

## SETTLEMENT OF DISPUTES OVER DOMAIN NAMES OWNERSHIP AND CYBERSQUATTING IN INDONESIA AND SINGAPORE

**Nur Hakiki and Sanusi**

Faculty of Law, Syiah Kuala University, Indonesia  
Jl. Putroe Phang No.1, Kopelma Darussalam, Kec. Syiah Kuala, Kota Banda Aceh, 23111  
E-mail: [Nurhakiki0007@gmail.com](mailto:Nurhakiki0007@gmail.com); Contact: 082366714562

### ABSTRACT

*The article was conducted based on the rise of cybersquatting against domain names in Indonesia, while the legal protection against cybersquatting of domain names remained ineffective compared to other Southeast Asian countries such as Singapore. Singapore can be the best country for Indonesia to compare with, due to its already has a perfect legal system and law enforcement toward domain dispute cases. The litigation settlement of domain names in Indonesia emphasizes on the registration aspect to make the court proceeding procedure easier. Meanwhile, in the non-litigation process, Domain Name Dispute Settlement Secretariat (PPND) already set up a new regulation called PPND Policy to settle the domain dispute based on universal standard. In Singapore the settlement of cybersquatting both litigation and non litigation has adopted the universal standard as stated in Uniform Domain Name Dispute Resolution Policy (UDPR) which empasizes on three elements of cybersquatting evidentiary process.*

**Keywords:** *Domain Name Ownership; Cybersquatting; Indonesia; Singapore.*

### INTRODUCTION

Domain names already have economic value in the world of economy so that domain names have begun to be traded and misused by parties who want to benefit from the trademark. In this case, the term brand piracy emerged through a domain name known as Cybersquatting.<sup>1</sup> Trademarks are copied by those who generate and hijack domain names, and they are then sold to other parties. This is undoubtedly quite upsetting for a business that already enjoys a positive

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<sup>1</sup> Cybersquatting is a crime committed by registering a domain name, which is usually a brand name of a well-known company owned by someone else, then trying to resell it to the company that owns the mark at a high price. The seizure of a domain name is by registering a site using someone else's name or brand without rights, before the rightful owner registers it, then trying to offer the site to the person or brand owner in question at a very high price. Niniek Suparni, 2009, *Cyberspace Problematika dan Antisipasi Pengaturannya*, Sinar Graphic, Jakarta, p. 40.

reputation and is well-known in the community because it is connected to those aspects of the business.

Usually well-known, trustworthy businesses are the ones being targeted. The technique Cybersquatters employ<sup>2</sup> is to frequently utilize a specific identified address to profit from online traffic, for particular objectives, or typically they just sell the domain name to the owner at a hefty cost.<sup>3</sup>

Cybersquatting dispute settlement against this domain name can be resolved by 2 methods. That is resolved through litigation and non-litigation. In Indonesia, the basic legal rules refer to the Republic of Indonesia Law Number 20 (hereinafter called Trademark and Geographical Indication Law 2016). In Singapore, the rules refer to the Singapore Trade Marks Act 1998. The management and registration of domain names in Indonesia is carried out by an institution called the Indonesian Domain Name Manager (PANDI). The domain name management agency in Singapore is the Singapore Network Information Center (SGNIC).

Cases regarding this domain name can be seen in the case of <www.daisyretreat.com> which this website is contested by the founders and managers of the company. This case was resolved at the Denpasar District Court with decision number 56/Pdt.G/2019/PN Dps. Another case is Benny Muliawan. Benny applied for a domain called BMW.id. The domain name comes from Benny's full name, namely Benny Mulia Wan. The first time the use of the BMW.id domain in Indonesia was at doctormerek@bmw.id. then, Benny received a subpoena from Bayerische Motoren Werke Aktiengesellschaft (BMW). The automotive company objected and submitted it to the Domain Name Dispute Settlement Secretariat (PPND) under the Indonesian Internet Domain Name Manager (PANDI). Not accepting the previous decision, Benny is now filing an appeal to the Supreme Court against PANDI.

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<sup>2</sup> Cybersquatters are people who register a domain name or (entitled) company that should use the domain name, with the aim of the perpetrators getting big profits from the actual brand owners.

