

## ONLINE DISPUTE RESOLUTION ON INTELLECTUAL PROPERTY CASE STUDY PLANTS VARIETY PROTECTION

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### Abstract

In Indonesia the protection of plant varieties is regulated in the Law: No. 29 of 2000 on the Protection of Plant Varieties. This law provides protection to crop varieties provided that the discovery of new varieties, Different, Uniform / Uniform, Stable and Have excellence. Disputes in terms of protection of plant varieties. The law is useful to provide protection and anticipation as well as to resolve disputes over plant varieties. In an effort to resolve the dispute, the Court will also be affected by globalization. Many countries, especially developing countries, must adapt and renew their justice system, because of the urgency of international needs. In the international sphere due to territorial and procedural costs, more and more dispute parties are using alternative mechanisms to resolve their disputes. The purpose of this research is to know the possibility of Online Dispute Resolutions on Intellectual Property Case study Plants Variety Protection.

This research is non doctrinal research. The type of data used in this study is secondary data. Data collection techniques used are literature and data analysis techniques using interactive analysis.

Result and conclusions this study that Online Dispute Resolution (ODR) is a dispute resolution that takes advantage of the Internet. ODR is not just an online version of Alternative Dispute Resolution (ADR), but often called online ADR, eADR, iADR, virtual ADR, cyber mediation, or cyber arbitration, the ODR has many unique aspects both from a technological and process perspective. ODR is effective to resolve disputes of Plant Variety Protection due to; The flexible nature of the ODR by utilizing outstanding Internet technology features, making ADR an appropriate instrument for resolving conflicts quickly and efficiently.

**Keywords:** ODR, Plants Variety Protection, IP..

### BACKGROUND

The Republic of Indonesia is an agrarian country, so advanced, efficient and robust agriculture has an important role in the achievement of national development goals, to develop an advanced, efficient and strong agriculture to be supported and supported, among others, by the availability of superior varieties. Germplasm resources which are the main ingredients of plant breeding, need to be conserved and utilized as well as possible in order to assemble and obtain superior varieties of plants without harming any related parties to encourage the growth of seed industry. In order to further enhance the interest and the role of individuals and legal entities to perform plant breeding activities in order to produce new varieties, to plant breeders or holders of plant variety rights should be given certain rights and legal protection of those rights adequately and in accordance with international conventions , The protection of crop varieties needs to be regulated by Law. Considering the foregoing, the regulation on the protection of crop varieties has been

established in the Law, namely Law Number 29 Year 2000 on Plant Variety Protection.

Plant varieties are usually obtained through a plant breeding process that finds mastery of science and technology, requiring great outpouring of mind, energy, time, and funds. The difficulty of the process of plant breeding requires an appreciation for the hard work of the breeders, namely the existence of the provision of legal protection of clear and decisive. Given the clear legal certainty will encourage breeders to be more active in conducting research in order to produce more new and superior crop varieties. In Indonesia the protection of plant varieties is regulated in the Law: No. 29 of 2000 on the Protection of Plant Varieties. This law provides protection to crop varieties provided that the discovery of new varieties, Different, Uniform / Uniform, Stable and Have excellence. Disputes in terms of protection of plant varieties. The law is useful to provide protection and anticipation as well as to resolve disputes over plant varieties.

A dispute over plant varieties occurred in 2002, PT East West Seed Indonesia (EWSI), an Indonesian-Dutch joint venture company, based in Purwakarta in dispute with PT Multi Benih Unggul Indonesia (MBUI) based in Tanggul, Jember, resulting in a lawsuit against PT MBUI was filed in the Jember District Court. This case is very interesting because it is the first case in court after the Law Number. 29 of 2000 on the protection of plant varieties is enacted. MBUI is sued for copying or mimicking the parent DNA of plant seeds patently owned by EWSI. EWSI is a tomato seeding, chilli and eggplant company. The seed plot was discovered when the EWSI market research team found five seeds of hybrid vegetable varieties suspected of imitating hers. The five vegetable seeds are marketed under another company's label, MBUI, and under other names: Tomato Soluna, Marina, Salina, Egg Turangga, and Chili Prima. After being investigated in the laboratory, it was concluded that the five vegetables came from Tomato Artaloka, Gems, Jelita, Eggplant Mustang, and EWSI Prepu Cabe that was created in 1990.

