



Optimizing Trade Secret Criminal Law Policies in Indonesia: Lessons from the United States

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Abstract

The acceleration of global free trade necessitates high-quality product outcomes, driving the creation of technology to meet these demands. Consequently, the significance of Intellectual Property Rights in advancing technological developments becomes increasingly apparent. In the realm of commerce, competition is inherent and vital to attain objectives, which include acquiring consumers and maximizing profits. Unfortunately, such competition often leads to fraudulent practices and ensuing conflicts. To mitigate and address unfair competition, it is imperative to establish regulations that entrepreneurs and business entities must adhere to, both preventively and punitively. This study seeks to analyze the current and prospective criminal law policy regarding trade secret offenses within the existing legal framework. The research employs a normative legal approach. The findings reveal that trade secret offenses in Indonesia are governed by Law Number 30 of 2000, but it exhibits certain weaknesses and shortcomings. The proposed Trade Secrets Bill aims to adapt to international standards, fostering economic benefits while maintaining legal protection convergence.



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A. INTRODUCTION

In the academic realm, the term “policy” is rooted in the English word “policy” or the Dutch word “politiek.” Expanding on these foreign terms, the concept of criminal law policy is also known as “Criminal Law Politics” (Susilo, 2016). It goes by various names, such as “penal policy,” “criminal law policy,” or “strafrechts politiek” (Mawati, 2020). Criminal law policy or politics is defined within legal and criminal politics. According to Sudarto, legal politics involves concerted efforts to establish regulations that suit the current circumstances. State authorities, through authorized bodies, aim to create regulations that express societal values and norms, working towards collective aspirations. Sudarto suggests that engaging in “criminal law politics” involves pursuing elections to achieve optimal results in criminal legislation, fulfilling justice and efficiency requirements. Mahmud Mulyadi echoes this sentiment, stating that the politics of criminal law attempts to determine the future enforcement direction of Indonesian criminal law based on its current state. This aligns with Marc Ancel’s definition of

“penal policy” as both a science and an art that seeks to formulate positive legal regulations more effectively.

Along with the times, in developing business and business Intellectual Property Rights (IPR) have become very important for business people and investors. Adequate protection is needed in carrying out its business through the results of human thought (Firdaus & Wahyudi, 2022). For example, those related to traded products or services and other resources in the form of confidential information that is useful for business activities and also has high economic value (Tomo, 2020). Talking about industrial rights, there are several categories of intellectual property regimes in it. Starting from patents (patents), brands (trademarks), geographical indications (geographical indications), protection of plant varieties (control of anticompetitive practices in contractual licenses), layout designs/topography of integrated circuits), and trade secrets (trade secret/undisclosed information).

Trade secrets are a crucial aspect of Intellectual Property Rights (IPR) and hold significant importance in the dynamic business landscape of Indonesia (Sudirman & Disemadi, 2023). In the current era of intense competition, safeguarding trade secrets is imperative to prevent unfair competition that could adversely impact the overall business climate (Gerungan, 2016). Legal protection of trade secrets, as an integral part of IPR, is paramount (Faramukti & Sukirno, 2022). The issues surrounding trade secrets are instrumental in facilitating business and trade activities, contributing to the economic well-being of the rights holders. In today's rapidly growing global trade, including Indonesia's expanding trade network beyond national borders, conventional and online trading have become prevalent. The scope of traded commodities extends beyond goods and services to include valuable information with high economic worth. Information is a key asset in business activities, distinguishing industries and businesses by showcasing their unique advantages (Tanaya, Marpaung, & Djohan, A2021). Recognizing the critical nature of information in industrial and trade pursuits, businesses assert the need to protect such data with confidentiality. This has led to the establishment of trade secret protection within the Intellectual Property Rights (IPR) framework (Disemadi & Budi, 2023). From a legal standpoint, safeguarding trade secrets is vital not only for fostering fair competition but also for preserving the economic value associated with such confidential information.