<sup>3</sup> Saghara Lutfillah Fazari, *Perlindungan Nama Domain Merek Terkenal Terhadap Tindakan Cybersquatting di Internet menurut Hukum Positif Indonesia*, Fakultas Hukum Universitas Brawijaya, Malang, 2014, p. 5

A similar case regarding cybersquatting of this domain name that occurred in Singapore is *TWG Tea Co Pte Ltd v Murjani Manoj Mohan* [2019] SGHC 117, High Court — Suit No 799 of 2017. The plaintiff, TWG Tea Company Pte Ltd (“TWG Tea”) commenced this action against the defendant, Mr Murjani Manoj Mohan (“Manoj”) in relation to a website with the domain name *www.twgtea.com* (“the Domain Name”). Manoj is TWG Tea’s former director, Chairman and Chief Executive Officer (“CEO”). The Domain Name was registered by Manoj in his name, but TWG Tea claimed that he holds it on trust for the company. The plaintiff, 3 Corporate Services Pte Ltd, is suing Grabtaxi Holdings Pte. Ltd. for specific performance in High Court Suit No. 682 of 2018, alleging that the defendant breached a contract to purchase the domain name “grab.co.id” (the Domain Name) from the defendant for US\$250,000.

Apart from cases that were settled in court, there are also several examples of cases in Indonesia and Singapore that were settled out of court. In 2022, PPND handled the case of *PT PASARPOLIS INDONESIA v MERVIN GOVENDER* with Decision Number: Decision-029-0222 on Domain Name <PASARPOLIS.CO.ID>. The Respondent offered to the Petitioner to sell the domain at a price of USD 25,500. There is also the case of *BARRY CALLEBAUT AG Against EBERHARD DURRSCHMID* Decision Number: Judgment-035-1022 Domain Name: BARRY-CALLEBAUT.ID The Respondent has contacted the Applicant as the legal owner of the brand “BARRY CALLEBAUT” who has repeatedly offered to purchase domain names at competitive prices very expensive, at US\$2,000.

Singapore Domain Name Dispute Resolution Service has issued a judgment against Case No. SDRP 01 of 2022 with the parties *Chemical Industries (Far East) Limited. v Childrens Imaginative Labs Pte Ltd*. The disputed domain name is “cil.sg”. The decision of this case is the transfer of the Domain Name to the Rapporteur because it is proven that the respondent has no interest in the domain name. Beside of that, there is Case No. SDRP 02 of 2022 against *SoftBank Group Corp. v Softban Investment Pte Ltd*. The disputed domain name is “softbank.sg”. The Domain Name is identical to the Petitioner's “SOFTBANK” trademark owned by the Petitioner and the Respondent intends that the Domain Name be similar to the Petitioner's trademark as a means to add to consumer confusion.

Indonesia is ranked 51st out of 55 countries in the 2022 US Chamber International IP Index Overall Score percentage and 48th in the trademark category in the tenth edition of the intellectual property index annual report launched by the Global Innovation Policy Center (GIPC) in 2022, an agency of United States Chamber of Commerce. This report is based on 50 indicators from nine main categories, namely patents, copyrights, trademarks, design rights, trade secrets, commercialization of intellectual property assets and market access, law enforcement, system efficiency, and membership and ratification of international treaties.<sup>4</sup> Singapore has been ranked 1<sup>st</sup> highest for the Southeast Asia region in several periods. In the results of the 2022 GIPC report, Singapore was ranked 11th in the percentage of the International IP Index Overall Score and ranked 15<sup>th</sup> in the trademark category. Indonesia's position is far behind in terms of protection of intellectual property rights, especially brands if you look at the achievements of Singapore.<sup>5</sup> Therefore, this research tends to compare the protection of domain names against cybersquatting between Indonesia and Singapore.

## PROBLEM IDENTIFICATION

The problems identification are as follows:

1. How is the settlement of cybersquatting disputes against domain names by courts in Indonesia and Singapore?
2. How is the implementation of the non-litigation system in resolving cybersquatting disputes against domain names in Indonesia and Singapore?

## RESEARCH METHOD

This research uses a comparative perspective of legal provisions in Indonesia and Singapore regarding the protection of domain names from cybersquatting. The laws and regulations that the author chose are laws that provide protection for trademarks and intellectual

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<sup>4</sup> US Chamber of Commerce Global Innovation Policy Center, “*International IP Index 2022 Competing for the Future*”, USA. 2022. p. 39

<sup>5</sup> *Ibid.*, p. 19

property rights on the internet. Some of the laws that the writer will examine are Law Number 20 of 2016 concerning Marks and Geographical Indications, Law Number 11 of 2008 concerning ITE, Indonesia's Internet Domain Name Management Policy (PANDI), the Statute of the Singapore Trade Marks Act 1998 and Singapore Network Information Center (SGNIC).

