



Legal Protection of Trade Secret from the View of Civil and Criminal Law

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Abstract

Indonesia has ratified the WTO/TRIPs Agreement convention and is in full compliance and non-reservation, the insistence of developed countries' owners of Intellectual Property Rights against Indonesia, and the need for national Intellectual Property Rights. By looking at the above, legal protection is needed for every product and service, especially licenses for trade secrets in the Intellectual Property Rights component. The state imposes criminal sanctions on violators of Trade Secret rights as stipulated in chapter 17 (1) constitution number 30/2000. However, it is also hoped that the act of imposing sanctions by the state will return to the interests of the protected party by making the crime a complaint offense chapter 17 (2) constitution number 30/2000. There are repressive legal actions that can be carried out as chapter 11 constitution number 30/2000 states that the holder of trade secret rights or the licensee may sue anyone who deliberately or without rights commits the actions referred to in the article in the form of (a). Compensations claim and/or; (b). Cessation of all actions referred to in chapter 4 constitution number 30/2000.

Keywords: *Legal Protection; Trade Secrets; Intellectual Property Rights*

Introduction

Intellectual Property Rights as one of the products resulting from the development of human ideas and mindsets, which is currently one of the complex problems that occur in the world of trade both nationally and internationally, making it a serious matter that is being handled both nationally and internationally. Intellectual Property Rights are immaterial objects which are also objects of property rights as stipulated in material law (Mahfuz 2020).

The most basic justification for Intellectual Property Rights is that someone who has put effort into creation has a natural right to own and control what they have created. This approach emphasizes honesty and fairness. Protection of Intellectual Property Rights and all its aspects in trade has become the rule of the game with the approval of the World Trade Agreement (*Agreement Establishing World Trade*

Organization), so without realizing that every member of the WTO has complied with these rules, and made Indonesia one of the WTO members who don't want to have to be ready to compete in the competition in today's global market era.

Member frustrations with the slow pace of negotiations and concerns about strategies and behaviors of other members' approaches to trade and economic development have created unprecedented stresses on a system of rules and commitments that have long encouraged global trade growth and increased economic integration (Koopman and others 2020).

Indonesia has ratified the WTO/TRIPs Agreement convention and is in full compliance and non-reservation, pressured by developed countries with intellectual property rights towards Indonesia and the need for national intellectual property rights. There is no courage to create the legal politics of Intellectual Property Rights itself which originates from the philosophy of Pancasila, the 1945 Constitution of the Republic of Indonesia, and national interests. Fear of threats from developed countries that own Intellectual Property Rights must be fought and handled intelligently (Setiady 2015).

Because of the above, it is necessary to have legal protection for every product and service, especially licenses for trade secrets in the Intellectual Property Rights component. The protection of trade secrets is aimed at protecting the creations of human minds that have commercial value as well as being a means of preventing unfair business competition. The owner of the trade secret has the right to share his trade secret through a licensing scheme or prohibiting other parties from using it. At first glance, the concept of trade secret protection is similar to a patent, namely the protection of information owned by individuals or corporations. The difference is related to the time the information is protected. Patents can be given protection after the inventor submits a patent application to the Minister of Law and Human Rights (HAM). In the aspect of trade secrets, it applies automatically without the need to be registered or requested in advance as long as it meets the criteria as a trade secret (Chandrika 2019).

A trade secret is an information that is closed information for other parties which of course is very personal for the owner. This means that the information is unreal information that may be known by other parties, except by certain parties, namely officers or officials who are authorized to carry out and store such confidential information. Trade secrets are regulated in constitution number 30 2000 Regarding Trade Secret, hereinafter referred as constitution number 30/2000. Based on chapter 1 constitution number 30/2000 What is meant by a trade secret is information that is not known by 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 the definition contained in the Trade Secret Law, there are critical elements to trade secrets. These critical elements include as follows (Sulasno 2019): (a). First element. A trade secret must be information, both information in the field of technology, business such as customer lists, food and beverage recipes, drug compositions, and internal processes to produce products or services.; (b). Second element. A trade secret must have economic value that is useful in business activities; (c). Third element. A piece of information must be maintained by the trade secret owner in a fair, proper, and proper manner.

A company's trade secret is highly confidential, and no one can know. This company's trade secret concerns technology and or business that has economic value. Some companies that have trade secrets include Coca-Cola, Kentucky Fried Chicken (KFC), Mc Donald (McD), and so on. Some companies believe that it would be better for inventions discovered by a person or company not to be announced to the public. This is because the invention has a fairly high economic value so the company keeps the invention a secret (Alfreda and others 2021).

Granting a license by the owner of a trade secret is one way to develop a company's business. Granting a license means permitted by the trade secret owner to the licensee to use his trade secret for

commercial purposes. The consequence is to provide compensation in the form of royalties to the owner of the trade secret. One of the companies in Indonesia that have succeeded in owning trade secrets and developing its business through licensing is an all-weak restaurant. The multi-purpose restaurant has a marketing system through a licensing system. With a licensing system, the licensee must meet the requirements put forward by the licensor (Retnowati 2004).

One of them is secret formulas such as food recipes. The granting of a license by the owner of a trade secret is usually stated in a contract or what is commonly called a license agreement. The contract as the basis for determining future business development steps contains the rights and obligations of the parties which are usually realized in the form of a standard contract. Even though it is in the form of a contract, the license agreement must still comply with the provisions regarding trade secrets. In this era of intense business competition, the protection of Trade Secrets is a necessity that cannot be negotiated, because uncertainty over this issue can lead to consequences of increasingly widespread unfair competition which will damage the overall business climate.

