the Al-Quran surah Al-

Maidah (5) verse 2, which emphasizes the importance of helping each other in social interactions, which reads as follows: (Sativa, 2024)

اَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا أَمِينَ الْبَيْتِ الْحَرَامَ يَبْتَغُونَ فَضْلًا
مِّن رَّبِّهِمْ وَرِضْوَانًا ۖ وَإِذَا حَلَلْتُمْ فَاصْطَادُوا ۚ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ أَن صَدَّقْتُم عَنِ الْمَسْجِدِ الْحَرَامِ أَن تَعْتَدُوا
وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۚ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning: *“O you who believe, do not violate the syiar (sanctity) of Allah, do not (violate the honor of) the haram months, do not (disturb) hadyu (sacrificial animals) and qalā'id (marked sacrificial animals), and do not (also disturb) the visitors to the Baitulharam while they seek the grace and approval of their Lord! When you have completed Tahalul (finished ihram), go hunting (if you want). Never let your hatred against a people, because they prevent you from leaving the Sacred Mosque, encourage you to go beyond your limits (towards them). Help you in (doing) righteousness and piety, and do not help in committing sins and enmity. Fear Allah, indeed Allah is very severe in punishment”*

Some previous reviewer reviews that are relevant to the topic of misuse of sardine fish cracker brands without the owner's permission are: Amalia Nurzannah (2024) Legal Protection Against the Inclusion of Registered Trademarks on Snack Kiloan Packaging in the Shopee Marketplace Perspective of MUI Fatwa Number I / MUNAS VII / MUI / 5/2005 Concerning Intellectual Property Rights. The purpose of this study is to find out the legal protection owned by brand owners in the event of brand counterfeiting. Anthon Fathanudien, Dikha Anugrah (2022) Socialization of Legally Aware Villages on Trademark Registration in MSMEs. In this study to provide socialization for MSME business actors in Cipancur Village, Kalimanggis District, Kuningan Regency, West Java, especially related to: 1) Legal awareness of business actors in the importance of brand registration for MSME business actors, and 2) Motivating MSME business actors to protect product innovations resulting from their findings in the form of Intellectual Property, namely their Trademark Rights. Nurlis Effendi (2022) Protection of Intellectual Property Rights of Trademarks According to Law No. 20 of 2016 Concerning Trademarks and Geographical Indications. This study aims to examine the reasons for using trademarks without permission, forms of legal liability for trademark misuse, and sanctions applied according to the fatwa of the Indonesian Ulema Council DSN MUI Number 1/MUNAS/VII/5/2005.

This research is significant because it examines the practice of trademark misuse at the local level using a positive law approach and an Islamic legal perspective. Specifically, the research aims to analyze the factors causing the misuse of the "Sardine Fish Crackers" trademark in Tembung Village, evaluate the forms of legal accountability, and examine the sanctions and moral implications based on the DSN MUI Fatwa. This study is expected to provide theoretical contributions to the development of Islamic economic law literature as well as

practical recommendations for business actors and policymakers in increasing legal awareness, preventing trademark infringement practices, and creating a fair and ethical business climate.

2. RESEARCH METHOD

This research uses an empirical juridical method, a legal research approach that combines normative studies of laws and regulations with analysis of social reality through field data. This method was chosen because the problem of trademark misuse can be understood not only from written legal norms but also from actual practices in society (Marzuki, 2017).

The approaches used include: a Conceptual Approach, to examine the basic concepts of trademarks as part of Intellectual Property Rights (IPR), including the principles of legal protection from an Islamic legal perspective (Arifin & Iqbal, 2020). A Statutory Approach, which refers to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, and the DSN MUI Fatwa Number 1/MUNAS/VII/2005 concerning Intellectual Property Rights (MUI, 2005). An empirical (sociological-juridical) approach was used to observe how legal regulations and fatwas are understood and implemented in community business practices in Tembung Village (Putra, 2021).

The research data consisted of primary and secondary data. Primary data were obtained through semi-structured interviews with business actors in Tembung Village involved in unauthorized trademark use, as well as direct observation of their business practices. Meanwhile, secondary data were obtained from legal literature, scientific journals, laws and regulations, and documents related to trademark protection and IPR.

