

## **Sarcasm-Nuance On A Brand : Unraveling of Islamic Law and Implication on Indonesian Halal Certification law**

**Aditya Prastian Supriyadi**

Faculty of Sharia Universitas Islam Negeri Maulana Malik Ibrahim Malang  
[aditya.prastian@uin-malang.ac.id](mailto:aditya.prastian@uin-malang.ac.id)

### **Abstract :**

Indonesia is the country with the largest Muslim population in the world. This number affects the interest of Muslim consumers in halal food. However, many business actors use the word sarcasm on culinary product brands that are not yet clearly halal. So, examining the permissibility of using the mark based on Islamic law and positive law in force in Indonesia is necessary. This study aims to examine the perspective of Islamic law and positive law on the use of sarcasm nuanced culinary product brands. This type of research uses normative juridical research methods to examine Islamic law. It is positive for the determination of halal certification on sarcasm-nuanced culinary product brands circulating in Indonesia. The approach used in this study is statutory, an analytical approach and a conceptual approach. The results of this study are seen from the perspective of Islamic law: product brands that contain the meaning of sarcasm based on the Qur'an, hadith and the opinions of scholars are acts of underestimating Islamic sharia so that the law is haram. Meanwhile, according to positive law based on Law No. 33 of 2014 concerning Halal Product Guarantee, product brands circulating in Indonesia must be certified halal. However, products containing sarcasm cannot bag halal certification, violating the law. The product cannot be subject to criminal sanctions even if it violates the brand law.

**Keywords :** Culinary Brand; Islamic Law; Positive Law; Halal Sertification; Sarcasm.

### **Introduction**

Indonesia is a developing country with the largest Muslim population worldwide. If implied, then 13% of Muslims worldwide are in Indonesia. Based on the 2022 edition of The Royal Islamic Strategic Studies Centre (RISSC) report, Muslims in Indonesia are 86.9% of the total population. Around 231.06 million Indonesians are Muslims.<sup>1</sup> This number certainly affects consumer interest in halal food products. Therefore, culinary businesses must have halal certification because it is an important indicator for Muslim consumers. In Indonesia, the Institute for the Assessment of Food, Drugs, and Cosmetics of the Indonesian Ulema Council (LPPOM MUI) observes halal assurance and issues halal certification. However, the phenomenon that occurs in the field is that it is found that there are still many

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<sup>1</sup> Data Indonesia, "As Many As 86.9% Of Indonesia's Population Is Muslim," Dataindonesia.Id, Accessed September 2, 2023, <https://Dataindonesia.Id/Varia/Detail/Sebanyak-869-Penduduk-Indonesia-Beragama-Islam>.

companies that do not have halal certification. Based on the author's observations, only 3,742 products were registered and received halal certification.<sup>2</sup> Over 90 per cent of Indonesian products have yet to obtain halal certification.

Amid this phenomenon, business actors do not attach importance to MUI halal certification. However, only focus on attracting as many consumers as possible and making the widest possible relationship. One way they attract consumers is by creating a unique and memorable brand<sup>3</sup>. They give names to their products even though they use words that contain sarcastic meanings<sup>4</sup>. The word sarcasm in question is a word that contains dirty swear that develops in society. On the other hand, the word sarcasm is considered inappropriate for some people who uphold the ethics and norms that develop in society.

Viewed from an Islamic point of view, the word sarcasm, which means swear, is a word that refers to the element of haram. Such words are not allowed in Islam. Islam forbids its followers to speak in the form of swearing and gambling. In Islam, we are taught to say good. The prohibition on swearing is contained in QS. Al-Humazah: 1 means: "Woe to every swearer and detractor,". Just like sarcasm, containing words or gambling is also forbidden in Islam. The verse prohibiting gambling is contained in QS. Al-Ma'idah: 90, which means, "O believers! Indeed, drinking, gambling, (sacrificing for) idols, and casting lots with arrows, are heinous deeds and belong to the devil. So stay away from them so that you may be lucky."

The MUI emphasized that food products with brands containing sarcasm cannot have halal certification. Prohibition of registration of product names using the word sarcasm and stated in SK/Dir/LPPOM MUI/XII/14 Concerning Provisions for Product Names and Product Forms. They concluded that products containing the meaning of sarcasm were rejected in submitting halal certificates because they contained meanings that contradicted Islamic law. Not only the composition and method of manufacture must be halal, but also the brand and name of the product must be good and by Islamic law<sup>5</sup>.

However, the word Sarcasm on food products that are not halal-certified is still widespread in Indonesia today. Several food products that do not have halal certification contain the meaning of Sarcasm, including "Mie Senewen", "Nasi Goreng Jancuk", "Mie Setan", and "Mie Sexy" and "Mie Gacoan", which contains the meaning of Sarcasm<sup>6</sup>. It is categorized as food that contains Sarcasm because it

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<sup>2</sup> "90 Percent Of Indonesian Products Do Not Have Halal Certificates," *Tempo*, September 19, 2008, <https://bisnis.tempo.co/read/136420/90-Persen-Produk-Indonesia-Belum-Punya-Sertifikat-Halal>.

<sup>3</sup> A. Munir Et Al., "The Impact Of Digital Marketing And Brand Articulating Capability For Enhancing Marketing Capability," *International Journal Of Data And Network Science* 7, No. 1 (2023): 65–72.

<sup>4</sup> "Search Results - Kbbi Online," Accessed September 2, 2023, <https://kbbi.kemdikbud.go.id/entri/sarkasme>.

<sup>5</sup> Devi Setya, "Makanan Dan Minuman Dengan Kriteria Ini Tak Bisa Dapat Sertifikat Halal Mui," *Detikfood*, Accessed September 2, 2023, <https://food.detik.com/info-kuliner/D-5833692/Makanan-Dan-Minuman-Dengan-Kriteria-Ini-Tak-Bisa-Dapat-Sertifikat-Halal-Mui>.