Research Method

This study will explain various research methods for conducting legal research with a literacy study approach to unravel contemporary legal issues. This research was conducted by tracing library materials for further use as a basis for analyzing the problems studied (Benuf and Azhar 2020).

Results and Discussion

Implementation and Implementation of Law Number 30/2000 Concerning Trade Secrets in Protecting Trade Secret violations in Indonesia

There are 2 (two) opinions about Indonesia having logical and juridical reasons in its implementation of constitution number 30/2000 regarding Trade Secrets, among others: (a) To promote industries that can compete in the scope of national and international trade, it is necessary to create a climate that encourages people's creations and innovations by providing legal protection for Trade Secrets as part of the system of intellectual property rights; and (b) To comply with the demands of the Agreement Establishing the World Trade Organization, which includes the Agreement of Trade-Related ('Agreement Establishing the World Trade Organization' 2014).

Implementation of the principles of international trade General Agreement on Tariffs and Trade (GATT) and constitution number 7, 2014 about Trade, based on constitution number 7, 1994 Concerning the Ratification of the Agreement Establishing the World Trade Organization, there is content or material which contains the GATT/WTO principle arrangements, namely in letters A, B, and C, as well as the harmonization of the principles of international trade. The General Agreement on Tariffs and Trade (GATT) in constitution number 7, 2014 about Trade, that in constitution number 7, 2014 about Trade There are several legal principles in international trade arrangements (Pangestu and others 2021).

The grouping of the term Trade Secret into IPR in national legal instruments began to appear in 1997, when the government of the Republic of Indonesia issued Government Regulation (PP) number 16, 1997 about the franchise. Chapter 1 explanation number 1 PP number 16/1997 states that what is meant by Intellectual Property Rights follows, among others, Brands, Trade Names, Logos, Designs, Copyrights, Trade Secrets, and Patents.

Other provisions that explicitly include Trade Secrets as a part of Intellectual Property Rights are chapter 50b constitution number 5/1999 regarding the prohibition of monopolistic practices and unfair

business competition. This provision has further strengthened the position of Trade Secrets as a form of exclusive rights, even rights that are excluded from objects that include prohibitions on monopolistic practices and unfair business competition, although these provisions have not been able to address the substance of the regulation on the protection of Trade Secrets in detail before their birth constitution number 30/2000 which specifically regulates Trade Secrets.

Regulations regarding trade secret violations that qualify as a form of crime provide a form of threatening the perpetrators with criminal sanctions as follows (a) Chapter 322 (1) Criminal Code; (b) Chapter 323 (1) Criminal Code; (c) Chapter 17 constitution number 30/2000; (d) Chapter 17 (1) and (2) Constitution number 30/2000; and (e) Chapter 13, 14 constitution number 30/2000. In the aspect of civil law, the sanctions include (a) Chapter 499 Civil Code; (b) Chapter 1347 Civil Code; (c) Chapter 1348 Civil Code; (d) Chapter 1234 Civil Code; and (e) Chapter 1242 Civil Code.

Application of the Principles of Clarity of Purpose and Legal Certainty in the Protection of Trade Secrets

Providing clarity in the relationship between the owner of the information and the employee indicating the boundaries of what employees may and may not do concerning to the company's secrets so that the parties know the limits of their respective rights and obligations to avoid misunderstandings in the interpretation of rights and obligations. obligation. Agreeing to regarding the protection of information on trade secrets is also one of the steps to ensure legal certainty if in the future there is a dispute with employees or third parties. This agreement can be used as authentic evidence that the company has information that is highly confidential and is only used for the company's business activities (Wingit 2001).

In contrast to employee relations which are sub-ordinative, relations with consultants have a coordinative nature in the sense that there are equals and parallels so that the legal construction between the two is also different. If the work agreement is based on work agreement law, the agreement is more likely to be based on performing certain services. The consultation agreement may also contain clauses regarding confidentiality, for example, those included in matters of confidentiality and the obligation not to disclose information (non-disclosure). With this provision, the recipient of the consulting services seeks to protect himself from the possibility of leaking trade secrets in his possession, because both the information provided to the consultant and the results of the consultation are confidential.

There are repressive legal actions that can be carried out as Chapter 11 constitution number 30/2000 states that the trade secret right holder or licensee can sue anyone who intentionally or without right commits the act as referred to in the article in the form of:

- a. Compensation claim and/or;
- b. Termination of all actions referred to in chapter 4 constitution number 30/2000.

Based on the provisions above, the holder of a trade secret has a monopoly or exclusive right. That it can use his own trade secrets and grant licenses to other parties or prohibit anyone from using trade secrets or disclosing trade secrets to third parties for commercial purposes.

Conclusion

The state imposes criminal sanctions on violators of Trade Secret rights as stipulated in chapter 17 (1) constitution number 30/2000. However, it is also hoped that the act of imposing sanctions by the

state will return to the interests of the protected party by making the crime a complaint offense (chapter 17 (2) constitution number 30/2000).

Law enforcement against violations in the field of Trade Secrets is more severe compared to other IPR law enforcement. This is caused by several things, there are :

- a. Trade secrets compared to other forms of IPR are less well known by the public, thus making law enforcement in this field more difficult than other IPRs.
- b. Violations of trade secrets in business activities in Indonesia tend to occur due to a lack of understanding of business actors in this field.
- c. Inappropriate treatment of Trade Secrets by Trade Secret owners, in this case, business people in Indonesia, which causes the confidential information to turn into a public property (public domain) which on the contrary is detrimental to the owner.
- d. The government does not yet have an effective mechanism for disseminating the Trade Secret Law, even though the law is effective.

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