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Protection of Trademark Rights from the Perspective of MUI Fatwa Number: 1/MUNAS/VII/MUI/5/2005 (Case Study of Mie Gacoan and Mie Gacok)

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Abstract: Imitation of the nomenclature of Mie Gacoan by Daun Kipas Café and Resto located in Langsa City with the name Mie Gacok along with imitation of its logo is a violation of trademark rights which is a violation of intellectual property rights. The imitation struggles to take advantage unilaterally. In this study, the author formulates the problem, namely how the conflict of trademark rights imitated between mie gacok and mie gacoan, legal protection of intellectual property rights in trademarks, and protection of trademark rights perspective Fatwa MUI Number: 1/MUNAS/VII/MUI/5/2005. This research uses empirical legal research methods somewhat easier for researchers in analyzing cases in the field. The results of the study proved that infringement of intellectual property rights on trademarks. This is considered an administrative criminal act that should be able to be pursued legally. In addition, according to MUI fatwa No. 1/MUNAS VII/MUI/15/2005 concerning Protection of Intellectual Property Rights, the actions of Gacok noodle owners against Gacoan noodles are acts that violate the provisions of MUI No. 1/MUNAS VII/MUI/15/2005 concerning Protection of Intellectual Property Rights which are illegal acts. In addition, MUI fatwa No. 1/MUNAS VII/MUI/15/2005 concerning Protection of Intellectual Property Rights is preventive protective and cannot protect repressively if it does not go hand in hand with Law Number 15 of 2001 concerning Trademarks and Law Number 28 of 2014 concerning Intellectual Property Rights.

Keyword: Rights, Trademark, Fatwa

INTRODUCTION

Before crossing the discussion, this journal is motivated by several studies that are in line and supportive such as research conducted in 2021 by Nopiana Nopiana, Hari Sutra Disemadi with the title Legal Protection of Trademark Rights Holders: A Comparative Study between Japan and Indonesia. Then a study in the same year by Icha Sheilindry with the title Protection of Intellectual Property Rights in Electronic Business Contracts for Trademark Rights Holders. Then the research was conducted by Ni Kadek Manik, Lely Kamani, and

Vira Khaerunnisa with the title Legal Analysis of Intellectual Property Rights in the Case of the Geprek Benu and Ruben Onsu Controversy: Copyright and Brand Rights Protection in the Culinary and Entertainment Industry. Then in 2023 research by Suroto Protection of Trademark Rights Holders Against Trademark Counterfeiting in the Perspective of Intellectual Property Rights. And finally, the research conducted in 2024 by Irfan Lowis Gabariel Pasaribu, Khansa Safa Aulia, Khanza Alma Khanisa, Muhammad Raihan Alamsyah, and Naeksha Christine Glory Purba with the title Analysis of Legal Protection of Trademark Rights of MSMEs Lazatto Chicken & Burger to Increase Community Economic Growth Based on Law No. 20 of 2016.

Officially, Intellectual Property Rights or IPR were called *Intellectual Property Rights (IPR)* which translated as Intellectual Property Rights or Intellectual Property Rights. In the GBHN of 1993 and 1998 the term Intellectual Property Rights are translated with Intellectual Property Rights, but Law Number 25 of 2000 concerning the National Development Program of 2000-2004 which is a further elaboration of the GBHN of 1999-2004 translates the term *Intellectual Property Rights* with Intellectual Property Rights, abbreviated as IPR. The term *Intellectual Property Rights* comes from the literature of the Anglo Saxon Legal system. (Usman, 2003)

The existence of these sacrifices makes the intellectual work have value. When coupled with the economic benefits that can be enjoyed, the inherent economic value fosters the conception of property towards these intellectual works. Intellectual property rights (IPR) are divided into two categories, namely copyright and industrial property rights (Gultom, 2018).

Brands are the most important part of a product in the world of commerce. Advances in the field of technology make a product brand not only aim to attract consumers, but also as a tool to increase competitiveness. It is unimaginable and undeniable if a product does not have a brand, of course the product will not be known to consumers.

Therefore, a product can be known well or not, of course it will have a brand. In fact, it is not impossible if a brand that is widely known by consumers because of its quality and price, can be followed, imitated, pirated, and may even be counterfeited by other manufacturers or rogue individuals who engage in fraudulent competition. (Esti, 2009)

Counterfeiting is the process of imitating or altering by using tricks to resemble the original. Counterfeit goods contain the same trademark or logo or are very difficult to distinguish from the original. Brand counterfeiting is one of the acts of fraudulent competition whose practice is to produce exactly the same as a well-known brand that already belongs to someone else who is not legally entitled to it.