<sup>6</sup> Widia Wati And Ahmad Ajib Ridlwan, "Muslim Consumer Perceptions Of Non-Halal-Certified Food Products With Brands Containing Sarcasm Meaning," *Journal Of Sharia Economics, Accounting, And Banking* 4, No. 2 (December 2020): 205–228.

has a swearing meaning<sup>7</sup>. Nevertheless, these food products have not bagged MUI halal certification to guarantee that the product is halal, while Muslim consumers like to consume the food. Even though Islam has taught us always to consume good and halal food<sup>8</sup>. The order is contained in QS. Al-Ma'idah: 5 verse 88 means: "And eat of what Allah has given you as lawful and good sustenance, and fear Allah whom you believe in Him." From this verse, it can be concluded that halal form is not enough in Islam because it must also be accompanied by halal overall production<sup>9</sup>.

In addition to Islamic law, the obligation of halal product certification is also contained in Law Number 33 of 2014 concerning Halal Product Assurance; this law requires all products in Indonesia to go through a halal certification process. Article 4 of Law No. 33 of 2014 concerning Halal Product Assurance reads, "Products that enter, circulate, and are traded in the territory of Indonesia must be halal certified". In the decree on the assessment of food, drugs and cosmetics of the Indonesian Ulema Council (MUI), the provisions for writing the name and form of the product number SK4 / Dir / LPPOM MUI / XII / 14 in the third part determine the name of products that cannot be certified halal, including:<sup>10</sup> (1) The product name contains liquor, (2) The product name contains the name of Dog, Pig and its derivatives, (3) The name of the product contains the name of Satan and (4) The name of the product refers to kufr and immorality.

Based on the decree on the assessment of food, drugs and cosmetics of the Indonesian Ulema Council (MUI), the author has anxiety about culinary product brands that contain sarcasm, including Mie Gacoan, Mie Senewen, Mie Setan, Nasi Goreng Jancuk and Mie Sexy. Hence, it needs to be analyzed about the ability to use these products based on positive laws in force in Indonesia. Positive law is a collection of principles or written legal rules currently in force and binding in general or specifically enforced by or through the government or courts in State<sup>11</sup>.

The first previous study was entitled "Legal Protection for Consumers for the Circulation of Non-Halal Food in Review of Law Number 33 of 2014 concerning Halal Product Guarantee". The results of this research show consumers can resolve disputes with two legal paths taken, namely the first, dispute resolution outside the court, namely mediation, arbitration and conciliation through an institution called the Consumer Dispute Settlement Agency, abbreviated as BPSK and the second is dispute resolution outside the court. The similarity in this study is using normative juridical research on the use of food products that are not halal certified in the review

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<sup>7</sup> Suharni Maulan, Nor Asiah Omar, And Maisarah Ahmad, "Measuring Halal Brand Association (Halba) For Islamic Banks," *Journal Of Islamic Marketing* 7, No. 3 (January 1, 2016): 331–354, <https://doi.org/10.1108/Jima-09-2014-0058>.

<sup>8</sup> Golnaz Rezai, Zainalabidin Mohamed, And Mad Nasir Shamsudin, "Assessment Of Consumers' Confidence On Halal Labelled Manufactured Food In Malaysia," *Pertanika Journal Of Social Science & Humanity* 20, No. 1 (2012): 33–42.

<sup>9</sup> Zurina Shafii And Wmnws Khadijah, "Halal Traceability Framework For Halal Food Production," *World Applied Sciences Journal* 17, No. 12 (2012): 1–5.

<sup>10</sup> Siti Nur Faiza, "Rejection Of Mui Surabaya's Halal Label Certification On 'Devil's Noodle' Products From The Perspective Of Islamic Law And Law No. 33 Of 2014," *Maliyah : Journal Of Islamic Business Law* 11, No. 2 (December 11, 2021): 260–81, <https://doi.org/10.15642/Maliyah.2021.11.2.104-125>.

<sup>11</sup> Philippe Nonet, "What Is Positive Law?," *The Yale Law Journal* 100, No. 3 (1990): 667–99.

of Law Number 33 of 2014 concerning Halal Product Guarantee. The difference in this study is that the previous research was more directed to consumer protection regarding non-halal food products in circulation. In contrast, the author's research focused more on the perspective of Islamic law and positive law, where it is not permissible to use food brands that contain sarcasm in food products.<sup>12</sup>

The second previous study, "Legal Protection for Muslim Consumers against Food Products Not Halal Certified According to Law Number 33 of 2014 concerning Halal Product Guarantee," was written by Ikhsan Maulana. The result of this study is that laws and regulations governing consumer protection provide full protection for consumers who violate their rights in the law; this regulation can provide a sense of security to consumers in choosing food products that have been certified halal, especially the increasingly strengthening law, namely law number 33 of 2014 concerning halal product assurance (UUPJH). The equation of this research is to use normative juridical research on food products not halal certified according to Law Number 33 of 2014 concerning Halal Product Assurance. The difference in this study is that the research written by Ikhsan Maulana is about consumer protection against non-halal-certified products. In contrast, the author's research focuses more on how it is permissible to use food brands that contain sarcasm<sup>13</sup>.

The third previous research, entitled "Legal Protection for Consumers Against Food Products That Are Not Halal-Certified", was reviewed by Asri Suhardi. The results of this study have three aspects: (1) There is legal protection for Muslim consumers from food products that are not halal certified, which has been regulated in Law Number 33 of 2014 concerning the Halal Product Guarantee. (2) Business actors who must be on time to obtain halal certification must put halal labels on product packaging that MUI has issued. (3) The government's role in supervising non-halal-certified products is going well, as outlined in the form of laws and regulations, namely the Food Law and the Halal Product Assurance Law. The similarity of this study with previous research is that both research on food products that do not have halal certification. The difference in this study is that previous research discusses the protection of consumer law only, while the author's research focuses more on the perspective of Islamic law and positive law regarding the ability to use food brands that contain the meaning of sarcasm<sup>14</sup>.

The fourth previous study was entitled "Muslim Consumer Perceptions of Non-Halal-Certified Food Products with Brands Containing Sarcasm Meaning". Widia Wati and Ahmad Ajib Ridlwan wrote this research. The result of this study is that Muslim consumers do not pay much attention to halal certificates on food products because the perception is that the important thing about food products is halal composition; if the composition is halal, then it does not matter if you consume it. Language containing sarcasm on food products is not a problem for Muslim consumers, and halal certification is considered only as an added value. The

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<sup>12</sup> Tri Rizki Damai Yanti, "Perlindungan Hukum Bagi Konsumen Atas Peredaran Makanan Non Halal Di Tinjau Dari Undang-Undang Ri No. 33 Tahun 2014 Tentang Jaminan Produk Halal" (Phd Thesis, 2017).

