



## Validity of Non Disclosure Agreement as The Protection Undisclosed Information (Trade Secret in Indonesia)

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### ABSTRACT

Undisclosed information that has economic value and is not published is an intellectual work that is recognized and protected as intellectual property rights. Business actors and owners of confidential information use various means to protect this information, although basically the law has regulated this through Law Number 30 of 2000, one of which is a non-disclosure agreement or confidentiality agreement were used to protect undisclosed information beside the Indonesian Law. The research method used in this study is normative legal research with two approaches (conceptual approach and statute approach). A non-disclosure agreement as an agreement is made to bind the parties to protect confidential information both during the work/business relationship and after the relationship ends. The binding power of the NDA applies like a law based on the principle of *pacta sunt servanda* and it is the obligation of the parties to comply with the agreement based on the principle of good faith. NDA legal instruments are the scope of civil law so that the output is in the form of lawsuits for violations to restore rights or demand compensation. Besides that, there is an option of criminal enforcement for violations of trade secrets in the Trade Secret Law.

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### 1. Introduction

Trade secrets are one of types of intellectual property rights are the protected and recognized in Indonesia under law number 30 of 2000 on trade secrets, in addition trade secrets are also protected globally through international agreements, one of which is TRIPs (Annex 1c). A trade secret is one thing that has economic value for an individual or group born from a thought process so that it can be categorized as a material right even though it has no form. Intellectual property rights themselves have been categorized as intangible

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material rights that can be owned, transferred and utilized so that these material rights have economic benefits. Intellectual property refers to creation of the mind, such as inventions, literary and artistic works, designs and symbols, names and images used in commerce.

Trade secrets as intellectual property rights are indeed not very familiar to the Indonesian people when compared to intellectual property rights such as copyrights and patents, but in the era of the industrial revolution 4.0 with the development of the business world, the protection of trade secrets has become something that is important to protect.

The World Intellectual Property Organization (WIPO) as one of the international institutions working in the field of intellectual property rights discloses several conditions for being used as a trade secret intellectual work, namely having commercial value, known only to a limited circle and being confidential.<sup>3</sup> According to WIPO that trade secrets are intellectual property rights on confidential information (undisclosed information) which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

It is undeniable that the economic value of a trade secret requires special attention in order to get protection from misuse which can cause harm to the owner of the trade secret. Legal protection for trade secrets can basically be seen from preventive and repressive efforts that need to be taken to prevent trade secret violations as well as repressive measures in the context of enforcement in the event of a trade secret violation.

Trade secret is one of the intellectual property rights and a uniquely properties because their value could disappears or falls dramatically because disclosed information or public accessible. That's why a thorough background check on the trustworthiness and reliability of a prospective commercial partner and the level of risk is high about information commercial bids and contracts, customer or supplier lists and financial information and planning etc.

Like other intellectual property, undisclosed information as a trade secrets are subject to the Indonesian national laws in which they are protected. Unlike copyrights, trade secrets there are no formal requirements to register trade secrets to direktorat jenderal KI (DJKI) ministry of law and human rights. The legislation around trade secrets is largely drawn from case law relating to breach trust, with effective remedies for instances in which trade secrets have been improperly acquired, disclosed or used.<sup>4</sup>

The government has basically made efforts in the form of protection by issuing Law Number 30 of 2000 concerning Trade Secrets which regulates the conditions for a secret to become a trade secret and sanctions for violations. Registration of trade secrets when compared to intellectual property rights such as copyrights, patents and industrial designs is indeed relatively rare.

In some companies, the prevention of leaking of trade secrets is usually done by binding the workers with an agreement that regulates the provisions for keeping confidential secrets accompanied by sanctions for violations. Agreements binding workers not to circulate or divulge company secrets are indeed not too common in the field when compared to work agreements in general.

