

Legal Analysis on the Use of *Muhammadiyah* Trademark on a Charity Business Marketing Based on Religious Justice

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Abstract

The purpose of this study was to Analyze The Use of *Muhammadiyah* Trademark on A Charity Business Marketing Based On Religious Justice. The research method used by the author is a normative-empirical research method. The data collection method used is library research, observation, interviews, and data analysis methods are using qualitative descriptive analysis. The results of this study shows that Religious Value in the Marketing of *Muhammadiyah* Charity Business Products are based on the belief in one and only God, meaning that everything that is done is in order to seek benefit and benefit, as is the case for example in *Muhammadiyah* education establishing many schools, madrasas, Islamic boarding schools and other orphanages solely because upholding religious values in which by building places to seek knowledge is a very noble glory and this, of course, are the result of the hard work of the Management of *Muhammadiyah*. An organization, whether it's non profit or not need a trademark that shows their reputation and goodwill. Therefore The Use of *Muhammadiyah* Trademark on A Charity Business Marketing can be justified to be Based On Religious Justice as it is for the need for the *Ummah* itself.

Keywords: Legal Reconstruction, *Muhammadiyah*, Trademark, Religious Justice.

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INTRODUCTION

Muhammadiyah or Persyarikatan *Muhammadiyah* is a non-governmental Islamic organization, and one of the largest in Indonesia. This organization was founded in 1912 by KH. Ahmad Dahlan in the city of Yogyakarta as a reformist socio-religious movement, which advocated the opening of a faucet for *ijtihad* as a form of detailed adjustment of Islamic law with the times. This is the antithesis of the thinking of most Muslims in the colonial period who were self-sufficient with the *ijtihad* of the 4 madhhab scholars and closed themselves off from the possibility of *ijtihad* renewal (Pratiwi, 2022).

Muhammadiyah plays an important role in the expansion of salafi theological doctrines in Indonesia. Salafiyah is a reform movement within Sunni Islam. Since its founding, *Muhammadiyah* has adopted a reformist platform that blends religious and modern education, primarily as a way to promote the upward mobility of Muslims towards 'modern' communities and to purify Indonesian Islam from local syncretic

practices. As a modernist organization, *Muhammadiyah* continues to support local culture and promote religious tolerance in Indonesia, while some universities are predominantly attended by non-Muslims, especially in the provinces of East Nusa Tenggara and Papua. The group also runs a large chain of charitable hospitals and operates 162 colleges to date.

As of 2019, *Muhammadiyah* is considered the second-largest Islamic organization in Indonesia with 60 million members. Although *Muhammadiyah* leaders and members are often actively involved in shaping Indonesian politics, *Muhammadiyah* is not a political party. *Muhammadiyah* has devoted itself to social and educational activities (Maulidia, 2022).

Muhammadiyah in mobilizing Business Charity can motivate other Islamic organizations and through them, Muslims can present and involve their religious teachings in regulating and managing their economic life. Thus, all economic activities of Muslims are in accordance with the provisions contained in their

religion. Islamic economics is built on the basis of the Islamic religion, therefore it is an integral part of the Islamic religion. As a derivation from the Islamic religion, Islamic economics will follow the Islamic religion in its various aspects. Islam is a system of life (way of life), in which Islam has provided a complete set of rules for human life, including in the economic field. Some of these rules are definite and apply permanently, while some are contextual according to circumstances. The use of religion as the basis of science is giving rise to long discussions among scientists even though history has proven that this is a necessity.

Muhammadiyah's Charity Business, which has been established and is growing rapidly, creates a sense of individual ownership. This problem gradually became a problem for *Muhammadiyah* Charity Business as small "kings", that is people who take the profit for themselves, appeared in *Muhammadiyah* Business Charity itself (Hidayatulloh, 2022).