Data collection techniques included: (1) in-depth interviews with key informants to explore motives, obstacles, and understanding of trademark law; (2) participant observation of business activities; and (3) literature review to strengthen the conceptual analysis. All collected data were analyzed using qualitative analysis methods, namely interpreting and linking field findings to the positive legal framework and sharia principles. The analysis was conducted inductively with the aim of generating a comprehensive understanding of the causal factors, forms of legal accountability, and implications of trademark misuse from the perspective of Islamic law and positive law (Sugiyono, 2021).

3. RESULT AND ANALYSIS

Indicators of Unlicensed Sardine Cracker Brand Misuse in Tembung Village

According to an interview with a business owner in Tembung Village, several factors were identified as the main causes of the unauthorized misuse of the sardine cracker brand. The business owner admitted that the misuse was due to a

desire for instant results through a method perceived as more practical. Trademark misuse is a form of violation of intellectual property rights, specifically trademark rights, as regulated by Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In the context of this research, the case of trademark misuse occurred with sardine crackers produced and marketed by a business owner in Tembung Village. An interview with one of the business owners revealed that the unauthorized use of the brand was not solely driven by the intention to copy or plagiarize, but rather by several factors related to the social and economic conditions and knowledge of the business owner. The reasons behind the perpetrators' decision to use other parties' trademarks include:

1. Lack of Supervision and Law Enforcement at the Regional Level

Another factor is weak oversight by authorities, both at the village and district levels. The absence of a monitoring or inspection system for local products means that trademark misuse practices go undetected. Furthermore, the lack of reports or complaints from the original trademark owners makes these violations seem acceptable and tolerated. The lack of law enforcement also makes perpetrators feel that their actions will not result in legal consequences. This suggests that local governments need to be more active in providing guidance and supervision to business actors in their areas, particularly regarding business legality and trademark protection.

2. Lack of Knowledge of Legal Consequences

Perpetrators are also unaware that trademark misuse can be subject to legal sanctions. They are unaware that such actions can be considered a violation of the law, leading to administrative, civil, and even criminal sanctions. This lack of awareness makes perpetrators feel safe as long as no one reports or sues. This lack of understanding of the legal consequences indicates that many regional businesses still lack the understanding of the importance of conducting their businesses in accordance with applicable laws and regulations. Yet, legal protection for trademarks is a crucial part of creating a healthy and competitive business climate.

3. Time and Cost Constraints in Brand Registration at the Start-up

In addition to a lack of knowledge, entrepreneurs also face constraints in terms of time and cost of brand registration, especially when starting a business. In the early stages of starting a business, entrepreneurs' primary focus is on the production and distribution processes so that the business can quickly become operational and generate revenue. As a result, legal aspects such as brand registration are often considered a low priority. Entrepreneurs stated that they lacked the time to manage the administrative procedures for brand registration, which they found to be quite complicated and time-consuming. Furthermore, information regarding the registration process is not easily accessible to small business owners in the regions. Furthermore, financial constraints also pose a serious obstacle. In the initial phase of a business, all

available capital is focused on production, raw material purchases, and daily operations. Meanwhile, brand registration costs are considered a non-urgent additional expense, so they are postponed or even ignored. This situation suggests that many small business owners prefer to simply start their business without considering legal protection for their brands. However, without legal protection, their brands are vulnerable to misuse or even future disputes.

4. **Lack of Education and Publicity about the Importance of Trademark Rights**
Another factor is the lack of education and publicity regarding the importance of official trademark registration. The perpetrator admitted to being unaware that trademarks must be registered to obtain legal protection. He also didn't understand that using another party's trademark without permission constitutes a violation of the law. This situation demonstrates the low level of legal literacy among the public, particularly MSMEs, regarding intellectual property rights. This lack of awareness is exacerbated by the lack of education or assistance from village governments, cooperatives and MSME offices, or other relevant agencies that should educate the public about the importance of legality in running a business, including trademark use.