## DISCUSSION

### 1. The Settlement of Cybersquatting Disputes Against Domain Name by Indonesian and Singaporean Courts

In Indonesia, the protection against cybersquatting practices is regulated under Law Number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). According to Article 26 of the ITE Law, everyone is prohibited from intentionally and unlawfully duplicate, disseminate, change, delete, add, store, insert into a computer system, and/or send information and/or electronic documents that are not in accordance with the interests and/or interfere with the rights of others.<sup>6</sup>

Article 29 of the ITE Law also states that anyone who feels aggrieved due to actions that violate these provisions can file a lawsuit with the District Court. If the court grants the lawsuit, the party who committed the violating action may be subjected to sanctions in the form of fines and/or imprisonment.<sup>7</sup>

Based on the provision, the government provides protection for trademark rights holders to file a defense against their Intellectual Property Rights by suing persons who deliberately take or deprive them of their brand rights if they cause material or immaterial losses to them. The filing of a lawsuit to the court is the main indicator of protection of trademark or domain rights in Indonesia based on applicable laws and regulations.

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<sup>6</sup> See Article 26 Law Number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

<sup>7</sup> *Ibid.*, Article 29

Furthermore, the settlement of domain disputes in Indonesia applies “the first to file principle” which provides more intensive protection for trademark or domain owners who have been registered through the Directorate General of Intellectual Property (DJKI).<sup>8</sup> If at any time a dispute arises over the ownership status of the trademark or domain name, the one who has registered and obtained a trademark registration number will have the confidence to claim and prove the ownership rights of the trademark or domain name in the court.

First-to-file principle provides protection to the registrant of the trademark and domain name, as well as prohibits other parties from registering similar registered marks or domain names.<sup>9</sup> So that the first registrant will be given absolute rights and if disputed in a court, they will be superior toward the opposing party because they have authentic evidence of a lawful trademark or domain name ownership. In addition to the registration aspect, based on Articles 18 – 27 of Law Number 15 of 2001 concerning Trademarks, the dispute settlement over domain names should consider the principle of good faith and differentiating elements to prevent or reduce the occurrence of potential disputes.<sup>10</sup>

In its implementation, the registration of trademark or domain name will be carried out several substantive checks to find out whether the trademark or domain name is worthy and lawful to be registered.<sup>11</sup> One of the most important is differentiation element and secondary meaning, so that the registered item must have uniqueness and distinctiveness toward other similar items in order to make the settlement process become much easier when a dispute occurs.<sup>12</sup>

Meanwhile, in Singapore, the protection against cybersquatting of domain names through the courts is regulated in the Trade Mark Act 1998 to protect the intellectual property rights of domain owners from any losses incurred due to cybersquatting.

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<sup>8</sup> Rendy Alexander “Penerapan Prinsip “First to File” Pada Konsep Pendaftaran Merek di Indonesia” *Semaya kertha Journal*, 2022, p. 2119

<sup>9</sup> *Loc. Cit.*

<sup>10</sup> Ari Wibowo “Penerapan Prinsip Itikad Baik dan Daya Pembeda Dalam Pendaftaran Merek Dagang yang Bersifat Keterangan Barang (Descriptive Trademark) Berdasarkan Undang – Undang Nomor 15 Tahun 2001 Tentang Merek” *Privat law*, 2015, p. 34

<sup>11</sup> *Ibid.*, p. 34

<sup>12</sup> *Ibid.*, p. 33

Under Article 31, the Singaporean government provides an opportunity for victims of cybersquatting to take action through filing a complaint to the Court by explaining some of the circumstances that are alleged to be the infringement of counterfeit trademark and inflicting damages or any loss that the claimant has suffered.<sup>13</sup> After filing a lawsuit, the court will examine the case and if it determines the potential for actual damages, the court will impose statutory damages in amount:

- a. Not exceeding \$100,000 for each type of good or service in relation of counterfeit trade mark has been used.
- b. Not exceeding in aggregate \$1 million, unless the actual loss prove the infringement cause damages exceeds \$1 million.<sup>14</sup>

In its implementation, the judges will decide domain cybersquatting cases not only based on the Trade Mark Act 1998, but will also look at the provisions in the UDPR (Uniform Domain Name Dispute Resolution Policy) and INDRP (.IN Domain Name Dispute Resolution Policy).<sup>15</sup>

In addition to the Trade Mark Act 1998, litigation dispute resolution also refers to the provisions of the SDRP (Singapore Domain Name Resolution Policy) which governs the management and resolution of domain dispute as a whole. The SDRP is a guide for domain dispute resolution that must also be applied during court proceedings to determine cybersquatting criteria and domain dispute management mechanism in more detail.

