
CYBERSQUATTING ACTIONS ON DOMAIN NAME TRADEMARK RIGHTS AS
THE INTERNET WEB

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ABSTRACT

In this ever-evolving digital era, domain names have become a valuable asset for organizations, trademarks and individuals. A domain name is not only an online address, but also an identity that reflects a brand image and facilitates communication and interaction in the internet world. However, the practice of cybersquatting has become a serious threat to trademark owners and the stability of the internet ecosystem. Currently domain names are regulated in articles 23 and 24 of the ITE Law, but these articles do not explain dispute resolution. Then it is also regulated in the MIG Law. This study uses the dogmatic research method and also uses the case approach method, laws and also a comparison of legal systems. The results of this study are that the holder of the rights to the first registering domain name trademark must have a legal protection regulated in Law Number 20 of 2016 concerning Marks and Geographical Indications. Domain name violations related to brands are the duty of PANDI (Indonesian Domain Name Manager). Furthermore, regarding the dispute that occurred above. The parties can resolve it through 2 channels, namely through litigation and also through non-litigation. Where if the parties choose the non-litigation route, it can be done through PPDN (Domain Name Dispute Settlement) formed by PANDI and can also go through arbitration which according to both parties can resolve this dispute properly.

Keywords: *Cybersquatting, Brands, Domain Names*

INTRODUCTION

Technological developments and advances in trade across the world today have changed the social relations of society. Technological advances cause people's lives to experience rapid development, resulting in the emergence of legal actions that continue to grow as well. Technological developments basically have a positive impact, especially in the political, social, cultural and economic fields. The positive impact is certainly felt in the fields, especially education, politics, socio-culture, economy and other supporting fields. negatively, there are more and more fraud, data falsification, online gambling, personal data theft, pornography to piracy⁴.

Communication between parts of the world is increasingly easy to do. both searching and making transactions can be done more easily received and sent very quickly and feel close. with the advancement of the internet, business people realize the ease of marketing and

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⁴ Gita Octavia Sari. *Perlindungan Hukum Bagi Pemegang Hak Atas Merek Dalam Tindakan Penyerobotan Nama Domain (Cybersquatting) Di Indonesia.*, (Skripsi Ilmu Hukum, Program Sarjana Ilmu Hukum, Surakarta: Universitas Sebelas Maret, 2022)

disseminating information related to the brand of goods and / or services. Trademark is a business asset of the business actors, because in the brand there is value, quality, image and reputation in the goods and / or services offered. Through a well-known brand, many people trust and are willing to pay more to get the best. Therefore, having a brand with a good reputation makes a company more recognizable and competitive. Market recognition of brands is usually through the world wide web (www) and domain names. WWW is a group of documents that are interlinked using hypertext links. by pressing the existing link, you can move from one document to another.

Internet Domain name plays a very important role for entrepreneurs, it is the identity, keywords and characteristics of the trade brand itself. Domain Name that matches the company's brand is the target of every company, so they are competing to be able to use the name according to the brand first. Internet domain name was first managed by Interinc. The principle of the internet domain name itself is "*first come first get*" or "*first come first serve*". In addition, according to Tambolon Internet Domain Name aims to simplify the collection of Internet Protocol (IP) numbers and as a self- identification.

In the ever-evolving digital age, domain names have become a valuable asset for organizations, trademarks and individuals. A domain name is not just an online address, but also an identity that reflects a brand image and facilitates communication and interaction in the internet world. However, the practice of *cybersquatting* has become a serious threat to trademark owners and the stability of the internet ecosystem. Brand marketing through the internet has 2 main important things, namely related to the brand itself and the Internet Domain Name used. The selection of the Internet Domain Name must be really selective and go through a long survey, because often the name has been used by many then there are similarities with other similar brands. Conflict of interest in domain naming often occurs. seeing more and more variations of technology crimes such as one of them is *cybersquatting*. *cybersquatting* is a harmful act by registering someone else's domain name, which then sells it at a much higher price.

Domain names basically cannot have the same name as one another, therefore indirectly the business actors who have an internet domain name have brand rights over it. So that inevitably it is advisable to make a domain name according to the product name or company name. This is what is often utilized by someone until the act of *cybersquatting* appears. This action occurs not only because of technological advances but also because juridically there is no law governing it. There is no law that regulates the domain, thus causing a legal vacuum that must be resolved immediately. The negative impacts caused by *cybersquatting*. These include financial losses to brand owners, reputational harm, consumer confusion, unfair competition, as well as the risk of fraud and other illegal activities⁵.

