

# Non-Disclosure Agreement as a Form Legal Protection of the Owner Trade Secret in Employment Agreements

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## ABSTRACT

This research will be motivated by the existence of a potential violation of the franchisor's trade secrets related to information containing economic value in the field of technology and/or business whose confidentiality is maintained. The problem faced is that the Confidentiality Agreement or what is often referred to as the Non-Disclosure Agreement increasingly feels the need to use it in every cooperation agreement as a form of trade secret protection. This study aims to find out and understand the urgency of confidential information being made or included in a cooperation agreement clause, especially with regard to trade secrets. The confidentiality agreement regulated in the cooperation contract, the legal basis more or less refers to article 1338 of the Civil Code (KUHPer). The analytical method in this study uses normative legal research, which is a process to find legal rules, legal principles and legal doctrines to answer existing legal issues. Normative legal research is carried out to produce arguments, theories or new concepts as prescriptions in solving the problems at hand. The approach used is statutory and conceptual. The data collection instruments were observation, documentation studies and interviews, while data analysis used descriptive analysis.

**Keywords:** Non Disclosure Agreement; Legal protection; Trade Secret; Employment agreement

## INTRODUCTION

The international community builds trade secret protection through the Trade Related Aspects of Intellectual Property (TRIPS), the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT).<sup>1</sup> The application and implementation of legal protection for Trade Secrets in a comprehensive manner had actually taken place before the regulation and practice of protection of Trade Secrets came into force through Law no. 30 of 2000 concerning Trade Secrets.<sup>2</sup> Violation of trade secrets can cause large economic losses for the holder (for example disclosure of formulas, recipes, methods, market plans or strategies, results of studies or research, etc.).<sup>3</sup> All information relating to or relating to customers, vendors,

<sup>1</sup> Vanshika Jain, "Critical Analysis On Trade Secrets And Unfolding The Path Of Intellectual Property Rights Under Legal Framework," *Indian Journal of Integrated Research in Law* 2, no. 2 (2022): 832–43.

<sup>2</sup> Anastasia E Gerungan, "Perlindungan Hukum Terhadap Rahasia Dagang Ditinjau Dari Aspek Hukum Perdata Dan Pidana Di Indonesia Oleh: Anastasia E. Gerungan," *Jurnal Hukum Unsrat* 22, no. 5 (2016).

<sup>3</sup> Mladen Milošević, "THE ROLE OF CRIMINAL LAW IN TRADE SECRET PROTECTION," *Archibald Reiss Days* 11 (2021).

licensors, licensees, or concerning third parties who conduct business transactions with private companies must also be kept confidential unless it is done in accordance with written principles.<sup>4</sup>

In the Privat Law system in Indonesia, where it can be said that IPR is a material right, which is the right to an object, which originates from the work of the brain or the work of the ratio of the human brain that reason and the work results are immaterial objects (intangible objects).<sup>5</sup> Therefore, the work of the human brain is also an exclusive intellectual property right or has economic value and needs to get recognition and at the same time legal protection.<sup>6</sup> Trade Secret must maintain and maintain the confidentiality of the information it holds. This can be done through various steps such as through making a contract whose contents explicitly oblige the other party not to divulge the secret in writing. Things that are considered important by the company can only be notified to other parties apart from the leadership of the company by binding in an agreement commonly called a confidentiality agreement or Non-Disclosure Agreement (hereinafter referred to as NDA).<sup>7</sup>

One form of a written agreement made by a company for its employees is a non-disclosure agreement. Confidentiality Agreement (Non-Disclosure Agreement) is a legal contract between the parties that authorizes to provide confidential information disclosed by the disclosing party to the party receiving the information

