

Trade Secret Protection Strategy Raising Awareness in the Business Sector

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ABSTRACT

Trade secret protection is becoming increasingly important amidst intense business competition, especially in competitive sectors such as food and beverages. Information with economic value, such as marketing strategies and product formulas, is at risk of being leaked, which can cause financial and reputational damage to the company. Law No. 30 Year 2000 on Trade Secrets in Indonesia aims to protect such information, but many companies still struggle with its implementation. This research aims to develop guidelines for companies in drafting effective work agreements to protect trade secrets and examine the ethics and corporate social responsibility in maintaining confidentiality. The normative juridical method is used to analyze the existing legal framework and evaluate the effectiveness of the protection provided. It is hoped that the results of this study can contribute to the protection of trade secrets in Indonesia and increase companies' awareness of implementing the necessary measures to safeguard sensitive information.

Keywords: Trade Secrets, Employment Agreement, Ethics and Responsibilities

INTRODUCTION

The development of the times has brought companies into an increasingly intense competitive area. Companies often face quite complex problems when facing business competition. One example is the leakage of personal information belonging to the company. This information usually contains economic value, such as product formulas, marketing strategies, and customer data, which are important assets that can determine the success and competitiveness of a company. For this reason, protecting this information is crucial in various sectors, especially in competitive sectors such as food and beverages. In addition to impacting economic losses, trade secret leaks can threaten the company's reputation and customer trust, ultimately disrupting business operations' stability.

Trade Secrets are part of IPR and are a fairly high right among economic activities in Indonesia. This condition was strengthened by the government's commitment to overcoming problems related to trade secrets, so a special regulation was made. Namely, Law No. 30 of 2000 concerning Trade Secrets and its enforcement began on September 20, 2000. The ratification or ratification of the WTO/TRIPS agreement is carried out through Law No. 7 of 1994. The implementation of this regulation is the basis for the presence of a policy on intellectual property rights and trade secrets in Indonesia. The existence of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Competition reflects that the basis of the thinking of the Trade Secret Law in Indonesia is following the provisions of TRIPs as stated in the WTO. (Gerungan, 2016) The Trade Secrets Act is a legal instrument designed to protect confidential business information. This law protects closed or private information so that it is unknown to the general public and becomes a competitive advantage for its owner.

According to the perspective of the anglo saxon country stated by Suyud Margono, trade secrets are information that is considered as a property right (*property rights*) and the violation is classified as an unlawful act of a special nature and is called

the action for breach of confidence. It differs from the viewpoint embraced by countries with legal systems in *Continental Europe*, which states that "infringement of trade secrets is seen as unlawful conduct as stated in the context of *unlawful offence*". (Riandhani Septian Chandrika, 2019) Article 1 of the Trade Secrets Law is defined as "information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities and is kept confidential by the owner of the secret trade".

Trade secrets can be interpreted as data or information that is closed to other parties and by those who have it is considered private information. This means that the existence of trade secrets has an exclusive nature and is not information that others can freely access except by parties who have interests, such as officers or officials who have the authority to always manage and be able to maintain the existence of these secrets. Trade secret protection aims to protect economic and strategic information for its owner by maintaining its confidentiality. With this protection, trade secret owners can feel confident and calm that their sensitive information will not be used or disclosed without permission. Although there is already a clear legal framework, many companies still face difficulties in maintaining the confidentiality of their information. Cases of information leakage often occur due to internal negligence and unethical actions from external parties. This reflects the effectiveness of the Trade Secrets Law, which is not optimal. (Etty, 2013)

For these problems, this study aims to develop guidelines for companies on preparing effective employment agreements to protect trade secrets, including ethics for employees or parties involved in trade secrets. In addition, this study will also examine ethics related to the use and violation of trade secrets, as well as corporate social responsibility in maintaining information confidentiality. This research examines trade secret infringement's legal and economic impact on companies and industry. By focusing on these issues, it is hoped that this research will also positively contribute to trade secret protection measures in Indonesia, as well as help companies better understand and implement the necessary measures to protect their sensitive information.