In the realm of commerce, spurred by the rapid advancements in information technology and transportation, trade activities have surged globally, shaping the world into a unified market. With this interconnectedness, there arises a pressing need for robust legal safeguards. Countries, recognizing the growing significance of economic activities and trade in intellectual creations, such as those in science, art, and literature, are seeking enhanced legal protection (Sembiring, 2002). The escalating volume of global trade intricately intertwines with the imperative to

safeguard intellectual property. Consequently, the World Trade Organization (WTO), through the Trade-Related Aspects of Intellectual Property Rights (TRIPs), meticulously oversees intellectual property protection, encompassing trade secrets. Indonesia, a member of the WTO, entered through the ratification of the Convention Establishing the WTO. This affiliation necessitates Indonesia to adhere to WTO agreements diligently. Furthermore, it mandates aligning domestic laws and regulations with WTO stipulations, particularly in the enforcement of Intellectual Property Rights (IPR) (Atika, 2023).

Discussing trade secrets, these are defined as information not publicly known in the technology and/or business sector, possessing economic value for business activities, and maintained as confidential by the owner (Disemadi, 2023). The Trade Secret Law encompasses not only technological but also non-technological data (Azmi, Wisnaeni, & Cahyaningtyas, 2021).. Common terms for trade secrets include undisclosed or unknown information. In Anglo-Saxon legal systems, information is viewed as a property right, with violations categorized as a specific tort, an act of breach of trust. In Civil Law systems, such breaches are considered *onrechtmatigedaad* acts, violating ordinary law. The normative definition of a trade secret is information not publicly known in technology and/or business, having economic value for business activities, and kept secret by the owner (Rizki & Marpaung, 2021). The concept of trade secrets dates back to around 3000 BC in China, evident in the legend of Princess Hsi-Ling-Shih. The Chinese guarded the silk-making process diligently, executing anyone revealing or smuggling out the secret for over 2000 years (Effendy, 2014). Trade secrets, a facet of Intellectual Property, involve confidentiality protection crucial for law enforcement. This protection is essential due to the limited and non-public nature of trade secret information. From a moral perspective, it can reward inventors, while materially, it can offer incentives (Ramli et al., 2021).

In the development of business activities in Indonesia, trade secrets have high economic value as part of intellectual property (Razak & Rajab, 2021). Economic value that is quite attached because of the formula or information that is deliberately not known to the general public (Suhardin, Sitorus, Ishwara, Manullang & Chansrakao, 2023). With this in mind, this element is one of the parts that is quite interesting. The business industry seems to support a great responsibility in the current era. There is a risk in the form of confidential data leaks causing the ignition of new problems related to data protection in an industry. So the question arises related to what is the criminal law policy towards trade secret crime in current and future positive law in Indonesia?. There are 3 studies that discuss trade secrets but they are different compared to the author's article because there are updates in the author's article that have not been studied in previous studies. First, a journal from Anastasia E. Gerungan entitled *Legal Protection of Trade Secrets Viewed from the Aspects of Civil and Criminal Law in*

Indonesia, which examines the application and implementation of Law No. 30 of 2000 concerning Trade Secrets in protecting violations of Trade Secrets in Indonesia from criminal and civil aspects (Gerungan, 2016). Second, research conducted by Taufik Effendy entitled Trade Secrets as Part of Intellectual Property Rights, in this research focuses more on the Protection of Trade Secrets in Law Number 30 of 2000 concerning Trade Secrets and examines the ins and outs of trade secrets broadly (Effendy, 2014). Third, namely a journal written by Ribka Pongkorung entitled Juridical Review Regarding Legal Protection for Trade Secret Owners. This research focuses more on what forms of trade secret crimes are and how legal protection is for trade secret owners (Pongkorung, 2020).

