

INTELLECTUAL PROPERTY PROTECTION IN STARTUP-FREELANCER RELATIONSHIPS: AN ANALYSIS OF THE LEGAL VACUUM IN COPYRIGHT AND TRADE SECRETS

Vizta Dana Iswara*, Elza Syarief**, Lu Sudirman***
Fakultas Hukum, Universitas Internasional Batam, Indonesia

Abstract

Startups play an important role in the digital economy by bringing innovation and growth. Intellectual property can be in the form of copyrights, patents, trade secrets and trademarks owned by a startup business. However, the protection of intellectual property, especially copyrights and trade secrets, still faces major challenges. This article examines the legal lacuna in intellectual property protection, particularly regarding the relationship between startups and freelancers who often contribute valuable ideas and works. Using Philipus M. Hadjon's theory of legal protection and Gustav Radbruch's theory of legal certainty, this article highlights the need for stricter regulation to address the legal vacuum. Reforms are needed to improve trade secret protection and ensure better legal certainty. The conclusion suggests that strengthening intellectual property regulations will support the sustainability and competitiveness of startups, as well as protect their innovative assets in a competitive digital environment.

Keywords: *intellectual property protection, start-up, trade secrets, legal regulation, digital innovation*

A. Background

Currently, many start-up companies are emerging across the world, including in Indonesia. Indonesia itself has entered a new phase known as the era of digital media, cybercrime, public information transparency, digital broadcasting media, and the digital economy. This shift towards the digital media era has brought about significant changes in Indonesia, affecting society, the nation, and the state in various aspects.¹

In an era of advancing industries, human creativity, and innovation in utilizing information technology, new business models have emerged, known as startups². In the 21st century, numerous startups have been introduced by young entrepreneurs in Indonesia. As a result, the concept of startups has become widely recognized in Indonesia.

Steve Blank defines a startup as "an organization formed to search for a repeatable and scalable business model,³" implying that a startup is an organization created to find a repeatable and measurable business model. Meanwhile, Paul Graham describes a startup as "a company designed to grow fast." Both definitions share the idea that a startup is a company designed to grow rapidly⁴.

* 2252005.vizta@uib.edu, elza.syarief@uib.ac.id, lu@uib.ac.id

¹ Halifa Haqqi and Hasna Wijayati, *Buku Revolusi Industri 4.0 Di Tengah Society 5.0: Sebuah Integrasi Ruang, Terobosan Teknologi, Dan Transformasi Kehidupan Di Era Disruptif* (Quadrant, 2019).

² Sudaryat, Dadang Epi Sukarsa, and Ahmad M Ramli, 'Perlindungan Kekayaan Intelektual Karya Kreatif Dan Inovatif Bisnis Startup Di Indonesia Dalam Era Industri 4.0 Dan Society 5.0', *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 1 (2020): 68–82, <https://doi.org/10.23920/acta.v4i1.270>.

³ Steve Blank and Bob Dorf, *The Startup Owner's Manual: The Step-by-Step Guide for Building a Great Company* (K&S Ranch Press, 2012).

⁴ Steve Blank and Bob Dorf, *The Startup Owner's Manual: The Step-by-Step Guide for Building a Great Company* (K&S Ranch Press, 2012).

It is evident that startups play a significant role in economic growth and recovery in Indonesia. This is demonstrated by the fact that during the COVID-19 pandemic, startups became part of the digital economy, contributing 4% of the GDP⁵, helping to drive Indonesia's economy while many other sectors struggled.

Referring to the important role of startups in Indonesia's digital economy, there are key factors that support the success of a startup company. On the other hand, there are three important roles in the success of establishing a startup company focused on digital. Dave McClure from 500 Startups states that every startup should have a team consisting of a hipster, hustler, and hacker⁶. These three core characters, commonly referred to as The Startup Triangle Team, are indeed needed as a foundation in building a startup. Below is a brief explanation of each character in The Startup Triangle Team.

1. **Hustler (Marketing & Business)** Every team needs a visionary in sales. In the startup world, this role is known as the hustler. Most hustlers are leaders or CEOs of a company, making them crucial to the company's success. Therefore, a hustler is expected to sell ideas to investors, pitch products to consumers, build networks, and focus on company management issues.
2. **Hipster (Design & User Experience)** One of the main differentiators in today's technology world is design. Therefore, it is no surprise that a startup needs a creative person with a passion for design, known as a hipster. A hipster must have a good sense of taste to project the startup as a strong brand and create a user-friendly website or app interface.
3. **Hacker (Engineer & Developer)** Finally, the hacker is responsible for technology. A hacker must have basic programming or coding skills, understand customer-desired technology, and create platforms aimed at developing the business.

