

Assessing Propriety in the Protection of Trade Secret Rights

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ABSTRACT

The increasingly competitive business world makes it crucial to protect aspects of information that support the course of business activities. Unfair business competition results in the leaking of information related to Trade Secrets. This article was written to find out what efforts should be made to protect trade secret rights. The type of writing of this article is Critical legal studies with a normative juridical approach where law is conceptualized in statutory regulations to serve as a guide for human behavior. In the case that occurred between CV Bintang Harapan and CV Tiga Putra Berlian, it shows that the contents of the Trade Secret Law regarding confidential matters cannot accommodate problems that occur in the field. Apart from that, there is no legal protection that can direct to handling or prosecution of trade secret violations so that they can operate across sectors. The government as a regulator and policy maker must more comprehensively set appropriate strategies to develop regulations on Law Number 30 of 2000 concerning Trade Secrets so that they can become a benchmark for appropriate Trade Secret protection.

Keywords: Compliance, Protection, Trade Secret Rights

INTRODUCTION

The increase in business competition today shows how crucial legal protection of economic and confidential information belonging to the Company in the world of trading business. Every individual or even a company needs ideas, ideas, or information because it has the potential to provide significant economic value. This depends on how the individual or company creates useful value for the idea, information, or work. There are many ways to make it happen, and of course, the results, benefits, and disadvantages of each have been calculated. When a person is unaware of the steps to take to oppose a concept, idea, piece of information, or work, it can sometimes create problems, preventing the individual from receiving the financial rewards to which he or she is entitled.

The development of the economic level in Indonesia shows the country's awareness of the need for protection of Trade Secrets at the beginning of 1986 where 125 countries together with Indonesia signed a declaration of the Pacta Del Este Final Act Uruguay Round which became the originator of the creation of the WTO (World Trade Organization).^[1] Of the many agreements in the convention, there was agreement related to TRIPs. With this approval, Indonesia is required to make legal policies such as in the fields of Trade Secrets, Patents, Copyrights, Trademark Rights, and Industrial Design Rights. Of course, the policy was created to protect the rights of intellectual works producers.

Trade secrets are regulated in Law Number 30 of 2000 concerning Trade Secrets. According to Law Number 30 of 2000 concerning Trade Secrets, article (1) number (1) states 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. Trade Secret Rights are rights to Trade Secrets arising under Trade Secret Act. So we can conclude that Trade Secrets are very valuable information for companies.^[2] Trade secrets are something that must be protected.^[3] Taking into account the formulation of Article 1 paragraph 1 of Law No. 30 of 2000 this definition can include protection activities against not only trade secrets, but also includes (industrial) know-how and this

law regulates only actions related to unfair competition and not unfair business practices. Similarly, the legal protection provided is not only limited to business secrets, but also includes industrial know-how. The information that must be kept secret is not only in the business field, but also in the field of technology. [4]

Thus, the protection of IPR basically requires justification for the protection of creators in the field of new technologies in the form of trade secrets and patents, which should be given an award and recognition and legal protection for the success of their efforts in creating their work. Therefore, for the results of his work, he was given exclusive rights to exploit IPR in order to obtain economic benefits. Trade Secrets on IPR as well as open patents, which means that the invention must be described or disclosed clearly and in detail as one of the requirements for patent registration. So that this situation has the potential to pose a risk that allows other parties to be able to find out or develop further secretly / secretly. Therefore, the inventor should be given a special right for a period of time for others to exploit his findings so that any violation of it can be prosecuted criminally or civilly. Another requirement is that these Trade Secrets must be kept confidential through reasonable efforts. Efforts to protect this confidentiality must of course meet these standard standards on the protection of Trade Secrets. The limits of this confidentiality under the Act are not publicly known to the public. In other words, to the extent that the information is within the scope and control of the owner of the Trade Secret, it is a Trade Secret. However, the Trade Secrets Act does not specify the forms of information that constitute Trade Secrets and are likely to be left to the practice of law. This Trade Secret Law requires every form of transfer of Trade Secret rights and licenses to be registered with the Directorate General of Intellectual Property Rights.

This article is different from other articles that have been written before, such as Anastasia E. Gerungan's article on "Legal Protection of Trade Secrets in Terms of Civil and Criminal Law in Indonesia" This article is unique in that it only focuses on the protection of normative law of trade secrets that can be studied from the point of view of civil and criminal law without direct community research.

