

Legal Protection Of Trade Secret Owners Through Non Disclosure Agreements To Guarantee Investment Security

Afif Khalid

Faculty of Law, Islamic University of Kalimantan Muhammad Arsyad Al Banjari
Banjarmasin

Yamani Naufal

Faculty of Law, Islamic University of Kalimantan Muhammad Arsyad Al Banjari
Banjarmasin

Address: Jalan Adhyaksa, No. 2 Banjarmasin Tangi Wood

Author correspondence : afifkhalid48@gmail.com

Abstract. *The protection of trade secrets against non-disclosure agreements is increasingly necessary in every cooperation agreement as a form of intellectual property protection. The purpose of this research is to know and understand the urgency of the inclusion of confidential information in the clause of the cooperation agreement so that it is fundamental to the principle of pacta sunt servanda. This research uses an analytical approach method to examine research materials through analysis of legal materials using normative legal research methods (Legal Research) In the protection of trade secrets, it also has a consequential impact on the abuse of the authority of the trade secret agreement contract because it has the nature of information that must be protected and not informed anywhere.*

Keywords: *Legal Protection, Trade Secret, Disclosure Agreement.*

BACKGROUND

Among the trade secret community, this is known as undisclosed information (WTO/TRIPs) or confidential information. In Indonesia, the term trade secret is a translation from America, namely trade secret. In this way, different naming roles do not take away from the essence contained in the trade secret itself. Especially in Indonesia, the implementation of trade secrets is intended for business information, not for use by celebrities such as affairs, gossip, and so on.

Trade secrets are part of intellectual property rights that protect against developing industrialization and a competitive and individualistic culture. Apart from that, trade secrets also have economic values which must be protected and kept confidential through preventive efforts to prevent violations from leaking information that is categorized as secret. As a private right because it is a secret resulting from human intelligence and dedication which has used a lot of thought, energy and money. On the other hand, eastern culture considers trade secrets as public rights which are shared property. This distinction does not support the protection of trade secrets in general.

Law Number 30 of 2000 concerning Trade Secrets (hereinafter referred to as Law No. 30 of 2000) has established protection that will encourage the birth of new findings or inventions which, even though they are treated as secrets, still receive legal protection, whether part of the plan of ownership, control or its use by its discovery. To manage the administration of Trade Secrets currently at the Ministry of Law and Human Rights c/q Directorate General of Intellectual Property Rights to provide services in the field of Intellectual Property Rights.

In providing legal protection for trade secrets, many people now violate existing regulations, resulting in conflicts between trade secret owners and trade secret users. As regulated in article 2 of Law no. 30 of 2000 states that the existence of an element of confidentiality in trade secrets means that trade secrets do not have a limited period of protection. The most important thing is that as long as the owner of the trade secret continues to make efforts to maintain the confidentiality of the information, then this information remains under trade secret protection. So if we examine it further, this problem arises when the owner of a trade secret is only known by certain parties, not the general public.

Currently, many people in the community do not understand the concept of trade secrets, so that information that has been determined can be leaked and easily hacked by other people and certain parties. So this must be used as a basis that the rights of trade secret owners must be protected so as to facilitate performance in providing information through several predetermined provisions. Therefore, although trade secrets are not registered like other intellectual property rights, they are protected by trade secrets which are confidential information, have economic value, and are kept confidential, except for the Trade Secret license granted.

This license must also apply to the legal principles that are binding between both parties. So that when the information becomes known to the general public, the legal protection of the owner of the trade secret must apply to provide legal certainty for both parties in carrying out the owner's mandate for commercial purposes. 4 A non-disclosure agreement license agreement actually provides legal protection for both parties so that no one is harmed by providing fairness in the expression of rights and obligations. The scope of rights and obligations in the license agreement needs to be clearly defined. Apart from that, it is also necessary to study the law enforcement process.

So it is an interesting problem for the author to examine the structural aspects of the license, the legal principle of the Pacta Sunt Senvarda agreement and the legal protection that the trade secret owner gets. To answer this problem, the author uses legal research methods with normative juridical research characteristics. This normative juridical research uses a

conceptual and statutory approach. In this way, we will obtain a comprehensive explanation regarding the legal protection of trade secret owners in non-disclosure agreement licenses in Indonesia.

