

## The Dangers of Forged Commodities and their Effects as Perceived by Islamic Jurisprudence

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### Abstract

Islamic law has dealt with consumer rights by providing the good product, which is commensurate with his needs and demand, and in accordance with specifications and standards supervised by reliable and competent specialists. To that end, Islam has established controls and provisions that protected trust and balance between the trading parties, for the freedom of the market in Islam is a freedom regulated by shari'a rules. The proliferation of forged commodities poses a threat to human beings, the environment and the economy in general. The reason for its spread is due to the lack of awareness, the weak role of supervision and the prolonged greed. Because of the dangers of forgery, and the seriousness of counterfeiting and their negative effects on the economy, owing to their blend with lies, fraud, false stealing of people's money and the consequent health damage, wasting money, and in order to achieve the security and well-being of the Muslim community, I thought it is highly significant to study the theme. So, this research through the use of the descriptive analytical approach aims at showing the dangers and effects of forged commodities, the causes, defects and hazards of fake merchandises in society.

**Keywords:** Forged commodities, defects, dangers, censorship, Islamic jurisprudence, intellectual property.

## Introduction

The recognition of Islamic law of consumer rights is explicit. It provides quality in the product and masters the productive work related to it. Moreover, the nature of the Islamic market is free, devoid of monopoly, either in commodities, or in information on prices, and regards monopoly as an economic offense. The freedom of the market in Islam is also regulated by the rules of shari'a, which are the condition of Allah Almighty, and Islam has put in place controls that protect trust and balance between trading parties. One of the frauds is the change in the scales of weights and measures from the known legal sizes, or decrease in them when selling, and the increase when buying, which is known as defrauding. God says: "Give in full when you measure and weigh with an even balance. That is fairest and best in the end" (Isra': 35).

That is why there was a need to state the jurisprudence of forged commodities, their dangers, and their negative effects on individuals and groups, which led me to look into the subject.

The proliferation of forged and false commodities poses a significant threat to human beings, the environment, and the economy in general, contributing to its negative impact on indigenous commodities, due to the lack of consumer awareness, the weak role of regulatory institutions, and material greed and weak religious prejudices. It entails that the consumer bears the double cost in addition to the negative effects on his health. In order to deter that phenomenon, a preventive penalty must be imposed for offending importers.

### The Importance of the Subject:

The subject of the legal rulings related to forged commodities is of paramount importance because of the following factors:

1. The seriousness of the phenomenon of forging commodities and their negative effects on the economy.

2. Research in the field of forging commodities is limited in Islamic jurisprudence.
3. Highlighting the role of Islamic law and protecting the rights of individuals and groups.
4. Achieving security and well-being for the Muslim community.
5. Enriching the jurisprudence library with such a study.

## The Research Question

The subject of the research raises many questions:

1. What are the reasons for the proliferation of forged commodities?
2. What are the defects and dangers of forged commodities?
3. What are the jurisprudence terms concerning forged commodities?

## Research Goals:

Through the study, the researcher tries to achieve the following objectives:

- to clarify the concept of forged commodities.
- to find out why forged commodities are spreading in society.
- to show the defects and dangers of forged commodities.
- to identify the jurisprudence of forged commodities.

## Previous Studies:

After researching and surveying previous studies on the subject of research, I managed to relate to the following studies linked to the subject:

1. "The phenomenon of forgery: risks and control methods." The research is published by Abdul-Aziz Shorabi, in which he addressed: the definition of forging, the evolution of the phenomenon of forging, the factors of its spread, its evolution, characteristics, effects, and risks.
2. "Customs protection against imported forged products," Master's Thesis by Sedomo Yassin. The thesis addressed: the definition of forging and its manifestations and the necessary customs procedures.
3. "The role of customs in combating the crime of forging in the field of industrial property," Master's thesis, written by: Hadi Lamé and Qarout Mohammed. It examines the phenomenon of forging in the field of industrial property, and customs intervention to combat the tradition in the field of industrial property.
4. "Consumer behavior towards forged products," Master's thesis written by As-Sound Radhiya, University of Mintori Constantine - Faculty of Economics and Management Sciences. It addresses consumer behavior, products and the phenomenon of forging, and consumer behavior towards forged products.
5. "The legal system of customs intervention to combat forging," Master's thesis, written by Belhwari Nasrin, Algeria Law School. It discusses the legal framework for customs intervention to combat forging, and the mechanisms of customs intervention to suppress forging.