Building upon prior research, this study introduces a novel approach by not only delving into the existing context of criminal law policies but also conducting comparative analyses with other nations. Specifically, it compares criminal law policies pertaining to trade secret crimes in Indonesia and the United States, highlighting distinctive elements. This departure from previous research adds a fresh perspective to the exploration of legal frameworks.

B. RESEARCH METHOD

This study adopts the normative legal research method, focusing on the statutory approach to analyze trade secret offenses within the framework of criminal law policies. The legal landscape under scrutiny is governed by Law Number 30 of 2000 on Trade Secrets. Utilizing various legal materials, including primary, secondary, and tertiary sources, the research employs a document technique from journals (Ali, 2016) to collect secondary legal literature. Qualitative analysis, complemented by deductive reasoning, will be applied to the gathered data. This approach aims to offer insightful solutions to the legal issues explored in this study.

C. RESULTS AND DISCUSSIONS

Trade Secrets Face Legal Challenges in Current Criminal Law Policy

As Indonesia strives to compete globally in business and trade, especially in the realm of intellectual property rights such as patents, challenges arise. While patents grant exclusive rights, some inventors prefer keeping their discoveries secret. This secrecy poses a challenge in Indonesia due to the absence of a unified system of rules addressing confidentiality issues (Manopo, 2021). Intellectual Property Rights (IPR) encompass creations of the human mind, divided into copyright and industrial property rights regimes. Industrial rights, linked to trade activities, highlight the need for safeguarding trade secrets to prevent unfair business competition and protect commercially valuable intellectual works (Mashdurohatun, 2013).

In the realm of trade secrets, owners wield the power to share their confidential information through licensing arrangements or to outright forbid its use by others. This might sound akin to patent protection at first glance, as both involve safeguarding proprietary knowledge held by individuals or corporations. However, a key distinction lies in the timing of protection. Patents gain safeguarding only after an inventor submits a patent application to the Minister of Law and Human Rights (HAM). Conversely, trade secrets enjoy automatic protection without the need for prior registration, granted they meet the defined criteria.

From a legal standpoint, a trade secret owner not only possesses the right to utilize their confidential information but also holds the authority to issue a trade secret license, thereby preventing other entities from utilizing or disclosing the trade secret to third parties. It's essential to note that the confidentiality of trade secrets isn't absolute; under specific circumstances, other parties can gain knowledge of the confidential information by obtaining permission through a formal agreement (Yusianti, 2017). This legal framework underscores the dynamic nature of trade secrets, where owners navigate the delicate balance between protecting their proprietary information and strategically sharing it for mutual benefit. Unlike patents that necessitate formal application processes, trade secrets provide an inherent shield to qualifying information without bureaucratic hurdles. This characteristic flexibility positions trade secrets as a versatile and accessible form of intellectual property protection.

In the realm of trade secrets, the legal landscape acknowledges the nuanced nature of confidentiality (Benia, 2022). The concept recognizes that, while protection is afforded, controlled dissemination can be a strategic choice. Through trade secret licenses, owners can intricately manage the accessibility of their confidential information, adding a layer of adaptability to intellectual property practices. This paradigm ensures that trade secrets remain a potent tool for innovation and collaboration in the ever-evolving business landscape.

The IPR system for trade secrets is using a Confidentiality System, in which the trade secret does not need to be registered with the Directorate General of Intellectual Property Rights, but only enough to keep it a secret. The law provides for a period of protection for trade secrets. As long as information containing economic value can be kept confidential by the owner, the law provides legal protection (Faramukti, 2021). The crime against the right to trade secrets is a complaint offense, so it is not an ordinary offense. An investigation can only be carried out if there is a complaint from the rightful person, namely the right holder or right recipient. There is much debate among legal experts regarding the placement of delicts on criminal acts against trade secret rights (including other intellectual property rights, except for copyright).

