

**ANALYSIS OF THE SUPREME COURT DECISION  
NO. 119 PK/Pdt.Sus-HKI/2017 ON TRADEMARK DISPUTES FROM  
THE PERSPECTIVE OF *HAQ AL-IBTIKAR***

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**Abstract**

Trademark protection is an integral part of the intellectual property system that protects a product's reputation, economic value, and identity. According to Article 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademark protection is only granted to registered trademarks. However, in practice, trademark infringement has occurred, as in Supreme Court Decision Number 119 PK/Pdt.Sus-HKI/2017, between PT Gudang Garam as the owner of the well-known trademark "Gudang Garam" and the party using the trademark "Gudang Baru" on cigarette products. The method used was a normative legal approach, with a conceptual lens, examining case studies and literature as data collection techniques. The results of the survey show that PT Gudang Garam initially lost at the first level and in cassation because the judge considered the registration of the Gudang Baru trademark to be administratively valid. However, through a case review (PK), the Supreme Court found bad faith and similarity in essence, so that Gudang Garam ultimately won the case. This shows that the protection of well-known trademarks still faces challenges in terms of evidence in court. From the perspective of *Haq al-Ibtikar*, such actions constitute the unlawful taking of another person's rights, which is prohibited under Sharia law, because trademarks are intellectual works with practical and economic value. It is recommended that trademark rights be protected preventively through official registration, market monitoring, and legal education for business actors, as well as strict law enforcement against trademark registrations made in bad faith.

**Keywords:** *Haq al-Ibtikar*, Islamic Law, Supreme Court Decision and Trademark Dispute



## Abstrak

Perlindungan merek dagang merupakan bagian integral dari sistem kekayaan intelektual yang melindungi reputasi, nilai ekonomi, dan identitas suatu produk. Berdasarkan Pasal 3 Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis, perlindungan merek dagang hanya diberikan kepada merek dagang yang terdaftar. Namun, dalam praktiknya, pelanggaran merek dagang telah terjadi, seperti dalam Putusan Mahkamah Agung Nomor 119 PK/Pdt.Sus-HKI/2017, antara PT Gudang Garam sebagai pemilik merek dagang terkenal "Gudang Garam" dan pihak yang menggunakan merek dagang "Gudang Baru" pada produk rokok. Metode yang digunakan adalah pendekatan hukum normatif melalui *pendekatan konseptual*, dengan menganalisis studi kasus dan studi literatur sebagai teknik pengumpulan data. Hasil penelitian menunjukkan bahwa PT Gudang Garam awalnya kalah di tingkat pertama dan kasasi karena hakim menganggap pendaftaran merek Gudang Baru secara administratif sah. Namun, melalui peninjauan kembali (PK), Mahkamah Agung menemukan adanya itikad buruk dan kesamaan esensial, sehingga Gudang Garam akhirnya memenangkan kasus. Hal ini menunjukkan bahwa perlindungan merek terkenal masih menghadapi tantangan dalam hal bukti di pengadilan. Dari perspektif *Haq al-Ibtikar*, tindakan semacam itu merupakan pengambilan hak orang lain secara tidak sah, yang dilarang oleh hukum Syariah, karena merek dagang merupakan karya intelektual yang memiliki nilai praktis dan ekonomi. Disarankan agar hak merek dagang dilindungi secara preventif melalui pendaftaran resmi, pemantauan pasar, dan pendidikan hukum bagi pelaku usaha, serta penegakan hukum yang ketat terhadap pendaftaran merek dagang yang dilakukan dengan niat buruk.

**Kata Kunci:** Sengketa Merek Dagang, *Haq al-Ibtikar*, dan Putusan Mahkamah Agung No. 119 PK/Pdt.Sus-HKI/2017

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## INTRODUCTION

A trademark is a form of right obtained through a creation or patented work, thereby proving original ownership resulting from intellectual ability. Trademarks are recognised as rights because the works they protect generally have financial value and can become assets. Thus, trademark rights enable owners to generate monetary income.<sup>1</sup>

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<sup>1</sup> Rahmi Janed, *Trademark Law* (Jakarta: Prenadamedia Group, 2015). p. 3

Trademarks, as a form of intellectual property, play an important role in distinguishing the origin of goods or services (an indication of origin) across business entities. Through trademarks, producers can guarantee the quality of their products or services, while protecting themselves from unfair business practices, such as attempts by other parties to imitate or piggyback on the reputation they have built.<sup>2</sup>

Trademarks function as a means of trade promotion and marketing media for producers. Trademarks play a role in conveying information to consumers about the identity and quality of the goods or services offered. With support from advertising activities at both the national and international levels, brands can increase consumer interest in purchasing and maintain consumer loyalty to their products. Brands can be a source of competitive advantage and also reflect ownership advantage in global market competition.