As the Government of the Republic of Indonesia has made a Law on the Protection of Trademark Rights and Geographical Indications and Intellectual Property Rights (IPR) to protect someone's work. So in the context of Islam, there are several words of Allah that explain the ins and outs of Intellectual Property Rights in Islamic Sharia. The following is one of the postulates that strengthens the understanding of Trademark Rights. In the Qur'an, Surah An-Nisa verse 29, reads:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ۚ ٢٩

Meaning: O you who believe, do not eat one another's wealth in a false way, except in a way that is mutually beneficial among you. And do not kill yourselves; Indeed, Allah is the Most Merciful to you."

This verse requires not to use the wealth of others except on the basis of mutual consent. And Islam prohibits the sale of all types of objects that damage human health, both intellect, religion or ethics such as making statues, cultivating liquor, raising pigs, and trading narcotics. Finally, Islam forbids humans to eat wealth in a false way. (Qardhawi, 2001)

The religion of Islam was revealed to realize and multiply the benefits of mankind. And Islam came to eliminate and minimize the harm that threatened them. Therefore, the existence of a brand as an asset in business has been recognized in Islam because it is seen as a wealth or something of economic value that needs to be protected.

The Indonesian Ulema Council issued a fatwa on the Protection of Intellectual Property Rights which includes the right to protect plant varieties, trade secret rights, industrial design rights, integrated layout design rights, patent rights, trademark rights, and copyrights. With the legal provision that a right that receives legal protection (*mashun*) does not contradict Islamic law, as it can be used as an object of the contract, both the *mu'awadhah contract* and the *tabarru'at contract* that can be waqaf and inherited.

MUI Fatwa Decision Number: 1/MUNAS/VII/MUI/5/2005 in the VII National Conference of MUI on 19-22 Jumadil Akhir 1426 H/26-29 July 2005 AD decided on the following legal provisions:

1. In Islamic law, IPR is seen as one of the *huquq maliyyah* (property rights) that receives legal protection (*mashun*) like *mal* (wealth).
2. IPRs that receive Islamic legal protection as referred to in number 1 are IPRs that do not contradict Islamic law.
3. IPR can be used as an object of contract (*al-ma'qud 'alaih*), both *mu'awadhah* (exchange, commercial) contracts, and *tabarru'at* (non-commercial) contracts, and can be waqaf and inherited.
4. Any form of violation of IPR, including but not limited to using, disclosing and making, using, selling, importing, distributing, delivering, providing, announcing, reproducing, plagiarizing, falsifying, hijacking other people's IPR without rights is a tyranny and the law is haram. (MUI, 2005)

The use of a well-known trademark without permission can harm the owners or holders of the registered brand, as well as harm *the brand image* that has been painstakingly pioneered by the owner or holder of the brand. This is clearly contrary to the regulations of the Law and the MUI Fatwa. Therefore, it is appropriate for us to give a proper appreciation for the sacrifice in order to produce a quality product.

The case of Mie Gacok and Mie Gacoan is actually something that has been discussed for a long time. From the year of its launch, Mie Gacoan was born in 2016 which is a trademark of PT. Eternal Debauchery. Finally, throughout the year, the name of Gacoan noodles itself became famous in the cyberspace and then spread its outlet expansion throughout Indonesia. This spread expanded for the first time on the islands of Java and Bali so that in 2022 Gacoan noodles will officially spread in North Sumatra, precisely in the city of Medan. In 2023, previously a café called Daun Kipas had been established with one of its products, namely Gacok noodles with the same logo, so that many customers thought that it was the first outlet in Langsa City which was predicted to be from Gacoan noodles on the island of Java.

Finally, the owner of Gacok noodles himself turned out to be inspired by the name from Gacoan noodles so that there was a taking of trademark rights by Gacok noodles under the pretext of being inspired by Gacoan noodles. From taking this name itself, the owner of Gacok noodles reaped quite a lot of profits so that he took advantage of the customer's mistake thinking that the outlet was a Gacoan outlet. From here we can see that there is an infringement in trademark rights committed by Mie Gacok against Mie Gacoan so that this is considered a necessity for an evaluation of trademark protection in Indonesia.

METHOD

This study uses empirical legal research by taking the starting point of analysis according to events in the field. Empirical legal research is a legal research method that uses

empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation.