Through the presentation of the previous studies, it is clear that they have not dealt with the jurisprudence of forged commodities which have become a phenomenon of the times. Such an approach will preserve the interests of the people, their rights and the youth of the nation, and their security. In addition, these studies can be used to guide the research and cement it.

## Research Hypotheses:

Forged commodities have a significant negative impact on society, so Islam has established provisions and legislation to illustrate the public's transactions in general, to achieve the interests of the people, as well as to demonstrate the dangers and effects of forged commodities.

## Research Limits:

The research will focus on demonstrating the defects and risks of forged commodities, show the jurisprudence associated with forged commodities and their effects, discuss the reasons for the proliferation of forged commodities, and propose solutions to address the phenomenon of forged commodities.

## Research Approach:

The research is based on the descriptive-analytical approach, which is the approach based on collecting information on a particular issue to interpret, analyze and identify its different aspects. The researcher used this approach while collecting information on the subject of the study from documents, scientific studies, literature, and periodicals, with the aim of describing and clarifying the concept of forged commodities, as well as using this method to identify the causes, risks, and disadvantages of forged commodities and their effects, and doctrinal provisions on forged commodities and their effects.

## The Concept of Risk:

**Language:** Al-khatar (danger) means coming close to annihilation; it is said: Khātara benefsehi (he risked himself); and al-khatar, (the danger) implies the race on which people bet; so, it is said, "khātara on something;" and it is said, "khatar" of man, implying his prestige or rank and it is said, "the spear khitara implying it shook (Al-Razi 1420 AH. 93). And "al-Khāter" is what comes to the heart of plotting or anything.

**For scholars:** al-mokhātarah (the risk) is "uncertainty about profit or loss, or the possibility that an expectation is wrong." Ibn 'Abedin expressed it as coming close to annihilation (Ibn Abedin, 1412 Ah, p. 213). Put differently, it is committing fears and taking advantage of the opportunity or collecting what is required quickly so that if he does not realize what is required, he won't attain what is required. And some scholars explained "taking advantage of the opportunity" by waiting for a period of time in which he attains what is desired (Al-Bojairami, 1369 Ah, p. 223). So, al-mokhātarah means taking the initiative to do something expecting winning or loss.

## The Concept of Forged Commodities The Meaning of Sil'ah (Commodity) Semantically

Sil'ah (commodity) is a notch on the head whatever it is. It also implies: what you drag with. And it is an increase that occurs in the body such as in the gland (Ibn Manthour, 1414 Ah, p. 68). It also means the baggage (Al-Zubaidi, 1414 Ah, 216).

### The Concept of “Forged” Semantically:

It has a variety of meanings as the verb “qallada folanan ‘amalan” it means to give a person a task and “taqallada al-amr” means, “He bore it” (Al-Zubaidi, 1414 Ah, 97). It is also said, “qallada the water in the basin,” implying “He collected it,” and it is said “The sea ‘aqlada’ on many creatures,” implying it closed on them and drowned them (Ibn Manthour, 1414 Ah, 365).

### For Scholars:

Scholars have defined the forging in accordance with Article 51 of the World Trade Organization of the Agreement as follows: Counterfeit products include all products including their packaging, which bear some or all of the characteristics of a registered mark and which affect the rights of the owner or owners of the mark in accordance with the legislation in each country, and cause him material or functional damage (Shorabi, 2008 224). Counterfeiting has also been defined as the process of reproducing products that harm the owner or owners of these products. From the legal aspect, counterfeiting is every act that affects industrial and intellectual property rights (Amin, 2008 24; Radhiya, 2009 115).

Counterfeiting is any re-manufacturing, or counterfeiting of a product, mark, or patent, without obtaining this right, which is a deliberate and misleading production of trademarked or even generic products aimed solely at profit. Therefore, counterfeiting is a process of returning, counterfeiting a product, mark or patent without a permit, to the detriment of the owner.

### The Definition of “Athar” (effect)

“Al-athar” (effect) in language: it is what is left of the drawing of the thing. It is said in the Quran: "Then in the footsteps of these 'prophets', We sent Our messengers" (Al-Hadid:17). It is also “what is inferred on the thing.” The plural of “athar” “athār.” As a gerund, it implies “leaving traces on something,” as said by God in the Quran, "Traces in the earth" (Gaffer:21), (Ibn Manthour, 1414 Ah. 57).