According to Law No. 20 of 2016 on trademarks and geographical indications, a trademark is a sign that can be displayed graphically in the form of images, logos, names, letter words, numbers, color arrangements, in the form of 2 (two) dimensions and or 3 (three) dimensions, sound, holograms or a combination of 2 (two) or more of these elements to distinguish goods and or services produced by persons or legal entities in trading activities of goods and or services. In this case, it does not change the meaning of the trademark when

⁵ Deo, Sukrut, and Sapna Deo. *Cybersquatting: Threat to domain name. International Journal of Innovative Technology and Exploring Engineering* Vol. 8 No. 6. (2019), h.1432-1434.

compared with Law No. 15 of 2001 on trademarks, but there is a slight change in the dimensions of sound, holograms in the form of 2 dimensions and 3 dimensions. From the new Trademark Act that will be more extensive legal protection to increase innovation and creativity in pouring ideas on the brand⁶.

Regulations on domain names are only regulated in Articles 23 and 24 of Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic and Information Technology (hereinafter referred to as ITE Law). The weakness of this regulation is the absence of dispute resolution, resulting in a legal vacuum. Furthermore, Law No. 20/2016 on Trademarks and Geographical Indications (hereinafter referred to as the MIG Law) also does not explain the domain. This regulation explains much more broadly than the ITE Law, because the MIG Law focuses on the rights and obligations of parties who own a brand, while disputes about brand ownership have not been regulated by this regulation. Therefore, the ideal is to link domain names with trademark rights, although trademark rights and domain names have differences⁷.

The relationship between trademark rights and domain name is the identity of a legal entity and goods/services company. In this case, the domain name is not always identical to the brand, because the domain name has different terms and registration systems. In this context, an understanding of the relevant legal regulations to protect trademark owners from *cybersquatting* is crucial. Trademark law and internet domain policy play a crucial role in providing the necessary legal framework to combat *cybersquatting*. However, with the development of technology and the complexity of the internet environment, these legal regulations also need to be constantly updated and adjusted to be effective in protecting trademark rights. With a better understanding of the legal aspects in the context of *cybersquatting*, trademark owners can take more proactive measures to protect their rights and maintain the integrity of their brands in an increasingly complex digital world.

However, despite efforts to protect trademark owners, there are still several challenges in implementing effective legal protection against *cybersquatting*. One of the main challenges is the complexity of laws in the digital space involving international aspects and differences in legal protection between jurisdictions. In addition, the legal process to resolve *cybersquatting* disputes can be expensive, complicated and time-consuming. By understanding the challenges and weaknesses in the legal protection against *cybersquatting*, this research will have an impact on updating the legal system governing trademark and domain rights and their dispute resolution which has not been in place so far. The implications will impact trademark owners, authorities, and legal practitioners in their efforts to counter *cybersquatting* and protect trademarks in the rapidly evolving digital environment⁸.

On the legal side, many countries have adopted regulations and policies designed to protect trademark owners from *cybersquatting*. Trademark law and internet domain policies

⁶ Noor, Hediati F. *Optimalisasi Pengawasan pada Penerimaan Pendaftaran Merek dalam Rangka Perlindungan Merek*. Jurnal Suara Hukum. Vol. 2 No. 2 September (2020). h. 234-257.

⁷ Pratama, Muhammad Farhan. *Tinjauan yuridis pelanggaran hak merek terhadap tindakan penggunaan merek untuk nama domain tanpa izin berdasarkan Undang-Undang No. 20 Tahun 2016 tentang Merek dan indikasi geografis.*, Skripsi Ilmu Hukum, Program Sarjana Ilmu Hukum Bandung, Universitas Katolik Parahyangan (2021)

⁸ Wahdani, Fahed. *The legal character of domain names' cybersquatting.*, Law, Society, Organisation, Vol. 4 No. 10 (2021) ,h. 23-41.

generally prohibit the registration or use of domain names that are identical or confusingly similar to existing marks, with the aim of protecting the rights of mark owners and preventing trademark fraud or abuse. Despite protective measures, *cybersquatting* remains a complex and challenging problem. *Cybersquatting* perpetrators often use increasingly sophisticated and difficult-to-detect methods, including the use of domain name variations, popular brand name tracking, and domain registrations with long-term goals.

