

Trade Secret Theft: Legal Measures And Challenges in Indonesia

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Abstract: Industries in the economic field such as trade have a large economic impact on the country. Each industry has a strategy to continuously increase its revenue, maintain market stability, conduct operations, etc. Every company has a way of securing confidential information as set forth in a work agreement, or an agreement that specializes in trade secrets, apart from that way the security of trade secret information is also regulated by laws and regulations. Even though there is an agreement that requires keeping secrets, it is often 'cheating' for the spread of confidential information from companies/trade. The result showed that the term "trade secret" refers to economic-related confidential information. Information that is a trade secret is information about technology or business that no one else knows about, has economic value because it can be used in business, and is kept secret by the owner. The biggest challenge in protecting trade secrets is identifying which information should be protected.

Keywords: Trade Secret, Legal Measures, Indonesia, challenge

1. Introduction

Industries in the economic field such as trade have a large economic impact on the country. Each industry has a strategy to continuously increase its revenue, maintain market stability, conduct operations, etc. This strategy is classified information that is only known by a few people in the company. Confidential information in the economic field is classified as a trade secret.

There are two viewpoints in proprietary advantages, to be specific the mechanical perspective and the exchanging framework angle. incorporating technological aspects like product models, software, formulas for high-quality products, and production procedures. In the interim, including parts of exchange organization, among others, tips on propelling the organization/exchange, organization the executives, possibilities for creation, creation and advertising, as well as computerization of organization prospect information.[1] Trade secrets are governed by six fundamental principles, namely:[2]

1. Information must be kept confidential in order to receive legal protection.
2. The Respondent should accept that the Offended party keeps up with the secrecy of data.
3. There should be utilization of classified data without the offended party's authorization by the offended party.
4. The plaintiff must suffer loss if information is used without permission.

5. In some cases, it may be in the public interest to disclose confidential information.
6. The courts offer a variety of legal options..

Trade secrets are based on several theories, namely:[3]

1. Property Rights Theory

Proprietary advantages are restrictive resources that are select and can be guarded against any individual who endeavors to abuse or take advantage of them without privileges. The proprietor has the option to take advantage of it as long as it doesn't abuse the arrangements of the relevant guidelines.

2. Contract Theory

Contract theory is the basis most frequently put forward in court proceedings regarding trade secrets. Contracts or agreements are sources of engagement that are made legally and apply as law. Thus, if one of the parties violates the agreement, it is a default and of course they will receive sanctions in accordance with the applicable provisions. In Dutch law, these contractual principles also serve as the foundation for know-how protection, which divides protection into three categories: before the contract is closed, during the contract, and after it has ended.

3. Theory of Unlawful Acts

The Theory of Unlawful Action is also connected to Trade Secret Protection. Various nations also widely apply this principle to combat unfair competition from rivals.

Every company has a way of securing confidential information as set forth in a work agreement, or an agreement that specializes in trade secrets, apart from that way the security of trade secret information is also regulated by laws and regulations. Even though there is an agreement that requires keeping secrets, it is often 'cheating' for the spread of confidential information from companies/trade. In principle, there are 2 ways to enforce the law on Trade Secrets. The first method is called the non-litigation method which focuses on efforts to settle out of court. The second effort is litigation efforts carried out through the courts.

2. Discussion

2.1 Definition

Information that is a trade secret is information about technology or business that no one else knows about, has economic value because it can be used in business, and is kept secret by the owner. According to the explanation, trade secrets may only be known by a select group of employees, or they may be known by all employees. Naturally, the owner of the trade secret will protect the trade secret.

2.2 Legal Remedies Against Theft of Trade Secrets

Trade Secret Law (Law on Trade Secrets) No. 30 of 2000 The Proprietary innovation Regulation thinks about that to propel an industry that can contend in the extent of public and global exchange, it is important to establish an environment that energizes individuals' manifestations and developments by giving legitimate security to exchange mysteries as a component of the Licensed innovation Freedoms framework.

Non-technical information as well as technology-related information are included in the scope of the Trade Secret Law, which also aims to protect trade secret objects without requiring registration. such as data from pharmaceutical tests, designs and drawings for computer programs, information about manufacturing processes, and commercial data. trade secrets may also consist of a combination of elements, each of which is in the public domain by itself, but

which combination, being kept secret, provides a competitive advantage, such as distribution methods, lists of suppliers and clients, and advertising strategies.[4]

The Trade Secret Law explains several actions that are included in trade secret violations, which if the violation is committed, criminal sanctions can be imposed, namely:[5]

1. Deliberately disclosing a trade secret, either to the general public or the competitors of the owner of the trade secret.
2. Refusing the agreement in the agreement, both written and unwritten related to maintaining the confidentiality of trade secrets.
3. Not carrying out obligations to maintain the confidentiality of trade secrets.
4. Obtaining or controlling trade secrets belonging to other people in ways that are contrary to the law.

Internationally trade secrets are regulated in TRIPS. The existence of trade secret arrangements in TRIPs shows that there has been an agreement, at least for WTO participating members, that without making a contract regarding the obligation to keep confidential valuable information with other parties in doing business, trade secrets are automatically protected.[6]

The purpose of trade secret protection is to safeguard property rights from unauthorized uses of trade secrets.[7] The laws of most countries protect various kinds of trade secrets from misuse by others. In Indonesia, it regulates concepts or information that receives protection, namely: [8]

1. Customer list;
2. market research;
3. technical research;
- b. recipes or ingredients used to produce a certain product;
- c. a certain work system that is quite profitable;
- d. the idea or concept underlying an advertising or marketing campaign.
- e. financial information or price list showing the profit margin of a product;
- f. a way of changing or producing a product using chemistry or machinery.

