

Legal Consequences of Non-Disclosure Agreements Between Companies and Employees Regarding the Protection of Sales Methods as Trade Secrets

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Abstract

The use of NDAs can certainly be employed as a preventive measure against the disclosure of trade secrets. An NDA is an agreement or contract used to protect a company's confidential information from being leaked. This research discusses the issue: What is the legal standing of NDAs in protecting a company's trade secrets from the perspective of Indonesian law? What are the legal consequences of NDAs between companies and employees regarding the protection of sales methods as trade secrets. This study uses a normative legal research method with a conceptual approach, a legislative approach, and an analytical approach. The research is descriptive in nature. The legal materials used include primary legal materials, namely Law of the Republic of Indonesia No. 30 of 2000 concerning Trade Secrets, and secondary legal materials. The results of this study indicate the urgency of creating NDAs between companies and employees in production or service sectors that regulate the boundaries of trade secrets prohibited from being disclosed to the public, thereby ensuring legal certainty between the parties. The impact of this will result in losses for the company and may lead to legal consequences in the form of civil sanctions causing compensation and criminal sanctions resulting in imprisonment and fines.

Keywords: *Legal Consequences, NDA, Company, Sales Methods, Secrets Trade.*

INTRODUCTION

The growth of the economy affects the success of a country's economic development. The process of achieving an increase in total income and per capita income, taking into account population growth and accompanied by a fundamental change in the economic structure of a country and the equitable distribution of income among its population, is referred to as economic development. If a country experiences an increase in real Gross National Product (GNP), then economic growth has occurred (Dhiyaah Karina et al., 2022).

The normative definition of trade secrets is formulated as information that is not known to 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. The products/information resulting from the development of human ideas and thoughts have become one of the complex issues occurring in both national and international trade, making it

a serious matter being addressed by the international and national community (Anastasia E. Gerungan, 2016).

Reflecting on the elements contained in the definition above, the legal characteristics of trade secrets can be drawn as follows:

1. It is information that is not known to the public
2. The information covers the fields of technology or business
3. It has economic value that is useful in business activities
4. It is kept confidential by its owner

The regulation defining trade secrets indicates that Indonesia is serious about appreciating forms of creativity and business innovation development. This law is backed by the WTO/TRIPs agreement and Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, hereinafter referred to as the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition, which indicates that the main idea of Law No. 30 of 2000 concerning Trade Secrets, hereinafter referred to as the Law on Trade Secrets. The agreement that specifically contains the crucial secrets of a company is often referred to as a Non-Disclosure Agreement (NDA) (Syadzwin Nabila, 2024).

The legal instrument commonly used to protect trade secrets is the NDA (Non-Disclosure Agreement). An NDA is an agreement that binds the parties to maintain the confidentiality of information that has been provided or accessed during the course of the employment or business relationship. In the context of employment, NDAs are typically applied between companies and employees as a means to ensure that important information obtained during the employment period is not misused or disclosed to third parties, both during and after the termination of the employment relationship.

The agreements contained in the NDA often pertain to a company's trade secrets. NDAs are frequently used as confidentiality agreements in collaborations or employment relationships between employers and employees, or in partnerships between certain parties to protect confidential information owned by a company. NDAs are also found in agreements between companies and their employees.

Although NDAs are often used as legal tools to protect trade secrets, there are still various challenges in their implementation. One of the main challenges is employees' lack of understanding of the content and legal consequences of the NDAs they sign. In the Civil Law system in Indonesia, where intellectual property rights can be considered as property rights, which are rights over an object derived from the results of human intellect or reasoning, and that work is an immaterial object (intangible). The confidentiality agreements included in collaboration agreements are based on Article 1338 of the Civil Code, which states: "All valid agreements shall have the force of law for those who make them. Unless both parties agree, agreements cannot be revoked according to the law. Agreements must be fulfilled in good faith," and also based on Article 1320 of the Civil Code, which mentions: "The valid conditions of an agreement are agreement, capacity, a specific matter, and a lawful cause."

Companies engaged in production generally find it easier to determine their trade secrets, while companies in the service sector often do not define their own trade secrets because the owners believe that trade secrets must be in the form of products. Therefore, if it is in the form of services, it automatically does not have an NDA, while it is clear that in the Law on Trade Secrets, Article 2 essentially states that trade secrets include production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value. Thus, it is clear that the objects included in the scope of trade secrets are not only products but can also be methods and other information in the field of technology.