Budi Raharjo stated that the crime of domain names can occur in several forms, one of which is *cybersquatting* where someone can freely use the name of a famous person, organization or company as a domain name then resell it at a price that has been multiplied so that the benefits he gets are many. The above illustrates that a person's behavior with bad intentions can occur in certain desired situations and what a person defines according to his understanding.

In 2014, there was a domain name dispute between BMW automotive and a Surabaya resident named Benny Mulawarman who abbreviated his name to the initials BMW, he received a subpoena for the domain name he had been using since 2012. In 2012, Benny had indeed registered the BMW name as a trademark and he used it as a domain name and his company email. However, the automotive company BMW itself has been using the domain name since 2001 with the name of the domain manager registrant, Bayerische Motoren Werke AG, Germany.

Therefore, in-depth research on *cybersquatting* acts on domain name brand rights as the internet web is essential. This research can identify relevant legal regulations, such as trademark law and internet domain policy, and analyze how these laws can be effectively used to protect trademark owners from *cybersquatting* actions. With a better understanding of this issue, brand owners, governments and relevant stakeholders can develop effective strategies and measures to counter *cybersquatting* and protect trademark rights⁹.

The novelty of this research is that researchers can identify relevant legal regulations, such as trademark law and internet domain policy, and analyze how these laws can be used to protect trademark owners from *cybersquatting*. The dispute that the author has described above is one example that occurs in Indonesia and internationally. There are still very many disputes that occur due to neglect and lack of survey of business actors over the chosen brand. Therefore, at this time there is a need for research related to how legal protection of internet web domain name registration is related to brand rights and domain names along with dispute resolution. Based on the things that have been explained above, the researcher is interested in taking the following title: "*Cybersquatting* Actions on Domain Name Brand Rights as an Internet Web"

METHOD

In writing this journal, normative juridical research is used by examining a legislation, principles, and doctrines of experts related to this research. According to Peter Mahmud

⁹ Wright, Steven. *Cybersquatting at the intersection of internet domain names and trademark law*. *IEEE Communications Survey & Tutorials* Vol. 14. No. 1 (2010).h. 193-205.

Marzuki, dogmatic or normative juridical research is a process for finding legal rules, legal principles, or legal doctrines to answer the legal issues at hand¹⁰.

The approach in this research uses three approaches, namely law The second is by using a case approach, which is a legal research approach that focuses on a legal issue on one example of a case in the community, in this study the *case* example used is the *BMW.id* domain dispute case between Benny Muliawan and *Bayerische Motoren Werke Aktiengesellschaft* (BMW AG) which occurred in 2014. The third research approach uses a comparative legal system approach between the *common law* legal system of England and America and the *civil law* legal system adopted by Indonesia.

The research in this journal uses primary legal materials including Law Number 15 of 2001 concerning Trademarks, Law Number 11 of 2008 concerning Amendments to Law Number 19 of 2016 concerning Electronic Information and Transactions, and Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Secondary legal materials are books, legal journals, legal scientific works and literature to support this research

ANALYSIS AND DISCUSSION

Internet Web Domain Name Registration Procedures Related to Brand Rights

The unique name contained in the computer network connected to the internet is called a domain name, in this case the domain name has a function for email addresses and website addresses. The general Internet Web Domain Name Registration procedure is as follows:

1. The domain *desa.id* and/or *go.id* domains are registered through the website <https://domain.go.id>;
2. The domain *mil.id* / or *net.id* can be registered through the website <https://register.pandi.id>;
3. The domains *mil.id*, *net.id*, *go.id*, and *desa.id* are registered at 12 PANDI registrars.