As a Term: Al-Jarjani (died 1010 Ah) said that it had four meanings:

The first: “The result, which is the result of the thing.”

The second is parallel to the “mark.”

And the third is in the sense of the “news.”

The fourth is the consequences of the object, which is known as the “ruling” among the jurists (Al-Jarjani, 1983, p. 9).

Al-Athar is a reference to the words of the Muslim early scholars and companions, and wise forefathers (salaf) (Al-Tahawoni, 1998 65).

What is desired by “athar” (effect) in this research is what a certain thing requires of guarantees, and so on.

## The Defects and Dangers of Counterfeit Commodities

### A. Defects of Counterfeit Commodities

Islam has made fraud, deception, swindling, extravagance, arrogance, wastefulness, meagerness, etc. illegal (ḥarām) in order to make people's transactions on the best platform (Ibn Abedin, 1412 Ah 47; Ibn al-Hajj, 1410 Ah 149; Al-Nawawī, 1412 Ah 104; Ibn Qudama, 1388 Ah 109; Khalaf, 1414 Ah 203). More important, the Sharī'a committed the contractors to truthfulness and the avoidance of fraud (Al-Fassi, 1995 213), based on God's commands: “O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent” (An-Nisā [4]:29), and the verse, “Do not abuse other people's wealth using wrong means, and do not bribe authorities in order to take possession of other people's wealth knowingly and sinfully” (Cow: 188). Evidently, the verses came to prevent people from eating each other's food except by buying or by any legal alternative (Al-Tabari, 1420 Ah 217).

### Counterfeit Commodities Are Accompanied by Many Defects, Including:

1. Counterfeit goods create dishonest competition among traders. Nations of the world have agreed on the need not to cheat commercially, not only because of the moral economy but also because commercial fraud closes the world's markets before their production. These are the morals of utility, not the morals of values (Gharib, 1998 165).
2. Commercial fraud continues to spread social, economic, and health damage due to its increasing flaws day after day (Al-Tariqi, 1421 Ah 134).
3. Commercial fraud has spread in many different products such as auto parts, cosmetics, clothing, and electrical appliances, so the risk remains in human health-related goods such as medicines, medical products related to slimming or thinness, and so on, and needs to be combated by the authorities (Ghraib, 1998 165).
4. Counterfeit goods lack the good performance and suffer from a short life span, as well as difficulty maintaining them (Ghraib, 1998 165). Thus, fraud in all its forms is considered one of the most important defects of counterfeit goods. So, the rule should include a description of a deficiency so if the buyer knows about it, he should refrain from buying it. Any recipe that is not in line with these data is prohibited (Ibn Nojaim, 1420 Ah 38; Al-Haithami, 1357 Ah 307).

### B. Risks of Forged Commodities

Deception is religiously forbidden in everything, and with everyone, and in any treatment; it is forbidden (ḥarām) in all transactions, forbidden at professional work, forbidden in industries, forbidden in contracts, and types of selling, etc., because of lies and deception, and for the quarrels and rivalries it causes (Ibn Abedin, 1412 Ah 47; Ibn al-Hajj, 1410 Ah 149; Al-Nawawī,

1412 Ah 104; Ibn Qudama, 1388 Ah 109, and Al-Tuwaijari, 1431 Ah 13). This ruling of unlawfulness is based on Quran and Ḥadīths. About Abu Huraira, may God rest his soul, said that the Messenger of God said: "Whoever takes up arms against us is not one of us, and whoever cheats us is not one of us" (Ṣaḥīḥ Muslim, 1422 Ah 99), and

Abu Huraira, may God rest his soul, said that the Messenger of God - peace be upon him - passed by a counter of food and entered his hand in it, and he got his fingers wet, and he said: "What is this, food owner?" He said, "It was hit by heaven, Messenger of God!" He said: "Would you rise it above the food for people to see? He who cheated, is not from me" (Ṣaḥīḥ Muslim, 1422 Ah 99).

As for Ḥakīm ibn Ḥizām, (may God rest his soul) he said that the messenger of God (peace and prayers be upon him) said,

"The two sides of selling are by choice, as long as they are not separated, then if they are honest and clear, they are blessed in their transaction, but if they are mute and lying, the blessing of their sale is eradicated" (Ṣaḥīḥ al-Bukhārī, 1422 Ah 58).

