

THE TRADE SECRET VIOLATION: ORIENTATION AND CONSTRUCTION

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Abstract

Problems related to trade secrets are trade secret violations which are only formulated as violations of positive law provisions. In the era of modern business development, there is a potential for violations of trade secrets that have not been accommodated by positive law. This study aims to analyze the orientation of the aspect of propriety violation as a form of trade secret violation and construct the propriety violation aspect as a form of trade secret violation. The urgency of this research is to construct a violation of decency as a form of violation of trade secrets in order to protect business actors holding trade secret rights. This research is a normative legal research that uses a concept, case, and statutory approach. The results of the study confirm that the orientation of a violation of decency as a form of trade secret violation can be carried out through extensive interpretation related to expanding the meaning of "laws and regulations" which has a broader meaning, namely "in accordance with legal provisions". This is intended so that there is optimal legal protection for ownership guarantees, especially ownership of trade secrets. There are two orientations of legal construction, namely short term and long term. The orientation of short-term legal construction is carried out by expanding the meaning of violating trade secrets not only contrary to positive law, but also including violations of decency that develop in society. The long-term orientation is that it is necessary to revise the provisions of trade secret law in order to keep abreast of developments in the growing business world.

Keywords: Business; Propriety; Trade Secret.

Abstrak

Problematika terkait rahasia dagang adalah pelanggaran rahasia dagang yang hanya dirumuskan pada pelanggaran atas ketentuan hukum positif. Di era perkembangan bisnis secara modern terdapat potensi pelanggaran terhadap rahasia dagang yang belum diakomodasi oleh hukum positif. Penelitian ini bertujuan untuk menganalisis orientasi aspek pelanggaran terhadap kepatutan sebagai bentuk pelanggaran atas rahasia dagang dan mengkonstruksikan aspek pelanggaran terhadap kepatutan sebagai bentuk pelanggaran atas rahasia dagang. Urgensi penelitian ini yaitu untuk mengkonstruksikan pelanggaran terhadap kepatutan sebagai bentuk pelanggaran atas rahasia dagang supaya dapat melindungi pelaku bisnis pemegang hak rahasia dagang. Penelitian ini merupakan penelitian hukum normatif yang menggunakan pendekatan konsep, kasus, dan perundang-undangan. Hasil penelitian menegaskan bahwa orientasi pelanggaran terhadap kepatutan sebagai bentuk pelanggaran rahasia dagang dapat dilakukan melalui interpretasi ekstensif terkait dengan memperluas makna "peraturan perundang-undangan" yang menjadi bermakna lebih luas yaitu "sesuai dengan ketentuan hukum". Hal ini bertujuan supaya terdapat perlindungan hukum yang optimal terhadap jaminan kepemilikan, khususnya kepemilikan atas rahasia dagang. Terdapat dua orientasi konstruksi hukum yaitu jangka pendek dan jangka panjang. Orientasi konstruksi hukum jangka pendek yaitu dilakukan dengan memperluas makna pelanggaran terhadap rahasia dagang tidak hanya bertentangan dengan hukum positif, tetapi termasuk juga pelanggaran terhadap kepatutan yang berkembang di masyarakat. Orientasi jangka panjangnya yaitu perlu dilakukan revisi terhadap ketentuan hukum rahasia dagang supaya dapat mengikuti perkembangan dunia bisnis yang semakin berkembang.

Kata kunci: Bisnis; Kepatutan; Rahasia Dagang.

Introduction

Trade secrets are part of intellectual property that is guaranteed legal protection. Trade secrets are substantively various information, methods, and various rights that are kept secret by business entities related to something that is confidential because it is related to the existence of their business (Ramli et al., 2021). Provisions regarding trade secrets in Indonesia are regulated in Law No. 30 of 2000 concerning Trade Secrets (UU RD). The RD Law stipulates that the provision of legal protection for trade secrets is intended to maintain the economic aspects inherent in a company. The economic aspects outlined in the secret of the dagang need to be protected to be able to maintain the existence of a business (Bintarto, 2022). Trade secrets as part of intellectual property rights have an exclusive nature which means that they can only be known and used by trade secret rights holders (Cavalieri, 2022). Other parties who want to know or use a trade secret must license with trade secret rights holders as stipulated in Article 6 of the RD Law. Article 14 of the RD Law explains that any person or party is considered to have violated a trade secret if it obtains or controls a right to a trade secret through ways that are contrary to laws and regulations.