THEORETICAL STUDY

The presence of law in society is to integrate and coordinate interests that usually conflict with each other. Therefore, the law must be able to integrate it so that conflicts of interest can be reduced to a minimum. The term "law" in English can be referred to as law or legal. In this subchapter, the meaning of law will be discussed in terms of linguistic terminology which refers to the meaning in several dictionaries and the meaning of law which refers to several opinions or theories presented by experts. The discussion of law here does not intend to create a definite boundary regarding the meaning of law because according to Immanuel Kant the definition or meaning of law is something that is still difficult to find because of the wide scope and various fields from which law is discovered.

The definition of legal terminology in Indonesian according to the KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or government, laws, regulations, and so on to regulate social life in society, standards or rules regarding certain natural events, decisions or considerations. determined by the judge in court, or verdict. Opinion regarding the meaning of understanding the meaning of law stated by R. Soeroso, SH that law is a collection of regulations made by the authorities with the aim of regulating social life which has the characteristics of commanding and prohibiting and has a coercive nature by imposing punitive sanctions for those who violate them.

According to JCT Simorangkir, SH and Woerjono Sastropranoto SH, law is coercive regulations that determine human behavior in the social environment made by official authorities. According to Soedjono Dirdjosisworo, the meaning of law can be seen from eight meanings¹, namely law in the sense of rulers, law in the sense of officers, law in the sense of attitude of action, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of legal order, law in meaning of legal science, law in the sense of legal discipline. Several meanings of law from various points of view put forward by Soedjono Dirdjosisworo illustrate that law is not merely written statutory regulations and law enforcement officials as currently understood by the general public who do not know about the law. But the law also covers things that actually exist in society.

Trade Secrets are also known as Undisclosed Information (WTO/TRIPs) or Confidential Information (England), or Trade Secrets (America), and Indonesia calls them Trade Secrets, which is a translation of Trade Secret. The existence of these different names does not differentiate the understanding contained therein. Specifically for Indonesia, the application only applies to business information. Not for example celebrity affairs. Trade secrets as part of the Intellectual Property Rights system should be given protection like other IPR objects. Trade secret protection is regulated in Law no. 30 of 2000 concerning Trade Secrets. Trade Secrets developed following industrialization and a competitive and individualistic culture. Trade secrets in western society are considered to be the result of human intelligence which has made sacrifices using thought, energy and high costs.

Regulations regarding trade secrets in Indonesia are still new. The basis for this arrangement is the ratification of the Agreement Establishing the World Trade Organization (approval for the Establishment of the World Trade Organization or WTO) which also includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) with Law no. 7 of 1994 so it is necessary to regulate trade secrets. In Indonesia, trade secrets were first regulated through Law no. 30 of 2000 concerning Trade Secrets. Initially, legal protection regarding all forms of unfair competition practices was regulated by the signs and norms in Article 1365 of the Civil Code and Article 382 bis of the Criminal Code.

RESEARCH METHODS

The research method used in this research is juridical, normative, conceptual law, conceptualized in statutory regulations and legal materials (law in books).⁶ The qualitative nature of this research explains legal material in words or statements, not numbers.⁷ Apart from that, The approach used in this research is the analytical approach. ⁸ Therefore, the research is aimed at studying normative materials and analyzing the specifications of references to primary legal materials and secondary legal materials.

RESULTS AND DISCUSSION

1. Applicability of the Pacta Sunt Servanda Principle to Trade Secrets to Ensure Investment Security.

Trade secrets have the characteristic of a person's actions which express their attitude to carry out their rights and obligations in maintaining the security of investments and inventories of goods to be transacted. Accidentalialia is a characteristic inherent in an agreement which firmly and straightforwardly binds the parties to the agreement, one of which is

accidentalia regulated in article 1320 of the Civil Code which reads "for the validity of agreements, four conditions are required, namely, the agreement of those who are binding themselves, their own competence. make an agreement, a certain thing, and a lawful cause." So the article generally states that the agreement must fulfill both subjective and objective conditions.

Wherever we are, the human conscience desires ethical and moral values in every agreement that has been agreed, because this agreement is the basis for implementing the agreement in accordance with what was agreed upon by the parties. Without the agreed promises, no agreement will be born. 10 Thus, the application of the principle of pacta sunt servanda as a fundamental principle in this trade secret agreement in carrying out the contract may not cause us to harm one of the opposing parties to the contract. So the party who goes against the contract is said to be in default and must compensate for the losses agreed upon in the agreement.