Muhammadiyah's name in Indonesia overshadowing the Business Charity that is in it is not comparable to the success of *Muhammadiyah's* Business Charity so the *Muhammadiyah* label has not fully contributed significantly to the development of the *Muhammadiyah* organization.

As stated in Article 7 paragraph 2 of *Muhammadiyah's* Statute, their business is manifested in the form of Charity Business programs and activities, the types and implementation of which are regulated in the household budget, then in paragraph 3, determines policies and the person in charge of Charity Business programs and activities is the leadership of *Muhammadiyah*. Their efforts are contained in the *Muhammadiyah's* Statutes, which rules are contained in the *Muhammadiyah* Bylaws. Regulations and laws regarding the establishment of a *Muhammadiyah* Charity Business and its management have been regulated in the *Muhammadiyah* AD/ART, but are not yet detailed. The *Muhammadiyah* legal entity in the establishment of a Business Charity needs to be made and socialized in a comprehensive and detailed manner.

There are no binding rules on the use of *Muhammadiyah* brands or names. This causes the use of the *Muhammadiyah* brand easily differentiated from other similar non-profit organizations. Procedures for the use of marks need to be regulated within *Muhammadiyah*. Likewise, sanctions for violating the use of the *Muhammadiyah* mark have not been applied in a fair and civilized manner. So it is necessary to have organizational rules that are binding on the regulations, it is necessary to adjust the legal regulations on trademarks, Copyrights, and AD/ART according to the rules in the implementation of *Muhammadiyah* Charity Business at various levels. Therefore, The Purpose of this study is to Analyze The Use Of *Muhammadiyah*

Trademark On A Charity Business Marketing Based On Religious Justice.

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

Harmonization in life is seen every day. Harmony can be felt by the existence of life that supports each other. The existence of knowing and understanding each other is what makes Human to be able to live side by side and also organize. The gathering of several people will give birth to a group that will be organized. Association in achieving certain goals, and agreed upon by an association. An organization is a unit consisting of parts in an association for a specific purpose.

This Harmonization, as time advances are challenged by various changes such as The Development of Consumer Protection Regulations in E-Commerce Transactions in Indonesia and ASEAN Countries, for example, can be the reason that many consumers actually do not fully trust online transactions. Consumers feel they are not fully protected in online transactions. In this case, the role of the state as a regulator is very important. Law number 7 of 2014 concerning trade as a legal umbrella in trade, both conventional trading, and online trading, sees this as something that must have clear rules in terms of consumer protection apart from using the consumer protection law. Therefore, the draft government regulations related to e-commerce as mandated in article 66 of the trade law must immediately become a priority for the government to be completed so that the existence of an e-commerce business climate in Indonesia can compete with other ASEAN countries (Toebagus, 2022). The development of the e-commerce business in Indonesia and what is used by the government as the regulator to be able to make e-commerce in Indonesia become the host in its own country. The existing policies can accommodate the interests of the e-commerce business, especially small-scale e-commerce entrepreneurs who choose the economy as a medium for marketing their products and services. With the demographic bonus they have and a large market nation, Indonesia must become a global citizen. In the economic field of ASEAN, to realize this, it must be supported by pro-consumer protection processes and regulations, not only in conventional trade but also in e-commerce. The thing that needs to be considered in the implementation of e-commerce is the need for a policy that is not only oriented towards aspects of security, certainty, and convenience for consumers in transactions but is also able to eliminate various barriers to trade (Widodo, 2019). Regulations and rules from the government will be able to provide legal certainty in supporting the development of e-commerce transactions in Indonesia.