The standard that a violation of the right to a trade secret is through means contrary to "laws and regulations" is actually a narrow formulation and only confirms that a violation of the right to a trade secret occurs when there is an act that is contrary to the laws and regulations. Trade secrets as intellectual property can certainly be categorized as property (*property rights*) (Kurniawan, 2022a). This is because trade is a product of human intellect regarding a certain method, formula, or composition related to a trade product so that trade secrets can be categorisively as the result of invention (invention or human intellectual creativity). As a property right, trade secrets also have value and economic aspects where these economic aspects can be utilized in accordance with agreements with rights holders (Maskus, 2022). A narrow formulation related to infringement of the right to trade secrets occurs when there is an act that is contrary to laws and regulations, asserting that a violation of the right to trade secrets only occurs if it conflicts with positive legal provisions. In fact, in the development of the business world and trading business there are various phenomena that have not been specifically regulated by positive law (Kock, 2021). One of them is if the violation of the right to trade secrets occurs because of an orientation that is contrary to propriety and has not received special regulations in laws and regulations (Kurniawan, 2022b). This study aims to analyze and construct aspects of propriety as a form of trade secret infringement.

One example of a violation of trade secrets related to decency was committed by Hi Pin, who was a former employee of the CV Bintang Harapan coffee factory. Hi Pin then moved to another company, namely CV Tiga Berlian and was given the freedom to develop a product. Hi Pin, because when he became an employee of CV Bintang Harapan he understood the ins and outs of making it and then applied the standards that existed at CV Tiga Berlian in his new company, namely CV Bintang Harapan. Hi Pin does not

understand the concept of trade secrets and only bases that the standards carried out by CV Bintang Harapan are good standards and he has the orientation of applying them to CV Tiga Berlian. Although in general Hi Pin is not considered to have deliberately taken trade secrets of other products, Hi Pin should have properly notified CV Tiga Berlian that the standards he was applying were similar or the same as those carried out by CV Bintang Harapan with the hope that CV Tiga Berlian would ask for permission to apply. CV Bintang Harapan in his company. From this phenomenon, the properness aspect deserves to be one of the aspects that needs to be considered in a trade secret violation.

Research on intellectual property rights in the form of trade secrets has actually been carried out by several previous researchers such as: Cahyaningtyas, et al. (2021) who discussed the practice of trade secret protection in one company (Azmi et al., 2021). The novelty of the research is that there are various efforts that can be taken by a company in protecting trade secrets both litigation and non-litigation. Further research was conducted by Benia (2022) which discusses the protection of trade secrets of franchise companies (Benia, 2022). The novelty of the study is that the RD Law only regulates in principle related to the protection of trade secrets of franchise companies, but specifically it needs to get comprehensive regulation in the RD Law. Research discussing trade secret protection for MSMEs conducted by Sudirman and Disemadi (2023) in which the novelty of the study confirms the need for regulations regarding trade secret protection for MSMEs, this is because the RD Law is considered irrelevant to the timeso (Sudirman & Disemadi, 2023). Referring to the three previous studies above, it can be concluded that research that discusses aspects of propriety as a form of trade secret infringement has not been specifically researched, so this research is original research.

Research Problems

This study seeks to answer two research problems, namely: (i) how the orientation of violations of propriety as a form of trade secret infringement? and (ii) what the legal construction of violations of propriety as a form of trade secret infringement?

Research Methods

Research that discusses aspects of propriety as a form of violation of trade secrets is a normative legal research. As a normative legal research, the main analysis of this research is based on authoritative legal sources in the form of laws and court decisions (Negara, 2023). The primary legal materials in this study are: the 1945 NRI Constitution, the KUHPer, the RD Law, and the DKI Jakarta High Court Decision Number 423/PDT/2020/PT DKI (PT DKI Jakarta RD Verdict 2020). Secondary legal materials are journal articles, books, and research results that discuss trade secrets. Non-legal material is a dictionary of languages. The approach used is the concept, case, and legislation approach. The concept approach in this study focuses on the concept of property rights and intellectual property. The case approach in this study seeks to analyze the case in the

PT DKI Jakarta RD Verdict 2020 decision and the legislative approach focuses on analyzing the RD Law and the KUHPer.