Theoretically, if someone creates or finds information that has economic value, then other people should not harm him by duplicating or interrupting the creative process and the activity of producing these "undisclosed information" because the creator of intellectual

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<sup>3</sup> World Intellectual Property Organization. (n.d.). *Trade Secrets*. <https://www.wipo.int/en/web/trade-secrets>

<sup>4</sup> Nirwan, P. (2017, December). *Trade secrets: The hidden IP right*. WIPO Magazine. <https://www.wipo.int/en/web/wipo-magazine/articles/trade-secrets-the-hidden-ip-right-40225>

creations owns the property as intellectual creation.

The occurrence of trade secret violations such as the acquisition of trade secrets by improper means such as theft, bribery, confusion, breach of contract, espionage or disclosure of trade secrets without approval are forms of trade secret violations.<sup>5</sup> The potential for trade secret violations is not impossible, but are the laws and regulations in force in Indonesia sufficiently qualified to provide legal protection in the field of trade secrets or sufficient contractual instruments in the form of non-disclosure agreements to protect these secrets or must be registered with the Directorate General of Intellectual Property Rights Ministry of Law and Human Rights of the Republic of Indonesia.

## **2. Method**

The research method used in this research journal is a normative legal research method. In this study, two approaches were used, namely the statute approach and the conceptual approach.<sup>6</sup> A conceptual approach is used by analyzing trade secrets as an intellectual property rights in the principle and a statute approach using several positive legal provisions governing related to the legal issues about protection undisclosed information as trade secrets. The data sources consist of primary sources comprising legal materials, legislation, and secondary data sources including dictionaries, journals, books, and other non-legal materials. Data analysis is conducted by inventorying both legal and non-legal materials, which are then analyzed based on the legal events that occur.

## **3. Result and Discussion**

### **3.1. Protection of Economic Rights in Trade Secrets**

Economic rights are absolute rights owned by the owner trade secrets to obtain economic benefits for use of his intellectual property in the form of undisclosed information that has economic value. Intellectual Property Rights as material rights have certain characteristics so that they have exclusivity which gives rise to moral rights and economic rights to them. Copyright as an example of intellectual property that has moral rights and economic rights over his creations that provide moral benefits (to put his name on his work) and economic benefits (to get benefits from the use of his work by other parties). The results of the creative process of human initiative and creative work can vary, can be tangible, but can also be intangible, although their rights will later be intangible rights.<sup>7</sup>

The unique characteristics of intellectual property make it necessary to get protection and appreciation for those who create, discover or make it so that the rights born of intellectual property are attached to those who produce the intellectual work. John Locke once put forward a theory about the Fruit of Labor which can be linked to the concept of protecting intellectual property rights:<sup>8</sup>

Labour is mine and when I appropriate objects from the common I join my labour to them. If you take the objekts I have gathered you have also taken my labor, since I have attached my labor to the objects in question. This harms me and you should not harm me. You therefore have a duty to leave these objects alone. Therefore I have property in the objects.

What emphasis was put forward by John Locke that a person's intellectual work is a right that must be respected so that the award will indirectly have implications for the

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<sup>5</sup> Ganglmair, B., & Reimers, I. (2019). *Visibility of Technology and Cumulative Innovation: Evidence From Trade Secrets Laws*. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3450351>. p.1

<sup>6</sup> Marzuki, P. M. (2015). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. p.113

<sup>7</sup> Sardjono, A. (2017). *Symphonizing Intellectual Property Laws in the Advancement of Culture*. Padjadjaran Jurnal Ilmu Hukum (Journal of Law), 4(3), 437-453. <https://doi.org/10.22304/pjih.v4n3.a1>

<sup>8</sup> Jened, R. (2014). *Hukum Hak Cipta (Copyright Law)*. Bandung: PT. Citra Aditya Bakti. p .3-4

existence of incentives as economic benefits. Hegel himself argued that economic benefits are not merely a form of appreciation for intellectual work, but there is something that is morally rewarding, so that recognition of the moral rights of an intellectual work is necessary.

