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Review Article

Legal Protection for Trade Secret Holders under the Laws of the Republic of Indonesia Number 30 of 2000 on Trade Secrets

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Abstract

Intellectual Property Rights (IPRs) are property rights that originate or are born as a result of human intellectual capabilities. With the emergence of use values and economic rewards, a thinking or conception regarding the need of legal protection for human outcomes or intellectual works develops. The term "law of confidence" refers to the legislation that evolved as a framework for protecting secret information (confidence). Trade secret violations occur when someone deliberately divulges trade secrets, breaches agreements, or violates written or unwritten responsibilities to maintain trade secrets. Owners of economically valuable technology or company knowledge are more likely to register their rights as trade secrets than patents or copyright protection. Article 5 paragraph (1), letter d of the Trade Secrets Law expressly provides for the protection of trade secrets based on an agreement.

Keywords: Legal Protection, Trade Secrets, Value, Economics.

INTRODUCTION

The journey of a nation's civilization continues to evolve following the currents of change that occur in society as a result of the development of mindset, intellectuality, science, and technology that are poured into products of economic value. In line with that, the law, as part of human civilization, also demands constant change. Political power and attraction in meeting a country's economic needs in a global framework cause countries all over the world to determine their respective countries' economic empowerment strategy.The national economic policy of a country is usually set out in legislation. Inevitably, countries that have strong economic capabilities will win in this global competition. Some countries in the world implement practices like monopolies, oligopolies, dumping, discrimination in tariffs (import duties), protectionist policies, restrictions on imports with quota systems, and others that cause many injustices.

Indonesia, as a developing archipelago country, has a growing diversity of arts and culture. This is in line with the diversity of ethnicities, races, and religions that, as a whole, is a national potential that needs to be protected. The wealth of art and culture is one of the sources of intellectual works that can and should be protected by law, in accordance with the Indonesian Nation's commitment to participating in the realization of world order, as stated in the Preamble to the 1945 Constitution. Indonesia needs to make sure that all of its intellectual resources are put together in a way that is consistent with the country's general rules.

Such intellectual wealth is not only for art and culture itself but can also be used to increase capabilities in trade and industry as a source of export revenue, especially in the non-oil sector, which involves its creators and can improve welfare not only for those creators but also for the nation and country. Furthermore, there is a new need to regulate the law in economics and trade, one of which is the emergence of awareness of the important meaning of Intellectual Property Rights (IPR), which can bring concrete and positive results to create an attractive investment climate in any country.

On a more fundamental level, IPRs are property rights that originate from or are created as a result of human intellectual capabilities. This definition is straightforward: IPR-regulated are the things that originate or emerge as a result of human intellectual capacities. Humans create works in science, art,

literature, and technology using their intellect, creativity, taste, and intention (Setijarto, 1998).

Intellectual property rights are created as a result of study and development in the realms of technology, science, art, and literature. These research and development efforts involve money, time, energy, ideas, and instruments in order to generate intellectual products that are both helpful and economically valuable. The outcome of intellectual work is a right obtained from the result of the human mind's creative activity as manifested in many kinds of creativity. This study recognizes that the right exists when human intellectual capability is created in the shape of anything visible, audible, readable, or usable. Thus, IPRs are not the result of imagination or the mind alone. They are the result of specific actions, not just the mind alone.

When the right to intellectual property has economic value and benefits, the thought or conception of the necessity for legal protection of human intellectual property or labor develops. Rights include copyright, patent, trademark, and trade secret rights, as well as many other types of rights, each of which has its own set of rules.

As a developing country, Indonesia strives for strong competition among businesses around the world. This is in line with global conditions in trade and investment. Such competitiveness has long been known in intellectual property rights systems, such as patents. In a patent, in return for an exclusive right granted by the state, the inventor must disclose his findings or invention. However, not all inventors or entrepreneurs are willing to disclose their findings or inventions. They want to keep their intellectual work confidential. In Indonesia, there are a lot of different rules about confidentiality, but they haven't yet been combined into a single set of rules.

