



Legal Protection of Restaurant Franchise Brands, in the Perspective of Trademark Law and Islamic Law

Asti Wasiska, Adang Djumhur Salikin

Islamic State Cyber Syekh Gunung Jati University, Cirebon, West Java, Indonesia
Corresponding Author Email: adangdjumhur@uinssc.ac.id

Abstract

Background. Legal protection of restaurant franchise brands has a high urgency in the context of modern business developments in Indonesia. Trademarks, as legal and commercial identities, not only serve as differentiators but also as instruments that determine a business's sustainability and reputation. However, in practice, there are many trademark infringements in the form of imitation, unauthorized use, and manipulation that is detrimental to the original brand owner.

Purpose. This study aims to examine the legal protection of restaurant franchise brands in the perspective of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, as well as from the standpoint of Islamic law that emphasizes the protection of property (ḥifẓ al-māl), justice, and the prohibition of fraudulent practices (tadlīs).

Method. The research method used is a normative juridical approach, with a legislative, conceptual, and maqāṣid al-syarī'ah perspective.

Result. The results of the study show that legal protection in the Trademark Law has provided a strong normative basis, but its enforcement practices still face challenges.

Conclusion. From the perspective of Islamic law, the protection of restaurant franchise brands is well-founded because it aligns with the principles of safeguarding ownership rights, preventing tyranny, and supporting the sustainability of halal businesses.

Implementation. The integration between positive law and Islamic law is vital to strengthen the protection of restaurant franchise brands in order to create legal justice and certainty of doing business.

Keywords: brand, restaurant franchise, legal protection, Trademark Law, Islamic law



© 2025 The Author(s). This article is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source.

INTRODUCTION

The development of franchise businesses in Indonesia over the last two decades has been very rapid. The restaurant franchise business model is one of the most in-demand business models because it provides opportunities for investors and business actors to develop business

networks with relatively controlled risk. Brand is a key element in the franchise system because it is through the brand that reputation, quality standards, and business identity are maintained.

Law Number 20 of 2016 concerning Trademarks and Geographical Indications (hereinafter, the MIG Law) provides a clear legal basis for the registration, protection, and enforcement of trademark rights. However, in practice, many brand disputes still afflict restaurant franchises in Indonesia. Cases such as Ayam Geprek Bensu, Kopi Kenangan, and Es Teler 77 highlight the vulnerability of trademark protection, especially when a brand's popularity encourages others to engage in piracy or imitation.

From the perspective of Islamic law, a trademark can be seen as part of the property rights (*ḥuqūq māliyah*) that must be protected. The principle of property rights protection (*ḥifz al-māl*) in *maqāṣid al-syarī'ah* affirms that Islam protects not only physical property, but also intellectual property. Trademark infringement can be categorized as a form of tyranny (*ẓulm*), fraud (*tadlīs*), and even a violation of others' rights. Therefore, it is essential to review the harmonization of trademark protection between Indonesia's positive legal system and Islamic legal principles.

Problem Formulation

Based on the above background description, this study formulates several main problems:

1. What is the legal protection for restaurant franchise brands according to Law No. 20 of 2016 concerning Trademarks and Geographical Indications?
2. What is the perspective of Islamic law in providing legitimacy for the protection of restaurant franchise brands?
3. How is the integration of trademark law protection in the perspective of Trademark Law and Islamic law to strengthen legal certainty in Indonesia?

Research Objectives

This research aims to:

1. Analyze the form of legal protection for restaurant franchise brands in the MIG Law.
2. Examining the basis of the legitimacy of trademark protection from the perspective of Islamic law.
3. Finding an integration model between positive law and Islamic law in protecting restaurant franchise brands.

Research Benefits

Theoretically, this research is expected to contribute to the development of intellectual property law, especially in the comparative perspective between positive law and Islamic law. In practice, this research is helpful for restaurant franchise business actors, regulators, and legal practitioners in understanding the urgency of brand protection as a business protection tool.

LITERATURE REVIEW

Intellectual Property Rights Theory

Intellectual Property Rights (IPR) are legal concepts that provide recognition and protection for human intellectual creations, works, and innovations. According to Sudargo Gautama, IPR was born as an answer to the needs of modern society, providing rewards for intellectual effort with real economic value. IPR covers various fields, including copyrights, patents, trademarks, industrial designs, trade secrets, and geographical indications.