<sup>13</sup> Saeful Amin, "Perlindungan Hukum Bagi Konsumen Muslim Terhadap Produk Pangan Yang Tidak Bersertifikat Halal Menurut Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal" (Undergraduate, Universitas Islam Sultan Agung Semarang, 2022), [Http://Repository.Unissula.Ac.Id/25788/](http://Repository.Unissula.Ac.Id/25788/).

<sup>14</sup> "Perlindungan\_Hukum\_Bagi\_Konsumen\_Terhada.Pdf," N.D.

similarity of this study with previous research is that both discuss food products with brands containing the meaning of sarcasm. The difference in this study is that previous research discusses the perception of Muslim consumers towards food products that are not halal-certified and whose brands contain sarcasm. In contrast, the author's research focuses more on the perspective of Islamic law and positive law regarding the ability to use food brands that contain sarcasm in food products.<sup>15</sup>

The last previous research was a thesis entitled "Community Response to Food Products Without Halal Labels in Kec. Mattiro Sompe Pinrang Regency (Analysis of Islamic Economic Law)". ST wrote this study. Fajrianti. The results of this study show that the public response to food products that are not halal-certified is carried out well. It is proven by fulfilling the requirements of the object and subject of society so that the community is protected from all forms of lies and tyranny that occur, and no party is harmed. This research is similar to previous research on food products that are not halal-certified based on Islamic law. The difference between this research and previous research is that previous research used empirical research methods that discussed the public response to food products without halal labels in Kec. Mattiro Sompe Kab.Pinrang, while this study used juridical normative research to examine the perspective of Islamic law and positive law regarding the use of food brands that contain the meaning of sarcasm<sup>16</sup>.

This research with previous research has differences, so it is necessary to conduct research that discusses the permissibility of using culinary product brands with sarcasm nuances. This study examines "Sarcasm-Nuance On A Brand: Analysis Of Islamic And Positive Legals As Well As Their Implication On Halal Certification..

### Research Method

The author chooses normative legal research methods as the basis for research to answer legal problems in this article issue in order to get a comprehensive answer. Normative legal research is a method to formulate legal rules, legal principles and legal doctrines in constructing legal *argumentation* as *problem solving* in a legal problem<sup>17</sup>. This type of research is considered appropriate in analyzing the concept of sarcasm in brands according to the landscape of positive law and Islamic law. In this paper, the author uses a statutory approach that is relevant to the study issue as well as a conceptual approach to analyze the problem more comprehensively and deeply<sup>18</sup>. The data analysis in this article uses *the content analysis* method. Holsti conveyed that *the content analysis* method approach is used to open new horizons in

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<sup>15</sup> Wati And Ridlwan, "Persepsi Konsumen Muslim Terhadap Produk Makanan Tidak Bersertifikat Halal Dengan Merek Mengandung Makna Sarkasme."

<sup>16</sup> St Fajrianti, "Respon Masyarakat Terhadap Produk Makanan Tanpa Label Halal Di Kec. Mattiro Sompe Kabupaten Pinrang (Analisis Hukum Ekonomi Islam)" (Phd Thesis, Iain Parepare, 2020).

<sup>17</sup> Theresia Anita Christiani, "Normative And Empirical Research Methods: Their Usefulness And Relevance In The Study Of Law As An Object," *Procedia-Social And Behavioral Sciences* 219 (2016): 203, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

<sup>18</sup> Robert Elliott And Ladislav Timulak, "Descriptive And Interpretive Approaches To Qualitative Research," *A Handbook Of Research Methods For Clinical And Health Psychology* 1, No. 7 (2005): 147–157.

finding, identifying, and processing material through conceptual integration of exploration of research objects<sup>19</sup>.

### Islamic Legal Perspective on the Use of Sarcasm-Nuanced Culinary Product Brands

Today's culinary business development is shown by the rise of culinary products with names prohibited by Islamic law. Food product brands containing sarcasm have grown rapidly<sup>20</sup>. A food product brand that contains the meaning of Sarcasm is Mie Gacoan. Gacoan noodles are a popular food today. When viewed on the Shopee and Grab applications, Mie Gacoan sales reach more than 10 thousand per menu. With this many sales, it is undeniable that Mie Gacoan cannot get halal certification because of problems with the product brand because it is a bad word in Islamic law.<sup>21</sup>

Of course, words such as sarcasm cannot be justified in terms of halal certification, so products that use the meaning cannot bag halal certification. These words of sarcasm are bad; the word sarcasm should not be put on the brand of food products to make the food not good in the view of Islam<sup>22</sup>. In Islam, food must be tayyib, which means every food must have a good brand name under Islamic law<sup>23</sup>. The author takes the postulates of the Qur'an and Hadith, which are strengthened by the opinions of scholars in analyzing the ability to use brands of culinary products with sarcasm nuances.

Halal or not, the food consumed by Muslims has restrictions in Islamic law<sup>24</sup>. It has been stated in QS. Al-Baqarah Verse 168, which means: "O man! Eat the lawful and good (food) found on earth, and do not follow the steps of Satan. Truly, Satan is a real enemy to you." The verse commands us to eat food that is not only halal but also good (Tayyib). In the Tafseer of Ath-Thabari, this verse is addressed more specifically to the believers that, fear, O believers, that you will transcend the limits of Allah Almighty, then you justify what is forbidden to you, and forbid what is permissible for you, and beware of Allah so that you do not disobey him, then his

<sup>19</sup> Ole R. Holsti, "Content Analysis For The Social Sciences And Humanities," *Reading. Ma: Addison-Wesley (Content Analysis)*, 1969, 14.

<sup>20</sup> V. Haripriya And Poornima G. Patil, "Detection Of Sarcasm From Consumer Sentiments On Social Media About Luxury Brands," In *Recent Trends In Image Processing And Pattern Recognition*, Ed. K. C. Santosh And Ravindra S. Hegadi, Communications In Computer And Information Science (Singapore: Springer, 2019), 652–667, [https://doi.org/10.1007/978-981-13-9187-3\\_58](https://doi.org/10.1007/978-981-13-9187-3_58).