If there is a violation of these rights, only the owner of the right will be harmed, so it will not harm the public interest. Even though there is no difference between someone who commits theft of goods owned by another person, in fact, in the Indonesian Criminal Code it is placed as an ordinary offense. The placement of a complaint offense against a crime whose object is intellectual property rights including rights to trade secrets is a mistake because the right holder may not know that his rights have been violated because the incident of the violation may have occurred in a place far from his place of residence. Of course, in this case the right owner is constantly being harmed but he doesn't know it.

If the crime is included in the complaint offense, then of course the perpetrator of the crime cannot be sentenced if the person concerned does not make a complaint. More than that, the creativity of creators, inventors or designers will be hampered because of the lax protection of rights given to them. Of course, in the end this situation will affect economic growth, technology, industry, and science as well as the decline of human civilization and fall into the category of harming the interests of the wider community (Semaun, 2011). The Government of the Republic of Indonesia has promulgated Law No. 30 of 2000 concerning Trade Secrets (hereinafter referred to as the Trade Secrets Law). Trade Secrets Law was made with the aim of advancing the national industry which would later be able to compete in the trade sphere. Trade Secrets Law provides protection for Trade Secrets within the scope of 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 the public. Information in Trade Secrets can also be grouped into information in the field of technology and information in the field of trade or business. The definition of trade secret can be seen in Article 1 paragraph (1) Trade Secrets Law.

Trade secrets are protected if (1) the information is confidential, has economic value, and is kept confidential through appropriate efforts. (2) Information is considered confidential if the information is only known by certain parties or not generally known by the public. (3) Information is considered to have economic value if the nature of the confidentiality of the information can be used to carry out activities or businesses that are commercial in nature or can increase economic profits. (4) Information is kept confidential if the owner or parties controlling it have taken proper and proper steps.

The Trade Secrets Law becomes an important role for a business or business that creates new innovations and creative innovations that must be kept secret to recover costs and profits (Ramli, 2000). The danger of not protecting Trade Secrets is enough to have a negative impact on the sustainability of a trading business because a company can maintain its company's existence in the business world by winning and surviving in the existing business competition. This can enable theft, unauthorized use, or use of business to obtain Trade Secret information from

business partners. So that fraudulent practices arise in business competition that are not in accordance with the principles of fairness and honesty. Bearing in mind that the Trade Secret Owner is the most entitled to the ownership of the information.

Some examples of companies that have trade secrets include Coca cola, Pepsi, KFC, McD, they utilize a trade secret protection system for the products they own. So that the confidentiality of their trade secrets is maintained and not misused or exploited by former employees or their competitors in doing business. Article 1 states that "Information that is not known by the public in the field of technology or business, which has economic value because it is useful in business activities, and its confidentiality is guarded by the owner of the trade secret". Article 2 reads "the scope of trade secret protection includes production methods, processing methods, sales methods, or other information in the field of technology or business that has other economic values that are not known to the public, including food/beverage recipes, formulas, production processes, implementation methods or marketing (Paat, 2013). Article 4 of the Trade Secret Law regulates the authority or rights possessed by the owner of a trade secret to his trade secret to: 1) Using its own trade secrets; 2) Grant licenses to or prohibit other parties from using trade secrets or disclosing trade secrets to third parties for commercial purposes. Pursuant to this article, the owner of a trade secret has the monopoly right to use his own trade secret in business activities to obtain economic benefits. This provision also means that only the owner of a trade secret has the right to grant permission to another party to use the trade secret he owns through a licensing agreement. In addition, the owner of a trade secret also has the right to prohibit other parties from using or disclosing his trade secrets to third parties if the disclosure is made for commercial purposes.

In addition to these rights, Trade Secrets Law also states that the owner of a trade secret also has an obligation, namely that the owner of a trade secret must be willing to disclose every part of his trade secret and the complete process of its use for use in the interests of evidence before a court. This does have a risk, namely trade secrets can be published, so to prevent this, the judge can order that the trial be held behind closed doors at the request of the parties to the dispute, both in civil cases and criminal cases.