The law that developed as a system to protect things that are kept secret (confidence) is called the "law of confidence". As for the specificity attached to the object, it is mainly about "breach of confidence", which is related to the confidentiality of something, which in this case is information that is secret or known as a trade secret (Djumhana and Djubaedillah, 2003).

The need for legal protection of trade secrets is also in accordance with one of the provisions in the Agreement on Trade Related Aspects of Intellectual Rights (TRIPs Agreement), which is an appendix to the Agreement Establishing the World Trade Organization, as ratified by Indonesia with Law Number 7 of 1994. Such protection will encourage the creation of new inventions or discoveries that, even though they are kept a secret, still have legal protection. This means that even though they are kept a secret, the inventor can still own, control, and use them.

Research Problems

The scope of trade secret protection includes the production, management methods, preparation methods, or other information in the field of technology and/or business that has economic value and is not known to the general public. Trade secrets are protected if the information is confidential, has economic value, and is kept confidential through due diligence. Furthermore, the information is considered confidential if it is only known by certain parties or not generally known by the public.

Information is considered to have economic value if the confidential nature of the information is used to carry out activities or businesses that are commercial or can increase economic profits, while information is considered confidential if the owner or the parties who control it have taken appropriate and appropriate steps. The efforts to maintain confidentiality are all steps that contain measures of fairness, appropriateness, and appropriateness that must be done. For example, in a company, there must be standard procedures based on common practices that apply elsewhere and/or that are set out in the internal provisions of the company concerned. Similarly, the company's internal provisions can be stipulated on how trade secrets are maintained and who is responsible for such secrecy.

Trade secret violations occur when a person knowingly discloses a trade secret, breaches an agreement, or breaches a written or unwritten obligation to maintain the trade secret in question. A person is considered to have violated the trade secret of another party when he acquires or controls the trade secret in a manner contrary to the

Based on the above description, the trade secret needs to obtain legal protection so that, in the event of a violation, the holder of trade secret rights can file a lawsuit against the violator based on the protection provided by applicable laws and regulations. Therefore, the issues that will be discussed in this paper are:

- How is the implementation of legal protection for holders of trade secret rights according to Law Number 30 of 2000 on Trade Secrets?
- What factors can hinder the implementation of legal protection for holders of trade secret rights?

LITERATURE REVIEW

Understanding Trade Secrets

There are several terms used to refer to trade secret terms, including undisclosed information, or unknown information. If viewed through the perspective of property law (civil law subsystem), trade secrets cannot be categorized as intellectual property

rights because there is no element of material rights that can be given protection. It is not known which material elements will be protected in the granting of the right to trade secrets, all of which are kept secret. It is true that intangible material rights are hidden in the protection of trade secrets, but it is never known to the public what the secret is. If it is traced that a confidential existence can actually be protected in the form of a patent or in the form of a copyright, if the right is protected based on copyright or patent protection, then it will no longer be confidential. Consequently, other people will be able to copy the right, or when the right ends, it will become public property, which means anyone can own the right (Saidin, 2004).

To protect that possibility, owners of economic technology or business information are more likely to register their rights as trade secrets than to register them as patents or under copyright protection. The goal is to make sure that the right can be used for a long time and that the owner can enjoy the benefits for a long time. At the same time, the product will be protected from imitation.

In countries with the Anglo-Saxon legal system, information is considered property rights and its violation is classified as an act against the law of a special nature, called an action for breach of confidence. While in countries that use the civil law system, these violations are only called "onrechtsmatigedaad," or "acts against common law," by people who live there (Margono, 2002).

The definition of trade secrets is normatively 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. If we look at the definition above, then the conclusion of trade secret law can be drawn, which is:

- It is information that is not publicly known.
- The information covers the fields of technology or business.
- It has useful economic value in business activities.
- Its owner should keep it private.

The information is not publicly known, meaning that the information is exclusive. Only the holder of the information can know the secret. Secrets that contain information in the field of technology or related to the business world. Information technology is, of course, obtained through scientific study, which requires intellectual intelligence, costs money, and may take a long time. Since the information is useful to the business world, it must have economic value. Therefore, its confidentiality needs to be maintained by the owner.