METHOD

The research method applied in compiling this research is normative juridical, which is a method that examines various approaches from theories and concepts and examines the relevant laws and regulations or approaches concerning legislation. This normative legal research examines principles in the field of law. (Ali, 2009)

Thus, this normative legal research method has characteristics that distinguish it as research from rhetoric and certainly not similar to research methods that focus on field research (*field study*) or empirical. As normative legal research, the scope of this research can be in the form of studies or analyses related to laws and regulations, legal systematics, positive legal inventory, in which there are efforts to discover laws *imprecise*. (Bahder & Nasution, 2008).

This research analyzes the effectiveness and application of regulations concerning the protection of trade secrets as stipulated in Law No. 30 of 2000 on Trade Secrets. Using a qualitative approach, it collects data from primary, secondary, and tertiary sources to address key issues related to trade secret protection in Indonesia. The study aims to examine the regulatory framework, assess the law's effectiveness

in preventing the leakage of confidential business information due to internal and external factors, and develop practical guidelines for companies to establish effective work arrangements. Furthermore, it explores the role of ethics and corporate social responsibility in maintaining the confidentiality of trade secrets and evaluates the economic impact of trade secret violations on businesses and society. By focusing on these aspects, the research seeks to strengthen the protection of business secrets, raise ethical awareness, and contribute to the development of industry practices.

RESULTS AND DISCUSSION

Employment Agreements to Protect Trade Secrets

Trade secrets can be defined as information in business or technology, public is not known to the public and has economic value because it contributes to commercial activities confidential information confidential. In Indonesia, the regulation of trade secrets is enshrined in Law No. 30 of 2000, which regulates the protection of economic value information.

In general, Article 1 Number 1 of the Trade Secrets Law. It is understood that "trade secrets are information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret".

Article 2 of the Trade Secrets Act Identifies the components included in the trade secret idea as a production method, management method, sales method, or other information in the field of technology and/or business that has economic value and is unknown to the general public. (Elsa Benia, 2022), Based on the elements listed in Law No. 30 of 2000, it is known the nature of the trade secret: (Saidin, 2015)

- a. It is information that is not known to the public;
- b. The information covers the field of technology or business;
- c. Have useful economic value in business activities and
- d. It is kept confidential by the owner.

In contrast to other intellectual property rights that are registered, such as trademark rights or patents, this trade secret does not require registration. Trade secrets are included in intellectual property rights because they are private and individual. This trade secret was born from the owner's hard work, whether it is pouring ideas or ideas to the energy expended in making the formulation or information. Characteristics Information that can be a trade secret includes information that has strategic and economic value for the company, such as product recipes, chemical formulas, marketing strategies, customer data, and production methods. Trade secret legal protection aims to prevent third parties from misusing business information without the owner's permission, which can cause the company to lose money and lose its competitive advantage.

Regulations related to Trade Secrets regulate important provisions regarding trade secrets, both in terms of protection, use, transfer of rights, and sanctions against violations of trade secrets. It is explained in the Trade Secrets Law that a company can transfer ownership or give it to another person while still considering the legal side. This is explained as one of the authorities of trade secret holders located in article 4 of the Trade Secret Law. According to this Article, the owner's right is to approve or prohibit the use of trade secrets by other parties, including disclosure to third parties for business purposes. The licensee may grant the recipient permission to use the

data commercially. Article 4 of the Trade Secret Law No. 30 of 2000 also regulates the authority of Trade Secret holders, including:

- a. Using his own Trade Secrets
- b. License to or prohibit any other party from using the Trade Secret or disclosing the Trade Secret to a third party for commercial purposes.

When dealing with disputes, there are two options presented by trade secret regulations. The first is the resolution of problems through arbitration, which is explained in Article 12, the second is Article 17, which regulates the resolution of disputes through the criminal scope. With regard to Article 11 of the Trade Secrets Act, the licensee has the right to claim compensation in the event of a trade secret violation. This action can be carried out when a third party uses protected trade secret information for a specific purpose or without permission, resulting in losses to the owner or licensee. The purpose of such indemnity measures is to obtain financial compensation for contractual partners who suffer losses as a result of such breaches. For example, if a trade secret is disclosed by a party to a competitor in the form of a product formulation, then the owner of the trade secret can sue for damages equal to the losses suffered, such as loss of profits or other adverse impacts on their business.