One of the future directions in managing natural resources as stipulated in TAP MPR No. IX/MPR/2001 is to review various laws and regulations related to natural resource management in order to synchronize inter-sectoral policies. These command codes are set by the government, but it has not yet been seen to carry out a comprehensive review. Until then there was a memorandum of understanding (NKB) of 12 ministries/agencies (K/L) and continued with GNP SDA in 2015 which encouraged this order to be realized. An important conclusion that can be put forward is that the relevant laws consult more on the principles of the Unitary State of the Republic of Indonesia and legal certainty rather than democracy. Sustainability, and social justice. Many things can emerge from this inspection, namely that the management of natural resources is more concerned with securing the source of commodities or the area

where natural resources are located, with the issue of who should be sovereign. Dominating, and owning natural resources, the point that is forgotten from this process is in what way and for whom the management of natural resources is carried out. The point is social justice, so the principle that is most often overlooked in laws related to natural resources is not in other words, regulations on natural resources that have more strengthening state institutions will have consequences for corporations rather than strengthening and providing more access to the public.

From this brief conclusion and reading of the current situation, several issues can be applied so that the review resulting in organizational guidelines can have a greater impact. The regulatory process must continue to be carried out not only on regulations in the form of laws but also on regulations under the law using the horizontal method in parentheses (which are) or vertically (checking their harmonization with higher/lower regulations). The perpetrators of this harmonization inevitably have to be state institutions either at the central or regional, executive or legislative levels. Harmonization will be more effective if the makers and executors do it because the process of changing or adding new regulations or it will be easier to do and will finally have a more consistent direction of harmonization (Widodo, 2018).

Finally, the most important thing in the process of harmonization of these regulations is to open up a wider space for fibers as the involvement of the republic in drafting regulations. Therefore, in order for the regulations that will be drafted in the future will not only strengthen the state but also make more rules that make the community empowered in managing the natural resources around them, The religious value in regulations in the marketing must be Implemented.

The religious value in regulations in marketing as mentioned above can be seen in *Muhammadiyah's* charitable business products is belief in one and only God, meaning that everything that is done is in the context of seeking benefit and merit, as is the case for example in *Muhammadiyah* education establishing many schools, madrasas, Islamic boarding schools, and orphanages solely because upholding religious values which by building places to seek knowledge is a very noble glory. Another religious value of *Muhammadiyah's* charitable efforts is the movement of people to help each other. This can be seen from the attitude of *Muhammadiyah* taking part in humanitarian social movements. In countries that need assistance, *Muhammadiyah* participates and performs with enormous assistance. It can be seen that *Muhammadiyah* has established various branch leaders abroad and has even built learning places in Malaysia, Australia, and even Lebanon. This is proof of the Influence of the *Muhammadiyah* organization.

This development is not possible without great support from the results of *Muhammadiyah's* charitable efforts. *Muhammadiyah's* charitable efforts unite the brotherhood of every Muslim, who incidentally fellow Muslims are brothers. This brotherhood is rooted in the heart so *Muhammadiyah* has built buildings that cost billions of rupiah. Tufak is only a *Muhammadiyah* building that has played a role in food aid to help victims of hunger, war, and also victims of natural disasters. This kind of behavior has been instilled in *Muhammadiyah* since its infancy, noble values have been instilled as a provision for the future of *Muhammadiyah*. *Muhammadiyah*, with its large financial support, often provides scholarships, not only for one or two people. Experiences that must be studied by *Muhammadiyah* students should be encouraged and taught from an early age.

The understanding of Islamic protection of brand rights as intellectual property rights is recognized as something of material value and must be protected.

In this regard, the basis of Islamic law for the protection of trademark rights is as stated in the Al-Quran (QS. An Nisa': 29):

عَنْ تِجَارَةٍ تَكُونُ أَنْ إِلَّا بِالْبَاطِلِ تَبْنِيكُمْ أَمْوَالَكُمْ تَأْكُلُوا لَا أَمْنُوا بَيْنَ أَيْدِيهَا يَا رَجِيماً بِكُمْ كَانَ اللَّهُ إِنْ أَنْفَسَكُمْ تَقْتُلُوا وَلَا مِنْكُمْ تَرْضَى

Meaning: *O you who believe, do not eat each other's wealth in a vanity way, except by way of trade that applies with mutual consent between you. And do not kill yourselves; verily Allah is Most Merciful to you.*

Recognition and appreciation of intellectual property rights are powerful motivators for thinkers, scientists, and other inventors of ideas to express the results of their thoughts that can be useful for human life. Islam was sent down to realize and multiply the benefit of mankind. And Islam came to eliminate and minimize the harm that threatens them.