In the Decision of Jember District Court, MBUI is proven to have violated Law Number. 29 Year 2000 on the protection of crop varieties, which regulate certification of the circulation of vegetable seed varieties from abroad to the Indonesian market. MBUI does not have a valid certificate, while EWSI has, and EWSI plant varieties must be protected. The punishment imposed on MBUI is compensation and apology to EWSI which must be published in five mass media.

The next case occurred in 2007, a corn seeding company, MJ, reported to Jenggawah Police, Jember District, that there was someone who had faked the brand of corn seeds it sold, so that sales turnover declined. The evidence included in his report was a plastic bag containing 5 kilogram corn seeds in a plain plastic bag, without any brand. (Jusup Jachobus Setyabudi, 2013)

As is the case of the Japanese Shisheido Cosmetics Company claiming nine patents on Indonesian traditional crops numbered with registration of JP 10316541 with patented tardisional plant subjects all of which are anti aging, skin and head (Riska Ega Wardani, 2015)

Certification of the circulation of varieties of vegetable seeds from abroad specified in Act Number 12 of 1992 concerning cultivation system of plants is very different from PVT specified in Law Number. 29 Year 2000 on the protection of plant varieties. Law No. 12 of 1992 concerning crop cultivation system determines that certification is the process of granting crop seed certificates upon inspection, testing and supervision and meeting all requirements for distribution. PVT according to Law No. 12 of 1992 on cultivation system of plants is, special protection given by the state, which in this case is represented by the Government and its implementation is done by the PVP Office of the Ministry of Agriculture, to the varieties of plants produced by plant breeders through plant breeding activities. (Jusup Jachobus Setyabusi, 2013).

The technological change brought about by the Internet is a complex blend of technical feasibility, infrastructure, commercial viability and political, social and psychological adaptation, (National Alternative Dispute Resolutions Advisory Council, 2002) that could potentially bring many new types of disputes. In an effort to resolve the dispute, the Court will also be affected by globalization. Many countries, especially developing countries, must adapt and renew their justice system, because of the urgency of international needs. In the international sphere due to territorial and procedural costs, more and more dispute parties are using alternative mechanisms to resolve their disputes. Based on the above problems, the purpose of this research is to know the possibility of Online Dispute Resolutions on Intellectual Property Case study Plants Variety Protection.

## METHODS

This research is a prescriptive research (Soerjono Soekanto, 1981) qualitative. Prescriptive research is a study aimed at obtaining suggestions for solving specific problems. When viewed in terms of its purpose, then this research including problem solution research that this research intends to solve problem about dispute settlement and protection against Intellectual Property Case study Plants Variety Protection.

This study also uses a conceptual approach, and a comparative approach. A conceptual approach is used to examine the views and doctrines about the possibilities of Online Dispute Resolutions on Intellectual Property Case study Plants Variety Protection. The type of data used is the primary data source of legal material derived from the Law: No. 29 of 2000 on Plant Variety Protection and Act No. 12 of 1992 on Plant Cultivation System. Secondary law materials, which provide an explanation of primary legal materials, such as draft laws, research results, work of law and so on. Material of Tertiary Law, which is material giving guidance and explanation on primary and secondary legal materials; Examples are dictionary, encyclopedia, cumulative index and so on. Techniques of collecting literature study data. The technique of data validity using data triangulation. Data analysis technique in this research is interactive analysis technique.

## **RESULT AND DISCUSSION**

### **The Responsive Law Theory**

All this time, the law is understood only as rigid rules and overly emphasized on the legal aspect of the system without seeing the link between legal science and other issues as in the case of social problems. The law is identical with order as a mirror of the rule of the ruler, on the other hand there is also an understanding of the law which emphasizes the legitimacy aspect of the rules themselves. Whereas the legal theory should not close themselves to social factors that affect the development of society. Currently the law can be used as a facilitator of various responses to social needs and aspirations (responsive law). (Philippe Nonet, 2001).

