



Legal protection of intellectual property rights in the field of trade secrets in Indonesia

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Abstract

It has a characteristic of non disclosure from information, which is one primary factor to differentiate it from the other kinds of intellectual property rights. This characteristic of trade secrets (non disclosure) is not limited in certain period of time as long as the confidentiality itself is still attached to the trade secrets.

The objects protected by trade secrets may consist of formulas and methods of processing chemicals and food, methods in conducting business, information on consumer demands, number and amount of subscription, design, data, information on invoice, design formulas, analysis on marketing plans, computer software, and access codes to marketing complete with business plan.

Trade secrets have high economic values, so that it can be transferred to another party through several ways, in which one of them is license contract that must be made in a written form. The protection to the trade secrets' owner is indication by the obligation to register for the license contract in Direktorat General of Intellectual Property Rights, Department of Law and Human Rights.

Legal protection of trade secrets will promote new invention in which even though it is treated as a secret, it will still get the protection whether in the ownership, the authorization, or even the utilization by the inventor.

Keywords: trade secrets, non-disclosure, legal protection, license contract

Introduction

Act No.7 of 1997 on the Ratification of Agreement Establishing the World Trade Organization causes Indonesia bound to regulate Intellectual Property Rights related to international trade. That specific regulation on Intellectual Property Right, specifically on the legal protection to trade secrets, is included in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

Trade secrets are one kind of intellectual property rights which is quite different compared to the other kinds of intellectual property rights. It has a characteristic of non disclosure information, which is one primary factor to differentiate it from the other kinds of intellectual property rights. Non disclosure in trade secrets is a primary factor. Secret factor as the primary factor is something that is hidden on purpose so that it will not be known by someone else. Information that has been announced or accidentally open for public is no longer a trade secret.

The characteristic of trade secrets, non disclosure, is not limited in certain period of time as long as the confidentiality itself is still attached to the trade secrets. A disclosure of trade secrets will harm the owner of the trade secrets, therefore one is allowed to issue 1 (one) legal claim based on unlawful act, that is called "break of confidence" or "break of trust", as the foundation of the claim, whether on a civilian or criminal basis. The lawsuit toward the party who disclose the secrets basically can be done by the owner of the trade secrets to anyone who disclose the trade secrets. The lawsuit can be based on Article 323 of Indonesian Criminal Code (*KUHPP*) or Article 1365 of Indonesian Civil Code (*KUHPerdata*).

According to Article 39 paragraph (2) on the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), it is stated that every individual as well as legal institution have the opportunity to avoid legal information under their

surveillance, so that it will not disclosed, obtained, or utilized by other parties without any consent of the owner through a method that is against "honest commercial practices".

Indonesia has regulated and protected trade secrets through Act No. 30 of 2000 on Trade Secrets (hereafter, law of trade secrets). The legal protection of trade secrets is a must, both in national and international scale. The needs of legal protection to Trade Secrets confirm one of the provisions in Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) that is appendix of the Agreement Establishing the World Trade Organization, as it has been ratified by Indonesia through Act No.7 of 1994.

World Trade Organization (WTO) obliges its member countries to protect Intellectual Property Rights in the field of trade secrets through its constitutional law. The protection of trade secrets is also considered as the protection on trade in counterfeit goods.

Scope of trade secrets

Article 1 point 1 Law of Trade Secrets states that:

Trade secrets are information that is unknown to the public specifically in the field of technology and/or business, it has economic values that are beneficial in business activities, and it is kept confidential by the owner of the Trade Secrets.

The characteristics of trade secrets are:

1. Information that is unknown to the public;
2. in the field of technology and/or business;
3. has economic values;
4. it is kept confidential by the owner of the trade secrets

The four elements of trade secrets as it is regulated in Article 1 No. (1) Law of Trade Secrets, there is no further explanation, yet it can be considered that the information is supposed to be in written form because it has to be kept confidential. There is no definition of information provided in the Act No. 30 of

2000. Though according to the English dictionary, information is data or explanation³ regarding any particular thing. Information in trade secrets must be in a written form. While the definition of oral information in practices is difficult to be accounted for.⁴ By scrutinizing the confidentiality that is obliged and imposed to the owner of the trade secrets, it surely can be concluded that the one considered and treated as information that has to be kept confidential is the written information or at least one that can be changed into the written form.