While some successful companies rely on solo founders, it is rare for one person to possess all three skills. Therefore, the presence of the hipster, hustler, and hacker is essential in building a digital company like a start-up.

However, many start-up founders cannot find a team that forms The Startup Triangle and decide to hire freelancers to design business ideas and develop technology. These founders bind freelancers with Non-Disclosure Agreements (NDA) to protect their ideas from being stolen by others⁷.

Startups heavily rely on technology and grow rapidly in the digital era. The services and products offered are generally technology or web-based, such as app development, payment systems, services, and more. In establishing a startup, innovation and unique ideas are fundamental and require adequate legal protection.

As startups' creations, inventions, and brands or identities become well-known, the risk of plagiarism and imitation by others increases. Therefore, it is crucial for startups to protect or register their intellectual property. Legal protection for intellectual property rights is essential for the sustainability of the relationship between startups and freelancers in Indonesia. Violating intellectual property rights can result in significant losses for the startup-freelancer relationship, such as losing a competitive edge, losing consumer trust, and even bankruptcy. Hence, it is important to enhance intellectual

⁵ Steve Blank and Bob Dorf, *The Startup Owner's Manual: The Step-by-Step Guide for Building a Great Company* (K&S Ranch Press, 2012).

⁶ Blank and Dorf, *The Startup Owner's Manual: The Step-by-Step Guide for Building a Great Company*.

⁷ A R Pratama and L Rahayu, 'Perlindungan Hukum Terhadap Kekayaan Intelektual Dalam Perspektif Pengembangan Startup Di Indonesia', *Jurnal Hukum Bisnis* 5, no. 2 (2020): 153–68, <https://doi.org/10.14710/jhb.v5i2.153-168>.

property regulations that support the sustainability and competitiveness of startups, as well as protect their innovative assets in a competitive digital environment⁸.

The gap between "Das Sein" (what is) and "Das Sollen" (what should be) is a common occurrence in the legal world. The enforcement of a law sometimes does not proceed as planned. Various factors cause the implementation of a law to be less than optimal, and many violations occur, while enforcement does not receive serious attention⁹. The Trade Secret Law, in reality, still lacks information about what is regulated within this legislation and is still not widely known by companies, especially in the startup-freelancer relationship. This impacts those who lack legal efforts and do not have protection for what trade secret owners will do.¹⁰

There are three types of intellectual property that are closely related to startups:

1. **Copyright**¹¹

Products created or owned by startups are generally technology or web-based, so many startups create and develop digital applications. The created applications can be categorized as computer programs that automatically receive copyright protection when published. However, for strong legal protection, startups should register their creations with the Directorate General of Intellectual Property (DGIP) at the Ministry of Law and Human Rights.

2. **Trademarks**¹²

Trademarks are signs and logos used as the company's face, which also become the name of the app or platform. Since trademarks follow the first-to-file principle, startups should immediately register their trademarks or logos with the DGIP to avoid registration by others.

3. **Patents**¹³

Patents protect inventions, which are ideas that solve specific problems in technology. Computer programs or applications owned by startups can also obtain patents if they have characteristics or instructions with technical effects. Startups can register patents with the DGIP with complete supporting data.

However, under Indonesian law, ideas without concrete form are not granted legal protection for copyright or patents. Ideas are only concepts and cannot be patented or protected by trademarks or copyrights.

To prevent trade secret leaks, companies must have adequate legal protection. An NDA is a confidentiality agreement between two parties that prohibits sharing specific information with third parties. NDAs are usually made between companies and clients,

⁸ Willy Jayandi Parasian Sinaga, 'Perlindungan Hukum Terhadap Kekayaan Intelektual Dalam Bisnis Startup', *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 2 (2024): 244–54, <https://doi.org/10.62383/amandemen.v1i2.163>.

⁹ Kurnia Raudhatu Ridha, 'Ketaatan Pengendara Sepeda Motor Pada Ketentuan Kewajiban Menyalakan Lampu Utama di Siang Hari (Studi Implementasi Pasal 107 Ayat (2) Undang-Undang Nomor 22 Tahun 2009 Di Wilayah Hukum Polsek Pangkalan Brandan)' (Unimed, 2013).

