

Legal Protection of Trademark Owners Against Domain Abuse: A Comparison Between the United States and Indonesia

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ABSTRACT

The development of information technology and electronic commerce has made domain names more than just internet addresses; they are now part of a business's identity and strategy, closely related to its brand. In practice, there have been instances of domain names that are identical or similar to registered trademarks being registered and used in bad faith (cybersquatting). This practice has the potential to harm trademark owners as it can cause consumer confusion and exploit the reputation of established brands. Legal issues arise because the Indonesian legal system does not yet have regulations that explicitly classify domain name abuse as a form of trademark infringement. This study aims to analyze the urgency of domain name regulations in trademark protection, examine the forms of legal protection that trademark owners can pursue against domain name abuse, and compare these regulations with those in the United States. The method used is normative legal research with a legislative, conceptual, and comparative law approach. The legal materials analyzed include the Trademark and Geographical Indications Law, the Electronic Information and Transactions Law, and the Anti-Cybersquatting Consumer Protection Act (ACPA) in the United States. Article 83 of the Trademark and Geographical Indications Act does provide a basis for compensation claims for trademark infringement, but there is a normative gap because it does not explicitly regulate the misuse of domain names as part of trademark infringement, indicating that there is a normative gap in Article 83 of the Trademark and Geographical Indications Act because it does not explicitly regulate the misuse of domain names as part of trademark infringement. As a result, dispute resolution still depends on the interpretation of judges and general provisions regarding trademark infringement or unlawful acts. Legal protection in Indonesia is carried out in two forms, namely preventive protection through trademark registration and objection and cancellation mechanisms, and repressive protection through civil lawsuits based on Article 83 of the Trademark and Geographical Indications Law and the possibility of criminal charges. However, there is a normative gap in Article 83 because it does not explicitly regulate the misuse of domain names as a form of trademark infringement, so dispute resolution still depends on legal interpretation. In contrast, the United States clearly regulates the registration and use of domain names in bad faith as trademark infringement through the ACPA. Therefore, adjustments and strengthening of regulations in Indonesian trademark law are needed to provide greater certainty and more effective legal protection for trademark owners in the digital age.

Keywords: domain, trademark, legal protection

INTRODUCTION

The development of information and communication technology has brought about major changes in the global trading system. Trading activities that were previously carried out conventionally have now shifted to the digital realm. Brands are no longer only used as product identities in physical markets, but also as digital identities through the use of domain names. In the modern trading system, business identity has become very important. One form of this identity is embodied in the form of a brand. Brands serve as distinguishing marks that differentiate goods and/or services produced or traded by a person or legal entity from goods and/or services belonging to other parties. Brands not only serve as distinguishing marks, but also as a guarantee of quality, a means of promotion, and a determinant of a business's reputation. Therefore, brands have high economic value and are an important asset in business activities.

As internet-based commerce grows, the use of domain names has become an integral part of business activities. Domain names initially served only as addresses on the internet to make it easier for users to access websites. However, in practice, domain names have evolved into the digital identity of a business. Many businesses use domain names that are the same or similar to their trademarks to make them more recognizable to consumers. This shows that domain names are closely related to trademarks.

Problems arise when domain names are registered by parties who do not have rights to certain trademarks. In practice, there are parties who deliberately register domain names that are identical or substantially similar to well-known trademarks owned by others. This is usually done for profit, either by reselling the domain name to the legitimate trademark owner at a high price or by exploiting the reputation of the trademark to attract consumers. This practice is known as cybersquatting. The phenomenon of cybersquatting is detrimental to trademark owners because it can cause consumer confusion and damage the reputation of the business.

Problems arise when domain names are registered by parties who do not have rights to certain trademarks. In practice, there are parties who deliberately register domain names that are identical or substantially similar to well-known trademarks owned by others. This is usually done for profit, either by reselling the domain name to the legitimate trademark owner at a high price or by exploiting the reputation of the trademark to attract consumers. This practice is known as cybersquatting. The phenomenon of cybersquatting is detrimental to trademark owners because it can cause consumer confusion and damage the reputation of the business.