Trade Secrets Law does not mention the subject matter of trade secret law at all, even though this issue is important because it involves who has the right to the information. In the previous Draft Law on Trade Secrets, those who are considered as owners of trade secrets are inventors who technically control said trade secrets. If in certain circumstances the information is discovered by more than one person, then the person who is considered as the owner is the person who leads and supervises the activity that produces the trade secret, or if there is no such person, the person who collects it, without prejudice to each other's right to part of the

secret. Trade. In certain cases where a trade secret is designed by someone and completed by another person under the leadership and supervision of the person who designed it, the owner is the person who designed the trade secret.

Some experts argue that the subject of trade secret law is an individual with legal authority, encompassing rights and obligations. This legal authority is twofold: the power to execute legal actions and the influencing factors, and the authority to possess rights, also known as *rechtsbevoegdheid*. In essence, a legal subject is defined as a rights bearer, beginning with a person's birth and concluding with their death. Even a person in their mother's womb is considered a rights bearer if their interests necessitate it, such as for inheritance (Isra, 2015). When discussing trade secret crimes, three forms are outlined in Law Number 30 of 2000 concerning Trade Secrets, as explained by Pongkorung (2020). Article 17, paragraph (1), addresses criminal acts involving intentional and unauthorized use of trade secrets, prescribing a maximum penalty of 2 years imprisonment and/or a fine of up to Rp. 300,000,000.00 (three hundred million rupiah). It is crucial to note that these criminal acts are distinct from administrative provisions. Additionally, Article 13 states that a trade secret violation occurs when someone deliberately discloses a trade secret, breaches an agreement, or fails to uphold a written or unwritten obligation to safeguard the trade secret. Combining Article 17, paragraph (1), with Article 13, the formulation reads: "Anyone intentionally disclosing a trade secret without the right, violating an agreement, or breaching a written or unwritten obligation to protect trade secrets shall be subject to a maximum penalty of 2 years imprisonment and/or a fine of up to Rp. 300,000,000.00 (three hundred million rupiah)."

Pursuant to the provisions in Articles 17 and 13 above, a trade secret violation occurs if someone intentionally uses another person's trade secret, or deliberately discloses information or the person violates the agreement on an agreement that has been made either expressly or impliedly to protect trade secret in question. Mentioned in Article 14 that "It reads that "Anyone who deliberately and without rights obtains or controls trade secrets belonging to other parties in a manner contrary to the applicable laws and regulations shall be subject to imprisonment for a maximum of 2 (two) years and/or a fine of a maximum of Rp. 300,000,000. 00 (three hundred million rupiah)".

The formulation consists of several elements, including: (1) subjective elements, namely mistakes: on purpose; (2) objective elements, namely against the law: without rights, in a way that is contrary to the applicable laws and regulations; (3) the object is a trade secret belonging to another person. However, in Article 15 it is further explained that the action referred to in Article 13 is not considered a trade secret violation if: a. the act of disclosing Trade Secrets or using the defence of security, health or public safety; b. the act of re-engineering a

product resulting from the use of another person's Trade Secret which is carried out solely for the benefit of further developing the product in question.

If someone feels aggrieved for an act committed by another person as defined in the provisions of the article above, then the holder of trade secret rights or the licensee may sue the District Court, but settling disputes through the district court is not the only way that can be taken against cases relating to trade secrets. Based on the provisions of Article 12 of the Trade Secret Law, the settlement of causes related to trade secrets can also be carried out through arbitration or through alternative dispute resolution (negotiation, mediation, conciliation, or other methods agreed upon by the parties) in accordance with the provisions of Law no. 30 of 1999 concerning Alternative Dispute Resolution and Arbitration. Disputes that can be resolved through arbitration are only disputes in the field of trade and regarding rights which according to laws and regulations are fully controlled by the parties to the dispute, including disputes regarding trade secrets.