¹⁰ Talitha Shabrina Faramukti, 'Perlindungan Hukum Rahasia Dagang Atas Informasi Bisnis Dalam Perjanjian Kerja Di Kabupaten Sleman (Studi Cafe "Ideologi Cafe" Di Sleman)', *Journal of Intellectual Property* 4, no. 2 (2021): 35–50.

¹¹ Republik Indonesia, *Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*, 2014.

¹² 'Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, Direktorat Jenderal Kekayaan Intelektual', n.d., <https://www.dgip.go.id>.

¹³ Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2016 Tentang Paten*, 2016.

investors, suppliers, and prospective employees to ensure that ideas or important data do not fall into the wrong hands.¹⁴

However, although the Trade Secret Law (Law No. 30 of 2000) provides a legal basis for trade secret protection, there are still deficiencies in practice, especially for startups that often employ freelancers. There is no legal protection or specific regulations protecting trade secrets in work relationships with freelancers, raising concerns that confidential information may leak or be misused by freelancers, especially if they are from foreign countries.

Cases of trade secret and copyright breaches by freelancers or former employees in startups often occur in the digital era. A notable example happened in 2020 when a technology startup in Jakarta suffered significant losses due to a data breach. A former employee who worked as a software developer downloaded a copy of the company's algorithm source code and sold it to a competitor. This caused financial losses and a loss of competitive advantage.¹⁵

To prevent such leaks, adequate legal protection is necessary. In Indonesia, NDAs are governed by the Trade Secret Law, which protects technology and business information that has economic value and is kept confidential by its owner¹⁶. However, there is still an urgent need to develop additional regulations that are more adaptive to modern work dynamics, including the use of freelancers by startups.

Thus, although the Trade Secret Law provides a legal basis for trade secret protection, there is a need for stricter regulations to protect trade secrets, particularly in the context of work relationships with freelancers. This effort will protect the innovation and investment of startup pioneers and foster a safer and more conducive business climate in Indonesia.

In addition to trade secret protection, startups must also pay attention to other aspects of intellectual property, such as copyright and patents¹⁷. Registering copyrights for computer programs or algorithms used, and registering patents for technological innovations developed by freelancers, can provide stronger legal protection. Comprehensive intellectual property protection not only safeguards valuable company assets but also increases investor and business partner confidence, ultimately driving startup growth and stability in a competitive market.

In recent years, the collaboration between startups and freelancers has become increasingly common in the digital business world. Freelancers often contribute significantly through ideas, designs, and innovative solutions that become integral to the products or services developed by startups. However, in many cases, the legal protection of intellectual property generated from this collaboration is not adequately guaranteed. This can lead to various issues, such as uncertainty regarding copyright and trade secret ownership and potential legal disputes in the future. In a highly competitive digital

¹⁴ Jordan Safranski, 'How to Legally Protect a Business Idea', 2022, <https://www.redpoints.com/blog/how-to-legally-protect-a-business-idea/>.

¹⁵ Felicia Edbert and Moody Rizqy Syailendra Putra, 'Pertanggungjawaban Hukum Terhadap Kebocoran Data Pribadi Pada Perusahaan Pengelola Jasa Keuangan Berbasis IT', *UNES Law Review* 6, no. 2 (n.d.): 5966–77, <https://doi.org/10.31933/unesrev.v6i2.1434>.

¹⁶ Mirza M Haekal, 'Non-Disclosure Agreement (NDA): Fungsi, Jenis, Dan Contohnya', 2023, <https://mekarisign.com/blog/nda-adalah/#:~:text=Non%2DDisclosure%20Agreement%20atau%20NDA,%2C%20informasi%20pelanggan%2C%20dan%20sejenisnya>.

¹⁷ Ririn Afriandari, 'Perlindungan Kekayaan Intelektual Bagi Startup Industri', 2023, <https://disperindag.jatimprov.go.id/post/detail?content=perlindungan-kekayaan-intelektual-bagi-startup-industri>.

economy, the legal vacuum in intellectual property protection becomes increasingly urgent to address.

Although regulations related to copyright and trade secrets exist, there remains a gap between 'das sein' (what is) and 'das sollen' (what should be). Research conducted by (Susi Yanuarsi, 2019) concluded that trade secrets do not need to be registered to obtain protection but are automatically protected and recognized by the state as owned¹⁸. Moreover, trade secret protection is not limited in time as long as the trade secret is not known to the public. In the context of the relationship between startups and freelancers, a significant legal gap is often encountered, particularly concerning the protection of copyrights and trade secrets generated by freelancers. Startups, which typically move quickly and have limited resources, often lack the legal framework to protect the intellectual property obtained from freelancers. This ambiguity can result in the loss of valuable intellectual assets for startups, thereby hindering their innovation and competitiveness in the market.