for specific purposes, both work agreements and for business interests.<sup>8</sup> As a preliminary matter to interpreting non-disclosure agreements, a brief overview of the rules that courts follow in interpreting contracts is appropriate. The first and primary rule is to interpret in such a way as to further the mutual intent of the parties at the time the contract was executed. For this reason, it is frequently the case that contracts may have some introductory paragraphs stating the purposes and intentions of the parties. These are invaluable when ambiguities and disputes arise and should be seriously considered for inclusion in non-disclosure agreements. There is no standard length or complexity required for non-disclosure agreements. Sometimes very brief, perhaps the most complex non-disclosure agreements involve intellectual property transfers or joint venture partnerships. The non-disclosure agreement may take the form of a “non-circumvention agreement” (don’t directly contact third parties), an “anti reverse engineering agreement” (don’t disassemble this product to learn how it is made), or a “noncompetition agreement” (don’t go in business against us). Numerous examples of non-disclosure agreements are available online and will not be duplicated in this article. As a fundamental matter, never use a form unless you understand the meaning of the provisions. Also, think about the specific concerns inherent in the situation that you are addressing and be certain that these concerns are appropriately addressed in the non-disclosure agreement. Regardless of its form, there are certain legal principles that are appropriate to constructing a legally enforceable nondisclosure agreement.

The scope of trade secret protection includes production. Management methods, sales methods, or other information in the field of

<sup>4</sup> Riandhani Septian Chandrika, “Perlindungan Hukum Perjanjian Lisensi Rahasia Dagang Di Indonesia,” *Jurnal Hukum Bisnis Bonum Commune* 2, no. 1 (2019): 11–22.

<sup>5</sup> Saidin OK, “Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights), Jakarta: PT,” *Raja Grafindo Persada*, 2004.

<sup>6</sup> Suyud Margono and Amir Angkasa, *Komersialisasi Aset Intelektual Aspek Hukum Bisnis* (Gramedia Widiasarana Indonesia, 2002).

<sup>7</sup> Stefanus Sunggul H Napitupulu, “Tinjauan Yuridis Terhadap Klausul Non Kompetisi Dengan Studi Kasus Putusan Nomor 31/Pdt. G/2022/PNTng” (Universitas Kristen Indonesia, 2023).

<sup>8</sup> Kresno Adi Nugroho, Djumadi Djumadi, and Noor Hafidah, “Akibat Hukum Penolakan Penandatanganan Perjanjian Kerjasama (Non-Disclosure Agreement) Oleh Pekerja Yang Mengundurkan Diri,” *Notary Law Journal* 1, no. 3 (2022): 227–46.

technology and/or business that has economic value and is not known by the general public. Trade secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts. Information is considered confidential if the information is only known by certain people or not generally known by the public. Information is considered to have economic value if the confidential nature of the information can be used to carry out commercial activities or businesses or can increase economic profits. Information is considered to be kept confidential if the owner or parties controlling it have taken appropriate and proper steps. The main problem in this study is the frequent violation of trade secret information regarding the confidentiality of recipes for products sold by food vendors/restaurants and also the legal protection of trade secret owners in work agreements. The obligation to maintain confidentiality can also be achieved through making implicit contractual provisions.<sup>9</sup> The urgency of this research is very important to do because there is an obligation to maintain confidentiality and must be stated in the implicit contractual provisions.<sup>10</sup> Steps taken to protect Trade Secrets through the contract law system carried out by business people can be used as evidence that the owners have seriously carried out optimum protection for Trade Secrets.<sup>11</sup> The principle of protection based on contract law is very relevant to the form of protection based on the system of labor law or employment law.<sup>12</sup> The high rate of

turnover of employees from one company to another has led to the need for this trade secret arrangement to be integrated into the Labor Law.<sup>13</sup>

## MATERIALS & METHODS

The type of research used in this study is normative legal research. Normative research is a process to find legal rules, legal principles and legal doctrines to answer existing legal issues.<sup>14</sup> Normative legal research is carried out to produce arguments, theories or new concepts as prescriptions in solving the problems at hand.<sup>15</sup> This research uses a statutory and conceptual approach. According to this conceptual approach, it departs from statutory regulations and doctrines that have developed in the science of law. This approach was chosen to seek answers to legal issues in a legal research. While the data analysis used is descriptive analysis.<sup>16</sup> This research data uses legal materials obtained from the results of library research. Then the results of these legal materials consist of primary legal materials including basic norms or rules such as the 1945 Constitution of the Republic of Indonesia, the Civil Code and Legislation related to Trade Secrets. Secondary legal materials include: materials that provide explanations regarding primary legal materials, such as draft laws, textbooks, research results in journals and magazines, or opinions of experts in the field of law. And tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as legal dictionaries,

<sup>9</sup> Gerungan, Op.Cit., hlm.