From the perspective of Islamic law, trademark rights are similar to the concept of *Haq al-Ibtikar*. This right arises from a person's thoughts or creativity and takes a tangible form, perceivable through the five senses. These thoughts are not imitations or plagiarism of previous works, but rather a form of development or refinement of the ideas of earlier scientists. This right is protected by law because it falls under the category of *al-mashlahah al-mursalah*, which is the effort to protect human interests, particularly property.

According to *the majority of scholars*, *haq al-ibtikar* or the right to intellectual creations falls under the category of property (*mal*). This is because the concept of property in Islam not only encompasses physical objects but also includes the benefits and economic value associated with the results of human thought. Intellectual works, such as creations, ideas, and innovations, are treated as having the same ownership value as tangible objects, such as houses, vehicles, or other valuable items. In form, *haq al-ibtikar* is the fruit of human creativity that is concrete and can be perceived through the five senses. These ideas are recognised as having value and influence only when they are

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<sup>2</sup> Muhammad Djumhana and Djubaedillah, *Intellectual Property Rights* (Bandung: PT. Citra Aditya Bakti, 2014). p. 229

realised in tangible form, for example, through writing, works of art, or other media, and are not the result of imitating others' thoughts.<sup>3</sup>

In the context of Indonesian positive law, trademark protection is regulated by Law No. 20 of 2016 concerning Trademarks and Geographical Indications. This law requires that every trademark be registered to obtain legal protection. Under Article 3, rights to a trademark are recognised only after the trademark has been officially registered. Without registration, trademark owners cannot claim legal protection against misuse or imitation by other parties. Furthermore, in accordance with Article 41 paragraph (1) of the same law, the use of a trademark by a third party can be declared valid if it is done based on a licence, agreement, or permission from the holder of the registered trademark rights.<sup>4</sup>

Given the significant economic value and reputation a trademark can generate, trademark infringement in Indonesia continues to rise, especially against well-known marks. Brand reputation plays a vital role in influencing consumer decisions. Generally, consumers tend to choose products with a good image and proven to deliver a positive experience. This consistency builds consumer loyalty, which ultimately becomes a competitive advantage for businesses. The enormous power of brands also has a negative side, where some companies choose to take shortcuts to gain profits by imitating or attaching themselves to well-known brands. Practices such as these clearly violate business ethics, moral norms, and applicable legal provisions.

One example of brand infringement in Indonesia that is the focus of this study is the dispute between PT Gudang Garam Tbk and the owner of the Gudang Baru brand. This dispute arose from allegations of plagiarism of cigarette packaging designs and brand names deemed similar to Gudang Garam products. Gudang Garam considered that Gudang Baru was attempting to gain profit and popularity by imitating elements that had become characteristic of their brand. In addition to filing a trademark cancellation lawsuit, PT Gudang Garam also reported the case to the East Java Regional Police Criminal Investigation Directorate for suspected trademark

<sup>3</sup> Ghulfron A. Mas'adi, *Contextual Fiqh Muamalah. First Edition, 1st Printing* (Jakarta: PT Raja Grafindo Persada, 2002). p. 32

<sup>4</sup> Law No. 20 of 2016 concerning Trademarks and Geographical Indications.



infringement. The case was then processed at the Kepanjen District Court to obtain a valid legal decision.

The Defendant's registration of the "Gudang Baru" trademark and logo was deemed *dishonest*. The purpose of the registration was considered to be to mislead the public by creating the impression that the trademark and products using the "Gudang Baru" trademark and logo were associated with the Plaintiff. The name "Gudang Baru" was considered similar to and inspired by the Plaintiff's "Gudang Garam" trademark.

In 2012, Gudang Garam filed the first lawsuit against Gudang Baru, which lasted for years. At the first level in the Surabaya Commercial Court, the lawsuit was filed by PT. Gudang Garam was unsuccessful. The decision was then appealed to the second level through cassation at the Supreme Court, but PT. Gudang Garam lost again because the judge ruled that the Gudang Baru brand had been legally registered and there was no evidence of bad faith. The legal battle continued to the final level, and through the Supreme Court Decision Number 104 PK/Pid.Sus/2015 and Supreme Court Decision Number 119 PK/Pdt.Sus-HKI/2017, PT Gudang Garam finally won. Through these decisions, the owner of Gudang Baru had to accept defeat and was sentenced to 10 months in prison and ordered to pay a fine of IDR 50,000,000.<sup>5</sup>

Based on this description, this study will examine in depth the trademark dispute between PT Gudang Garam and the owner of the Gudang Baru trademark, which was decided by Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017, with a focus on analysis from the perspective of *Haq al-Ibtikar*. Through this research, it is hoped that a comprehensive understanding of the principles of Islamic law in *Haq al-Ibtikar* will be obtained, thereby protecting trademarks, especially well-known trademarks with high economic value and reputation.

