

Legal Construction of Domain Name Ownership to Protection of Registration Rights to Registered Domain Names

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Abstract. Problems domain name arrived today is still not yet give certainty for lots the resulting party happening abuse domain name. Article 23 (3) of law 11/2008 only arranges the use of domain name by no entitled whereas action creates and registers the same unset domain name. The problem in this study is how to construct law ownership domain names against protection right registrants on registered domain names. The type of research used is normative research with statutory and conceptual approaches. The research results show that *there are emptiness norms on registration bonded domain name is not good related to the brand experienced by the owner one of the original domain names which is cybersquatting*. Hence, there is a change in ITE law and strengthening the draft protection domain name by adding related norms with the crime domain name.

Keywords: Legal Protection, Cybersquatting, Domain Names

1. Background

The emergence of the internet can say a result of revolutionary information that is very admirable, proud because in manner fundamental contain characteristic practical and easy, good for use individually nor organization or institutional, in various aspect of life. Characteristics of the No regardless of strength and speed deep internet order operational which among others can penetrate space and time [1]. Barda Nawawi (2006) stated that the real and virtual worlds (cyberspace) are not separately firm meaning activity on the internet though considered as something, virtual activity, deep settings. None can release from a man in the real world. This is due to the internet as a technology that demands the role of man in its operation. Man in natural responsible answer on a consequence from his deeds" [2].

The need of technology network computer is increasing. Besides as a media provider of information through the internet, as well as activities community commercials, become part biggest and fastest growth as well as penetrate various national boundaries. Even though a network, this world market activity can be known for 24 hours via internet, also known as cyberspace [3]. Indonesia is part of public world information, so requires formation arrangement about development technology information as a response to developments that occurred. [4] The moment has born new regime that known by the law, cyber law or telematics law. Cyber law, by international used for term is related laws with the utilization of technology information and communication. Other terms that are also used are law technology information, cyber law, and law Mayantara.[5] The development of technology and information give influence to the

use of domain name. Utilization of a domain name for benefit people is impacted positively by the existence of domain name. On the other hand, the abuse of domain names is something that can harm lots of parties, especially internet users. There is action abuse technology information related to this domain name, among others known by the term Cyber-squatting.

In the field of technology crime, one of the information is Cybersquatting, which is action acts committed by one or party that can result from loss for one party to another. The method is registering someone else's domain name and then sell their domain name to that person with higher price so that raises loss for owner original domain name. [6] Cyber-squatting is action piracy brand through the domain name. The party that hijacks or make domain name with a copy of famous brand name, then sell it return to other parties, for example to a company which already own good reputation and known in broad society. This, of course, is very disturbing. Domain name consists from a number of character for pointing field, which will with easy identify holder address the or a website. [7] Application various regime law to problem related domain name occurred these days. This still not yet give certainty for lots party. This is up to certain levels of raising atmosphere. Uncertainty, law in industry internet-based in particular, and circles global business in general remember almost all entity business that has even established feel the significance presence on the internet. The law on domain name is this still in the scope of the legal sense generated domain name as just computer technology identification in network on one parties, and resemblance instant between domain name with brand as identity business on the other hand others approaches the proven still characteristic minimalist. In fact, in the middle public, it developed habit for associate domain name with understandings about things (property, Dutch: *zaak*, *sic.*), rights property, owner and rights ownership which really means including in constructions of law material. Phenomenon judge public that such an understanding That mistaken, thought law should accommodate habit and explore it with more serious possibility of applying regime law material to problems laws that arose around domain name.

Description about difference between domain name and brand, of course just difficult for apply acts of cyber-squatting included in violation brand in Indonesia, recalling the difference construction of governing law between brand and domain, so brand owner is difficult enough to sue the cyber-squatting case. The reason is because it has plowing brand, however, it matters to the possibility to ensnare cybersquatting as a form of violation law to brand if there is new provision set.

