

Passing Off in The Perspective of Islamic Business Ethics (Case Study on Street Vendors Selling Es Cendol Elizabeth in Bandung City West Jawa)

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ABSTRACT. This study aims to discover how Islamic business ethics view the practice of street vendors selling es cendol (iced jelly) who brand themselves Elizabeth, a famous brand in Bandung City. It is qualitative research with a descriptive analysis approach. The data collection techniques use interviews, observation, and documentation. The study shows that the street vendors selling es cendol (iced jelly) have done brand passing-off activity using a reputable/well-known brand: Es Cendol Elizabeth. It is considered a violation of copyright in Indonesia. From the perspective of Islamic business ethics, this activity falls under *ghasy* (manipulation) or *khida* (fraud). In the application of Islamic business ethics, aspects that have not been applied are aspects of the principle of justice, the principle of fraud, the principle of *syubhat* transactions, and taking advantage by considering the risks that occur.

Keywords: Islam Business Ethics; Es Cendol Elizabeth Bandung; Brand Use

ABSTRAK. Penelitian ini bertujuan untuk mengetahui bagaimana etika bisnis Islam memandang praktik pedagang kaki lima yang menjual es cendol (es jelly) yang mencap dirinya Elizabeth, sebuah merek terkenal di Kota Bandung. Jenis penelitian ini adalah penelitian kualitatif dengan pendekatan deskriptif analisis. Teknik pengumpulan data menggunakan wawancara, observasi, dan dokumentasi. Hasil penelitian menunjukkan bahwa pedagang kaki lima yang menjual es cendol telah melakukan aktivitas *brand passing* dengan menggunakan merek ternama/terkenal: Es Cendol Elizabeth. Hal tersebut dianggap sebagai pelanggaran hak cipta di Indonesia. Dari sudut pandang etika bisnis Islam, kegiatan ini termasuk dalam kategori *ghasy* (manipulasi) atau *khida* (penipuan). Dalam penerapan etika bisnis Islam, aspek yang belum diterapkan adalah aspek prinsip keadilan, prinsip penipuan, prinsip *syubhat* transaksi, dan mengambil keuntungan dengan mempertimbangkan risiko yang terjadi.

Kata Kunci: Etika Bisnis Islam; Es Cendol Elizabeth Bandung;
Penggunaan Merek

INTRODUCTION

The rapid development of the economy and technology in Indonesia makes it easy

for business people to get various kinds of information. Therefore, the opportunities seen are even more. In this case, companies need to know the potential of the business undertaken carefully. It must also be balanced with good management to maintain business continuity, produce quality products, and get as much profit as possible.

From the perspective of Islamic business ethics, a business must not only focus on getting profits but also consider pleasure, blessings, and creating welfare for the community. M. Qurais Shihab explained the application of business ethics, including honesty, hospitality, honest offers, tolerance for debtors, freedom of buyers to decide and not swearing in selling, firm and fair in scales and measures, not monopolizing, commodity price restrictions and voluntariness (Heri, 2017) .

As the number of companies that have sprung up, it takes creativity and innovation to be a market leader. So, using a brand is one way to introduce the company's identity. No wonder business owners are competing to create brands to distinguish their products from similar products that are competitors in the market. In addition, a brand is also a guarantee of the quality of the goods and services offered.

Brands will give consumers a first impression of the product they choose, and as an economic asset for their owners, individuals, and companies, in the hope of making big profits. In this case, the brand becomes one of the most important things to protect in business activities.

In Indonesia, brands are regulated by Law Number 20 of 2016 concerning brands and Geographical Indications (hereinafter referred to as the Law on brands and Geographical Indications). The brands and Geographical Indication Law repealed Law Number 15 of 2001 concerning Brands (hereinafter referred to as the Trademark Law), which had been used for 15 years in Indonesia. Article 1 point 1 of the Law on Marks and Geographical Indications defines a mark as 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 2 (two) or more of these elements to distinguish goods and/or services produced by people or legal entities in the trade of goods and/or services (Kosanke, 2019).

But seeing the success of a brand with a very high reputation, it becomes an opportunity for other business owners to take advantage of the success. They commit fraud by imitating or resembling a brand of goods or services known as *passing off* on an existing brand. The activity will undoubtedly confuse consumers in choosing goods to buy.

Indonesia is a country that adheres to a trademark registration system with a constitutive system. It requires trademark registration so that a mark can get legal protection if a problem related to a famous mark is found. This system is known as *the first-to-file principle* system, which gives trademark rights to the person who first registers his trademark. A party that continues to use the same mark in all its business activities or has similarities in essence with a well-known mark even though the Directorate General of Intellectual Property has rejected its registration, and that party can be given legal sanctions based on Article 100 Paragraph (1) and Paragraph (2) of Law Number 20 of 2016 concerning the mark and geographical indications; then it will get legal sanctions in the form of imprisonment for a maximum of five years and or a maximum fine of two billion

rupiah (Rizky Dewinta & Astariyani, 2016).