Steps for registering a ID domain in general:



Source: Processed by Researcher 2024

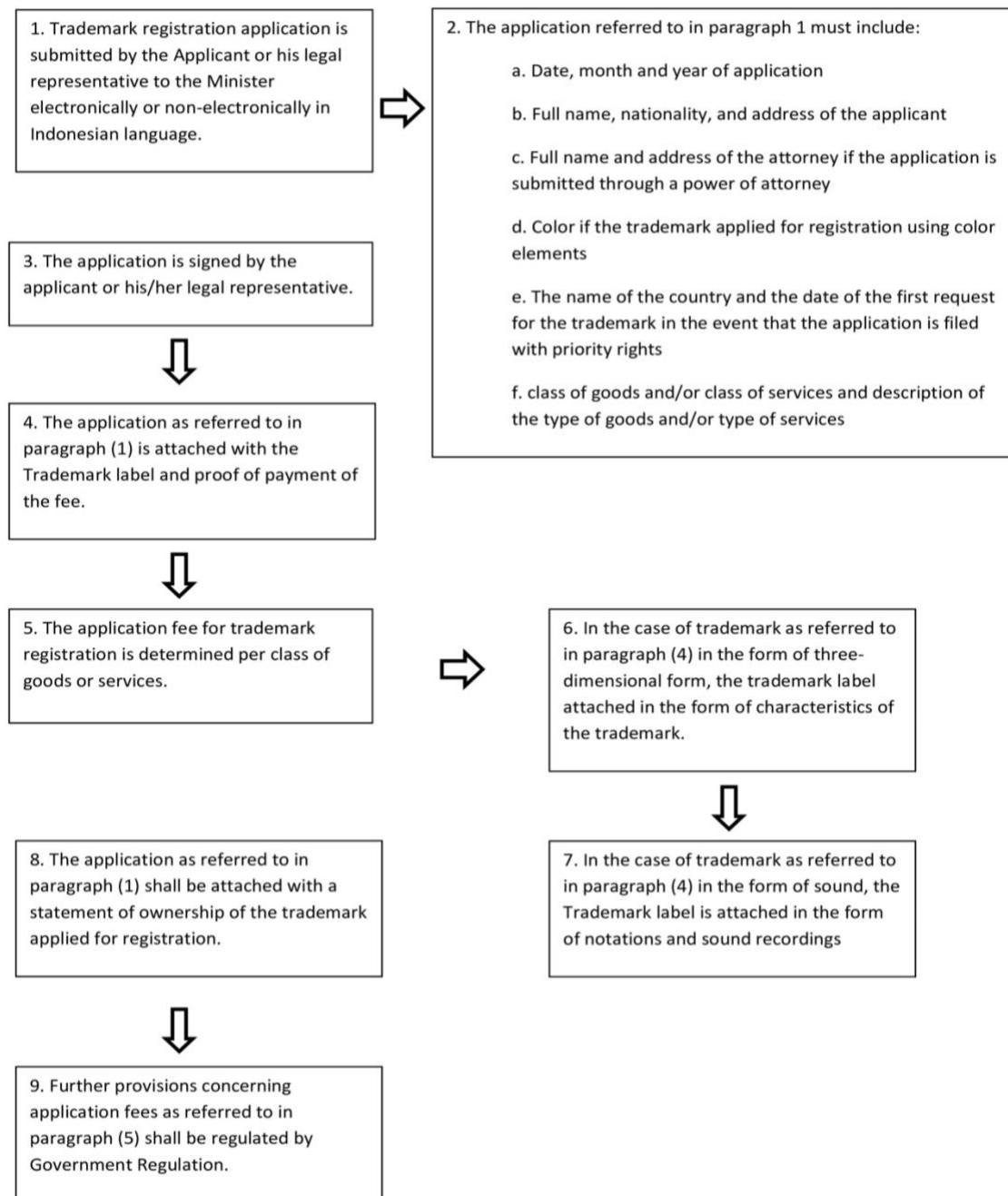
¹⁰ Marzuki, Peter Mahmud, *Penelitian Hukum*, (Jakarta: Kencana Prenada, 2010).

1. Checking the registered address first whether it is still available or not by entering the domain address you want to register through the website <https://whois.pandi.id/>;
2. Preparing documents for registration for each domain level is different;
3. Choose a registry that accepts companies in domain registration; To register, please visit <https://pandi.id/registrar/daftar-registrar>;
4. After selecting, completing the requirements, and paying a certain amount of money to the registry, the domain name is ready for use.

Over time the Trademark Act has undergone several changes. First, Law No. 19 of 1992 concerning Trademarks until Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Trademark registration ensures trademark rights for the registrant. So, the main registrant has good faith requires time in the examination of approximately 150 days. In the development of information technology is now very rapid, the Directorate General of Intellectual Property of the Ministry of Law and Human Rights has enforced online trademark registration but there is a gap of trademarks that have been registered by the first party imitated by other brands or third parties so that there are similarities and then there will be a conflict, therefore the need for legal protection for the first registrant for trademark owners¹¹.