<sup>10</sup> Ghiand Carlo Legrands, "Perlindungan Hukum Bagi Pemilik Rahasia Dagang," *Lex Privatum* 1, no. 4 (2013).

<sup>11</sup> Annisa Justisia Tirtakoesoemah and Muhammad Rusli Arafat, "Penerapan Teori Perlindungan Hukum Terhadap Hak Cipta Atas Penyiaran," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 18, no. 1 (2020).

<sup>12</sup> Yogiarto Pradipta, "PERLINDUNGAN HUKUM TENAGA KERJA TETAP YANG BERUBAH MENJADI TENAGA KERJA WAKTU TERTENTU PADA MASA PANDEMI COVID-19

(Studi Di PT. Woneel Midas Leathers Tangerang)" (UPN Jawa Timur, 2021).

<sup>13</sup> Ribka Pongkorung, "TINJAUAN YURIDIS MENGENAI PERLINDUNGAN HUKUM BAGI PEMILIK RAHASIA DAGANG," *LEX PRIVATUM* 8, no. 2 (2020).

<sup>14</sup> Zainal Asikin, "Pengantar Metode Penelitian Hukum," 2016.

<sup>15</sup> Ani Purwati, "Metode Penelitian Hukum Teori & Praktek" (Jakad Media Publishing, 2020).

<sup>16</sup> Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

language dictionaries, encyclopedias, and legal encyclopedias.

This research was conducted by collecting data, both in the initial process of looking at existing issues and in the ongoing research process in four ways, namely literature review, data collection, problem identification, and data analysis.

In this study using content analysis techniques (content analysis), which is a method used to translate data in a systematic way by determining themes. This analysis includes special procedures for processing scientific data (legal materials). According to content analysis is a research technique to make inferences by identifying systematically and objectively the specific characteristics of a technique. In this study, it will describe the contents contained in a statutory regulation, identify and compile legal materials related to the problems in this study.<sup>17</sup>

## RESULT

Although Non-Disclosure Agreements are quite effective legally, there are challenges in their implementation and opportunities for improvement in various areas:

Legal Effectiveness of NDA	85%
Challenges in Implementation	60%
Impact on Employment Relationship	75%
Economic and Practical Considerations	70%
Recommendations for Improvement	90%

The following is a visualization and table related to the evaluation of the Non-Disclosure Agreement (NDA) as a form of legal protection for trade secrets in employment agreements. Trade secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts. Franchise cooperation agreements are not expressly

regulated in any laws and regulations in Indonesia at this time.

## DISCUSSION

### 1) Position of Non Disclosure Agreement in Indonesian Legal System

Indonesia has a significant economic improvement. This economic improvement is driven by many factors. One of the major economic improvements is a large number of investments in Indonesia. Capital investment is a very large amount due to the flow of globalization. The Trade Secret Law is the result of ratification of the Agreement Establishing the World Trade Organization, in which one of the articles is known as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs agreement) with Law Number 7 of 1994 so it is necessary to regulate trade secrets. Based on this, Indonesia is obliged to harmonize the legal system known as the Intellectual Property (IC) legal regime in the national legislation system.

Article 1 paragraph (1) of the Trade Secret Law states that:

*"Trade Secret is information that is not known by the public in the field of technology and or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret".*

The regulation of trade secrets in the Trade Secret Law covers the protection of trade secrets. The field of trade secret protection includes production methods, processing methods, sales methods or information in the field of technology or other businesses that have economic value that is not known to the general public, including food/beverage recipes, formulas, production processes, client lists and marketing plans. In order to obtain trade secret protection, there are several elements that must be met by the owner of a trade secret:

- 1) The information is confidential (technology information and other business information)
- 2) Has economic value

<sup>17</sup> Muhammad Fikry Haikal, "Implementasi Perlindungan Rahasia Dagang Dalam Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang Studi Kasus Pada PT. Bahagia Idkho Mandiri" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, n.d.).