Throughout 2019, the Ministry of Law and Human Rights (Kemenkumham) recorded trademark infringement as the most complained thing. The number of complaints submitted to the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights is as follows:

Table 1 Intellectual Property Report K

No	Violation	Number of Complaints
1	Copyright	7
2	Patent	2
3	Industrial design	4
4	Brand Infringement	34
Total		47

Source: CNN Indonesia

From the table above, it can be seen that the total number of trademark infringement complaints reached 47 reports, with details of 43 cases of infringement and 26 cases of action have been taken. This figure increases compared to 2018, when 36 complaints-12 cases were handled, and 24 were prosecuted (Palendeng et al., 2021).

Business can never be separated from the production, purchase, sale, or exchange of goods and services involving people or companies. Business activities generally have the aim of generating profits for survival and collecting enough funds for the implementation of the activities of business people themselves. In a narrower context, ordinary people often associate business with a company or organization that produces and sells goods and services (Peralta-gomeda et al., 2016)

A business that is vulnerable to the practice of *passing off* is *Es Cendol Elizabeth*. The beverage is a legendary and famous traditional culinary in Bandung. The freshness and distinctive taste of natural *Suji* leaves are a favourite choice. Its popularity attracted many vendors in Bandung to imitate its products and use the name *Es Cendol Elizabeth*.

The reputation of a well-known brand has disturbed *Elizabeth's* brand image because the products made are of lower quality (both from the taste and authenticity of the ingredients used). In addition, the price offered is also cheaper. This action indirectly harmed the owner of the original *es cendol Elizabeth* brand in sales and brand *image*.

Islam, as a guide to life, has regulated all aspects of life, including business activities, especially in ethics. Ethics is a limitation so that there is no violation or aggrieved party. From an Islamic perspective, business ethics even regulates preventive efforts so that business runs balanced or fair.

LITERATURE REVIEW

The Concept of Passing Off

In Indonesian legal literature, the term *passing off* is not too familiar because this term is developed in countries that adhere to the Common Law legal system. Reputational acts include acts against the law in countries that adopt the *standard law* system, such as Australia, Malaysia, the United States, and others. In the

common law system, the protection provided is not determined based on the Law of Parliament. Still, it has been developed based on case *law* which then produces jurisprudence in judges' findings in deciding a case (Aurora Quintina, Syafaruddin, 2009).

In the *standard law system*, *passing off* can be interpreted as a getting on the reputation and image of a brand that has been and or is more famous. It is used to confuse the general public, which results in people choosing the wrong items. Well-known brands are often the object of infringement because of the reputation owned by the famous brand, so it often tempts other parties with bad intentions to get on the reputation of a well-known brand first (Wiradiredja, n.d.). According to Copinger, *The Action for Passing Off* is: "*The action for passing off lies where the defendant has represented to the public that his goods or business are the goods or business of the plaintiff. A defendant may make himself liable to this action by publishing work under the same title as the plaintiff's or by publishing a work where "get up" so resembles that of the plaintiff's work as to deceive the public into the belief that it is the plaintiff's work, or is associated or connected with the plaintiff's*".

From the above definition, it can be concluded that according to Copinger, five characteristics are used as reasons for *passing off*, namely:

1. A misrepresentation;
2. Made by a trader in the course of trade;
3. To prospective customers of his or ultimate customers of good service supplied by him.
4. Calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence); and
5. Which causes actual damage to a business or goodwill or the trade by whom the action is brought or, in a quotient action, will probably do so.

According to Djumhana and Djubaedillah¹⁵, the definition of *passing off* is an act that tries to gain profits through shortcuts by all means and pretexts by violating business ethics, moral norms, and laws. This action can occur by jumping on the jump in imitation or resembling other reputable brands. How galvanizing reputation (*goodwill*) can happen in brands, patents, industrial designs, and copyrights.

Characteristics of Reputation Piggyback (Passing Off)

Actions included in *passing off* must meet three elements, namely: (Tim Lindsey, 2003)

1. Plaintiff Must Have a Reputation
In this case, if the plaintiff does not have a reputation, where the reputation piggyback occurs. Then the plaintiff will not succeed in guarding the reputation piggyback case.
2. There is a misrepresentation.
Some business owners have bad intentions to jump on the same brand and cause *confusion or misunderstanding* (e.g., *leading*) in selecting the desired product.
3. Losses incurred
What is meant here is material and non-material losses. If a brand meets the three elements above, it experiences a passing-off action in running its

business. And further action is needed so that no more errors occur.