Trademarks have a very important role for the field of trade and services so that we can distinguish other product brands. In trademark law is divided into two systems, namely declarative and constitutive (attributive). Trademark registration has a certainty value to a product of goods. If a good or service has been registered then others can not register without proof. However, if a trademark registration can prove that the trademark has not been owned then it will get a Trademark Certificate of proof of property rights so that others can not claim and others can not use it. Trademark registration examination is carried out a very strict process by the Directorate General of Intellectual Property Rights in accordance with the provisions of the MIG Act. Terms and Procedures for Trademark Applications are regulated in Article 4 of the MIG Law as follows:

¹¹ Al - Fatih S. *Analisis Keterhubungan Konsep Merek dengan Nama Domain: Kajian Kekayaan Intelektual di Indonesia*. Journal of Judicial Review. JJR Vol. 23 No. 2 (2021), h. 257-264.



Source: Processed by Researcher 2024

The MIG Law does not specify the names, images, colors, fonts and practices found on the website:

1. Trademark rights are entitled to be protected is a trademark that has been registered in the general register of trademarks in the period used alone or for those who use a trademark that has been registered at the Directorate General of Intellectual Property Rights must use the permission of the owner.

2. Trademark registrants have legal protection that is the legal certainty of the trademark that has been registered either used, extended, transferred and removed as evidence that will be a dispute or conflict over the trademark that have already been registered.

Based on the flow that the researcher has described earlier, the trademark registration process according to the Trademark Law begins with the attorney filling out and signing the registration application form, proof of payment document, trademark ownership statement letter, and trademark label and submitted to the Ministry of Law and Human Rights. After that, the application is checked by the Ministry of Law and Human Rights. However, if there is a lack of completeness of the requirements, then within a period of thirty working days from the date of receipt of the application, the applicant or attorney is given time to complete it, if not completed until the time period expires, the application is considered withdrawn. Applications that have met the minimum requirements are given an acceptance date and within a maximum of 15 working days from the date of acceptance, the trademark application will enter the announcement stage in the official trademark news. The trademark application enters the announcement stage for two months and any party can file an objection/opposition in writing to the Ministry of Law and Human Rights on the application along with the reasons.

Legal Protection of Internet Web Domain Name Registration Related to Brand Rights.

Barda, a telematics expert, stated that currently the real world and the virtual world cannot be separated from their interaction. This means that although activities on the internet are cyberspace activities, their regulation cannot be separated from human intervention in the real world. Technology certainly still requires the role of humans in its operation. However, the actions that occur in cyberspace are still the responsibility of humans in the real world. These actions do not only harm one or two people, but sometimes harm a lot of parties which result in their rights being violated. Therefore, the need for protection for the community both users and non- users whose rights are violated. Trademark rights are exclusive rights granted by the state to someone who has registered, if not registered then certainly can not be legal protection¹².

There are three conflicts that cause disputes: *First, the* domain name is registered by a third party who is very famous. The third party sells the famous domain name with high marketability to the trademark rights holder. *Second, the* domain name is registered by someone else, namely a third party. The implication of the dispute is that the third party then seeks out the owner of the primary mark who is unaware that his mark has been registered. The purpose of the third party includes economic interests by selling the registered domain name to the main brand owner, so that the first party has to spend money to buy a domain on behalf of its own brand from the third party. *Third, the* domain name registration is registered by a third party, this is without realizing that there is a similarity with the company even though the category and class are different. The actions of the third party clearly violate a *first come first serve* principle that has been regulated in Article 23 Paragraph (1) of the ITE Law. The right holder of the first registrant of a domain name must have legal protection regulated in the MIG Law. When associated with the above case, the domain name dispute between BMW automotive and one Surabaya resident named Benny Mulawarman who

¹² Ni Komang Lugra Mega Triayuni Dewi. *Perlindungan Hukum Terhadap Pendaftaran Merek Nama Domain Dalam Tindakan Cybersquatting Di Indonesia*. Journal Kertha Wicara. Vol. 8No. 12 (2019),h. 43-58.

abbreviated his name into BMW initials has violated Article 23 of the ITE Law. The offense committed is to register the brand of a famous person's name¹³.