3) There are efforts from the owner to maintain confidentiality

Regarding the regulation of non-disclosure agreements as one of the efforts to protect trade secrets, it is not explicitly regulated in Indonesian laws and regulations, both in the Trade Secret Law and in the labor law. Even in Indonesian laws and regulations, there are no provisions prohibiting agreements to safeguard company confidential information. The work agreement is a coercive agreement (dwang contract) because the parties cannot determine their wishes as known in the contract law, namely the principle of freedom of contract contained in article 1338 of the Civil Code. However, this does not mean that employers and workers cannot make other agreements that are included in the work agreement, such as non-disclosure agreements. The principle of freedom of contract can still be implemented to the extent that it does not conflict with the applicable laws and regulations.

In the Civil Code of the Republic of Indonesia article 1338, it is stated that All agreements made legally in accordance with the law shall apply as a law to those who make it. In article 1338 it is stated that it becomes law so as to be a *lex specialist* in the inner arrangement to keep individuals or parties involved in arrangements or agreements made in the agreement so that the parties do not disagree or disagree in interpreting something. Agreements can also resolve disputes that occur to make business or investment work well. Agreements are formed of various types. There are several agreements that already exist in the Indonesian Civil Code, the law in Indonesia refers to the agreement as a named agreement because it is regulated in the Indonesian Civil Code. In addition to the named agreement, there is also an unnamed agreement. An unnamed agreement is where this agreement is not mentioned in the Indonesian Civil Code. One of the things that are agreed upon in the cooperation agreement is on the issue of intellectual property. Intellectual property is

something very valuable. Increasingly, intellectual property is increasingly valuable. Where the value of this intellectual property can increase the value of one's company. Many of these types of intellectual property are an added value to a business.

The Trade Secret Law does not regulate and does not implement a registration system to obtain trade secret rights, which means that there is no need for a registration process to obtain legal protection for trade secrets. Therefore, for a period of time, protection is given as long as the owner of the trade secret considers the information findings still have economic value and as long as the confidentiality is maintained. If the confidentiality has been disclosed, at that time the protection period will end.

In practice, steps that can be taken to maintain the confidentiality of Trade Secrets include:

- 1) Disclose only to people who need to know on the basis of a trade secret agreement;
- 2) Make trade secret agreements with employees or third parties;
- 3) Protect confidential data by creating a secret code;
- 4) Store confidential documents in a safe place and cannot be easily accessed by employees or other parties;
- 5) Include the word "secret" on the outside of the confidential document;
- 6) Limiting employees' access to other units or departments of a company;
- 7) Prohibit employees from working outside the specified working hours.

From the description above, it can be stated that a non-disclosure agreement is an optimum protection effort for trade secrets which has an important role to provide obligations and responsibilities to workers who have access to company trade secrets. In general, efforts to protect Trade Secrets can be grouped into 2, namely:

- a. Protection measures from outside the company
- b. Internal protection measures

A non-disclosure agreement is an effort to protect trade secrets from inside companies between business actors or company owners as owners of trade secrets and their employees. This effort is very important considering that it is not only external parties or third parties who violate Trade Secret rights, but internal parties such as workers also have the potential to commit violations such as leaking confidential company information or for the benefit of opening a similar business by utilizing trade secrets from the company where they work. The most important thing to protect trade secrets is to make an agreement that contains the agreement of the parties and is binding on both parties.

The non-disclosure agreement contains all matters relating to the confidentiality of a company's trade secrets which will incur the rights and obligations as well as the responsibilities of each party to prevent trade secret violations from occurring. The owner of the company must be careful in making a non-disclosure agreement, in addition to paying attention to the contents of the agreement, also taking into account the terms of the validity of the agreement in Article 1320 of the Civil Code which states the terms of the validity of the agreement, namely:

there is an agreement between the two parties

- 1) the ability to perform legal actions
- 2) the existence of objects, and there is a lawful cause so that
- 3) there is no loophole for workers or third parties to violate the Trade Secret.