Article 1338 of the Civil Code which states that "All agreements made in accordance with law are valid as law for those who make them", is the basis for the principle of pacta sunt servanda. Therefore, the article explains that this principle stipulates that an agreement must be carried out until it is fulfilled by both parties. This means that every agreement or agreement has legal force and is binding on the parties. Apart from that, the principle of pacta sunt servanda is that contracts are also created to serve the law, including ensuring justice. Because the application of the law can be achieved through its own terms and conditions.

So if we look at the owner of a trade secret to obtain legal protection through a non-disclosure agreement to guarantee investment security, the principle of pacta sunt servanda applies as a crucial and fundamental principle in the contractual agreement between the owner of the trade secret and the person who will carry out the rights and obligations that will be do it later. In trade secrets, the principle of pacta sunt servanda is the goal of the law itself, namely justice for users of trade secrets because many people abuse contractual agreements even though they use a non-disclosure agreement as an agreement that binds both parties. Apart from that, the principle of pacta sunt servanda also has binding legal force for the parties so that this principle applies to the basic theory (Grand Theory) which binds morals and decency to trade secrets to obtain legal protection.

2. Legal Protection of Trade Secret Owners to Guarantee Investment Security Through a Non-Disclosure Agreement

The rights and obligations of the subject of the contract stipulate that the company transferring the trade secret is ready to provide the necessary information to the recipient at a

certain time, provided that the recipient keeps it confidential and does not provide the information to the recipient of the trade secret to another person without the written permission of the complainant, so that other people can use it. for its own benefit outside of this Agreement. This obligation to maintain confidentiality also applies to subsequent contracts that may be entered into by the receiving party. Therefore, this non-disclosure agreement is very influential for the party holding trade secret rights to protect, close and not disseminate trade secrets in accordance with the contractual agreement based on the principle of *pacta sunt servanda* towards what has been promised in protecting rights and obligations.

Therefore, based on the above statutory regulations, it can be seen that the application of the principle of *pacta sunt servanda* is very binding for both parties so that the legal protection obtained by the owner of a trade secret also has the capacity to relate to criminal justice to provide justice for the owner so that it is not made into a trade secret through The non-disclosure agreement is just a sign or symbol, but it still survives because efforts to protect trade secrets through the contract law system implemented by commercial parties is one of the legal strategies to protect trade secrets themselves.

The implementation and comprehensive implementation of legal protection for Trade Secrets actually occurred before the enactment of the regulations and practices for the protection of Trade Secrets in Law Number 30 of 2000 concerning Trade Secrets (hereinafter referred to as Law No. 30 of 2000). Legal protection for trade secrets has actually been provided by the state with legal certainty which essentially originates from the civil relations between the owner of the trade secret and the holder of the trade secret in the form of a trade secret contract license which is not given the authority to do things outside the contract agreement or take legal action that is detrimental one of the parties.

In the Indonesian criminal justice system, every criminal act determined by the legislators has a legal interest which is intended to be protected. against the perpetrator with criminal sanctions as follows: Article 322 paragraph (1) of the Criminal Code: "Anyone who deliberately discloses a secret which he is obliged to keep because of his position or livelihood, whether current or previous, is threatened with imprisonment for a maximum of nine months or a fine of a maximum of nine thousand rupiah.". If we look at the provisions of Law no. 30 of 2000 in Article 17 (1) states that: "Anyone who intentionally and without right uses another party's Trade Secret or commits an act as intended in Article 13 or Article 14 shall be punished by imprisonment for a maximum of 2 (two) years and/or a fine. maximum IDR 300,000,000.00 (three hundred million rupiah)."

With the legal protection of trade secret owners through a non-disclosure agreement, this is a guideline for trade secret owners that at the time of the agreement an agreement must also be made which will have consequences for misuse of trade secrets, especially if they are leaked to safeguard the security of investments with commercial value. So that the owner of the trade secret is protected by the information he has and the holder of the trade secret as the implementer of the contract agreement which applies the principle of *pacta sunt servanda* is significant for the law that will be obtained later when there is an abuse of this authority.

CONCLUSIONS AND RECOMMENDATIONS

Trade secrets have legal protection against misuse of the authority of the trade secret holder so that the principle of *pacta sunt servanda* applies to both parties as a fundamental contractual agreement in protecting investments and inventory which are made secret and protected by Law no. 30 of 2000. An owner who owns trade secrets can easily differentiate between a profitable trade deal and a competitive market. Therefore, as a step to resolve disputes arising in the field of trade secrets, the law regulates settlement methods and sanctions that can be imposed on all persons guilty of committing trade secret violations.

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