Trade secret is information that is not published to the public which becomes something that is kept secret by individuals or business entities because it has economic value. In the provisions of Article 2 of Law 30 of 2000 concerning Trade Secrets, it is stated regarding secrets that can be used as trade secrets, namely: 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 by general public.

Trade secret protection, as explained earlier, that an intellectual work or creation that is born from a human intellectual process so that the work or creation has economic value needs to be protected in order to reward the creator or inventor. Trade secret protection is also beneficial in the world of trade in that trade secrets are an important source of risk because the disclosure of a trade secret of a company or individual can damage the company's competitiveness leading to unfair competition and will have implications for significant economic losses for companies.<sup>9</sup>

Today many major countries in Asia such as Japan, Korea, Thailand, Taiwan and China are following the approach used by the United States in criminalizing trade secret violations in the form of more severe penalties for economic espionage.<sup>10</sup> Indonesia itself as a country that provides protection and awards for trade secrets has regulated the forms of enforcement and sanctions for violations of trade secrets regulated in the provisions of Law 30 of 2000 concerning trade secrets. Besides the existence of preventive efforts with statutory regulations, the government has also made these regulations a repressive effort against trade secret violations by providing instruments in the form of civil and criminal lawsuits. Conditional trade secret protection rule, that trade secret protection shall be granted if and only if the informed party has undertaken a small but significant investment to conceal his information (granted if and only if it increases the social surplus.<sup>11</sup>

A trade secret as an intellectual property right is not declarative like copyright, but the protection given to a trade secret has the option of not being registered because it automatically gets protection as long as the secret is secret, has economic value and is kept confidential through appropriate efforts. Article 3 Law 30 of 2000). In particular, trade secret licenses are required to be recorded at the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights. A trade secret license agreement that is not recorded at DJKI has consequences for the absence of legal consequences for third parties and this is stated in Article 8 Paragraph (3) of Law 30 of 2000.

Based on the provisions of Article 2 of Law 30 of 2000 it states the scope of trade secrets that can be protected against this law, namely:

- a) Production method;
- b) Processing method;
- c) Sales method;

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<sup>9</sup> Klasa, S., Ortiz-Molina, H., Serfling, M., & Srinivasan, S. (2018). *Protection of Trade Secrets and Capital Structure Decisions*. Journal of financial economics, 128(2), 266-286. <https://doi.org/10.1016/j.jfineco.2018.02.008>.

<sup>10</sup> Liu, K. C. (2022). *The Problems With Trade Secret Protection/Overprotection in Asia*. IIC-International Review of Intellectual Property and Competition Law, 53(1), 94-115. <https://doi.org/10.1007/s40319-021-01136-9>.

<sup>11</sup> Bechtold, S., & Höffler, F. (2011). *An Economic Analysis of Trade-Secret Protection in Buyer-Seller Relationships*. The Journal of Law, Economics, & Organization, 27(1), 137-158. <https://doi.org/10.1093/jleo/ewp020>

- d) Information in the field of technology and/or business that has economic value and is not known by the general public.

Intellectual property as a material right that needs to be protected by law both preventively and retrospectively as an instrument in protecting and enforcing the exclusive rights of the owner. The law is used to protect every development in human life as the progressive nature of the law means that the law will continue to develop following human development.<sup>12</sup>

Indonesian legal products that regulate intellectual property rights cannot be separated from the influence of international agreements such as the General Agreement on Tariffs and Trade (GATT) which is one of the reasons for the establishment of the international organization the World Trade Organization (WTO). The long history of regulating the recognition, protection and enforcement of intellectual property rights cannot be denied because of the need for countries to protect intellectual property rights.

