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Application of the Principle of Lex Specialis Derogat Legi Generali in the Settlement of Cybersquatting Domain Name Disputes at the National Arbitration Institution

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Abstract: The development of information technology has increased the strategic value of domain names as digital identities and intellectual property assets. However, in practice, the phenomenon of cybersquatting has emerged, namely the registration of domain names by unauthorized parties to control or profit from similarities with well-known trademarks. This phenomenon has given rise to legal conflicts between brand owners and domain name holders, while national regulations have not explicitly regulated the dispute resolution mechanism. This article aims to analyze the application of the principle of lex specialis derogat legi generali in resolving cybersquatting disputes through national arbitration institutions, specifically the Indonesian Internet Domain Name Manager (PANDI). This research uses a normative juridical method with a statutory approach and literature study. The results of the discussion indicate that Law No. 20 of 2016 concerning Trademarks and Geographical Indications should be positioned as lex specialis compared to Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE), considering that the object of the dispute is closely related to the protection of intellectual property rights. Furthermore, PANDI's domain arbitration rulings have not yet received full legal recognition in the national judicial system, thus reducing the effectiveness of their resolution. The establishment of specific regulations governing domain names and their dispute resolution is necessary to provide legal certainty and comprehensive protection for brand owners in the digital realm

Keyword: cybersquatting, domain name, lex specialis, arbitration, trademark

INTRODUCTION

The development of information and communication technology has given rise to a new legal dimension that demands the protection of rights in the digital space (Indarta 2025). One crucial aspect of the digital world is the domain name, which serves as the primary gateway to information access and represents an entity's identity on the internet (Sulaksono 2023). Domain names serve not only as website addresses but also represent the trade name,

reputation, and even image of a company or individual online (Al-Fatih 2021). Amidst this important function, the practice of cybersquatting has emerged, namely the unauthorized registration of a domain name that resembles or is identical to another person's trademark, with the aim of profiting or harming the brand owner (Salsabila 2024). This phenomenon has given rise to conflicts between domain owners and legitimate registered brand owners. These conflicts concern not only the use of technology but also the protection of intellectual property rights in the digital context.

A domain name is a digital representation of a legal or commercial identity operating on the internet. Unlike physical addresses, domain names are global, easily accessible, and a key instrument in marketing, communication, and online transactions (Khormali 2021). Selecting and utilizing the right domain name provides a competitive advantage in the digital business realm. Many companies and organizations utilize domain names as part of their branding strategy, giving them significant commercial and legal value (Widjaja 2018). Possessing a domain name that resembles a well-known company or brand name can influence consumer trust. In this context, domain names must be understood not simply as technical addresses but as strategic digital assets.

As a form of digital asset, domain names have intangible characteristics, meaning they are intangible but possess real economic value (Saputro 2023). Managing and transferring domain name rights can lead to disputes if intellectual property rights, particularly trademarks, are violated (Rizkia 2022). Domain names are not automatically considered trademarks, but if their use is closely related to business activities, their existence can have legal implications. Conflicts typically arise when a domain is used to copy, imitate, or damage the image of a registered brand (Hassanah 2021). The difference between domain registration systems and brand protection systems creates legal loopholes that are often exploited by irresponsible parties. This situation reflects the need for alignment between information technology principles and intellectual property law.

Cybersquatting has become a serious legal phenomenon in this context. The term refers to the practice of registering domains that are identical to or similar to well-known brand names with the intention of reselling them to the brand owner or exploiting them for ill-gotten gains (Bhusari 2021). According to the Internet Corporation for Assigned Names and Numbers (ICANN), this act is considered an abuse of the domain registration system (Maulidi 2024). Cybersquatting can take various forms, such as typosquatting (intentionally using similar spellings or typos), using duplicate domains with different extensions, and even registering the personal names of famous figures (Puzari 2023). The motives behind these actions vary, ranging from financial gain to bad-faith attempts to damage the brand owner's reputation. These practices clearly harm legitimate parties and complicate the legal protection of domain names.

