
Fiona Eriba Rahma Putri¹, Sri Maharani MTVM²*

¹Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Indonesia, Email: fionaeribarahmaputri@gmail.com
²Faculty of Law, Universitas Pembangunan Nasional “Veteran” Jawa Timur, Indonesia, Email: runnei2014@gmail.com

Abstract
The development of business activities that are very competitive in Indonesia today has led to quite fierce business competition among the business world. Every company must have information that is kept secret from the public, usually referred to as trade secrets. This is the most important aspect for the business owner of the trade itself because the trade information owned holds commercial points and is tied to the quality of the business produced. When a company’s trade confidential information is leaked, the impact will be detrimental to the company itself. Before the problem occurred, it could be seen that the government was serious when dealing with this problem and therefore the government began to formalize Law No. 30 of 2000 concerning Trade Secrets. The hope is that this will provide legal protection for trade business owners who keep the confidential nature of company trade information so that competitors are not easily owned. The purpose of this study is to provide legal protection for the owners of trading businesses. So as to reduce the form of violations of trade secrets that often occur, granting legal protection for trade business owners can be done by optimizing the implementation of Law No. 30 of 2000 concerning Trade Secrets and improving the performance of the Directorate General of Intellectual Property. The type of research applied in this study is normative juridical legal research, this research is based on legislation relating to trade secrets, namely Law No. 30 of 2000 and for the collection of data such as from legal books, legal journals, and news articles. The results of the study can be concluded that in guaranteeing a legal protection for trade secret owners there must be cooperation between several parties, not only from the Directorate General of Intellectual Property, but also from business actors, the community and law enforcement as well. In the application of Law No. 30 of 2000 concerning Trade Secrets, it should be carried out effectively, in order to reduce the form of violations of trade secrets that often occur lately among the business world.

Keywords: Legal Protection, Owners, Trade Secrets

I. Introduction

Indonesia as a developing country needs an effort to prevent fierce competition in the trading business environment. This is in line with current conditions in business and capitalization aspects. This kind of competition has long been known in the Intellectual Property Rights system. The issue of information confidentiality in Indonesia is regulated in a number of provisions which have not yet established a systematic form of regulation.

Trade secrets as a component of Intellectual Property Rights, are high enough rights in the field of business growth in Indonesia today. Because it can be seen from the government’s seriousness to settle the problem, the government began to formalize Law No. 30 of 2000 regarding Trade Secrets that have been active since September 20, 2000

*Corresponding Author
based on the validation of the WTO / TRIP’s agreement. The emergence of legal protection for trade secrets is expected to motivate people that any new creations or discoveries of a confidential nature will continue to obtain legal protection in the form of ownership of their findings and the use of those findings.

Confidential trade information from a company has a very essential role for every trading business owner because his trade information holds commercial points and is tied to the quality of goods and services produced. If a company’s trade secret information is disclosed, it will have an impact on the company’s loss itself. If observed from the perspective of the rule of law and trade, Trade Secrets has a fundamental role in the progress of a company.

Legal protection for Trade Secrets is crucial when dealing with employees and the company. Then the legal protection of Trade Secrets becomes an authoritarian provision and as a very basic element, especially in preventing the occurrence of unhealthy business competition between other businessmen who produce similar goods and services, especially when it relates to business globalization. So it is expected that legal protection against Trade Secrets is able to form honest business competition between other business actors because trade secret information from each company is very valuable because it has high economic value.¹

It is hoped that the Trade Secret Act No. 30 of 2000 in Indonesia can provide legal protection guarantees for trade information that has the confidential nature of each company so that other competitors are not easily possessed by a system that is contradictory to the law so that it is free from unfair or fraudulent competition practices.

In addition to providing legal protection for Trade Secret information which is a component of Intellectual Property Rights, it is also hoped that Trade Secret Act No. 30 of 2000 will be able to create conditions that will encourage new discoveries and breakthroughs from the public. Related to this, trade business owners feel greatly helped because their trade secrets will be guaranteed through the practice of protecting Intellectual Property Rights in accordance with international standards, which will later

¹ Ahmad M Ramli, (2000), *Hak atas Kepemilikan Intelektual (Teori Dasar Perlindungan Rahasia Dagang)*, Bandung : Mandar Maju, p. 1

Fiona Eriba Rahma Putri, Sri Maharani MTVM

 oversee the smooth and development of a company that can later advance and realize the enthusiasm of business actors.