5. **Desire for Instant Profits**

One of the main reasons cited by the perpetrator is the desire for quick and instant results. The perpetrator realized that the trademark he was using belonged to someone else, already well-known to the public and with a reputation in the market. By using this trademark, the perpetrator hoped to immediately attract consumer attention and increase sales volume quickly, without having to go through the lengthy process of building his own brand identity. The perpetrator also stated that he didn't want to wait long to gradually promote and market the product. In his view, using a well-known brand would save him the time, effort, and promotional costs that would have been incurred if he had built a new brand from scratch. This decision was based on practical and efficiency considerations, even though it violated the exclusive rights of the legitimate brand owner.

Legal Liability Under Law Number 20 of 2016

In positive legal terms, Law Number 20 of 2016 concerning Trademarks and Geographical Indications affirms that registered trademark owners have the exclusive right to prohibit others from using their trademarks without permission. This exclusive right is not only declaratory but also preventive, as it legitimizes the trademark owner to exercise full control over the use of their trademark in commercial activities (Saidin, 2019). In the context of the Tembung Village case, the unauthorized use of the trademark "Sardine Fish Crackers" clearly violates this exclusive right and can result in legal consequences.

Article 83 of Law Number 20/2016 stipulates that trademark owners have the right to file a civil lawsuit seeking compensation or the termination of

unauthorized use of the trademark. This lawsuit covers not only actual damages but also potential losses that may arise from a decline in the brand's reputation or commercial value (Putra, 2021). Furthermore, Articles 100 and 102 of the Trademark Law stipulate criminal sanctions for trademark infringement, including imprisonment and fines, indicating that trademark infringement is positioned as a form of economic crime that damages the business climate.

Further analysis shows that this legal accountability mechanism aligns with the principles of legal certainty and the protection of economic rights. According to Mahadi (2012), legal protection for trademarks serves to prevent unfair business competition practices and guarantee justice for trademark owners. From a legal theory perspective, this relates to the function of law as a tool of social engineering, namely creating healthy business conditions through the enforcement of norms (Rahardjo, 2000).

However, despite the availability of legal instruments, implementation in the field often faces obstacles. Low public legal awareness, relatively high court costs, and limited local government oversight have made trademark protection ineffective (Effendi, 2022). Thus, the case in Tembung Village not only reflects a violation of business ethics but also demonstrates the gap between regulation and legal implementation. If left unchecked, this has the potential to undermine consumer confidence, reduce the competitiveness of MSMEs, and create a negative precedent for IPR protection at the local level.

The Perspective of the Indonesian Ulema Council (MUI) Fatwa Number 1/MUNAS/VII/5/2005 on the Misuse of the Sardine Crackers Trademark Without the Owner's Permission

From an Islamic perspective, trademarks are categorized as *huquq maliyyah* (property rights) that receive legal protection similar to private property (MUI, 2005). This concept aligns with the principle of justice in Islam, which emphasizes the prohibition of unlawfully appropriating the rights of others. Surah An-Nisa' [4]:29 emphasizes that every transaction must be conducted voluntarily, so the use of a trademark without permission clearly violates sharia principles.

The National Council of Indonesian Ulema Council (DSN) Fatwa Number 1/MUNAS/VII/2005 affirms that violations of Intellectual Property Rights (IPR), including trademarks, are unjust and unlawful. This ruling demonstrates that Islam not only regulates tangible property transactions but also protects intangible property rights such as trademarks, copyrights, and patents (Badroen et al., 2016). Thus, this fatwa provides a normative basis for understanding that trademark misuse has not only a positive legal dimension but also a moral and spiritual one.

From the perspective of *maqashid sharia* (Islamic law), trademark misuse contradicts the principle of *hifz al-mal* (protection of property), one of the five main objectives of Islamic law (Huda & Jannah, 2012). Protecting a trademark means maintaining economic justice, preventing losses to business owners, and

ensuring the fair distribution of benefits in trade. If a trademark is misused, not only the business owner is harmed but also the wider community, as consumer trust in the product is distorted. This aligns with the principle of *laa dharara wa laa dhirara* (no harm and mutual harm), which prohibits all forms of business practices that harm others (Az-Zuhaili, 1998).