There are several reasons why cases of trade secret violations often occur, especially in Indonesia, one of these things is triggered because the awareness of employees in protecting trade secrets is still low, and working relationships are carried out verbally, giving rise to unclear patterns of legal relations between employees and secret owners. trade, and the existence of competitors who compete unfairly.

The holder of a proprietary innovation right whose proprietary innovation has been taken can document a legitimate activity by recording a claim against the party liable for the robbery of the proprietary advantage. The Trade Secret Law stipulates that the owner of a trade secret has the right to sue for compensation, termination of all actions involving the use of the trade secret, licenses, or prohibitions against the use of the trade secret by third parties for commercial purposes. The District Court received this lawsuit. Arbitration or alternative dispute resolution are also options for resolving trade secret disputes.

2.3 Challenges in Protecting Trade Secrets

The security of proprietary innovations is turning out to be progressively significant for organizations since data that is considered private can turn into an important scholarly resource. Be that as it may, lawful endeavors to safeguard proprietary innovations can be trying in light of multiple factors, specifically:

2.3.1 Expansion of the Definition of Trade Secret

The definition of a trade secret can be very broad and include information that is not always considered confidential by others. This can cause difficulties in protecting

the information that should be protected. Companies must ensure that their definition of trade secret is clearly defined and consistently applied.

2.3.2 Trade Secret Identification

The biggest challenge in protecting trade secrets is identifying which information should be protected. The company must conduct an internal audit to identify information that is confidential and needs to be protected. Inaccurate identification can cause important information to be unprotected and open to misuse.

2.3.3 Required Evidence

To deal with trade secret infringements, companies must be able to prove that the information collected is a trade secret and that the information was used without permission. The evidence needed to prove this is usually quite difficult to obtain. Companies must have a robust monitoring system in place and carry out regular security checks to prevent such breaches.

2.3.4 Legal Challenges in Various Jurisdictions

Protecting trade secrets can be difficult because companies have to deal with many different jurisdictions. Each country has different laws regarding the protection of trade secrets and companies must understand these differences. This can lead to confusion and confusion in determining the best way to protect trade secrets.

2.3.5 Hard to Detect Violations

Trade secret infringements can be difficult to detect because they usually occur behind the scenes. Companies must have a robust monitoring system in place and carry out regular security checks to prevent such breaches. However, even if the company has a strong monitoring system in place, trade secret violations can still occur.

2.3.6 Cost

Legal efforts to protect trade secrets can be very expensive and require considerable resources. This can be challenging for small companies or startups who may not have a large budget to protect their trade secret information. Companies must weigh the costs and benefits of taking legal action to protect their trade secrets.

3. Conclusion

The term "trade secret" refers to economic-related confidential information. Information that is a trade secret is information about technology or business that no one else knows about, has economic value because it can be used in business, and is kept secret by the owner. The security of proprietary innovations is turning out to be progressively significant for organizations since data that is considered private can turn into an important scholarly resource. Law No. 30 of 2000 on Trade Secrets (Trade Secret Law) states that in order to advance an industry that can compete in 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 rights system. Property Intellectual TRIPs governs trade secrets internationally. The idea of proprietary advantage security is to safeguard property freedoms from the activities of others who use proprietary advantages without privileges. A lawsuit against the party who committed the theft of the trade secret can be filed by the holder of a trade secret right whose trade secret was stolen to a district court as a legal remedy; alternatively, this can be resolved through arbitration or alternative dispute resolution.

The biggest challenge in protecting trade secrets is identifying which information should be protected. The company must conduct an internal audit to identify information that is

confidential and needs to be protected. The evidence needed to prove this is usually quite difficult to obtain. Companies must have a robust monitoring system in place and carry out regular security checks to prevent such breaches. Protecting trade secrets can be difficult because companies have to deal with many different jurisdictions. Each country has different laws regarding the protection of trade secrets and companies must understand these differences. Trade secret infringements can be difficult to detect because they usually occur behind the scenes. Companies must have a robust monitoring system in place and carry out regular security checks to prevent such breaches.

Reference

- [1] Abdulkadir, Muhammad. *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*. Bandung: Citra Aditya Bakti. 2001
- [2] Semaun, Syahriah. "Perlindungan Hukum Terhadap Rahasia Dagang." *Jurnal Hukum Diktum*. Vol. 9 No. 1. 2011
- [3] Legrands, Ghiand. "Perlindungan Hukum Bagi Pemilik Rahasia Dagang." *Jurnal Lex Privatum*. Vol. 1 No. 4.
- [4] Thalib, Emmy Febriani. et.al. "Pentingnya Perlindungan Rahasia Dagang Pada Perusahaan Di Indonesia." *Jurnal Yustina*. Vol. 2 No. 2. 2022
- [5] A.E., Gerungan. "Perlindungan Hukum Terhadap Rahasia Dagang Ditinjau Dari Aspek Hukum Perdata dan Pidana di Indonesia." *Jurnal Hukum Unsrat*. 2016
- [6] Yanuarsari, Susi. "Perlindungan Hukum Terhadap Pemilik Rahasia Dagang Yang Bersifat Komersil." Vol. 17 No 2. 2019
- [7] Muasyara, Husnul. et.al. "Perlindungan Hukum Bagi Pemilik Rahasia Dagang Ditinjau Dari Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang (Analisis Putusan Mahkamah Agung No. 783k/Pid.Sus/2008)." *Diponegoro Law Review*. Vol. 5 No. 2. 2016
- [8] Talitha, Shabrina Faramukti, "Perlindungan Hukum Rahasia Dagang Atas Informasi Bisnis Dalam Perjanjian Kerja di Kabupaten Sleman (Studi *Café "Ideologi" Café di Sleman*)." Skripsi ilmu hukum pada Fakultas Hukum Universitas Islam Yogyakarta, 2019.