The definition of secret is something that is intentionally hidden so that it is unknown to others. Economic values in trade secrets mean that those trade secrets can be measured with price/money and beneficial in business activities. The rights of the trade secrets owner bind as it is mentioned in Article 1 No. 2 the Law of Trade Secrets, which is:

Trade secrets rights are the rights of trade secrets that arise based on this law:

The confidentiality attached in trade secrets is mentioned in Article 2 Law of Trade Secrets, stating that:

The scope of Trade Secrets protection includes production methods, processing methods, selling methods, or other information in the field of technology and/or business that have economic values and is unknown to the public.

Confidential information, confirmed by Article 3 paragraph (2) Law of Trade Secrets, that is:

Information is considered as confidential if it is only known by certain party or unknown to the public.

The definition of information is only known by certain party, there is no further explanation, yet the information can be transferred to another party, whether due to a written agreement, grants, wills, inheritance or other causes that is legitimized by the constitutional law (check on Article 5 paragraph (1) the Law of Trade Secrets). The transfer must be supported by documents about rights transfer, registered in the Directorate General, Trade Secrets Right. Transfer that is not registered in Directorate General has no legal effect to the third party, and also announced in Official Trade Secrets News.

The primary factor in the scope of trade secrets is information about methods, economic values, and unknown to the public. What becomes the object protected by trade secrets provided by this protection can include the formulas and methods of processing chemicals and food, methods in implementing business, information about consumer demands, number and amount of subscription, design, data, information on invoice, design formulas, analysis on marketing plans, computer software, and access codes to marketing complete with business plan.

The scope of trade secrets includes information that is unknown to the public, specifically in the field of technology and/or business, it means confidential, not to be widely revealed and to be a part of the intellectual property of the owner of the trade secrets

Violations towards trade secrets is regulated in Article 11 and 12 Law of Trade Secrets, Article 11 confirmed that:

1. The holder of the Trade Secrets Rights or the licensee can sue anyone who intentionally, and without any right, conduct acts as it is intended in Article 4, that are:
 - a. Claim of compensation; and/or
 - b. Termination of all acts as it is intended in Article 4.
2. Lawsuit as it is intended in paragraph (1), submitted to District Court.

Article 12 stated:

Beside the settlement of the lawsuit as it is intended in Article 11, the parties can resolve the dispute through arbitration or alternative dispute resolution.

The Criteria of Violation to trade secrets as it is regulated in Article 13 Law of Trade Secrets are a person intentionally discloses the trade secrets, denies the agreement or denies the written obligation, or not written, to keep the trade secrets. Article 14 Law of Trade Secrets added that a person is considered violating the trade secrets of another party if he obtains or dominates the trade secrets in a way that is against the prevailing constitutional law.

Article 15 Law of Trade Secrets stated:

The acts as it is intended in Article 13 are not considered as trade secrets violation, if:

1. The disclosure of trade secrets or the use of trade secrets is based on the interests of security defense, health, or public safety;
2. The act of reverse engineering on products produced the utilization of others' trade secrets conducted solely for the interest of further development of the product itself.

Sanksi terhadap pelanggaran rahasia dagang adalah Pasal 17 yang menegaskan bahwa:

The sanction for the trade secrets violators is the Article 17 that expressly stated:

1. Whoever intentionally and with no rights, uses other parties' Trade Secrets or conducting acts as it is intended in Article 13 or Article 14, will be sentenced to imprisonment for the longest 2 (two) years and/or fines maximum Rp.300,000,000.00 (three hundred millions Rupiah).
2. Criminal act as it is intended in paragraph (1) is a complaint offence.

The fines criteria of Rp.300,000,000.00 (three hundred millions Rupiah) can be a note for filing a lawsuit, by measuring the price fluctuation and Rupiah's exchange rate and also the inflation happens in Indonesia.

Act No. 7 of 1994 on the Ratification of Agreement Establishing the World Trade Organization

Agreement Establishing the World Trade Organization is law as a result of ratification of Marakesh Declaration.

The considerations of the Act No.7 of 1994 on point c, d, and e confirmed:

- a)Indonesia always enforces primary principles that are contained in General Agreement on Tariffs and Trade/GATT 1947, and also the follow-up approval that had been resulted before the Uruguay Round negotiations.
- b) That from a series of Uruguay Round negotiations that had been started since 1986, it had been resulted Agreement Establishing the World Trade Organization that then will administrate, supervise, and provide certainty to the implementation of all agreement General Agreement on Tariffs and Trade/GATT 1947 complete with the result of Uruguay Round negotiations.
- c) That during the ministry-level meeting of the participants of Uruguay Round in April 15th 1994 in Marrakesh, Marocco, Indonesian Government had also signed the General Agreement on Tariffs and Trade/GATT 1947 along with all agreements that were attached as Appendix 1, Appendix 2, and Appendix 3 as a part of the agreement.