The sales method is the way or strategy used to sell products/services to customers with the aim of making those objects sellable. Therefore, various techniques and tactics are needed to attract customers' attention, convincing them to purchase products/services and ensuring that

sales transactions occur. Thus, the selection of the right method is crucial for obtaining profits, as an inappropriate sales method can affect the effectiveness and efficiency of sales. Therefore, businesses need to consider factors such as characteristics, products/services, customer preferences, and market conditions when choosing the right sales method (Esti Tri, 2025). For example, in terms of sales methods, the object can be in the form of SOPs (Standard Operating Procedures) designed by each company as well as possible, and with these SOPs, it can increase the turnover of a company. However, in the process of designing and building them, many factors involving businesses, customers, etc., are required.

This phenomenon can certainly become a problem in the future if there are former employees in a certain company who no longer have a legal relationship with the company but leak the company's sales methods for profit, caused by the negligence of the company in not taking any measures to protect its trade secrets, namely by creating NDAs that can protect sales methods as trade secrets owned by the company.

Based on this background, this research aims to analyze the legal consequences of Non-Disclosure Agreements between companies and employees regarding the protection of sales methods as trade secrets of the company.

METHOD RESEARCH

This manuscript is the result of a literature research study employing a normative approach (Andria Luhur Prakosa and Absori, 2022) because it can accurately describe and analyze the legal consequences of Non-Disclosure Agreements between companies and employees regarding the protection of sales methods as trade secrets of the company.

The nature of the research used in this study is descriptive, which aims to objectively describe a situation. This research was chosen because it can depict the characteristics of a phenomenon in efforts to prevent the leakage of trade secrets caused by the absence of NDAs between employees and companies, and it is prescriptive. This research falls into the category of normative legal research, where the author will strive to examine and analyze various literary sources, such as books, journals, papers, and magazines (Efendi Ibnu Susilo et al., 2022).

In relation to the type of research used, which is normative, the research approach employed in this study is through analytical, conceptual, and case approaches (Kenny Femia Sekar Arum and Rosalia Dika Agustanti, 2022). This research is normative legal research, so the primary data source is in the form of secondary data sources. The three sources of legal materials for this research are: Primary Legal Materials are legal materials that have binding legal force, namely norms or basic rules (the preamble of the 1945 Constitution), basic regulations (the body of the 1945 Constitution), statutory regulations, uncodified legal materials such as customary law, jurisprudence, treaties, and legal materials that are colonial legacies such as the Criminal Code/Wetboek Van Strafrecht (WvS) and the Civil Code/Burgerlijk Wetboek (BW).

The technique for collecting legal materials used in this research is through library research, a data collection tool employed to study documents gathered by conducting literature studies in libraries, catalog searches, and internet browsing to find answers to the issues to be discussed and analyzed, thereby providing a scientific description. The data analysis used in this research is qualitative data analysis.

DISCUSSION

1. The Legal Status of Non-Disclosure Agreements (NDAs) to Protect Trade Secret Information of Companies Under Applicable Legislation in Indonesia

The Indonesian legal system adopts many concepts from Dutch law, including in the area of contracts/agreements. The legal basis for NDAs in Indonesia refers to:

The Civil Code (KUHPerdata), specifically:

1. Article 1313 of the Civil Code: Definition of an agreement.
2. Article 1338 of the Civil Code: Principle of freedom of contract.
3. Article 1320 of the Civil Code: Conditions for the validity of an agreement.

Confidentiality agreements play an important role in the business and technology sectors by serving as a legal tool to protect confidential information and safeguard business interests. Confidential information in this context is closely related to trade secrets, particularly in an agreement, especially confidentiality agreements or what is known as NDAs, which are confidentiality agreements between the trade secret owner and employees to protect the confidentiality of information and/or specific materials shared with access/information but must not be disclosed to third parties.

1. The Increasing Business Competition and the Need to Protect Confidential Information
2. Globalization and International Standards
3. Growth of Startups and the Technology Industry
4. Efforts to Build Trust Among Parties
5. Need for Preventive Legal Tools
6. Increasing Legal Awareness.

The main purpose of NDAs is to provide legal protection for confidential information, especially when such information must be shared with other parties such as investors, employees, consultants, or business partners, and cannot be considered a trade secret if the owner does not make efforts to maintain its confidentiality.