Domain name violations related to brands are the duty of the Indonesian Domain Name Manager (PANDI). PANDI has the task of creating and designing regulations on domain names based on the provisions of Article 23 of the ITE Law. In this case, when compared to the rules in the United States and the United Kingdom, what obtains legal protection is its use in practice, not its registration. Bitlaw's definition *"the term 'common law marks' indicates that the trademark rights that are developed under use are not governed by statute, instead, common law trademark rights have been developed under a judically created scheme of rights governed by state law"* That in common law countries it is not the registration but the use. . In the system of the United States and the United Kingdom names protected by trademark law but not registered must prove that the name registered has a *secondatary meaning* there is an element of distinction and not a name that has a description.

The theory of legal protection of intellectual property rights must fulfill 4 principles, namely:

1. The Social Principle, intellectual works or copyrights are not for personal benefit but, also provide prosperity for the community, nation, and state of Indonesia;
2. Economic Principle, the owner of intellectual property rights will get benefits, namely royalties and licenses;
3. The principle of justice, the owner of intellectual property rights will get a reward both materially and non-materially because his work must get legal protection.
4. The principle of culture, the work of intellectual rights fosters, develops, and encourages ideas from the community as a support for the standard of living of the community itself which is more literate on intellectual and modern¹⁴.

The protection of intellectual property law functions to protect the rights of individuals or groups within the jurisdiction of Indonesia. The phenonema of Benny Mulawarman's case or the legal issue of brand internet web domain names using Satjipto Rahardjo's theory of legal protection *"provides legal protection in the form of protecting human rights that are harmed by others and the protection is given to the community in order to enjoy the rights granted by law"*. In the case of Benny Mulawarman In 2014, there was a domain name dispute between BMW automotive and a Surabaya resident named Benny Mulawarman who abbreviated his name to the initials BMW, he received a subpoena for the domain name he had been using since 2012. In 2012, Benny had indeed registered the BMW name as a trademark and he used it as a domain name and his company email. However, the automotive company BMW itself has been using the domain name since 2001 with the name of the domain manager registrant, Bayerische Motoren Werke AG, Germany¹⁵.

¹³ Shafwan A. M. *Perlindungan Hukum Bagi Pemegang Merek Terkenal Di Indonesia*. Jurnal USM Law Review. Vol. 4 No. 2, (2021)., h. 566-585

¹⁴ Vemberia Wijaya K.Y. *Upaya Perlindungan Hukum Terhadap Pelanggaran Hak Merek*. Jurnal Ilmiah. Vol. 6 No. 10 . (2018), h. 16-21

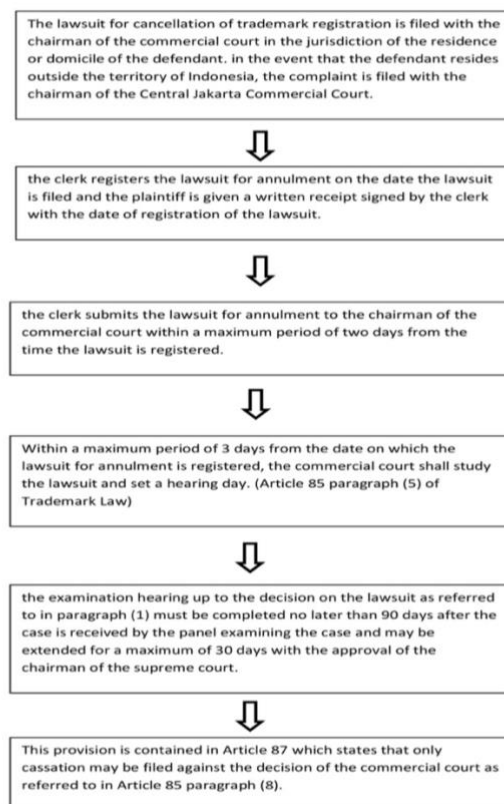
¹⁵ Arifin Z, *Perlindungan Hukum Terhadap Merek Yang Terdaftar*. Jurnal Ius Constituendum Vol. 5 No. 1. (2020).