Discussion

The Orientation on Propriety Crime as a Form of Trade Secret Violation

Trade secrets as part of intellectual property certainly require legal protection to maintain their existence. Efforts to provide legal protection for the community are actually mandated by the constitution as stipulated in Article 28D paragraph (1) of the 1945 NRI Constitution which affirms that the state has the authority to guarantee and fulfill the protection and guarantee of legal certainty for every citizen. In this context, protection of intellectual property rights is a constitutional right so that the state through its various legal policies is obliged to implement protection of intellectual property rights, one of which is related to trade business (Hidayanti, 2021)(Darwance et al., 2020).

Legal protection of trade secrets is an important aspect because trade secrets develop as part of business development. In carrying out its business activities, every company or business entity certainly has aspects that are kept confidential as part of efforts to maintain the existence of every business carried out (Ariani, 2021). The importance of the position of trade secrets in business processes makes trade secrets construct as the "heart" of business activities (Maulidda Hafhari, 2021). This is because trade secrets that can then be known by other unauthorized parties can have an impact on the existence of a business company.

The term trade secret itself linguistically refers to the Indonesian Dictionary can be based on the words "secret" and "trade". Secret according to the Indonesian Dictionary means something that is not allowed to be known by others and even if anyone knows, it is also limited to certain requirements (Pusat Bahasa Departemen Pendidikan Nasional, 2008). While trade according to the Indonesian Dictionary means any activity carried out by producing or adding to the selling value of a good or service aimed at obtaining profit (Pusat Bahasa Departemen Pendidikan Nasional, 2008). From the understanding of trade secrets from the linguistic aspects above, it can be concluded that trade secrets are everything that is not allowed to be known by others related to the smooth running of any activity to produce or add to the selling value of a good or service intended to make a profit (*Intellectual Property Theft: A Threat To Working People and the Economy*, 2021). The understanding of trade secrets in accordance with the above linguistic aspects is actually relevant to the provisions of Article 1 point 1 of the RD Law which confirms that trade secrets have four main aspects.

Four main aspects of the trade secret include: first, information that is kept secret or not allowed to be known by the public. As generally understood, trade secrets generally contain related to trade secrets or all information that is confidential and only allowed to be known to certain parties (Ariyanti, 2021). Confidential information related

to business processes is intended to maintain the existence of a business or business that has been run. Second, in the field of technology or business. Trade secret provisions in the RD Law are actually formulated broadly (extensive) which not only relates to business practices, but also includes technology (Fakunmoju et al., 2022)(Trequattrini et al., 2022). This can be understood because in the development of modern business, technology also has a profit oriented where various aspects of technology are oriented to get profits (Kurniawan et al., 2023).

Third, trade secrets have economic value. This aspect of economic value is the most important aspect so that the law is obliged to provide protection against trade secrets. Economic value in trade secrets is generally divided into two, namely material and immaterial value (Anita & Triasavira, 2021). The material value in a trade secret is a value that can be estimated or calculated against the price of a trade secret. In this context, trade secrets also need to be seen for commercial value, especially if the trade secrets are licensed to other parties to jointly exploit the trade secret. Immaterial value relates to prestige or non-calculable aspects related to the price of a trade secret (Siregar, 2021)(Al-Rawashdeh, 2023). This can be exemplified by the existence of trade secrets from a leading company or brand that has a prestige value so that the leakage of a trade secret from a leading company or brand will reduce the value of a company or leading brand.