The three main elements of trade secrets under Indonesian law are:

1. Information that is not generally known.
2. Has economic value
3. Maintained in secrecy by the owner.

NDAs are one of the most important legal tools for protecting trade secrets. The relationship between the two can be explained through the following aspects:

1. Mechanism for Safeguarding Trade Secrets
2. Information Access Control
3. Prevention and Law Enforcement Tools.

Based on the importance of protecting such business information, the State has introduced Law Number 30 of 2000 concerning Trade Secrets. With the presence of this regulation, business people or entrepreneurs can be more proactive in protecting their business information, especially when events occur that may threaten the security of that business information (Maya Sari Butar-Butar et al., 2019).

This can be done through various steps, such as creating contracts that explicitly require the other party to not disclose the secrets in writing (Asry Rismawaty, 2019). In principle, the law will protect that confidentiality based on the principles of contract law, which state that agreements not only cover what has been explicitly agreed upon but also include customs, even if not explicitly stated, as outlined in Article 1347 of the Civil Code, which states:

“Matters that are customarily agreed upon are considered to be implicitly included in the agreement, even if not explicitly stated.”

Similarly, the agreement must be interpreted broadly in relation to the relationship of one promise to another, so that each promise must be interpreted systematically within the context of the overall agreement. This is in line with the provisions of Article 1348 of the Civil Code, which states:

“All promises made in an agreement must be interpreted in relation to one another; each promise must be interpreted within the context of the entire agreement.”

If related to the protection of the principle of Trade Secrets, then a party that has violated the rights to a secret information owned by someone with commercial value can be qualified as

an unlawful act. The provisions of Article 1365 of the Civil Code essentially aim to provide civil substance against all violations by other parties that are detrimental.

A person is considered to have violated another's trade secret if they obtain or control that secret through commercial means that contradict applicable laws and regulations. Regarding the rights and obligations of the parties to the agreement, it is stipulated that the company providing the Trade Secret is willing to disclose to the recipient the necessary information within a certain period, provided that the recipient will keep it confidential and will not disclose it to others except for interests outside this agreement. The obligation to maintain confidentiality also applies to subsequent agreements that may be made by the receiving party.

In principle, the law will protect confidentiality based on the principles of contract law, which state that agreements not only encompass what has been explicitly agreed upon but also include customs, even if not expressly stated, as outlined in Article 1347 of the Civil Code, which reads:

Matters that are customarily agreed upon are considered to be implicitly included in the agreement, even if not explicitly stated."

According to contract law in Indonesia, an agreement is valid if it meets four requirements as stipulated in Article 1320 of the Civil Code. This relates to the clauses contained in an agreement.

The contents of an employment agreement have been explicitly regulated in the Employment Law. In its manifestation, an NDA can be part of an employment agreement or made separately from the employment agreement. Of course, if this clause is included in the employment agreement, it must refer to the applicable legal provisions. The legal provisions in Indonesia do not explicitly regulate the arrangement or limitation of an NDA. In fact, there is no legal provision under Indonesian law that explicitly prohibits the inclusion of an NDA in an employment agreement as long as the parties agree to be bound by that clause.

It should be emphasized here that an agreement made by a company with its employees that prohibits the use of technology or information that is generally known or is in the public domain is an action that constitutes a legal defect.

The steps taken to protect Trade Secrets through the contract law system by business actors are one legal strategy to protect the Trade Secrets themselves, which can serve as evidence that the owner has genuinely obtained protection for the trade secrets they possess, which is one of the requirements for information categorized as Trade Secrets.

2. Legal Consequences of Non-Disclosure Agreements Between Companies and Employees Regarding the Protection of Sales Methods as Trade Secrets of the Company

An agreement according to Article 1313 of the Civil Code is an act by which one or more persons bind themselves to one or more other persons. The valid requirements of an agreement according to Article 1320 of the Civil Code are:

1. Agreement of those who bind themselves;
2. Capacity to create an obligation;
3. A certain object;
4. A lawful reason.

With the understanding of agreements as defined above, it can be concluded that the position between the parties entering into the agreement is equal and balanced.

However, if the understanding of the agreement as mentioned above is examined in depth, it will be seen that this understanding has a broad and very general meaning, in addition to not specifying the purpose for which the agreement is made. In an agreement, the principle of freedom of contract is recognized. The purpose of this principle is that everyone is

fundamentally allowed to make agreements of any content and type, as long as they do not contradict laws, morals, and public order. Everyone may enter into any agreement with anyone. The provision regarding this principle is stated in Article 1338 of the Civil Code, which states that.

“All valid agreements shall have the force of law for those who make them.”