2. Method

Type research conducted in study is juridical normative method. Approach used is comparison laws and legislation approach as well as conceptual approach for analyzing construction law ownership of domain name against protection right registrant on the registered domain name. The object of this study is focused on cybersquatting and protection law according to the law in Indonesia. Data obtained from results study were analyzed by descriptive technique, that is give description or exposure on the study subject and object as results the research.

3. Findings and Discussion

Top rights brand is a right exclusive granted by the state to owners registered mark, if no

registered No obtain protection law. According to Fitzgerald as quoted sat into Raharjo's beginning starts from appearance theory protection law This is sourced from theory law natural or Genre law nature. Genre This was pioneered by Plato, Aristotle (Plato's student), and Zeno (the founder of Stoics). According to Genre Law naturally mention that law is sourced from God who is universal and eternal, as well as between law and morals cannot be separated. Believers looked that law and morals are reflections and rules internally and externally from life embodied by a human through law and morals.[8]

Top rights brand given for 10 (ten) years and got be extended every 10 (ten) years. System protection brand in Indonesia adheres to the system constitutive right on the emerging brand because registration and rights on the brand are given to the registrar first. Besides that, protection laws given to brands registered in each class are adjusted with goods and/ or services [9]. The domain name has set inside Article 23 of Law Number 11 of 2008i concerning Information and Transactions Electronic stating that every state official, person, business entity, and/ or public is entitled to own based domain name principal registrar first. Chapter it also states that ownership and use of the domain name must be based on intent well, not violate principal competition business in a manner healthy, and not violate other people's rights. Besides that, every state official, person, business entity, or disadvantaged community. Because use of a domain name without rights by others, entitled to submit a lawsuit cancellation of the specified domain name.

Understanding cybersquatting generally refers to the practice buy a domain name using the existing business or names of famous people to sell the name to gain profit for their business. Because a domain name is a very valuable asset that can be sold, buy, rent, get to by the installer site advertisement so that becomes source finances, even can be guaranteed, then the crooks see an opportunity to make the domain name an object trade, that is with cybersquatting. Related to this matter, Budi Raharjo stated that the crime of domain name can happen in three forms. One of them is cybersquatting which is activities registering the domain name of a business entity, organization, other people, or another party outside. Then sold to the domain name owner for more expensive (cybersquatter). This type is similar to a ticket scalper whose destination mainly looks for profit personal with harms others [10].

In practice, brand trade tends to become the same company domain name giving a description that is common in society that a registered domain name is a brand trade that exists in the real world, so grow in view public site name describes brand trade cannot be denied that someone else's register domain name or brand trade by those who are not own right on Name the raises problems in practice and existence [11]. According to the opinion of OK Saidin "Violation This can happen the moment the other party doesn't It is concerned he continued with A company or with A brand company it turns out register Name from the company concerned the as Name domain on the internet network without exists permission " [12]. So that, if the someone's right-owned brand is protected in a manner juridical from actions that lead to the usage brand wrongly or oppose the law. Objective protection law the function to protect something right brand from action leads to action opposed laws are carried out by those who are not responsible and answer with intent [13].

In addition to the ITE Law, cybersquatting is also regulated in Article 83 of the Law Number 20 of 2016 concerning Brands and Indications Geographical mention that owner brand registered and/ or recipient license brand registered can submit a lawsuit to other parties who without the right to use owned brand equality in essence or the whole for goods or similar services form lawsuit change loss, and/ or termination all related actions with use the brand. The lawsuit is filed to court trade and earn submitted by the owner brand famous based on a decision court.