Previous research from Indonesia, such as those by (Nugraha, 2018; Suhendar, 2020; Wijaya, 2021; and Yusuf, 2019), identifies various challenges in intellectual property (IP) protection in Indonesia, but they have significant shortcomings in the context of startup-freelancer relationships. Nugraha highlights regulatory gaps in IP protection in the digital era but does not focus on the startup-freelancer relationship. Suhendar outlines trade secret protection but does not delve specifically into implications for freelancers. Wijaya discusses the legal challenges faced by startups but lacks detailed examination of the freelancer relationship. Yusuf investigates copyright protection but does not adequately address legal certainty in the context of freelancer collaboration. This paper, *"Intellectual Property Protection in Startup-Freelancer Relationships: An Analysis of Legal Gaps in Copyright and Trade Secrets,"* will fill this gap by focusing specifically on legal gaps in the context of startup-freelancer relationships, offering an in-depth analysis of how these gaps and legal uncertainties affect the protection of copyrights and trade secrets in this dynamic.

The significant contribution of this research lies in its ability to fill the legal vacuum in protecting intellectual property, particularly copyright and trade secrets, in the relationship between startups and freelancers. By understanding and addressing the current legal gaps, this research provides practical and regulatory recommendations that could enhance legal certainty for startups and freelancers. Thus, this study not only contributes to the body of knowledge on intellectual property protection but also has practical implications for improving the legal framework that supports the growth of startups in Indonesia.

B. Identified Problems

Based on the background provided, this research will focus on several key questions:

1. How is intellectual property protection in the startup-freelancer relationship: an analysis of the legal vacuum in copyright and trade secrets?
2. How is the legal certainty of intellectual property protection in the startup-freelancer relationship: an analysis of the legal vacuum in copyright and trade secrets?

¹⁸ Susi Yanuarsi, 'Perlindungan Hukum Terhadap Pemilik Rahasia Dagang Yang Bersifat Komersil' 17, no. 2 (2019): 122–31.

By answering these questions, the research aims to provide more comprehensive and adaptive solutions to protect trade secrets and copyrights, prevent information leaks, and maintain the competitive advantage of start-up companies in Indonesia.

The objectives of this research are as follows:

1. To determine how intellectual property protection operates in the startup-freelancer relationship: an analysis of the legal vacuum in copyright and trade secrets.
2. To identify the legal certainty of intellectual property protection in the startup-freelancer relationship: an analysis of the legal vacuum in copyright and trade secrets.

By achieving these objectives, this research is expected to make a significant contribution to improving the understanding and application of laws related to trade secrets and copyrights in the startup sector. Additionally, this research aims to provide practical guidelines for companies in managing and protecting their intellectual assets.

C. Research Methods

The method used in this research is normative legal research. This study focuses on normative juridical aspects, where the researcher seeks to identify relevant legal rules, principles, and doctrines to address the legal issues at hand¹⁹. The research utilizes secondary data, which includes the study of legal materials. This secondary data consists of legal materials that have binding legal force, such as legislation, including Law No. 30 of 2000 on Trade Secrets (Trade Secrets Law), and Law No. 28 of 2014 on Copyright (Copyright Law). In addition, the researcher also gathers materials and references from books.²⁰ To address the legal issues discussed, the researcher collects legal materials using the literature study method, which is then analyzed qualitatively. This process involves a deep understanding of the applicable legal rules and the identification of literature such as legal journals, research reports, and other legal sources relevant to the research topic, namely the protection of intellectual property in startups from the perspective of copyright and trade secrets.

D. Research Findings dan Discussions

Protection of Copyright and Trade Secrets in Startup-Freelancer Relationships in Indonesia

Legal protection of intellectual property (IP) for startups in Indonesia is a critical aspect that requires special attention, particularly concerning copyright and trade secrets. Law No. 28 of 2014 on Copyright (Copyright Law) provides a clear legal foundation regarding copyrights, which include exclusive rights for creators to control and utilize their creations. According to Article 1, paragraph 1 of the Copyright Law, copyright is an exclusive right granted to the creator or copyright holder to exercise those rights, whether to utilize or protect the work from unauthorized use.

The exclusive rights of copyright include moral and economic rights. Exclusive rights imply that only the creator or copyright holder can benefit from these rights. Moral rights are permanently attached to the creator and cannot be transferred while the creator

¹⁹ Susanti, 'Analisa Yuridis Terhadap Kepemilikan Alas Hal Milik Dalam Wilayah Hak Pengelolaan di Kota Batam', *Universitas Internasional Batam*, 2018.