Brand

A brand is an essential component of doing business. With the brand, consumers can identify a product more efficiently; the brand becomes the hallmark or advantage of the product so that it can be distinguished from other competitors. Consumers also become more trusting and confident in products that have a brand. Therefore, companies need to create products with a good image in the community and can protect and improve the brand in the market (Bloor & Wood, 2016).

Types of Brands

Based on Article 1 of Law Number 15 of 2001 concerning Brands, brands can be distinguished into three (3) types, namely as follows (Bloom & Reenen, 2013) :

a. Trademark

A trademark is a mark used on goods traded by a person or several people together or legal entities to distinguish it from other similar interests (Article 1 point 2 of Law Number 15 of 2001 concerning Brands).

b. Service Marks

A service mark is a mark used on services traded by a person or several people together or legal entities to distinguish other similar services (Article 1 point 3 of Law Number 15 of 2001 concerning Brands).

c. Collective brand

A collective mark is a mark used on goods or services with the same characteristics traded by several people or legal entities together to distinguish them from similar goods or services (Article 1 point 4 of Law Number 15 of 2001 concerning Brands).

Islamic Views on Brands

The Indonesian Ulema Council (MUI) responded to the issue of intellectual property rights. According to MUI, protecting intellectual property rights does not contradict Islamic law; these rights must be covered by *syara* (Islamic law) based on rules (*istishlah*) because violation of property rights is a crime and violation of ownership rights over intellectual works. The State grants exclusive rights to its registration and its owner as legal holders of rights that prohibit others without their consent or rights. Thus, brands in any way that makes people think that imitation marks are genuine marks are acts of lying, forgery, and fraud. In Islam, such actions are included in *ghasy* (manipulation) or *khida'* (deception).

According to the book *Adab Work and Business* by Ustadz Oni Sahroni, *ghasy* (manipulation) or *khida'* (deception) belongs to the type of *gharar*. There are two forms of *gharar*, namely speculation and fraud. *Ghasy* is the act of one party engineering or manipulating so that the other party is persecuted. In general, *ghasy* actions are included in the character of prohibited business transactions carried out as a shortcut to many natural processes that should be carried out. As the Prophet SAW said:

Meaning: *From Ibn Mas'ud (r.a.), said the Prophet (peace be upon him) said, "Whoever deceives us is not among our class, the one who commits treason and decorates his place in hell" (HR. Ath Thabrani).*

The above hadith explains that acts are strictly forbidden in Islam. This

action can harm all parties involved in it. The original owner of the brand felt the loss, as well as those who committed the act of *ghasy*. They will be severely sanctioned. People also feel lied to. It includes improperly eating other people's property. For someone who opens a store and trades counterfeit branded goods that can cause consumers to be deceived, it is considered haram. Officials and employees who counterfeit and mislead the public have also committed illegal acts (Sahroni, 2022).

Islamic Business Ethics

Islamic business ethics emphasizes human freedom to act and be responsible, but not wholly free from responsibility as there are still limitations set by Allah SWT about good and bad things. The ethical teachings in Islam, in principle, are that humans must do good to themselves and the environment (nature) and social environment, do good to fellow humans, and have faith in Allah SWT (Ratih et al., 2020).

Functions of Islamic Business Ethics

As revealed by Dr Husein Syahata Islamic business ethics has a substantial function that equips business people with some of the following (Husein Syahata, 2002):

1. Build an Islamic code of ethics that regulates, develops, and implements business methods within the framework of religious teachings. This code of ethics also symbolizes direction to protect business people from risk.
2. This code can be the legal basis for establishing the responsibilities of business people, especially for themselves, between the business community, society, and above all, responsibility before Allah Almighty.
3. This code of ethics is perceived as a legal document that can resolve problems that arise rather than having to be submitted to the judiciary.
4. A code of ethics can contribute to resolving many issues that occur between fellow business people and the communities in which they work. A thing that can build brotherhood (*ukhuwah*) and cooperation between all of them.

Islamic Business Ethics of Prophet Muhammad SAW

on the historical studies, the Prophet Muhammad was a man and rasul who put forward a role model for his people. Not only did his daily attitude and behaviour have noble morals, but in running a business, ethics, and noble morals have always been the Based characteristics and things that are prioritized by the Prophet Muhammad SAW. In conducting a trade witness train, he never once made his customers complain or disappointed, let alone doubt. The exemplary attitudes he does in his business are as follows (Yahya, 2020)

1. Honest

Honesty is, to tell the truth according to the facts and what he does, not to exaggerate and underestimate. Prophet Muhammad was given the title *Al-Amin* which means trustful, honest, and trustworthy. The people in Mecca widely knew his simple deeds at that time. Prophet Muhammad was always transparent with his merchandise; nothing was underestimated. He also conveyed a message on the importance of being honest in trading, such as the following hadith: "*Indeed, vendors are resurrected on the Day*

of Judgment as sinners, except those who fear Allah Almighty, behave well in transactions and are honest" (HR. Tirmidhi).

