

Juridical Review of Trade Secrets of the Traditional Food *Burayot*

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ABSTRACT

This research intends to protect the protection of trade secrets for protection and home industry businesses such as traditional Burayot food in Garut Regency so that this will maintain the protection of Burayot as a local Garut product that can help maintain local and national and international economic progress. Based on the provisions in Article 3 Verse 1 of Law of Republic of Indonesia No. 30 of 2000, it takes three conditions for a trade secret to obtain legal protection; namely, the information is secret in nature, it is of commercial value, and its secrecy is strictly safeguarded through appropriate measures. Thus, looking at the criteria above, traditional local food burayot is entitled to legal protection for trade secrets.

Keywords: *Legal Protection, Trade Secrets, Burayot.*

1. INTRODUCTION

As a developing country, Indonesia needs to strive for tough competition in the business world. This is in line with global conditions in trade and investment. Such competitiveness has long been recognized in the Intellectual Property Rights system, one of which is trade secrets. In Indonesia, the issue of confidentiality is regulated in several separate rules that do not yet constitute a unified system of rules.

The need for legal protection of trade secrets is also in accordance with one of the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) which is an appendix to for the Establishment of the World Trade Organization, as ratified by Indonesia with Law of Republic of Indonesia Number 7 of 1994 [1]. Such protection will encourage the birth of new findings or inventions which, even though they are treated as confidential, still receive legal protection, both in terms of ownership, control, and utilization by the inventors.

The discovery of trade secrets can be passed down from generation to generation, as is the case with business products in the traditional food sector such as

burayot in Garut, West Java. The production of burayot is claimed to have been going on since the era of saribu tilu sen sajiwa, during the independence era where President Soekarno at that time distributed the money to the people of Indonesia. At that time burayot was always there to serve at celebratory occasions such as weddings or circumcisions. The competition in marketing burayot is the same as marketing other food products because it is sold in public places such as in food shops around Garut. The question is if this Garutian local food is entitled to legal protection when associated with trade secrets regulation stated in Law of Republic of Indonesia No. 30 of 2000. The taste is different and the presentation is sure to attract tourists [2]. With the invasion of super modern foods and the proliferation of franchise business systems such as McDonald's, Turkish kebabs, and so on, the competition is increasingly fierce between traditional local foods.

Home industry companies producing traditional foods such as burayot need a strategy to win the competition. Burayot is a traditional Sundanese food originating from Garut, West Java. This traditional food can be found in several sub-districts in Garut, such as

Leles, Kadungora, and Wanajara. The word "burayot" itself is taken from the Sundanese language which in Indonesian means "hanging" [3]. Many things can be done to win the competition. Business competition has both positive and negative sides. On the positive side, companies and/or entrepreneurs will improve the quality of their products, but on the negative side, there are not a few who use unhealthy methods and even break the law to win the competition.

Based on the above description, some questions arise: can local food like burayot obtain legal protection for trade secrets? Does it violate the trade secret provisions when one uses the same formula or trade recipe for the same products with different names?

2. METHODS

This study was conducted using a normative juridical approach, aiming to discover the principles of positive law and positive legal doctrines, usually called dogmatic legal research. The procedures begin with premises in the form of existing positive law and end with the discovery of legal principles [2] by connecting the existing statutory rules as positive legal norms. Data collection techniques included documentary study (library research), interviews, and surveys.

3. RESULTS AND DISCUSSION

a. Understanding Trade Secrets

According to Law of Republic of Indonesia No. 30 of 2000 on Trade Secrets Article 1 Verse 1, trade secret shall be the information that is not identified by the public on technology and/or business which has economic value, because it is useful for business activities and whose secrecy is safeguarded by the owner of the trade secret.

The elements of a trade secret consist of [3]:

1) Information secrecy.

The information is considered secret if it is a concept, idea, or information that is identified by certain parties only and it is not identified by the general public [4].

2) The information is not identified by the general public.

Law of Republic of Indonesia No. 30 of 2000 provides delimitations regarding the notion of not being identified by the public in Article 3 Verse 2 as follows: The information is considered if it is a concept, idea, or information that is identified by certain parties only and it is not identified by the general public. The secrecy is permanent and covers the process including system, procedures, formula, and processing tools, but not the product per se.

3) The information is within the scope of technology or business

Law of Republic of Indonesia No. 30 of 2000 Article 2 mentions:

The scope of the trade secret covers methods of production, processing, sale, or other information in the area of technology and/or business that have economic value and are not identified by the general public.

Technology in this context refers to product processing, and business refers to processing methods, sales, distributions, goods, or other information considered unique and of economic value.