Trademarks fall within the realm of IPR because they protect the commercial identity of a product or service. A brand is not just a symbol or logo, but also a reputation, trust, and goodwill attached to a business. The theories underlying IPR are generally divided into two major streams:

1. Utilitarianism theory – which emphasizes that IPR protection will encourage innovation because it provides economic incentives for creators or rights owners.
2. Natural Rights Theory – as influenced by the thought of John Locke, who stated that intellectual labor is the personal property of its creator and therefore morally and legally must be protected.

In the Islamic context, the theory of IPR is closer to the concept of *ḥuqūq māliyah*, which are material rights that are inherent in individuals and have beneficial value. IPR protection means safeguarding the owner's interests and preventing *ẓulm* (tyranny) in the form of deprivation of rights.

Brand Concept According to Trademark Law and Geographical Indications

Law No. 20 of 2016 concerning Trademarks and Geographical Indications (MIG Law) defines a trademark as a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of two or three dimensions, sound, hologram, or a combination of two or more of these elements, to distinguish goods and/or services produced by people or legal entities.

The role of a brand in the franchise business is vital because it is the contractual basis between the franchisor and the franchisee. The MIG Law provides legal protection for trademarks through a constitutive registration system. This means that trademark rights are recognized only if they are registered with the Directorate General of Intellectual Property (DJKI).

Article 83 of the MIG Law gives registered trademark owners the right to file a lawsuit for compensation or termination of the use of the trademark without permission. This mechanism is intended to ensure legal certainty in protecting the reputation and economic value inherent in the brand.

However, problems arise when imitation or the use of similar brands occurs, which often confuses society. This phenomenon is rife in the restaurant franchise sector, where the popularity of particular brands encourages competitors to use identical names or logos for economic gain.

Franchising in Business Law

Franchising is a form of business cooperation in which the owner of the brand and business system (franchisor) gives the right to another party (franchisee) to run the business using proven brands, systems, and support. In Indonesia, the regulation of franchising is contained in Government Regulation No. 42 of 2007 concerning Franchising, which states that franchising is a special right owned by an individual or business entity to a business system with business characteristics to market goods and/or services that have been proven successful and can be used by other parties based on a franchise agreement.

In the restaurant industry, the franchise system enables rapid business expansion by leveraging the brand's strength. However, it is precisely these brands that are most vulnerable to violations. Many franchise trademark disputes arise from struggles over rights to trade names and logos considered to have high market value.

Thus, the legal protection of trademarks in franchises concerns not only the economic interests of the franchisor but also the legal certainty of the franchisee, who has invested substantial capital in the cooperation.

Islamic Law's View on Trademark Protection

In Islamic law, the discussion of trademark rights falls into the realm of *ḥuqūq māliyah* (material rights). Contemporary scholars affirm that intellectual property rights, including trademarks, are property rights that must be respected.

Some of the main principles of Islamic law relevant to trademark protection are:

1. *Hifz al-Māl* (Protection of Property) – one of the five main objectives of *maqāṣid al-shari'ah*. Trademark rights that have economic value must be maintained like other property.
2. Prohibition of *Ghasab* (Deprivation of Rights) – the use of a trademark without the permission of the original owner can be categorized as a form of *ghasab*, i.e., taking the rights of others without willingness.
3. Prohibition of *Tadlīs* (Fraud or Cheating) – impersonation of brands that mislead consumers, including *tadlīs*, which is strictly prohibited in Islam because it eliminates the principle of justice in *muamalah*.
4. *Shirkah* (Partnership) The relationship between a franchisor and a franchisee can be analogous to a valid *shirkah* contract if it is based on the principles of voluntariness, fairness, and transparency.
5. *Maqāṣid al-Syarī'ah* – the principle of brand protection is in line with the purpose of the *shari'a* in safeguarding property, preventing disputes, and creating the common good.

Thus, Islamic law not only legitimizes brand protection but also emphasizes the importance of enforcing business ethics to avoid harming rights owners and the consumer community.

