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Trade Secret Protection on Globalization Era

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Abstract:

Trade secrets in a business activity must be kept confidential by either the licensee or the person receiving the license. Producing a product for business continuity is not an easy thing.

Research and experiments are repeatedly done to achieve the desired thing to run the business. The problem is that if a product is successful and widely used by the public, then the problem arises that many people want to imitate or steal the product to achieve personal gain, without permission or legal procedure applicable to use the trademark of the concerned owner of the trade secret license .

Settlement of the case can be done by way of consensus or through the court. In principle how the licensee can be legal protection from the government, so its business sustainability can be run in the presence of legal protection.

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1. Introduction

Economic growth today, is inseparable from the role of business people in running their business activities. Business undertaken by business actors really should reflect the benefits of the parties involved in it. Running the business the principals experience a lot of very rapid changes from the traditional implementation of moving towards a highly dynamic technology. The role of information technology and globalization is a sign of business activity that is inevitable. All companies will run the business strictly to maintain the business continuity.

There is a very close relationship between the protection of trade secrets and also known as confidential information, which is part of the Intellectual Property hereinafter referred to as IPRs with trade globalization. Currently the problem of international trade will not only be related to goods and services solely, but in it also involved other resources of technology. In addition, investments may also include intellectual property rights such as trade secrets, patents, industrial product design brands, copyrights and other rights related to the scope of intellectual property rights. Certainty and legal protection are sure to be protected by business people (Faisal Santiago, 2010; Bondarenko *et al.,* 2017).

The rise of perpetrators who run a business by using a brand or a product without the consent of its owner is a criminal act. Factors to get the most profit is the main factor why they do it. Stealthily avoid law enforcement continues to run the business they do. They do not think that any party is harmed as a result of using a brand or license without the owner's knowledge. In this regard, investors and businesspeople feel very concerned about the protection of their technological inventions and trade secrets through an intellectual property protection system in accordance with international standards. For them, adequate safeguards against trade secrets and intellectual property rights in general are one of the basic considerations for conducting trade and investment in a country (Faisal Santiago, 2012).

With this protection, it will enhance creativity for inventors, to do more innovative thinking or inventions in accordance with the development of science and technology. The extraordinary development of the science of technology is the role of the government in providing intellectual property protection is urgently needed. From a legal point of view this is understandable and very reasonable, for violations of trade secrets will in turn economically harm the inventors and owners of those rights. Especially when it is associated with trade globalization, the protection of trade secrets is an absolute requirement. Because of the era of globalization, trade secret has become a very essential factor in the efforts of fair trade competition, as well as a very valuable commodity and have high economic value.

Trade secrets are now one of the most expensive forms of investment in addition to other forms of investment that must be maintained against all parties so as not to be misused for the benefit of others through a mechanism of unfair competition. As a

result of this fact, the protection of trade secrets will be one of the decisive factors in attracting foreign investors to enter Indonesia, and the decisive factor for the frequency of international trade itself (Akopova and Przhedetskaya, 2016).

To protect trade secrets investors also have an interest in a form of foreign investment (hereinafter referred to as FDI) in which it does not engage with the outside elements of the enterprise. The protection of trade secrets is also becoming increasingly important if it is associated with the relationship between the company and its employees. The existence of PMA that does not involve the outside of the company at this time has been possible in Indonesia with the government policy which states the permissibility of foreign 100% foreign investment form as expressed by Komar that for foreigners 100% share ownership in a PT is very important, especially if the business The PT involves IPR including patents and trade secrets (Komar Mieke, 1989; Sambrakos and Ramfou, 2014; Thalassinos, 2017).

With the issuance of Investment Law No. 25 of 2007 strengthens the protection of trade secrets in Indonesia associated with intellectual property rights. The high frequency of in and out of human resources from one company to another, even between different companies of the country has become a feature in the era of trade globalization that can not be avoided. This fact will greatly affect the protection of trade secrets. The high frequency of employment outsourcing from one company to another internationally can easily be misused as an attempt to breach trade secrets by competitors.