One of the decisions of the Agreement Establishing the World Trade Organization is The Trade Related Aspect of Intellectual

Property Rights (TRIPs). Article 1 of TRIPs states 8 types of Intellectual Property Rights, those are:

1. *Copy Rights and related Rights* ;
2. *Trademarks*;
3. *Geographical Indications*;
4. *Industrial Designs*
5. *Patens*;
6. *Lay-out Design (topographies) of Integrated Circuits*
7. *Protection of Undisclosed Information*);
8. *Control of Anti-Competitive Practices in Contractual Licenses*.

Article 39 of TRIPs confirmed that:

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 and data submitted to governments or governmental agencies in accordance paragraph 3.
2. Natural and legal person shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in manner contrary to honest commercial practices so long as such information:
 - a) Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - b) Has commercial values because it is secret, and
 - c) Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information to keep it secret.
3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use.

In addition, members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, and includes the acquisition of undisclosed information by third parties who knew, or were involved in the acquisition.

In the principles, the protection that is regulated in the Article 39 of TRIPs is:

1. Protection to information that is kept confidential along with data that are submitted to the Government or Government agencies.
2. A person or legal institution can make a preventive act so that their information will not be disclosed, obtained, or utilized by other parties without their consent which is against the honest commercial practices, as long as the information:
 - a. Is confidential, meaning that the information as an object or in form of configuration and design with proper components;
 - b. Have commercial values due to its confidentiality;
 - c. Provide reasons to be kept confidential.

3. The members who submitted confidential test or data, that initially involved numbers of business as the requirement to grant an agreement on the marketing of chemical products or newly chemical-based agriculture products, protect the data from the underhanded commercial uses. The members will protect the data from the underhanded commercial uses. Besides, they will also protect its disclosure, except to protect the interests of the public or to guarantee that the data is protected from fraudulent commercial or business competitors.
4. The violation that might arise is the violation of contract, violation of trust, and any persuasion to conduct the violation.

This WTO agreement became the foundation of the reformation of legislation regarding of Intellectual Property Rights which aims to protect the owner of the Intellectual Property Rights, both nationally and internationally.

Trade secrets protection through license agreements.

Article 4 Law of Trade Secrets states that:

The Trade Secrets owner has the rights to:

- a) utilize his own Trade Secrets;
- b) Grant License to or forbid other parties to utilize or disclose the Trade Secrets to the third party for commercial interests.

Article 5 Law of Trade Secrets states:

1. Trade Secrets Rights can transfer or be transferred through:
 - a) inheritance;
 - b) grants;
 - c) wills;
 - d) written agreement; or
 - e) Other causes that is legitimized by the Constitutional law.
2. The transfer of Trade Secrets Rights as it is intended in the paragraph (1) supported by the documents about the transfer of rights.

Trade secrets rights, other than accessible for private uses, it can also be transferred to other persons. This legal circumstance can take place in the form of grants, wills, or inheritance. Especially for the transfer of rights on the basis of agreements, this provision stipulates the necessity of that transfer to be conducted with a deed. It is principal considering the width and complexity of the covered aspects. The transfer of rights on the basis of agreements is by license agreements.

Article 1 point 5 Law of Trade Secrets confirmed that:

License is a permit granted by the Trade Secrets Rights holder to another party through an agreement based on grant of rights (not transfer of rights) to utilize the economic benefits from a Trade Secret that is under protection for a certain period of time and certain requirements.

What is meant by must be registered in Directorate General is just about the administrative data from the documents of the transfer of rights and do not cover the substance of Trade Secrets being held on agreements.

The transfer of trade secrets rights by license agreements, which in the form of written agreements, must be accompanied with documents of transfer of rights. That transfer of rights must be registered in Directorate General of Intellectual Property Rights of Indonesia by paying the fees. The transfer of Trade Secrets Rights that is not registered in Directorate General has no legal effect to the third party, and also announced in Official Trade Secrets News.

The registration may be rejected by the Directorate General if the contents of the License agreements potentially cause an effect that will harm the economic interests of Indonesia. For instances, the agreement regulates obligation that can be considered as unfair to the recipient of the License such as impeding the process of technology transfer to Indonesia (check on Article 9 paragraph (2) Law of Trade Secrets).