## RESEARCH METHOD

This study uses a normative legal research method, which examines applicable positive legal norms and relevant legal principles. This research was conducted using a conceptual *approach* to thoroughly analyse the legal

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<sup>5</sup> Court Decision No. 119 PK/Pdt.Sus-HKI/2017.

protection of the well-known trademark "Gudang Garam" in Supreme Court Decision Number 119 PK/Pdt.Sus-HKI/2017, which was reviewed in light of the concept of *Haq al-Ibtikar*. This study also aims to assess the compatibility between the court's decision and the principles of intellectual property rights protection in Islam, particularly regarding the prohibition of unjustly taking others' rights and the protection of property (*hifz al-māl*). The data sources in this study consist of primary and secondary data. Primary data were obtained from the official files of Court Decision Number 119 PK/Pdt.Sus-HKI/2017, as well as documentation related to the registration of the "Gudang Garam" trademark and evidence of its similarity to the "Gudang Baru" trademark. Secondary data was obtained through a literature study covering laws and regulations, intellectual property law books, scientific journals, and Muamalah fiqh literature related to *Haq al-Ibtikar*. Data analysis was conducted qualitatively by describing the data obtained, classifying it based on the research problems, then comparing the findings with the provisions in the concept of *Haq al-Ibtikar* to draw comprehensive conclusions.<sup>6</sup>

## RESULTS AND DISCUSSION

### A. Trademark Dispute in Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017

The trademark dispute between PT Gudang Garam and the party using the Gudang Baru trademark stemmed from the similarity between the two marks. The first lawsuit was filed by PT Gudang Garam in 2012 and resulted in different decisions at each level of court. At the first level in the Surabaya Commercial Court, PT Gudang Garam lost because the judge ruled that the registration of the Gudang Baru trademark was administratively valid.<sup>7</sup>

<sup>6</sup> Muhammin, *Legal Research Methods* (Mataram: Mataram University Press, 2020). pp. 54-71

<sup>7</sup> M. I. Hajizi, M. A. Wafa, and M. Yasir, "Legal Analysis of the Settlement of the Gudang Garam and Gudang Baru Trademark Dispute (Case Study of Decision Number 104 PK/Pid. Sus/2015)," *Journal of Legal Research*, 2019, 357, <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/44594/1/MUHAMAD%20IKBAL%20HAJIZI-FSH.pdf>.



At the second level, through an appeal to the Supreme Court, PT Gudang Garam lost again, given that there was no evidence of bad faith on the part of Gudang Baru. However, the legal battle reached the final level, and after a case review (PK), PT Gudang Garam finally won. This was decided in Supreme Court Decision Number 104 PK/Pid.Sus/2015 and Supreme Court Decision Number 119 PK/Pdt.Sus-HKI/2017. In these decisions, the registration of the Gudang Baru trademark was declared to be in bad faith, and the owner of Gudang Baru was sentenced to 10 months' imprisonment and ordered to pay a fine of IDR 50,000,000. The fact that PT Gudang Garam lost at the first and second levels, despite being the owner of a well-known trademark, is a critical issue to examine because it reveals loopholes in the evidence and the judge's reasoning.<sup>8</sup>

The lawsuit was filed over alleged similarities between the two brands in visual, phonetic, and conceptual aspects. PT Gudang Garam considered that the defendant's trademark registration was made in bad faith to piggyback on the popularity of a brand that has long been widely known to the public. Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Article 21, explicitly prohibits the registration of trademarks that are essentially similar to registered trademarks belonging to other parties, especially if the trademark is already well-known. This principle was strictly applied in the Gudang Garam and Gudang Baru case, in which the Panel of Judges ruled that the defendant's trademark registration violated the principle of good faith, a fundamental requirement for trademark registration.<sup>9</sup>

Through a case review (PK), the Supreme Court reassessed the evidence submitted by Gudang Garam, including a criminal verdict that became a novum. This strengthened Gudang Garam's legal position. The judges considered that the visual similarities, writing style, colour palette, and layout of the elements in the Gudang Baru trademark could not be coincidental. This consideration confirms that, at the initial level, the judge did not pay sufficient attention to the substantive aspects of brand similarity and

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<sup>8</sup> Dwi Atmoko, "Legal Protection for Trademark Holders According to Law No. 20 of 2016 on Trademarks and Geographical Indications," *Jurnal Hukum Sasana* 5, no. 1 (2019): 76-78, <https://ejurnal.ubharajaya.ac.id/index.php/SASANA/article/view/93/86>.

