



# Protection of Trade Secret Rights in Indonesia

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**Abstract.** Trade secrets are proprietary rights held by legal entities within the technology and business sectors, constituting essential components of their commercial operations and carrying inherent economic value. The principle of confidentiality inherent in trade secrets distinguishes them from other forms of intellectual property rights. This emphasis on non-disclosure serves as a pivotal characteristic of trade secrets. Such legal safeguarding facilitates the emergence of new discoveries or innovations, even when kept confidential, ensuring protection in terms of ownership, regulation, and utilization by the originator. The aforementioned discoveries were encompassed within the realm of trade secrets. Any information that has been disclosed or inadvertently becomes accessible to the public ceases to be considered a trade secret. Law Number 30 of 2000 concerning Secrets does not explicitly define "information," as it is only intended for specific parties' knowledge rather than being commonly known.

**Keywords:** Legal Protection; Trade Secrets; Owner; Economic Value.

## 1 Introduction.

Intellectual property includes trade secrets that concerns confidentiality in the field of business with economic value. Information contained in trade secrets is an important part of trade secrets and is protected both on a national and international scale. Trade secrets have differences with other intellectual property because they involve non-disclosure of information which is the main characteristic that distinguishes it from other intellectual property. Nondisclosure is an important and central factor in trade secrets that are deliberately hidden so that they are not known to others.

Prior to various national and international arrangements, trade secrets had spurred unfair competition in the field of trade, but matters that arose had not been dealt with based on trade secret arrangements. Lindenbaum's case against Cohen as a well-known jurisprudence is one of the trade secret cases involving unlawful acts. Information about trade secrets leaked by Lindenbaum employees has harmed Lindenbaum, and Hoge Raad's ruling is based on unlawful conduct regulations.

The nature of non-disclosure in trade secrets becomes an inherent nature and there is no time limit, as long as the trade secret has a confidentiality component tied to it.

Trade secrets belonging to others can be leaked or disclosed, which can cause harm to the trade secret owner. As a result, people who are permitted to file one (1) legal claim based on illegal acts known as "break of confidence" or "break of trust" may use these acts as the foundation for both civil and criminal lawsuits (Gautama and Winata, 2003). The owner of the trade secret will generally bring legal action against anyone who divulges his trade secret. Article 1365 of the Civil Code or Article 323 of the Criminal Code may serve as the basis for charges.

The national and international nature of trade secret regulation can be seen from the laws and regulations governing it. National arrangements can be seen in Law Number 30 of 2000 concerning Trade Secrets (hereinafter abbreviated as Trade Secret Law) and its international nature is attached to the World Trade Organization (WTO) which has been ratified in Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. This Law on Ratification binds Indonesia in the regulation of Intellectual Property that cannot be separated in international trade, which is specifically contained in the World Trade Organization Establishment Agreement's annex, the Agreement on Trade Related Aspects of Intellectual Property Rights, or TRIPs.

Law No. 7 of 1994 is also an important foothold because the WTO requires all member countries to provide intellectual property protection in the field of trade secrets through its laws and regulations, which include protection against trade in counterfeit goods.

Individuals and legal entities have the right, under Article 39 paragraph (2) of the TRIPs Agreement, to prevent legal information under their control from being obtained, leaked, or used in a way that goes against "honest commercial practices" by third parties without the owner's consent (Gautama and Winata, 2003). Trade secrets can be transferred to another person either through a licensing agreement. A license agreement is this that gives permission to another party under a license agreement to enjoy economic benefits for a certain period of time and conditions by paying a certain amount of money to the holder of trade secret rights.

### **1.1 Scope and Purpose of Trade Secrets**

"Trade secrets are information that is not publicly known 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," according to Article 1 Point 1 of the Trade Secret Act.

Trade secrets have the qualities listed below:

1. information that is private to the public;
2. fields related to technology and/or business;
3. has monetary value;
4. in the corporate world;
5. Secrets are guarded by the owner of the trade secret.

Although the article's description of these factors doesn't go into additional detail, it may be said that the information is in writing since it needs to be kept confidential.

The definition of information is not provided by Law Number 30 of 2000. Data or information about something is called information. The trade secret's content needs to be documented in writing. It can be challenging to sustain oral comprehension of material in practice (Gautama and Winata, 2003). Given the strict requirements for confidentiality placed on the trade secret owner, anything that is written down, or at least capable of being written down, naturally qualifies as information that needs to be kept secret.