This study is entitled "Assessing Propriety in the Protection of Trade Secret Rights" which will examine how appropriate efforts are made in the protection of Trade Secret Rights.

Problem Statement

1. How to measure the proper protection of trade secrets and in accordance with the Trade Secrets Act?

Research Objectives

1. Finding out the extent of trade secret protection efforts in accordance with the Trade Secret Law is the author's research objective.

METHODS

This article uses a type of case study research (critical legal studies), while the approach used is a juridical approach, which is a fundamental approach to normative rules and provisions. In this context, the juridical approach used is to refer to Law Number 30 of 2000, from this source the author tries to examine matters related to trade secret protection. Secondary legal material, namely material that supports primary legal material, namely thoughts from expert experts obtained by the author through journals, books, papers, theses or other literature. Using a conceptual theory by Agus Comte, Positivism, departs from the assumption that the natural sciences are the only sciences that are universally valid. Based on this assumption, although there are differences between natural phenomena and social phenomena, it is considered always possible to study social phenomena with an approach in natural science. The dominance of the positivist paradigm in the natural sciences which was later adopted in the social sciences gave rise to a way of thinking as if social phenomena had to be understood with impersonal, neutral and objective methods. Novelty in this study is

firstly looking for tangent points between regulations in positive law and conflicts that occur in cases and secondly what if the point of view of trade secret infringement also sees social phenomena that participate simultaneously as external factors not singular standing alone.

RESULT AND DISCUSSION

Understanding of Trade Secrets

Trade secrets are defined as information including a formula, pattern, compilation, program, engineering method or process that produces economic value independently, tangibly and potentially. The information itself is not publicly known information and is not easily accessible to others for use so that the intellectual property producer benefits economically. The term trade secret as a comparison can be seen from the Uniform Trade Secret Act (Canada) which states that a trade secret is any information that can be used in a trade that is not general information and has economic value^[5]

In Article 1 point (1) of the Trade Secret Law, trade secrets are mentioned 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 trade secret, from this explanation can be drawn three important elements in a trade secret:

1. Trade secrets must be “information” in both technology and business such as customer lists, food and beverage recipes, drug composition, and internal processes to produce a product or service.
2. Trade secrets must have economic value that is useful in business activities.
3. The trade secret must be kept confidential by the owner of the trade secret. Such confidentiality must also be maintained accordingly, which means all steps that according to measures of reasonableness, appropriateness, and propriety must be taken.

If these three elements are met, then a trade secret can receive legal protection^[6]

Law relating to trade secrets developed from a variety of examples that include components of contracts, financial honesty, and obligations based on trust and good faith.^[7] Two (2) reasons for the need for Indonesia to have laws and regulations that expressly regulate and protect trade secrets can be found if examined through the lens of legal considerations in Trade Secret laws and regulations, namely:

1. It is essential to foster an environment that supports people’s inventions and ideas by providing legal protection for trade secrets as part of the intellectual property rights system to promote an industry capable of competing in the sphere of national and world trade.
2. to carry out the obligations of the “Agreement Establishing the World Trade Organization” on the “Agreement of Trade Related Aspects of Intellectual Property Rights”, which has been ratified by “Law No. 7 of 1994”.

Therefore, it is clear that the establishment and ratification of the UURD is necessary to fulfill the following objectives:

1. Encouraging Indonesian industry;
2. Creating fresh ideas that can develop the sector;
3. Safeguarding the legal right to innovation, especially new ones;
4. Provide inventors with legal assurance that their trade secret rights are not being infringed.^[8]

Regarding trade secret infringement, a new offense occurs when a person knowingly discloses a trade secret, reneges on a written or unwritten agreement to safeguard the trade secret. Violations can also occur if someone obtains trade secrets in a way that is contrary to laws and regulations. However, there is an

exception to trade secret infringement, which is when someone knowingly discloses a trade secret solely for the defense, security, health or safety of the public. In addition, trade secret infringement also has exceptions for the act of re-engineering of products resulting from trade secrets belonging to other parties for the purpose of further development of the resulting product.. What is meant by reengineering is the act of analysis and evaluation to find out information about an existing technology.[9] This trade secret violation is also protected by civil law which is one of the unlawful acts (Article 1365 of the Civil Code). From this article it can be seen that acts that violate the rights to confidential information owned by a person and have economic value are unlawful acts, in this case trade secret law. It is also considered unlawful if it causes harm to the owner of the trade secret due to the disclosure of the trade secret or the denial of the written or oral obligation to maintain the confidentiality. Thus, the offending party is obliged to pay compensation.[10] For this violation, the Trade Secret Law also regulates criminal provisions for trade secret violations. A person who intentionally and without rights uses someone else's trade secret or discloses a trade secret, reneges on a written or unwritten agreement to safeguard the trade secret, shall be sentenced to imprisonment for a maximum of two years and/or a maximum fine of Rp.300,000,000.00 (three hundred million rupiah).