<sup>21</sup> Muhammad Nafis Ilyasa Et Al., "Memberi Nama Buruk Terhadap Makanan Dan Minuman Mempengaruhi Status Halal," *Ijm: Indonesian Journal Of Multidisciplinary* 1, No. 1 (June 7, 2023): 401–405.

<sup>22</sup> Abu Saim Md. Shahabuddin, Mohd Edil Abd Sukor, And Noor Hazarina Hashim, "Product-Centric Halal Business: A Critique From An Islamic Perspective," *Journal Of Islamic Marketing* 11, No. 6 (January 1, 2020): 1707–1724, <https://doi.org/10.1108/Jima-06-2019-0129>.

<sup>23</sup> Lina Herlina, M. Luthfi Hamidi, And Muhammad Doddy, "The Concept Of Branding In Islamic Business Ethics Perspetive," *Jurnal Ekonomi Dan Perbankan Syariah* 7, No. 1 (April 18, 2019): 55–67, <https://doi.org/10.46899/Jeps.V7i1.99>.

<sup>24</sup> Mohamed Syazwan Ab Talib Et Al., "Emerging Halal Food Market: An Institutional Theory Of Halal Certificate Implementation," *Management Research Review* 39, No. 9 (January 1, 2016): 987–997, <https://doi.org/10.1108/Mrr-06-2015-0147>.

wrath will come upon you, or you will be tormented by him<sup>25</sup>.

Product brands that contain the meaning of sarcasm are not *tayyib*, so their use is not allowed in Islam. Islam has restrictions on branding culinary products, which is not to use bad words<sup>26</sup>. To the restrictions on the use of marks in Islam, the mention of marks is equated with *maal* (treasure) because the mention of marks has not been found in *fiqh*. There are two criteria for *maal* (treasure): material value and usefulness. If these two criteria are applied to the brand, then the brand has a very expensive material value. Brand criteria in Islam must be beneficial and not forbidden<sup>27</sup>. *Toyyibah* here also includes the name of the food product, which must be good in the Islamic view. Wahab Az Zuhaili gives a view in his book *Islamic Fiqh Wa Adillatuhu* as follows

*Toyyibah* here also includes the name of the food product must be good in the Islamic view. Wahab Az Zuhaili gives a view in his book *Islamic Fiqh Wa Adillatuhu*, as follows<sup>28</sup>: "And it is forbidden to give bad names such as demons, tyrants, *dzihab* (arrows of fire), *himar* (donkeys) and *kulaib* (little dogs). Moreover, things that signify habits, such as *najih* and *barakah*. It is based on the hadith of the Holy Prophetsa, which means: Never name your child *Aflah* (lucky), *Najih* (success), *Yasar* (ease), or *Raba* (profit). That is because when you ask, is he there? People then say no."

The use of sarcasm in nuanced culinary product brands does not fit the criteria of a brand in Islam<sup>29</sup>. It is by the Qur'an An-Nisa' Verse 148 proposition, which means "Allah does not like bad words spoken frankly"<sup>30</sup>. God does not like bad words alone, especially when bad words are used to name a food brand. Allah does not reward brands of products that contain the meaning of sarcasm. Moreover, Allah's displeasure with a charity usually does not reward the practice<sup>31</sup>.

During the hadith about prohibiting the use of culinary product brands with sarcasm nuances, the other is the hadith about giving names narrated by Abu Daud, which means, "Do not give names with bad names, because the name will be a nickname in the hereafter (HR. Abu Dawud)<sup>32</sup>. The meaning of the hadith is the

<sup>25</sup> Auliya Izzah Hasanah, "Konsep Makanan Halal Dan Thayyib Dalam Perspektif Al-Qur'an," N.D.

<sup>26</sup> Muhammad Anwar And Mohammad Saeed, "Promotional Tool Of Marketing: An Islamic Perspective," *Intellectual Discourse* 4, No. 1 & 2 (1996), <https://journals.iium.edu.my/intdiscourse/index.php/id/article/view/387>.

<sup>27</sup> "Marks According To Islamic Law," Nu Online, Accessed September 3, 2023, <https://islam.nu.or.id/ekonomi-syariah/merek-menurut-hukum-islam-dmguk>.

<sup>28</sup> Wahbah Az-Zuhaili, "Fiqh Islam Wa Adillatuhu, Terj," *Abdul Hayyie Al-Kattani, Et Al, Jakarta: Gema Insani*, 2011.

<sup>29</sup> Eesha Ghani And Basheer Ahmad, "Islamic Advertising Ethics Violation And Purchase Intention," *International Journal Of Islamic Marketing And Branding* 1, No. 2 (January 2015): 173–198, <https://doi.org/10.1504/Ijimb.2015.071783>.

<sup>30</sup> "The Law Says Dirty In Islam, Really Hated By Allah Swt," *Suara.Com*, November 16, 2020, <https://www.suara.com/news/2020/11/16/134501/hukum-berkata-kotor-dalam-islam-benar-benar-dibenci-allah-swt>.

<sup>31</sup> Farid Adnir, "Halal And Haram According To Hadith Perspectives And Community Views On Halal Products In Coal Regency," *Other (Faculty Of Ushuluddin And Islamic Studies Uinsu Medan, 2023)*, <http://repository.uinsu.ac.id/12865/>.

<sup>32</sup> "Guide To Naming Children In Islam – An Nur Islamic University Lampung," Accessed

prohibition of giving a bad name to a child; the hadith is to glorify a child from his name. The name is a prayer from a parent to his child. It is recommended for parents to give a good name as a good prayer as well, like the Islamic names taught by the Prophet SAW. When giving a name to a child, parents should choose the most beautiful and noble name for him. Parents are advised to avoid bad names, as they can harm the glory of the child or will even become the subject of ridicule<sup>33</sup>.

Just giving a bad name to children is forbidden by the Prophet, let alone giving a bad name to the food we consume. Using sarcasm to nuanced culinary product brands is giving a bad name to food product brands; this is prohibited if analogous based on the hadith above<sup>34</sup>. The bad names that should be changed are demonic names such as only (demon bully the one who prays), walhan (demon who bullies the ablutionist) and dasin (demon of the house). The demons of the house enter the empty rooms; the way to cast them out is to say Assalamu'alaikum<sup>35</sup>. Satanic bullies fall into the category of sarcasm. Therefore, they should be replaced if they already use them. Brands of culinary products that use the word devil must also be replaced; if not, the act is still haram<sup>36</sup>.