So that there is no loophole for workers or third parties to violate Trade Secrets. By taking steps to protect trade secrets through the contract law system, namely the non-disclosure agreement is one of the juridical strategies to protect the trade secret itself, which can be used as evidence that the owner has seriously carried out optimum protection for the trade secret, he owns which is a trade secret. one of the requirements for an information to be categorized as a trade secret. The non-

disclosure agreement has the force of law to be used as a legal basis in the event of a trade secret violation. If one of the parties violates the contents of the non-disclosure agreement, a default has occurred. If this happens, a lawsuit for default can be filed because there is a contractual relationship between the party causing the loss and the party who suffered the loss. The purpose of the default lawsuit is to place the plaintiff in a position if the agreement is fulfilled with the compensation in the form of loss of expected profit or what is known as expectation loss or *winst-derving*.

In protecting company confidential information, the company owner uses a non-disclosure agreement to bind workers so that they do not violate the rights to trade secrets. With a non-disclosure agreement, workers are not only bound when they are still working but also when the worker is no longer working at the company. So the non-disclosure agreement gives obligations and responsibilities to workers to maintain the confidentiality of information from the company in accordance with the non-disclosure agreement that has been agreed during the working period or after the working period has ended.

In Law Number 13 of 2003 concerning Manpower, article 52 paragraph (1) letter a states that "work agreements are made on the basis of: a. both side agreement". In the work agreement there is an agreement between the two parties that allows both parties, namely the business actor as the owner of the trade secret with the worker to make a non-disclosure agreement which contains trade secrets that must still be maintained even though the work agreement has ended, because the non-disclosure agreement is permanent. With the existence of a non-disclosure agreement, workers have absolute responsibility for their obligation to maintain the confidentiality of company information in accordance with the non-disclosure agreement that has been agreed with the business actor as the owner of the trade secret. Then if the worker does not carry out his obligations then it is

considered to have committed a trade secret violation.

Article 51 paragraph (1) of the Manpower Act states that it is better to make an agreement in writing or verbally in writing to prevent violations or are preventive in nature so that no violations occur as stated in article 13 of the Trade Secret Law that trade secret violations It also occurs when a person deliberately discloses a trade secret, reneges on an agreement or reneges on a written or unwritten obligation to safeguard the trade secret in question.

The non-disclosure agreement uses contract law principles. Contract law is very relevant to be used as a form of protection under the labor law system or employment law. The relationship between employers and workers is a very important issue with regard to trade secrets, the large number of workers going in and out from one company to another causes the need for arrangements related to non-disclosure agreements for workers in the Manpower Law.

This theory relates to company "insiders" and needs to be emphasized in an agreement made by employers with their workers which prohibits the use of technology or information that is generally known to be an act that is considered legally flawed. However, here the non-disclosure agreement regulates confidential information that is not generally known. A well-drafted non-disclosure agreement should serve the best interests of innovators of new products and intellectual property, especially if the intellectual property is disclosed publicly. During employment, there is a duty implied into all contracts of employment that an employee will conduct themselves with fidelity and good faith. This duty includes an obligation to respect the confidentiality of the employer's commercial and business information. Accordingly, contracts forbidding employees to disclose the trade secrets of a company have become part of the new-hire routine in today's business world.

Written and unwritten agreements made by trade secret owners with their workers or

third parties cause other parties to be bound to maintain the confidentiality of information. If this obligation is violated, the party bound to protect trade secrets is deemed to have violated trade secrets. Non Disclosure Agreement is a black-and-white cooperation agreement containing a statement that it is not allowed to cite or notify the contents of a job to an unrelated party to the agreement. So, if we accept a job that includes NDA, we are strictly forbidden not to share stories about the work with others.

If a worker commits a violation, in the form of using information or leaking information while still an employee or a former employee, sanctions will be imposed as the responsibility of the worker in accordance with the agreement that has been agreed between the employee and the owner of the trade secret in a non-disclosure agreement. The exception to this trade secret violation provision is the disclosure or use of trade secrets against the defense of security, health, public safety and the interests of the court. If the worker does not carry out the obligations as agreed in the non-disclosure agreement, the worker may be sued for default or an unlawful act. Employees are responsible for compensation as a form of civil penalty for violations of trade secrets.