Elements of Trade Secret Infringement Under the Trade Secrets Act in the Case Between CV Tiga Putra Berlian and CV Bintang Harapan

Related cases between CVs. Three Sons of Diamond and CV. Bintang Harapan is the author sees the development of business competition that is so competitive between the two factories that it has elements of trade secrets that are very, very crucial to protect and also complex ranging from language, packaging design, manufacturing process, taste to marketing process. Therefore, the substance stated in the contract agreement must include a trade secret clause containing matters that can affect business competition and also the course of business activities. Intellectual property owners, in this case, business actors need to convey to workers how important trade secrets are to be kept confidential as long as they work or are no longer working at the place of business.

In the following case, a defendant named Hi Pin (HP) was an employee of CV Coffee Factory. Bintang Harapan wants to find employees of Bintang Harapan Coffee Factory. A few days later the defendant went to the mess of the employees of the bintang harapan coffee factory to meet Noldy Lagindawa (NL) an employee of the production and marketing department of the bintang harapan coffee factory and persuaded him to stop working at the bintang harapan coffee factory and, the defendant also asked the NL to recruit his co-workers at the bintang harapan coffee factory. NL then stopped working at the Bintang Harapan coffee factory and persuaded his co-workers at the Bintang Harapan factory, namely Parian who worked in the production department, Arsend in the production section, Markum in the frying and packing section, and Jumaidi in the production and marketing department to stop working at CV. Bintang Harapan and moved to work at the Defendant Company CV. Three Sons of Berlin because his salary is 2 times that of CV. Star of Hope.

After the same NL witness the theme stopped working on CV. Star of Hope and move on CV. Three Berlin owned by the defendant which was also a newly established coffee factory, the defendant ordered the NL witness and his friends to make a frying and grinding station according to their experience while working at CV. Star of Hope. The accused also ordered the NL witness to take samples of raw coffee, documentation and frying and production machines, the Parian witness to take the ground coffee filter at the mill and the Markum witness to take plastic packing at the CV coffee factory. Bintang Harapan with the intention that ground coffee produced by CV. The defendant's Three Sons of Diamonds are the same as CV's ground coffee. Hope star. That the frying pan, grinding and filtering ground coffee is something specific and Trade Secret because it is closely related to the aroma and taste of Bintang Harapan ground coffee. The defendant also along with NL witnesses used marketing distribution by visiting subscriptions and distributors of Bintang Harapan ground coffee and offering the defendant's Tiga Putra Berlian ground coffee. The defendant's actions were without the permission of the victim's witness, Johan Satria Salim, the owner of

CV. Bintang Harapan and resulted in losses in the form of hampered production of Bintang harapan ground coffee because 5 of its employees had been recruited by the defendant and the switch of several subscriptions / distributors from Bintang harapan ground coffee to ground coffee Three Sons of Berlin According to “Article 2 of Law 30/2000”, information in the field of technology and / or business that is of economic value but not known to the general public is included in the protection of trade secrets.^[11] Like a trademark,^[12] 20 (twenty) years from the date of receipt is given as the period of protection,^[13] Trade secret protection is valid indefinitely, or until the secret is revealed or obtained by the public.^[14]

“Articles 13 and 14 of Law 30/2000” prohibit trade secret infringement in the following ways:

Willful disclosure of trade secrets, breach of contract, or failure to enforce contractual responsibilities to protect trade secrets are also considered violations of trade secret law.

This provision leads to conclusions about the components of keeping trade secrets as follows:

1. As if someone intentionally leaked trade secrets.
2. knowingly breaches any contract, contract or commitment to protect trade secrets; and/or
3. obtain or manage trade secrets in a manner that is outside applicable laws and regulations.