Previous Research

Some relevant research on brand and franchise protection in Indonesia includes: Research by Rahmi Jened (2018) on trademark legal protection in the context of modern business confirms that trademark registration is a key instrument for providing legal certainty. A study by Zainal Abidin (2020) regarding the Ayam Geprek Bensu trademark dispute shows the weak supervision and enforcement of trademark laws in Indonesia. A study by Ahmad Sarwat (2021) emphasizes that, from the perspective of Islamic law, trademarks are part of property rights and must be protected under the principle of *hifz al-māl*. International research, for example, by Al-Fawzan (2015), also confirms that IPR, including trademarks, is a Sharia right recognized in modern Islam.

From previous research, it is evident that there is a gap between the strong normative protection in the MIG Law and the still weak implementation practices. This underscores the need for a comparative study with Islamic law to find common ground for strengthening legal protection for restaurant franchise brands.

METHODS

Types and Properties of Research

This research uses a normative juridical approach (doctrinal research), which is legal research that focuses on written norms contained in laws and regulations, court decisions, expert doctrines, and principles of Islamic law. The nature of this research is descriptive-analytical, aiming to describe the legal protection of restaurant franchise brands under the Trademark and Geographical Indications Law (MIG Law) and to conduct a comparative analysis from the perspective of Islamic law.

Research Approach

The approaches used in this study include:

1. The Statute Approach is to examine Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Government Regulation No. 42 of 2007 concerning Franchising, and other related regulations.
2. Conceptual Approach, which explores legal concepts related to brand protection, franchising, and Sharia business principles.
3. Maqāṣid al-Syarī'ah's approach, to understand brand protection from the point of view of Islamic ethics and law to safeguard property (ḥifẓ al-māl), prevent disputes, and realize the common good.

Data Type and Source.

The data sources in this study are secondary data, which consist of:

1. Primary legal materials: laws and regulations (MIG Law, Franchise PP, and their implementing rules) and court decisions related to trademark disputes.
2. Secondary legal materials: books, journals, research results, academic articles, as well as fatwas or opinions of contemporary scholars regarding IPR in Islam.
3. Tertiary legal materials: legal dictionaries, encyclopedias, and other supporting sources that help clarify concepts.

Data Analysis Techniques.

The data obtained were analyzed using normative qualitative analysis, a systematic interpretation of the provisions of laws, legal doctrines, and sharia principles to develop complete legal arguments. The analysis is carried out by:

1. Examine laws and regulations related to brands and franchises.
2. Comparing positive norms with Islamic legal principles.
3. Interpreting the law through the framework of maqāsid al-syarī'ah to find common ground and recommendations to strengthen legal protection.

DISCUSSION

Protection of Trademark Law in Trademark Law and Geographical Indications

Law No. 20 of 2016 concerning Trademarks and Geographical Indications (MIG Law) emphasizes that trademarks are legal identities and commercial assets that must receive state protection. Protection is provided through a first-to-file system, namely trademark registration at the Directorate General of Intellectual Property (DJKI). By registering, the trademark owner acquires the exclusive right to use the trademark and to prohibit others from using the same or a similar trademark.

Article 83 of the MIG Law provides registered trademark owners with the right to file a lawsuit, either for compensation or to request termination of infringement. In addition, there is a criminal sanction for the use of a trademark without the right that causes losses.

However, the effectiveness of brand protection is often constrained by:

1. The registration process is slow and prone to conflicts between parties.
2. Weak law enforcement, especially in cases of popular brand impersonation.
3. Lack of legal awareness of business actors, especially MSMEs that run a simple franchise model.

This shows the need to strengthen regulations and ensure consistency in law enforcement so that trademark protection is not only a formality but also provides legal certainty.

Trademark Dispute Resolution Mechanism

The MIG Law provides several mechanisms for resolving trademark disputes, namely:

1. Civil lawsuit in Commercial Court – trademark owners can sue for damages or termination of use of the trademark.

2. Alternative Dispute Resolution (ADR) – mediation, arbitration, or negotiation can be pursued for a faster and more efficient resolution.
3. Criminal Sanctions – if trademark infringement is committed with an intentional element, the perpetrator may be subject to imprisonment and/or fines according to the provisions of the MIG Law.