Therefore, in managing all the management of Trade Secrets this time the government established the Department of Justice and Human Rights especially the Directorate General of Intellectual Property Rights to serve assistance in the aspect of Intellectual Property Rights. Understanding that such authority and obligations may be possible in the future, the Directorate General that houses Intellectual Property Rights has developed into an agency that is independent in the Government area, including being independent in managing finances.

II. Method

This study uses the normative legal research method, because the system used in this study is the research object of literature related to trade secrets regarding legal protection for owners of trade coffee powder trade secrets that are violated based on the laws and regulations in Indonesia.

In the study, researchers used 3 (three) types of data namely primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is legal material that has the authority and nature required as from the legislation that is bound with the purpose of observation, namely: the Civil Code and Law No. 30 of 2000 concerning Trade Secrets. Secondary legal material is all publications regarding the rule of law that are not from official documents. Secondary legal materials are usually in the form of legal books, legal journals and research results in order to examine the contents of the core issues examined. And tertiary legal material is a legal material that explains the direction or analysis of the meaning of primary legal material and secondary legal material, usually consisting of a legal dictionary and encyclopedia.

For the collection of data itself by using literature or document studies. As for the data analysis method, it is descriptive analysis so that the data analysis used is a qualitative approach to secondary legal materials.

III. Main Heading of the Analysis or Results

Any activities related to disclosure or use of trade secret information that there is no prior agreement from the owner of those who know clearly that it should be kept confidential,
then the action is included in the act of violating the law.  

Violation of the law is an action that has an impact on the loss of others which should have been the benefits that he obtained. One of the most common forms of violations of the law is the violation of trade secrets.

Violation of the law is an individual or group’s actions that violate the rules by carrying out acts according to their own will without regard to the rules that are already valid. In addition there is an act against the law is an act that violates the rights of others or is contradictory to the legal responsibilities of the creator himself.

Trade secrets as a component of Intellectual Property Rights law. The trade secret law has a very significant position because every business owner of the trade certainly does not want the trade secrets of his business activities exposed especially to the knowledge of other competitors, while what is protected in the trade secret law is the confidentiality of information in the commercial world which holds commercial points and is not known by the public. However, in a business activity there must be circumstances where it can trigger problems.

A violation of trade secrets is often called breach of confidence because it is generally grouped according to tort. The beginning of the case began in the Netherlands between Cohen v. Lindenbaum and Hoge Road. Broadly speaking, their actions include breaking the law because in their explanation the act against the law is an act that urges the rights of others and is contradictory to the legal responsibilities of the creator himself or contradicts morally or with etiquette in the sphere of society.

### A. Forms Of Violation Of Trade Secret Rights According To Trade Secret Law Number 30 Of 2000

Based on research in the regulation of Law No. 30 of 2000 concerning trade secrets, it is explained that the forms of violations are broken down into 2 (two) provisions, namely, acts which are considered as violations of trade secrets and which are not considered as trade secrets.

---

3 Ibid, p. 70

Fiona Eriba Rahma Putri, Sri Maharani MTVM

Actions that are considered as violations of trade secrets such as if the person intentionally discloses the trade secrets of other parties, such as violating agreements or violating the agreed unwritten or written obligations. (Law No 30 of 2000 Article 13). And if the person controls or obtains the trade secret with a rule that is contradictory to a valid statutory law. (Law No 30 of 2000 Article 14).

Whereas for acts which are not considered as violations of trade secrets if the said disclosure or use of trade secrets occurs on the basis of security, protection, safety and public health purposes, and if the re-engineering activities of goods resulting from the implementation of trade secrets belong to other parties whose purpose is to need for further improvement. (Law No 30 of 2000 Article 15).

The authority in the Indonesian Trade Secret Law is merely limited to legal protection for business actors, they have a power or what is commonly referred to as exclusive rights, the aim is that business actors can determine in using their trade secrets only personally or give their licenses to other parties with the aim for commercial purposes. So if there is a business actor who feels aggrieved by the violation he can file criminal and civil charges.  

The scope of protection of Trade Secrets covers production methods, processing methods, sales methods, or other information in the field of technology or business that holds commercial points and may not be known to the public (Law No. 30 of 2000 Article 2). Whereas the criteria for protecting trade information must be confidential, have commercial points, and be kept confidential with appropriate efforts. The way to obtain trade secret rights is also different from other intellectual property rights, because in trade secrets there is no need for registration and no time period, so as long as the owner of the trade secret can maintain the secrecy of his trade, as long as the trade secret will be safely protected.