His honest attitude instantly made the Prophet Muhammad a successful and trusted merchant. Buyers feel safe when transacting with him. Honesty will lead business people to blessings in every business activity.

2. Amanah (Trusted)

The implementation of the trust is trustworthy, responsible, and timely. Honesty and trustworthiness also have a strong relationship. If someone is honest, most of these people are trustworthy. The implementation of the trustful attitude is that the seller does not take away the buyer's rights. Prophet Muhammad was a reliable merchant and always kept his word. He followed the quality standards of his customers' requests when delivering goods. He constantly shows a sense of responsibility for every transaction made. In this regard, Allah describes the fortunate believers with his words and those who keep the trust he bears according to the word of Allah:

It means: "O Our Lord, and enter them into the heaven of 'And which You have promised them and the righteous among their fathers, and their wives, and their posterity. Behold, you are the mighty, the wise." (Q.S.Ghafir 40:8).

This trustful attitude makes buyers and investors more happy and feel benefited from trading with the Prophet Muhammad. Like business activities, trustworthiness is significant because it is related to property security and good relations with humans.

3. *Fathonah* (Smart)

Fathonah attitude means having broad insight, having a vision in business, and intelligence in understanding products and services and being able to convey them. The nature of *fathonah* is a life strategy for every Muslim. An intelligent Muslim will be more concerned with the Hereafter than the world's problems because the longer and more eternal life is life in the Hereafter.

Intelligence is not only intellectual intelligence but spiritual intelligence and emotional intelligence. Spiritual and emotional intelligence will lead a person to behave based on the intention of worship, have a monotheistic mindset, and conduct only based on the principle of only because of Allah. It will make a person feel that God is constantly watching him to prevent him from committing immorality.

4. *Tabligh* (Communicative/Conveying)

Tabligh nature is a trait that shows the ability to convey/communicate the products and services to be offered appropriately, not reduced/hidden and exaggerated information. One of Prophet Muhammad's behaviours in trading was that he had good negotiation, communication, and reputation skills. He communicated decisively. He also always explained the condition of the merchandise without hiding the facts. As the following word of God says:

It means: "O Apostle! Tell me what your Lord has revealed to you. If you do not do (what is commanded), then you are not delivering His message. And God preserves you from man. Indeed, Allah does not instruct the unbelievers" (Q.S.Al-Maidah 4:67).

Here's what Rasulullah did when trading to give a good impression to his customers:

a. Manners

He has polite behaviour even with enemies, even though he still behaves full of manners. As the Apostle said, namely:

It means: *"Whoever gives joy from the sight of a believer, Allah Almighty will give a sense of joy in his eyes on the Day of Judgment"* (HR. Ibn Mubarak).

Emulating the politeness and courtesy shown by the Prophet SAW can be a capital for vendors to give a good impression to their customers. It will provide comfort for customers because they feel valued.

b. Giving the most beautiful smile

In addition to behaving with good manners, Rasulullah is very generous in smiling when trading. Doing it will give an excellent first impression to those who see it. Senyuman can attract the attention of people around. A smile becomes worth alms, as the Prophet (peace be upon him) said:

Meaning: *"Your sweet smile before your brother is alms"* (HR. Tirmidhi).

c. Maintaining Appearances

Appearance has an important role when trading. Vendors who look neat, fragrant, and clean will make customers feel interested in approaching and arousing people's curiosity. In addition, even looking clean is part of a Muslim's faith. As the Prophet said:

It means: *"Clean everything you can. Indeed, Allah the Exalted built this Islam based on cleanliness and will not enter paradise unless everything is clean"* (HR. Ath Thabrani).

Principles of Islamic Business Ethics

A Muslim entrepreneur must have principles in doing business so that the run business has clear goals and is guided in the right direction. This principle is inherent in all business people, creating calm and tranquillity in all business activities.

Based on the book *Ihya Ulumuddin 3* written by Imam Al-Ghazali in 2011, the ultimate goal of all life activities is salvation (*al-falah*) at the end of it. But, in achieving *al-falah*, certainly does not neglect one's worldly obligations. In this regard, he asserted that one's intention to behave economically per Islamic rules could be of value to worship. Finally, Al Ghazali stated that this economic development made social compulsory activity (*fard al-kifayah*) that Allah had ordained (Imam Al Ghazali, n.d.). If it cannot be fulfilled, the world's life will collapse, and humanity will perish. There are eight broad outlines of Islamic business ethics principles, according to Imam Al-Ghazali (Nureteta, 2015):