Indonesian laws and regulations do not specifically regulate cybersquatting practices (Muti'ah 2022). In this context, domain name dispute resolution must refer to a number of relevant general regulations. Law No. 20 of 2016 concerning Trademarks and Geographical Indications serves as the primary legal basis for protecting trademark rights from counterfeiting, including those occurring in the form of domains. Although it does not explicitly mention domain names, the provisions in this law provide a basis for protection against unauthorized use of trademarks that could potentially mislead the public. Provisions on trademark infringement can be used to prosecute parties using domain names that resemble or contain registered trademarks (Gunawan 2023). However, this approach still leaves loopholes when domain names are not used in a clear commercial context.

Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE), which was updated through Law No. 19 of 2016, provides a legal framework for activities in cyberspace (Panggabean 2025). While this law does not specifically address domain names,

protecting intellectual property rights and preventing unlawful acts in the digital space remains crucial. Cybersquatting committed with the intent to mislead or harm others can be categorized as a violation of the ethical and legal norms stipulated in the Electronic Information and Transactions (ITE) Law (Maddusila 2025). However, this ITE law-based approach is more general and fails to provide comprehensive legal clarity regarding the specific characteristics of domain name disputes.

Minister of Communication and Information Technology Regulation No. 5 of 2020 concerning Private Electronic System Providers is one of the most recent regulations relevant in this context. This regulation governs the obligations and responsibilities of electronic system providers, including those related to the provision of domain name services (Alhakim 2024). This regulation provides a basis for government intervention in the abuse of domain names, although it does not yet stipulate sanctions or detailed dispute resolution mechanisms. The lack of comprehensive regulations means that legal protection for brand owners in the domain remains very limited. Law enforcement often relies on broad interpretations of existing norms, rather than on explicit and unequivocal provisions.

Internationally, regulation of domain name disputes has advanced through the implementation of the Uniform Domain-Name Dispute-Resolution Policy (UDRP) by ICANN. The UDRP allows trademark owners to file administrative lawsuits against cybersquatters through institutions such as the World Intellectual Property Organization (WIPO) (Astrini 2023). This system offers efficient, expeditious dispute resolution, eliminating the need for formal court proceedings. The assessment criteria include the similarity of the domain name to the trademark, the absence of any legitimate rights or interests in the domain, and bad faith in its use. Although not directly applicable in Indonesia, the UDRP illustrates that legal protection for domain names can be achieved through a more specialized intellectual property-based approach (Sjahputra 2021).

Indonesia has not yet fully adopted a domain name dispute resolution system like the UDRP within its national legal framework. The role of local institutions such as the Indonesian Internet Domain Name Manager (PANDI) remains limited to administrative governance and voluntary mediation (Kartasasmita 2024). In these circumstances, clear norms and the existence of specific regulations are essential to ensure dispute resolution does not rely on general norms that are open to multiple interpretations. Domain names, as legal identities on the internet, require equal legal treatment with other intellectual property objects such as trademarks, designs, or copyrights. The lack of equal treatment can lead to inequality in legal protection.

The need for regulatory clarity is becoming increasingly urgent with the increasing number of cases of domain name misuse. The issue extends beyond registration to ownership, intended use, and the legal impact on third parties. In this context, harmonization of the ITE Law and the Trademark Law is crucial, but it is insufficient without the support of specific norms regarding domain names. The legal system needs to adapt to the evolving digital reality, including providing resolution mechanisms relevant to the characteristics of digital disputes. Legal protection for domain names will be more effective if supported by principles and norms that are not only adequate but also adaptive to advances in information technology.

The application of the principle of lex specialis derogat legi generali is an appropriate solution to address the complex relationship between trademark law and cyber law in resolving domain name disputes. This principle emphasizes that specific regulations override general regulations in the event of a conflict of norms. In the context of domain names, the Trademark Law can be viewed as lex specialis when a domain is used to represent or imitate a particular trademark. Strengthening this principle within the national legal system will provide legal certainty for trademark owners and encourage fair and structured dispute

resolution. A normative approach that places domain names as part of intellectual property allows for proportional and contextual dispute resolution.