The commercial characteristic in trade secrets is attached in the license rights, because license is an intellectual property rights, and the holder of trade secrets rights can grant License to or forbid other parties to utilize or disclose the Trade Secrets to the third party for commercial interests.

Differ from the agreements that become the basis of transfer of Trade Secrets, License only grants limited rights and also within limited period of time. Therefore, License is only granted for the usage or utilization of Trade Secrets during a certain period of time. Considering the characteristic of Trade Secrets, that is non-disclosure to other parties, the implementation of License is accomplished by sending or directly assisting experts that can protect the Trade Secrets. (Check Article 6 of the Law of Trade Secrets)

Trade secrets protection in the field of patent

The law of patent has reformed or revised multiple times, adjusting to the development in the field of technology. There were substances in the former law that are no longer appropriate with the legal development, nationally and internationally, and have not yet regulated according to the standard of Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), there it is necessary to make a reform. The last law is the Act No.13 of 2016 on Patent.

The revision approach of Law of Patent:

1. Optimization of the state's presence related to the best governmental service specifically in intellectual property sector.
2. Partisanship to Indonesia's interests without violating any international principle.
3. Actualization of economic independency by developing strategic sectors of domestic economy, encouraging national Invention in the field of technology in order to enhance technological reinforcement.
4. Establishing national Patent foundation through systemic approach of pragmatic legal realism.

The urgencies on the revision of the Law of Patent are as follow:

- a) Adjustment by automation administrative system of intellectual property because related to the mechanism of Patent registration that can be submitted online.
- b) Improvement on the conditions of Patent utilization by the Government.
- c) Exception of criminal and civil charges for parallel import and bolar provision.
- d) Invention in the form of second use and second medical use of Patent which protection period has been expired (public domain) is not permitted.
- e) Rewards for researchers of State Civil Apparatus as the inventors in official relationship from the outcome of commercialization of the Patent.
- f) Improvement on the conditions related to the new inventions and inventive acts for the publication in educational or research institutions.

- g) Patent can be taken as fiduciary guarantee object.
- h) Expansion of the authorization of Patent Appeal Commission to check on the request for correction on the description, claims, or image after request is granted a patent and eradication of Patent that was granted. Patent can be transferred through donative transfer.
- i) Conditions on appointment and dismissal of experts by the Ministry as the Inspector.
- j) Provision of mechanism of grace period related to the payment of the Patent's annual expenses.
- k) Regulation on *force majeure* in the administrative inspection and substantive requests.
- l) Regulation of export and import related to compulsory License.
- m) Mediation mechanism before the implementation of criminal charges.
- n) Opening up opportunities as many as possible to the national industry to utilize Patent which protection period has expired optimally and released from legal charge and obligation to pay for the royalty.
- o) Granting of compulsory License on the basis of requests from a developing country or least developed country that needs pharmaceutical products that was patented in Indonesia for endemic disease medical treatments, and those pharmaceutical products are possibly produced in Indonesia to be exported to that country. Also the opposite way, the granting of compulsory License to import the procurement of pharmaceutical products that were patented in Indonesia but have not yet possible to be produced in Indonesia for endemic diseases medical treatment.

The definition of Patent according to Article 1 point 1 Act No.13 of 2016 on Patent (Law of Patent) is:

Patent is the exclusive rights that is granted by the state to the inventors as the result of their inventions in the field of technology for a certain period of time individually implementing the invention or signing an agreement with other parties to implement it.

The definition of invention as it is regulated in Article 1 point 2 Law of Patent is:

Invention is inventor's idea that is poured down in an activity of problem solving specifically in the field of technology taking form of a product or process, or improvements and developments of a product or process.

Article 4 of the Law of Patent confirmed that Invention does not include:

1. aesthetic creation;
2. scheme;
3. rules and methods in conducting activities:
 - a. that include mental activities;
 - b. games; and
 - c. business/
4. rules and methods that consist only computer programs;
5. presentations on a certain information; and
6. discovery in forms of:
 - a. the utilization of new products that are already invented and/or well-known; and/or
 - b. new form of compounds that are already invented yet do not produce any significant improvement and do not have difference on the chemical structure related to the one that is already known from the compound itself.