<sup>9</sup> Law No. 20 of 2016 on Trademarks and Geographical Indications.



to Gudang Garam's reputation as a well-known brand. In other words, Gudang Garam's initial defeat was not due to weak brand rights, but rather because the judge's considerations focused more on administrative aspects. They did not prioritise protecting well-known brands.<sup>10</sup>

From a legal standpoint, PT Gudang Garam has had exclusive rights to the brand since 1979, with more than 79 official registrations in various classes of goods, particularly class 34 for cigarette products. These registrations provide constitutive legal protection, so that any other party using a similar brand without permission can be considered to be in violation.<sup>11</sup>

The judge's considerations in this case were not only based on formal registration but also on the principles of consumer protection and fairness in trade. The judge assessed that the similarity between the trademarks poses a high risk of consumer confusion, leading consumers to believe that Gudang Baru products are from the same manufacturer as Gudang Garam. This is in line with the concept of *passing off* recognised in trademark law practice, namely, infringement that occurs when another party attempts to take advantage of the reputation of a well-known trademark for their own benefit.<sup>12</sup>

The Supreme Court's acceptance of PT Gudang Garam's appeal in the Review (PK) stage was not solely due to formal aspects of trademark registration, but because it was proven that there were similarities in essence and strong indications of bad faith on the part of Gudang Baru. The judge ultimately ruled that the visual, phonetic, and conceptual similarities presented by the defendant had the potential to mislead consumers, which is consistent with the concept of *passing off* in trademark law. This fact shows that

<sup>10</sup> Erval Ade Rahman, "Comprehensive Analysis of Legal Protection of Trademarks in Business in Indonesia," *Ren Nullius* 7, no. 1 (2025): 49–52, <https://ojs.unikom.ac.id/index.php/law/article/download/15260/4901/52854>.

<sup>11</sup> Putu Aditya Darma Putra, Komang Febrinayanti Dantes, and Si Ngurah Ardhy, "Implementation of Legal Protection for Holders of Registered Trademark Rights Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Buleleng Regency," *e-Journal of Communication and Justice*, Ganesha University of Education 5, no. 1 (2022): 71, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/45930/21477>.

<sup>12</sup> Herdi Agriansyah, "Analysis of Trademark Cancellation by Third Parties Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications (Study of Decision Number 120/Pdt.Sus/Merek/2022/PN Niaga Jkt.Pst)," *Examination: Law Journal* 2, no. 4 (2023): 221–24, <https://jurnal.umpwr.ac.id/index.php/eksaminasi/article/view/4157>.



the protection of well-known trademarks in Indonesia still faces challenges, because at the first instance and cassation levels, judges adhere more to administrative formalism without considering the principle of substantive protection as stipulated in Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which prohibits the registration of trademarks with similarities in essence, especially if the trademark is already well-known.

The complexity of the decisions at each level reflects the problems of the judicial system in Indonesia, which remains oriented towards the principle of formal legality. At the same time, the aspects of legal certainty and the protection of well-known trademarks are often neglected. It was only at the PK level that the Supreme Court presented a more progressive approach by considering *novum* in the form of criminal verdicts and other new evidence. This decision also confirms the importance of the status of "well-known trademarks," which should provide extra protection from the outset.

The PK ruling can be understood as a corrective measure that affirms the application of *the good faith* principle in trademark registration and the principle of consumer protection. On the other hand, the phenomenon of differences in rulings between levels shows that the practice of decision-making in Indonesia is not yet entirely consistent, as there are still disparities in interpretation between judges in assessing substantive and formal aspects. The case of Gudang Garam v. Gudang Baru sets an important precedent that legal protection of well-known trademarks should not stop at administrative procedures, but must prioritise substantive justice, legal certainty, and consistency with the objectives of the Trademark Law to prevent unfair business competition.<sup>13</sup>

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<sup>13</sup> Muhammad Ferdian, "The Legal Position of Law No. 20 of 2016 on Trademarks and Geographical Indications in Relation to Unfair Business Competition," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2019): 75–80, <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/download/355/327/653>.