In empirical research (*field research*) or field research, it is research whose object is about the symptoms, events, and phenomena that occur in society, institutions or the State that are non-literary by looking at phenomena in society. (Sugiono, 2003) The nature of this research is descriptive, namely research that seeks to provide systematically and carefully about actual facts with certain population characteristics. This research was carried out using internet access to obtain the necessary data. The object of this research is Mie Gacoan with Mie Gacok which is a trademark of Daun Kipas Café and Resto in Langsa City.

The approach used is a case approach because it is considered more credible in researching cases of imitation of trademark rights by Gacok noodles against Gacoan noodles which is considered to have occurred since 2023. This approach is also considered more effective because it is clearer to know the infringement committed by Gacok noodles against Gacoan noodles in imitation of trademarks.

RESULTS AND DISCUSSION

Trademark Rights Imitated Between Mie Gacok and Mie Gacoan

The trademark of Gacok noodles actually imitates the trademark of Gacoan noodles. The beginning of the history of Gacoan noodles itself is a restaurant franchise from Indonesia. This business was established in early 2016 in Malang City, and is under the auspices of PT Pesta Pora Abadi. Until the end of 2022, Mie Gacoan has employed more than 3,000 people in dozens of its outlets spread throughout Indonesia, especially on the islands of Java and Bali. The word 'gacoan' comes from the Javanese language which means hero or mainstay. Mie Gacoan outlets are quite spacious with affordable product prices, so that Mie Gacoan consumers are mostly young.

At the beginning of its establishment, Harris Kristanto was said to be the pioneer of noodles that were very popular among these young people. He holds an S.E degree from Widya Mandala Catholic University Surabaya in 2010. In this business, Harris Kristanto works as a *Human Resources Director*. With various innovations from Harris, the Mie Gacoan business can grow rapidly. This development was successfully proven by an increase in the company's profit by up to 50 percent.

After successfully starting a business to the success it is today, Mie Gacoan currently has more than 20 branches in Indonesia. In fact, in one city there can be several restaurants, because they are in demand by buyers. In 2021, the number of Mie Gacoan branches has reached 54 branches. You can enjoy Gacoan Noodles in the cities of Malang, Surabaya, Tulungagung, Madiun, Kediri, Jombang, Blitar, Ngawi, Ponorogo, Pasuruan, Bali, Bekasi, Bandung, Solo, Cirebon, Semarang, and Jakarta.

Quoting from the official website of the pioneer of spicy noodles in Indonesia, the name Gacoan comes from the word 'Gaco'. In Javanese, 'Gaco' means hero. This was also confirmed by a spokesperson from PT Pesta Pora who confirmed that the meaning of Gacoan is a hero. The meaning of the name is quite relevant to the current business condition of Mie Gacoan, where Mie Gacoan is quite a leader in culinary innovation of spicy noodles that many people like.

One of the imitators of the Gacoan noodle trademark is Gacok noodles in Langsa City, precisely the gacok noodle product itself is a product of Daun Kipas Café and Resto in Langsa City. Mie Gacok itself was born in 2023 which means it is a new product in Langsa City by presenting that Gacok noodles are the same menu and take the fame and good name of Gacoan noodles.

Many thought that the outlets were the same. The name of Gacok noodles itself is actually inspired by Mie Gacoan which was born a long time ago and has also been patented by the owner of the name PT. Pesta Debauchery Abadi so that the brand is a patented

trademark. Mie Gacok itself imitates the logo of Gacooan noodles on the word Mie which is united between the letters I and E so that the logo is exactly the same as Gacooan noodles. Even so, it is still wrong so it is considered an infringement in copyright on trademarks. This perception changed when in 2022 Gacooan noodles decided to stall in Medan City with the first outlet on Jalan Abdullah Lubis, Medan Selayang District and the second outlet on Jalan Tuasan, Medan Tembung District.

Legal Protection of Intellectual Property Rights in Trademarks

1. Brand Definition

In article 1 paragraph 1 of law number 20 of 2016 concerning trademarks, the definition of a trademark reads: A trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of two or more of these elements to distinguish goods and/or services produced by persons or legal entities in the trading of goods and/or services.

A trademark is a sign of the creation or thought of humans to be used as an identification of the goods or services made, and consumers as users of a good or service can distinguish the mark or brand of one goods or service company from another. By owning a brand, it means that it can be applied as one of the marketing strategies, namely a product development strategy to the user community or to the consumer community, where the position of a brand is influenced by the quality of the goods in question. (Erlina, 2018)

So a brand that is also acceptable is when the brand is not related to a product, for example, the "apple" brand is the name of the fruit but from a product in the form of a gadget or mobile phone, or for example, "jaguar" is the name of an animal but from a product in the form of a car. The types of these trademarks have also been regulated in the Trademark Law which consists of: trademarks, service marks, and collective marks. Regarding the definition of trademark, article 1 point 2 formulates as follows: a trademark is a mark used on goods that are traded by a person or several people jointly or a legal entity to distinguish it from other similar goods. Meanwhile, a service mark according to article 1 point 3 is defined as a mark used in services that are traded by a person or several people jointly or as a legal entity to distinguish it from other similar services.