Patent rights contain secrets because its confidentiality is protected by being not disclosed or revealed to the public of the

invention that belongs to the Patent rights holder. The holder of the Patent rights can transfer the Patent rights to another party by entering into a license agreements. Article 1 point 11 Law of Patent confirmed that:

License is a permitt that is granted by the Patent holder, whether exclusively or non-exclusively to the recipient of the license according to the written agreement to utilize the patent that is still under the protection for certain period of time and certain requirements.

One way of protection of patent rights is through license agreements, because the patent rights holder can also get his own patent rights while still be able to conduct transfer, authorization, and technological development.

Article 76 Law of Patent confirmed that

1. Patent holder has the rights to grant License to another party based on the License agreements whether exclusively or non-exclusively to implement acts as it is intended in Article 19.
2. License agreements as it is intended in the paragraph (1) can cover all or some acts as it is intended in Article 19.
3. License agreements as intended in the paragraph (2) are applied for the period of time in which the License is granted and is applied in the regions of the Republic of Indonesia.

Article 79 stated:

1. License agreements must be registered and published by the Ministry that is charged with fees.
2. If the License agreements are not registered and not published as intended in the paragraph (1), the License agreements do not have legal effects to the third party.
3. Ministry rejects the request of License agreements registration which contains conditions as intended in Article 78.

Registration and publication by the ministry is one form of protection to trade secrets in patent rights, because if it is not registered and published, then the patent rights do not bind the third party.

Trade secrets protection

There are four basic elements from the considerations of the Law of Trade Secrets, those are (1) to promote the industry that is capable to compete in the scale of both national and international, (2) to enhance the creativity and innovation of the society, (3) protection toward the trade secrets owner, and (4) trade secrets have international characteristic.

The protection to trade secrets is not only involve the owner's interests but also to promote the industry and enhance the innovation and creativity of its society, the thing that becomes the secrets for the owner of the intellectual property have high economic values. One of the protection of trade secrets is through license contract and the obligation to register the license contract to Directorate General Intellectual Property Rights Department of Law and Human Rights (Article 8 paragraph (1) Law of Trade Secrets).

According to Arthur R. Miller & Michael H. Davis, there are two basic theories that is related to the legal protection of inventions:

1. The bargaining of Contract Theory, this theory is related to the argument that a person is given a present or reward of the creation of invention. The present or award is in form of the granting of legal protection by the State in a certain period of time;

2. The natural rights theory, invention is the fruit of mental struggle of a person that therefore it belongs to him. He has the liberty to utilize his rights, thus there is no obligation to disclosure his invention. Yet in order to other people to know about the existance of his invention, so that the invention can be continued with other new inventions, the State grants rights special for the inventor by granting legal protection in a certain period of time.

According to Ahmad M. Sanusi, as quoted from Muhammad Djumhana proposing a new theory in the field of trade secrets that are theory of interests and agreement. The theory of interests consists of the understanding that protection of trade secrets is a part of the award for the people's rights on the basis of their struggle related to creativity in inventing new things that can be used to improve their efforts in actualizing human welfare and public interests in a wider sense and also to get off of the possibility of theft by other parties.

Through this basic theory, the owner of trade secrets will not be freed from the obligation to give contribution to the public interests of his trade secrets. If it is necessary, for instance it is related to the science and mathematics, health and public safety, or defense and security of the State, with a condition that the contribution must be sincerely pay attention to the economic rights of the owner and protecting the object's confidentiality.

According to the theory of agreement, trade secrets are obligation objects in which the obligation itself brings forth rights and obligations between each party, whether it exists because of the agreement or the law

Those two theories grant protection to the owner of the trade secrets rights regarding the interests of the rights protection or rights and obligations that is attached to the trade secrets, that is, whoever earned rights from trade secrets has obligations attached to him.

The foundation of theory of interests, firstly, is the award to the inventor of trade secrets which point is that trade secrets as material rigts have exclusive characteristic protected by the State. This characteristic is higher compared to other materials because trade secrets as Intellectual Property Rights are exception to the material object considered into the category of prohibition of monopolistic practices and unfair business competition, even though it is necessary to have some further limitation on the basis of public interests.

As the series then Article 3 stated:

1. Trade secrets achieved its protection if the information is confidential, have economic values, and being kept confidential through the proper methods as it is supposed to be.
2. Information is considered as confidential if the information is only known to certain party and unknown by the public.
3. Information is considered as having economic values if the confidentiality of the information can be used to implementing commercial activities or business, or can improve the advantages economically.
4. Information is considered being kept confidential if the owner or the authorized parties have done the proper and appropriate methods.