4) The information is of economic value

Law of Republic of Indonesia No. 30 of 2000 Article 3 Verse 2 mentions:

The information is deemed of economic value if the nature of secrecy of the information can be used to carry out commercial activities or business or can economically increase profits

What can be inferred from this is that commercial activities can be useful and beneficial if the information is widely disseminated, not restricted. It is said to have economic value if the profits obtained from the trade secret are higher than production costs and other related costs. Any information about commercial production impropriety may also be of economic value to the owner and therefore can also be categorized as a trade secret [4].

5) The information secrecy is strictly safeguarded by the owner.

Article 3 Verse 4 of Law of Republic of Indonesia No. 30 of 2000 defines that the secrecy of the information is considered having been safeguarded if the owner or the parties who control it have taken proper and reasonable steps, both internally and externally in order for the information cannot easily be accessed by unauthorized parties. The trade secret holders are fully responsible for the secrecy of the information. This means that the trade secret holders are responsible for proving whether there are efforts to safeguard trade. According to the encyclopedia [5], a trade secret is a piece of information that is not identified by the public in the area of technology and/or business that has economic value because it is useful in business activities, and is kept confidential by the owner of the trade secret.

b. Legal Protection of Trade Secret

The rationale for trade secret information under the TRIPs agreement is to guarantee the party making the investment to develop concepts, ideas, and information of commercial value and to benefit from the investment by obtaining the exclusive right to use the concept of

information, as well as to prevent other parties from using or disclosing the information without permission [6].

Intellectual property rights (IPR) protection was originally a form of protection provided by the state for the ideas or works of its citizens and therefore intellectual property rights are basically state territory [7]. Without the protection of IPR, business communities in developed countries feel insecure in carrying out their activities, especially when dealing with people from developing countries. The Omnibus Act Special 301 imposed by the United States is a classic example frequently mentioned. Furthermore, because the existence of WIPO is considered unsuccessful in disseminating and imposing a uniform law or regulation on IPR for countries in the world, assuming that WTO-GATT will succeed, TRIPs are included in the WTO-GATT.

By taking part in the Agreement for the Establishment of the World Trade Organization as part of the agreement to participate in the WTO-GATT-TRIPs, by adopting and enacting Law no. 7 of 1994 concerning Ratification of the Agreement for the Establishment of the World Trade Organization, Indonesia is obliged to make and enforce legal provisions regarding intellectual property rights that are in line with the provisions stipulated in the WTO-GATT-TRIPs. Protection of trade secrets is then regulated in Trade-Related Aspects of Intellectual Property Rights or abbreviated as TRIPS [8]. The scope of the trade secret covers methods of production, processing, sale, or other information in the area of technology and/or business that have economic value and are not identified by the general public [6].

The subject matter object that is in the legal spotlight regarding this confidence is information, be it technical, commercial, personal information, or other information that is closely related to the owner, whether personal, individual, or corporate [5]. Based on the provisions in Article 3 Verse 1 of Law of Republic of Indonesia No. 30 of 2000, it takes three conditions for a trade secret to obtain legal protection; namely [9]:

- 1) The information is secret in nature.
- 2) The information is of commercial value, used to develop business activities or to increase economic profits.
- 3) The information secrecy is strictly safeguarded by the owner through appropriate measures.

Article 39 Verse (1) TRIPs regulates the aim of ensuring the effectiveness of the implementation of legal protection against unfair business competition, which is regulated in Article 10 bis of the Paris Convention (1967). To ensure the implementation of protection against unfair business competition, WTO

members are required to provide protection for such confidential information and for data submitted to the government or government agencies [10]. Gunawan Widjaya [8] explained that Article 39 Verse (2) of TRIPs regulates the rights for individuals and entities to the protection of information that is in themselves, which is not disclosed by them which is obtained or used by other parties illegally or dishonestly without their consent according to the law. in a manner that is contrary to honest business practices as long as:

- 1) The information is secret in nature, meaning that the information cannot be easily identified or obtained by public
- 2) The information has commercial value for its secrecy.
- 3) Proper measures have been taken to protect the information from disclosure.

Law of the Republic of Indonesia No. 30 of 2000 does not regulate the relationship between employees and employers or business owners who are also the holder of the right to trade secrets regarding the obligation to maintain the trade secrets of the company where they work, nor do labor laws and regulations, Law of the Republic of Indonesia no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-monopoly Law) and the Civil Code (KUHPerdata) and the Criminal Code (KUHP).

A work agreement is an agreement to perform work as referred to in Article 1601 of the Civil Code. One important part of this employment agreement is if there is an agreement between the worker and the employer to maintain the confidentiality of company information. Agreements between employers and workers that create an obligation for workers to maintain the confidentiality of the company information where they work (trade secrets of the company) do not conflict with applicable laws and regulations and can be carried out by employers in order to protect valuable information.