Risks to the issue of protection of confidential information refers to several studies that conclude a conclusion about a company's competitors can gain access to its trade secrets encourage companies to choose a strategic capital structure that many companies face a greater risk that their rivals will try to find ways to gain access to confidential information so that this could trigger unfair business competition.<sup>13</sup>

WIPO in the magazine writes about steps to mitigate external threats on trade secret that is:<sup>14</sup>

- a.) Contracts, most contracts with third parties contain confidentiality provisions, which too often contain "standard boilerplate". These clause deserve closer consideration and need to be aligned with the risk posed by the third party's access to business secret (Non Disclosure Agreement);
- b.) Due diligence, trade secrets are a uniquely fragile asset as intellectual property. Once disclosed (or made "accessible") their value disappears or falls dramatically. Reasonable steps required under the TRIPs Agreement, Law Number 30 2000 by implementing the steps outlined above, businesses can satisfy the test and, perhaps more importantly they can better protect some of their most valuable assets.

The form a trade secret violation according to article 13 of Law Number 30 of 2000 is if an action is taken intentionally to reveal a trade secret, renege on an agreement or renege on a written obligation to safeguard the trade secret in question. There is phrase in article 13 which states "...breaking agreement..." this refers to a promise that may be made for someone to keep a secret and basically a bond is born on the basis of an agreement. Then in article 14 law number 30 of 2000 mentions other act besides leaking or disclosing a secret/information, namely an act committed by another party who obtains/controls a trade secret in a way that is contrary to applicable laws and regulations such as fraudulent methods in obtaining confidential information of business opponents.

The TRIPs Agreement which is one of the bases for transplanting intellectual property rights arrangements in Indonesia which is then embodied in the form of laws and

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<sup>12</sup> Ramli, A. M., Permata, R. R., Mayana, R. F., Ramli, T. S., & Lestari, M. A. (2021). *Pelindungan kekayaan intelektual dalam pemanfaatan teknologi informasi di saat Covid-19*. *Jurnal Penelitian Hukum De Jure*, 21(1), 45-58.

<sup>13</sup> Klasa, S., Ortiz-Molina, H., Serfling, M., & Srinivasan, S. (2018). *Protection of Trade Secrets and Capital Structure Decisions*. *Journal of Financial Economics*, 128(2), 266-286. <https://doi.org/10.1016/j.jfineco.2018.03.007>

<sup>14</sup> Hull, J. (2019). *Protecting Trade Secrets: How Organizations Can Meet The Challenge Of Taking "Reasonable Steps"*. *WIPO Mag*, 35.

regulations.<sup>15</sup> There are several weaknesses in the protection of intellectual property rights in Indonesia, especially in law enforcement, that apart from various policies and steps aimed at overcoming this problem, in essence one of the big problems is regarding legal culture, as well as weak governance and corruption, which is a challenge to the existence of intellectual property rights infrastructure in Indonesia.<sup>16</sup>

### **3.2. The Validity of Non Disclosure Agreement as Trade Secret Legal Protection**

Protection of undisclosed information protected by globally in the route of ensuring effective protection against unfair competition as provided of The Paris Convention (1967) specially at Article 39 TRIPs Agreement “natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

Non-disclosure agreement as a term that appears in a work agreement between the employer (company) and the recipient of work against a clause in the work agreement. Non-disclosure agreements are used in order to protect company secrets from being misused or distributed illegally by certain parties. Confidentiality is often a method of protecting privacy and the term “non disclosure” has become a designation for keeping information private where it can come from clauses.<sup>17</sup>

The form of implementation of efforts to protect trade secrets is to include a clause in the work agreement which regulates the obligations of the worker when he is working and after not working for the company. This protection clause is to prevent actions that could harm the company due to the actions of workers or former workers who misuse trade secrets owned by the company.

Non Disclosure Agreements were used mainly by employers to prevent employees from disclosing any knowledge (undisclosed information) they had of company trade secret.<sup>18</sup> Indonesia as one of the developing country provide protection to undisclosed information as intellectual property rights (trade secret). Employees routinely sign Non Disclosure Agreement as part of employment contracts of settlement agreements, and thus promise not to disclose a broad range confidential information.