Especially for collective brands, it cannot actually be said to be a new type of brand because this collective brand actually also consists of trademarks and services. It's just that this collective brand is used collectively. In other terms of the type of brand as explained above, there are other explanations that are based on the shape or form. The form or form is intended to distinguish it from similar goods belonging to other people. Because of this distinction, there are several types of brands, namely: (Saidin, 2015).

- a. Painting brand (beel mark);
- b. Word marks;
- c. Form mark;
- d. Noise mark (klank mark);
- e. Title mark.

Furthermore, Soekardono expressed his opinion that, regarding the form or form of the brand, the law does not command anything, but must be differentiating, which is manifested by: (Saidin, 2015)

- a. A way that anyone can easily see (beel mark);
- b. Brands with words (word marks);
- c. A combination of the top sight brand and the word brand.

The function of the brand is to fulfill the trading activities of goods or services. Where the function of the brand as: (Saidin, 2015)

- a. As an identification for the products of one company with another;
- b. As a promotional tool. So promoting the products is enough to mention the brand to attract consumers.
- c. Quality assurance or quality of goods. This not only benefits brand-owned producers, but also protects the quality assurance of goods or services for consumers.
- d. Identify the origin of the product. It is an identification of goods or services that connects goods or services with producers, or between goods or services with their region/country of origin.

2. Trademark Rights in Islam

The existence of a brand that enters the business world is very influential, both for producers and for consumers. For good brand manufacturers, it can raise the name or evoke the image of the producer (company), and can be used for promotional purposes. For example, a very famous clothing brand, even though the design is not good, people will still consider that this shirt is a magnificent shirt made by a well-known design or worn by a famous model.

How important is the existence of a brand in the business world. However, due to the fierce competition in the business world, it can change the behavior of business actors to conduct unfair business competition related to the products and goods they produce. This is considering that the goal of business is to achieve the greatest and highest possible, so that business actors try to win the competition even though it is done in a way that is not good or true or that violates the applicable ethics and norms so that not only other business actors are harmed but also consumers. (Hidayah, 2014)

Any infringement on a trademark in the form of imitating, hijacking, plagiarizing and counterfeiting a branded product is haram, because it is included in the category of eating other people's property in a false way. Allah SWT said:

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

Meaning: O you who believe, do not eat one another's wealth in a false way, except in a way that is mutually beneficial among you. And do not kill yourselves; Indeed, Allah is the Most Merciful to you."

In Islamic law, it is explained that a person's monopoly on the ownership of Intellectual Property Rights through the form of knowledge that he has obtained with the aim of collecting the greatest profit and is not accompanied by the purpose of getting pleasure from Allah SWT, then the knowledge that we have in the form of works, will not get glory before Allah SWT. (Hidayah, 2017)

Because every Muslim is instructed to avoid things that are haram or not allowed in Islamic law and try to do according to their abilities. Buying a product with a counterfeit brand is an act contrary to this command, therefore it means assisting them in wrongdoing and unjustified acts.

Infringement of trademark rights is also considered as "taking your rights in a cheap way", meaning that this act in the eyes of Islam itself is referred to as theft. Although it looks more administrative, it is still considered theft in Islamic law. Regarding the case of Gacok noodles with Gacoan noodles themselves, it is clear that there is an attempt to infringe on trademark rights by taking part of the Gacoan name into Gacok. In the analysis of Islamic law itself, the owner of Gacok noodles should withdraw the name of the Gacok noodle trademark from circulation in the public. This is because the act has apparently created a new perception in the community.

This perception is apparently used by the owner of the Gacok noodles themselves in order to reap more profits so that this is called a form of theft of works and detrimental because there are parties who really feel disadvantaged for the actions carried out by this Gacok noodles, namely the Gacoan noodles themselves.

Protection of Trademark Rights from the Perspective of MUI Fatwa Number: 1/MUNAS/VII/MUI/5/2005

MUI Fatwa No. 1/Munas VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights was born from the anxiety of artists, both in the field of fine arts and music, whose works are widely imitated and duplicated without the permission of the owner. Therefore, the Indonesian Anti-Counterfeiting Society (MIAP) submitted a fatwa request to the MUI to immediately issue a fatwa on the protection of intellectual property rights.