Trade secret violations are violations that are included in the business sector; therefore it requires a quick, low-cost, and simple settlement of cases. These conditions cause non-litigation dispute resolution to better meet the needs of businesspeople, namely owners or holders of trade secrets, where dispute resolution must be resolved as quickly and as simply as possible. This non-litigation dispute resolution also guarantees the privacy of the parties to the dispute (Nurhayati, 2020). On the other hand, when the confidential information of the owner of the trade secret is leaked, the owner of the trade secret has the potential to suffer losses because his trade secret is used by other parties who do not have good intentions. Whereas in Trade Secrets Law through Article 4 it is stipulated that the owner of a trade secret has the right to use his own trade secret. If the owner intends to grant the right to use his trade secret to another party, he can do so, however, the owner of the trade secret must grant this right through a license as stipulated in the Trade Secret Law.

Article 9 of the Trade Secret Law No. 30 of 2000 stipulates that: "License agreements are prohibited from containing provisions that may result in adverse consequences for the Indonesian economy or contain provisions that result in unfair business competition as stipulated in the applicable laws and regulations." If the license agreement includes the above matters, then the Directorate General of Intellectual Property Rights is obliged to refuse the registration of the license. Not only that, but the Directorate also General of Intellectual Property Rights needs to report it to the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha). The recording of the license agreement does not need to describe the contents of the licensed Trade Secret so that the confidentiality contained in the Trade Secret agreement is guaranteed. All that is needed is the data of the parties entering into a license agreement (for example the name and address of the licensor and licensee, royalties, and the license agreement

period). By recording this, it can provide protection not only to the licensor and licensee, but also to third parties, especially the public. who need to know that it is true that the licensee has the right to make commercial use of the Trade Secret in their product or service (Dody Safnul, 2018). Regarding the issuance of Law No. 30 of 2000 concerning Trade Secrets, it can be said that this is the implementation regulation of TRIPS-GATT. Previously, arrangements regarding this matter did not mean that they did not exist at all, because long before the TRIPs were agreed upon in Indonesia there had been provisions regarding trade secrets scattered in various laws, although they had not explicitly grouped this as part of Intellectual Property Rights which was the implementation of TRIPs.

Confidential information is regulated in Chapter 7 Article 39 TRIPS paragraph (1) to paragraph (3). Article 39 paragraph (1) and paragraph (2) in full states: (1) In the course of ensuring effective protection against unfair competition as provided in Article 10 bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 below and data submitted to governments or governmental agencies in accordance with paragraph 3 below; (2) Natural and legal persons shall have the possibility of preventing information legally within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information: is secret in the sense it is not, as a body or in the precise configuration and assembly of its components, generally known among or easily accessible to persons within the circles that normally deal with the kind of information in question; has commercial value because it is secret, and; has been subject to reasonable steps under the circumstances, by the person legally in control of the information, to keep it secret. From these provisions it can be concluded that as a member country, Indonesia is obliged to provide protection for confidential information (trade secrets) to ensure effective protection against unfair competition in accordance with Article 10 bis of the 1967 Paris Convention version. Designation of the application of Article 10 bis of the Convention Paris is a consequence of the enforceability of TRIPs which also functions as a pointer rule. The Paris Convention has been ratified without reservation by RI through Presidential Decree No. 15/1997. As a member country, Indonesia has an obligation to provide instruments and forms of protection that enable individuals and legal entities to publish, give to other parties, or use illegally and without permission any information that they legally possess in a way that is contrary to commercial practices that are honest, insofar as the information is confidential, either in a certain form or in a configuration and a combination of its components, which are not generally known or do not allow access to it by parties working in the environment who normally deal with such information.