### The Risks of Forged Commodities:

1. Their spread in markets and business communities to the point of dumping the markets, which have damaged traders with indigenous products from the recession of their goods, and have affected national products conforming to standards and specifications, as well as the national economy. The components of manufactured materials are also described as untrue indicating images of deception and fraud (Afana, 1426 Ah 43).
2. The material greed of the owners of the original goods, and the cheap price of counterfeit goods. People cheat in haste for the profit they hope in their trade, or for the hypocrisy, they await in their industry, or so on (Al-Shatibi, 1417 Ah 349).
3. The effects of the phenomenon of forgery on health aspects such as the transfer of many infectious diseases to humans, and the environment. Perhaps this is why the Prophet said: "He who cheats is not from me" (Ṣaḥīḥ Muslim, 1422 Ah 99). In addition to many of the damages to society and its members, the sale of health-damaging substances, which cause incurable diseases, is a form of fraud and deception (Afana, 1426 Ah 42).
4. Flooding markets with counterfeit goods leads to widespread bribery, due to weak oversight from all stakeholders (Ṣaḥīḥ Muslim, 1422 Ah 99). The damage caused by counterfeit and imitated goods does not stop there. It causes losses measured by billions to the national economy annually (Shorabi, 2008 230).

### Jurisprudence on Counterfeit Goods and their Effects

### The Ruling on the Import of Counterfeit Goods for International Items (Brands) and its Impact According to Islamic jurisprudence:

The import of counterfeit goods for international items (brands) has two cases:

**The first case:** to tell the buyer the truth of the matter and this is what is required legally from honesty and morality in the sale and purchase (Iben Nojaim, 1420 Ah, 193; Bogha, 14 13 Ah, 44; and Ibn Qudama, 1388 Ah, 480). There is no doubt that it is one of the greatest reasons for the satisfaction of Allah almighty and the blessing in livelihood. As already been quoted, the messenger of God (Peace and Prayers be upon him) said,

The two sides of selling are by choice, as long as they are not separated, then if they are honest and clear, they are blessed in their transaction, but if they are mute and lying, the blessing of their sale is eradicated (Ṣaḥīḥ al-Bukhārī, 1422 Ah 58).

**The second case:** it takes place when one sells these goods to people as items, international brands, with special specifications and not forged. But these brands are far from those specifications. This is cheating, lying, and taking people's money falsely. The prophet as already indicated warned against deception and illustrated its punishment. If so, the liar must repent to God by showing regret at what he has done and refrain from cheating in the future, and ask for forgiveness from his victims if he could reach them and pay them back the difference in the value of those goods sold if they request it, or they return the item and get their money back. If he can't know them, he must give the money to the poor and the needy; if he finds one of his victims, he must give his victim the chance to choose between giving to charity and paying him back and paying him the losses (Al-Mardawi, 1424 Ah, 402). God said: "Whoever repents after his injustice and made things right, then, truly, God will turn to him in forgiveness (al-Ma'idah, 5:39), and he said:

"Those who live on usury will not rise (on Doomsday) but as a man possessed of the devil and demented. This is because they say that trading is like usury. But trade has been sanctioned and usury was forbidden by God. Those who are warned by their Lord and desist will keep (what they have taken of interest) already, and the matter will rest with God. But those who revert to it again are the residents of Hell where they will abide forever" (Cow, 2:275).

Cheating by selling non-original goods as the original. Dealing with this type of work implies cooperation with its performers on sin and aggression, and that is forbidden as God says: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allāh; indeed, Allāh is severe in penalty" (Al-Ma'idah: 2). And the Prophet said, "He who earns money from sin then connected it with his kinship or gave it in charity or spent

it on the cause of God, all of these will be collected and cast into the fire of Hell (Al-Albani, 1413 Ah, 148).

Al-Marodi stated that the forged commodities are two types: one type whose forgery lies in its poor brand, and so it is by someone that does not know it unless he is updated) because of his vanity and fraud. The forger is pushed by arrogance and deceit.

And the second type involves commodities in which cheating lies in something else rather than the target object, such as silver mixed with other minerals. This type is split into two: one, the amount of its silver is known, and the type of the fraud material is also known, too. Its condition is known to all so dealing with type is lawful. The second kind refers to a condition where the amount of silver is not known and here there are two cases: One refers to the material intended to be mixed with silver has value such as diamond and copper and the second type is when this added material is a worthless material like arsenic and mercury. If mixing is intended, then again there are two types: silver and the added material are not mixed and the second is when the two materials are mixed. If silver is not mixed with copper and the forged material for the purpose of cheating, but silver is known on the cover and the forged is in its interior, the treatment is not lawful at all; this is so because silver, if seen, the other purpose is unknown and no seen. Likewise, it is not permissible to deal with gold-plated silver, because one of its destinations is unknown and not seen, even if silver mixed for cheating and made of copper and diamond, has not been used in secret for ignorance of it (Al-Marodi, 1419 Ah, 260).