The problem arises because the Trademark and Geographical Indications Law does not explicitly regulate domain names as a form of trademark use in commerce. Article 83 of the Trademark Law only regulates claims for damages for trademark infringement of goods and services, without explicitly stating that the use of trademarks in domain names is included in the scope of infringement in the digital space. This regulatory gap creates uncertainty regarding the legal basis that trademark owners can use when dealing with cybersquatting practices. In addition, there is potential for overlapping regulations between the ITE Law and the Trademark Law. The ITE Law regulates the use of domain names in general and emphasizes the principle of good faith, while the Trademark Law regulates the protection of rights to registered trademarks. However, the two laws are not systematically integrated in regulating the misuse of domain names related to trademarks. This condition causes legal uncertainty in dispute resolution practices.

Unlike Indonesia, the United States has specific regulations under the Anti-Cybersquatting Consumer Protection Act (ACPA) as part of the Lanham Act. The United States was chosen as a comparative country because it was one of the first nations to address issues of domain name abuse related to trademarks in the development of digital commerce. Regulations under the Anti-Cybersquatting Consumer Protection Act (ACPA) provide a legal framework that specifically links the registration and use of domain names to trademark protection. Although the U.S. legal system is rooted in the common law tradition, the principles established in the ACPA are fundamentally universal, namely prohibiting the registration of domain names in bad faith with the intent to profit from another party's trademark reputation. The ACPA explicitly prohibits the registration of domains in bad faith that are similar to registered trademarks. It also provides clear parameters for assessing the presence of bad faith and offers more specific litigation mechanisms. The clarity of these regulations provides stronger legal certainty for trademark owners in confronting cybersquatting practices, making them a conceptual reference for developing regulations regarding domain name misuse in Indonesia.

A comparison between the legal systems of Indonesia and the United States shows differences in their approaches to regulating domain name abuse. Indonesia still relies on interpretations of general provisions in the Trademark Law and the Electronic Information and Transactions Law, while the United States has specific and comprehensive regulations. It is important to analyze these differences to determine the extent to which the Indonesian legal system is capable of providing effective legal protection to trademark owners in the digital age. Based on this background, this study examines three main issues, namely the urgency of domain name regulation in trademark protection, the form of legal protection for trademark owners against domain abuse, and the future direction of domain name regulation in Indonesia.

The Urgency of Domain Name Regulation in Trademark

The development of information technology has driven fundamental changes in the trading system, particularly through the use of the internet as a medium for transactions and promotion. In electronic trading practices, domain names have become an important element because they serve as a digital identity that connects businesses with consumers. Domain names often use or resemble trademarks owned by businesses so that they are easily recognized and accessed by the public. Thus, in practice, domain names are closely related to trademarks as intellectual property rights.

Trademarks are protected under Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Such protection is granted to registered trademark owners to ensure legal certainty regarding the use of trademarks in the trade of goods and/or services. The exclusive rights attached to trademark owners give them the authority to use the trademark themselves or to grant permission to other parties through licensing. Domain name rights are obtained through a registration mechanism that adheres to the first come, first served principle, whereby whoever registers a domain name first will obtain the right to use that name. Basically, the domain name registration procedure is designed to prioritize convenience and speed. The weakness of the principle used in domain name registration lies in the absence of an obligation for the registrar to conduct a substantive examination of the registrant's good faith, namely an examination that assesses whether the registration was made in good faith and does not have the potential to infringe on the rights of other parties, such as similarity to a registered trademark or well-known trademark. In domain registration practice, checks are only administrative in nature, limited to ensuring the availability of the domain name, the completeness of documents, and payment of fees, without assessing whether the registrant has legitimate rights or interests in the name.⁶⁰ The registration procedure without any substantive examination of the domain above distinguishes domain name registration from trademark registration.