Safeguarding Trade Secrets: The Future of Criminal Law Policy in the United States

In the early 19th century, the United States began formulating trade secret laws to address the intricate interplay between business secrets, competition, evolving technologies, and workplace management practices. The foundation of these laws can be traced back to the British Common Law system, where judicial doctrines developed through case law played a pivotal role in shaping jurisprudence related to trade secrets. In contemporary U.S. legislation, the comprehensive definition of trade secrets finds its place in the Uniform Trade Secret Act (referred to as UTSA), which has been adopted by 39 states. Under UTSA, trade secrets encompass a wide array of information, including formulas, patterns, compilations, programs, technical methods, or processes that possess intrinsic economic value, both actual and potential. The key criterion is that these trade secrets must be genuinely confidential and not generally known or readily ascertainable through legitimate means by others who could derive economic benefits from their disclosure or use. It is imperative that reasonable efforts are made to maintain their confidentiality.

Much like Indonesia, the United States addresses trade secrets through a bifurcated approach, differentiating between civil and criminal aspects. On the civil front, UTSA provides the framework, while on the criminal side, the Economic Espionage Act (EEA) comes into play. The UTSA, as the legal framework for trade secrets, extends its coverage to all forms of information, whether of a technological or non-technological nature. However, in addition to safeguarding confidentiality, it imposes a crucial condition that the information must be sufficiently unique, particularly within the context of the specific industry or trade. Information that is commonplace among industry peers, even if not widely known by the public, does not qualify for protection under UTSA. This distinction underscores the necessity for trade secrets to possess a degree of rarity and exclusivity within their respective fields to be eligible for the comprehensive protection offered by the UTSA.

Misuse of trade secrets under UTSA means: 1. Acquisition of another person's trade secret by a person who knows or has reason to know that the trade secret was improperly obtained; or 2. Disclosure or use of another person's trade secret without express or implied consent by someone who: a. Using inappropriate means to obtain knowledge of trade secrets, or b. At the time of disclosure or use, knows or has reason to know that his knowledge of the trade secret is: Derived from or through a person who has used improper means to obtain it; 2) Obtained in circumstances which create an obligation to maintain confidentiality or limit its use, or 3) Derived from or through a person who has an obligation to obtain permission from a person who is obliged to maintain confidentiality or restrict its use; or c. Prior to a material change from his position, he knew or should have

known that the information was a trade secret and that knowledge about it was obtained by accident or an error occurred (Nizliandry, 2022).

America is the only country that adheres to a first-to-use registration system for intellectual property. The United States is quite extensive in classifying trade secrets. Trade secret is information on a particular product, including the formula, pattern, compilation, program, device, method, technique, or process, which include it has an independent economic value, actual or potential, from which it is not generally known, and it is difficult to find a way for other people to obtain economic value from its disclosure or use; and related information is under circumstances to keep it confidential.

According to UTSA there are basic characteristics of a trade secret: 1) The information is confidential; 2) The relevant information provides a competitive advantage for its owner; 3) The information must also give its owner an economic advantage over its competitors. To determine this, there are several factors that must be looked at, including the value of the information held by its owners and competitors; what actions and efforts have been made by the owner in keeping the information confidential; the degree of difficulty for other people to obtain or reproduce the information correctly; and the extent to which other parties place this information in the public domain or make the information accessible by filing a patent application or marketing it; the owner of the information is subject to reasonable efforts to maintain confidentiality (Febrina, 2022).

In the United States, the protection of trade secrets during the examination and litigation processes is a paramount concern for the courts. It is essential for the courts to ensure the confidentiality of trade secrets in legal proceedings. Consequently, all individuals involved in the litigation process are strictly prohibited from disclosing trade secrets without obtaining prior approval from the court. This stringent safeguarding of trade secrets is a fundamental aspect of legal proceedings in the United States. Similarly, Canada also places a significant emphasis on the protection of trade secrets through its legal system. Canadian courts possess the authority to issue orders aimed at safeguarding trade secrets during legal proceedings. These measures may include conducting closed hearings, sealing all or specific records related to the prosecution, or prohibiting any party involved in the litigation from disclosing the trade secrets without prior court approval. The Canadian legal framework, like that of the United States, is designed to prevent unauthorized disclosure and protect the sensitive information integral to trade secrets.