So when importing counterfeit goods of international brands, the buyer has two options: either to tell the buyer about it, which is lawful, or sell those goods to people as international brands and with special specifications, not counterfeit, which is undoubtedly fraud, and cooperation with those people implies cooperation to commit the sin and aggression (Ibn Nojaim, 1420 Ah, 193; Al-Bogha, 1413 Ah, 44; and Ibn Qudama, 1388 Ah, 480).

### The Ruling of the Purchase and Sale of Counterfeit Goods and its Effect in Islamic Jurisprudence

The stealing of the name or brand is legally forbidden because they are the rights of the companies which first created them (Afana, 1426 Ah, 42). Such counterfeit materials cannot be traded, lest they be partners with their owners in sin and help them to falsehood. Many of these goods are not committed to quality and safety reasons, and they harm people. Accordingly, it is not permissible to trade in these goods even for those which do not appear to be false (Afana, 1426 Ah, 245). Scholars have stipulated that those who deal with the usurpers, robbers or aggressors are placed in the same category is the offenders themselves and so are prone to the same punishment as them as long as they know that they have attacked the right of others (Al-'Aini, 1420 Ah, 320; Al-Mawaq, 1416 Ah, 314; Al-Haithami, 1357 Ah, 366; Ibn Qudama, 1388 Ah, 218).

It should be known that the trademark is a right owned by its owners and they have the right to dispose of it in legitimate manners, and the decision of the Jurisprudence Council of the

Organization of Islamic Cooperation (Assembly of Islamic Jurisprudence, 1405 Ah) states the following:

**First**, the trade name, trade address, brand, authorship, invention, or innovation are the special rights of their owners, which in contemporary custom have considerable financial value to be financed by the people, and these rights are legally reliable, and may not be attacked.

**Second**, a trading name, trade address, or trademark may be disposed of, and any of them may be transferred as financial compensation if fraud, deceit, and swindling are not practiced, as this has become a financial right.

**Third**: Since the trademark is a legally established right, it is forbidden to infringe on it by imitating and falsifying it, and other forms and methods of infringement, which is considered to be fraud, forgery, and stealing people's money falsely, all of which are legally forbidden (Ibn Abedin, 1412 Ah, p. 47; Ibn Rushd, 1408 Ah, 100; Al-Nawawī, 1412 Ah, 104; Bahuti, 1414 Ah, 213). This ruling is indicated by:

1. It is well known that one of the rules of transactions in Islamic jurisprudence is the prohibition of fraud and deception (Ibn Nojaim, 1420 Ah, p. 38; Ibn Rushd, 1408 Ah, 100, Al-Bogha, 1413 Ah, 25; Al-Bahuti, 1414 Ah, 213).

It is narrated on the authority of Abu Huraira that the Messenger of Allah (Pbuh) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of that heap of eatables (corn):

What is this? He replied: Messenger of Allah, these have been drenched by rainfall. He (the Holy Prophet) remarked: Why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower). (Ṣaḥīḥ Muslim 1422 Ah, p. 99).

2. Imitating trademarks is falsification and deception of people, which is legally forbidden (Ibn Abdin, 1412 Ah, p. 47; Ibn al-Hajj, 1410 Ah, p. 149; Al-Nawawī, 1412 Ah, 104; Ibn Qudama, 1388 Ah, p. 109) The de-legitimization is based on a verse in which Allah said: "and turn away from telling lies." (Hajj:30). Indeed, forgery is one of the greatest sins. It is narrated about Abi Bakrah, May Allah be pleased with him, that he said:

The Messenger of God said, "Shall I not tell you about the greatest of sins?" (three times) They said: "Yes, Messenger of God, he said, "Polytheism, disobedience to parents - and he sat down and he was

reclining and said, "And false saying," and he said, "He continued to repeat it until we said, "if only he had been silent!" (Ṣaḥīḥ Al-Bukhārī, 1422 Ah, p. 172).