## B. Review of *Haq al-Ibtikar* in Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017

*Haq al-Ibtikar* comes from two Arabic words: *haq*, meaning certainty, determination, or ownership, and *ibtikar*, meaning innovation, discovery, or creation born of ideas. The meaning of *ibtikar* emphasises a creative process that produces something that has never been realised before, either in its entirety or as a development of existing ideas or theories. Thus, *Haq al-Ibtikar* can be understood linguistically as the right attached to the creator or inventor of a work of art produced through an intellectual and innovative process.<sup>14</sup>

Islamic legal scholars distinguish between rights attached to pure ideas and those translated into forms the senses can perceive. An idea that has not been realised does not have the same protection as a work that has been published or realised in concrete form. This means that the protection of *Haq al-Ibtikar* in Islamic law is stronger when the result of the thinking has a tangible form, such as a product, design, or written work.<sup>15</sup>

Scholars hold diverse views regarding the status of *Haq al-Ibtikar* in Islamic law. The majority of scholars, particularly from the Malikiyah, Hanabilah, and some Syafi'iyah schools of thought, recognise that a person's thoughts, creations, and inventions are part of property (*al-mal*) that has economic value. In their view, property is not limited to tangible objects such as houses or vehicles, but also includes benefits and rights that can be legally utilised.

Imam Malik emphasised that *Haq al-Ibtikar*, once manifested in physical form, such as books, designs, or products, has a property value that can even exceed the value of other physical objects. He argued that the benefits generated from intellectual works can provide sustainable financial gains, so their protection falls within the scope of *hifz al-mal*. Imam Al-Qarafi took a different view. According to him, *Haq al-Ibtikar* is not property in the sense that it can be inherited or transferred in absolute terms. In his view, this right

<sup>14</sup> Lailatun Nikmah, Zuhrotul Janah, and Darin Arif Mu'allifin, "Copyright (Hak Ibtikar) in Islamic Law and Legal Views," *International Conference on Islam, Law, and Society (INCOILS)* 2, no. 1 (2023): 4–5, <https://incoils.or.id/index.php/INCOILS/article/view/174>.

<sup>15</sup> Miftakhul Huda, "The Concept and Position of Intellectual Property Rights in Islamic Law," *SALIMIYA: Journal of Islamic Religious Studies* 1, no. 1 (2020): 39–40, <https://ejournal.iaifa.ac.id/index.php/dirasah>.



originates from the mind and the results of non-material thinking, so it is not entirely subject to the rules of property transfer transactions. This view emphasises the non-physical nature of pure ideas before they are realised in concrete form.<sup>16</sup>

One of the arguments from the Qur'an that is often used to support *Haq al-Ibtikar* is the word of Allah in QS. Al-Baqarah verse 188: "*Do not consume one another's wealth unjustly, nor bring it before the judges with the intention of consuming a portion of other people's wealth through sin, even though you know.*" (Q.S Al-Baqarah: 188)

This verse emphasises the prohibition on unlawfully taking or utilising other people's wealth. This is relevant to the concept of *Haq al-Ibtikar*: intellectual works fall within the category of wealth referred to because they have economic value and provide benefits to their owners. Duplicating, plagiarizing, or using other people's brands and works without permission constitutes unlawful appropriation of wealth and is prohibited by Sharia law.<sup>17</sup>

Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017, which ruled on the dispute between PT Gudang Garam Tbk and the owner of the Gudang Baru trademark, is interesting when viewed from the perspective of *Haq al-Ibtikar*. The main issue the author focuses on is PT Gudang Garam's defeat at the first level. On cassation, even though, substantively, Gudang Garam is the owner of a well-known trademark that should have received protection from the outset. This defeat was mainly due to the judge's consideration, which focused on the formal aspects of trademark registration and did not emphasize the status of "well-known trademark" and the principle of good faith. In other words, at the initial level, legal protection was viewed only from an

<sup>16</sup> Duwirdja Haris, Muhammad Akbar, and M. Taufan, "Copyright (Copyright) in the View of Islamic Law," *Proceedings of Islamic Studies and Science Integration in the Era of Society 5.0 (KIIIES 5.0)* Postgraduate 1, no. 1 (2022): 68-71, <https://kiiies50.uindatokarama.ac.id/>.