The definition of a secret, as stated in the Big Dictionary Indonesian (2008), is something that is purposefully kept hidden from other parties. It can be utilized in economic contexts and is a measurement of the cost of a discovery or an individual's ownership. As stated in Article 1 Point 2 of the Trade Secret Law, the following rights of owners of trade secrets are legally enforceable:

“Trade secret rights are rights to trade secrets arising under this law”.

The nature of confidentiality inherent in trade secrets is mentioned in Article 2 of the Trade Secrets Act, namely:

“The scope of Trade Secret protection includes production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known to the general public”.

Article 3 paragraph (2) of the Trade Secrets Law confirms confidential information that:

"If information is not widely known by the public or is only known by specific parties, it is deemed confidential."

Only a few parties are aware of the definition of information; as previously stated, there is no further clarification. However, information can be shared with other parties due to a written contract, grant, will, inheritance, or other legal or regulatory reasons (refer to Article 5 paragraph (1) of the Trade Secret Law). Transfer of Trade Secret Rights that is not registered with the Directorate General has no legal effect on third parties. The transfer must be accompanied by a document on the transfer of rights that has been proclaimed in the Official Trade Secret Gazette.

Information regarding techniques, economic value, and things that the general public is unaware of are the primary components in the field of trade secrets. The following may be considered items that are covered by trade secrets: formulas and procedures for processing food and chemicals; business processes; consumer preferences; quantity and size of subscriptions; planning; data; invoice information; design formulas; analysis in marketing plans; computer software; marketing access codes; and business plans (KBBI, 2008). Trade secrets include information that is not publicly known in technology and/or business, meaning it is confidential, deliberately not to be disseminated as part of trade secret ownership.

Trade secret infringement is provided for in Article 11 which confirms:

(1) “Trade Secret Rights Holders or Licensees may sue anyone who intentionally and without rights commits acts as referred to in Article 4, in the form of:

- a. claims for damages; and/or
- b. termination of all acts as in Article 4.

(2) The lawsuit referred to in paragraph (1) shall be submitted to the District Court”.

Article 12 states:

“In addition to the settlement of claims as referred to in Article 11, the parties may resolve the dispute through arbitration or alternative dispute resolution”.

Criteria Violation of trade secrets as stipulated in Article 13 of the Trade Secrets Act is a person knowingly disclosing trade secrets, renegeing on agreements or renegeing on written or unwritten obligations to maintain trade secrets concerned. Article 14 adds “a person is considered to be infringing another party's trade secret if he obtains or possesses the trade secret in a manner contrary to applicable laws and regulations”.

Article 15 of the Trade Secrets Act states:

“Acts referred to in Article 13 shall not be considered trade secret infringement, if:

1. The act of disclosing trade secrets or using such trade secrets is based on the interests of public defense, security, health, or safety;
2. The act of re-engineering the product resulting from the use of trade secrets belonging to others is carried out solely for the purpose of further development of the product concerned.”

The penalty for trade secret infringement is Article 17 which confirms that:

(1) “Whoever intentionally and without the right to use the Trade Secret of another party or commit acts as referred to in article 13 or article 14 shall be punished with 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 offence referred to in paragraph (1) shall constitute a complaint offense.”

Considering the price and rupiah exchange rate variations, as well as the inflation that happens in Indonesia, this fine requirement may serve as a record for a lawsuit by the owner. It is possible to immediately adjust the lawsuit's value, which is currently considered too light or low, by comparing the current value of the rupiah to the exchange rate that existed at the time the law was being drafted. One of the elements that can be used as a guide is the price of gold at the moment.

Furthermore, the purpose of the trade secret arrangement is regulated in the Trade Secret Considerations, namely:

a. "that the intellectual property rights system's legal protection of trade secrets is essential to fostering an environment that fosters societal innovation and creativity and to progress an industry that can compete in the domain of national and international trade.

b. that Indonesia has ratified the Agreement Establishing the World Trade Organization which includes the Agreement on Trade Related International Property Rights (TRIPs) with Law Number 7 of 1994, so it needs to be regulated about Trade Secrets”.

There are four fundamental things from the consideration of the Trade Secret Law, namely (1) advancing industries that are able to compete in the national and

international scope, (2) fostering community creation and innovation, (3) protection of trade secret owners, and (4) that trade secrets have an international nature.