The problem with burayot's trade secrets is that there is no work agreement between employees and the owner of the trade secret. Because everything is done on the basis of mutual trust from both parties, where employees believe in what they will receive in the form of wages from the owner. Meanwhile, the owner trusts his employees with no prejudice or presumption whatsoever for the leakage of his trade secrets. The element of confidentiality in this trade secret causes the trade secret to have no time limit for 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, this information is still under the protection of the trade secret [11].

Law of the Republic of Indonesia No. 30 of 2000 mentions that the scope of the Trade Secret covers methods of production, processing, sale, or other information in the area of technology and/or business that have economic value and are not identified by the general public. Information in trade secrets is divided into information in the area of technology and information in the area of business. What is included in information technology are:

- a. Information about research and development of a technology
- b. Information about production or process
- c. Information on quality control

And what is included in the information in the area of business are:

- a. Information about product sale and marketing
- b. Information about customers
- c. Information about finance
- d. Information about administration

Information contained in advertisements, brochures, operating manuals, provided to the public is no longer categorized as information regulated in trade secrets [12].

c. Trade Secret Rights and Trade Secret Transfer

The owner of the trade secret is free to use and exploit the trade secret or prevent other parties from using it. However, as with other types of intellectual property rights, the owner may also grant a license to another party to use the trade secret for a certain period of time through a license agreement. The license agreement creates an obligation for the licensee to maintain confidentiality. Article 4 of the Law of the Republic of Indonesia No. 30 of 2000 mentions that the owner of the trade secret has the right to prohibit other parties from using the trade secret or revealing the trade secret to any third party for commercial interests.

Trade secret rights may be transferred to other parties as regulated in Article 5 Verse (1) of the Law of the Republic of Indonesia No. 30 of 2000; namely, through:

- 1) inheritance,
- 2) grant,
- 3) testament,
- 4) a written agreement, or
- 5) other causes which are justified by laws.

The owner of a trade secret is the inventor or originator of the confidential information, which is called a trade secret. The holder of the trade secret is the owner of the trade secret and the parties who obtain

further rights from the owner of the trade secret. In practice, the obligation to maintain confidentiality exists because of the legal relationship between one party and another, one of which is the relationship between employers and employees. Most cases of trade secret breaches involve an employee who has used information obtained from his employer's workplace during or after the end of the employment period.

Legal protection of trade secrets by the state is due to a civil relationship between the owner of the trade secret and further recipients of trade secret rights in the form of a trade secret license with third parties who are not entitled to take (legal) actions that commercially utilize the trade secret, including those who provide trade secret information incorrectly and who obtain it illegally. Law of the Republic of Indonesia No. 30 of 2000 Article 13 reads that a trade secret violation also occurs if a person purposely discloses a trade secret, disavows the agreement, or disavows written or unwritten obligations to safeguard the relevant trade secret. Further Article 14 mentions that a person is considered to have violated the trade secret of another party if the person in question obtains or controls the trade secret in a way that is contrary to the applicable laws and regulations.

Although it is not expressly stated that the misuse of a trade secret must result in harm to the owner, it is implied that if the trade secret has a commercial value, losses will be experienced if the trade secret is misused.

Basically, the trade secret law is not violated if the disclosure or use of the trade secret is in the interest of security, health, or public safety. In accordance with the provisions of Article 11 of the Law of the Republic of Indonesia No. 30 of 2000, if someone violates the rights of the owner of a trade secret as referred to in Article 4 of the Law of the Republic of Indonesia no. 30 of 2000, the owner of a trade secret can file a lawsuit to the Public Court in the form of:

- 1) lawsuit on compensation and
- 2) stopping all acts

Article 17 Verse (2) of the Law of the Republic of Indonesia No. 30 of 2000 states that the criminal act of violating trade secrets is a complaint offense. This means that the process of a new criminal case warrants a complaint from the aggrieved party. This still reflects the civil nature of the interests of the aggrieved party, which in this case is the trade owner or trade secret holder. This provision is clearly different from those stipulated in the Economic Espionage Act-USA, where the government plays an important role in the protection of intellectual property rights [13].

Article 3 Verse (2) of the Law of the Republic of Indonesia No. 30 of 2000 says that what is secret is permanent. Therefore, this trade secret can only cover

system, procedure, formula, and processing tools, not a product. If someone, either a former employee or another party, uses the same system, procedure, and formula as the process of making burayot, but the processing tools and the resulting products are different, for example in the case of making ali agrem, it is considered an act of violating trade secrets.

4. CONCLUSIONS

Legal protection for trade secrets can only be done if it meets the conditions specified in Article 3 Paragraph (1) of the Law of the Republic of Indonesia No. 30 of 2000 concerning Trade Secrets, namely; first, the information must be confidential, cannot be identified by the general public. Second, the information shall be of commercial value; i.e., its secrecy can be used to develop business activities or to increase economic profits. Third, the owner of the information must have taken appropriate measures to protect the confidential nature of the information.

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