Agreements made in accordance with Article 1320 of the Civil Code have binding legal force. An Employment Agreement according to Article 1601a of the Civil Code is:

“An Employment Agreement is an agreement whereby one party, the worker, binds himself to carry out his work under the orders of the other party, the employer, for a certain period, in exchange for wages.”

An Employment Agreement according to Article 1 number 14 of Law Number 13 of 2003 concerning Manpower states that:

“An employment agreement is an agreement between a worker/laborer and an employer or provider of work that contains the terms of work, rights, and obligations of the parties.”

When compared to the general understanding of agreements as outlined in Article 1313 of the Civil Code, it is clear that the position between the parties making the agreement is equal and balanced. Because in that article it is stipulated that one person binds himself to one or more persons (Yessi Pramita, 2017).

Returning to the provisions of Article 1313 of the Civil Code, it is explained once again that the parties entering into the agreement are in an equal and balanced position. Conversely, in Article 1601a of the Civil Code, the parties making the employment agreement do not have the same position and degree of equality or balance.

The regulation regarding Non-Disclosure Agreements (NDAs) has not been established in positive law in Indonesia. However, Non-Disclosure Agreements (NDAs) can be legally based on Article 1338 of the Civil Code, which states that:

“All agreements made in accordance with the law shall have the force of law for those who make them. Such agreements cannot be revoked except by mutual consent of both parties, or for reasons specified by law. Agreements must be executed in good faith.”

The Non-Disclosure Agreement (NDA) itself serves as an agreement that a company has sensitive information that must be protected, maintains patent rights, and provides clear limitations. This is also regulated in Article 3 paragraph (1) of Law Number 30 of 2000 concerning Trade Secrets, which states that Trade Secrets receive protection if the information is confidential, has economic value, and is kept confidential through appropriate efforts. This is further explained in Article 3 paragraphs (2) to (4) which state:

1. Information is considered confidential if it is known only to certain parties or is not generally known to the public.
2. Information is considered to have economic value if the confidentiality of the information can be used to conduct commercial activities or can increase economic profits.
3. Information is considered to be kept confidential if the owner or the parties who possess it have taken appropriate and reasonable steps.

This principle of fairness is realized when an agreement is based on Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower. There is a need for regulations regarding the limitations of Non-Disclosure Agreements (NDAs) so that the contents of the agreements made for employees do not violate moral norms and public order. This is in accordance with Article 1338 of the Civil Code which states that:

“All agreements made in accordance with the law shall have the force of law for those who make them.”

The owner of trade secrets must maintain the confidentiality of the information. This can be done with a written contract that prohibits other parties from disclosing the information. In

addition, the law also protects confidentiality based on the general principles of agreements, which include unwritten customs, as explained in Articles 1347 and 1348 of the Civil Code.

The confidentiality agreement requires the receiving party to keep the confidential information and not disclose it without consent. The employment contract ensures that employees adhere to confidentiality rules in accordance with the law, while the consulting contract requires consultants to maintain confidentiality during and after the contract ends, to prevent information leakage.

The extent of the employee's knowledge about the information, its impact on the company's operations, and the potential benefits to third parties if the information leaks to them are other considerations in determining whether this crucial information should only be known by relevant employees and not be freely disseminated. The criterion that potential benefits to third parties from leaked information is an indication that the information is worthy of being considered a trade secret.

The trade secret lawsuit is filed in the District Court and can be resolved out of court through Arbitration or other Dispute Resolution methods. A violation occurs if a trade secret is disclosed without permission or obtained illegally. Investigations by civil servant investigators are regulated under Law No. 30/2000 and Law No. 8/1981. Perpetrators of trade secret violations can be sentenced to a maximum of 2 years in prison or fined Rp. 300 million, and the trial can be closed to maintain confidentiality. A trade secret violation occurs when someone unlawfully obtains or uses confidential information without permission, through means such as theft, eavesdropping, or espionage. Offenders can be sentenced to a maximum of 2 years in prison and fined up to Rp. 300 million.

This action can be pursued both civilly and criminally, and specific provisions apply to regulate the civil relationship between the parties involved in the trade secret. Law No. 30 of 2000 establishes criminal sanctions for trade secret violations. Article 17 states that the use of trade secrets without permission or actions that violate Articles 13 or 14 can be punished with a maximum of two years in prison or a fine of up to Rp. 300 million. Only the owner, holder, or licensee of the trade secret has the right to use it, and violations of this right are considered a complaint offense.