The TRIPS Agreement stipulates information that is confidential and has economic value so that it is included as something that can be claimed by individuals or legal entities who have said confidential information. Article 9 of the TRIPS Agreement states that individuals and legal entities have the possibility to prevent information that is legally under their control from being disclosed to, obtained or used by others without the owner's consent in a way that is contrary to honest commercial practice provided that the information must meet the following conditions:<sup>19</sup>

- 1) Confidential in nature, not known by the public or not easily accessible by people who are in the environment usually related to the type of information in question;
- 2) The information has commercial value so it is confidential;

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<sup>15</sup> Saidin, O. K. (2015). *Transplantation of Foreign Law into Indonesian Copyright Law: The Victory of Capitalism Ideology on Pancasila Ideology*. Journal of Intellectual Property Rights, 20(4).

<sup>16</sup> Barizah, N. (2017). *The Development of ASEAN's Intellectual Property Rights Law; From Trips Compliance to Harmonization*. Indon. L. Rev., 7, 95.

<sup>17</sup> Resnik, J., Garlock, S., & Wang, A. J. (2020). *Collective Preclusion and Inaccessible Arbitration: Data, Non-Disclosure, and Public Knowledge*. Lewis & Clark L. Rev., 24, 611.

<sup>18</sup> Zhai, J. (2020). *Breaking the Silent Treatment: the Contractual Enforceability of Non-Disclosure Agreements For Workplace Sexual Harassment Settlements*. Colum. Bus. L. Rev., 396.

<sup>19</sup> Khaw, L. T. (1994). *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*.

- 3) Has been subject to reasonable Steps in the circumstances, by the person who legally has the information to keep it confidential.

Protection of confidential information is basically even though it is not recorded at the Ministry of Law & Human Rights based on the basic principles of intellectual property protection, it can be protected. Article 39.2 TRIPs states that member countries must protect confidential information that has commercial value, the type of intellectual property referred to in article 39 is information that tends to be confidential even though the TRIPs do not provide provisions that provide special protection.

The protection of trade secrets can be said to be a defense of the public interest, that recognition of the competing interests of the public in owning valuable secrets, each of which can be defended by the owner. There are several exceptions to certain matters when there is a public interest or special interest which requires that confidential information be disclosed, although this requires a more in-depth study.<sup>20</sup>

In practice, even though the protection of confidential information has been protected by the provisions of the Trade Secret Law, many business actors use additional instruments as an effort to protect their secrets. One of the forms or efforts that are usually carried out by business actors in protecting their secrets is by binding employees or partners. The instrument used to create a bond with the obligation to keep information confidential is to make an agreement which can be in the form of "*Confidentially Agreement*" or "*Non Disclosure Agreement*" which in essence in the agreement there is an obligation not to disseminate confidential information.

Confidentially Agreement is the most popular form of binding used by business actors to protect company secrets. In certain companies the confidentiality agreement is not included in the work agreement, but a separate agreement is made that is separate from the work agreement.

Confidentiality Agreement (Non Disclosure Agreement) as a form of agreement used to protect confidential information in addition to the protection provided by the state guaranteed in the Trade Secret Law. The importance of setting non-disclosure agreements as a form of binding is that for one of the reasons that workers between employers and recipients of work, the employment relationship does not last forever so it is feared that after the employment relationship ends it is possible for confidential information to be leaked so it is necessary to be bound by protect the secret forever.

The advantages of a Non Disclosure Agreement in protecting confidential information are:

- 1) The binding of the agreement is valid as per the law based on Article 1338 Paragraph (1) BW;
- 2) Violation of the contents of the agreement entitles the aggrieved party to claim rights in the form of compensation or restoration of rights in the event of default;
- 3) The nature of the contents of the agreement can be enforced so as to provide a sense of security to business actors against confidential information.

Confidential information that basically has economic value without a confidentiality agreement based on the principle of intellectual property rights has automatically received protection under the Trade Secret Law. There is a threat to the party who leaked, disclosed a trade secret based on article 13 of the Trade Secret Law resulting in consequences of threats of civil lawsuits and even had a criminal element.