Furthermore, the use of culinary product brands with sarcasm nuances and the opinions of this paper are examined based on the opinions of Wahbah Az Zuhaili and Salih Al Munajjid. Giving names of culinary products that are not by Islamic law, Wahbah Az Zuhaili provides provisions for giving children names, which must be given good names; he also emphasized that giving bad names is makruh law, such as the devil, dualism, Shihab (fire arrow), himar (donkey), kulaib (small dog). Thus, it is with names whose absence makes people pessimistic, such as najih (success) and barakah (blessing). Wahab Az Zuhaili gives a view in his book *Islamic Fiqh Wa Adillatuhu*, as follows: Meaning: And it is forbidden to give bad names such as the devil, tyranny, dzihab (arrow of fire), himar (donkey) and kulaib (small dog). Moreover, things that signify habits, such as najih and barakah. It is based on the hadith of the Holy Prophetsa, which means: Never name your child Aflah (lucky), Najih (success), Yasar (ease), or Raba (profit). That is because when you ask, is he there? People then say there is no.

Based on the description of Wahbah Az Zuhaili, giving a food name with a bad name is makruh law based on the similarity of illat with the case above, which is the same as giving a name to an object. Therefore, the names of culinary products with bad names, such as sarcasm, should also not be used and replaced with good names. Wahab Az Zuhaili argued that the names of culinary products that contain

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September 3, 2023, <https://An-Nur.Ac.Id/Panduan-Menamai-Anak-Dalam-Islam/>.

<sup>33</sup> Nurul Azizah, "The Values Of Islamic Education In Hadiths Of Akikah," *Progress: Journal Of Islamic Education At Wahid Hasyim University* 7 (2019): 81–102.

<sup>34</sup> Mohammad Hatim Abuljadail And Louisa Ha, "What Do Marketers Post On Brands' Facebook Pages In Islamic Countries? An Exploratory Study Of Local And Global Brands In Saudi Arabia," *Journal Of Islamic Marketing* 10, No. 4 (January 1, 2019): 1272–1287, <https://doi.org/10.1108/Jima-11-2017-0131>.

<sup>35</sup> *Law On Changing Name - Ustadz Adi Hidayat*, 2021, <https://www.youtube.com/watch?v=Vcg3z6ybn70>.

<sup>36</sup> Fiqih Aisyatul Farokhah, "Halal Certification Of Satan Noodles As An Islamic Marketing Strategy And Mass Media Coverage (Critical Discourse Analysis)," *Proceeding Of Annual International Conference On Islamic Economics (Aicie)* 2, No. 1 (September 14, 2023): 19–27, <https://doi.org/10.21154/Aicie.V2i1.1010>.



bad meanings should be changed into good names according to Islam; his opinion was based on the hadith of the Holy Prophetsa, which means: "Have told us Ahmad bin Hanbal and Zuhair bin Harb, Muhammad bin Al Mutsanna, 'Ubaidullah bin Sa'id and Muhammad bin Basysyar they said; Have told us Yahya bin Sa'id from 'Ubaidullah; It has been reported to me Nafi' from Ibn 'Umar that the Prophet sallallahu 'alaihi wasallam changed the name 'Ashiyah saying; "Your name is Jamilah." Ahmad said with lavish, 'of Nafi', no; 'Have told me'<sup>37</sup>.

While Salih Al Munajjih's opinion discusses the name of food products that are not good, the author quotes in his fatwa as follows, which means: Calling something that Allah justifies by using the term something that Allah hates, this kind of act includes belittling Allah's rules and not glorifying His laws. Moreover, this is contrary to the attitude of piety to Allah." (Islamic Fatwa, no. 234755)<sup>38</sup>. In the act of giving a bad name to culinary products in the fatwa, Salih Al Munajjid argued that such a thing is to underestimate the rules of Allah and not use its laws, which is contrary to the nature of devotion to Allah Almighty. The argument used by Salih Munajjih is Q.S Al Hajj Verse 30, which means: "Thus (Allah's commandment), and whosoever exalts that which is honourable in the sight of God, it is more for him. Then the following postulate is Q.S. Al-Hajj Verse 32, which means: "Such (Allah's commandment), and whoever glorifies the shiar of Allah, then verily it arises from piety of heart".

In this description, it is clear that Salih Al Munajjid strictly forbids naming something that Allah has justified with a bad name. Included here is halal culinary naming with names that contain bad meanings and are unsuitable for use, such as sarcasm. It is an act that undermines the rules of Allah and is very contrary to the nature of piety in humans. So, it should not give a bad name to food that Allah justifies because it is a sustenance given by Allah that must be glorified and respected.

### **Legal Implications of Using Sarcasm-Nuanced Culinary Product Brands Based on Positive Law in Indonesia**

The enactment of Law Number 33 of 2014 concerning Halal Product Assurance precisely in Article 4 explains that food entering, circulating and traded in Indonesia must be halal certified<sup>39</sup>. The government, through the Institute for the Assessment of Food, Drugs and Cosmetics of the Indonesian Ulema Council (BPOM MUI) and the Halal Product Assurance Organizing Agency (BPJPH), has urged business actors to take care of halal certification for products to be traded to the public. However, not all business actors care for halal certification on their products<sup>40</sup>. This is the case of food product brands that contain sarcastic meanings,

<sup>37</sup> Azizah, "Nilai-Nilai Pendidikan Islam Dalam Hadis-Hadis Akikah."

<sup>38</sup> Apon Nur Aropah Et Al., "Understanding The Content Of The Qur'an Through The Rules Of As-Sual And Al-Answer," *Al-Akhbar: Journal Of Islamic Science* 9, No. 1 (August 15, 2023): 21–26.

<sup>39</sup> Fahmi Ali Hudaefi And Irwandi Jaswir, "Halal Governance In Indonesia: Theory, Current Practices, And Related Issues," *Journal Of Islamic Monetary Economics And Finance* 5, No. 1 (May 16, 2019): 89–116, <https://doi.org/10.21098/jimf.v5i1.1049>.