Article 17 of Law No. 30 of 2000 regulates the settlement of trade secret criminal disputes. If for certain purposes a person uses another person's trade secret illegally, they may be subject to criminal sanctions, including imprisonment and fines. This provision applies to violations such as divulging, using and utilizing another person's trade secret information for commercial purposes.

If recognized by the company concerned, the intellectual property and knowledge acquired on the company may be recognized and become valuable information or trade secrets. (Suseno, 2018) Trade secret holders are required to keep their information that has a confidential nature and has more value in economic terms. These provisions are listed in article 3 of Law No. 30 of 2000. In this case, the owner needs an appropriate form of information disclosure for business purposes. confidentiality and obligations in safeguarding arise from the legal relationship between one party and the other. (Ferdiansyah, 2022)

Legal protection for employees is not fully regulated explicitly in Law No. 30 of 2000 concerning Trade Secrets. When workers are directly involved in all production processes or other economic processes that cover trade secrets, if there is no clear employment relationship, it is feared that there will be losses. Due to these concerns, the relationship between companies and workers is crucial in maintaining trade secrets. This is due to the need for information to convey strategic information from the company to workers such as product recipes or marketing strategies. This condition creates a risk of information leaks, whether it is leaks that are carried out intentionally or accidentally. Thus, the company must be able to make efforts to ensure that the delivery of the information is structured to maintain trade secrets so that they are properly protected. (Kopko, 1964)

Although there are already regulatory sanctions related to the protection of trade secrets in the criminal and civil realms, it does not seem to be important. Workers often do not know what constitutes a trade secret in the work they are engaged in. In Indonesia, there are currently no special regulations related to the protection of employees so that this can cause legal problems. Arrangements related to employment contracts are needed to be proof that the company has made efforts to

protect its trade secrets. This concerns the written provisions in Article 3(4) of Law No. 30 of 2000, which states that "information is considered confidential if the owner or the parties in control of it have taken appropriate and appropriate measures". Thus, the business gets security against trade secrets. (Achmad Loedy Ramadhan, 2021)

Based on this, the protection of trade secrets that can be done by companies or owners of trade secrets is by granting special licenses. This license allows the owner to legally own and use the trade secret. The existence of this special license is in line with Article 1(5) of the Trade Secrets Law, which explains that "a license is a license granted by the holder of trade secret rights to another party through an agreement". The granting of such rights (not transferred) is intended to obtain economic benefits from protected trade secrets, with provisions regarding certain periods and conditions. So that the owner or holder of the trade secret has the right described in article 4 "to grant a License to or prohibit another party from using the Trade Secret or disclosing the Trade Secret to a third party for commercial purposes."

In order to protect its trade secrets, companies can draw up various agreements. An agreement is written or unwritten evidence that is the foundation for granting rights and is very important to protect and prevent infringement of trade secrets. An agreement occurs between the employer in this case the company and the employee and is regulated based on article 50 of the Manpower Law which explains that the formation of an employment relationship through an agreement between the employer and the employee who is in the interaction in the work environment gives rise to rights and obligations between the employee and the company. (Rizki Nur Annisa, 2018) The importance of clear arrangements related to the rights and obligations that occur between employees and the company through laws, employment contracts, internal company regulations, and/or mutual agreements. Good arrangements aim to ensure safety for each party as well as create balanced and harmonious work collaboration. According to Article 1 point 15 of the Manpower Law No. 13 of 2003, it is stated that "An employment relationship is a relationship between the employer and the worker/laborer based on an employment agreement, which includes aspects of work, remuneration, and instructions." In this context, the agreement includes a clause that regulates the confidentiality of information within the company. (Irfan, 2019)

The agreement between the company and the employee is not only written about the obligations and rights of the employee when working with the company but also regulates whether or not to disclose trade secrets after the expiration of the agreement within a certain period of time. The written employment agreement at least contains information including:

- a. Company name, address, and type of business;
- b. Name and address of the employee;
- c. Job title or type of employment;
- d. Terms of employment that govern the rights and obligations of workers and employers;
- e. The amount of wages and the method of payment;
- f. Place of work;
- g. Entry into force of the employment agreement;
- h. The place and date the employment agreement was made;
- i. Signatures of the parties in the employment agreement. (Mahila, 2010)

It is said that the contract is valid if both parties meet the validity provisions stipulated in Article 1320 of the Civil Code.;