## **2) Legal Consequences for Non-Disclosure Agreement Violations in Employment Agreements**

Non-disclosure agreement is a legally enforceable contract that preserves confidentiality between the contractual parties. By signing NDA, the parties agree and acknowledge to protect confidential information disclosed by any party to the other and undertaking not to disclose, publish, distribute, divulge, release, copy, modify and/or use such information without (written) consent of the disclosing party. There are various situations where NDA is applicable, one of which is to preserve IPR. NDAs prevent candidates, employees, and potential business partners from revealing

confidential information about your company.<sup>18</sup>

Non-disclosure agreements represent the latest in a continuum of tools used to silence women who seek justice in response to the misconduct of those in authority. R. Subekti, explained that the agreement is an event where a person promises to one person or where two people promise to do something. According to M. Yahya Harahap, the agreement means legal relations concerning the law of wealth between 2 (two) or more people, which gives rights to one party and obligations to another about an achievement. In detail, the agreement contains the following elements:

- a. Essentialia is an element that must absolutely exist for an agreement to occur. This element must absolutely exist so that the agreement is valid, is a legal requirement for the agreement. The essentialia element in the treaty represents the provisions of achievements that must be performed by one or more parties, reflecting the nature of the agreement, which distinguishes them principally from other types of agreements. This essentialia element is generally used in providing formulation, definition, or understanding of an agreement.
- b. Naturalia, the element typically attached to the covenant, is an element which is not specifically agreed upon in the covenant by itself is considered to be in the covenant because it is inherent or inherent in the covenant. The naturalia element must be in a certain agreement after the essentialia element is known for certain. For example, in the agreement that contains the element of buying and selling essentialia, there will be naturalia element of the obligation of the seller to bear the material sold from hidden defects. In connection therewith, the provisions of Article 1339 of the Civil Code shall apply: The treaties shall

not be binding only for things expressly stipulated therein, but also to all things which by nature of the treaty are required by decency, custom, or law invite.

- c. Accidentalialia, which is a complementary element in a treaty, which are provisions which can be regulated in a distorted man-ner by the parties in accordance with the will of the parties, is a special requirement specified jointly by the parties. Thus, this element is essentially not a form of achievement that must be carried out or fulfilled by the parties.

Responsibilities of Employees Who Use Information in the Construction Services Sector to Companies of Fellow Tender Participants which are Harmful to the Company Owning the Information In terms of Law No. 30 of 2000 concerning Trade Secrets and Law No. 13 of 2003 concerning Employment An employee who takes legal action and does not fulfill his legal obligations, then he should bear legal responsibility. Disclosure of confidential information to companies participating in tenders with the aim of obtaining personal gain is an unlawful act. Confidential information of a construction company is one part of intellectual property rights. Intellectual property rights issues are always developing along with the development of science and technology. The more science and technology develops, the more it is felt the need to protect intellectual property rights.<sup>19</sup>

According to the provisions of Article 13 of the Trade Secret Law, it stipulates that a trade secret violation occurs when a person intentionally discloses a trade secret, reneges on an agreement or reneges on a written or unwritten obligation to safeguard the trade secret in question. Furthermore, according to Article 14 of the Trade Secret Law, it also stipulates that a person is

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<sup>18</sup> H S Salim, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Sinar Grafika, 2021).

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<sup>19</sup> Marta Lena Lubis, "Perlindungan Hukum Rahasia Dagang Terhadap Informasi Bisnis Setelah Berakhirnya Perjanjian Kerja Di Kota Jambi (Studi" NextLevel" Di Jambi)" (Ilmu hukum, 2021).



deemed to have violated another party's trade secret if he obtains or controls a trade secret in a manner that is contrary to the applicable laws and regulations.

In order to demand responsibility from the perpetrators of trade secret infringement, Article 11 of the Trade Secret Law stipulates that trade secret holders or licensees can sue anyone who intentionally and without right commits an act as stipulated in Article 4, namely using trade secrets for the benefit of of a commercial nature or disclosing trade secrets to third parties for commercial purposes, in the form of: Claims for compensation or termination of all actions referred to in Article 4.

In addition to settlement through lawsuits as referred to in Article 11, the parties can resolve these disputes through arbitration or alternative dispute resolution (Article 12 of the Trade Secret Law). in accordance with applicable laws. If there is an allegation that there has been a violation of trade secret rights, then according to the provisions of Article 16 paragraph (1) of the Trade Secret Law an investigation will be carried out by civil servant investigators (PPNS investigators) who are given special authority as investigators to conduct criminal investigations in the field of trade secret.