Indonesia follows the “first-to-file” principle, or the constitutive principle, whereby ownership of a trademark is granted to the party that registers it first with the Directorate General of Intellectual Property (DJKI), as stipulated in Article 3 of the Law on Trademarks and Geographical Indications. Trademark rights may also be revoked if the trademark is not used or if the registration infringes upon another party's trademark. In the trademark registration procedure, trademark rights arise upon the issuance of a trademark certificate by the competent authority. In the domain name registration procedure, the right to use arises once the domain name is registered and active after the administrative registration process is completed. A domain name registration system that focuses solely on the technical availability of characters without substantive examination opens up a wide opportunity for others to continue committing infringements. Infringements related to domains can be resolved through the authority responsible for resolving all domain-related issues, namely the Indonesian Internet Domain Name Administrator (PANDI). In practice, the misuse of domain names often makes it difficult for registered trademark owners to obtain prompt and effective legal protection. Trademark owners frequently face situations where a domain name resembling their trademark has already been registered by another party, while the legal grounds for seeking its cancellation remain limited. Intellectual property legal practitioners also note that the absence of regulations explicitly classifying the use of a trademark in a domain name as trademark infringement makes the dispute resolution process more complex, as it must rely on the interpretation of general provisions in the laws and regulations.

From the perspective of domain name administration, PANDI essentially holds authority of an administrative nature in managing the domain name registration system and facilitating dispute resolution mechanisms related to the use of domain names. This authority primarily pertains to the technical regulation of registration, the management of the domain database, and the provision of dispute resolution procedures through administrative mechanisms. However, PANDI's authority does not directly encompass substantive assessments regarding trademark infringement, as such authority fundamentally falls within the realm of intellectual property law enforcement, a domain under the jurisdiction of other agencies and the judiciary. Consequently, in cases where a registered domain name bears a resemblance to a registered trademark or is suspected of being used in bad faith, the dispute resolution mechanisms available through the domain administrator often fail to provide a comprehensive resolution to conflicts related to trademark rights. This situation indicates that regulations governing the relationship between domain names and trademark protection still require strengthening through a

clearer regulatory framework, so that coordination between domain name registrars and the authorities responsible for intellectual property protection can function more effectively.

As time goes by, all activities are carried out through the internet. In the development of the digital economy, domain names have great strategic value and can affect the sustainability of a business. Domain names are no longer just technical addresses on the internet but have become business identities, promotional tools, and the main gateway for consumers to access a company's products or services and business practices carried out through digital media. The function of a brand as a differentiator is not only seen on the label of goods or services, but is also reflected in the use of domain names as a business identity on the internet and as the main means for consumers to find and access the products or services offered. In this case, the use of a domain name that is similar to a registered trademark is directly related to the use of the trademark itself, thus giving rise to a problem, particularly in relation to the trademark itself, namely when a domain name registered by a person is similar in essence or in its entirety to a registered trademark owned by another party. In practice, registering domain names like this is often done for specific purposes, such as to make money by reselling the domain or to take advantage of a well-known brand's reputation. These actions are basically directly related to the legal interests of the brand owner. Regulations regarding domain names are found in Article 23 of the Electronic Information and Transactions Law, which states that domain names must be used in good faith and must not violate the rights of others. The Trademark and Geographical Indications Law regulates the rights of trademark owners to file lawsuits against trademark infringements as stated in Article 83. This article gives registered trademark owners the right to sue parties who, without authorization, use trademarks that are essentially or entirely similar for similar goods and/or services. However, these provisions do not explicitly regulate the use of trademarks in the form of domain names.

Based on the above description, there is a gap in Article 83 of the Trademark and Geographical Indications Law, whereby violations in the digital space, namely the use and registration of domain names that resemble trademarks, are not explicitly regulated therein, i.e., it does not regulate domains as objects of protection. However, in practice, domain names are often used as business identities and marketing tools on the internet. Therefore, the use of domain names that contain registered trademarks belonging to other parties can be considered a trademark infringement as long as the domain is used for commercial purposes and is related to similar goods or services. The application of Article 83 of the Trademark and Geographical Indications Law to domain name disputes has limitations. This article requires the use of a trademark, whereas in many cases of domain registration, particularly in the practice of cybersquatting, domains are only registered and stored without being actually used. In this case, the registration of a domain name that is similar to a trademark can automatically be classified as a trademark infringement. Such qualifications must be limited to the registration and control of domain names carried out in bad faith, for commercial purposes, and with the potential to cause consumer confusion or harm to registered trademark owners, so that even though it has the potential to harm trademark owners, such acts do not meet the qualifications for trademark infringement under applicable regulations. The registration of a domain name that is substantially similar to a registered trademark does not always allow the trademark owner to file a lawsuit under Article 83 of the Trademark and Geographical Indications Law if there is no actual use of the trademark. As a result, trademark owners are at a disadvantage because they do not obtain effective legal protection, not because there is no infringement, but because the applicable legal provisions are not yet able to cover the forms of trademark infringement that occur in the digital space.