1. Business activities must be based on elements of justice, kindness, virtue, and the absence of tyranny.

A person in business activities is prohibited from complicating or making trouble with others, such as forcing, imitating, and not being honest / lying. Everything includes unfair actions. Injustice causes two potential

tyrannical effects in business: tyranny that can harm many people (in general) and tyranny that only hurts certain people. As Allah Almighty says:

It means: "*And whoever intends in his heart (intends) to commit tyranny, We (Allah) will surely feel to him a painful torment.*" (QS.al-Hajj:25)

Al-Ghazali also forbade *gharar*, *maisir*, and *usury* in all economic activities. Al-Ghazali considers *gharar*, *maisir*, and *riba* activities that take advantage of an Ummah's economic conditions and trigger injustice in the social economy. As Allah SWT says, namely:

It means: "*And whatever usury (addition) you give so that he may increase in the wealth of men, then it does not add to the side of Allah. And what you give in the form of zakat which you intend to achieve the pleasure of Allah, then (those who do so) are those who multiply (the reward)*". (Q.S Ar-Rum:39).

2. There must be clarity between business people to avoid fraud.

In running a business, business people must know in advance information about the status of other business people running their business. One of them is communication and friendship. It will avoid misunderstandings that lead to cheating.

Meaning: "*O believers, do not falsely eat one another's property.*" (Q.S.An-Nisa:29)

3. Fostering good and trustful business relationships.

In doing business, we will meet various business relationships both buyers, suppliers, and fellow sellers. In this regard, Islam commands noble morals to buyers. There is a day of retribution, a practice when carrying out buying and selling activities in the world will be shown and accounted for. Therefore, business people should straighten their intentions in their business activities by consistently doing good in the process of buying and selling, as Allah SWT says:

It means: "*And do good to others, as Allah has done good to you,* (Q.S al-Qashash [28]: 77).

And the Prophet (peace be upon him) said that:

If you want to be loved by Allah and His apostles, pay if given trust, be honest if you speak, and do good to those around you". (H.R. Ath Thabrani)

4. Receivables payable must be settled immediately before the agreed time.

Islam advocates paying debts better by spending debts on time, before maturity, or before collection. It is included in *ihsan* deeds. When due, those who owe are encouraged to go to the person who gave the debt, not wait to be collected by the debtor.

The Prophet (peace be upon him) said,

Meaning: "*The best among the debtors is the one who is prompt in paying his debts. Pay your debt before the time comes if you can pay. And, if you can, increase the payment with pleasure over it.*"

The Prophet (peace be upon him) also said,

It means: "*Whoever has a debt, then intends to pay it after he is able, then Allah Almighty will command His angels to guard the intention of that person and pray for him so that he can pay it later.*"

Understanding the importance of trade also includes forgiving those who have not been able to pay or even reduce part of their debts. *In a hadith, it is stated, "Ambi is your right by forgiving the payment of debts of those who owe, either by assuming full or partial repayment Because Allah Almighty will facilitate the hisab of those who do good in business, "*

5. Reduce margins by selling cheaper to increase profits.
Selling lower prices to increase customers is included in *the patronage buying motive*, which is a patterned buying motive where consumers will shop at their subscription places so that sellers will increase their profits. According to Imam Al Ghazali, a small profit has the potential to get many buyers who will bring profit and get multiple blessings.
6. Business activities are not only to pursue world profits but also to prioritize the end of t.

In the realm of trying to get sustenance, do not forget the interests of the Hereafter and be complacent with profits and worldly goods alone. O people who are excuse and wise are those who always maintain and maintain the principal capital Allah Almighty has given, namely the guidance of Islam and matters related to the interests of the Hereafter. A Salaf scholar once said, "The best merchandise for the preacher is whatever is needed like this world. And something indispensable in this world must produce the best and praiseworthy for the sake of life in the hereafter". As the Word of Allah SWT below:

It means: "*And seek in what Allah has bestowed upon you the enjoyment of the Hereafter, but do not forget your part in the realm of this world*" (Q.S. al-Qashash [28]: 77).

7. Abstain from transactions that are *syubhat*.
A business person should keep away from any doubt about what is halal and what is haram. Leave every item, place, food, or act that is forbidden and contains elements of *syubhat (doubtful)*. In the word of Allah SWT, it is also explained that:
It means: "*O apostles! Eat of good (food), and do good. Truly, I know what you do*" (Q.S. Al Mu'minun: 51).

8. Achieve profits by considering the risks that exist.
A business person, when taking profits, must consider the risks that will occur in the future to avoid losses. Suppose a successful business prioritizes its business activities with the aim of getting high profits and other reasons. In that case, it is at a disadvantage because its actions are considered reprehensible deeds and further away from the affection of Allah SWT.

Allah Almighty says as follows:

It means: "*O believers! Fear Allah and let everyone pay attention to what he has done for tomorrow (hereafter), and be fearful of Allah. Truly, Allah is meticulous in what you do*" Q.S. al-Hashr: 18).

