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Implementation of Legal Protection of Trade Secrets License Based on Law Number 30 of 2000 Concerning Trade Secrets

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Article Info

Article History:
Received : 09-04-2026
Revised : 10-05-2026
Accepted : 20-05-2026
Published : 25-06-2026

Keywords:
Implementation
Licence
Legal Protect

Abstract

A company's trade secret information is very important for business actors and should not be known by other companies because trade secret information has economic value and is related to the quality of products and services produced. If a trade secret violation occurs in the form of information leakage, it will be detrimental to the company. This can affect business success and you will lose profits that should be obtained. The author's research method uses a normative juridical legal research method which is limited to the study of the application of positive law that occurs in society regarding the legal protection of trade secret licenses based on Law Number 30 of 2000. Granting a license by a trade secret owner is one way to develop a company's business. Granting a license means giving permission by the trade secret owner to the licensee to use his trade secret for commercial purposes. With the consequence of providing compensation in the form of royalties to the trade secret owner. The main clauses of the license agreement that must be agreed upon by the parties include the tempus and locus of use of exclusive rights to trade secrets, the rights of the trade secret owner to the use of exclusive rights to trade secrets by the licensee, and the licensee's authority to further pass on the license rights to third parties.

INTRODUCTION

In practice, civil and criminal law provisions are insufficient to protect trade secret holders from unfair competition. Because these provisions are deemed insufficient, a specific law, established under Law No. 30 of 2000 concerning Trade Secrets, is necessary.

Law No. 30 of 2000 was enacted to promote competitive industries within the national and international trade sphere. It is essential to ensure the protection of trade secrets, particularly against unfair competition practices and the disclosure of trade secrets. Effective protection of the ownership, control, and use of trade secrets is also crucial due to Indonesia's participation in agreements related to the trade aspects of Intellectual Property Rights (IPR).[1]

[1] Cita Citrawinda Priapantja, *Budaya Hukum Indonesia Menghadapi Globalisasi Perlindungan Rahasia Dagang*, (Jakarta: Chandra Pratama, 2005).

A company's trade secret information is crucial for businesses and should not be shared with other companies because it has economic value and is related to the quality of the products and services produced. A breach of trade secrets, such as a leak of information, will be detrimental to the company. This can impact business success and result in the loss of profits.

The practice of disclosing trade secrets to individuals or businesses is a potential threat to the company's operations and activities within the community. Public transmission in Aliam is insignificant, and has been ineffectively developed. It is understood that the current magnetic contract agreement is intended to generate information necessary for continuous production processes, loading and unloading tables, methods, and so on.

Several confidential disclosures issued by the Secretariat General and contrary to the Commercial Secretary's instructions in the form of pre-dated or public disclosures, public records must be easily and securely accessed. Information on legal secretarial matters, business negotiations, workplace placement, concepts, and information.

Law Number 30 of 2000 also regulates criminal aspects as stipulated in Article 17, which states:

1. Anyone who intentionally and without authority uses another party's trade secrets or commits an act as referred to in Article 13 or Article 14 shall be subject to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp 300,000,000.00 (three hundred million rupiah).
2. The criminal act referred to in paragraph (1) constitutes a criminal offense.

This also applies to trade in Indonesia. This was marked by Indonesia's accession to the World Trade Organization (WTO). Indonesia joined the WTO through ratification of the Convention Establishing the WTO. The consequence of joining the WTO is that Indonesia must comply with all agreements and treaties established by the WTO. Furthermore, Indonesia is also required to adjust its laws and regulations in accordance with the agreements and treaties established by the WTO. One of these is the enforcement of Intellectual Property Rights (IPR) provisions.

The implementation of the ASEAN Economic Community (AEC) correlates with the implementation of policies related to international trade regulations, particularly regarding trade secrets. The object of a trade secret is information held by an individual or company regarding something of economic value. If this information becomes public, it has the potential to harm

the owner of the trade secret, as it no longer serves as an attractive and profitable asset for the owner.