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<sup>20</sup> Mohd Ali, J., Ramzi Sulaiman, N. F. A., & Abdul Razak, H. (2014). *Breach of Confidence: Limiting Disclosure of Information to Public and Business Competitors and The Consequences of Revealing It By Improper Means*. In International Conference on Law, Policy and Social Justice (ICLAPS 2014) (pp. 1-8). <https://ir.uitm.edu.my/id/eprint/52283/>

The implementation of confidential information protection in work relations or other relationships can basically be embodied in an agreement to bind a party to maintain confidentiality. The form of information confidentiality protection can be realized in two models, namely:

- 1) Clauses that are included in the main agreement (work agreement or cooperation agreement) regarding the obligation of a party to keep confidential and not share the information;
- 2) Agreements that are separate from the main agreement (addendum), create a confidentiality agreement or non-disclosure agreement as an additional agreement.

A confidentiality agreement which is usually manifested in the form of a "non-disclosure agreement" is a contract made to bind someone to keep some information, but there is a question about the validity of this agreement. Article 1320 BW requires an agreement to fulfill the pillars in order to have binding force based on *pacta sunt servanda* and one of the pillars of the agreement is the word "agree". Agreement in an agreement is essential because not all agreements are agreements, there are several conditions that can result in defects in an agreement regulated in Article 1321 BW which states that no agreement is made with coercion, fraud or oversight.

Non-disclosure agreements on several agencies or companies or even private businesses that have confidential information of a valuable nature is a must for prospective employees or business partners before they get in touch. Is the obligation to sign this confidentiality agreement a form of coercion referred to in Article 1321 BW?. According to article 1321 BW states that "no agreement has any force if it is given due to an oversight or obtained by coercion or fraud". NDA form basically in several companies that have undisclosed information don't give workers the right to refuse to sign NDA, so this raises the question of whether this fulfills the condition of "coercion" in article 1321 BW. According article 1325 BW said about the consequences if "coercion" at contract that coercion renders an agreement "null and void", not only if it is done against one of the parties who made the consent, but also if it is done against the husband or wife or their family in an upward or downward line.<sup>21</sup>

Coercion in signing NDA's is a implementation good faith principle from the parties for an action that can harm one of the parties in a contractual relationship. The compulsion is made not to harm the party forced to sign the NDA's but to bind the party to keep a undisclosed information as a form of good faith refers to Article 1338 BW which states that contracts must be carried out in good faith.

In some forms of agreement, restrictions on the basis of freedom of contract, especially on the content of the agreement, are basically allowed as in standard agreements where almost the entire content is determined unilaterally by one of the parties. A standard agreement or standard contract is not something that is prohibited because what is prohibited by law is a standard agreement that includes an "exoneration clause" Article 18 of Law 8 of 1999 on consumer protection.

An agreement or contract is an instrument in civil law to bind the parties in a transaction that agree to enter into something so that their promises or agreements are contained in an agreement to protect the rights of the parties to acts of violation by one of the parties or what is termed as "default". The purpose of the agreement instrument in civil law is that in addition to binding the parties, it can also be used to claim compensation or force the default party to carry out its achievements so that it is in the form of a lawsuit in the event of default.

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<sup>21</sup> Indonesia. (1847). Indonesian Civil Code: Book III – Obligations. (Kitab Undang-Undang Hukum Perdata). Retrieved from <https://www.flevin.com/id/lgs0/translations/Various/Civil%20Code.pdf>

NDA, confidentiality agreement, employment contract etc are based on the principle of freedom of contract article 1338 BW, according this article give a person is generally free to make promise of silence in return for consideration. Article 1338 BW sometimes described as “the power of the contracting parties to control the rights and duties they create” as the binding force of contract (*pacta sunt servanda* principle). Every agreement that makes between the parties legally will binding as statute.

The principle of *pacta sunt servanda* in a non-disclosure agreement makes the bond that is born for the parties entering into an agreement force to be obeyed. This principle applies universally and is regulated in Article 1.3 Unidroit Principles of International Commercial Contracts (UPICC) 2016 “a contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or otherwise provided in these principles”<sup>22</sup> This article is the basis for binding the contract, that the contract is legally binding for the parties and can only be modified or terminated in accordance with the terms or by agreement.