METHOD

This research uses a normative juridical method, a legal research method that relies on primary and secondary legal materials as the basis for analyzing the legal issues raised. The key focus of this approach is to examine applicable positive legal norms using legal logic and systematic interpretation of statutory provisions. The approaches used in this research include a statutory regulatory approach (statute approach) and a conceptual approach (conceptual approach). The statutory regulatory approach is conducted by examining various relevant legal regulations, such as Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), and Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning Private Electronic System Providers. Meanwhile, a conceptual approach is used to examine the principle of lex specialis derogat legi generali as a basic principle in resolving norm conflicts, as well as the concepts of intellectual property law and cyber law in relation to cybersquatting practices. Through these two approaches, this study seeks to provide a comprehensive and argumentative understanding of how special norms should be applied as a priority in resolving domain name disputes in Indonesia, as well as the importance of establishing separate, more explicit, and comprehensive regulations in the future.

RESULT AND DISCUSSION

Authority of the National Arbitration Institution in Resolving Domain Disputes

The Indonesian National Arbitration Board (BANI) is one of the legally recognized arbitration institutions in Indonesia under Article 34 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This institution has the authority to resolve various types of business disputes, including disputes related to intellectual property rights and information technology. In practice, BANI is widely used by businesses to resolve conflicts without resorting to litigation, which tends to be time-consuming and expensive. Disputes regarding domain names, which are closely related to trademark rights, can fall within BANI's jurisdiction if the parties agree in writing to submit them to this institution. Arbitration as a resolution method is considered to provide an effective and relatively quick alternative in handling cases requiring legally binding decisions.

In addition to BANI, Indonesia has a special institution that handles internet domain management, namely the Indonesian Internet Domain Name Manager (PANDI), which also functions as a domain name dispute resolution institution. PANDI was established based on a Decree of the Minister of Communication and Informatics of the Republic of Indonesia and is responsible for managing the .id country code top-level domain (ccTLD). Over time, PANDI has developed a dedicated unit for domain name mediation and arbitration, known as the Indonesian Domain Name Dispute Resolution Forum (ID-DRP). This function is based on the PANDI Regulation on Domain Name Dispute Resolution and aligns with the mandate of Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendment through Law Number 19 of 2016. These provisions provide a sufficient legal basis for PANDI to perform its non-litigation dispute resolution function.

The procedure for filing a domain name dispute with PANDI begins with a report from the aggrieved party regarding the use of a domain name that is deemed to infringe their rights, particularly in a registered trademark case. The applicant must submit a written claim, attach proof of trademark rights and legal identity, and pay an administrative fee. PANDI will

review the completeness of the documents and then appoint a panel of independent arbitrators to hear the case. This process is regulated by the PANDI Regulation on the Settlement of.ID Domain Name Disputes (ID-DRP Policy), which provides a relatively quick resolution timeframe, typically within 60 days. The arbitrator's decision is final and binding on the parties, with enforcement taking the form of transferring or deleting the disputed domain through technical cooperation with the registrar.

The legal basis for implementing domain name arbitration in Indonesia refers to Article 1, point 1, and Article 5 paragraph (1) of Law Number 30 of 1999, which stipulates that arbitration may be conducted for civil disputes in the commercial sector as long as the parties agree to resolve them out of court. In the context of domain names, disputes arising from the struggle for rights to domains identical to or similar to certain trademarks fall into the category of commercial disputes, as they concern business competition and consumer protection. Furthermore, Law Number 11 of 2008, as amended by Law Number 19 of 2016, legitimizes electronic system providers to comply with agreements containing clauses for dispute resolution through arbitration. Thus, if a domain user has agreed to the terms and conditions of service that include arbitration, PANDI has the authority to resolve the dispute.

Domain name arbitration decisions issued by the PANDI arbitration panel are legally binding, as stipulated in Article 60 of Law Number 30 of 1999. These decisions cannot be appealed, except in the case of annulment through the courts for limited reasons, such as fraud in the arbitration process. The final and binding nature of these arbitration decisions is one of the advantages of the arbitration route, as it provides swift legal certainty for the parties. However, in practice, the implementation of these decisions still depends on the cooperation of the registrar in enforcing the decision, especially if the domain is managed by a foreign registrar.

A comparison with international domain dispute resolution systems such as the UDRP (Uniform Domain-Name Dispute-Resolution Policy) administered by the World Intellectual Property Organization (WIPO) shows that the Indonesian system is still in the process of strengthening its institutions and infrastructure. The UDRP provides a similar mechanism to the PANDI procedure, but its jurisdictional scope and registrar reach are much broader, encompassing generic top-level domains (gTLDs) such as .com, .org, and .net. In some cases, cybersquatters who register domains from abroad cannot be directly reached by decisions from arbitration panels in Indonesia. Therefore, in such situations, Indonesian brand owners must resort to the UDRP or WIPO as alternatives.