<sup>17</sup> Ade Hidayat, "The Concept of Intellectual Property Rights in Islamic Law and Its Implementation for the Protection of Trademark Rights in Indonesia," *Adliya* 8, no. 1 (2024): 164-67, <https://journal.uinsgd.ac.id/index.php/adliya/article/download/8626/4118>.



administrative perspective, not from the essence of protecting creativity and reputation.<sup>18</sup>

When linked to the concept of *Haq al-Ibtikar*, the Gudang Garam brand is a valuable creative asset (*al-mal*) because it was built over a long period through investment and a reputation recognised by the public. In the view of Sharia, imitating or piggybacking on a well-known brand without permission constitutes unjustly taking the rights of others, thereby violating *hifz al-mal* (protection of property). From the outset, the Gudang Garam brand should have received maximum protection, not only from a formal administrative perspective but also based on the principles of justice and benefit.<sup>19</sup>

The Gudang Garam brand falls into the category of property that has economic benefits (*manfa'ah maliyyah*), so copying it for financial gain clearly contradicts Sharia provisions. Even if the brand registration was completed through formal channels, if it was done in bad faith, it remains invalid from a Sharia perspective.

It is essential to understand that *Haq al-Ibtikar* not only protects pure ideas but also the concrete manifestations of creativity. A registered trademark that has been used and widely recognised by the public is a tangible form of *ibtikar* and therefore enjoys full protection. In this case, the Gudang Garam trademark has been in use since 1979 and has constitutional legal protection, so that its rights are also strong from a Sharia perspective. The registration of Gudang Baru, which is essentially similar, cannot be justified.

Trademark protection in *maqashid al-syariah* is in line with the objectives of protecting property (*hifz al-mal*) and protecting reason (*hifz al-'aql*). Protecting property means safeguarding all forms of legally owned wealth, both tangible and intangible. Meanwhile, protecting reason means preventing confusion and misperceptions among the public, such as when consumers are tricked into buying counterfeit products due to brand similarities. The Gudang

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<sup>18</sup> Sutisna, "The Islamic Legal Perspective on Copyright," *MIZAN Journal of Islamic Law* 5, no. 1 (2021): 1–6, <https://www.jurnalfai-uikabogor.org/index.php/mizan/index>.

<sup>19</sup> Cut Vera Shilvia, Azkiya Sabrina, and Shabarullah, "Understanding The Concept Of Copyright In Civil Law And Islam," *Jurnal Al-Mudharabah* 3, no. 2 (2022): 198–200, <http://doi.org/10.22373/al-mudharabah.v3i2.3424>.



Baru case clearly has the potential to mislead consumers, so the protection of the Gudang Garam brand has a strong *maqashid* basis.

PT Gudang Garam's defeat at the first level and on appeal shows the limitations of the evidence and the judges' perspective in assessing the status of a well-known brand. However, in the case of the Judicial Review of the Supreme Court ( ) (PK), the Supreme Court adopted a more substantial approach by considering new evidence (novum), including a criminal verdict finding that the registration of Gudang Baru was done in bad faith. This consideration is consistent with the concept of *Haq al-Ibtikar*, under which protection is granted not only when there is administrative evidence but also when there are indications of moral violations, such as *tadlis* (fraud) and *gharar* (deceptive ambiguity).

Trademark protection in *Haq al-Ibtikar* is not only repressive (punishing violations) but also preventive. In the Gudang Garam case, taking legal action was an appropriate repressive measure. However, from a sharia perspective, trademark owners are also encouraged to take preventive measures, such as expanding trademark registrations across multiple classes and regions and monitoring potential violations.<sup>20</sup>

According to the author's analysis, when viewed from the perspective of *Haq al-Ibtikar*, this PK ruling reflects the synchronisation between positive law and sharia principles. The judge no longer considers only formalities but also attends to the ethical and welfare dimensions at the core of *maqashid al-syariah*, namely protecting property (*hifz al-mal*) and protecting reason (*hifz al-'aql*). Thus, PT Gudang Garam's victory at the final level confirms that the protection of well-known brands must be based on the essence of *Haq al-Ibtikar*, namely ensuring justice, preventing fraud, and maintaining legitimate economic value and reputation.<sup>21</sup>

<sup>20</sup> Nursania Dasopang, "Intellectual Property Rights (Hak Ibtikar) Copyright in the Perspective of Islamic Law," ISLAMIDA 1, no. 2 (2023): 96–98, <https://www.ejournal.staidarussalamlampung.ac.id/index.php/islamida/article/download/475/428>.

<sup>21</sup> Vika Husnul Khotimah and Rani Apriani, "Factors Causing Trademark Infringement in the Form of Passing Off Famous Trademarks as Viewed from Law No. 20 of 2016 concerning Trademarks and Geographical Indications," Wahana Pendidikan Scientific Journal 8, no. 20 (2022): 412, <https://jurnal.peneliti.net/index.php/JIWP/article/view/2643>.