B. Preventive Legal Protection And Reppressive Legal Protection For Owners Of Trade Secrets

Legal protection is the protection of dignity and the recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness which can harm

---

4 Based on interview with Mr. Pahlevi, as Head of Patent Section, Layout Design of Integrated Circuits and Trade Secrets of the Directorate General of Intellectual Property Regional Office of the Ministry of Law and Human Rights of East Java, on January 29, 2020, at 10.50 WIB.
other legal subjects or as a collection of regulations that will protect one thing from other matters. If it is associated with consumers, then legal protection is a law that provides protection for the rights of consumers / customers from something that results in losses or the fulfillment of the rights that should have been obtained by consumers / customers.\(^5\)

Protection of trade secret law itself is divided into 2 (two) forms of legal protection, namely preventive legal protection and repressive legal protection.

Preventive legal protection is a form of legal protection in which the people are given the opportunity to protest before the formation of an effective government decree, the goal is that preventive legal protection can prevent cases of disputes. This is contained in legislation with the intent to provide a limitation signal in carrying out a responsibility and does not harm the rights and interests of others.\(^6\)

Preventive legal protection for trade secrets is only given to business actors who decide to give their licenses to others for the purpose of commercial interests. So these business actors must register with the Directorate of Intellectual Property, it is necessary to remember that only administrative data is recorded. (Law No 30 of 2000 Article 8 (1)). If there is no recording, it is not binding on a third party so that it does not have any legal consequences. (Law No 30 of 2000 Article 8 (2)). However, if the business actor decides not to give a license, only he who uses it does not mean that his trade secret does not get legal protection. All trade secrets are guaranteed legal protection without having to register them, because the trade secret system is different from most intellectual property rights. Therefore, without the need to register, a company's trade secrets are automatically protected.

However, it should be noted that protected trade secrets must meet the following four elements so that trade secrets obtain legal protection namely:

1. The information must be confidential, that is, trade secrets that receive legal protection must have confidential information, have commercial value, and always be kept confidential. (Law No 30 of 2000 Article 3 (1))

---


2. The information can only be known only to a number of core parties, that is, the trade secrets can only be known to specific parties, not to spread everywhere. (Law No 30 of 2000 Article 3 (2))

3. The information must be of commercial value, that is, the information must have economic value in it which is expected to increase profits in its business activities. (Law No 30 of 2000 Article 3 (3))

4. The owner of the information must have set a strategy to maintain or protect the confidentiality of the information, such as information that is clearly confidential company must be kept confidential by the way the owner of the information must have prepared steps that must be taken to anticipate that the company's information remains safe. (Law No 30 of 2000 Article 3 (4)).

Repressive legal protection is an action or effort taken after a legal effect, the aim is to resolve a dispute. In court, the action is classified as part of legal protection. Repressive legal protection can also be interpreted as a form of legal protection which in civil law practice is often in the form of compensation by a party that results in losses to the injured party for such actions.

With the lawsuit for compensation does not eliminate the right of the state to carry out criminal investigations as long as it is complained of by the party being violated or harmed, this is due to the offense of complaint. In addition to resolving claims through litigation (General Courts, Religious Courts, Commercial Courts, State Administrative Courts and so on) the parties can settle disputes between the two parties through non-litigation (Mediation, Arbitration, Negotiations, Conciliation and so on).7

Repressive legal protection in the Trade Secrets Act is explained if someone who intentionally and has no right to obtain and control trade secrets belongs to another person without permission from the original owner so that the actions carried out result in losses then that person may be subject to civil sanctions (compensation), administrative sanctions (termination of all acts) (Law No 30 of 2000 Article 11 (1)) and criminal sanctions (imprisonment with a maximum period of 2 years and / or a maximum fine of Rp. 300,000,000 (three hundred million rupiah). (Law No 30 of the Year 2000 Article 17 (1)).

C. Legal Remedies For The Owner Of An Injured Trade Secret

When problems often occur, certainly a variety of ways and efforts are made so that a problem can be resolved. It is also not possible for the problem area to be a violation of intellectual property rights especially trade secrets. The violation is identical to the violation of the rights of the owner of the trade secret. Violations that are commonly carried out in trade secrets are violations of exclusive rights. Exclusive rights can only be obtained and exercised by the owner of the trade secret rights and other people can not use it without prior approval.