The advantages of a national arbitration system like that operated by PANDI are time and cost efficiency compared to litigation in general courts. The simple administrative procedures and the lack of physical attendance at courts provide convenience for businesses seeking a quick solution. Decisions are made by arbitrators with expertise in intellectual property and information technology, ensuring relatively high-quality decisions relevant to the disputed issues. The document-based process also ensures objectivity and reduces interference from unauthorized external parties.

A drawback of the national domain name arbitration system is its limited reach to domains registered through foreign registrars, or cybersquatters domiciled abroad. In the context of globalization and internet openness, infringers can easily register domains from outside Indonesia, making the enforcement of PANDI arbitration decisions ineffective. This weakness reflects the need for international collaboration and support from international bodies such as ICANN or WIPO to strengthen cross-border enforcement. Furthermore, the low awareness of PANDI among internet users in Indonesia regarding the existence and role of PANDI has prevented this mechanism from being optimally utilized.

The authority of national arbitration institutions, particularly PANDI, to resolve domain name disputes is a crucial component of efforts to legally protect intellectual property rights

in the digital space. Domain name disputes arising from cybersquatting demonstrate the urgent need to strengthen dispute resolution mechanisms that adapt to technological developments. Indonesia has taken the first step by providing a clear, legally based arbitration pathway, but implementation challenges remain. Strengthening implementing regulations, increasing the capacity of arbitrators, and increasing public awareness are necessary for this system to function optimally. Harmonizing national regulations and international policies is a strategic step to ensure comprehensive legal protection for domain names as valuable digital assets.

Application of the Principle of Lex Specialis Derogat Legi Generali in Cybersquatting Disputes

The principle of lex specialis derogat legi generali holds a crucial place in the practice of legal interpretation in Indonesia. This principle states that a specific regulation will override a general regulation when both regulate the same substance. In practice, this principle is used to harmonize two or more concurrently applicable legal norms with varying degrees of specificity. In the Indonesian legal system, which adheres to a hybrid of civil law and national law, this principle serves as the primary reference for legal decision-making at various levels of judicial institutions and arbitration institutions. The function of this principle is not merely technical, but reflects the principle of substantive justice.

The application of this principle is particularly relevant in the context of disputes involving domain names and intellectual property, particularly in cybersquatting cases. These disputes generally involve the intersection of the norms stipulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law). The ITE Law essentially regulates the operation of electronic systems as a whole, including violations of the integrity and ethics of internet use, as stipulated in Articles 26 and 27. Meanwhile, the Trademark Law specifically regulates exclusive rights to a trademark, including trademark infringement that occurs in the digital realm, as stipulated in Articles 21 and 83.

Problems arise when cybersquatters use domains that resemble or are identical to another party's trademark to gain an unlawful commercial advantage. This action can be classified as a violation of intellectual property rights, which is more appropriately handled through a lex specialis approach, namely, utilizing the provisions of the Trademark Law. Article 21, paragraph (1) of the Trademark Law states that a trademark application will be rejected if it is similar in substance or in its entirety to a registered trademark owned by another party. When such cybersquatting results in losses for the registered trademark owner, Article 83 of the Trademark Law gives the owner the right to sue in civil court, including demanding compensation and removal of the infringing domain.

In dispute resolution practices within the arbitration realm, such as those facilitated by the Indonesian Internet Domain Name Administrator (PANDI), the lex specialis norm has been consistently applied. The arbitration panel in the Indonesian Internet Domain Name Dispute Settlement (PPNDII) process tends to use the Trademark Law as the primary basis for assessing the legality of a domain. This is because the use of a domain name that resembles a trademark has a direct impact on the reputation and economic value of the brand. The use of a domain such as tokopedia-shop.id by a party not the owner of the Tokopedia trademark is a concrete example of cybersquatting that can be subject to sanctions under the lex specialis approach as stipulated in Article 100 paragraph (1) of the Trademark Law.