This review confirms that *Haq al-Ibtikar* is adaptive to the times. Although the term “trademark” is a modern concept, its substance has been recognised in fiqh as a right attached to a person’s efforts and creativity. This dispute teaches us that trademark law literacy and awareness of business ethics must be instilled in business actors from the outset. Business actors must understand that imitating a well-known trademark is not a legitimate business strategy but rather a form of infringement that can result in legal sanctions and sin under Sharia law.

### C. Analysis of Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017 on Trademark Rights Disputes

Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017 is one of the essential jurisprudences in the field of intellectual property law, particularly related to the protection of well-known trademarks in Indonesia. The dispute between PT Gudang Garam Tbk, owner of the “Gudang Garam” trademark, and the owner of the “Gudang Baru” trademark illustrates the dynamics of trademark law enforcement, which extend beyond administrative matters to substantive issues of good faith and consumer protection.<sup>22</sup>

Historically, PT Gudang Garam has owned a well-known brand since 1979. This brand not only has high economic value but also a strong reputation among consumers. The registration of Gudang Garam in various classes of goods provides a constitutive legal basis for trademark ownership. Therefore, the emergence of the “Gudang Baru” trademark, which is essentially similar to the original, raises strong suspicions of trademark infringement.

The long journey of this case shows that the protection of well-known trademarks is not always smooth. At the first level of the Surabaya Commercial Court, PT Gudang Garam’s lawsuit was rejected because the judge considered the Gudang Baru trademark registration to be administratively valid. This consideration shows an approach that focuses more on formal legal aspects than on substantive protection.

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<sup>22</sup> Muhamad Sidiq, “Analysis of the Impact of Ethical Decisions on the Validity of Judicial Decisions: A Comparison of Constitutional Court Decisions and Judicial Decisions within the Scope of the Supreme Court,” *Journal of Constitution & Democracy* 5, no. 1 (2025): 66-76, <https://scholarhub.ui.ac.id/jurnalkonsdem/vol5/iss1/5/>.



PT Gudang Garam's defeat continued at the Supreme Court's cassation level. In the decision, the judge again rejected the lawsuit on the ground that there was no evidence of bad faith on Gudang Baru's part. Similar considerations emphasised the formality of registration, rather than the protection of well-known trademarks as stipulated in Article 21 of Law No. 20 of 2016.<sup>23</sup>

This situation illustrates that the trademark legal system in Indonesia still faces challenges in balancing the principle of formal legality with the need to protect well-known trademarks. Although the law prohibits the registration of trademarks that are essentially similar to well-known trademarks, implementation in practice is not always consistent.<sup>24</sup>

The situation changed when this case was submitted in an extraordinary legal action, namely a Case Review (PK). Through Decision No. 119 PK/Pdt.Sus-HKI/2017, the Supreme Court finally ruled in favour of PT Gudang Garam. This decision also overturned the previous judge's consideration and confirmed that the registration of the Gudang Baru trademark was carried out in bad faith.

One of the main reasons for accepting the PK was the existence of a novum in the form of a criminal verdict that sentenced the owner of Gudang Baru. This new evidence strengthened the argument that the registration of the Gudang Baru trademark was not purely a legitimate business venture, but rather an attempt to piggyback on the fame of Gudang Garam. In its considerations, the Supreme Court judge stated that the visual, phonetic, and conceptual similarities between Gudang Garam and Gudang Baru could not be considered coincidental. From the colours and layout to the writing style, the two brands share significant similarities that could potentially mislead consumers.

This consideration is in line with the doctrine of *passing off*, recognised in trademark law, namely the prohibition on other parties exploiting the

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<sup>23</sup> Court Decision Number 119 PK/Pdt.Sus-HKI/2017.

<sup>24</sup> Cecep Priyayi et al., "Legal Analysis of the Judge's Decision Regarding the Dismissal of All Legal Claims (Study of Mandailing Natal District Court Decision No. 26/PID/2019/PN.Mdl)," *Iuris Studia* 2, no. 3 (2021): 2-14, <https://doi.org/10.55357/is.v2i3.165>.

reputation of a well-known trademark by imitating or piggybacking on its popularity. Passing off is essentially a form of unfair business competition that can harm consumers and the owners of the original brand. This PK decision also reaffirms the principle of good faith as a fundamental requirement in trademark registration. Law No. 20 of 2016 emphasises not only the formalities of registration but also its substance, namely that registration must be carried out with legitimate and non-misleading intent.<sup>25</sup>

Further analysis shows that PT Gudang Garam's defeat at the initial level was not due to weakness in their legal position, but instead to the judge's overemphasis on administrative aspects. This indicates a problem of inconsistent decisions across different levels of the judiciary. This phenomenon creates legal uncertainty for business actors. Well-known brands, which should receive maximum protection from the outset, must instead go through a lengthy process up to the PK level to obtain justice. This situation can undermine confidence in Indonesia's trademark protection system.