- a. There is an agreement between the parties
- b. The ability of the parties to make an agreement
- c. The existence of a certain thing or a certain object that is agreed upon
- d. A cause or causa that is halal

Agreement is considered void if the agreement occurs due to force (*dwang*), Mistakes (*dwaling*), or fraud (*bedrog*). The agreement that occurs between employers and employees, which contains the obligation of employees to maintain the confidentiality of trade information, as long as it is in line with existing laws and regulations and can be a strategic step for entrepreneurs in protecting trade secrets owned by the company. (Ningsih, 2018)

Ethics and Social Responsibility

Protection against trade secrets is not solely to protect but is also useful to ensure that such infringements also have sanctions for those who violate them. In a business environment, maintaining information confidentiality is an important part of practicing business ethics and social responsibility. As a valuable intellectual asset, trade secrets are often the target of infringement, which in this case can result in financial losses as well as damage to the company's reputation. Therefore, the company has an obligation to comply with applicable regulations, but also to integrate ethical principles in protecting important information, in order to maintain stakeholder trust (Bilqis Dewi Purnomo, 2024)

Companies that own trade secrets often entrust their management to individuals or entities that play an important role in safeguarding their sensitive information. To protect their trade secrets, companies generally make a special agreement, whether in written or unwritten form, intended for employees. The agreement aims to ensure that confidential information is not disclosed to third parties without the permission of the trade secret holder. From a legal and ethical point of view, employees who are entrusted with responsibility are obliged to protect the confidentiality of such information. If an employee violates this obligation and discloses the company's trade secrets, then the principles of honesty embraced by the company towards business ethics are violated by themselves. (Na'afi, 2019)

Legal analysis related to trade secret violations shows that Law No. 30/2000 on Trade Secrets reflects business ethics values by prohibiting the use or disclosure of information without the consent of the owner. The law provides protections which include data or information that contains economic value such as secrets, production methods and business strategies. Challenges and violations of Trade Secrets in Article 13 of Law No. 30 of 2000 concerning Trade Secrets explain that violations of trade secrets can occur if a person has the intention to disclose confidential information, violates agreements that have been agreed, or fails to fulfill obligations, both written and unwritten, to protect the trade secret.

Violation of trade secrets by employees is not only against the law, but also business ethics that emphasize honesty and integrity. Therefore, companies must significantly develop a work culture that upholds legal awareness of trade secrets, upholds values related to trade secrets, and provides education to employees about the importance of maintaining the confidentiality of company information. However, the implementation of this regulation still faces challenges, including a lack of

awareness among business actors of the importance of legal protection and limited access to reporting mechanisms. Based on the analysis, several policy recommendations can be provided to strengthen the ethical responsibility of the Company as well as employees:

a. Legal Awareness Enhancement

Trade secret protection only applies when the information is still confidential. This is because in Indonesia there is no registration process at the Directorate General of Intellectual Property (DJKI) for trade secrets, so business owners need to present specific actions to protect their rights. Protection of trade secrets is a general effort that can be made to protect healthy competition. Trade secret regulations as regulated in Law Number 30 of 2000 have so far regulated several aspects that are quite clear and relevant. But trade secret violations are still inevitable even if there is no effort to report. Therefore, it is very necessary to increase legal awareness of trade secrets, in order to build individual awareness of the importance of an applicable regulation, especially trade secrets. Increasing Legal Awareness of Trade Secrets can be done in the first way, Legal Counseling where this counseling is one of the important aspects in the application of the principle of legal fiction is that "everyone is considered to know the law" However, if this principle is applied without effective legal socialization, this can be risky for the community. Without adequate understanding, individuals may engage in violations of laws that they do not know or want, thus leaving them vulnerable to legal consequences that should not occur. Second, training is carried out especially for employees in the context of ethics and social responsibility in the Trade Secrets Law which is an important step to ensure that the company's sensitive information is properly protected, such as (Anny Gunadi, 2024) (Ernis, Implikasi Penyuluhan Hukum Langsung Terhadap Peningkatan Kesadaran Hukum Masyarakat, 2018) *Corporate Social Responsibility* (CSR) where CSR is a corporate activity that can be required by law. On the other hand, Corporate Social Responsibility (CSR) reflects the company's commitment to operate responsibly towards society and the environment. CSR can be understood as a company's responsibility which is divided into four aspects, namely economic, legal, ethical, and philanthropic. From a trade secret perspective, this training can be designed to make employees understand the importance of protecting company information as an inherent legal provision that also has ethical value for them. Third, companies can hold workshops on securing confidential data, even the implementation of confidentiality agreement policies or (Fahham, 2010) (Rindang Adrai, 2024) *non-disclosure agreement* (NDA) is a legal contract that regulates the relationship between the parties to the role. NDAs allow parties wishing to disclose confidential information to do so to the receiving party, which is expected to maintain the confidentiality of the information. These agreements are usually used in the context of employment contracts or for specific business purposes. Thus, employees are trained to understand the risk of information leakage and its impact on the company and society. These measures aim to significantly increase the legal awareness of trade secrets and protect confidential business information more effectively. (Rismawaty, Non-Disclosure Agreement Sebagai Perlindungan Hak Kekayaan Intelektual Dalam Perjanjian Kerjasama, 2019)