Dispute Resolution over Domain Name Trademark Rights as an Internet Web

A dispute is a conflict that occurs between the parties to an agreement due to a default by one of the parties to the agreement. Disputes are divided into two, namely disputes in the private sphere and disputes in the public sphere. Disputes in the private sphere, for example, are debt and credit disputes that occur between two parties. While public disputes, for example, are business disputes between two legal entities, organizations or groups with an interest in trade.

Disputes over domain name trademark rights are caused by several causes, for example when someone has successfully registered and purchased their domain name trademark rights from the regulator in the domain trademark field, but there is the same name in the domain and the assessment of the regulator is whichever party registers its trademark rights first, then that party has the right to own the trademark rights. Domain disputes that occur in Indonesia are the many practices of *cybersquatting*. The settlement of disputes that occur in the field of domain name trademark rights as the internet can be resolved by several ways of settlement, namely litigation and non-litigation. if using the litigation route, of course, this dispute resolution must go through the court and use the judicial system as regulated in Indonesian legislation¹⁶.

Dispute resolution through litigation can be filed a lawsuit through the commercial court, the following is the flow of dispute resolution of trademark rights through litigation based on the MIG Law, the following flow of dispute resolution:



¹⁶ Adi Astiti N.N. Penyelesaian Sengketa Nama Domain Internet Terkait Hak Merek Di Indonesia. *Jurnal Ilmu Hukum Tambun Bungai*. Vol. 3, No. 1, (2018)..

Source: Processed by reasercher 2024

Based on the chart above, it can be seen that the settlement of domain name trademark rights disputes through litigation must begin with a lawsuit filed by one of the aggrieved parties submitted to the other party through the commercial court in the jurisdiction of the defendant who is certainly authorized to accept the lawsuit, if the domicile of the defendant is outside Indonesia then the lawsuit is filed at the Central Jakarta Commercial Court. If the lawsuit has been received by the commercial court, the clerk will immediately register the lawsuit so that the lawsuit is immediately processed and a trial date is obtained. Within 2 days the clerk will inform the chairman of the commercial court from the time the lawsuit is registered with the commercial court.

Within 3 days, the court will study the contents of the lawsuit and immediately set a trial date for the parties. Within a maximum period of 60 days after the lawsuit is registered at the commercial court, a hearing on the annulment lawsuit is held. If the trial has reached the stage of decision by the judge, the decision of the commercial court judge cannot be appealed. This has been regulated in Article 87 of Law Number 20 Year 2016 on Trademarks and Geographical Indications. The decision of the commercial court can only be appealed to the Supreme Court.

The non-litigation path can be taken in several ways by the parties according to mutual agreement. As through the previously explained government institution, PANDI, this institution also functions as an alternative dispute resolution related to domain names. PANDI has a policy which is based on the ITE Law, then Government Regulation No. 82 of 2012 concerning the Implementation of the ITE System, Minister of Communication and Information Regulation No. 23 of 2013 concerning Domain Name Management, besides that PANDI also refers to Government Regulations governing Domain Name registration. In addition to national rules, PANDI also based on international rules such as Uniform Domain Name Dispute Resolution issued by ICANN. PANDI has a sub-institution specialized in dispute resolution, namely Domain Name Dispute Resolution (PPND), this institution is almost the same mechanism as BANI and ADR. There are no restrictions on who can submit objections to PPDN accompanied by prepared documents. PPDN is currently not as effective as the District Court in giving decisions. Until some parties prefer the litigation route, although the cost is more expensive, the legal certainty provided is certainly more relieving for aggrieved entrepreneurs.

According to the Law on Arbitration and Dispute Resolution Article 31 states that the parties are free and can determine the alternative dispute resolution method they will take as long as it does not violate the provisions of the Law. If we look at this article, it can be concluded that the parties in a business dispute, in this case including a domain name dispute, can use the Indonesian arbitration institution, in this case BANI (Indonesian National Arbitration Board) to resolve the dispute.

If we look at the case that occurred in the *BMW.id* domain dispute between Benny Muliawan and *Bayerische Motoren Werke Aktiengesellschaft* (BMW AG) which occurred in 2014, it can be analyzed that the dispute resolution in this case was initially resolved by non-litigation channels, namely through a mediation process carried out by the parties and assisted by a third party, namely the PANDI institution. however, the mediation process did not go smoothly enough, so it did not produce any decisions. however, Benny Muliawan assumed that PANDI decided to use the *BMW.id* domain for the *Bayerische Motoren Werke*

Aktiengesellschaft (BMW AG) company while Benny Muliawan in April 2014 had bought the domain, and was legally the owner of the domain.