This approach in the United States and Canada stands in contrast to the Uniform Trade Secret Act (UTSA), which provides a defined terminology for the concept of a “person.” Under the UTSA, a “person” encompasses a broad range of entities, including individuals, companies, business groups, associations, partnerships, joint ventures, government agencies, and various other legal or

commercial entities. The explicit inclusion of this extensive range of entities within the UTSA framework highlights the comprehensive approach taken by the United States in safeguarding trade secrets through legislative measures. Both the United States and Canada have stringent legal mechanisms in place to protect trade secrets during legal proceedings, emphasizing the confidentiality and importance of such information. In contrast, the UTSA takes a broader approach by clearly defining the entities encompassed under the term “person,” reinforcing the comprehensive nature of trade secret protection in the United States.

If a trade secret is found in a work agreement, then the party to whom the trade secret is produced is the owner of the trade secret. This is excluded if there is another agreement between the two parties without reducing the rights of the employee as the maker if the use of the trade secret is extended beyond official relations. If a trade secret is made in a work relationship or based on an order, the party making the trade secret is deemed to be the owner of the trade secret, unless otherwise agreed between the two parties. In this regard, it is necessary to pay attention to whether the owner of the trade secret should be the employer where the employee works if no other agreement has been made. As a comparison, the provisions in Law no. 13 of 1997 concerning Amendments to Law no. 6 of 1989 concerning Patents, which regulates the subject of patents to inventions within the framework of a work agreement.

If in the previous explanation the author explained that in Indonesia based on the Trade Secret Law, the holder of trade secret rights or the licensee can sue anyone who intentionally and without right commits an act (as referred to in Article 4, namely using the trade secret he owns and giving license to or prohibit other parties from using the trade secret or disclosing the trade secret to third parties for commercial purposes) the owner of the trade secret can file a lawsuit with the District Court. In contrast to trade secret dispute settlements in America, damages to the owner of a trade secret may include actual damages caused by unfair acts caused by misuse that are not considered in calculating actual damages or losses. Section 4 UTSA regulates in terms of: a. Claims of abuse are made in bad faith; b. Motions to terminate judgments made or contested in bad faith; or c. There is intentional and harmful misuse.

There are three categories of damages that a court can grant recovery (Holland & Knight, 2023). Actual losses; The plaintiff's lost profits due to misuse; unjust acts: The plaintiff may also recover the amount of the unjust act received by the defendant, but only to the extent of the actual damages; reasonable royalties. As an alternative to damages based on actual damages or unfair actions, the plaintiff may be awarded reasonable royalties for disclosure of illegal acts or use of trade secrets. Although in practice this is not the preferred solution. The Committee prefers another solution, namely by stopping the abuse and dissemination of misused trade secrets and providing appropriate compensation.

D. CONCLUSION

Based on the analysis provided in the preceding discussion chapter, the authors have drawn the conclusion that there exist significant disparities between the prevailing Trade Secret Laws in Indonesia and the United States. These disparities encompass aspects such as the legal subjects involved, the scope of protection afforded to trade secrets, and the mechanisms for dispute resolution. The legal subjects and the intricate framework governing trade secrets in the United States stand in sharp contrast to the relatively simpler legal provisions in Indonesian Law Number 30 of 2000 concerning Trade Secrets. This Indonesian law, however, exhibits certain inadequacies, particularly in its failure to explicitly address the legal subjects pertaining to trade secrets. This omission is critical given the implications for individuals with rights to such information and the potential for future disputes over ownership, considering the absence of a trade secret registration system. Additionally, the forthcoming Draft Law on Trade Secrets of the Republic of Indonesia, as an *ius constituendum*, seeks to align itself with international legal standards found in developed countries, aiming to enhance economic benefits while fostering a convergence of legal protection.

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COMPETING INTEREST

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