b. Trade Secret Evaluation and Supervision

In Indonesia, legal protection of trade secrets is listed in Law No. 30 of 2000 concerning Trade Secrets. This law provides a clear definition of trade secrets, which includes confidential information, data, or knowledge that has economic value and is kept secret by its owner. In addition to the Law on Trade Secrets, Indonesia has other related regulations, such as Patent Law No. 14 of 2001, which protects technological innovations.

Although trade secrets and patents are different concepts, the distinction between the two can be blurred and the relevant laws and regulations must be applied carefully. Trade secret protection in Indonesia is also closely related to other aspects of commercial and competition law. If trade secrets are confiscated or disclosed without permission, then there may be violations. In this regard, trade secret protection in Indonesia is an integral part of the broader legal framework, which also includes aspects of economic and competition law. (Muhammad Imaduddin, 2023)

In its implementation, assessing and monitoring trade secrets during their implementation is an important step to ensure compliance with the law and permanently protect business interests. Trade secret assessment involves a thorough review of policies and procedures designed to protect confidential information. Companies must identify information that meets trade secret criteria, evaluate the effectiveness of safeguards such as access controls and data security systems, and ensure that all parties understand their legal confidentiality obligations. This needs to be done. The assessment not only helps identify potential vulnerabilities but also allows companies to take better preventive measures. In addition to assessments, trade secret monitoring is carried out through regular audits and proactive monitoring of potential risks, such as data leakage or breaches by internal or external parties. This monitoring is important for detecting possible breaches early on and ensuring that the company remains within the legal framework. For example, companies can enforce strict non-disclosure agreements (NDAs) for employees and business partners and develop internal reporting systems to prevent and correct violations.

Therefore, incorporating evaluation and monitoring into trade secret management not only ensures the protection of company assets, but also maintains stakeholder trust and supports the creation of a healthy and competitive business ecosystem.

Measures such as ongoing education to employees on the importance of maintaining confidentiality, implementing a *non-disclosure agreement* (NDA) policy, and developing an effective oversight system are part of a broader social responsibility. By doing this, companies not only protect their intellectual assets but also create a work environment that supports business sustainability, promotes fairness in competition, and enhances its reputation as a socially responsible entity.

CONCLUSION

Trade secrets are information that is not known to the general public and is only known by the Trade Secret Owner. The protection of this information is important because it is very vulnerable to information leaks. Unauthorized disclosure of information will cause significant losses to the owner of the trade secret.

Leakage of trade secrets is very likely to occur and can be triggered by various factors such as the leakage of trade secret information by workers. Basically, workers

in a company, whether they are still part of it or who have left the company, have the responsibility to maintain the trade secret. Information leakage by workers, whether intentional or unintentional, often occurs when there are no adequate controls and clear arrangements regarding confidentiality in employment agreements.

Therefore, maintaining trade secrets is a very important step, for example by making a trade agreement which contains the provisions of employee obligations in maintaining trade secret information. Apart from employment agreements, ethics also have a crucial role in maintaining confidential information. An employee is expected to have integrity and a sense of responsibility to always maintain the information obtained. This ethics can include the obligation not to divulge information to the unconcerned party for personal gain when the employment relationship has ended.

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