The transfer of human resources from one company to another does not mean that the person can use the trade secrets owned by the company he left behind to be used in his new company. Therefore, the creation of a working contract protecting trade secrets whether it be a formula, a production process, a list of customers, methods used and so forth becomes very important to do. Trade secrets are now widely chosen as a form of protection in addition to other intellectual property protection such as patents and copyrights, as trade secrets can precisely protect important information that could not be protected under patent, copyright, industrial and brand product design.

The protection of trade secrets for technical or non-technical information or management information is considered to be more advantageous when compared to patent protection forms that have limited durations and may be widely publicized due to the registration system through the patent office. In relation to this, an agreement on the Trade Related Aspects of Intellectual Property Rights Including Trade in Counterfeit Goods (TRIPs-GATT) has provided its own arrangement regarding undisclosed information called undisclosed information.

In line with the protection of these trade secrets TRIPs protect the development of technologies in which patents and trade secrets are embedded regarding new

innovations that are potentially imitative in imitations such as drugs, chemicals, biotechnology and other production processes.

The issue of trade secret protection is important in relation to international trade in Indonesia, because international trade activity is very closely related to the protection of trade secrets itself. Businesses are entitled to the protection of all information they possess that belong to trade secrets as in relation to import-export activities, which will largely involve information about marketing methods of customer lists and consumers. Indonesia is much criticized by other nations, because the rise of pirated products is of particular concern to the government to continue to monitor and monitor the use of trade secrets run by businessmen in Indonesia, socialization and appeal to register trade secrets to the government in this case the Director General of IPR is highly expected .

In line with this, Sudargo Goutama is of the opinion that there should now be national measures in the field of equitable and consistent legal and regulatory arrangements in the areas of trade secrets and intellectual property rights in general. In its capacity as one of the participating countries of the TRIPs-GATT agreement and has also ratified the Agreement Establishing World Trade Organization Agreement Establishing the World Trade Organization (WTO) through Law No. 7/1994, Indonesia's linkage with the World Trade Organization (WTO) will affect trade, investment and the national economy in general (Sudargo Goutama, 1999).

2. Literature Review

Intellectual Property rights are a timbo right! due to the creative actions of humans that produce innovative works that can be applied in human life (Wayne Golding, 1997; Hadi *at al*., 2017) Currently there are several terms used to provide an understanding of those rights which are translations of Intellectual Property Rights (IPR), another term used for translation.

IPR is an Intellectual Property Right (Sudargo Gautama, 1997) the word "property" is more appropriate to use than the word wealth for the reason that the notion of "property" has a more specific scope than the term "wealth". In the Indonesian civil law system, the law of wealth consists of two parts, namely the law of attachment and the law of things (Abdulkadir Muhammad, 1994). In the concept of property of each item there is always the owner who is called the owner of the goods and every owner of the goods have the right to his property which is commonly called property rights.

From this sense, the term "property" refers more to a person's right to a thing in a concrete way rather than referring to a vast "asset." Intellectual property rights are more properly qualified as property rights because property rights themselves are the most important rights when compared with other material rights, to the fullest extent.

In this regard, Subekti and Tjitrosoedibjo provide the notion of property rights as goods in the most powerful or perfect right of power under applicable law. The property itself is a translation of eigendomsrecht in Dutch and right of property in English which refers to the most powerful or the most perfect right (Subekti and Tjitrosoedibjo, 1982; Nikolova *et al.*, 2017).

Therefore, in the Indonesian law, the term "Intellectual Property Rights" (IPR) is used as a translation of the Intellectual Property Rights (IPR) because it also reflects a more concrete understanding, also in line with the concept of Indonesian Civil Law which applies the term "property" to objects someone (Alua, 2017).