In dispute resolution practice in Indonesia, conflicts related to the use of business identities on the internet are often resolved through the interpretation of general provisions regarding trademark infringement or unlawful acts. This situation indicates that judges must still engage in legal construction to determine whether the use of a trademark in the form of a domain name can be categorized as trademark infringement. The absence of specific regulations governing the relationship between domain names and trademark infringement means that dispute resolution still relies on the interpretation of existing norms. This suggests that the current legal framework is not yet fully capable of addressing the evolving practices of digital commerce, which increasingly rely on business identities in the form of domain names.

Normatively, domain names are not mentioned as a form of trademark use in commerce, even though in digital commerce practices, the use of domain names that resemble trademarks can have the same impact as the direct use of trademarks on products or services. As a result, when domain name abuse occurs, trademark owners must

use legal interpretation to classify such actions as trademark infringement. This situation highlights the lack of synchronization between the ITE Law and the Trademark Law. The Trademark and Geographical Indications Law provides a civil lawsuit mechanism through Article 83, but does not explicitly include domain names as objects of infringement. This overlap in regulations leads to a lack of clarity regarding the most appropriate legal basis to use in disputes over domain name misuse.

The urgency of regulating domain names in trademark protection becomes increasingly apparent when linked to the principle of legal certainty. Legal certainty requires clear, firm rules that do not give rise to multiple interpretations. In the context of domain name abuse, the absence of explicit provisions in the Trademark and Geographical Indications Law has the potential to cause differences in interpretation in judicial practice. Judges must construct legal arguments to determine whether the registration of a domain name that resembles a trademark can be categorized as trademark infringement. In addition, in digital commerce, domain names are often the primary means of building a business's image and reputation. Businesses that have legally registered their trademarks should also obtain protection for the digital identity directly related to those trademarks. If the law does not provide clear regulations, trademark protection will not be optimal, especially in the context of internet-based commerce.

The use of domain names that resemble certain trademarks can cause confusion among the public. Consumers may assume that a website is the official website of the legitimate trademark owner, when in fact this is not the case. In such circumstances, it is not only the trademark owner who suffers, but also consumers who use the service. Thus, it can be said that the need for clearer regulations regarding domain names in trademark protection is not solely for the benefit of trademark owners, but also to maintain legal order and certainty in the digital trading system. The absence of norms in Article 83 of the Trademark Law and the lack of integration of regulations with Article 23 of the ITE Law indicate that existing regulations are not yet fully capable of responding to developments in practice.

Unlike in the United States, through the Anti-Cybersquatting Consumer Protection Act (ACPA), the misuse of domain names that are identical or similar to trademarks and carried out in bad faith is specifically regulated as a form of legal violation. The ACPA explicitly provides a legal basis for trademark owners to sue parties who register or use domain names with the intention of obtaining unlawful profits from the reputation of the trademark. The existence of these specific regulations indicates that in the United States, the relationship between domain names and trademark infringement has been explicitly regulated. The ACPA not only emphasizes the element of bad faith intent to profit, but also provides a clearer lawsuit mechanism, including the possibility of a lawsuit against the domain name itself (in rem action) if the identity of the perpetrator cannot be found. This provides greater legal certainty for trademark owners in protecting their rights. In addition, if the holder or registrant of the domain name is located in the United States, the dispute can be resolved under the ACPA. In such circumstances, trademark owners have a stronger legal basis to demand the cancellation or transfer of domain names that were registered in bad faith. This regulation shows that the United States has anticipated the potential for domain name abuse more comprehensively than the Indonesian legal system.