²⁰ William Law, 'Tinjauan Hukum Mengenai Jual Beli Saham Dikaitkan Asas Hukum Terang Tunai', *Universitas Internasional Batam*, 2018.

is alive²¹. Research by (Sudaryat et al., 2019) concludes that the Copyright Law protects works in the fields of science, art, and literature. Creative and innovative works of startups, such as computer programs, are protected by copyright. Through the declarative negative system, these creative and innovative works of startups receive legal protection from the first time they are published, with registration serving as proof of rights. As long as the work meets originality requirements and is tangible, it is protected by copyright²².

Within the framework of Philipus M. Hadjon's legal protection theory, the protection of copyright can be analyzed through preventive, repressive, and compensatory dimensions²³. Preventive protection, which aims to prevent copyright infringement, involves the registration process of the creation. Although copyright registration is not mandatory, Article 5 of the Copyright Law states that registration can provide valid proof of ownership and facilitate the enforcement of rights. This registration offers greater legal certainty and makes it easier for creators to claim their rights in the event of a dispute. Additionally, Article 24 of the Copyright Law establishes the creator's exclusive rights, including the right to transfer copyright to others if necessary.

On the other hand, repressive protection relates to the enforcement of laws against copyright infringement. Article 113 of the Copyright Law regulates criminal sanctions for copyright violators, such as piracy or forgery of works. Besides criminal sanctions, Article 116 of the Copyright Law also provides administrative sanctions in the form of fines for administrative violations. Consistent and strict law enforcement is crucial to deter violators and maintain the integrity of copyright. Meanwhile, compensatory protection refers to the creator's right to receive compensation for losses suffered due to copyright infringement. Article 119 of the Copyright Law grants creators the right to claim appropriate compensation, covering both material and immaterial losses as well as potential lost revenue.

In addition to copyright, the protection of trade secrets also plays a crucial role in safeguarding the critical and strategic information of startups. Law No. 30 of 2000 on Trade Secrets (Trade Secrets Law) governs the protection of trade secrets, defined in Article 1, paragraph 1 as information not known to the public, having economic value, and maintained as confidential through reasonable efforts. Under Hadjon's theory, the protection of trade secrets can be viewed through similar preventive, repressive, and compensatory dimensions as copyright protection²⁴.

Preventive protection for trade secrets involves the implementation of strict internal policies and the use of clear non-disclosure agreements (NDAs)²⁵. Article 11 of the Trade Secrets Law states that trade secrets must be protected from unauthorized disclosure, and NDAs serve as an effective tool to protect vital information from leaks. Moreover, internal company policies regarding the management and access to information are also important to ensure that information considered a trade secret is not leaked to unauthorized parties.

²¹ Sudaryat, Sukarsa, and Ramli, 'Perlindungan Kekayaan Intelektual Karya Kreatif Dan Inovatif Bisnis Startup di Indonesia Dalam Era Industri 4.0 Dan Society 5.0'.

²² Sudaryat, Sukarsa, and Ramli.

²³ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Bina Ilmu, 1987).

²⁴ Hadjon, P. M. (1987). *Loc. Cit.*

²⁵ Siahaan, 'Perlindungan Hukum Terhadap Rahasia Dagang Dalam Konteks Startup di Indonesia. *Jurnal Hukum & Pembangunan*, *Jurnal Hukum & Pembangunan* 51, no. 2 (2021): 220–35.

Regarding law enforcement, Article 12 of the Trade Secrets Law stipulates criminal and civil sanctions for trade secret violations. Trade secret violations can result in imprisonment and fines, as well as compensation to the harmed trade secret holder. Consistent and effective law enforcement is crucial to protect trade secrets from leaks and misuse. Additionally, compensatory protection includes the right to obtain compensation for losses suffered due to trade secret violations, as provided in Article 13 of the Trade Secrets Law.

Despite the laws regulating copyright and trade secret protection, startups often face unique legal challenges when working with freelancers. Freelancers are independent workers who are not bound by long-term employment relationships with the company. They are often hired for specific projects with limited duration and may not always have full access to or a deep understanding of the company's internal policies. This can create a legal vacuum in the protection of copyright and trade secrets²⁶.