3. Imitating trademarks does cause harm to the owner, and this is also unlawful. It is reported that Abu Saeed al-Khodri, may God rest his soul, said: "The Messenger of God said: There is no harm, no being harmed. He who harms Allah will harm him and he who makes it hard, God will make it hard to him" (Al-Ḥākim, 1990, p. 66).
4. The imitation of trademarks is also considered to be a way to steal people's money falsely, as Allah said: "O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill 'each other or' yourselves. Surely Allah is ever Merciful to you" (An-nisā':29).

It is true in the *ḥadīth* that the Prophet said: "Your blood and money - Muhammad said and I believe he said - and your honors, are *ḥarām*, such as the sanctity of your day, this month. Each witness of you shall inform the absent" (Ṣaḥīḥ Al-Bukhārī, 1422 Ah, p. 33; my translation).

The decision of the Jurisprudence Council of the Organization of Islamic Cooperation (Council of the International Islamic Jurisprudence Complex, 1988) states:

If the forgery when it is written on the bags the trademark or brand name of these brands without their permission, this is a clear falsification, which is legally forbidden, because it infringes on the right of companies to mark and trade names. They are considered financial rights and, therefore, it is not permissible to trade, buy or make counterfeit brands, because it is a participation in the offense (Afana, 1426 Ah, p. 42). God also says: "O you who believe (who wish to reach Allah and submit to Him)! Fulfill the contracts (you have)" (Surat Al-ma'deh:1), and between us and the laws governing international trade, including the protection of the trademark and intellectual rights in general, and the sanctity of the capital of the Muslim and the non-military infidel as the sanctity of his blood, and as he [the Prophet] said: do not cause harm and do not be harmed" (Al-Ḥākim, 1990, 66; my translation)

As for the simulation, it is to make or buy goods similar to known goods and not exactly match them, with no brand status, which is made lawful according to contemporary religious experts. The religious verdicts (*fatāwā*) of the Permanent Committee in this respect state that it is not lawful to sell these counterfeit goods as if they were original; they may not be traded or distributed to shops as they involve deceit to Muslim consumers (Permanent Committee, 2000 73). This prohibition is based on the above-

quoted Quranic verses and the Prophet's *ḥadīths*. Such goods bring harm to those who trade in original goods and eradicate the sense of blessing inherent in them. Hence, the selling of these goods is forbidden. Likewise, using the trademark or brand name of those brands without the permission of their owners, and imitating trademarks are legally forbidden. If the trade-in counterfeit goods are known to the relevant sides, their sale and trade are *halāl*, provided the buyer knows, but if they are sold as original goods, this is *ḥarām* (Ibn Nojaim, 1420 Ah, 193; Al-Bogha, 1413 Ah, 44; Ibn Qudama, 1388, 480). If the seller sells counterfeit goods as genuine, it is not permissible for him to do so, because this is fraud, deception, trickery, and stealing the money of others falsely. As for the buyer, he may buy them, because he has not wronged anyone by doing so, and has not caused any harm to the owner of the original (Ibn Abedin, 1412 Ah, 238).

According to the book, *The Still Sea (Al-Baḥr Al-Rā'eq)*, Abu Ḥanīfa said it is passable to sell forged goods if they are revealed and visible, which is also the saying of Abu Yusuf. He issued a verdict about a man with an item of copper and silver that he does not sell until he shows its reality. He believed that the Sultan should break it, so that it may not fall into the hands of those who do not show its reality. And in the book *Dictation (Al-Imlā')*, it was narrated about Abu Yusuf saying that he hated the man covering some items like the kohl and the incense burner, even if their reality was exposed because it causes harm to the general public and what causes public harm is hated but not sin (Ibn Nojaim, 1420 Ah, 193).

And the condition that the counterfeited item may be sold, even if it is exposed, is when it is sold to someone who will break it or not cheat through it but acts in a permissible way which does not cause harm. And it is hated to sell it and it should be returned to its seller. If the seller is not found, the buyer should not own it or give to charity its price as is certified by all scholars. If it is sold by those who cheat, it will be sold at a higher price (Ibn Arafa, 1412 Ah, 43).

Therefore, the sale of counterfeit goods as genuine is not legally permissible and is considered to be fraud, deception and trickery, and false stealing of third-party funds.