Protection of the rights of a mark is a form of property ownership that is recognized as permissible by *Syar'a*. So the mark also includes property and property rights that are protected in Islam.

One thing that needs to be noted on why Non-Profit Organizations such as the *Muhammadiyah* need to be trademarked is that the fact that Non-Profit organizations hold an important power in the community and it's a place where a large amount of money comes from donations circulates. For example, In 2015, it was estimated that private individuals donated over \$350 billion, which accounted for approximately two percent of the U.S. Gross Domestic Product (Katsyuba, 2016) and the same can be seen in Indonesia where the majority of its people follow the Islamic teaching.

Beyond legal protection against counterfeiting, there are many reasons to care about trademarking. First, trademarks are an asset for a non-profit organization such as *Muhammadiyah*. As they have undoubtedly worked hard to develop a product, market it, and attract donors. All that effort generated in proprietary intellectual property is integral to the nonprofit's operation. Therefore Safeguarding their nonprofit's intellectual property through trademark protection provides security for valuable company assets.

Second, trademarks can become a lucrative revenue stream for their organization. Nonprofits commonly license their intellectual property, including trademarks, to third parties in exchange for royalties or other payments. Licensing arrangements benefit nonprofits by outsourcing production, thus reducing costs. Not only is the nonprofit earning additional revenue under a licensing agreement, but it also retains control over the use of its intellectual property, eliminating any risk of damaging the nonprofit's reputation and goodwill.

Third, trademarking intellectual property builds brand identity. Trademarks serve as a mechanism to prevent others from using the same or similar marks as your nonprofit. A trademark minimizes copycatting and helps establish their nonprofit's unique identity in the marketplace. Moreso, fanciful and arbitrary trademarks ensure their nonprofit's products never get confused with competitors and all of that need to be considered for the benefit of the *Ummah*.

In relation to the legal protection period for trademark rights in Article 35 paragraphs (1) and (2) of Law Number 20 of 2016 Concerning Trademarks and Geographical Indications, the aim is for a benefit so that the goods are not only registered but can be felt by the public. Because if the brand is not used it will be useless and useless.

Trademark rights are something of value and have economic value, so they can be referred to as al-mal (treasures). According to Imam Syafi'i, al-Mal or property is devoted to something of value and can be traded and has consequences for those who damage it.

The logical consequence of this opinion of the majority of scholars is that so-called assets do not have to be objects or materials, but can also benefit or right to be seen as assets. The reason used by the majority of scholars is that the intention of people to own an object is not solely because of the object, but because of the benefits of the object itself.

By looking at this provision, the legal protection period does not mean to limit the property rights of the brand owner, but aims to be used properly

by providing the greatest benefit to the community, in addition to seeking advantage from the mark.

Article 36 of the Trademark Law requires that if a mark is to be extended, it must include that the mark is still in use and is still being produced and traded. Therefore, if viewed from the perspective of *maslahah mursalah*, it is appropriate because the goal is *maslahat*, so that existing and registered brands can benefit from it.

During the 10 (ten) year period of legal protection for the mark, it is hoped that the brand owner will be able to innovate and develop again so that when *Muhammadiyah* is about to extend the mark, the existing goods/services can really benefit the community. For the Author, this time is not a limitation but rather, a trigger tool to continue to contribute and create creativity through branded goods and services.

Protection of *muammalah* is an absolute thing because the stipulation of guarding or protecting property (property rights) is at the level of *saddu dzari'at* (closing the road), the meaning is that the enforcement of laws in terms of protecting assets is absolute, because if it happens otherwise in the sense that it is not there are rules governing the protection of property rights then the chaos will occur on earth.