Article 20 of the Copyright Law regulates the moral and economic rights of creations. However, this provision mainly focuses on the relationship between the creator and the copyright holder without considering the specific conditions in work contracts with freelancers. In the context of freelancers, there is often ambiguity regarding who owns the copyright to the created works, especially if there is no explicit agreement stating the transfer of copyright from the freelancer to the company. Without a clear agreement, freelancers may still hold moral and economic rights to the works they create, even if the company paid them for the work.

Article 9 of the Trade Secrets Law regulates that trade secrets can be protected from unauthorized use or disclosure. However, this law does not specifically address situations where freelancers have access to the company's trade secrets. Since freelancers are not permanent employees, they may not be bound by the company's strict regulations regarding the use and protection of confidential information. This could pose a risk of trade secret leaks, whether intentional or unintentional.

To address this legal vacuum, startups need to draft comprehensive and specific work contracts with freelancers²⁷. These contracts should include clear clauses regarding copyright and trade secrets. For instance, the company could require the full transfer of copyright for works created by the freelancer, ensuring that all economic and moral rights related to the work are transferred to the company. Additionally, the contract should include a strict NDA to protect the company's confidential information, setting clear boundaries on the use and disclosure of such information.

Moreover, it is important to include a comprehensive dispute resolution mechanism in the work contracts with freelancers. This includes provisions regarding the forum and applicable law in case of a dispute, as well as mediation or arbitration procedures as alternative dispute resolution methods. These mechanisms can help reduce legal uncertainty and provide a clear path for resolving issues that may arise.

Overall, more specific and stringent regulations regarding IP protection in freelance work relationships are needed to ensure adequate legal security. This could include clearer guidelines or regulations on copyright and trade secrets in the freelance work context, as well as stricter oversight of work contracts made between companies and freelancers. By doing so, the legal vacuum can be addressed, and the legal protection

²⁶ Smith, J. A., 'Legal Challenges in Protecting Intellectual Property for Startups', *Journal of Intellectual Property Law* 25, no. 3 (2020): 345–68.

²⁷ Hutagalung, T., 'Kontrak Kerja Dengan Freelancer Dan Perlindungan Hak Cipta Di Indonesia', *Jurnal Hukum Bisnis* 18, no. 1 (2019): 40–55.

of copyright and trade secrets can be enhanced, providing greater legal certainty for startups in managing their work relationships with freelancers.

Certainty of Copyright and Trade Secret Protection in Startup-Freelancer Relationships in Indonesia

From the perspective of Gustav Radbruch's theory of legal certainty, legal certainty encompasses three main aspects: regulatory certainty, controlling certainty, and implemented certainty²⁸. Regulatory certainty relates to the existence of clear and consistent regulations and laws. The Copyright Law provides a comprehensive legal framework regarding copyright, including definitions and exclusive rights granted to creators. Article 1, paragraph 1 of the Copyright Law clearly defines copyright, but in practice, there is still confusion and uncertainty in the application of this law. Regulatory certainty requires consistent and unambiguous regulations to provide adequate protection.

Controlling certainty relates to law enforcement and responses to violations. Article 113 of the Copyright Law provides the legal basis for prosecuting copyright violations, but law enforcement often faces obstacles such as complicated procedures and limited resources. Effective and consistent law enforcement is essential to maintaining legal certainty and providing adequate protection for copyright holders. Controlling certainty requires an efficient legal enforcement system that responds to violations as they occur.

Implemented certainty involves the implementation of policies and regulations in the field. Startups need to develop clear internal policies and procedures to protect copyrights, including registration and enforcement of copyrights, as well as training for staff and freelancers on the importance of copyright protection. Implementing best practices and consulting with legal experts can enhance legal certainty in copyright protection.

In the context of trade secrets, regulatory certainty also includes the existence of clear regulations regarding trade secrets. The Trade Secrets Law provides a clear legal basis, but there is uncertainty in the application of these provisions in the field. Regulatory certainty requires consistent and effectively enforceable regulations. Controlling certainty relates to the enforcement of laws against trade secret violations, where Article 12 of the Trade Secrets Law stipulates criminal and civil penalties. Effective and consistent law enforcement is required to ensure that trade secrets are protected from leakage and misuse.

Overall, although there are laws governing copyright and trade secret protection, significant legal gaps exist in the context of startups working with freelancers. These legal gaps arise because the existing laws do not fully regulate the unique situations faced by startups, especially in working relationships with freelancers that are often temporary and not bound by long-term employment contracts.