<sup>40</sup> Ridwan Arifin, "Legal Analysis Of Halal Product Guarantee For Development Of Small And Medium Enterprises (Smes) Business In Indonesia," *Jurnal Hukum Islam* 18, No. 1 (2020): 121–

namely "Mie Setan", "Mie gacoan", "Mie Senewen", and "Nasi Goreng Jancuk".

Article 33 Paragraph 1 of Law No. 33 of 2014 concerning Halal Product Assurance states that MUI determines halal products. Thus, MUI plays an important role in determining the halal of a product from all elements, ranging from production to product circulation<sup>41</sup>. So related to the naming and form of products determined by MUI based on fatwas issued based on Islamic law<sup>42</sup>. The product name that refers to the element of haram has been explained in a decree issued by LPPOM MUI in 2014: SK46 / Dir / LPPOM MUI / 2014. Then, the Halal Fatwa of the Indonesian Ulema Council Number 4 of 2003 in the fourth part concerning the names and ingredients of the first point, which reads, "Do not consume and use names and symbols of food that lead to kufr and sleaze"<sup>43</sup>. So, in this case, product brands that contain the meaning of sarcasm cannot pocket halal certification because these brands are not by Islamic law, where the name of the food that should be used does not lead to kufr and kebathilan. Giving names and symbols that have negative meanings, containing elements of kufr and sleaze, will certainly not be allowed by sharia<sup>44</sup>.

Brands of culinary products that contain sarcasm, such as Mie Setan, Nasi Goreng Jancuk, Mie Senewen, Mie Gacoan and Mie Sexy, are among the brands that should not be used in the fatwa because they contain names that refer to kufr and kebathilan. The product brand cannot pocket the halal certification of the product. In order to get halal certification, product brands that carry the meaning of sarcasm should be replaced with good names so that the mark is by the law in the applicable law. These names are replaced with good ones by the MUI fatwa rules so that they can pocket halal certification.

The Consumer Protection Law already regulates the circulation of brands of products that are not halal-certified, including those that contain the meaning of sarcasm. According to Article 1 Paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, what is meant by Consumer Protection is all efforts that ensure legal certainty to protect consumers<sup>45</sup>.

In the explanation of Law Number 8 of 1999 concerning Consumer Protection Article 2, Consumer Protection is carried out based on 5 (five) principles relevant to national development, namely :

- a. The principle of benefits, intended to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit

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136.

<sup>41</sup> Edi Krisharyanto, Endang Retnowati, And Noor Tri Hastuti, "Regulation And Provisions For Supervision Of Halal Products In Indonesia," *Journal Of Legal, Ethical And Regulatory Issues* 22 (2019): 1.

<sup>42</sup> Diky Faqih Maulana, Makhruh Makhruh, And Hamidatul Hasanah, "The Urgency Of Mui Halal Fatwa About Food, Beverage, Medicine And Cosmetic Products For The Consumer Protection," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, December 19, 2022, 199–214, <https://doi.org/10.24090/Volksgeist.V5i2.6421>.

<sup>43</sup> Fatwa Of The Indonesian Ulema Council Number 4 Of 2003

<sup>44</sup> Mehran Najmaeia Et Al., "Marketing From Islamic Perspective, Tapping Into The Halal Market," *Journal Of Marketing Management And Consumer Behavior* 1, No. 5 (2017): 53–62.

<sup>45</sup> Misnar Syam Et Al., "Consumer Protection Enforcement Law Characteristics On Civil Law Aspects In Indonesia," *Linguistics And Culture Review* 5, No. S2 (December 13, 2021): 1471–1481, <https://doi.org/10.21744/Lingcure.V5ns2.1976>.

for the interests of consumers and business actors as a whole. The existence of culinary product brands that contain the meaning of sarcasm does not provide the principle of benefits to Muslim consumers, where Muslim consumers are required to consume good food per Islamic law. Asas keadilan, dimaksudkan agar partisipasi seluruh rakyat dapat diwujudkan secara maksimal dan memberikan kesempatan kepada konsumen dan pelaku usaha untuk memperoleh haknya dan melaksanakan kewajibannya secara adil. Dengan adanya merek produk kuliner bernuansa sarkasme artinya tidak tercapainya asas keadilan dimana konsumen tidak memperoleh haknya secara utuh untuk memperoleh makanan dengan merek yang halal.

- b. The principle of balance is intended to balance the interests of consumers, business actors and the government in a material or spiritual sense. The existence of a culinary product brand with sarcasm nuances means that a balance principle is not achieved where the interests of Muslim consumers in spiritual matters are not fulfilled to consume halal and good food.
- c. The principle of legal certainty is intended so that both business actors and consumers obey the law and obtain justice in implementing consumer protection, and the state guarantees legal certainty. With the existence of culinary product brands with sarcasm nuances, they also do not achieve legal certainty. The existence of culinary product brands with nuances of sarcasm certainly does not provide legal protection to Muslim consumers to consume halal and good food.

In addition to these principles, Law Number 8 of 1999 concerning Consumer Protection in Article 3 outlines the objectives of the Consumer Protection Law, namely:

- a. Increase consumer awareness, ability and independence to protect themselves;
- b. Elevating the dignity and dignity of consumers by avoiding the negative excesses of the use of goods and / or services;
- c. Increase consumer empowerment in choosing, determining and demanding their rights as consumers;
- d. Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information;
- e. Growing awareness of business actors about the importance of consumer protection so that an honest and responsible attitude in doing business grows;
- f. Improve the quality of goods and/or services that ensure the continuity of the business of producing goods and/or services, health, comfort, security, and consumer safety.

Consumer protection in the UUPK aims to raise the dignity of consumers' lives. Therefore, everything that brings negative consequences from using goods and or services must be avoided from activities carried out by business actors. Therefore, the Law determines various prohibitions on business actors contained in Article 8 of the Law, including producing and trading goods and services that do not follow the provisions for halal production, as stated in the label.

Furthermore, Article 8 Paragraph (8) of the Consumer Protection Law states that business actors are prohibited from not following the provisions for halal production as stated in the label. Meanwhile, in Article 8 Paragraph (9), business

actors are prohibited from including halal labels containing the name of the goods. In the article, brands of culinary products with sarcasm nuances that do not include halal labels mean that it is prohibited.