### **The Ruling on Manufacturing Counterfeit Goods and its Impact in Islamic Jurisprudence**

According to the decision of the Islamic Jurisprudence Council, (The International Islamic Jurisprudence Council, 1988): trade name, trade address, and brand are the rights of their owners, which in contemporary custom have significant financial value, to finance people with, and these rights are legitimately lawful and solid. It is not permissible to commit any violation against them in any way, and this right is not removed in cases of deception or forgery.

As for the product on which a forged brand has been placed, the seller has to remove it. Concerning what has already been sold, the seller must compensate the company for offending its right or requesting his acquittal from it. If this condition cannot be performed, the seller must spend the obtained money in the public

interests of Muslims, including its distribution to the poor and the needy. The mixing of funds resulting from the sale of counterfeited goods, in this case, is lawful.

## The Ruling on the Purchase of Anonymous Goods and its Impact in Islamic Jurisprudence

### Purchase of Usurped Goods

The sale of usurped goods is suspended even if the usurper denies it. The usurper is obliged to make it up for the victim till the sale is over. However, if the usurper does not give the victim his right the sale is unlawful (Ibn Nojaim, 1420 Ah, 193; Al-Zaila'i, 1313 Ah, 44). If the usurper sells the usurped product before he owns it from its lord, all that has been sold is lawless, and all the money should be donated, or given to charity. But if the usurper buys it from the victim after selling the product, the sale should go on (Ibn Arafah, 1412 Ah, 11; and Alaish, 1409 Ah, 457).

Ibn Taymiyyah issued a very interesting verdict in this respect. He said that the usurped and obtained money by contracts does not become lawful when owned. If the seller detects the usurped transaction, he should avoid it. If a trader knows that the buyer has stolen money, betrayed a contract, or usurped the money, i. e. he took it from the victim against his will, the buyer should not benefit from the money in any way, whether as a gift, compensation, in return for a fee, a price for a sale, or giving back a loan, because the capital is the right of the victim (Ibn Taymiyyah, 1995 323).

Relating to properties usurped by Mongolians, Ibn Taymiyyah said that if what they - i.e., the Tatars - or others obtained is known to be usurped from the true owners, the properties may not be purchased from those who own it now. However, if the usurped products are purchased for the purpose to be rescued, they must be returned to the original owners if possible, otherwise, they should be spent in the interests of Muslims (Ibn Taymiyyah, 1995 276).

Likewise, the scholars of for *fatāwā* (the Permanent Committee, 2000 82) said if the man is sure that the item for sale is stolen or unlawfully grabbed, or that the one who offers it does not own it legally, he is not an agent in the process of the sale, the item is forbidden for him to buy. This is so because the act includes cooperation to commit a sin and aggression, causing its real owner to lose the item. It is doing injustice to the people who own it and recognizing evil. Therefore, he who knows that a certain item is stolen or usurped should advise those who stole it gently and wisely to return the theft; if the thief does not return it and insists on his crime, that person must inform the relevant authorities so that the thief will take the appropriate punishment for his crime and the item is returned to the right owner. By doing so, that person is doing society good and he cooperates to support righteousness and piety.

As a matter of fact, the behavior of the person is considered to be good for both parties: the victim and the thief. He has helped the oppressor by deterring him from his injustice and his aggression. And he has helped the oppressed by seeking to restore his right. According to Islam, the prevention of the oppressor from doing the harm is considered a good deed imposed upon the whole society or

those who can do it. If there is no one who can do the prevention officially, then the average person should perform that task with kindness and softness.

## Buying Stolen Items

The sale of stolen goods, and the gift of the thief or others is lawless. According to Hishām, who narrated that Muhammad said that the thief is not guaranteed in the judgment, but between him and Allah, he should fulfill the guarantee, because the person whose goods are stolen has suffered the decrease and loss, but the judge was unable to guarantee what he considered financial. The judge does not issue a verdict regarding the guaranteed items but he gives a ruling that entails the payment of the loss and damage that he inflicted between him and God (Al-Sarkhasi, 1414 Ah, 159).

Sheikh Abdul Aziz bin Baz (Ibn Baz, 1417 Ah 91) was asked by a person who claimed that he was offered a commodity that turned out to be stolen, but the seller who offered the commodity was not the thief. Rather, he bought it from someone else who bought it from the robber. Now if the enquiring person bought it knowingly, was he considered a sinner, even though he did not know the owner from whom it was stolen?