As an exclusive right of intellectual property rights can not be contested, this is in line with the principle of droit inviolable et by the right of property itself, this exclusive right is not only directed to eigenaar but also applies to legislators or rulers where they should not restrict property rights but must be repaid with the fulfillment of certain conditions. The application of the principle of droit inviolable et sacre itself to objects in general can not be fully implemented, but for intellectual property rights especially in moral rights in copyright, the application of this principle is still relevant. Sudikno Mertokusumo argues that, Intellectual Property Rights is an absolute property that is not material that the object is the result of human thought, an opinion, a sign or discovery (Sudikno, 1991). In this regard the Copyright Act provides that copyright is a moving object.

The Law of Intellect is the law that regulates the protection of creators and inventors of innovative works in relation to the widespread utilization of their works in society, therefore the objective of IP law is to channel the individual's creativity to the widespread use of humanity.

As an exclusive right of intellectual property legally has the same place as other property rights, even in some cases has a higher position. Can be put forward as follows. First, that to the creator in the field of arts and literature science, or inventor in the field of new technology either in the form of trade secrets or patents, in order to recover what he has expended, and enjoy the economic benefits of the effort he has expended it.

Incentives should be given to stimulate creativity in creating new works in the fields of technology, art and science, because without creativity incentives will be inhibited. This is also in line with the principle that intellectual property is a tool for achieving and developing the economy, and creating independence and pride in his own work as further WIPO (WIPO, 1998) provides the following details:

"The object of intellectual property are creations of the human intelled. This is why this kind of property is called "intellectual" property in a somewhat simplified way one can state that intellectual proprety relates to pieces of information which can be incorporated intangible objects at the same time in an unlimited number of copies at

different locations anywhere in the world. The property is not in those copies but in the information reflected in those copies. Similar to property in moveable things and immoveable property, intellectual property, too, is characterized in the case of copyright and patents."

In contrast to trade secrets in other areas of intellectual property such as patents are essentially open, meaning that the inventor must clearly disclose or disclose the invention as one of the conditions for registration of patents. This situation poses a potential risk because other people can learn or carry out the discovery without rights. Therefore, in return the inventor is granted an exclusive (exclusive) right to periodically exploit the invention so that any violation of it may be prosecuted both civil and criminal.

Intellectual property that is the result of a creation or discovery of a prefix that has not been registered as a patent for example, opens the possibility to the other party to be able to know or further develop the invention generated by the inventor secretly. Although it may not be able to obtain protection under patent law, copyright or design, but may be categorized as the owner of his work.

With the latest arrangements in TRIPs, there is a development in the forms of intellectual property rights, so that the current forms of Intellectual Property Rights are: 1. Copyright and related rights; 2. Patents; 3. Layout Designs of Integrated Circuit Design (Topography); 4. Undisclosed Information.

Today there are various international treaties relating to the protection of intellectual property rights. These agreements, among others, administered by the World Intellectual Property Rights Organization (WIPO) are of a more HAKI nature. This is in contrast to Trips which also contain the rules of indication of the full validity of the international treaties.

TRIPs, as the newest legal source in the field of Intellectual Property Rights, is the most widespread legal source of treaties and other sources of international law in the field of intellectual property, and incorporating intellectual property rights as part of TRIPs does not abolish existing HAKI conventions, complement and even strengthen it. Article 2 paragraph 2 TRIPs states that the Paris Convention, Berme Convention, Rome Convention, and Threaty on Intellectual Property in Respect of Integrated Cirfuits remain in force and shall be complied with by the Member States which have been bound by those Conventions. TRIPs are currently the most widespread source of IP law, and in some cases regulate the very far and technical matters affecting the legal instruments of intellectual property of participating countries.

Trade Secrets as Part of Intellectual Property, Trade secrets are defined as follows: (Robert Patrick, 1997) *"A trade secret is any formula, pattern, division or*

compilation of information which is used in one's businees and which gives opportuity to obtain and advantege over competitors who do not know use it ".