In addition to revealing Islamic business ethics, Al Ghazali also told and warned about ethical violations, including exploitation, willingness, fraud, and fraudulent property.

RESEARCH METHOD

This research is field research using descriptive qualitative research. The data collection technique carried out by the researchers was direct interviews with five cendol ice vendors who used the Elizabeth brand in the city of Bandung and direct observation of the location. The data validation technique used is the process of triangulation of data sources (Gunawan Imam, 2013) (Lexy J Moleong, n.d.).

RESULT AND DISCUSSION

The Use of Elizabeth Brand on Street Vendors in Bandung City

Intellectual Property Rights, or IPR, is a right born based on the results of a person's scholarly work to get legal protection of intellectual property as a result of the work of the creator or inventor. In principle, IPR comes from developed countries interested in protecting IPR and securing its investment in developing countries.

A brand is a name, term, symbol, sign, colour, motion, or design used to identify and distinguish a product's goods or services and distinguish the product's quality from competitors who offer similar products. This brand arrangement protects third parties or the public against imitation of brands with a good name.

Due to the use and patronage of the reputation of the Elizabeth ice cendol brand by merchants, they are well aware that Elizabeth ice cendol is well known to many people. It motivates these trades when starting a business using the Elizabeth brand.

Trademark Rights as Intellectual Property Rights (IPR)

Intellectual property has many types, including copyrights, patents, brands, and trade secrets. If a business uses trademark rights that are not its own without permission and consent, it has violated the trademark rights that have been regulated.

The patronage of the reputation of the Elizabeth cendol ice brand by street cendol vendors was done without the permission of the original owner. They do it because the brand is widely known, so the hope will be easy to sell. If you look at the business theory, what the cendol ice trader did violated applicable laws in Indonesia and international law.

Indonesian Regulation on Trademark Rights

The era of trade can be maintained if there is healthy competition. In this case, the brand becomes an essential role in beneficial business. Brands can meet all consumer needs as a critical identifier or differentiator. A brand's existence guarantees the quality of products or services in free competition. Therefore, the brand becomes one of the economic assets for its owners, who can later generate significant profits by paying attention to business aspects and sound business management.

Brand provisions are regulated by Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the Trademark and Geographical Indications Law). The Trademark and Geographical Indication Law repealed Law Number 15 of 2001 concerning Brands (hereinafter referred to as the Trademark Law), which had been in force for 15 years in Indonesia. Article 1 point 1 of the Law on Marks and Geographical Indications defines a mark as a

sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, colour arrangements, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by people or legal entities in the trade of goods and/or services.

This study found that some consumers who bought Elizabeth Es Cendol from street vendors were not concerned about the brand. The primary considerations of consumers are low prices, places that are easy to reach, fast in service, and delicious taste.

Based on interviews with street cendol sellers, it was found that they did not know the process of using the brand. They think they sell just ice cream to get money to meet daily needs. It reflects that they regard *passing off* as trivial without considering the adverse effects, even though branding is a work that must be appreciated and even get legal protection treated out of place.

Based on the legal sanctions of Article 100 Paragraph (1) and Paragraph (2) of Law Number 20 of 2016 concerning brand *counterfeiting* (*passing off*) and geographical indications, actions committed by street cendol vendors can be subject to legal sanctions in the form of imprisonment for a maximum of five years and or a maximum fine of two billion rupiahs.

Islamic Views on the Use of Marks That Are Not Their Right

Business is an activity that leads to increased added value through service delivery, trade, or processing of goods (production). Nowadays, many businesses have sprung up, and competition is getting faster. With so many interests related to Intellectual Property Rights (IPR), the economic and political fields cannot be separated from IPR problems.

Regarding intellectual property rights, the Indonesian Ulema Council (MUI) believes that protecting intellectual property rights does not conflict with Islamic law. Instead, it must be covered by *sharia* (Islamic law) based on rules (*istishlah*) because a violation of property rights is a crime and a violation of the ownership rights of intellectual works.

Cendol Street vendors get a lot of profits from the passing off in Elizabeth Es Cendol brand. But on the other hand, it creates consumer confusion because it makes it difficult for them to distinguish real and fake Elizabeth ice Cendol. Worse yet, the taste of Cendol owned by street cendol vendors is far different from the original quality.

According to the perspective of Islamic business ethics, passing off Elizabeth's brand reputation by vendors is a violation of Sharia provisions. It includes the practice of *ghasy* (manipulation) or *khida'* (fraud). According to Dr. Oni Sahroni, Lc., M.A, both are included in the type of *gharar*—there are two forms of *gharar*: speculation and deception. In general, *ghasy* acts are included in the character of prohibited business transactions carried out as shortcuts rather than living them naturally. As the Prophet SAW said: Meaning: *From Ibn Mas'ud (r.a.), said the Prophet (peace be upon him) said, "Whoever deceives us is not among our class, the one who commits treason and deceit his place in hell"* (HR. Ath Thabrani).