The philosophical basis of the protection of confidential information is that because the information is obtained by its owner with great effort and requires special expertise, spending a lot of time and money is just like any other copyright protection, although not always. The fact that information exists can be found in a very simple way, but it is still a right that must be kept (Saidin, 2004).

The rationale for the protection of confidential information under TRIPs approval is the same as the rationale for the protection of other forms of copyright, such as copyrights, patents, designs, or trademarks, namely to ensure that investing parties develop valuable concepts, ideas, and information commercially in order to benefit from such an investment by acquiring the exclusive right to use such concepts, ideas, or information and to prevent others from using or disclosing them without permission. Legal protection of confidential information also encourages business and commercial development by ensuring that entrepreneurs develop knowledge, concepts, and information rather than simply stealing or imitating the wealth of others.

The subject of the right to trade secrets is the owner of the secret itself. The owner of a trade secret may use and exploit such a trade secret or prevent others from using it. However, as with other types of rights, the owner may also grant a license to another party to use the trade secret for a certain period of time through a license agreement. The license agreement creates an obligation for the licensee to maintain its confidentiality.

Implementation of Legal Protection for Holders of Trade Secret Rights

The idea of the need for protection of something that comes from human creativity, obtained through human ideas, has actually existed since the birth of the Industrial Revolution in France. The protection of property rights regulated by the current civil law is thought to be insufficient, especially with the rise of international trade.

Based on this, the concept of the need for an international provision that can protect the right to intellectual property was born. The first international convention on intellectual property rights was the Paris Convention, which was signed in 1883. It was followed by the Bern Convention, which was signed in 1886, which regulated copyright.

Trade secrets are defined as information, including a formula, pattern, compilation, program, technical method, or process that generates independent, tangible, and potential economic value. The information itself is not known to the general public and is not easy for others to get their hands on so that those who are involved can make money.

The Indonesian Trade Secrets Law also states that the object of trade secret protection is confidential information that 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.

Trade secrets must also have economic value because of their confidentiality, and their confidentiality is maintained through proper efforts. Information is considered confidential if it is not known to the public by the public or only known to a limited extent by certain parties who find it or who use it for activities that generate profit or interest of a commercial nature (Budi, 1997).

To be categorized as a trade secret, the information must also have economic value and be kept confidential. Information is considered to have economic value if, with its confidentiality status, it can be used to carry out activities or businesses that are commercial in nature and increase profits economically. Information is considered to be kept confidential if the owner or the parties who control it have made protective efforts through appropriate and adequate measures to maintain and maintain its confidentiality and control. The Explanation of Article 3 of the Trade Secrets Law states that what is meant by "proper efforts" are all measures that contain measures of reasonableness, feasibility, and propriety that must be taken. For example, within the company, there must be standard procedures based on common practices that apply elsewhere and/or that are enshrined in the internal provisions of the company itself. Similarly, the company's internal provisions can specify how the trade secret is maintained and who is responsible for that confidentiality.

In contrast to patents born out of registration, a "trade secret" is considered to be born when a person discovers a new invention in the form of information of economic value, which, due to certain considerations by the inventor, is deliberately kept private and maintained as confidential information. It is possible that the trade secret will one day become a patent, for example, when the information is registered as a patent by the inventor. In the event that information that was originally treated as a trade secret has been disclosed in a patent specification or patent request, the information is no longer considered a trade secret. Article 4 of the Trade Secrets Law regulates the authority or right held by the owner of the trade secret over their trade secret to:

- Use their own trade secrets.
- Grant licenses to or prohibit other parties from using the trade secrets or disclosing them to third parties for commercial purposes.

Based on this article, the owner of trade secrets has the monopoly right to use the trade secrets he has in his business activities to obtain economic benefits. This provision also means that only the owner of the trade secret is entitled to give permission to another party to use the trade secret he holds through the license agreement. In addition, the owner of the trade secrets also has the right to prohibit other parties from using or disclosing the trade secrets they hold to third parties if such disclosure is made for a commercial purpose.