Another notion of trade secrets can also be found within Section 757 American Law Institute Restetement of Torts commest (b) 757 yang menyatakan: "*Trade secret may cosist of any formula, pattem, divece or compilation of information which is used in one's busness. and wich gives himan opportunity to obtain and advantage over competitors who do not know or use it. It may be a formula for a chemical compund, a process of manufakturing, treating or preserving materials, a pattern for machine or other divice, or a list of customer*."

In principle, trade secrets are all unknown information in the framework of trading activities, highly strategic information of which has potential and actually contains high economic value because it can be used to compete with competitors. Such information shall meet certain specific elements such as having and be used by others who do not in detail know the information. Such information must consistently be kept confidential, so it can not be used by others, because with that information one can gain a competitive advantage to compete with competitors who do not know the information. Negligence of the owner of the information on this matter may nullify the existence of trade secrets as intellectual property rights.

The trade secrets protection has a very important value in the world of investment and trade, because through such a protection system, highly strategic and competitive business information that is not protected by patent and copyright or design patent systems can be protected. As an illustration that in order to obtain an inventor's patent protection, it must be true to discover something novelty, the fulfillment of the inventive step requirements, and the fulfillment of the very complex conditions stipulated by the Patent Office, while trade secrets may carried out more flexibly because of the formal requirements as is the case with the patent law system, which requires the fulfillment of formalities and a complex examination process.

3. Problems

How the Trade Secret Act is important to ensure the effective protection of the ownership, control and use of trade secrets as a consequence of Indonesia's participation in the Trade Intellectual Property Rights (IPR) agreement, and how to regulate the protection of trade secrets and other objects by refers to TRIP-s Agreement as well as parts related to the standard of IPR arrangements.

4. Research Methods

1. Method approach: The formulation of the problem shows that the research is done by approach of normative juridical approach. Where the normative

jurisdiction is to examine a legal problem and make the settlement through the applicable legislation.

2. Research specifications: The specification of this study is descriptive analysis to provide an overview of the real facts along with an accurate analysis of laws and regulations that can be used as material analysis or analysis related to trade secret.

5. Result and Discussion

To maintain the existence of trade secrets, the owner must take concrete steps to protect it, the steps can be as follows:

1. The disclosure of trade secrets shall be made only to those who need to know only with the requirements of a confidential nature. Thus disclosure of secrets should only be made after a guarantee such as for inter-company disclosure cooperation can only be done after the agreement is signed.
2. Trade secrets should always be incorporated into groups of information or confidential data. Accordingly, all documents containing such trade secrets must be marked "secret" and unauthorized employees are prohibited from knowing the information.
3. Public access to such information in any form should be avoided. These include laboratory research activities, literature studies, comparison of production processes and others
4. In the employment agreement between the company and the employees shall be expressly stipulated the provisions concerning the prohibition of disclosure of trade secrets outside of its duties such as if it relates to other parties not bound by the agreement.

As an Intellectual Property form an information must meet certain criteria to be classified as trade secrets, the criteria that must be met is that the information must have the value and the nature of confidentiality that can be used for business activities. In this case a trade secret identifier should be able to show that the information has commercial existence and value, is not publicly known and requires costs to keep it a secret. In a court proceeding a person who feels the right to information to be confidentially infringed must be able to prove that an unlawful takeover of trade secrets has been committed by a defendant. In the International Civil Code such matters are categorized as unjust enrichment.

Trade secrets that include formulas, patterns, workings, or complications of information that can economically be used in a business activity must also have value which in turn provides an opportunity for the owner to be able to produce a product of his business beyond any other competitor who does not know the confidential information . Therefore, Restatement of Torts Section 757 (b) states that material or information that is public or is publicly known in the industry can not be

classified as a trade secret. It also includes information that has been publicized through the sale of goods on the market, not including trade secrets.

The conclusion is that trade secrets must be known only to the owner (and his company) where the facts are used for his business interests. Knowing that information by employees is not one thing that eliminates a person's rights to trade secrets, in other words the owner may inform his employees about trade secrets he has. To protect such trade secrets from possible misuse by employees, the owner may make an agreement that the employee must uphold the secret and not abuse it for himself or for others.