Responsiveness can be interpreted as serving the needs and social interests that are experienced and discovered, not by officials but by the people. The responsive nature implies a commitment to "the law within the consumer's perspective". Two prominent features of the responsive legal concept are: a. Shifting emphasis from rules to principles and objectives; B. The importance of democracy both as a legal objective and a way to achieve it. Responsive law is results-oriented, ie on objectives to be achieved outside the law. In responsive law, the legal order is negotiated, not won through subordination or coercion.

### **Patent pada Perlindungan Varietas Tanaman**

Patents are often referred to as "monopolies", but patents do not entitle the inventor or owner of a patented invention to create, use or sell anything. The effect of granting patents is that patented invention may not be exploited in this country by persons other than the patent owner unless the owner approves the exploitation. The owner is denied the right to practice his invention, he is given the legal right to prevent others from commercially exploiting his invention, which is often referred to as the right to exclude others from the manufacture, use or sale of the invention. The right to take action against a person utilizing the patented invention in this country without his consent is the most important patent owner's right, as it enables him to obtain the material benefits he possesses as a reward for his work and intellectual work. In other words, the patent owner must be his own "cop".

Simply put, the patent is the right granted by the state to the inventor to exclude others from the commercial use of this invention for a limited period of time, in return for the disclosure of the present invention, so that the other party may benefit from this invention. Disclosure of the present invention is an important consideration in the procedure of granting patents.

The invention must meet several criteria if it meets the requirements to obtain patent protection. This includes, most importantly, that the present invention shall consist of patentable subject matter, the invention shall be industrial (useful), must be new (new), shall show "adequate inventive step" (unclear), Disclosure of the invention In a patent application must meet certain standards. (WIPO Intellectual Property Hand Book: 2008).

Novelty is a fundamental requirement in any examination of the substance and is an irrefutable condition of patentability. However, it must be emphasized that

novelty is not something that can be proved or established. A new invention should be given a general explanation or Prior art which is a general description of the origin of the invention. Prior art disclosure may be made by describing the invention in writing or published publications in other forms, describing the invention in publicly spoken words, such disclosure is called oral disclosure and may also use the present invention in public, or by Putting the public in a position that allows every member of society to use it, such disclosure becomes "disclosure by use." (WIPO Intellectual Handbook, 2008).

### **3.3 Online Dispute Resolution on Plant Variety Protection**

In the context of the Internet, where parties in different parts of the world can collide with interest with just one mouse click. The litigation process for resolving an online dispute is often uncomfortable, impractical, time consuming and expensive. Under these circumstances require an alternative approach to resolving the online dispute so as to help correct the complaints of the interested parties. Alternative Dispute Resolution (ADR) is one way to resolve disputes outside the court. Problems arising from information technology raises an alternative dispute resolution Online. Online Dispute Resolution (ODR) is a dispute resolution that takes advantage of the Internet. ODR is not just an online version of Alternative Dispute Resolution (ADR), but often called online ADR, eADR, iADR, virtual ADR, cyber mediation, or cyber arbitration, the ODR has many unique aspects both from a technological and process perspective. ODR is not an alternative process for dispute resolution forms in the online environment (Colin Rule, 2002). Resolving disputes using ODR is faster than using offline ADRs because technology can shorten the distance that other people may need to travel. ODR does not depend on the time or calendar of the mediator or judge. By using e-mail, discussion groups, and websites, an agreement can be written and changed when it gets the deal. (Krause, Brian, 2008).

ODR can be performed in whole or in part online and concerns two types of disputes: arising in cyberspace and arising offline. As Internet use continues to grow, the ODR is becoming increasingly important as an efficient dispute resolution mechanism to resolve Internet disputes over traditional mechanisms, such as time-consuming, costly and jurisdictional jurisdictions. In offline disputes, it can also be dealt with traditional dispute resolution mechanisms equipped with online technology. Although the available ODR Methods range from negotiation and mediation to modified arbitration to a modified jury process.