In addition to these rights in the Trade Secrets Law, it is also mentioned that the owner of the trade secret also has an obligation, which must be willing to disclose every part of the trade secret and the process of its use in full for the purpose of proof in court. This does have the risk of trade secrets being published, so to prevent this, the judge may order that the hearing be held in private at the request of the disputing parties, both in civil and criminal cases.

The Trade Secrets Law in Article 5 Paragraph (1) mentions legal events that may result in the transfer of trade secret rights. The transfer of trade secrets may be made through a process of inheritance, grant, will, written agreement, or other reasons permitted by legislation.

For the transfer of rights on the basis of an agreement, it is necessary to have a transfer of rights based on the making of a deed, especially an authentic deed. This is important given the aspects that are covered are so wide and strange, in addition to safeguarding the interests of each party who entered into a transfer agreement on the trade secret (Muhammad, 2001).

The transfer of trade secrets caused by "other reasons justified by legislation" can be explained here, for example, a court decision regarding bankruptcy. In addition, the owner of the trade secret or the holder of the trade secret rights may also grant a license to another party under a license agreement to exercise or use the trade secret rights in activities of a commercial nature.

In contrast to the agreement that forms the basis of the transfer of trade secrets, the license only grants limited rights and for a limited time as well. As such, a license is granted for the use or use of the trade secret within a specified period of time. Based on the consideration that the nature of the trade secret is closed to other parties, the implementation of the license is done by sending or directly assisting experts who can maintain the trade secret. This is different, for example, from the provision of technical assistance that is usually done in the framework of project implementation, the operation of new machines, or other activities

specifically designed in the framework of technical assistance.

During the granting of the license, the owner of the trade secret may still exercise it himself or grant a license to third parties in connection with the trade secret he holds. Thus, in principle, the license agreement is non-exclusive, meaning it still provides the possibility for the owner of the trade secret to grant licenses to other third parties. If it is desired for a license agreement to be exclusive, meaning that the right to trade secrets can no longer be granted to other third parties, then it must be explicitly stated in the license agreement in question.

As a note, it should be stated that, in principle, the license agreement should not contain provisions that directly or indirectly harm the Indonesian economy, or contain provisions that result in unfair business competition as regulated by applicable laws and regulations. The legislation referred to in this provision is Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition.

In the administrative or recording mechanism, both the various forms of transfer of trade secret rights and trade secret license agreements must be recorded with the Directorate General of Intellectual Property Rights (HaKI). This provision on mandatory records will not allow access to the publication of trade secrets because what is recorded is not the substance of the trade secret but only data of an administrative nature from the transfer document or license agreement document. This mandatory provision is listed in Article 5 paragraph (3) and Article 8 paragraph (1) of the Trade Secrets Law. Similarly, the announcement made on the transfer of trade secrets and licensing agreements in the Official Trade Secret News also does not include things that are substantial, but only data that is administrative only (Usman, 2003).

Both the Trade Secret transfer document and the license agreement document that are not recorded with the Directorate General of IPRS will have the consequence that without recording, the document in question will have no legal consequences against third parties. In addition, it can be stated that the government itself until now has not implemented regulations on the registration of license agreements. This is a very fundamental weakness because the existing patents, trademarks, and copyright laws have mandated this regulation.

Protection of trade secrets based on the agreement has been explicitly stated in Article 5 paragraph (1) letter d of the Trade Secrets Law, which states that the protection of trade secrets is born, among others, based on a written agreement. For the transfer of rights on the basis of an agreement, it is necessary to have a transfer of rights based on the making of a deed, especially an authentic deed. This is important given the aspects that are covered are so wide and strange, in addition to safeguarding the interests of each party who entered into a transfer agreement on the trade secret.