The process of canceling or handing over a domain to the legitimate trademark owner is a strategic step in maintaining legal order in the digital world. PANDI, as the technical institution appointed by the government to manage Indonesia's top-level domain names (.id), has a resolution mechanism through internal arbitration based on the PANDI Regulations on

Procedures for Settling Disputes in Indonesian Internet Domain Names. Although these regulations are administrative in nature, the decisions of the PANDI arbitration panel are final and morally binding within the national digital community. This creates a rapid and specific dispute resolution system, in line with the principle of lex specialis.

The absence of regulations explicitly defining cybersquatting as illegal creates a legal loophole that needs to be addressed immediately. In practice, cybersquatting has not been explicitly categorized as a criminal offense under the ITE Law, as such acts are often considered merely ethical or commercial violations. Yet, the losses caused are very real for registered trademark owners. Without specific regulations, law enforcement against cybersquatting is suboptimal and does not provide a deterrent effect for perpetrators who exploit regulatory weaknesses. This underscores the importance of recognizing cybersquatting as a legal violation that requires new regulatory instruments.

Regulatory reform is essential to adapt to the dynamic developments in information technology and the digital economy. The existence of new norms in the form of laws or government regulations specifically concerning domain names will clarify the legal basis for taking action against domain name violations, particularly in matters concerning intellectual property. Such regulations can bridge the conflict between general norms in the ITE Law and specific norms in the Trademark Law, and emphasize that violations of domain names that resemble trademarks are not only administrative violations, but also involve civil and potential criminal aspects in the context of consumer fraud.

In the long term, the proposal to establish a new lex specialis on digital property is a normative solution worth considering. Such legislation could include provisions regarding cybersquatting, domain name protection, exclusive rights to digital identities, and special judicial procedures involving digital disputes. With an explicit legal basis, law enforcement will no longer rely on mixed normative interpretations of the ITE Law and the Trademark Law, but will instead have a strong and clear legal foundation. This will also strengthen Indonesia's position in global digital governance, particularly in collaboration with organizations like ICANN and WIPO.

The establishment of lex specialis will also clarify the role and authority of institutions like PANDI in resolving disputes fairly and professionally. Arbitration dispute resolution mechanisms will gain greater legal legitimacy if supported by a concrete legal basis within the national legal system. Furthermore, harmonization of regulations between relevant ministries, such as the Ministry of Communication and Informatics, the Ministry of Law and Human Rights, and technical institutions, will create a legal ecosystem that is integrated, efficient, and adaptive to technological developments. All of this aims to ensure that digital property rights are protected with a fair and proportional legal approach.

CONCLUSION

Domain name disputes, particularly those related to cybersquatting practices, demonstrate the legal complexities of two distinct regimes: intellectual property law and electronic information law. Problems arise when unauthorized use of a domain name, though similar or identical to a registered trademark, is not explicitly classified as a violation of existing regulations, particularly the Electronic Information and Transactions Law (ITE Law). However, such actions can harm the brand owner's reputation and economic potential. Therefore, the legal approach should not rely solely on the general provisions of the ITE Law but should instead emphasize the protection of intellectual property rights as stipulated in the Trademark Law. In this context, the principle of lex specialis derogat legi generali is crucial to emphasize that trademark protection in the domain name context is more specific and therefore requires specific legal norms. Furthermore, arbitration institutions such as PANDI have demonstrated a significant role in efficiently resolving domain name disputes.

Nevertheless, the lack of national regulations explicitly governing the authority and legal force of PANDI's decisions presents an obstacle to achieving substantive justice.

Based on this, there is a need to establish special legal regulations in the form of lex specialis that explicitly regulate the resolution of domain name disputes and cybersquatting practices within the national legal system. Such regulations should include strengthening the legal position of domains as digital assets with economic value and exclusive rights, and clarify the scope of authority of national arbitration institutions. Furthermore, norms should be formulated that recognize and grant legal force to domain name arbitration decisions, so they can be enforced and respected within the national judicial system. The government, together with the House of Representatives (DPR), needs to draft special laws governing digital property and non-physical assets as a form of legal adjustment to the increasingly complex digital economy era. It will ensure the Indonesian legal system is better prepared to handle disputes in the digital realm, provide adequate legal protection for rights holders, and strengthen the legitimacy of alternative dispute resolution institutions at the national level.

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