5.1 Alternative Dispute Resolution as a Form of Trade Secret Protection

The current cases of intellectual property can not only be resolved through the General Courts. Alternative Dispute Resolution (ADR) resolution is a relatively new way of completion. Since 1982 the settlement of HAKI cases through ADR began to be realized in the United States. Alternative dispute settlements in IPC cases can be made through several models of settlement. In this regard (Nancy Neal Y & Cathy E.R: 1998) also stated. "*There are well over sixteen distinct ADR processes currently in use. Many of these processes have been developed as hybrids form there basic models; processing involving only the disputing parties (negotation); processing involving a neatural, non decision maker (mediation), and processes involving a decisionmaker (arbitration*)".

Negotiation is the best way of dispute resolution if it can be done by the parties. In the negotiation there is no mediator, and is done solely by the parties (or their attorney) to resolve the dispute. Mediation is a means of settlement involving a mediator. The mediator in this case must be a neutral party who can bridge the parties to the dispute. The mediation verdict is binding on the basis of the parties' good faith, but has no legal force as well as the Judge's verdict. If there is a disobedient party to the verdict. The most aggrieved party can only sue for it based on misconduct.

In contrast to mediation, arbitration is a dispute resolution form of trade secrets / intellectual property rights that have absolute competence equivalent to court. The decisions are final and binding because the parties have agreed without any appeal and cassation and have such legal force as a court decision. Dispute settlement through ADR to fulfill has high profit and effectiveness, because the settlement can be faster and cheaper, also the parties can avoid the possibility of opening trade secrets to their confidential trade information as stated by Nancy Neal Yeend & Cathy E. Rincon. "*Unlike trials, most ADR processes are confidential. In a mediation situation, any evidence Product for the mediation mav not be used in subsequent proceeding involving the same parties, except for evidence that would be discoverable and admissible at trial regadless of the mediation proceeding. This is of great benefit for those intellectual property cases involving trade secrets such as*

business or technical information. or for coraorations wishing to avoid negative publicity".

WIPO has its own provisions on arbitration and mediation known as WIPO Mediation Rules and WIPO Arbitration Rules to resolve IPR disputes out of court. These provisions are one of the efforts to efficiently resolve the intellectual property dispute. Dispute resolution through ADR is effectively practiced by the American Intellectual Property Law Association (AIPLA) that provides ADR services to its members to resolve cases of intellectual property rights.

6. Conclusion

After the authors explain the discussion of the Principles of IPR and Trade Secret, here the author will conclude as follows: The Principles of Intellectual Property can be described as a right to property arising or born out of human intellectual ability. Intellectual Property Rights can be categorized as a right to wealth, considering intellectual property in the form of knowledge, art, literature, technology, in which to realize it requires the sacrifice of energy, time, cost and mind. The existence of such sacrifices makes intellectual work valuable. Protection in the principles of intellectual property rights, more dominant in the protection of individuals, but to balance the interests of individuals with the interests of society, the principles of intellectual property based on the principle of natural justice, the economic argument, the social argument.

The Law on Trade Secrets is established in order to promote industries capable of competing within the scope of national and international trade, where there is a need to guarantee the protection of Trade Secrets, especially from fraudulent competition. The existence of the Trade Secret Act is also important to ensure the effective protection of ownership, control and secret use as a consequence of Indonesia's participation in the Trade Intellect of Intellectual Property Rights (HAKI).

Trade secrets are part of the legal system of intellectual property rights and property in Indonesia. In this Trade Secrets Act that is protected is the idea of ideas, ideas of a work of creation, and ideas of engineering that have not been manifested in real. In the event of a dispute in the trade secret matter, the effective settlement pattern should be through an arbitration institution. Arbitration is usually in final and final (binding) decisions. In principle, trade secrets are all unknown information in the framework of trading activities, highly strategic information of this nature has potential and actually contains high economic value because it can be used to compete with the competitor

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