Fourth, trade secrets are guarded exclusively and periodically by trade secret holders. This is so that confidential information contained in trade secrets is not easily "leaked" and exposed to other parties that can harm the company or business entity (Sudjana, 2021). From the four aspects of trade secrets above, it can be concluded that trade secrets are aspects of confidentiality in a trade or business act and technology related to the existence of a trade or business and technology act. Referring to the understanding related to trade secrets above, sometimes there are difficulties in distinguishing between trade secrets and intellectual property rights in the form of patents. This can be understood because in the RD Law it is affirmed that trade secrets also cover the fields of business and technology at once.

The main difference between trade secrets and intellectual property rights in the form of patents is related to novelty or novelty in inventions in the field of technology. In intellectual property rights in the form of patents, the novelty aspect is the main aspect that must be fulfilled in patent registration (Wesna, 2021). This is different from trade secrets that do not require a novelty, but there are enough certain methods that can support a business or technology can be categorized as a trade business (Taufiq & Disantara, 2023). In addition, another essential difference between trade secrets and intellectual property rights in the form of patents is related to the period of validity of exclusive rights, which for patents for 20 years (specifically for simple patents for 10 years) while for trade secrets have an unlimited period of time based on the ability of the owner or holder of the right to the trade secret to keep its trade secret secret (Winata & Purwanto, 2023).

Regarding the transfer of trade secret rights, it actually has no special difference from the transfer of other intellectual property rights. It can be seen that the transfer of trade secret rights can be carried out through various provisions allowed in laws and regulations such as: inheritance, grants, to agreements between the parties. Trade secrets as part of intellectual property rights certainly have consequences for other parties who seek to exploit or steal part or all of the information from trade secrets (Alwi, 2021). Parties who attempt to exploit or steal part or all of the information from trade secrets are considered to have violated the trade secret and are subject to sanctions as in the RD Law. The RD Law actually facilitates problems related to trade secrets in two domains, namely the civil realm and the criminal realm. The civil domain related to violations of trade secret rights occurs when there is a violation committed of an agreement relating to a trade secret. Meanwhile, in the criminal aspect, violations of trade secret rights are carried out if there is an attempt to steal information or use trade secret rights in violation of the law. Referring to the provisions of Article 17 paragraph (1) of the RD Law, the criminal sanctions given are in the form of a maximum imprisonment of two years and a maximum fine of 300 million rupiah.

The use of the right to trade secrets is prohibited, but the RD Law provides space for appropriate agreements, one can take advantage of the right to trade secrets. This can be done through the licensing agreement mechanism as affirmed in Article 8 and Article 9 of the RD Law. In general, license agreements are subject to the conditions of validity of the agreement as affirmed in Article 1320 of the Indonesian Civil Code (Muhammad & Ilyasa, 2022)(Raden Roro et al., 2019). Specific requirements regarding license agreements are emphasized in Article 9 paragraph (1) of the RD Law which specifically emphasizes that license agreements are prohibited from formulating two things, namely having an impact on state economic losses and having an impact on efforts to cause unfair business competition.

In the aspect of violation of the right to trade secrets, legal problems occur when there is a violation of propriety which then has implications for the dissemination of information on the right to trade secrets. This violation of propriety is unwritten because it is an act that is not directly regulated in the RD Law (Nurhayati, 2019)(Xavier Nugraha, John Eno Prasito Putra, 2020). This can be seen from the provisions of Article 14 of the RD Law which confirms that violations of the right to trade secrets can only be qualified if based on the provisions of laws and regulations. The formulation of Article 14 of the RD Law actually has implications for two aspects, namely: first, the provisions of Article 14 of the RD Law narrowly emphasize that violations of the right to trade secrets can only occur if they meet the qualifications as stipulated in positive law. The weakness of this provision is that it has not anticipated the potential for the development of violations of the right to trade secrets that have not been regulated in positive law (Durkin et al., 2021). The development of violations of the right to trade secrets that have not been regulated in this positive law can be a loophole in committing a violation of the right to trade secrets but cannot be sanctioned in accordance with legal provisions. Secondly, the provisions in Article 14 of the RD Law a *contrario* affirm that any matter that has not

been regulated in positive law, then cannot be considered a violation of the right to trade secrets. This creates legal problems because in the context of trade secret license agreements, for example, there are sometimes legal acts that are not specifically regulated but have the potential to cause violations of the right to trade secrets.