While acts that do not constitute Trade Secret infringement are if disclosure is based on the interests of public defense, security, health or safety. In addition, the act of modifying/reverse engineering a product resulting from the use of someone else’s Trade Secret solely for the purpose of further development of the product in question is also not a Trade Secret infringement. Legal issues in trade secrets can be done through several legal remedies, namely::

1. Civil remedies The remedy as stipulated in Article 11, is to explain that in the event of a dispute related to the unauthorized use of a trade secret, then an attempt to apply for compensation is allowed to be submitted by the owner of the trade secret through the commercial court;
2. Criminal Legal Remedies Criminal legal remedies are regulated in article 17 which explains that violations in the form of a person who knowingly discloses trade secrets, reneges on agreements or reneges on written or unwritten obligations to safeguard trade secrets and obtain or control trade secrets in a manner contrary to laws and regulations, can be criminally remedied;
3. Arbitration or alternative dispute resolution, this provision is provided for in Article 12 of the Trade Secrets Act.

The inventive value behind the coffee industry’s complicated process is high on the work of human hands in blending coffee as trade secret information. With several determining factors such as raw materials, product / packaging design, and technical basic knowledge of blending different coffee. From raw materials that are easy to obtain even though they have different qualities so that they can produce a composition between raw materials to obtain the best quality, making the coffee industry for MSMEs requires trade secret protection between industries. In Article 1 number 1 of Law Number 30 of 2000 concerning Trade Secrets. Based on the above case, it is stated that the definition of “has economic value: on an information that is confidential in Law Number 30 of 2000 is narrower when compared to TRIPs. In this case, the conformity of the principle of freedom of legal regulation of TRIPs will conflict with the principle of minimum standards of TRIPs that may not regulate minimum domestic provisions that are lower than TRIPs. So that the definition in the Act can be biased with a lower position than TRIPs.

For the above cases, business actors must be stricter in choosing their business strategies, so that the risk of leaking information from workers or other risks can be disallowed to a minimum. The possibility of the case above is an example of a small part of large business actors and is a lesson for MSME business actors in terms of choosing their business strategies. If trade secrets are not protected, it will have a negative impact on the continuity of a business considering that a company can survive in the business world by winning the

existing competition. Therefore, there is an opportunity for unauthorized use, theft or leakage of business information to obtain trade secrets from business opponents, resulting in fraudulent competition. The owner of a trade secret is the most entitled to an ownership, including trade secrets that are included in the category of intangible assets that have economic value that is very valuable to the owner because they are useful for the implementation of industrial and trading business activities.

CONCLUSIONS

Legislation relating to the protection of Trade Secrets in Indonesia has not been able to properly support the protection of medium-sized businesses because in addition to the absence of detailed attachment regulations regarding the forms of information that constitute Trade Secrets and law enforcement only carried out by legal practice in the field alone cannot encourage trade secret protection is implemented. The regulations regarding confidential matters in several articles in the Trade Secrets Law cannot accommodate problems that occur in the field. Apart from that, there is no legal protection that can direct the handling or action of trade secret violations so that they can operate across sectors.

The government as a regulator and policy maker must more comprehensively set the right strategy to develop the regulation of Law Number 30 of 2000 concerning Trade Secrets, which is then harmonized with current legal practices and socialize to medium-level businesses regarding efforts to protect the products of medium-sized businesses in Indonesia in maintain its innovative products so that they can compete both at home and abroad, in addition to strengthening and protecting medium-sized businesses, this can be done through easy access to information on the Trade Secrets Act, renew the articles that are more relevant to the enforcement of the Trade Secret law and the details of the trade secret protection articles so that they can be further included in the articles of the Trade Secret Law.

The application of the theory of the role of the state as a regulator has not been achieved in the end, so that the theory of legal protection regarding the fulfillment of the protection of the rights of owners of trade secrets has not been achieved. The role of the state in protecting trade secrets is still very weak, both in drafting legislation to carry out its regulatory role as well as in law enforcement.

REFERENCES

Bibliography

Books

1. Donandi S., Sujana, Intellectual Property Rights Law In Indonesia, (Yogyakarta: Budi Utama, 2019)
2. Sutedi, Adrian, Intellectual Property Rights, (Jakarta: Sinar Grafika, 2013)

Journal

1. Aryanti, Legal Protection of Company Secrets Through Law Number 30 of 2000 concerning Trade Secrets, *Bhirawa Law Journal*, Vol.2, No.2, 2021
2. Effendy, Taufik, Trade Secrets as Part of Intellectual Property Rights, *Al'Adl Journal*, Vo. VI. No.12, 2014
3. Gerungan, Anastasia E. Legal Protection of Trade Secrets Viewed from the Aspects of Civil and Criminal Law in Indonesia, *Unsrat Law Journal*, Vol. 22, No. 5, 2016
4. Gultom, Elisantris and Sudjana, Trade Secrets in the Perspective of Consumer Protection, (Bandung: Keni Media, 2016).
5. Maulana, Insan Budi, The First Step to Know the Trade Secret Law, (Bandung: PT Citra Aditya Bakti, 2010).