Based on the above description, since Indonesia does not have specific regulations such as the ACPA, the resolution of disputes over domain name abuse must still be based on the interpretation of Article 83 of the Trademark Law or the principle of good faith in Article 23 of the ITE Law. The absence of norms that explicitly mention domain names as objects of trademark infringement creates a legal vacuum. Judges in court practice must construct legal arguments to determine whether the registration of a domain name that resembles a trademark can be categorized as trademark infringement. This comparison shows that the urgency of regulating domain names in trademark protection in Indonesia lies in the absence of specific and integrated legal basis. Unlike the United States, which has provided specific regulations through the ACPA, Indonesia still relies on general provisions that do not explicitly regulate the relationship between domain names and trademark infringement.

Legal Protection for Trademark Owners Against Domain

Legal protection of trademark rights is an effort regulated by law with the aim of preventing violations by unauthorized parties acting in bad faith in the business activities of legitimate trademark owners. A trademark

will receive protection if it is registered with the Directorate General of Intellectual Property Rights, as stipulated in Article 1 paragraph 5 of the Trademark and Geographical Indications Law, which states that registered trademark owners will receive the exclusive right to use the trademark themselves or to grant permission to other parties to use it. The purpose of granting exclusive rights to the trademark is to facilitate the provision of legal protection guarantees to trademark owners.

Legal protection for trademark owners is inseparable from the specific nature of trademark rights. This special right is a monopoly, meaning that only the trademark owner can exercise it. If the trademark owner does not grant permission to others to use the trademark, then no one else may use it. If someone uses a trademark without the permission of the trademark owner, it constitutes a violation of the law and may be subject to sanctions. The protection afforded to trademark owners also has a condition, namely that the trademark owner must have good faith. In practice, the good faith of the trademark owner can only be tested and proven concretely if there is a trademark cancellation lawsuit. That is, since a trademark is declared accepted and registered, the applicant is deemed to have good faith that the trademark they registered is their own creation, has distinctive power, and does not violate the rights of other parties. The stipulation of good faith as one of the requirements for trademark registration aims to provide legal certainty regarding who is legally entitled to a trademark. Through a constitutive registration system, the state is expected to avoid mistakes in granting legal protection and exclusive trademark rights to unauthorized parties. A bona fide trademark owner is one who acts honestly, as demonstrated by the absence of any intention or intent to commit fraud against another party's trademark, especially trademarks that are well-known and reputable in society.

Legal protection provided to trademark owners against infringements committed by parties acting in bad faith and irresponsibly, causing harm to consumers or trademark owners, namely the right to file a lawsuit against individuals or legal entities that have unlawfully used the trademark for goods or services that are substantially or wholly similar to well-known trademarks for similar goods or services. The form of protection referred to in relation to trademark infringement, namely repressive legal protection, is a form of protection that is applied after a trademark infringement has occurred, through the imposition of legal sanctions on parties who commit infringements aimed at any person who unlawfully uses or infringes a registered trademark in accordance with the provisions of Article 83(1) of the Trademark and Geographical Indications Law. With this legal protection, trademark owners obtain their rights in the form of legal protection against trademark infringements they experience, either through filing a lawsuit for damages or requesting the cessation of all acts related to the unauthorized use of the trademark.

Legal protection for trademarks against domain name abuse is essentially a manifestation of the exclusive rights attached to registered trademarks as stipulated in the Trademark and Geographical Indications Law. These exclusive rights give trademark owners the authority to use their trademarks themselves and prohibit other parties from using the same trademark or one that is substantially similar without permission, including the use of trademarks in the digital space such as domain names. Based on this description, this form of legal protection includes repressive protection, in the form of claims for damages and/or requests for the cessation of all acts related to the unlawful use of trademarks. In the case of domain name abuse, the cessation of such acts can be interpreted as the cessation of the use of domain names that resemble registered trademarks. The form of legal protection in the form of compensation is also important in cases of misuse of domain names that are similar in essence or in their entirety to registered trademarks. Such misuse not only causes quantifiable economic losses, but also damages the reputation and image of the brand owner in the eyes of consumers. The use of a brand as a domain name without rights may create the impression of an association or connection with the legitimate brand owner, so that any activity carried out through that domain has the potential to influence consumer perceptions of the brand in question. Brand reputation can be threatened by domain misuse of a brand, resulting in tangible losses for the brand owner.