The right to trade secrets which have dimensions of ownership rights and economic benefits certainly requires certain legal remedies if there is a potential for misuse of trade secrets. Referring to the RD Law, there are actually two orientations that can be taken if there is a potential for misappropriation of trade secrets. The two legal remedies are civil and criminal legal remedies. In the civil aspect, abuse of trade secrets is generally based on agreements entered into by trade secret right holders and trade secret right users where the agreement has been violated. In this aspect, it can be categorized as a default. If the abuse related to trade secrets is carried out massively in the civil aspect and is not based on an agreement, it can be oriented that there has been an unlawful act as referred to in Article 1365 of the Civil Code. In addition to civil aspects, if there is abuse related to trade secrets that fulfill elements of fraud or other aspects in the field of criminal law, then criminal processes and procedures can be pursued through legal apparatus in the criminal justice system (Disantara et al., 2023). Of the two legal remedies above, the potential for abuse related to trade secrets must be seen and analyzed whether it is a violation of criminal or civil law first before determining the next legal steps.

Another problem contained in Article 14 of the RD Law is that in the construction of the regulation it does not actually adopt positive non-legal aspects that must also be considered by law because it has the potential to have implications for violations of the right to trade secrets. Positive non-legal aspects that must also be considered by law because they have the potential to have implications for violations of the right to trade secrets such as aspects of propriety which in treaty law can make an agreement null and void (Hernoko, 2014). This aspect of propriety is most likely to occur in licensing agreements regarding trade secret rights. In fact, on the other hand, violation of propriety can be one of the reasons that make the agreement null and void while on the other hand Article 14 of the RD Law only limits that violations of the right to trade secrets only occur if they violate positive legal provisions.

Referring to the problem as in Article 14 of the RD Law above, it is necessary to make extensive interpretation efforts related to the provisions of Article 14 of the RD Law which expands the meaning of "laws and regulations" to "in accordance with legal provisions". Extensive interpretation related to the provisions of Article 14 of the RD Law is needed to expand the meaning of "legislation" which narrowly means "positive law" to a broader meaning of "in accordance with legal provisions" (Fanani, 2021). This is necessary because only based on existing laws or positive laws or regulations, sometimes there is a legal act that escapes positive legal arrangements so that there is the potential for violations of rights to trade secrets that have not been regulated in laws and regulations. It also confirms that by conducting extensive interpretations related to the

provisions of Article 14 of the RD Law so that "legislation" which narrowly means "positive law" becomes broader meaning "in accordance with legal provisions", this can anticipate legal developments that have not been facilitated by positive law but have the potential to cause infringement of the right to trade secrets. This can happen, for example, that there is a violation of propriety which can be categorized as a violation of the right to trade secrets through extensive interpretation of the provisions of Article 14 of the RD Law.

Based on the results of the analysis above, the orientation of violations of propriety as a form of trade secret infringement actually needs to be anticipated because violations of propriety are by-context so that not all forms of violations of propriety are regulated by positive legal provisions. Attempts to classify propriety violations as trade secret infringement can be done through extensive interpretations related to expanding the meaning of "legislation" which narrowly means "positive law" to a broader meaning of "in accordance with legal provisions". This is necessary because only based on existing laws or positive laws or regulations, sometimes there is a legal act that escapes positive legal arrangements so that there is the potential for violations of rights to trade secrets that have not been regulated in laws and regulations.

The Legal Construction of Violation of Adequacy as a Form of Trade Secret Violation

The problematic provisions of Article 14 of the RD Law which only narrow the meaning related to violations of trade secrets also have implications for implementing practices related to trade secret intellectual property rights. This is because with the narrow formulation of the provisions of Article 14 of the RD Law which interprets violations of trade secrets only in the form of positive legal violations, this has the potential to cause legal gaps when there are legal acts that have not been regulated in positive law but then these legal acts are actually a form of trade secret infringement (Maurid Rizki, 2021). One of the cases that discusses trade secrets and is interesting to analyze is related to cases as in the PT DKI Jakarta RD 2020 Decision.