From a consumer protection perspective, the use of similar trademarks such as Gudang Baru has the potential to mislead the public. Consumers may assume that the product is of the same quality as Gudang Garam, when in fact it is produced by another party. This is contrary to the principle of consumer protection as stipulated in the Consumer Protection Law.<sup>26</sup>

In a normative analysis, this ruling establishes an important precedent that the legal protection of well-known trademarks must extend beyond administrative procedures. Judges are required to be more progressive in interpreting the law to align with the objectives of intellectual property protection, namely to prevent unfair competition and protect consumer interests. Furthermore, this ruling also highlights the importance of synergy

<sup>25</sup> Josep Panggabean, "Analysis of the Constitutional Court's Decision Regarding the Determination of Suspects as Objects of Pre-trial (Study of Decision Number 73/Pid.Pra/2018/Pn.Mdn)," *Juris Studia* 1, no. 2 (2020): 39–46, <http://jurnal.bundamediagrup.co.id/index.php/juris>.

<sup>26</sup> Alfina Maharani and Adnand Darya Dzikra, "The Function of Consumer Protection and the Role of Consumer Protection Agencies in Indonesia: Protection, Consumers and Business Actors (Literature Review)," *Journal of Economics, Management, and Information Systems* 2, no. 6 (2021): 659–66, <https://doi.org/10.31933/jemsi.v2i6.607>.



between positive law and Islamic law. From the perspective of *Haq al-Ibtikar*, Gudang Baru's actions clearly constitute the unlawful taking of another person's rights. The Gudang Garam brand, built through significant investment and a long-standing reputation, must be protected as a form of legitimate property.

This PK ruling also shows that the judges' role is crucial in determining the direction of legal protection. Progressive judges will place substantive protection above formalities, thereby achieving more genuine justice. Conversely, rigidly formalistic judges may overlook the essence of legal protection. In addition to the legal aspects, this case also has economic and social dimensions. Well-known brands such as Gudang Garam are essential assets that absorb labour, contribute to tax revenue, and support the national economy. Therefore, trademark infringement not only harms companies but also affects society at large.<sup>27</sup>

This analysis concludes that the ruling is an essential milestone in Indonesian jurisprudence. Although late, PT Gudang Garam's victory shows that the legal system still has corrective mechanisms in place. Consistency is needed so that similar disputes can be resolved more quickly, fairly, and definitively. Judges should not only adhere to administrative formalities but also prioritise the substantive protection of well-known brands, notably by assessing good-faith and the potential for consumer confusion.

## CONCLUSION

Based on the analysis conducted, it can be concluded that Supreme Court Decision No. 119 PK/Pdt.Sus-HKI/2017 emphasises the importance of substantive protection for well-known trademarks as stipulated in Article 21 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, while also reflecting the principle of *Haq al-Ibtikar* in Islamic law, which prohibits the unjust taking of another person's rights. The defeat of PT Gudang Garam at the first level and on cassation shows the weakness of the judicial

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<sup>27</sup> Miranda Lufti Nasution, Sunarmi Sunarmi, and Robert Robert, "Legal Analysis of the Constitutional Court's Decision in the Cassation Appeal Against the Decision to Postpone Debt Payment Obligations (Study of Decision No. 23/PUU-XIX/2021)," *Recht Studiosum Law Review* 2, no. 2 (2023): 20-27, <https://talenta.usu.ac.id/rslr/article/view/12105>.

system, which remains oriented towards formal legality. In contrast, the victory at the PK level indicates that there has been a substantial correction through novum and the recognition of the status of well-known trademarks. This complexity reflects the reality of law enforcement in Indonesia, which is not yet entirely consistent, thus creating legal uncertainty for business actors. It is recommended that judges in trademark cases not only focus on administrative aspects, but also emphasise substantive justice, the principle of good faith, and consumer protection. In addition, it is necessary to strengthen preventive mechanisms through legal literacy, market monitoring, and inter-agency coordination to minimise similar disputes. From the perspective of *maqāsid al-syari'ah*, the protection of well-known trademarks not only safeguards economic interests but also protects the property (*hifz al-māl*) and intellect (*hifz al-'aql*) of society, so that positive law and Islamic law work together in upholding justice and legal certainty.

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