Confidentially Agreement, Non-Disclosure Agreement creates a bond so that the parties to the agreement maintain confidential information and will apply even after the relationship/work bond ends. The parties to a confidentiality agreement or non-disclosure agreement have an obligation to protect confidential information both because the agreement is coercive in nature but also because in principle in 1338 Paragraph (3) BW it states that agreements must be made in good faith. The obligation of good faith as a principle in private law signifies honesty, loyalty and fairness between the parties in an agreement.<sup>23</sup>

One famous case about trade secret violation which is the basis for the expansion of “*onrechtmatige daad*” is *Lindenbaum v Cohen* (Drukkers arrest) by Netherland Hoge Raad 31th January 1919. According to *Lindenbaum v Cohen* which employees working in *Lindenbaum’s* office were persuaded by *Cohen* to reveal the names of his customers and the offers made to them, with that data, *Cohen* can use to create a new offering that will make people choose his printing office over *Lindenbaum’s*. *Cohen’s* act were constructed by the judge as an unlawful act (*onrechtmatige daad*) but *Lindenbaum’s* employees took a leaking action for undisclosed information (trade secret violation).

Violation of trade secrets can result in civil and criminal consequences giving the owner of the trade secret which option to exercise. Confidential information as intellectual property is protected against any acquisition, use and disclosure that violates the law, in particular any unauthorized access that leads to confiscation or copying of documents, objects, materials, substances or any electronic files, legally in the possession of the holder of trade secret information.<sup>24</sup> These actions are examples of actions that unlawfully violate trade secrets referred to in the Trade Secret Law.

Civil lawsuits and criminal charges certainly have different objectives so that this is often understood differently by the general public who take the criminal route to demand fulfillment of achievements or demand compensation. In an article written by *Rebecca Wexler* argued that the criminal in trade secrets as a privilege that leads to exaggerated

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<sup>22</sup> UNIDROIT. (2016). *Unidroit Principles of International Commercial Contracts*. Rome: International Institute for the Unification of Private Law. <https://www.unidroit.org/english/principles/contracts/principles2016/principles2016-e.pdf>

<sup>23</sup> Tan, W., & Maysura, N. A. (2023). *Indonesian-British Strategic Partnership in the Perspective of International Treaty Law*. *Kosmik Hukum*, 23(3), 319-332. <https://doi.org/10.30595/kosmikhukum.v23i3.17386>

<sup>24</sup> Arcidiacono, D. (2016). The Trade Secrets Directive in the International Legal Framework. *European Papers-A Journal on Law and Integration*, 2016(3), 1073-1085. <https://data.datacite.org/10.15166/2499-8249/83>

claims that basically the government values intellectual property holders more by risking freedom.<sup>25</sup>

#### 4. Closing

Confidential information that has economic value and is kept confidential is an intellectual work/creation that gives the owner the right to obtain material rights as intellectual property rights. Confidential information in the form of methods of production, sales, processing and information in the field of technology or business that has economic value and is not known to the public. The Trade Secret Law has provided protection for intellectual property in the form of secret information in a preventive manner, even the owner of a trade secret can use repressive measures against violations of trade secret rights.

The use of non-disclosure agreements by several companies, agencies or individuals to bind someone to keep confidential information is a civil legal instrument to bind parties bound in an NDA to safeguard confidential information. NDA is an additional agreement in a work agreement/business agreement to bind the parties to maintain confidential information. NDA's binding power applies based on the principle of *pacta sunt servanda* 1338 (1) BW. The bond to maintain confidential information regulated in the NDA does not only bind the parties during work/partnership but also after the work relationship ends and the bond is coercive so that if a violation is committed, the party can be sued based on default based on the NDA. Violations of confidential information outside the NDA basically result in criminal consequences as stipulated in Article 17 of the Trade Secret Law.

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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