Sanctions are dependents, actions, and punishments to force people to keep agreements or obey the provisions of laws<sup>46</sup>. Article 62 paragraph (1) of the Consumer Protection Law states that Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of 2,000,000,000 (two billion rupiah).

So, with the sanctions that have been regulated in the laws and regulations, business actors should further increase their awareness to carry out halal certification to the Indonesian Ulema Council to obtain halal certificates and include halal labels on the packaging of their products. The responsibility of business actors or producers is closely related to enforcing laws and other laws and regulations in force in Indonesia. Law enforcement is the activity of harmonizing the relationship of values described in rules/views to create, maintain and maintain social peace. Law enforcement also requires supervision of implementing consumer protection and applying the provisions of laws and regulations organized by the government. Juridical supervision and law enforcement are based on applicable legal institutions regarding halal products<sup>47</sup>.

The Consumer Protection Law confirms that the government, the community, and non-governmental consumer protection agencies carry out supervision of consumer protection and the application of its statutory provisions. Diversity and illegal actions carried out by unscrupulous business actors can occur because the certification process is still voluntary or voluntary. Halal certification and information carried out have only reached a small number of food products, beverages, drugs, cosmetics and other goods circulating in the community. It is due to various obstacles faced today, such as the absence of halal product standards, the absence of halal product officers in the company adequately, and the need for company policies regarding implementing the halal production system. Culinary product brands with sarcasm nuances certainly cannot bag halal certification. Article 62, paragraph (1) of the UUPK, explained the legal consequences for business actors or producers who produce illegally; the threat is in the form of imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (Two Billion Rupiah).

Business actors who use culinary product brands that contain sarcasm, including Mie Setan, Mie Gacoan, Mie Senewen and Nasi Goreng Jancuk, cannot be subject to criminal sanctions under Article 62 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection. Criminal violations in the Law are business actors who violate or do not follow the provisions for halal production. Halal production referred to here is contained in Article 8 letter (b-j) of Law No. 8 of 1999 concerning Protection, which is not by net weight, net or net content, size, dose, scale, quality, level, composition, processing process, style, mode, does not include the expiration date. Meanwhile, business actors who use culinary product brands

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<sup>46</sup> Mahrus Ali, *Basics Of Criminal Law* (Sinar Grafika, 2022).

<sup>47</sup> Ali.

with sarcastic nuances produce halal, but the product's name is the main problem, so it does not get a halal label.

Muti said it was reported from detikFinance that what was halal was semi-finished raw materials because no ingredients were forbidden in Islam. Muti said halal certification for foodstuffs cannot be claimed as halal certification of restaurants. Ingredients listed as halal include dumpling dough, minced chicken, fried onions, basic noodles, dry prickly dumpling dough and shrimp spring rolls<sup>48</sup>. The restaurant is needed for halal certification because it contains a bad meaning, so it needs to be by Islamic law and cannot pocket halal certification.

Law No. 20 of 2016 concerning Marks and Geographical Indications (from now on referred to as the MIG Law 2016) in Chapter IV of Trademark Registration, in the first part, describes marks that cannot be registered and rejected. Article 20 A trademark cannot be registered if: a) it is contrary to state ideology, legislation, morality, religion, decency, or public order<sup>49</sup>. If we look at Article 20 and the explanation of Article 20, there is a blurring of the norm in Article 20 letter a of the word morality, where the word morality is not explained in the explanation of Article 20 letter a. This blurring of norms about brand criteria that contradict morality can result in legal certainty cannot be met.

An event may occur: a company registers a trademark with the director general of IPR, and then the director general of IPR immediately states that it is unacceptable because it is contrary to morality or gives an explanation, but the substance of the rejection that seems to be contrary to morality is still debatable, or the trademark that has been registered is then unilaterally cancelled by the Director General of IPR because it is contrary to morality<sup>50</sup>.

Morality refers to the behaviour of people according to accepted standards. So, morality will be a body of behaviour approved by the customs or habits of the group to which it belongs. It can be interpreted as a brand that is contrary to morals as the moral sense, according to Roscoe Pound, is a brand that describes human behaviour that is not by ideal judgments. Mass images that are gruesome, scary or disgusting.

If referring to the definition of brand according to Roscoe Pound, then using a brand that contains the meaning of sarcasm is human behaviour that is not by ideal judgment. In KBBI itself, the meaning of the word ideal is what is aspired to, dreamed of, or desired<sup>51</sup>. The ideal assessment is an assessment that is very much in line with what is aspired to or dreamed. Bad names in culinary brands such as Devil, jancok, Senewen, sexy and Gacoan are certainly not by the ideal judgment of society. The ideal judgment of society is certainly a brand that uses good words.

According to Aristotle, as quoted by Arthur Scheller Jr., "Morality may be equated with order and has as its object human actions that are ordered to one another and some end. The idea of value (good or end) is the crux of any moral

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<sup>48</sup> Aulia Damayanti, "Gacoan Noodle Raw Materials Have Been Halal Certified But This Is What Hasn't," Detikjatim, Accessed September 3, 2023, <https://www.detik.com/jatim/berita/d-6550459/bahan-baku-mie-gacoan-sudah-bersertifikat-halal-tapi-ini-yang-belum>.

<sup>49</sup> Sulthon Miladiyanto And Ariyanti Ariyanti, "The Principle Of Brand Morality In Law Number 20 Of 2016 Concerning Brands And Geographical Indications," *Journal Of Legal Horizon* 11, No. 3 (2020): 241–249.

<sup>50</sup> Miladiyanto And Ariyanti.

<sup>51</sup> "Search Results - Kbbi Online."

system since value is a primary concept in the order of our practical concepts, i.e., ultimate in its genus." (Scheller, 1952-1953). Translation: "Morality can be equated with order and as its object human actions commanded of each other and for some purpose. The idea of value (good or bad) is at the core of any moral system because value is the main concept in the order of practical concepts. According to Aristotle, brands that are contrary to morals in the moral sense are brands that describe human actions that are not in accordance with general desires and goals<sup>52</sup>.