Provisions on the violation of trade secrets are regulated in Chapter VII of Articles 13, Articles 14, and Article 15 of the Trade Secrets Law. Usman (2003) states that Article 13 states: "Violation of trade secrets can also occur if a person knowingly discloses trade secrets, breaches an agreement, or breaches a written or unwritten obligation to maintain the trade secrets in question." Based on these provisions, the violation of trade secrets is considered to have occurred if there is a person who deliberately discloses information or violates the agreement or denies obligations (default) under the agreement that he/she has made either express or implied to maintain the trade secret.

In the Trade Secrets Law, there are no provisions governing the crimes of theft and economic espionage related to trade secrets. Economic espionage is a very serious matter for developed countries. In the previous Trade Secrets Bill, economic espionage was included as a provision that needs to be regulated. Economic espionage related to trade secrets can be defined as a violation of trade secrets that is deliberately committed with the intent to benefit foreign governments and is categorized as an act of economic espionage. The act of economic espionage itself includes the following actions:

1. Stealing, or without permission taking for oneself, carrying, or concealing, or by fraud, cunning, or by fraudulently obtaining Trade Secrets;
2. Without permission to reproduce, reproduce, sketch, draw, photograph, take data, enter data, alter, destroy, photocopy, replicate, transmit, transmit, transmit, post, communicate, or convey Trade Secrets;
3. Receiving, purchasing, or possessing Trade Secrets, with intent to steal, obtain, or alter without permission;
4. Attempt to commit a violation as referred to in letters a, b, and c.

Factors Obstructing the Implementation of Legal Protection for Trade Secret Holders

In general, the implementation of legal protection for trade secret rights holders has been able to be implemented based on the provisions of Law Number 30 of 2000 on Trade Secrets. However, in its implementation, there are still some factors that hinder the implementation of legal protection for the holders of trade secrets. The factors that hinder the implementation of legal protection for holders of trade secret rights (Tim & Damian, 2002) include:

Legislative factors

Nationally and internationally, trade secrets are regulated and protected under Law No. 30 of 2000 on Trade Secrets, which is a harmonization of the provisions on international trade in the World Trade Organization (WTO) and the agreement in the General Agreement on Tariffs and Trade (GATT), and more specifically, is regulated in the Trade Related Aspects of Intellectual Property Rights (TRIPs).However, the government hasn't released the implementation regulations for the Trade Secrets Law until now. This means that it still needs more rules to be put in place, and it hasn't been regulated very well yet.

Information Factors

Not all entrepreneurs or companies know about the legal protection for trade secret rights holders. Based on this, there are some companies that feel that the trade secrets they have do not have legal protection.

Legal Awareness Factors

Although some entrepreneurs or companies are aware of the legal protection for trade secret rights holders under Law No. 30 of 2000 on Trade Secrets, there are still some parties who deliberately ignore the provisions on legal protection for trade secret rights holders and deliberately violate the trade secrets of other parties in various ways and utilize technological advances to steal or take trade secrets belonging to other companies or parties.

Weak Law Enforcement

Law enforcement of trade secret violations felt by entrepreneurs or trade secret rights holders is still very weak because the criminal act of violation of trade secrets is classified as a violation and included in the complaint delinquency. This causes the police and the prosecution to only wait for a report of trade secret violations from the holder of trade secret rights.

CONCLUSION

Based on the previous description, the following is a conclusion that is the answer to the problems in this paper as follows:

In general, the implementation of legal protection for the holders of trade secret rights has been implemented well, based on the provisions of Law Number 30 of 2000 on Trade Secrets. The law automatically and directly protects trade secrets owned by companies or entrepreneurs without the need for trade secret registration if the information is confidential, has economic value, and is kept confidential by the owner through appropriate efforts. The holder of a trade secret may defend his trade secret rights from violations committed by another party through a lawsuit in the District Court or resolve the matter through arbitration or other dispute resolution alternatives.

Factors that can hinder the implementation of legal protection for trade secret rights holders include incomplete legislation, information factors that are not evenly distributed to all entrepreneurs or trade secret rights holders, legal awareness factors, and weak law enforcement factors.

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