There are several things that must be considered further when choosing dispute resolution through court proceedings, including the selection of the competent court determined by the place where the torts were committed and where would the order of the court could be enforced.<sup>16</sup>

In general, the dispute resolution through court proceedings is much easier to resolve if the dispute occurs in the same jurisdiction. Meanwhile, if the dispute occurs between parties in

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<sup>13</sup> See Section 31(5) Trade Marks Act 1998

<sup>14</sup> *Ibid.*, Section 35(5)

<sup>15</sup> S&G “Domain Name Dispute” 2021 <<https://singhania.in/practice-areas/intellectual-property-rights/domain-name-disputes>> [Accessed on 30/03/2023]

<sup>16</sup> Hsiao Chung Phang “Resolving Domain Name Disputes – a Singapore Perspective” *Singapore Academy of Law Journal*, 2002, pp. 94 – 95

different jurisdictions, then it may be prudent to commence court proceedings.<sup>17</sup> Therefore, it is rare to conduct a dispute settlement through the courts when the parties live in different jurisdictions.

According to section 27 of the Trade Marks Act (Cap 332, 1999 Ed), a lawsuit to the court can be filed if a person infringes a registered domain name without the consent of the proprietor of the domain name.<sup>18</sup> There are some domain infringement conditions which is well known to be submitted to court proceedings in Singapore, as follows:

- I. The use of domain name without the consent of the proprietor;
- II. The use of domain name in relation to those goods or services indicates a connection to the good or services of the proprietor;
- III. There exists a likelihood of public confusion because of such use;
- IV. There intentions to cause damages toward the proprietor from the use of the domain name.<sup>19</sup>

Based on above description, it can be further understood that in the settlement of domain name disputes in Singapore, the parties are entitled to file a civil action against the court must regard to several provisions, including the jurisdiction of the competent court and the kinds of domain infringement as specified in the Trade Marks Act 1998.

## **2. The Implementation Of The Non-Litigation System Of Cybersquatting Disputes Against Domain Name In Indonesia And Singapore**

In Indonesia, the resolution of domain disputes can also be resolved through non-litigation forums, it is affirmed under article 18 of the ITE Law which gives authority for parties involved in domain name disputes to exercise legal choices and ask for a dispute resolution forum as a result of electronic transaction violations that occurred. The settlement forum in question can be in the form of courts, arbitrations or other alternative dispute resolution institutions.<sup>20</sup>

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<sup>17</sup> *Ibid.*, p. 95

<sup>18</sup> *Ibid.*, p. 99

<sup>19</sup> *Ibid.*, p. 99

<sup>20</sup> Ni Nyoman Adi Astiti and Samsul Rizal "Penyelesaian Sengketa Nama Domain Internet Terkait Hak Merek di Indonesia", *Tambun Bungai Law Journal*, 2018, p. 50

Resolution of domain disputes must follow the rules under the UDRP (Uniform Domain Name Dispute Resolution Policy), UDRP is a legal instrument that further regulates the basis for filing a lawsuit between the complainant and respondent who are in dispute and ask for dispute resolution.<sup>21</sup> Therefore, it can be understood that UDRP is a general rule that further regulates the domain name dispute resolution mechanism starting from the registration stage, filing a lawsuit and containing the results of the final decision.

The UDRP is also generally applicable and adopted by various countries in the world, it aims to make it easier for the parties who are in dispute to obtain a solution even though the parties come from different jurisdictions. UDRP becomes a reference or guiding rule for all domain name dispute resolution forums to identify domain infringement, therefore it creates a common and uniform resolution of domain disputes mechanism throughout the world.

In response to domain name disputes, Indonesia has established a non-profit organization called PANDI (Indonesian Internet Domain Name Manager) which officially became a registry domain.id in 2006.<sup>22</sup> As for carrying out to resolve domain name disputes and forming a Domain Name Dispute Resolution (PPND) policy that adopts the provisions of the UDRP.<sup>23</sup> So that if there is a domain dispute case, the parties can submit a request for domain name dispute settlement through the dispute resolution forum toward PANDI, then PANDI will form a PPND Panel to lead and facilitate the dispute resolution forum.