Provision criminal as a form of protection law to follow criminal cybersquatting is also explained in several chapters of Constitution Brands and Indications Geographic. One of them that is Article 100 which regulates 3 provisions criminal following, first, everyone without the right to use the same brand as a whole with a brand registered owned by another party for goods and/ or services of a kind produced and/ or trafficked, convicted with criminal maximum imprisonment of 5 years and/or a maximum fine of Rp. 2,000,000,000. Second, everyone without the right to use owned brand equality in essence with brand registered owned by other parties for goods and/ or service of a kind produced and/ or trafficked, convicted with criminal maximum imprisonment of 4 years and/or a maximum fine of Rp. 2,000,000,000. Third, everyone, who violates the provision criminal that kind the goods resulted in a disturbance of health, disorder of environment live, and/or death human, punished with criminal maximum imprisonment of 10 years and/or a maximum fine of Rp. 5,000,000,000. Provision criminal is also regulated in Article 101, that is first, everyone who with without right to use a sign that has equality overall with indication geographically owned by another party for goods and/ or the same product or kind with goods and/ or registered product, convicted with criminal maximum imprisonment of 4 years and/ or a maximum fine of Rp. 2,000,000,000. Second, everyone without the right to use a sign that has equality in essence with indication geographically owned by other parties for goods and/ or the same product or kind with goods and/ or registered product, convicted with maximum imprisonment of 4 years and/ or a maximum fine of Rp. 2,000,000,000. Besides, Therefore, Article 102 also regulates that everyone who trades goods and/ or services and/ or known products or properly suspected knowing that goods and/ or services and/ or products the results follow criminal as mentioned above convicted with criminal maximum imprisonment of 1 year or a maximum fine of Rp. 200,000,000.

Brand and domain name own very closely related, and both of them own different settings [14] Provision law about brands arranged in Constitution Number 20 of 2016 concerning Brands and Indications Geographical (next called the Trademark and Indication Law Geographic), whereas domain name set in Constitution Number 11 of 2008 concerning Information and Transactions Electronics (called UU ITE). In Article 3 of the Trademark and Indication Geographic Law, protection brand only happens after brand the registered or "first to file system". As for the domain name as arranged in Article 23 Paragraph (2) of the ITE Law, its protection is given to the registrar or "first come first serve" with condition registration the done-on faith ok [15].

In Indonesia's case of cybersquatting, it once happens between PT. Mustika Ratu and Tjandra Sugiono were indicted as detrimental to PT. Mustika Ratu Tbk with method register the domain name MustikaRatu.com. Case This Once filed to court and decided at the Central Jakarta District Court with number decision 1075/PID.B/2001/PN.JKT.PST, above the deed he did indict with Article 382 bis KUHP on indictment first and then on the indictment second indicted with Article 48 paragraph (1) jo. Article 19 letter b of Law Number 5 of 1999 concerning Prohibition Practice Monopoly and Competition No Healthy. Then in settlement disputes abuse Domain names can also be resolved using base law Constitution Brand. Mustika Ratu has owned the domain name Mustika-Ratu.co.id since 5 September 1996. In Indonesia, cybersquatting cases can be seen in the case of mustika-ratu.com, where PT. Mustika Ratu cannot register mustika-ratu.com as the website address, because there are parties that have registered mustika-ratu.com as the website address. Liberally, this ethical just during the party not only used to destroy brand trade the but also to support marketing brand trade, because party feels satisfied with services and products brand trade. However, conservative, non-ethical, and stable whatever the reason possible actions will destroy brand other people's trade. Field conservative this is dominating method view of the public now because there is the view that

brand trade that owns law so that anyone cannot the using party brand trade without permission from the brand trade owner although the motivation harms the company tends to experience worry against cybersquatting because action. This can destroy their company name. Associated domain names tightly with the company name and or the product (service) it has. Sometimes something domain name can protected by a law brand, accordingly, a domain name is owned and is one form or field right riches intellectual property rights (IPR). In the case of mustika-ratu.com researchers argue that the other party has not registered the mustika-ratu.com domain guilty if not harming the mustika-ratu.com. However, it is still not ethical because party the without permission especially formerly to party PT.Mustika Ratu so questioned the objective of the other party. To avoid violating ethics, company needs an alert specifically in the registered domain name, which required extensive knowledge about the domain name in the cyber world. If necessary, all possibilities associated with the domain name look name company registered to prevent cybersquatting or give information to the consumer site address with a clear warning to avoid error in the writing site address. For example in writing that should be .com so co.id/.net/.ac.id/.web, etc, or for example just mustika-ratu so mustikaratu / mustika_ratu / MUSTIKA-RATU.