Freelancers, who are not always bound by the company's internal policies, can become a loophole in intellectual property protection. For example, regarding copyright, Article 20 of the Copyright Law regulates the transfer of copyright from the creator to another party. However, this provision does not specifically address freelancers working on a project basis. Without a clear contract regulating the transfer of copyright from the freelancer to the company, the company may face difficulties in claiming ownership of the work created by the freelancer.

²⁸ Radbruch, G., *Legal Philosophy* (Harvard University Press, 1946).

Additionally, in the context of trade secrets, Article 9 of the Trade Secrets Law regulates the protection of trade secrets. However, once again, this provision does not specifically address freelancers. Freelancers not bound by strict contracts may not fully understand or comply with the company's confidentiality policies. This can lead to the risk of valuable trade secret information being leaked.

To address these legal gaps, adjustments and strengthening of regulations and legal practices are needed. First, regulations need to be updated to specifically regulate copyright and trade secret protection in the context of working relationships with freelancers. This may include requiring companies to draft clear and comprehensive work contracts with freelancers, including clauses on copyright transfer and trade secret protection. The contract should clearly define the rights and obligations of both parties, including dispute resolution mechanisms that may arise.

Second, companies need to adopt stricter legal practices to protect their intellectual property. This may include implementing strict internal policies regarding access and use of confidential information, training staff and freelancers on the importance of intellectual property protection, and using clear and firm Non-Disclosure Agreements (NDAs).

Adopting Gustav Radbruch's theory of legal certainty in the application of law can help strengthen legal protection for the intellectual property of startups in Indonesia. Radbruch suggests that legal certainty must encompass three aspects: regulatory certainty, controlling certainty, and implemented certainty. By ensuring that existing regulations are clear and unambiguous, law enforcement is consistently and strictly carried out, and field policies and procedures are properly implemented, legal protection for intellectual property can be enhanced.

In applying this theory, the regulations governing copyright and trade secret protection must be updated to cover the specific situations faced by startups, including working relationships with freelancers. Firm and consistent law enforcement is required to ensure that copyright and trade secret violations can be effectively addressed. Additionally, companies must implement clear and comprehensive internal policies to protect their intellectual property.

Thus, strengthening regulations and legal practices, as well as adopting Radbruch's theory of legal certainty, can help improve business security and support the growth of startups in a competitive market. Strong and comprehensive intellectual property protection will not only protect the innovation and technology developed by startups but also provide confidence and certainty for investors and business partners, ultimately driving the growth and development of startups in Indonesia.

E. Conclusions

In the rapidly evolving digital era, startups play a crucial role as pioneers of innovation and drivers of economic growth. However, the protection of intellectual property rights, particularly copyright and trade secrets, remains a significant challenge. This article highlights the legal gaps in intellectual property protection, especially in the context of relationships between startups and freelancers, which often involve contributions of highly valuable ideas and works. Referring to the background that illustrates the vital role of startups in the digital economy and the importance of intellectual property protection, it is clear that the current legal framework is inadequate. Philipus M. Hadjon's theory of legal protection emphasizes the need for fair and balanced protection, while Gustav Radbruch's theory of legal certainty underscores the importance of legal certainty in creating a sense of security. In this context, there is a significant gap

in regulations affecting trade secret protection, which often serves as a core asset for startups. Limited copyright protection needs to be backed up by trademark protection, which functions not only as a differentiator but also as a guarantee of quality, a promotional tool, and a product quality assurance. Referring to the discussion on the need for stricter regulations, this article proposes regulatory reforms to enhance trade secret protection and reduce the risk of information leakage. These reforms should be designed to provide better legal certainty and create an environment that supports innovation. Strengthening intellectual property protection through clearer and more detailed regulations will support the sustainability and competitiveness of startups, as well as provide the necessary protection for valuable ideas and works. Overall, to support the growth of startups in a competitive digital ecosystem, it is important to develop policies that not only keep up with technological advancements but also provide effective and reliable legal protection.