Based on the case, the author has an opinion that this domain case can be resolved through two dispute resolution channels, namely litigation and non-litigation channels. If using the litigation route, the *Bayerische Motoren Werke Aktiengesellschaft* can file a lawsuit against Benny Muliawan through the commercial court. The plaintiff must also know the consequences of this litigation dispute resolution, some of the consequences of the settlement of trademark rights disputes through litigation is that it takes more time than the settlement of disputes through non-litigation channels, in addition to the results of the decision of the commercial court judge can not be appealed to the high court, the decision of the commercial court judge can only be appealed to the Supreme Court which requires additional time for the parties in resolving trademark rights disputes.

As for if the settlement of trademark rights disputes is resolved by non-litigation channels, it can be through PPND (Domain Name Dispute Resolution) formed by PANDI or through arbitration, both national and international. This is because the arbitration court is one of the institutions that have the right to adjudicate related to business disputes. The parties can agree to use an arbitration institution in Indonesia, in this case BANI (Indonesian National Arbitration Board) or through arbitration bodies in other countries that are considered better by both parties¹⁷

CONCLUSION

Trademarks have a very important role for the field of trade and services so that we can distinguish other product brands. In trademark law is divided into two systems, namely declarative and constitutive (*attributive*). Trademark registration has a certainty value to a product of goods. If a good or service has been registered then others can not register without proof. However, if a trademark registration can prove that the trademark has not been owned then it will get a Trademark Certificate of proof of property rights so that others can not claim and others can not use it.

In general, there are several stages that can be done if someone wants to register their domain. First, the applicant can submit First, the registered address is still available or has been used by verifying the domain address to be registered through the website <https://whois.pandi.id/>. Second, the applicant can prepare documents for registration for each different domain level;. Thirdly, the applicant can choose a registry that accepts companies in domain registration; Register registration can be seen <https://pandi.id/registrar/registrar-registrar>. Finally, after choosing, and also completing the documents to be used as requirements, and paying a certain amount of money to the registration register, the domain name is ready for use.

There are three conflicts that cause disputes: *First, the* domain name is registered by a third party who is very famous. The third party sells the famous domain name with high marketability to the trademark rights holder. *Second, the* domain name is registered by someone else, namely the third party. As a result of the dispute, it is clear that the third party does not have a sense of good faith so that it is clear that the third party deliberately cheats

¹⁷ Svinarky I. *Efektivitas Undang - Undang Merek dan Indikasi Geografis terhadap Daftar Usaha Merek Dagang Industri Kecil dan Menengah*. Jurnal Magister Hukum Udayana Vol. 7 No. 1, (2018)

the competitor of the right owner of the mark or the registrant who does not know that it has previously registered the same *domain name* as the mark. The purpose of the third party is to confuse consumers by registering the same domain name as the competitor's brand. *Third*, the domain name registration is registered by a third party, this is without realizing that there is a similarity with the company even though the category and class are different. Holders of rights to the brand of the first registrant of the domain name must have a legal protection regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Domain name violations related to brands are the duty of PANDI (Indonesian Domain Name Manager). The Indonesian Domain Name Manager has the task of making and designing regulations on domain names based on the provisions of Article 23 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information Technology and Electronics.

There are two solutions that can be done to resolve the Domain Name dispute that occurred between Benni Mulawarman and *Bayerische Motoren Werke Aktiengesellschaft* (BMW AG), namely through litigation and non-litigation. However, if the plaintiff chooses to settle through litigation, the settlement taken will be quite time-consuming due to the procedures followed and is considered less effective. In addition, the result of the decision of the commercial court judge cannot be appealed to the high court, the decision of the commercial court judge can only be appealed to the Supreme Court which requires additional time for the parties in resolving the trademark rights dispute. Meanwhile, if the parties choose to resolve the case about this Domain Name through non-litigation channels, it can be done through PPDN (Domain Name Dispute Resolution) formed by PANDI or can also be resolved through arbitration both nationally (BANI) and internationally which is considered better. It depends on the wishes of both parties.

The domain name registration system is very effective and efficient. However, the government is considered to need to improve in terms of supervision, protection and also the utilization process in order to prevent problems such as cyberquatting.

REFERRANCE

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