According to Suyud Margono, from the perspective of countries adopting the Anglo-Saxon legal system, trade secrets are "considered property rights, and their violation is classified as a specific unlawful act, known as an action for breach of confidence.[2]" This is different from the perspective of countries that adhere to the continental European legal system, which considers that "violation of trade secrets is just an ordinary unlawful act as per the concept of onrechtmatigedaad".

This raises concerns about unfair competition in the form of trade secret violations. Baristas who already know the trade secrets of one cafe move to another cafe or even open their own cafe. Based on the description above, we have conducted a study entitled: Implementation of Legal Protection of Trade Secret License Based on Law Number 30 of 2000 Concerning Trade Secrets. The problem in this study is: How is the "legal protection of trade secret licenses for trade secrets based on Law Number 30 of 2000 concerning trade secrets?"

The author uses a normative juridical legal research method that is limited to the application of positive law that occurs in society regarding the legal protection of trade secret licenses under Law Number 30 of 2000.

DISCUSSION

Legal Protection Of Trade Secret License For Trade Secrets Based On Law Number 30 Of 2000 Concerning Trade Secrets

Based on the definition contained in the Trade Secrets Law, there are critical elements to trade secrets. These critical elements include the following[3]:

a. First element

A trade secret must be information, whether in the field of technology or business, such as customer lists, food and beverage recipes, drug compositions, or internal processes for producing products or services.

b. Second element

[2] Suyud Margono, 2001, Hak Kekayaan Intelektual, Komentar Atas Undang-Undang Desain Industri dan Desain Tata Letak Sirkuit Terpadu, Jakarta, CV Novindo Pustaka Mandiri, hlm. 13

[3] Rachmadi Usman, *Hukum Hak atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia*, Cetakan Pertama, (Bandung: PT. Alumni, 2013).

A trade secret must have economic value that is useful in business activities.

c. Third element

The information must be maintained by the owner of the trade secret in a reasonable, proper, and appropriate manner.

From the definition above, a company's trade secrets are highly confidential, meaning no one may know them. These company trade secrets concern technology and/or business matters that have economic value. Some companies that hold trade secrets include Coca-Cola, Kentucky Fried Chicken (KFC), McDonald's (McD), and others. Some companies believe that it is better to keep an individual's or company's inventions private. This is because these inventions have significant economic value, which is why the company keeps them secret. The process of determining whether an invention should be announced to the public or kept confidential is the first step a company must consider. Several important aspects need to be considered in this regard, including[4]:

a. The difficulty of reverse engineering the invention;

b. The rapidity of technological development;

c. The product's life cycle; and;

d. The ability of the invention to meet the requirements for formal legal protection.

By considering the above important aspects, a company can determine whether to publicly announce the invention. If the invention is difficult to reverse engineer, develops rapidly, has a rapid product life cycle, and meets the requirements for formal legal protection, the company can keep the invention confidential.

Company development is also related to the development of trade secrets. A company can transfer and commercialize its trade secrets. Developing protection for IPR, particularly trade secrets, is "a necessity to provide recognition of intellectual property rights and the right to, or within a certain time, exploit, commercialize, or enjoy such property." Therefore, not everyone can use and commercialize the rights to the trade secret without the permission of the owner of the trade secret.[5]

[4] Dody Safnul, Perlindungan Rahasia Dagang dari Tindakan Persaingan Curang, Jurnal Warta Edisi: 56, ISSN: 1829-7463, April 2018.

[5] Syahriyah Semaun, Perlindungan Hukum Terhadap Rahasia Dagang, Jurnal Hukum Diktum, Volume 9, Nomor 1, Januari 2011, hlm. 32.

In the context of trade, the aim is to commercialize ownership of trade secrets. According to Warren J. Keegen in Widjaya, entrepreneurs who intend to expand their businesses internationally can do so through:

1. International trade through exports and imports;
2. Licensing;
3. Franchising;
4. Forming joint ventures;
5. Making direct foreign investment with total ownership or through mergers, consolidations, or acquisitions.