In Ben Baz's point of view, the forensic evidence indicates beyond any doubt that the enquiring person may not buy it if his doubts prevail over his belief that it is stolen. And he knew that the seller was not a legitimate owner of it, nor was he authorized to sell it. So he could help the seller to oppress the victim and take others' money without right. More important, the obtained money from such transactions is illegal and should not be given by parents to children. Children should advise their fathers to investigate *halāl* and avoid *harām* things because every item that has been proven to be forbidden is destined for hellfire.

## Reasons for the Proliferation of Counterfeit Goods, and Proposed Solutions to Address the Phenomenon of Counterfeit Goods

### Reasons for the Proliferation of Counterfeit Goods

The reality of markets nowadays indicates the blockade of the phenomenon of counterfeit goods. The growth of the counterfeit goods market over the past years, however, is attributed to the following reasons:

1. High online sales and technological advances (Shorabi, 2008 266; Amin, 2006 24).
2. Lack of values, lack of legislation protecting consumers, and weak religious and legal deterrents (Al-Jawabi, 1421 Ah 87).
3. Weak consumer awareness of the seriousness of these goods, the weak role of enterprises in censorship, as well as physical, legal, and greed.
4. The intensity of international trade: During the last twenty years, global trade exchanges recorded a very significant increase, including levels of exchange for counterfeit activities.
5. The emergence of new markets: the development of government systems, as well as the rapid development of

the socio-cultural systems of the peoples of the world, driven by the levels of development of globalization, have led to the creation and emergence of new markets, both in business and in the area of broad consumption.

6. The emergence of new products: the evolution of the high shares of full and half-finished products in global trade far exceeds that of raw material quotas. Manufactured materials accounted for 75% of the world's exports, which have a high additional value, and are now targeted by traditional activity for the high profitability of these products (Shorabi, 2008 266; Amin, 2006 24).

### Proposed Solutions to Address the Phenomenon of Counterfeit Goods

To address the phenomenon of counterfeit goods, the following solutions are proposed:

1. The sanctions approved by Islamic law are to be increased (Saqr, 2001 153).
2. Increasing the awareness of consumers through seminars and media.
3. Reducing commercial fraud by controlling commodity prices.
4. Staying away from counterfeit goods to preserve human life.
5. Applying and activating regulations, and laws that reduce commercial fraud.

### Conclusions

The research has reached many results, the most important of which are:

1. Risk means to make an adventure expecting winning or loss by taking advantage of opportunities.
2. Forgery is a process of re-counterfeiting a product, mark, or patent, without permission causing harm to the owner.
3. Islam made sure that people's dealings should proceed on the best platform; so, fraud, deceit, faking, over-spending, and scantiness are forbidden.
4. One of the disadvantages of counterfeit goods is the spread of commercial fraud in many different products, and therefore the jurists have set a discipline for forbidden fraud, namely, that the sale should include a description of a deficiency so that if the buyer would know about it, he refrains from buying it.
5. The jurists decided that fraud was forbidden in all transactions, particularly commercial treatment, because of the lies and deception involved, and because of the quarrels and rivalries caused.
6. What is required legally at the contract is honesty and trustworthiness, and telling the buyer the truth of the product.
7. The jurists decided that selling counterfeit goods to people as original is cheating, lying, and taking people's money falsely.
8. Infringement of the name or trademark is legally forbidden, as they are the legal right of the competent company.

9. Islam legalized commercial property rights and decided that attacking them is a form of forgery and deception.
10. Purchasing stolen goods knowingly is forbidden, because of the harm caused to the owner, and cooperation to commit the sin.
11. One of the proposed solutions to address the phenomenon of counterfeit goods is: imposing sanctions approved by Islamic law and limiting commercial fraud by controlling commodity prices.
12. There are two types of risk in the promotion of counterfeit goods: direct and indirect
13. The seriousness of commercial fraud and counterfeit goods costs a lot, and the cost may endanger the life of the human being himself.
14. Violation of intellectual property rights is an abuse of the law and the relevant international conventions.
15. It is not permissible to trade in counterfeit materials, lest the buyer is a partner with the seller in sin and spreading falsehood.
16. A trademark is a right owned by its owners who have the right to dispose of it in legitimate manners.

### Significant Recommendations

1. Media awareness of the danger of counterfeit goods to the buyer's security, health, and life.
2. Activating, strengthening, and solidifying the role of regulatory agencies.
3. Activating the preaching role towards the prohibition of counterfeit goods, demonstrating their danger, and preserving intellectual rights.

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