Several organizations have been established as Alternative Dispute Settlement institutions that provide online services (Aashit Shat, 2005). World Intellectual Property Organization (WIPO) is one of the organizations that can help resolve disputes online. WIPO appoints a panelist, who acts as arbitrator and decides the case. A case is usually concluded within two months using an online procedure.

Some sites that can help do online Mediation include, Cybersettle, SettlementOnline and clickNsettle. These sites offer services that are fully online and focused on negotiations. These sites serve as a neutral arena for exchanging settlement offers within 30 to 60 days. The service then sends an email to the other party to notify him that the settlement offer is filed and also grants them access to the website.



Figure 1. Online Dispute Resolution Site (<http://www.namadr.com/>)

Cyber-Mediation uses Advanced Software and Neutral Third-Party Facilitators and uses innovative negotiation processes and powerful computer software programs that allow multiple parties to participate in the negotiations. Third party facilitators work with stakeholders either directly or through the Internet to help them express their interests and identify problems. The facilitator is a lawyer who will help the parties model the problem of negotiation and resolve. ODR is effective to resolve disputes of Plant Variety Protection due to; The flexible nature of the ODR by utilizing outstanding Internet technology features, making ADR an appropriate instrument for resolving conflicts quickly and efficiently. Cost is one of the most important factors in dispute settlement, as both parties ultimately want to reach the optimal decision at the lowest possible price. ODR in accordance with the financial demands of both parties. Mostly in the process of exchanging documents in an online manner via e-mail is different from fax (which is very expensive) and post (which is slow). Therefore, sending documents electronically is not only easier and faster. But it is also cheaper than litigation.

In implementing the ODR the parties to the dispute do not need to travel long distances to settle disputes. Online disputes may arise between parties located in different countries. Travel and accommodation costs may be an obstacle, making it impractical for parties to resolve disputes offline. On ODR put both parties in the same position If necessary required witnesses or face-to-face meetings are required, instant messaging, video conferencing, or conference chat rooms can be used to reduce travel. ODR promises to settle disputes within days or even hours. The unlimited nature of the Internet reduces the communication problems faced by parties in different time zones.

Formal dispute settlements, such as litigation, are limited by the concept of sovereignty and legal precautions, the aggrieved party may not be able to find a way out without traveling to where the action or place of the perpetrator is located. In the context of the Internet without borders, ODR is not only a flexible and open media, but also an attractive option to avoid jurisdictional attention. Parties Transact over

the Internet may contract to file a dispute to an online ADR provider. Once an online ADR provider agrees to settle the dispute, it must decide which law to apply. The parties may avoid jurisdiction issues by including the choice of legal provisions in their online agreements. ODR also provides facilities for recording process of correspondence, defense, statement, and written, oral, or other communications transmitted electronically.

Implementation of ODR verdict which has been made by arbitrator but not voluntarily executed by the defeated party, then the winning party may execute the legal action of execution of the arbitration award. The winner applies to the state in which case the state institution has the authority to try to forcibly prosecute. Implementation of this ODR verdict can be made on ODR verdicts made within the country as well as abroad. In the domestic ODR decision, the provisions of Article 59 to Article 64 of Law Number 30 Year 1999 regarding Arbitration and Alternative Dispute Settlement shall be applied. As for the decision of international ODR, the provisions of Article 65 to Article 69 of Law Number 30 Year 1999 regarding Arbitration and Alternative Dispute Settlement. The recognition of international arbitration decisions in Indonesia is based on the participation of Indonesia in an international agreement called the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (convention on the recognition and execution of foreign arbitral award) or better known as the New York Convention 1958. The results of this Convention That the participating country shall recognize and execute arbitral award made abroad insofar as the country where the arbitration takes place has also become a participant of the convention.

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