The decision of PT DKI Jakarta RD 2020 is actually a case between Rista Bintara versus PT Mardohar Catur Tunggal Gaya and PT 3DI Garmentech. The case is actually related to the existence of a company information confidentiality agreement carried out by the company (in this case PT Mardohar Catur Tunggal Gaya and PT 3DI Garmentech) with its employees, namely Rista Bintara. In this case, Rista Bintara asserted that the company information confidentiality agreement made was actually invalid and contrary to the provisions of Article 1320 of the Indonesian Civil Code. Referring to the Decision of PT DKI Jakarta RD 2020, at least the decision a quo, confirms several aspects, namely: first, the Decision of PT DKI Jakarta RD 2020 emphasizes that the importance of trade secrets as intellectual property rights, it is natural for a company to enter into a company information confidentiality agreement which in other terms is called a Non-Disclosure Agreement. This agreement explicitly states that the company has the right to determine

what is a company secret and the employee must not disclose company secrets to other parties (Sudjana, 2022). Although at first glance this agreement seems "one-sided", it must be understood that the company information confidentiality agreement is a right granted by the RD Law. This confirms that in the company's information confidentiality agreement, the company has the freedom to formulate various things that are considered company secrets and are not allowed to be disseminated (Liu, 2021).

The main substance of the PT DKI Jakarta RD 2020 Decision is that the company's information confidentiality agreement is valid and does not conflict with the law. Although specifically the PT DKI Jakarta RD 2020 Decision does not discuss propriety, it should also be seen that in practice trade secret infringement based on propriety is very likely to occur in practice in society. In addition to the case in the PT DKI Jakarta RD 2020 Decision decision above, there is also the case of Hi Pin who was a former employee of the CV Bintang Harapan coffee factory who then moved to another company, namely CV Tiga Berlian and used the standards used in CV Bintang Harapan to be applied in CV Three Diamonds. Even though Hi Pin had no intention of stealing trade secrets belonging to CV Bintang Harapan, his carelessness in applying the CV Bintang Harapan standard to be applied to CV Tiga Berlian was a form of decency violation and has not yet been regulated in the RD Law. This Hi Pin case should serve as a lesson that the propriety aspect is the most important aspect to pay attention to in trade secrets.

Trade secret infringement through propriety that develops in society can occur because, first, business law practices in society are growing and not all positive laws can anticipate every legal action that is growing faster (Habibi, 2021). Therefore, in addition to basing on the standards of positive legal provisions as specified in Article 14 of the RD Law, other standards that also need to be oriented for trade secret infringement are contrary to the values of decency in society. Second, referring to the legal provisions of the agreement as stipulated in the KUHP, it should be understood that agreements in general are not only subject to the provisions of Article 1320 of the KUHP only, but also must also be subject to the provisions of Article 1339 of the KUHP which affirms that agreements must not conflict with customs, positive laws, and propriety that develop in society (Rahmatya et al., 2019). The provisions of the agreement in the KUHP can be said to be more progressive than the provisions of the agreement in the RD Law. The Code specifically states that agreements must not contradict the law where the law here is broadly defined not only as positive law, but also includes customary law as well as propriety values that develop in society (Anna Maria Tri Anggraini et al., 2022). In the construction of the Code, an agreement that does not contradict positive law is not necessarily a legally valid agreement, but it must also be seen whether the substance of the agreement is contrary to customary law as well as the value of propriety that develops in society or not.

In the context of trade secrets, the existence of a specific license agreement is also part of the agreement in general. License agreements in trade secrets are actually "species" of agreements in general. This has implications for many common principles

and conceptions of mandatory agreements applied to license agreements in trade secrets. It also implicitly asserts that infringement of trade secrets should be broadly interpreted not only as affirmed in Article 14 of the RD Law but also as the substance in Article 1339 of the Indonesian Civil Code.