Criminal penalties for trade secret violations can include imprisonment or fines, and the judge may choose to impose both or either one. The holder of the trade secret can sue the perpetrator through a claim for damages or an injunction against the infringing act. Trade secret disputes can be resolved in the District Court or through arbitration and alternative dispute resolution methods such as negotiation, mediation, or conciliation, in accordance with Law No. 30 of 1999.

The Trade Secret Law is formed from various cases that have elements of contracts, honesty in wealth, obligations based on trust, and good faith. If we consider the legal considerations that led to the formation of the Trade Secret Law (UURD).

Legal consequences are the outcomes arising from a legal action taken by a legal subject against a legal object. In the context of employment agreements between companies and employees, one important aspect is the protection of trade secrets. According to the legal theory proposed by Soeroso, the legal consequences of a legal action can manifest as the birth, change, or disappearance of a legal state. One form of legal consequence in employment agreements is the inclusion of a non-compete clause, which aims to protect the company's business interests.

When a dispute arises regarding the implementation of a trade secret agreement, the court can decide whether the clause is valid and in accordance with applicable law. If it is proven that the employee violated the agreement, the company can seek damages or request the court to issue a ruling prohibiting the employee from using information obtained during employment.

In Indonesia, although there are no explicit regulations mandating this, courts in several rulings have interpreted that NDA clauses without compensation may be considered invalid.

An alternative for companies to protect trade secrets is to use Non-Disclosure Agreements (NDAs) or confidentiality agreements, which emphasize the employee's obligation to maintain business information without restricting their right to work elsewhere. Thus, the legal consequences of trade secret violations in employment agreements can include civil, administrative, and even criminal sanctions. Therefore, both companies and employees must understand the legal implications of the clauses contained in the employment agreement to avoid violations of applicable legal principles.

Protection of business information is an effort to ensure the security and continuity of business, as well as to minimize potential risks to the information held by the company. This includes several aspects such as compliance with regulations, risk management, and protection of the company's business reputation. The court stated that such actions constitute unlawful acts and imposed compensation sanctions on the defendant. The security service company was proven to have taken customer data beyond what was agreed upon in the sales transaction because, despite the existence of contractual freedom (Kurniawan C, 2025).

This action violates the provisions in the business agreement and is considered fraudulent behavior that harms the seller. The court ruled that the buyer must pay compensation for the violation. In addition to civil cases, trade secret violations can also be subject to criminal sanctions under Article 17 of the UURD, which regulates a maximum prison sentence of two years and a fine of up to Rp 300 million for parties who intentionally use or disclose trade secrets without permission. This is evident in. From a regulatory perspective, Article 4 of the UURD grants exclusive rights to the owner of the trade secret to use, license, or prohibit others from accessing confidential information. If the clause is overly broad or disproportionate, the court may annul it. This is in accordance with the principle of freedom of contract in Article 1338 of the Civil Code, which states that agreements bind the parties like law but must not contradict public order and morals.

In terms of dispute resolution, the holder of the trade secret can pursue litigation or non-litigation routes. Article 11 of the UURD stipulates that the owner of the trade secret can file a claim for damages or an injunction against acts that violate their rights in the District Court. Additionally, alternative dispute resolution methods such as arbitration and mediation can also be used to resolve trade secret-related cases more efficiently. With the increasing complexity of challenges in protecting trade secrets, companies must take strategic steps to secure their business information. These steps include implementing strict data security systems, creating clear internal policies regarding the management of confidential information, and drafting employment contracts that include trade secret protection clauses.

Conclusion

The legal consequences are the outcomes that arise from a legal action taken by a legal subject against a legal object. In the context of employment agreements between companies and employees, one important aspect is the protection of trade secrets. In terms of law enforcement, companies that experience trade secret leakage can file a lawsuit based on Law No. 30 of 2000 concerning Trade Secrets. Article 11 stipulates that the owner of a trade secret may file a lawsuit for damages or cessation of actions that violate their rights in the District Court. Additionally, alternative dispute resolution is regulated in Article 12, which essentially allows for resolution through an arbitration system, making it more efficient in relation to trade secrets.

Suggestion

The presence of NDAs as an instrument in protecting trade secrets certainly provides legal certainty for the parties compared to companies that do not regulate NDAs in their active efforts to protect trade secrets. This is because the NDA clearly outlines the boundaries that must be

kept confidential to prevent leakage and misuse that could harm the company. Therefore, it is mandatory for companies engaged in services and production to regulate NDAs between the company and employees to anticipate the leakage of trade secrets and provide legal certainty to the parties.

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