In addition, the term of protection must be interpreted as *Daf Al Mafsadah* (refusing damage) in the sense that the period of protection for trademark rights is a preventive measure so that a larger *mafsadah* does not occur. Because with this protection, every time you make a work, you will be motivated to continue exploring new discoveries that will benefit humans.

Indonesia adheres to a constitutive system of trademark registration, registration is a must in order to obtain trademark rights, without state registration it will not grant trademark rights to the trademark owner. This

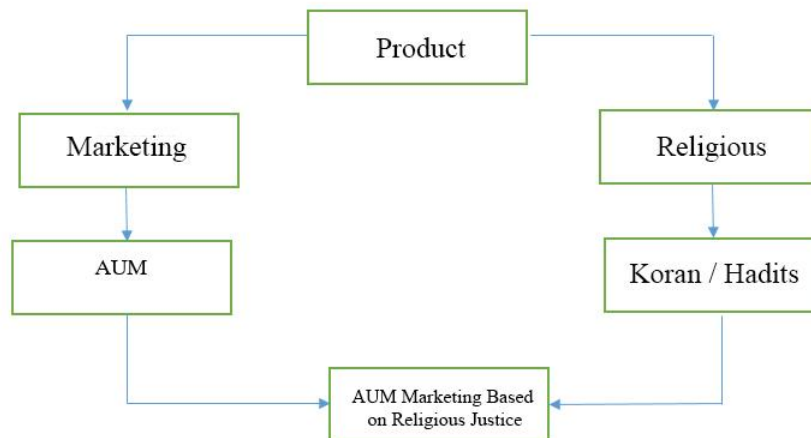
means that without registering a trademark, a person will not be given protection.

Meanwhile, the declarative registration system is a system in which the first user of the mark concerned gets legal protection. This system is adhered to in Law Number 21 of 1961 concerning Company Marks and Commercial Marks. In other words, it is not registration that creates a right to a mark, but on the contrary, it is the first use in Indonesia that creates or gives rise to that right.

The fact that the declarative system is no longer used in Indonesia means that brands that are not registered in Indonesia have no legal force and do not have legal protection for the mark. If viewed from the concept of benefit, there is a rule that avoiding damage must take precedence over obtaining (gaining) profit. So if there is a brand that is not registered it has a greater risk of harm than a registered one, because there is a potential loss if it is used by other parties because it does not have legal protection (Holubarova, 2020).

The protection of trademark rights in Islam is also based on *shari'ah* principles, which relate to the *maqasid shari'at* theory (objectives of *shari'ah*), in which the purpose of establishing Islamic law is to create justice in various aspects of life, including *muammalah*. The implementation of *maqasid shari'at* in trademark protection is related to the protection of property rights or assets (*mukhafadhah al-maal*).

The Protection of brand rights in Islam is also based on the individual's obligation to protect his property from harm. Indonesia provides all legal protection based on registration with the aim of achieving legal certainty. From this, legal certainty is only achieved after going through the registration period. Therefore, The Model draft chart, based on the explanation above, can be seen in the chart below:



CONCLUSION

Based on the results of the research, the following conclusions can be drawn, is that Religious Value in the Marketing of *Muhammadiyah* Charity Business Products are based on the belief in one and only God, meaning that everything that is done is in order to seek benefit and benefit, as is the case for example in *Muhammadiyah* education establishing many schools, madrasas, Islamic boarding schools and other orphanages solely because upholding religious values in which by building places to seek knowledge is a very noble glory and this, of course, are the result of the hard work of the Management of *Muhammadiyah*. An organization, whether it's non profit or not need a trademark that shows their reputation and goodwill. Therefore The Use of *Muhammadiyah* Trademark on A Charity Business Marketing can be justified to be Based On Religious Justice as it is for the need for the *Ummah* itself.

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