Licenses by trade secret owners are one way to develop a company's business. Licensing means granting permission from the trade secret owner to the licensee to use the trade secret for commercial purposes. This results in compensation in the form of royalties to the trade secret owner. One company in Indonesia that has successfully acquired trade secrets and developed its business through licensing is the Serba Wenak restaurant. Serba Wenak has a marketing system through a licensing system.[6] With this licensing system, the licensee must meet the requirements set by the licensor. One of these requirements is the disclosure of secret formulas, such as food recipes. The granting of a license by a trade secret owner is usually outlined in a contract, commonly known as a license agreement. The contract, which serves as the basis for determining future business development steps, contains the rights and obligations of the parties, usually expressed in a standard contract. Even though it is a contract, the license agreement must still comply with provisions regarding trade secrets. The license agreement essentially provides legal protection for both parties, ensuring that neither party is disadvantaged by ensuring fairness in the allocation of rights and obligations. The scope of rights and obligations in the license agreement should be clearly defined. Furthermore, the legal enforcement process should be reviewed.

Trade secrets are assets owned by individuals or companies. If another party wishes to exploit the trade secret, they can use one commercial means, namely a license agreement. Trade

[6] OK. Saidin, 2015, Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights), Jakarta, PT Raja Grafindo Persada, hlm. 559

secret license agreements must be based on six basic principles of trade secrets that apply in most countries[7]:

a. To obtain legal protection, the information must be confidential;
b. The defendant must reasonably believe that the plaintiff is maintaining the confidentiality of the information;
c. The unauthorized use of the confidential information must result in harm to the defendant;
d. Unauthorized use of information must result in harm to the plaintiff;
e. Disclosure of confidential information may be justified in the public interest under certain circumstances, and;
f. Various legal remedies may be pursued through the courts.

The six basic principles of trade secrets constitute the soul of the license agreement. These basic principles provide guidance regarding the main substance of the license agreement. They also outline the obligations and rights of the parties under the license agreement.

The main clauses of the license agreement that must be agreed upon by the parties include the tempo and locus of use of the exclusive right to the trade secret, the rights of the trade secret owner to the use of the exclusive right to the trade secret by the licensee, and the licensee's authority to further assign the license rights to third parties.[8] The holder of trade secret rights has the right to grant a license to another party under the license agreement to carry out legal acts such as[9]:

a. Using the trade secret itself;
b. Granting a license to or prohibiting another party from using the trade secret or disclosing the trade secret to a third party for commercial purposes.

The scope of the trade secret license agreement may be waived if otherwise agreed by the parties (see Article 4 of the Trade Secret Law). However, the licensing agreement must not contain clauses that have the potential to disrupt the Indonesian economy, either directly or indirectly, or that result in the emergence of unhealthy business competition.

[7] Etty Susilowaty, 2013, Hak Kekayaan Intelektual Dan Lisensi Pada HKI, Semarang, Badan Penerbit Undip Press, hlm. 136
[8] Sudarmanto, 2012, KI & HKI Serta Implementasinya Bagi Indonesia, Jakarta, PT Elex media Komputindo, hlm. 89
[9] Sulasno, 2018, Lisensi Hak Kekayaan Intelektual (HKI) dalam perspektif Hukum Perjanjian di Indonesia, ADIL: Jurnal Hukum Vol. 3 No. 2, hlm. 354

CONCLUSION

Licensing by a trade secret owner is one way to develop a company's business. Licensing means granting permission from the trade secret owner to the licensee to use the trade secret for commercial purposes. This results in compensation in the form of royalties to the trade secret owner. The main clauses of the licensing agreement that must be agreed upon by the parties include the tempo and locus of use of the exclusive right to the trade secret, the right of the trade secret owner to the use of the exclusive right to the trade secret by the licensee, and the licensee's authority to further transfer the license rights to third parties.

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