Looking closer to Article 3 paragraph (2), then it would be more on expanding the limitation given in the definition of trade secrets. The formulation is indeed not initiated with the intention to provide an understanding of "unknown to the public", but to give formulation "considered as confidential,

with explanation that what is considered as confidential is the information that are only known to certain party or unknown to the public". Therefore this formulation do not also prove specific understanding. An implicit interpretation cannot be provided solely based on the meaning that the information considered as confidential is only used on limits to implement the business activities, and specific to those business activities. If we take the interpretation in *a'contrario* way by looking at the conditions of Patent, which obliges the publication of information so that it becomes public information, then the criteria of public information that is formulated in the Law of Patent could be applied to formulate the definition of information that is unknown to the public. Even though making understanding out of Patent, the confidentiality of Trade Secrets, by any ways, cannot be terminated, and the period of time is not limited as with the Patent, which is open because it needs to be entirely disclosed to the public and temporer, if the Patent inventor wants to be granted with legal protection on the secrets that are disclosed.

About the understanding in the field of technology or business, the Law of Trade Secrets does not provide any explanation either, and this is another limitation which is only in the field of technology and business. The formulation of technology and business is not provided with the formulation either, and Article 2 only prove addition on the production methods, processing methods, and selling methods. From this understanding, then, technology in this law is the production and processing methods. It is a quite difficult to be understood also due to the fact that if this methods are going to be patented, then the protection could be expanded even wider.

About other definition, that it has economic values, then it can be interpreted that information in Trade Secrets is commercial, therefore if it is implemented in a (masal), it can be calculated as giving more contribution and prosperity instead of only being utilized within limitations.

The trade secrets require protection as intellectual property rights and as well in line with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) that is appendix to Agreement Establishing the World Trade Organization (WTO) that had been ratified by Indonesia through Act No.7 of 1994.

The legal protection of trade secrets will promote new invention in which even though it is treated as a secret, it will still get the protection whether in the ownership, the authorization, or even the utilization by the inventor.

In the secrets there is characteristic of non-disclosure that is one primary factor to differentiate it from the other kinds of intellectual property rights. This non-disclosure is the main key of the protection. The consequence of non-disclose is that there is no limit in the period of time, as long as the confidentiality is still attached to the Trade Secrets and during that moment the protection of trade secrets is granted.

Conclusion

Trade secrets are one kind of intellectual property rights which is quite different compared to the other kinds of intellectual property rights. It has a characteristic of non-disclosure from information, which is one primary factor to differentiate it from the other kinds of intellectual property rights. This non-disclosure characteristic is the main key in the trade secrets. Secret factor as the primary factor is something that is hidden on purpose so that it will not be known by someone else.

Information that has been announced or accidentally opens for public is no longer a trade secret.

The purposes of legal protection of trade secrets are to promote the industry that is capable to compete in the scale of both national and international, to enhance the creativity and innovation of the society, and as a protection toward the trade secrets owner.

The trade secrets require protection as intellectual property rights and as well in line with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) that is appendix to Agreement Establishing the World Trade Organization (WTO) that had been ratified by Indonesia through Act No.7 of 1994.

References

1. Etty Susilowati, Kontrak Alih Teknologi pada Industri Manufaktur, Genta Press, Yogyakarta, 2007.
2. Gunawan Widjaja, Seri Hukum Bisnis, Lisensi, Rajawali Pers, Jakarta, 2001.
3. Muhamad Djumhana, Doktrin dan teori Perlindungan Hak Kekayaan Intelektual, Citra Aditya Bakti, Bandung, 2006.
4. Peter Salim, the Contemporary English – Indonesia Dictionary, Modern English Press, Jakarta.
5. Sigit Irianto, Hukum Perdata, Badan Penerbit Fakultas Hukum UNTAG Semarang, 2013.
6. Sudargo Gautama dan Rizawanto Winata, Komentar Atas Undang-Undang Rahasia Dagang Tahun 2000, Citra Aditya Bakti, Bandung 2003.
7. Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, Edisi Keempat, Gramedia Pustaka Utama, Jakarta, 2008.
8. Indonesian Constitution Act No. 7 of 1994 regarding the Ratification of Agreement Establishing the World Trade Organization
9. Indonesian Constitution Act No. 30 of 2000 regarding Trade Secrets
10. Indonesian Constitution Act No. 13 of 2016 regarding Patent