REFERENCES

- Afriandari, Ririn. 'Perlindungan Kekayaan Intelektual Bagi Startup Industri', 2023. <https://disperindag.jatimprov.go.id/post/detail?content=perlindungan-kekayaan-intelektual-bagi-startup-industri>.
- Badan Pusat Statistik. 'Laporan Ekonomi Digital Di Indonesia'. BPS, 2021.
- Blank, Steve, and Bob Dorf. *The Startup Owner's Manual: The Step-by-Step Guide for Building a Great Company*. K&S Ranch Press, 2012.
- Edbert, Felicia, and Moody Rizqy Syailendra Putra. 'Pertanggungjawaban Hukum Terhadap Kebocoran Data Pribadi Pada Perusahaan Pengelola Jasa Keuangan Berbasis IT'. *UNES Law Review* 6, no. 2 (n.d.): 5966–77. <https://doi.org/10.31933/unesrev.v6i2.1434>.
- Faramukti, Talitha Shabrina. 'Perlindungan Hukum Rahasia Dagang Atas Informasi Bisnis Dalam Perjanjian Kerja Di Kabupaten Sleman (Studi Cafe "Ideologi Cafe" Di Sleman)'. *Journal of Intellectual Property* 4, no. 2 (2021): 35–50.
- Graham, Paul. *Hackers & Painters: Big Ideas from the Computer Age*. O'Reilly Media, 2004.
- Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat Di Indonesia Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara*. Bina Ilmu, 1987.
- Haekal, Mirza M. 'Non-Disclosure Agreement (NDA): Fungsi, Jenis, Dan Contohnya', 2023. <https://mekarisign.com/blog/nda-adalah/#:~:text=Non%2DDisclosure%20Agreement%20atau%20NDA,%2C%20informasi%20pelanggan%2C%20dan%20sejenisnya>.
- Haqqi, Halifa, and Hasna Wijayati. *Buku Revolusi Industri 4.0 Di Tengah Society 5.0: Sebuah Integrasi Ruang, Terobosan Teknologi, Dan Transformasi Kehidupan Di Era Disruptif*. Quadrant, 2019.
- Hutagalung, T. 'Kontrak Kerja Dengan Freelancer Dan Perlindungan Hak Cipta Di Indonesia'. *Jurnal Hukum Bisnis* 18, no. 1 (2019): 40–55.
- 'Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, Direktorat Jenderal Kekayaan Intelektual', n.d. <https://www.dgip.go.id>.
- Law, William. 'Tinjauan Hukum Mengenai Jual Beli Saham Dikaitkan Asas Hukum Terang Tunai'. *Universitas Internasional Batam*, 2018.
- Pratama, A R, and L Rahayu. 'Perlindungan Hukum Terhadap Kekayaan Intelektual Dalam Perspektif Pengembangan Startup Di Indonesia'. *Jurnal Hukum Bisnis* 5, no. 2 (2020): 153–68. <https://doi.org/10.14710/jhb.v5i2.153-168>.
- Radbruch, G. *Legal Philosophy*. Harvard University Press, 1946.
- Republik Indonesia. *Undang-Undang Nomor 13 Tahun 2016 Tentang Paten*, 2016.
- . *Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*, 2014.
- Ridha, Kurnia Raudhatu. 'Ketaatan Pengendara Sepeda Motor Pada Ketentuan Kewajiban Menyalakan Lampu Utama Di Siang Hari (Studi Implementasi Pasal 107 Ayat (2) Undang-Undang Nomor 22 Tahun 2009 Di Wilayah Hukum Polsek Pangkalan Brandan)'. Unimed, 2013.
- Safranski, Jordan. 'How to Legally Protect a Business Idea', 2022. <https://www.redpoints.com/blog/how-to-legally-protect-a-business-idea/>.
- Siahaan. 'Perlindungan Hukum Terhadap Rahasia Dagang Dalam Konteks Startup Di Indonesia. Jurnal Hukum & Pembangunan'. *Jurnal Hukum & Pembangunan* 51, no. 2 (2021): 220–35.
- Sinaga, Willy Jayandi Parasian. 'Perlindungan Hukum Terhadap Kekayaan Intelektual Dalam Bisnis Startup'. *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 2 (2024): 244–54. <https://doi.org/10.62383/amandemen.v1i2.163>.

- Smith, J. A. 'Legal Challenges in Protecting Intellectual Property for Startups'. *Journal of Intellectual Property Law* 25, no. 3 (2020): 345–68.
- Sudaryat, Dadang Epi Sukarsa, and Ahmad M Ramli. 'Perlindungan Kekayaan Intelektual Karya Kreatif Dan Inovatif Bisnis Startup Di Indonesia Dalam Era Industri 4.0 Dan Society 5.0'. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 1 (2020): 68–82. <https://doi.org/10.23920/acta.v4i1.270>.
- Susanti. 'Analisa Yuridis Terhadap Kepemilikan Alas Hal Milik Dalam Wilayah Hak Pengelolaan Di Kota Batam'. *Universitas Internasional Batam*, 2018.
- Yanuarsi, Susi. 'Perlindungan Hukum Terhadap Pemilik Rahasia Dagang Yang Bersifat Komersil' 17, no. 2 (2019): 122–31.