In addition to the ITE Law and PPND policy, non-litigation settlement of domain name disputes also refers to Law Number 30 of 1999 concerning Arbitration and Dispute Resolution which guides the mechanism or procedure for alternative dispute resolution in Indonesia in general. In deciding cases regarding domain infringement in Indonesia, the Panel must also comply with the provisions of Law Number 20 of 2016 concerning Marks and Geographical Indications which regulates all rules regarding marks including the registration process, protection and also the provisions for violations to assist the implementation of dispute resolution more effectively.

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<sup>21</sup> *Ibid.*, p. 53

<sup>22</sup> Dannys Siburian “Penyelesaian Sengketa Nama Domain Merek Terkenal di Internet dari Tindakan Cybersquatting” *Badamai Law Journal*, 2018, p. 339

<sup>23</sup> *Ibid.*, p. 341

Meanwhile, the settlement of domain disputes in Singapore through non-litigation forum is managed by SGNIC (Singapore Network Information Centre) Private Limited. SGNIC has the authority to manage all issues of first-level (.sg), second-level (.com, .org, .net, .edu, and other lower-level domains) and other lower-level domains.<sup>24</sup>

In resolving domain name disputes, Singapore implements the policies and provisions of the Singapore Domain Name Dispute Resolution Policy (SDRP) which is an adoption of the UDRP that is applied universally. According to SDRP, the parties have the right to choose the alternative dispute resolution forum between mediation or having the appointed administrative proceeding that will be implemented by SGNIC.<sup>25</sup>

In general, the settlement of domain name through alternative dispute resolution forums is more desirable by parties in Singapore because it has many advantages including a mediation or administrative proceeding is a quicker and more cost-effective option to resolve the domain dispute rather than court.<sup>26</sup>

In its implementation, the settlement of domain name disputes follows the provisions of the WIPO Final Report and SDPR rules which emphasize the fulfillment of three criteria to identify the cybersquatting, including:

1. The domain name is identical or confusingly similar to a trademark or service mark to registered or well-known domain;
2. Has no rights or legitimate interests in respect of the domain name;
3. The domain name has been registered and is being used in bad faith.<sup>27</sup>

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<sup>24</sup> Helni Mutiarsih Jumhur “Perbandingan Bentuk Kelembagaan Pengelola Nama Domain di Indonesia dengan Lembaga Nama Domain di Beberapa Negara” *Padjajaran Law Journal*, 2014, p. 487

<sup>25</sup> Singapore Mediation Centre “Singapore Domain Name Dispute Resolution Policy Service” <<https://www.mediation.com.sg/our-services/overview-of-services/singapore-domain-name-dispute-resolution-policy-service/>> [Accessed on 04/04/2023]

<sup>26</sup> *Ibid.*

<sup>27</sup> 3 Corporate Services Pte Ltd v Grabtaxi Holdings Pte Ltd, *Op Cit.*, p. 57

The three criterias above are aspects that must be considered by the parties and also the panel in formulating the problem of cybersquatting that occurs. If any of the three cybersquatting criteria above are met, the party can file a lawsuit to the SGNIC.

## CONCLUSION

The settlement of cybersquatting disputes against domain name in Indonesia is regulated under articles 26 and 29 of the ITE Law related to the prohibition of cybersquatting and providing opportunities for the parties to file a lawsuit to the Court. The litigation settlement of domain name dispute in Indonesia by court applies the principle of *first come first serve* which emphasizes the registration aspect. Meanwhile, a litigation dispute resolution against domain cybersquatting in Singapore is regulated under Section 31 of the Trade Mark Act 1998 and resolved through SGHC (Singaporean High Court) following UDRP policy and rules of UDRP which further regulate the dispute resolution mechanism of domain infringement.

The settlement of domain cybersquatting through non-litigation in Indonesia is regulated under Article 18 of the ITE Law and Law Number 30 of 1999 concerning Arbitration which provides an opportunity for parties to take alternative dispute resolution steps through arbitration or other forums. The institution that has the right to handle domain violation cases is PANDI, the parties will submit a request to PANDI then PANDI will form a PPND forum to resolve disputes outside the court. Meanwhile, domain dispute resolution is managed by the Singaporean Network Information Centre (SGNIC), SGNIC will provide a domain name dispute resolution forum that complies with international standards and follows the provisions of the SDRP which is the result of UDRP adoption as a reference and guideline for domain name dispute resolution in Singapore.

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### **Thesis**

Saghara Lutfillah Fazari, *Perlindungan Nama Domain Merek Terkenal Terhadap Tindakan Cybersquatting di Internet menurut Hukum Positif Indonesia*, Malang: Universitas Brawijaya, 2014.