Brands of culinary products that contain sarcasm, such as Mie Gacoan, Mie Setan, Mie Senewen, Mie Sexy and Nasi Goreng Jancuk, when viewed from spiritual morality, cannot be registered intellectual property rights. Marks contrary to morals cannot be registered as intellectual property rights. A brand that is contrary to morals in the moral sense, according to Arthur Scheller, is a brand that does not conform to the rules that govern human life to achieve spiritual perfection<sup>53</sup>.

Based on moral understanding, according to Arthur Scheller, this sarcasm-nuanced culinary product brand is not in accordance with the rules governing human life to achieve spiritual perfection. The use of sarcasm-nuanced culinary product brands based on spirituality indirectly mocks the teachings of Islam, where the act has named halal food with a forbidden name. Based on the hadith, the act was locked by the Holy Prophets.

In Article 20 Paragraph 1 of Law No. 20 of 2016 concerning Brands and Geographical Indications, marks that cannot be registered are contrary to state ideology, laws and regulations, morality, religion, decency or public order. Based on Article 20 Paragraph 1 of Law No. 20 of 2016 concerning Brands and Geographical Indications above, culinary product brands that contain the meaning of sarcasm cannot be registered trademark rights because they conflict with state ideology, laws and regulations, morality, religion, decency and public order.

When viewed from the point of view of state ideology, the ideology of the Indonesian state is Pancasila. The second precept reads "Just and civilized humanity", as the word civilized in KBBI means to have civilization, have good language skills, and Be polite. The use of sarcasm in nuanced culinary product brands is certainly the behaviour of business actors who do not have civility, do not have good ethics and do not behave politely. Using words such as the devil, bacon, renewed, sexy, and Hancock certainly does not have a good language if it is based on Pancasila.

Referring to the legislation, the use of sarcasm nuanced culinary product brands is clearly prohibited in Law No. 33 of 2014 concerning Halal Product Assurance because by using such dirty words the product will not get halal certification from MUI, in SK46 / Dir / LPPOM MUI / XII / 14 names such as devil, dog, liquor and lead to bathilan may not be used in culinary product brands.

Regarding morality, if you use inappropriate words such as demonic, sexy, and jancuk can not be used in culinary product brands. The brand contradicts morals because these words are certainly not by good morals and ethics (immoral). Based on KBBI, morals are generally accepted as good and bad lessons regarding

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<sup>52</sup> Miladiyanto And Ariyanti, "Prinsip Moralitas Merek Dalam Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis."

<sup>53</sup> Miladiyanto And Ariyanti.

actions, attitudes, obligations, ethics, and morals.

From a religious point of view, as taught by Islam, it is not permissible to give a bad brand to food that Allah has halalized. As a Muslim, you should use good language, including branding. Many arguments prohibit using bad names, such as in the hadith, naming babies should not use satanic names and other unrighteousness; naming children with bad names alone is not allowed, let alone naming brands of food products.

Based on decency, using culinary product brands with sarcastic nuances contradicts morality. In KBBI, decency means morality related to civility and manners, good norms, good conduct, and The sublime karmic system. Moral norms are standards of behaviour considered good and correct about moral and social values prevailing in society<sup>54</sup>. Susila means to have a noble karmic system while using sarcastic words is not a noble karmic system.

Based on public order, public order is a state that achieves the welfare of the whole society and runs regularly according to laws and norms<sup>55</sup>. The use of sarcasm in nuanced culinary product brands seen from public order is contrary because it is not by applicable laws and norms. By applicable law, the mark may not be used based on the UUJPH, which the Director's Decree reinforces. It also is not run by norms; there are 4 (four) types of norms: religious, legal, decency, and decency norms<sup>56</sup>. When viewed from these norms, all aspects of the norm contradict if they still use culinary product brands with sarcastic nuances.

By not registering a mark, the mark has no legal protection. Legal protection here plays a very important role so that the brand is guaranteed not to be imitated or used incorrectly or in other unlawful acts. Legal protection for marks is used to provide the rights of protected parties (in this case, parties with rights to the mark) by the obligations carried out<sup>57</sup>.

## **Conclusion**

In determining the permissibility of using culinary product brands with sarcasm nuances, this paper uses the perspective of Islamic law and positive law. Islamic law is studied with the postulates of the Qur'an and hadith, which are reinforced by the opinions of scholars. In the Qur'an, hadith and opinions of scholars, the use of sarcasm in culinary product brands is prohibited because it is not good in the view of Islam. Meanwhile, positive law is reviewed by Law No. 33 of 2014 concerning Halal Product Guarantee, Law No. 8 of 1999 concerning Consumer Protection and Law No. 20 of 2016 concerning Brands and Geographical Indications. The enactment of Law Number 33 of 2014 concerning Halal Product Assurance precisely in Article 4 explains that food entering, circulating and traded

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<sup>54</sup> Bams, "Norms Of Decency: Definition, Purpose, And Examples," *Bams* (Blog), March 20, 2023, <https://Pasla.Jambiprov.Go.Id/Norma-Kesusilaan-Pengertian-Tujuan-Dan-Contohnya/>.

<sup>55</sup> Sudargo Gautama, *Introduction To Indonesian Private International Law* (Bina Cipta, 1977).

<sup>56</sup> Tim, "Various Norms And Examples In People's Lives," Education, Accessed September 3, 2023, <https://Www.Cnnindonesia.Com/Edukasi/20230315134422-569-925362/Macam-Macam-Norma-Dan-Contohnya-Di-Kehidupan-Masyarakat>.

<sup>57</sup> Nadira Ramadhanty And I. Wayan Wiryawan, "Legal Consequences Of Not Registering The Trademark Of Shop Pastry Products 'Madame Patisserie,'" *Kertha Semaya Journal Of Legal Studies* 7 (N.D.).

in Indonesia must be halal certified. Meanwhile, product brands with sarcasm nuances cannot be registered for halal certification. Using product brands that contain the meaning of sarcasm cannot be subject to criminal sanctions, even if it violates the law as for Article 20 Paragraph 1 of Law No. 20 of 2016 concerning Brands and Geographical Indications, brands of culinary products with sarcasm nuances cannot be interpreted as brands because they conflict with state ideology, laws and regulations, morality, religion, decency, or public order.

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