Settlement dispute in domain name refers to the law riches Intellectual is supported by the opinion of JB Lumenta who stated "viewed from practice the law draft law it is the brand that is principally used For finish cases domain name because the domain name is meant as something easily remembered and recognized by the owner. The same case with purpose and function brand". If happen dispute associating a domain name with a brand can demand Good in a manner civil punishment by the parties owner brand by provision Article 83, Article 100, and Article 101 of the Law Brand.[16]

The difference principle in arrangement brand and domain name is what gives rise to conflict in protection to abuse brand as a domain name. Remember in first to file principle, the inspection registration brand is done in a manner detailed through an inspection process substantive and well-founded a good faith. Whereas, domain name with the principle of first come first serve in registration has not done substantive inspection as a brand. Inspection to registration domain name is only based on trust or good faith [17]. During registered domain name, there is no same or exactly name as a domain; The registration can be done even though only have one different letters [18]. In Indonesian law, domain names have arranged in ITE Law. However, the arrangement action crime that occurs on the domain name is not regulated in the Act. As for the Articles that regulate problem domain names in The ITE Law namely Article 23 paragraphs (1), (2), (3). Article 23 paragraph (1) states that: "The domain name is in the form of address or teak self-administration of the state which is earned based on principles registration first (first come first serve)". The weakness principal registrar first in this domain name lies with the registrar who does not check in a manner competence on the part registrar. This is what will raise disputes, especially on registration-associated domain names with a brand.

The development of computer technology using Internet connection has raised problems law new related to unlimited cyberspace reach by law conventional circumstances This responded to the United States government with emit rule law about brands used in trading in virtual worlds one the Anti Cybersquatting Consumer Protection Act of 1999 (ACPA) legislation which is part from law United States brand. The United States was the first country to implement rule deeds done in cyberspace can know rule law America in a manner conventional, that is room scope validity rule law is not only in the real world, it would but also deep virtual world [19]. The interesting thing about this United States legislation is that it places the act of cybersquatting or cyber piracy within the framework of brand law as well as within

the framework of consumer protection. The reason stated for this arrangement is the increasing number of disputes over marks used as domain names in internet trade, which also have broad implications for misleading for consumers.

Cyber-squatting has been defined as “an act of obtaining fraudulent registration with an intent to sell the domain name to the legal owner of the name at a premium”. The court in *Manish Vij vs. Indra Chugh*, and *The Satyam Infoway Ltd vs. Sifynet Solutions (P) Ltd.* case nailed the Indian domain name scenario way back in 2004 stating that "As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 is not extraterritorial and may not allow for adequate protection of domain names, it does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off. The recent trend is Reverse Domain Name Hijacking where an attempt is made by a trademark owner/holder to acquire a domain name from a legitimate user by making false cyber-squatting allegations against him [20]. The Information Technology Act, 2000 of India dealing with The Information Technology (Amendment) Act 2008 addresses numerous cybercrimes and addresses numerous cybercrimes and has set up a special cyber-crime cell. However, the Act oddly ignores the problem of domain name dispute and cybersquatting. In the case of cybersquatting, the domain may be considered a trademark based on its use and brand reputation and so fall under the Trade Marks Act of 1999. However, not all domain names are trademarks. Other than the above-mentioned civil remedies, according to Section No. 135 of the Indian Trade Marks Act 1999, legal remedies for suits of infringement of registered trademark or passing off include injunction, damages, or account of profits delivery up of infringing goods or destruction of infringing goods. Section 103 imposes a penalty for applying false trademarks or trade descriptions and Section 104 imposes a penalty for selling goods or services bearing a false trademark or description, (in both cases) which is punishable with imprisonment for a term not less than 6 (six) months, and may extend to 3 (three) years along with fine not less than Rp. 50,000 which may extend to Rp. 2 Lakhs. The Copyright Act of 1957 was invoked at times and raids were conducted; however, domain name offenses are still struggling for legislative clarity. The common law remedy of passing off is available to the owner of the trademark, but in this case, if his mark is registered, he can file an action for infringement of trademarks [21]. Numerous cases including Yahoo, Rediff, and Satyam have laid down the following guidelines [22].