Based on the above description, filing a lawsuit for damages is an appropriate form of legal protection against the misuse of domain names that resemble registered trademarks. Damages are not only intended to compensate for losses that have occurred, but also as an effort to recover reputational damage and as a form of legal accountability for parties who commit misuse. Legal protection against domain name abuse is also reinforced through the provisions of Regulation of the Minister of Communication and Information Technology Number 23 of 2013 concerning Domain Name Administrators. This regulation specifically regulates the mechanism for

resolving domain name disputes for parties who have suffered losses due to the unauthorized use of domain names. Parties who suffer losses due to the unauthorized use of domain names are given the right to file a lawsuit to cancel the domain name with the domain name registry and registrar through out-of-court settlement (non-litigation).

The resolution of domain abuse through the above registry is an attempt at resolution through mediation, whereby the registry also plays a role in facilitating the resolution of domain name disputes through a mediation mechanism. In this process, mediation may involve the Indonesian Domain Name Forum as a party that assists the disputing parties in finding a solution through deliberation. The mediation mechanism provides an opportunity for the parties to convey their respective interests and reach an agreement without having to immediately resort to court proceedings. However, if resolution through mediation is unsuccessful, the aggrieved party still has the right to resolve the dispute through the courts.

Legal protection of trademarks in relation to domain name abuse is essentially not only repressive, i.e., protection provided after a violation has occurred, but also preventive. This preventive protection is realized, among other things, through a domain name registration system that requires good faith, supervision by the domain registry, and awareness on the part of trademark owners to register their trademarks as domain names after the trademarks have been registered with the Directorate General of Intellectual Property Rights. With preventive protection in place, the potential for misuse of domain names that resemble registered trademarks can be minimized, thereby providing legal certainty for trademark owners while protecting the interests of consumers. Prevention of domain name misuse can also be achieved through the active role of domain name administrators in conducting administrative checks on domain name registrations. Although in principle the domain name registration system adheres to the first come, first served principle and is carried out automatically, domain name administrators still have the authority to ensure that the domain name registration and usage process does not conflict with applicable legal provisions and the principle of good faith. The parties authorized to conduct administrative checks in domain name registration are the domain name registry and the domain name registrar, in accordance with their respective authorities.

In Indonesia, this authority is exercised by the Indonesian Domain Name Administrator (PANDI) as the registry for Indonesia's top-level domain (.id), as well as accredited registrars that serve the public by registering domain names. Form of Implementation Domain name administrators have the right to conduct administrative verification of registrant data, including clarity of identity, compliance with registration requirements, and compliance with domain name usage policies and conditions. In addition, domain name administrators can also conduct preliminary assessments of indications of bad faith registration, for example, if the proposed domain name is similar to a well-known trademark or a registered trademark belonging to another party. This administrative check is not intended as a substantive examination as is done in trademark registration, but rather as an initial control mechanism to minimize the potential for domain name abuse. With administrative checks by registries and registrars, domain name registrations that clearly violate registration policies or infringe on the rights of others can be prevented at an early stage, before the domain name is actively used and causes greater harm. Thus, the role of domain name administrators through administrative checks is part of an institutional prevention system that complements preventive legal protection for trademark owners. This authority demonstrates that efforts to prevent domain name abuse are not only the responsibility of trademark owners, but also involve the active role of domain name administrators in maintaining legal order and legal certainty in the digital space.

Future regulations on domain names in Indonesia

Future regulations on domain names in Indonesia can be implemented by drafting rules that clearly link the use of domain names to the protection of registered trademarks, which can be realized through legal provisions that explicitly regulate the relationship between domain name registration and registered trademark protection. The strict regulations referred to in the above description must state that the use of domain names that are essentially similar to registered trademarks, if done without rights and not based on good faith, constitutes a form of domain name abuse that can have legal consequences. To date, the Trademark and Geographical Indications Law has not directly regulated the use of trademarks in the form of domain names, so the protection afforded to trademark

owners has not fully covered business practices in the digital space. Therefore, regulatory updates need to focus on the Trademark and Geographical Indications Law as the primary basis for trademark protection.