The above hadith explains that *ghasy* (deception) includes treason. Treason is an act of deceit, deceiving, betraying, and deceiving. The victims of

ghasy are the community and the original owner of the brand. Both of them must have suffered losses. People are deceived that the products they buy are not genuine. Brand owners are deceived by leveraging reputation and using brands without permission which results in decreased profits. In this case, it is appropriate for the perpetrators of *ghasy* to be given commensurate sanctions.

In a broader context, *ghasy* practices such as shops selling counterfeit goods can be categorized under this category. The act of *ghasy* is the same as eating someone else's property, so it is haram. The same law applies to workers who participate in such counterfeiting and fraud.

Islamic Business Ethics principles

Islamic business ethics is a rule that people must apply to run their businesses. Not a few of them prioritize their interests more than the interests of others. In Islamic business ethics, the emphasis is that business is not only looking for profit but also blessings in how the business is run by obtaining reasonable profits and being recognized by Allah SWT.

The research results show deviant behavior carried out by five ice cendol vendors, namely *first*, the street cendol vendors used someone else's brand, Elizabeth cendol ice, which is not their right without permission. *Second*, street cendol vendors sell it at a lower price and quality than the original product.

In this case, the author also analyzes the application of business ethics related to the practice of *passing off* based on the outline of 8 Islamic business ethics according to Al-Ghazali (Nureteta, 2015), namely:

1. Business activities must be based on elements of justice, kindness, virtue, and the absence of tyranny.

In this case, the street cendol vendors have acted unfairly against the original owner of the Elizabeth cendol ice brand because the original owner suffered losses for the actions taken by the merchants, especially in the form of a decline in the company's image. It is included in the act of *gharar* (fraud) because it deceives the public by using the name es cendol Elizabeth which does not belong to her. As in the word of Allah SWT: It means: "*And whoever intends in his heart (intends) to commit tyranny, We (Allah) will surely feel to him a painful torment*" (QS. Al-Hajj: 25).

2. There must be clarity between business people to avoid fraud.

The unauthorized use of the Elizabeth brand shows the unclear relationship that has resulted in street cendol vendorstaking advantage of opportunities to use the Elizabeth brand that is already trusted and known. Allah Almighty said: Meaning: "*O believers! Do not falsely eat one another's possessions.*" (Q.S.An-Nisa:29)

3. Fostering good and trustful business relationships

Relationships influence business development, especially if business people can foster and respond appropriately and maintain trust/trust. You do this by establishing relationships with other business people, buyers, and suppliers of goods. If a mandate of tasks must be completed, then complete it with a sense of responsibility. As Allah SWT says the following: It means: "*And do good to others, as Allah has done good to you*" (Q.S. al-Qashash [28]: 77).

The Prophet (peace be upon him) said: Meaning: If you want to be

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loved by Allah and His messenger, pay if given trust, be honest if you speak, and do good to those around you" (H.R. Ath Thabrani).

In this case, researchers see that there has not been a proper relationship between the street cendol merchant and the owner of the original Elizabeth cendol ice brand. No forum brings the two together that opens communication opportunities. If this is realized, it may create synergy in sales to get mutual benefits. On the other hand, street cendol ice vendors have understood to build relationships with customers, which can be seen from their enthusiasm and attitude toward maintaining trust. This attitude will undoubtedly be a good capital if used in synergy with the owner of the original Elizabeth ice cendol brand.

4. Of the receivables must be settled immediately before the agreed time

In Islam, debt receivables are also a matter that must be considered because anyone who has debts and who gives obligations will be accounted for in the Hereafter. In this case, the five vendors have no debt because they use their capital.

5. Reduce margins by selling more affordably and can increase profits.

Islam recommends that in selling goods, not much profit in the hope of getting many buyers so that the gains obtained will increase and get blessings. On the one hand, setting an affordable price compared to the cost of the original brand owner has been implemented by the ice cendol street vendor Elizabeth. But unfortunately, because they use someone else's brand without permission, it is still classified as a fraudulent act (*ghasy*).

6. Business activities are not only for pursuing world profits; the real payoff is the hereafter.

As humans, sometimes we are dominated by lust, wanting to get profits instantly and quickly, thus encouraging business people to justify all ways to make it happen. Islam gives directions that everything sought in this world should still pay attention to the interests of the Hereafter. Do not let the world get pleasure, but in the Hereafter, feel pain. As Allah SWT says below. It means: "*And seek in what Allah has bestowed upon you the enjoyment of the Hereafter, but do not forget your part in the realm of this world*" (Q.S. al-Qashash [28]: 77).