What is a secret for intellectual property owners has high economic value, so trade secrets can be transferred to other parties in several ways, one of which is by licensing contracts (agreements). The license contract is not limited to the interests of the parties, but in the broad aspect concerns the interests of the state to protect the intellectual property rights of its citizens. A written license agreement is required. The requirement to register a license agreement with the Ministry of Law and Human Rights' Directorate General of Intellectual Property Rights indicates that the owners of trade secrets are protected.

## **1.2 Trade Secret Protection.**

According to Ahmad M Ramli's research in 2000, two distinct concepts of safeguarding trade secrets were identified: the concept of interest and the concept of engagement. In addition to these, existing notions include the concept of property rights, contract theory, and the theory of illicit acts, which tend to favor developed countries.

Since the trade secret is a physical right that the state exclusively protects, the idea of interest guarantees protection for the trade secret inventor. This exclusive ownership surpasses that of other possessions. Another perspective of this theory is the safeguarding of trade secrets as a means of respecting the societal rights of citizens, recognizing their creative contributions that benefit humanity's progress and the broader welfare. Its aim is to prevent potential theft by others.

This theory implies that a trade secret owner is not absolved from the responsibility of contributing the benefits of their trade secret for public welfare. Public interests, such as scientific advancements, public health, national security, or defense, are considered as long as they uphold the economic rights of the owner and maintain the confidentiality of the trade secret.

The concept of engagement, on the other hand, revolves around the rights and obligations of the involved parties, whether by agreement or law. It broadens the scope of rights and obligations beyond the fundamental principles of trade secret protection through contracts and torts alone. The broad nature of this engagement theory is that not only those contained in trade secret agreements, but also those that by law are protected rights concerning trade secrets, so that what is not written in the clauses of the agreement remains protected under the law.

The existence of this protection will encourage the birth of new findings or inventions which, although treated as secrets, still receive protection, both in the context of ownership, control and use by the inventor.

In the secret contained the nature of non-disclosure (non-disclosure) which is the main element that distinguishes it from other intellectual property. This trait is the main key to trade secret protection. The consequence is that there is no limit on the period of time, as long as and as long as the secret element is still attached, so long as it is protection of trade secrets.

The sensitive nature of trade secrets contains advantages and disadvantages. Trade secret advantages and disadvantages, namely:

1. Advantages:
  - a. The subject matter of trade secrets need not necessarily be patentable (i.e. novelty and vagueness are not essential requirements)
  - b. trade secret protection lasts indefinitely, while patents are valid within a certain time limit;
  - c. Contract royalties regarding trade secrets may still remain limited even after the subject matter of the trade secret is no longer confidential.
2. The drawbacks are as follows: a. trade secrets must remain confidential because their protection expires once they are made public; b. trade secrets may be subject to multiple state laws enforcing them; and c. trade secrets may be planned in reverse, meaning that the owner cannot stop the other party from using a trade secret in which they are lawfully impersonating him.

The nature of non-disclosure attached to trade secrets is an important trait that has high economic value, so that owners of intellectual property rights about trade secrets must really maintain what is the nature of confidentiality they have.

#### Trade Secrets in the WTO And TRIPs

The World Trade Organization (WTO) was established in Marrakesh in April 1994, as the successor institution to GATT with much broader attributes and powers than GATT. The objectives of the WTO (which are essentially also the objectives of the GATT as contained in Annex 1a) are to increase incomes and living standards, achieve full employment, grow commerce and production, and utilize the world's resources as efficiently as possible.

In the Uruguay Round, GATT has considered aspects of Intellectual Property connected with trade, including trade for counterfeit goods, and including patents, copyrights, trademarks, and trade secrets.

The objectives of GATT are:

1. improvement of living standards and progressive economic growth, for its members, especially for developing country interests;
2. guarantee employment opportunities and increased income;
3. develop the full use of the world's natural resources and expand the production and exchange of goods;
4. comprehensive tariff reduction;
5. sovereignty of all States over their natural resources, and economic activity.

Furthermore, as the main principle, the approval at GATT establishes the following principles:

1. National Treatment (no discrimination of national and foreign companies);
2. Most Favoured Nation Treatment ( the key is it is an ideal that all nations should be equal, but if, in fact they are not, equal treatment become inequality);
3. Reciprocity principle, the more open it is to imports, the more open it is to exports;
4. Obligatory task or duties (tariff commitment and subsidies is not prohibited but shall be restrained or meets countervailing duties);
5. Transparency.

The objectives of the WTO are to carry out the following activities:

1. The WTO introduces the idea of “sustainable development” in how the world's resources are used and the necessity of preserving and protecting the environment in accordance with various degrees of economic development;

2. The WTO recognizes positive efforts to ensure that developing countries, and particularly disadvantaged countries, have a better share of development in international trade.