6. Muasyara, Husnul, Legal Protection for Trade Secret Owners in View of Law Number 30 of 2000 concerning Trade Secrets (Analysis of Supreme Court Decision No. 783K/Pid.Sus/2008), *Diponegoro Law Review*, Vol.5, No.2, 2016
7. Nurhayati, Elly, Legal Consequences of Trade Secret Violations in the Food Industry, *Journal of Legal Analysis*, Vol.3, No.1, 2020.
8. Nizliandry, Chairinaya, Analysis of the Legal Protection of Trade Secrets According to the Trade Secrets Law in Indonesia and the United States, *Dharmasiswa Journal*, Vol.2.,No.1, 2022
9. Purwaningsih, Endang Intellectual Property Rights (IPR) and Licenses (Mandar Maju Bandung, 2012)
10. Setiawan, Andry, et al, Existence of Trade Secret Registration and Implementation of Protection (Study at the Regional Office of the Ministry of Law and Human Rights of Central Java), *Journal of Law & Justice*, Vol.3, No.2, 2018
11. Sutedi, Adrian Intellectual Property Rights, (Jakarta: Sinar Grafika, 2009).
12. Usman, Rachmadi, Law on Intellectual Property Rights.(Bandung: P.T.ALUMNI, 2003), First Edition.

Internet

1. Saputra, Andi, 2018, Leaking Trade Secrets of Coffee Concoction, Hi Pin Jailed, <https://news.detik.com/berita/d-4289403/bocorkan-rahasia-dagang-racikan-kopi-hipin-dibui>, accessed on June 20, 2023.

Legislation

1. Supreme Court Decision Number 332/K/PID.SUS/2013, Trade Secret Case
2. Law Number 30 Year 2000 on Trade Secrets.
3. Civil Code.

FOOTNOTES

[1] Insan Budi Maulana, First Steps to Know the Trade Secret Act, (Bandung: PT. Citra Aditya Bakti, 2001), p. 3.

[2] Adrian Sutedi, Intellectual Property Rights, (Jakarta: Sinar Graphic, 2009), p. 122

[3] Elisantris Gultom dan Sudjana, Rahasia Dagang Dalam Perspektif Perlindungan Konsumen, (Bandung: Keni Media, 2016), hlm. 61.

[4] Elisantris Gultom and Sudjana, Trade Secrets from a Consumer Protection Perspective, (Bandung: Keni Media, 2016), p. 61.

[5] Taufik Effendy, Trade Secrets as Part and Intellectual Property Rights, *Al Adl Journal*, Vol. VI No. 12, 2014, p.54

[6] Endang Purwaningsih, Intellectual Property Rights (IPR), (Mandar Maju Bandung, 2012) ,P. 100.

[7] Anastasia E. Gerungan, Legal Protection of Trade Secrets Viewed from the Aspects of Civil and Criminal Law in Indonesia, *Unsrat Law Journal*, Vol. 22, No. 5, 2016, p.70

[8] *Ibid*, p.71

[9] See Article 15 letter b Elucidation of Law no. 30 of 2000 concerning Trade Secrets

[10] Anastasia E. Gerungan, Legal Protection of Trade Secrets Viewed from the Aspects of Civil and Criminal Law in Indonesia, *Unsrat Law Journal*, Vol. 22, No. 5, 2016, p.69, 79

[11]Sujana Donandi S., Intellectual Property Rights Law in Indonesia, (Yogyakarta: Budi Utama, 2019), p. 94.

[12] Susanti Adi Nugroho, Business Competition Law in Indonesia, in Theory and Practice and Application of the Law, p. 273

[13]“Patents are exclusive rights granted by the state to inventors for the results of their inventions in the field of technology for a certain period of time to implement the invention themselves or give approval to other parties to implement it. See Indonesia, Patent Law, Law no. 13 of 2016, LN No. 176 of 2016, TLN No. 5922, Ps.22 paragraph (1)”

[14]Chairinaya Nizliandry, Analysis of Legal Protection of Trade Secrets According to Trade Secret Laws in Indonesia and the United States, Dharmasisya Journal, Vol.2., No.1, 2022, p.103