Further analysis shows that the DSN MUI fatwa also serves as an ethical instrument to suppress business practices that are inconsistent with Sharia principles. Although the fatwa is not legally binding, it can serve as a moral basis and guideline for the Muslim community and as a reference in decision-making by state institutions, particularly in the context of Sharia economic law in Indonesia (Husna & Permata, 2024). Thus, the implementation of this fatwa strengthens the position of Islamic law in supporting the protection of intellectual property rights while creating a just, ethical, and sustainable socio-economic order.

The legal basis for trademark protection is explained in the words of Allah SWT in the Qur'an, Surah An-Nisa', verse 29 and Surah Ash-Syu'ara', verse 183: Surah An-Nisa', verse 29:

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

Meaning: "O believers, do not consume your neighbor's wealth in a false (unrighteous) manner, except in the form of business based on mutual consent between you, and do not kill yourselves. Allah is most merciful to you"

Surah Ash-Syu'ara' verse 183:

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْنُوا فِي الْأَرْضِ مُفْسِدِينَ

Meaning: "Do not harm people by diminishing their rights, and do not cause corruption on earth"

Based on the explanation of the verse above, it can be understood that Islam places great emphasis on and protects individual property. Islam directly emphasizes the prohibition of taking other people's property without permission, including what is contained in trademark rights. According to Ibn Kathir, this verse is one of the prohibitions against fraud and dishonesty. The theory of *maqashid sharia* underlies the principle of trademark protection in Islam, which is related to the goal of Islamic law, namely to create justice in various aspects of life, including commercial activities. The application of *maqashid sharia* to trademark protection is closely related to the protection of property rights (*mukhafadhah al-mal*), where recognition is granted by Islam to those who work legitimately, whether through physical labor or intellectual endeavor. Every business undertaken by an individual has the right to avoid plagiarizing another's well-known trademark

(Huda, 2024). Misuse of a trademark without the permission of the trademark owner, if detrimental to the owner, is subject to ta'zir penalties. Ta'zir is a punishment for crimes that do not have a clear text in the Qur'an and Hadith, so it must be determined by the government or waliyul amri through ijtihad. All provisions are returned to them to impose sanctions or punishments on perpetrators of crimes subject to ta'zir (Novalia, et.al., 2024). According to Wahbah Zuhaili, misuse of a business brand without the owner's permission is subject to compensation (ta'widh), which is an effort to cover losses that have occurred due to errors or violations. He also explained that compensation can be in the form of general provisions aimed at covering losses in the form of losses as an effort to protect the injured party (Az-Zuhaili, 1998).

4. CONCLUSION

This research confirms that the unauthorized misuse of the "Sardine Fish Crackers" trademark in Tembung Village constitutes a serious violation of intellectual property rights. The main factors behind this practice are low legal literacy, cost and procedural constraints in trademark registration, weak oversight by relevant authorities, and the perpetrators' motivation to gain instant profits. These findings demonstrate a significant gap between applicable legal norms and their implementation in the field.

From a positive legal perspective, Law Number 20 of 2016 grants trademark owners the exclusive right to sue for damages and to stop unauthorized use of trademarks, and stipulates criminal sanctions for violators. This demonstrates that the case in Tembung Village is not simply a matter of business ethics but also a category of unlawful act with implications for both civil and criminal law.

Meanwhile, from an Islamic legal perspective, through the DSN MUI Fatwa Number 1/MUNAS/VII/2005, it affirms that trademark misuse is an unjust and forbidden act because it violates the principles of justice, honesty, and protection of property (hifz al-mal). This violation not only causes economic losses but also undermines the moral integrity and social fabric of society.

The social and economic implications of trademark misuse are far-reaching. For business owners, this practice damages reputations and reduces profits; for consumers, it creates information asymmetry and potential losses; and for honest MSMEs, it weakens the motivation to innovate. At a macro level, this practice disrupts a healthy business climate and hinders equitable economic growth.

Therefore, strategic steps are needed to combat trademark misuse, including: increasing legal literacy and IPR socialization for MSMEs, simplifying the trademark registration process to make it more affordable, and strengthening the role of local governments in monitoring and enforcing the law. Furthermore, it is crucial to build ethical awareness based on Islamic values so that business actors not only obey the law but also uphold the principles of justice and moral

responsibility. Thus, trademark protection is not only a legal instrument but also part of efforts to create a fair, competitive, and ethical business climate in Indonesia.

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