Upon the submission of MIAP, the MUI considers it necessary to issue a fatwa on the status of Islamic law regarding the Right to Intellectual Property to be used as a guideline for Muslims and those who need it. After a mature formulation process based on the Decree of Majma' al-Fiqih al-Islami number 43 (5/5) Mu'tamar V of 1409 H/1988M concerning al-Huquq al-Ma'nawiyah, the opinion of the Ulama on IPR, the explanation from MIAP represented by Mr. Ibrahim Senen in the Fatwa Commission meeting on May 26, 2005, various laws and regulations of the Republic of Indonesia regarding IPR and all its implementing regulations and amendments, and the opinion of the Commission C Session for Fatwa at the 2005 MUI VII National Congress, the Indonesian Ulema Council issued a fatwa No. 1/Munas VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights on July 29, 2005.

The issuance of the MUI fatwa was caused by weak law enforcement and public awareness. For this reason, with the issuance of MUI Fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights, it is hoped that awareness for the public not to violate copyright, this fatwa is not everything, but a moral approach. This fatwa is a joint campaign against things that can cause madharat.

The case of Gacok noodles and Gacoan noodles is actually a form of copyright infringement case against trademarks because it imitates the logo of Gacoan noodles itself. This case is actually not only one in Indonesia but many similar things have happened. The case between Gacok and Gacoan actually started from nomenclature. This nomenclature is considered a proud identity so if there is a brand that imitates a little, it is considered a theft.

The nomenclature and logo that resemble it turned out to be a nomenclature that was taken part of the name Gacoan into Gacok so that this act resulted in a perception in the community and customers that Gacok noodles are the company's underbow of Gacoan noodles so that the nomenclature is used as an effort to attract customers and take advantage of the act.

MUI Fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights views that this act is a copyright infringement and stipulates that the act carried out by Gacok noodles is an attempt to plagiarize the trademark of Gacoan noodles so that it is a tyranny and is determined as a haram act.

MUI Fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights itself protects IP owners or trademark owners as a whole by using Islamic principles in protecting all rights of the actual trademark owners. The power of this fatwa is indeed far from the strength of Law Number 15 of 2001 concerning Trademarks and Law Number 28 of 2014 concerning Intellectual Property Rights which are the main forces in protecting trademark owners who feel harmed by several parties.

The power of this fatwa is only limited to prevention to prevent people from violating the right to trade as a form of intellectual property rights so that no one wants to imitate it because it is a haram act. However, the MUI Fatwa No. 1/MUNAS VII/MUI/15/2005

concerning the Protection of Intellectual Property Rights itself is nothing more than a preventive effort because in fact illegal acts related to trademark plagiarism itself have been regulated by sanctions through Law Number 15 of 2001 concerning Trademarks and Law Number 28 of 2014 concerning Intellectual Property Rights.

Even so, the actions of the owner of Gacok noodles themselves are illegal acts and the trademark of Gacok noodles should be abolished through a complaint to the court and must have permanent legal force. This is actually common because not many people know that trademark plagiarism is an illegal act that can be sanctioned by the relevant laws.

Analysis, MUI Fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights only protects the Gacok noodles with prevention alone. In order for this fatwa to work optimally, it must be in conjunction with using Law Number 15 of 2001 concerning Trademarks and Law Number 28 of 2014 concerning Intellectual Property Rights. If not, then this fatwa is nothing more than a preventive protection and cannot be a repressive protection.

CONCLUSION

Legal protection in the case of Mie Gacok whose brand was partially imitated by Mie Gacok is indeed an infringement of intellectual property rights on trademarks. This is considered an administrative criminal act that should be able to be legally enforced. In addition, according to the MUI fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights, the actions of the owners of Gacok noodles against Gacok noodles are acts that violate the provisions of the MUI Atwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights which is an illegal act. In addition, the MUI fatwa No. 1/MUNAS VII/MUI/15/2005 concerning the Protection of Intellectual Property Rights is preventive and cannot be protected repressively if it does not go hand in hand with Law No. 15 of 2001 concerning Trademarks and Law No. 28 of 2014 concerning Intellectual Property Rights.

As a suggestion, trademark owners should pay attention to the management and protection of their trademarks. This can affect the nomenclature that can be used by irresponsible people. In addition, IPR is the absolute right of a person who owns the trademark, so in protecting it it is not enough only law enforcement but also requires the full role of the owner of the trademark.

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