The provisions of Article 83 of the Trademark and Geographical Indications Law should not be interpreted narrowly as only trademark infringement that occurs through the direct use of a trademark on goods or services, but should also include the use of a trademark as a domain name if it is done without rights, for business purposes, and has the potential to harm the registered trademark owner. In the practice of the digital economy, domain names have a strategic function as a business identity and promotional tool that is substantially equivalent to the use of trademarks in conventional trade activities. In Article 83 of the Trademark and Geographical Indications Law, the scope needs to be expanded, particularly in relation to the object of infringement or the object being protected, so that it is not limited to the direct use of trademarks on goods and/or services, but also covers the use of trademarks as domain names. This expansion is important because domain names function as identities and means of business activities in the digital world, so their misuse can cause losses to registered trademark owners. Thus, trademark owners can obtain early legal protection against the unauthorized use of trademarks as domain names, while also preventing domain name abuse or cybersquatting.

Legal protection for trademark owners against domain abuse has essentially been prevented through the provisions of Article 23 of the ITE Law, which stipulates that domain names must be used in good faith and may not infringe on the rights of others, including intellectual property rights. This provision shows that the ITE Law recognizes domain names as a means that can give rise to intellectual property rights violations in the digital space. However, this recognition is not followed by corresponding regulations in the Trademark and Geographical Indications Law, which does not regulate domain names at all, either as a form of trademark use or as an object that can give rise to trademark infringement. Optimal legal protection for trademark owners can be achieved through synchronization, particularly regarding the use of domain names that have the potential to infringe on registered trademarks, between the ITE Law and the Trademark and Geographical Indications Law. Such synchronization aims not only to avoid overlapping regulations between the Trademark and Geographical Indications Law and the ITE Law, but also to ensure that trademark protection in the digital space can be comprehensive and complementary.

Based on the above description, with complementary or harmonious regulations, any form of domain name misuse related to trademarks can be clearly assessed as an act that infringes on trademark rights. The ITE Law regulates the use of domain names in cyberspace, while the Trademark and Geographical Indications Law serves as the main basis for assessing violations of the exclusive rights of trademark owners. The integration of these two regulations enables more effective and targeted law enforcement. The synchronization of these two regulations also provides legal certainty for trademark owners, as they are no longer in a position of waiting for actual trademark use or the occurrence of greater losses in order to obtain legal protection. With clear regulations, trademark owners can take legal action from the outset if there is a registration or control of a domain name that resembles their trademark and is done without rights.

The synchronization between the Trademark and Geographical Indications Law and the ITE Law also plays a role in protecting consumers. The use of domain names that resemble registered trademarks has the potential to cause misperceptions about the origin of the goods or services offered. With harmonized regulations, consumers can be certain that the domain names they access truly represent legitimate businesses, thereby maintaining consumer confidence in digital commerce.

The problem of domain name abuse against trademarks essentially stems from the lack of regulations that explicitly link the use of domain names to trademark infringement. The provisions in the Trademark and Geographical Indications Law still limit trademark protection to the use of goods and services as classified in the registration system. Meanwhile, domain names are positioned as part of the information technology system and are not explicitly included in the scope of trademark protection. In the early stages of internet development, the United States also faced rampant abuse of well-known trademarks for profit. However, the fundamental difference lies in the legal response. The United States did not rely solely on conventional trademark law, but went on to establish specific regulations aimed at dealing with domain name abuse more effectively. Through the provisions of the Anti-Cybersquatting Consumer Protection Act, the use of domain names that resemble or imitate

registered trademarks can be classified as trademark infringement, even if the domain name is not used directly for commercial activities.