The WTO Charter contains institutional rules along with several important annexes (Annex), which contain:

1. The first Annex contained multilateral agreements consisting of the results of the Uruguay round which were all coercive in nature, meaning that they set obligations for member states. These include rules regarding agriculture to security measures and a schedule of tariffs concessions. It also includes the General Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), or trade in intellectual property rights, and the General Agreement on Trade in Services (GATS).

2. The second Annex contains government provisions and procedures for dispute resolution.

3. The third Annex provides for the establishment of the Trade Policy Review Mechanism (TPRM), through which the WTO will review the trade policies of each member country and report the results of the review. The main purpose of this review is to assess the general impact of a country's trade policies and their impact on other countries' trading partners.

4. The fourth Annex contains agreements that are optional in nature, namely plurilateral agreements.

Because trade secrets are a commodity in the realm of international trade, they are therefore essential to both the global trading system and the defense of intellectual property rights. When it comes to trade secrets, intellectual property rights are transferred through an agreement between the person who owns the rights and the person who uses the trade secret (the licensee).

#### License Agreement in Trade Secrets

Article 1 point 5 of the Trade Secret Law states that:

“License is permission granted by a Trade Secret Rights holder to another party through an agreement based on granting rights (not transfers) to enjoy the economic benefits of a Trade Secret that is given protection for a certain period of time and certain conditions”.

There are several important aspects in the definition of the license mentioned above, namely:

1. There is permission from the holder of trade secret rights to other parties;
2. The existence of a license rights granting agreement;
3. The right to enjoy economic benefits from trade secrets
4. The existence of protection within a certain period of time;

### 3. The existence of certain conditions.

The approval from the holder of the trade secret rights denotes an acknowledgment to exercise those rights for the purpose of deriving economic benefits from their utilization. This authorization is typically granted in the form of a license agreement, wherein the trade secret holder permits another party to enjoy the economic advantages associated with the undisclosed information, such as production methods, processing techniques, sales strategies, or other proprietary data in the realm of technology and/or business.

In the legal context, the contract between the owner and the recipient of the technology is referred to as a license contract. This contract can be established verbally, in writing, or even implied through gestures, depending on the preferences of the involved parties. An agreement between the licensor (the technology owner) and the licensee (the recipient of the technology) entails the licensor receiving compensation (royalty) over a specific time frame, granting the licensee the right to utilize their protected intellectual property rights, specifically patents.

For legal validity, the license agreement must be documented in writing and signed by both parties. Additionally, it must be registered with the Directorate General of Intellectual Property Rights and included in the General Register of Patents, subject to a predetermined fee specified by Ministerial Decree. Unregistered license agreements lack legal force when it comes to third parties. The patent license agreement contains at least information about:

- a. date, month and year in which the license agreement was concluded;
- b. full name and address and signatures of the parties to the license agreement;
- c. the number and title of the patent that is the object of the license agreement;
- d. term of the license agreement;
- e. whether or not the term of the license agreement can be extended;
- f. Patent execution for all or part of the licensed patent;
- g. the amount of royalties and their payments;
- h. whether or not the licensee may grant further licenses to third parties;
- i. the boundaries of the area where the license agreement applies, if agreed;
- j. and whether or not the licensor can execute the patent itself that has been licensed to the patent recipient.

According to Ahmad M. Ramli's findings, it is possible that what has not been stated in the trade secret agreement between licensors and licensee, then based on the law, the trade secret rights belonging to licensors remain protected.

## 2 Closing

Parts of an individual's or organization's intellectual property that are legally protected on a national and international level are known as trade secrets. Trade secrets relate to both national and international trade as well as intellectual property. Law Number 30 of 2000 about Trade Secrets regulates national arrangements, whereas Law Number 7 of 1994 concerning the Ratification of Agreement



Establishing the World Trade Organization ratifies international arrangements based on the World Trade Organization (WTO). Indonesia is required to abide with the Agreement's intellectual property laws as a result of this ratification.

One of the steps for the transfer of trade secret rights is with a license agreement that include the parties' rights and obligations, as well as rewards, economic value, and technological advancements. According to the terms of the license agreement, licencor will pay royalties to the licensee in exchange for allowing the licensee to utilize the trade secret rights for a predetermined amount of time. The Directorate General of Intellectual Property must receive a written copy of the license agreement.

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