When preventive legal protection in the form of provisions stipulated in Law Number 30 of 2000 concerning Trade Secrets has been carried out. However, there are still violations of trade secrets that have an impact on losses due to the actions inflicted, the owner of trade secrets can make repressive legal efforts, namely efforts to resolve cases that can be carried out by owners of trade secrets.

There are 2 (two) solutions to the injured trade secret owner that can be chosen, namely settlement of cases through litigation and non-litigation.

Settlement of cases using the litigation path of the owner of a trade secret may file a civil suit filed with the district court. However, in civil claims the holder of trade secret rights can also file criminal complaints. In the trade secret law for civil claims includes a lawsuit for compensation and termination of all activities that cause harm, while for criminal charges include a maximum fine of Rp. 300,000,000 (three hundred million rupiah) and / or imprisonment with a maximum time of 2 (two) year.

For compensation, the court can determine a proper compensation for the amount of money the plaintiff has spent in producing information, the amount of money that the plaintiff may request from the defendant depends on the licensing agreement from the beginning as a result of the actions of the defendant.

During the judicial process, the role of evidence is crucial. The owner of the trade secret must be able to ensure that the licensee has a responsibility to protect the confidentiality of the trade information because the information submitted is confidential. In general, trade information in the form of documents is marked that it is confidential or verbally stated that the information is confidential. If there is no written or oral evidence that proves that the information provided there is no provision for maintaining
confidentiality, then there must be other evidence that states that the information provided creates an obligation to maintain confidentiality.

In general, expert witnesses are included in an important part in clarifying that the information is confidential. Although there is written evidence that confirms that the owner thinks it is confidential, but the concept of information ideas could have been the result of the development of others. To prevent the concept of ideas that others might have had before or even the concepts of ideas are not authentic and not secret, the validity factor is now the main one.⁸

Settlement of disputes through non-litigation can be carried out by holders of trade secret rights through arbitration or alternative dispute agreements with various options (Law No. 30 of 2000 Article 12) such as negotiation, mediation, conciliation, and other methods that can be chosen by the parties in accordance with the Law used.⁹

The procedure for resolving cases through alternative dispute resolution or arbitration is not specifically regulated only in outline only in Law Number 30 of 2000 concerning Trade Secrets. For more details about alternative dispute resolution or arbitration settlement procedures, see Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution.

IV. Conclusion

Based on observations discussed by the author regarding the legal protection of the owner of the trade secret of coffee powder concoction which is violated according to the Trade Secret Law No. 30 of 2000, it can be concluded that:

1. In Trade Secrets there are 2 (two) forms of violations, namely, acts considered as violations of trade secrets and which are not considered violations of trade secrets. Forms of conduct that are considered as violations of trade secrets occur when the person intentionally discloses another party’s trade secrets, such as violating agreements or violating agreed upon unwritten or written obligations. Whereas for acts that are not considered as violations of trade secrets when

---

⁸ Based on interview with Mr. Pahlevi, as Head of Patent Section, Layout Design of Integrated Circuits and Trade Secrets of the Directorate General of Intellectual Property Regional Office of the Ministry of Law and Human Rights of East Java, on January 29, 2020, at 10.50 WIB.
⁹ Gunawan Widjaja, (2013), Alternatif Penyelesaian Sengketa, Depok : Rajawali Pers, p. 45
Disclosure or use of trade secrets on the basis of security, protection, safety and public health purposes.

2. In the protection of trade secret law consists of 2 (two) forms of legal protection namely repressive and preventive. Although trade secrets themselves do not require registration procedures like other intellectual property rights because there are properties that cannot be known publicly. But the trade secret will still get legal protection if it covers the factors contained in the trade secret law such as, the information must be confidential, the information can only be known by a few parties, the information must also have commercial value and the owner of the information must have set strategies to maintain or protect the confidentiality of the information itself. In contrast, if the trade secret transfers rights or licenses to another party, the business actor must register it with the Directorate General of Intellectual Property. If there is no recording, it is not binding on a third party so that it does not have any legal consequences. Whereas repressive protection can be in the form of the imposition of criminal sanctions (imprisonment with a maximum period of 2 (two) years and / or a maximum fine of IDR 300,000,000 to violators of trade secrets, the imposition of civil sanctions (compensation) and the imposition of administrative sanctions (termination of all deed).

References

Books with an author:

Others:
Based on interview with Mr. Pahlevi, as Head of Patent Section, Layout Design of Integrated Circuits and Trade Secrets of the Directorate General of Intellectual Property Regional Office of the Ministry of Law and Human Rights of East Java, on January 29, 2020, at 10.50 WIB.