In several countries, for example, the United States, some laws regulate this crime which is contained in the Lanham Act 15 U.S.C sub-section 1129 or better known as the Anti Cyber Squatting Consumer Protection Act 1999 (ACPA) which took effect on November 29, 1999 [23]. Meanwhile, in Indonesia, no law is used as a basis for prosecution or prosecution for perpetrators of crimes who use this internet facility. The United States of America is the first country to apply the rules for actions that are done in the virtual world that can be subject to conventional American law rules, i.e. the scope of the enactment of these legal rules not only in the real world but also in cyberspace [24]. In ACPA [5] which is added in the section trademark law in person shall be liable in a civil action by the owner of the mark, including a personal name which is protected as a mark under this section, if without regarding the goods and services of the parties, that person: registers, traffics in or use a domain name that; (I) in the case of a mark that is distinctive at the time of registration of the domain name is identical or confusingly similar to that mark; (II) in the case of a famous mark that is famous at the time of registration of a domain name, is identical or confusingly similar to, or dilutive of that mark.

The enactment of the Anti-Cybersquatting Consumer Protection Act (ACPA), although it still relies on traditional law (applicable in the real world), is a form of awareness that

cyberspace does need legal rules that are different from the real world, although these rules also cannot reach cybersquatting and cyber piracy actors outside US jurisdiction. United States, because this rule applies to perpetrators who register domain names or use domain names in the United States. However, what the United States government has done by enacting the ACPA has become a milestone in regulating activities in cyberspace, which was subsequently adopted by ICANN's Uniform Dispute Resolution Process and the WIPO Mediation and Arbitration Center.

Provision the state that someone without right or No related with owner brand or owner Name reputation protected by law brand can be sued by the owner brand if :

1. Register, trade, or use as a domain name ;
2. now do the registered domain name use the same brand or identical or similar to the brand;
3. at the moment, registration uses the brand same as famous or similar to the brand famous so that can confuse. ACPA aside set prohibited acts in cyber piracy rules this also sets nine possible limits associated with the determination of faith bad usage brand as arranged in part B of this section.
4. in determining whether a person has a bad faith intent described under subparagraph A, a court may consider factors such as but not limited to:
 - a. the trademark or other intellectual property rights of the person, if any, in the domain name;
 - b. the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
 - c. the person's prior use, if any, of a domain name in connection with the bonafide offering of any goods or services;
 - d. the person's bonafide non-commercial or fair use of the mark in an accessible site under the domain name;
 - e. the person's intent to divert consumers from the mark owner's online location to an accessible site under the domain name that could harm the goodwill represented by the mark, either for commercial gain or to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;
 - f. the person's offer to transfer, sell, or otherwise, assign the domain name to the mark owner or any third party for financial gain without having used, or having the intention to use the domain name in the bonafide offering of any goods or services or the person's prior conduct indicating a pattern of such behavior;
 - g. the person's provision of material and misleading false contact information when applying for registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such manners;
 - h. the person's registration of acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names without regard to the goods or services of the parties;
 - i. the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous with the meaning of this section.

Provision rule American law provides clear boundaries about faith bad from people who

don't have right when happen piracy domain name. Besides that rule it also expands draft base that brand _ traditional only apply in scope Where brand the registered and used in activity trade. However, with enactment Constitution This piracy brands in cyberspace can be imposed provision law United States brand if brand the registered as domain name in the United States although no worn for activity commercial.