In practice, lawsuits in the Commercial Court are the main route. However, litigation procedures are often time-consuming, costly, and frequently result in controversial judgments. Therefore, ADR is a strategic alternative to franchise brand disputes, especially when the parties still have business relationships.

Restaurant Franchise Brand Dispute Case Study

The case of Ayam Geprek Bensus.

This case became a significant phenomenon because it involved the public figure Ruben Onsu. The lawsuit was filed regarding the "Bensus" trademark. The Supreme Court (Decision No. 57 PK/Pdt.Sus-HKI/2020) ruled that the rights to the "Bensus" trademark are owned by PT Ayam Geprek Benny Sujono, not Ruben Onsu. This ruling shows the importance of the first-to-file principle: although Ruben Onsu is popular, because he did not register first, he loses his legal rights.

Memories Coffee Case

Kopi Kenangan faces brand imitation by small coffee shops across several regions. The use of names similar to "Memories of the Former" or "Kopi Mantan" causes confusion among consumers. Although it does not always lead to litigation, this case highlights the challenge of brand dilution, which threatens the reputations of big brands.

The Case of Ice Teler 77

As a legendary franchise in Indonesia, Es Teler 77 has faced several cases of using similar names and logos. However, because its brand registration is strong and consistently maintained, Es Teler 77 has retained its rights. This case teaches that the consistency of legal protection is the key to preserving franchise brands in the long term.

Analysis of Islamic Law on Franchise Brand Protection

From the perspective of Islamic law, a trademark is a *ḥuqūq māliyah* (material right) with economic value. Therefore, brand protection is in line with Sharia principles:

1. *Hifz al-Māl* (Protection of Property) – a trademark is an asset that has economic value, so it must be protected from theft, imitation, or seizure.
2. Prohibition of *Ghasab* – the use of a trademark without the permission of the rightful owner is a form of *ghasab* (involuntary taking of rights).
3. Prohibition of *Tadlīs* (Fraud) – imitating brands to mislead consumers, including the act of *tadlīs*, which is strictly forbidden in Islam.
4. *Shirkah* (Partnership) – the relationship between franchisor and franchisee can be analogized to a *shirkah* contract that must be based on justice and transparency.
5. *Maqāsid al-Syarī'ah* – brand protection is in line with the Sharia's goals of safeguarding property, preventing disputes, and creating benefits.

Thus, Islamic law not only legitimizes trademark protection but also provides a stronger moral and ethical dimension to business ethics than a purely formal legal approach.

Meeting Point and Differences between the MIG Law and Islamic Law

Meeting Point:

Both recognize brands as an exclusive right that must be protected.

Both prohibit the use of trademarks without permission.

Both regulate dispute resolution mechanisms, though Islam emphasizes deliberation and peace.

Differences:

The MIG Law is based on formal legality, focusing on registration.

Islamic law is based on morality and justice, emphasizing the owner's willingness and the benefit.

The MIG Law uses litigation instruments, while Islamic law emphasizes settling disputes before resorting to the judicial realm.

CONCLUSIONS

Based on the description of the analysis that has been carried out, several conclusions can be drawn as follows:

1. The legal protection of restaurant franchise brands in Law No. 20 of 2016 concerning Trademarks and Geographical Indications has provided a reasonably clear legal framework through the principle of first to file, exclusive rights, civil lawsuit mechanisms, alternative dispute resolution, and criminal sanctions. However, in practice, this protection is not optimal due to weak law enforcement, limited understanding among business actors, and the complexity of the registration and dispute processes.
2. The case studies of Ayam Geprek Benu, Kopi Kenangan, and Es Teler 77 show the variation in the implementation of legal protection of franchise brands in Indonesia. The Benu case confirms the dominance of the first-to-file principle; the Kopi Kenangan case illustrates the risk of brand dilution; and Es Teler 77 shows the success of long-term brand protection consistency.
3. Islamic law views trademarks as *ḥuqūq māliyah* (material rights) that must be protected according to the principle of *hifz al-māl* (protection of property). Unauthorized impersonation of a brand constitutes *ghasab* (unauthorized taking of rights) and *tadlīs* (fraud), both of which are strictly prohibited in sharia. A franchise contract can be analogized as a form of *shirkah* (partnership) that must be built based on justice, transparency, and willingness.
4. The common point between the MIG Law and Islamic law lies in the recognition of the existence of exclusive rights to trademarks and the prohibition of unauthorized use. The difference is that the MIG Law emphasizes more formal-legal aspects, while Islamic law emphasizes more moral, ethical, and beneficial elements.