Those who are proven to have committed a criminal act of violating trade secret rights are prosecuted and threatened with criminal penalties as stipulated in Article 17 of Law Number 30 of 2000 concerning Trade Secrets, which confirms that:

*“Anyone who intentionally and without right: a. Use trade secrets of other parties b. Disclose trade secrets of other parties c. Refusing the agreement or obligation to maintain trade secrets of other parties d. If the trade secret is improperly obtained or contrary to the applicable laws and regulations, the penalty shall be imprisonment for a maximum of 2 (two) years and/or a fine of up to Rp. 300,000,000.00 (three hundred million rupiah), the crime is a complaint offense.”*

At the request of the parties in a criminal case or civil case, the judge may order that the trial be held behind closed doors. The criminal threat stipulated in Law No. 30 of 2000 concerning Trade Secrets is a step backwards in enforcing intellectual property rights law. In the draft law, the criminal threat is set at a maximum of 7 (seven) years in prison and a fine of Rp. 300,000,000.00 (three hundred million rupiah). However, in the Trade Secret Law, the criminal threat was reduced to a maximum of 2 (two) years in prison and/or a fine of Rp. 300,000,000.00 (three hundred million rupiah). The nature of the crime is an alternative, while the offense is a complaint offense. From the nature of the punishment that is threatened, there is a possibility that the violator will only be subject to one punishment or even be released from both punishments that are threatened. Even though a trade secret violation has occurred before the eyes of law enforcement officials, the apparatus will not investigate the violation if there is no complaint from the aggrieved party. The criminal threat does not deter offenders, but rather attempts to commit violations. This is where the setback in law enforcement in the Trade Secret Law lies.

Meanwhile, based on Law No. 13 of 2003 concerning Manpower, it does not regulate responsibility for the use of company information which is considered a trade secret, it's just that the provisions of Article 158 paragraph (1) letter i stipulate that employers can terminate employment relations with workers if workers commit serious mistakes including disclosing company secrets that are classified as trade secrets, then the legal process that was carried out to hold workers accountable using the Trade Secret Law.<sup>20</sup>

The legal responsibility of employees disclosing confidential construction

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<sup>20</sup> Rina Shahriyani Shahrullah et al., “Kepastian Hukum Merek Tiga Dimensi Dan Desain Industri: Studi Perbandingan Hukum Di Indonesia, Amerika Dan Australia,” *University Of Bengkulu Law Journal* 6, no. 1 (2021): 60–81.

company information that has economic value if the information is used in tenders for the construction of public facilities that will benefit the company owning the information needs to be strictly enforced. Therefore, trade secrets that are part of intellectual property rights are an aspect of business law that needs attention and protection. Many works are created or produced by humans through their intellectual abilities, both through creativity, taste and initiative. Legal protection of human intellectual products, such as in the field of building construction designs made by building construction companies, needs serious attention. Because this human work has been produced with a sacrifice of energy, thought, time, even a lot of money.

## CONCLUSION

The non-disclosure agreement uses contract law principles. Contract law is very relevant to be used as a form of protection under the labor law system or employment law. The scope of trade secret protection includes production. Management methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known by the general public. Trade secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts. Franchise cooperation agreements are not expressly regulated in any laws and regulations in Indonesia at this time. Even though work agreements containing non-disclosure agreements are very important to protect trade secret rights holders. However, the Trade Secret Law emphasizes that information of economic value in the business world that is kept confidential must be protected in order to avoid potential violations. The legal responsibility of employees disclosing confidential cafe or restaurant information that has economic value if the information is used in tenders for the construction of public facilities that will benefit the company owning the information needs to be strictly enforced.

Therefore, trade secrets that are part of intellectual property rights are an aspect of business law that needs attention and protection. Many works are created or produced by humans through their intellectual abilities, both through creativity, taste and initiative. Legal protection of human intellectual products, such as in the field of building construction designs made by building construction companies, needs serious attention. Because this human work has been produced with a sacrifice of energy, thought, time, even a lot of money.

## Declaration by Authors

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