Whereas possible sanctions dropped in piracy domain name in the form of fines and or cancellation of the domain name as well as divert domain name to owner valid brand as listed in section C of the article. Besides, the owner of the original brand also works to submit a lawsuit for change loss termination for all activities that are not valid. Article 15 USC sec 1129 protects Name hijacked private as a domain name. Article 15 USC sec 1129 is as follows:

Sec.1129 Cyber piracy protection for individual (A) civil liability stated that *"any person who registers a domain name that consists of the name of another living person, or a substantial name and confusingly similar there too, without that person's consent, with the specific intent to profit from the such name by selling the domain name for financial gain to that person or any third party shall be liable in a civil action by such a person."*

Section 1129 protects individual or individuals from piracy his name as domain name. Provision the state that somebody can be held accountable in a manner civil if register the domain name that it consists of from other people's names are still life or similar name or The same without permission from the concerned, with objective get profit from owner Name indeed or from third-party. Exception from section 1129 of this is If registrar have faith Good register the domain name that it consists of from other people's names are still life or similar name or the same on base connection Work or because why not prohibited by law or registrar is owner or holder right own copyright connection Work with owner relevant name exception it arranged in section 1129 letter B.

Meanwhile in Indonesia at the time this is also medium done assessment Manuscript Academic Draft Constitution Utilization Technology Information by the University of Pajajaran. Article 1 number 19 of the Utilization Bill Technology Information:

"The domain name is internet address from a person, association, organization, or business entity that can done for communicate through the internet"

Article This give understanding about draft base domain name, will but draft This not enough complete because understanding this domain name must consists from in a row number or Name or combination both. Article 16 Utilization Bill Technology Information:

- 1) Every person or business entity entitled own domain name;
- 2) Domain name is not can contrary with order general, decency and regulations applicable laws and regulations;
- 3) Now registration, user mandatory domain name make statement that the domain name it uses No conflicting and or violate other people's rights.

Article 17 Utilization Bill Technology Information:

The domain name is registered can contrary with brand registered name of legal entity registered, indication geographical or indication origin in accordance with regulation applicable laws. Article 17 Utilization Bill technology information too wide Because include prohibition usage indication geographical as domain names, in fact Lots the domain name that it consists of from Name area or region indeed can worn in a manner general Because is generic name. Besides it is also necessary exists clarity-imposed sanctions punishment for perpetrators of cybersquatting and cyber piracy, then needed expansion state authority to demand perpetrator deed this, not only for registered offender brand in Indonesia will but also the perpetrators who register Name the domain is in Indonesia, as well as perpetrators who use country code .id illegally explicit subject to conditions Indonesian law.

Utilization Bill Technology Information can wear as umbrella to ensnare perpetrators of cybersquatting and cyber piracy, therefore That what good if this bill quick perfected, socialized and approved as soon as maybe for emptiness rule law in usage internet technology can overcome. But also, must remembered that endorsement something Constitution really depends on will political from government, so no there are rarely any bills in existence will still as a bill without There is clarity When will legalized become Act. Whereas fact has happened detrimental act rights of others this act of cybersquatting and cyber piracy. Other policies that can take as soon as possible is amending Law 15 of 2001 concerning Brand with add related rules with domain name as set in trademark law in the United States.

4. Conclusion

In the United States acts of cybersquatting and cyber piracy can clearly covered by the rules of positive law as poured in 15 USC sec.1125 and 1129. While Indonesia has its own regulation, ITE Law, which includes the arrangement about domain name. However, arrangement in a manner substantial about crime associated domain name with peacock has not yet arranged in the ITE Law. Then the utilization of Bill Technology Information at least has arranged the acts of cyber-squatting and cyber-piracy through a number of improvement about provision principles and procedures settlement dispute used, such domain name elements. The need to be proven by the parties in submission of the lawsuit to institution settlement dispute.

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