Thus, the protection of restaurant franchise brands in Indonesia is not only relevant from a positive legal perspective but also in line with the principles of *maqāsid al-syarī'ah*, which emphasize property protection, dispute prevention, and the creation of benefits in business activities.

Recommendations

1. For Governments and Regulators. It is necessary to strengthen law enforcement in trademark infringement cases, especially by speeding up the commercial court process and enhancing the role of mediation and arbitration as alternative channels.
2. The Directorate General of Intellectual Property (DJKI) should improve IPR legal literacy for MSMEs, especially those involved in the franchise system.

3. For Franchise Business Actors. Brand owners (franchisors) must ensure their trademarks are registered and updated regularly, and actively monitor potential infringements. Franchisees must maintain business ethics in accordance with the contract and avoid actions that harm the parent brand's reputation.
4. For Academics and Legal Practitioners. It is important to conduct further research on the synchronization between positive law and Islamic law, particularly regarding the application of the principles of *maqāsid al-syarī'ah* to the protection of intellectual property rights. Encourage the formulation of sharia-based policies that support the halal franchise system, with attention to justice, transparency, and benefits.
5. For the Community. It is necessary to raise awareness that the use of trademarks without permission is not only against state law, but also against Sharia principles. Consumers are expected to be more selective in their product or service choices and not support business actors who imitate or infringe on others' brand rights.

BIBLIOGRAPHY

- Al-Ghazali, Abu Hamid. (2000). *Al-Mustashfa min 'Ilm al-Ushul*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Al-Kasani, Alauddin. (1986). *Bada'i' al-Shana'i' fi Tartib al-Sharai'*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Al-Nawawi, Yahya ibn Sharaf. (1995). *Al-Majmu' Sharh al-Muhadhdhab*. Beirut: Dar al-Fikr.
- Arifin, J. (2018). "Legal Protection of Trademarks in Indonesia." *Journal of Law IUS QUIA IUSTUM*, 25(3), 345–362.
- Bold, Jasser. (2008). *Maqasid al-Shariah: A Beginner's Guide*. London: IIIT.
- Az-Zuhaili, Wahbah. (1985). *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr.
- Fuady, Munir. (2013). *Introduction to Business Law*. Bandung: Citra Aditya Bakti.
- Hasanah, N. (2020). "Intellectual Property Rights in the Perspective of *Maqāsid al-Syarī'ah*." *Al-Ahkam: Journal of Sharia and Law*, 30(2), 211–226.
- Hidayat, R. (2019). "Trademark Disputes in the Culinary Industry: An Analysis of the Supreme Court's Decision on the Case of Ayam Geprek Benu." *Judicial Journal*, 12(2), 177–192.
- Ibn Qudamah, Abdullah. (1997). *Al-Mughni*. Beirut: Dar al-Fikr.
- Ibrahim, J. (2006). *Normative Law Research Theory & Methodology*. Malang: Bayumedia.
- Marzuki, Peter Mahmud. (2016). *Legal Research*. Jakarta: Kencana.
- Mertokusumo, Sudikno. (2010). *Getting to Know the Law: An Introduction*. Yogyakarta: Liberty.
- Regulation of the Minister of Trade of the Republic of Indonesia No. 71/M-DAG/PER/9/2019 concerning the Implementation of Franchises.
- Government Regulation Number 42 of 2007 concerning Franchise.
- Soekanto, Soerjono & Mamudji, Sri. (2003). *Normative Law Research: A Brief Review*. Jakarta: RajaGrafindo Persada.

- Susanto, H. (2019). "Protection of Intellectual Property Rights in the Perspective of Sharia Economics." *Al-Iqtishad: Journal of Sharia Economics*, 11(1), 45–62.
- Law Number 20 of 2016 concerning Trademarks and Geographical Indications.
- Wijayanti, A. (2021). "The Position of Franchise Agreements in the Perspective of Indonesian Law." *Pulpit Law*, 33(2), 201–220.