The principles contained in the Anti-Cybersquatting Consumer Protection Act (ACPA) can be applied in the provisions of the Trademark and Geographical Indications Law, given that the main source of the problem of domain name abuse against trademarks lies in the limited scope of trademark protection as regulated in the law. As long as trademark protection remains focused on the use of trademarks in goods and services as classified in the registration system, the use of trademarks outside this scope, including in the form of domain names, does not receive adequate protection. As a result, when there is misuse of domain names that resemble or imitate registered trademarks, trademark owners do not have a direct and clear legal basis to seek protection for trademark infringement. The application of the principles of the Anti-Cybersquatting Consumer Protection Act to the Trademark and Geographical Indications Law is also considered more effective in terms of law enforcement. Trademark owners will have a clear and direct legal basis for filing lawsuits against the misuse of domain names as trademark infringement. Thus, dispute resolution will no longer depend on the interpretation of legal provisions outside the trademark regime, but can be resolved within a systematic and consistent legal framework. This also provides legal certainty for the disputing parties. The effectiveness of this regulation will be optimized if the principles of the Anti-Cybersquatting Consumer Protection Act are integrated with the domain name management mechanism at the national level. Although the technical management of domain names remains outside the scope of the Trademark and Geographical Indications Law, the existence of strict norms in this law will strengthen the position of trademark owners in any dispute resolution mechanism, whether through administrative or judicial channels. Based on the above description, it can be understood that the adoption of the principles of the Anti-Cybersquatting Consumer Protection Act into the Trademark and Geographical Indications Law is a necessary step to minimize trademark infringement in the digital era and provide stronger legal certainty and justice for trademark owners who have been harmed by the misuse of domain names.

Although the need for stricter regulations regarding domain name abuse is becoming increasingly clear, the implementation of regulatory reforms in this area also faces a number of practical challenges. One such challenge relates to domain name registration mechanisms, which have traditionally been designed to facilitate ease and speed in the registration process; consequently, the implementation of stricter checks has the potential to increase compliance costs for both registrars and domain service providers. Furthermore, coordination between agencies involved in trademark protection and domain name management, such as the Directorate General of Intellectual Property and the Indonesian Internet Domain Name Administrator (PANDI), also requires strengthening to ensure that disputes related to trademark rights can be resolved more effectively.

Updates to regulations regarding domain name abuse in Indonesia can be implemented gradually through several strategic steps. The first step is to conduct academic studies and consultations with various stakeholders, including the Directorate General of Intellectual Property, PANDI, legal practitioners, and digital business operators. The second phase involves drafting amendments or additions to the Trademarks and Geographical Indications Act that explicitly recognize the use of trademarks in domain names as a form of trademark use in commercial activities. The third phase involves aligning these regulations with the provisions of the Electronic Information and Transactions Law, as well as strengthening coordination mechanisms between the Directorate General of Intellectual Property (DJKI) and PANDI in resolving domain name disputes. Through these phased steps, the regulatory updates are expected to provide legal certainty while also taking into account institutional readiness for their implementation.

CONCLUSION

Domain name regulation in trademark protection is becoming increasingly important with the growth of trade in the digital age. Currently, trademarks are not only used on physical goods and/or services, but also attached to digital identities in the form of domain names. However, in the Indonesian legal system, regulations concerning trademarks and domain names are still under separate regimes. The Trademark and Geographical Indications Law focuses on trademark protection in the trade of goods and/or services, while domain name registration is based on the first come, first served principle without substantive examination of registered trademark rights. This situation creates a normative vacuum in Article 83 because the misuse of domain names is not explicitly classified as a form of trademark infringement. This is in contrast to the United States, which, through the Anti-

Cybersquatting Consumer Protection Act (ACPA), has clearly stipulated that the registration and control of domain names that resemble trademarks in bad faith constitutes trademark infringement, even if they have not been used in practice. Legal protection for trademark owners in Indonesia can basically be pursued through repressive measures in the form of civil lawsuits based on Article 83 of the Trademark and Geographical Indications Law to claim damages and cessation of unauthorized use. In addition, non-litigation mechanisms are available as stipulated in Article 93, such as dispute resolution through domain name management agencies, which may result in the cancellation or transfer of disputed domain names. Therefore, it is necessary to strengthen and reinforce legal regulations that integrate domain names as part of trademark infringement, so that legal protection for trademark owners in the digital space becomes clearer and provides legal certainty.

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