Although at first glance, it can be seen that the motivation for *passing off* from the five Cendol ice street vendors, Elizabeth seems good, namely to meet the needs of herself and her family. However, because it is done by deceiving the community, it is still classified as violating Islamic Sharia.

Musia's parents are obliged to strive in this world with all good behaviour following the guidance of Islamic teachings because this world is a place to plant good deeds that will be reaped in the Hereafter.

7. Abstain from transactions that are *syubhat*./

Shubhat transactions are when in the transaction process, there is doubt between what is halal and haram, which results in something wrong looking right or vice versa. Fraud carried out by vendors by piggybacking on the reputation of well-known brands makes the process of buying and selling classified as *syubhat* because in terms of food content classified as

halal, but from the sales process classified as actions that are not allowed. As the word of Allah SWT is also explained: It means: *"O apostles! Eat of good (food), and do good. Truly, I know what you do"*. (Q.S. Al Mu'minun:51)

8. Achieve Profits with Consideration of Existing Risks.

Business activities will always be faced with various situations and conditions that can occur. When someone takes a considerable risk, the potential profit will be great. On the contrary, when someone takes a negligible risk, the potential payoff will be small. In this case, business people must weigh by preparing a strategy if they experience possible risks. Islam strongly recommends considering all kinds of risks that occur, as in the following words of Allah SWT:

It means: *"O believers! Fear Allah and let everyone pay attention to what he has done for tomorrow (hereafter), and be fearful of Allah. Truly, Allah is meticulous in what you do"* (Q.S. Al-Hashr: 18).

Five street cendol vendors seem to have not considered all the risks that will occur, even though what the vendors do is very risky because there has been an article that rewards copyright infringement and all the consequences.

Based on the explanation above, the following outlines the application of Islamic business ethics principles according to Imam Al-Ghazali, which street vendors es cendol Elizabeth has implemented.

Table 2. Application of Islamic Business Ethics According to Imam Al Ghazali¹

No	Principles of Islamic Business Ethics	Already	Not yet
1	Business activities must be based on justice, kindness, benevolence, and the absence of tyranny.		✓
2	There must be clarity between business people so that there is no fraud.		✓
3	Fostering excellent and trustworthy business relationships.		✓
4	Receivables payable must be settled immediately before the agreed time.	✓	
5	Reduce margins by selling cheaper, and can increase profits.	✓	
6	Business activities are not only for pursuing world profits, but the real profit is the afterlife.		✓
7	Stay away from transactions that are syubhat.		✓
8	Achieve profits by considering the risks that exist.		✓

Source: Processed from the results of the interview

Based on the table above, it can be concluded that the street vendor, es cendol Elizabeth, has not entirely behaved under the principles of Islamic business ethics because there are elements of tyranny, obscurity, fraud, and they do not foster

business relations properly and manah. They seem to still attach importance to getting a lot of profit/money but ignore the benefits of the hereafter, idhaiAllah SWT. They also seem not to consider all the risks that occur in the future.

CONCLUSION

have committed a passing *off*. The leading cause is the lack of knowledge about conventional and Islamic business ethics. The Elizabeth Cendol trader prioritizes personal gain without considering the benefits or losses that those around him will experience. In this case, the society and the owner of the original brand.

Based on the Islamic view of the law of using brands to which it is not his right, the ice cendol merchant Elizabeth has committed *acts of ghasy* (manipulation) or *khida'* (fraud). In the application of Islamic business ethics, they have not been fully applied, especially in aspects of the principle of justice, the principle of fraud, the principle of syubhat transactions, and taking advantage by considering the risks that occur.

However, they have done well in business practices that are service in nature, such as hospitality and security, and pricing.

Based on the conclusions above, the suggestions that can be given are as follows:

1. For Companies
 - a. Based on the study's results, the company still does not inform about the original Elizabeth ice cendol brand. So hopefully the company can provide more precise and broader information. For example, being given the slogan "Legendary Original" in front of the store or on social media that has been used and his bio provides complete information.
 - b. Seeing that street vendors often use the Elizabeth brand, it's time for the company to embrace it by making them partners/resellers. In addition, companies also need to consider opening branches in several regions so that business activities can be carried out with collaboration instead of unfair competition. The dissemination of information will also be more widespread.
2. For the Public or Buyers

The awareness and role of the community represented by consumers is required to understand the system of business ethics in Islam. Do it carefully in buying an item so that there are no more obstacles in the future that cause disappointment, loss, and injustice felt by vendors and the community.
3. For Vendors

The lack of knowledge vendors possess the task of Islamic economists to socialize how business ethics should be carried out. You can hold free workshops for coaching vendors, especially those who are usually on the side of the road but still lack coaching. Or when the Friday sermon is inserted material about what good muamalah looks like

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