Legal construction of violations of propriety as a form of violation of trade secrets is important to do as an effort to protect trade secret rights holders. There are actually two orientations of legal construction, namely short-term and long-term. The orientation of short-term legal construction is carried out by harmonizing Article 14 of the RD Law with Article 1339 of the Indonesian Civil Code, this is especially by interpreting extensively the provisions of laws and regulations as standards for violations of trade secrets which tend to perceive that violations of trade secrets can only occur through violations of positive law. In fact, in business development, there can be violations that have not been regulated in positive law such as violations of decency that have the potential to violate trade secrets. The long-term orientation is that it is necessary to revise the provisions of the RD Law, this is considering that the RD Law was formulated in 2000 where the rapid development of business requires the responsiveness of legal rules that are responsive to the development of the business world. Therefore, revisions to the provisions of the RD Law are needed, especially revisions relating to the provisions of Article 14 of the RD Law to replace the phrase "laws and regulations" which narrowly means "positive law" to a broader meaning that is to the phrase "in accordance with legal provisions".

Conclusion

The orientation of violations of propriety as a form of trade secret infringement actually needs to be anticipated because violations of propriety are by-context so that not all forms of violations of propriety are regulated by positive legal provisions. Attempts to classify propriety violations as trade secret infringement can be done through extensive interpretations related to expanding the meaning of "legislation" which narrowly means "positive law" to a broader meaning of "in accordance with legal provisions". This is necessary because only based on existing laws or positive laws and regulations, sometimes there is a legal act that escapes positive legal arrangements so that there is the potential for violations of rights to trade secrets that have not been regulated in laws and regulations. There orientations of legal construction, namely short-term is carried out by harmonizing Article 14 of the RD Law with Article 1339 of the Indonesian Civil Code so as to expand the meaning of violations of trade secrets not only contrary to positive law, but also include violations of decency that develop in society.

Suggestion

This is considering that the RD Law was formulated in 2000 where the rapid development of business requires the responsiveness of legal rules that are responsive to the development of the business world. In practice, violations of propriety can be used as one of the reasons for trade secret right holders to file civil lawsuits. In addition, for

judges, violations of propriety can be used as a parameter in adjudicating potential trade secret violations or abuses.

References

- Al-Rawashdeh, A. M. A. (2023). The Principle of Exhaustion of Intellectual Property Rights in Jordanian Legislation. *Endless: International Journal of Future Studies*, 6(1), 224–238. <https://doi.org/10.54783/endllessjournal.v6i1.139>
- Alwi, I. F. (2021). Perlindungan Hukum Terhadap Pembeli Yang Beritikad Baik Dalam Kaitannya Dengan Akta Jual Beli Yang Dibatalkan. *Pagaruyuang Law Journal*, 4(2), 209–228. <https://doi.org/10.31869/plj.v4i2.2468>
- Anita, & Triasavira, M. (2021). Rahasia Dagang Masakan Chake Ciri Khas Kuliner Kabupaten Sumenep (Studi Kasus Sampoerna Catering Di Sumenep). *Jendela Hukum*, 8(1), 84–92.
- Anna Maria Tri Anggraini, Simanjuntak, M., Safari, A., Halim, R. E., & Riyadi, S. (2022). Consumer Protection in the Retail and Financial Services Sectors against the Practice of Exoneration Clauses. *Journal of Consumer Sciences*, 7(2), 83–96. <https://doi.org/10.29244/jcs.7.2.83-96>
- Ariani, N. V. (2021). Enforcement of Law of Copyright Infringement and Forgery with the Rise of the Digital Music Industry. *Jurnal Penelitian Hukum De Jure*, 21(2), 223. <https://doi.org/10.30641/dejure.2021.v21.223-236>
- Ariyanti, A. (2021). Perlindungan Hukum Rahasia Perusahaan Melalui Undang-Undang No. 30 Tahun 2000 Tentang Rahasia Dagang. *Bhirawa Law Journal*, 2(2), 79–86. <https://doi.org/10.26905/blj.v2i2.6843>
- Azmi, H., Wisnaeni, F., & Cahyaningtyas, I. (2021). Perlindungan Hukum Rahasia Dagang (Studi Pada PT. Haifa Paraestetiderma). *Notarius*, 14(1), 259–275. <https://doi.org/10.14710/nts.v14i1.38913>
- Benia, E. (2022). Analisis Perlindungan Hukum Rahasia Dagang pada Perjanjian Waralaba berdasarkan Undang-Undang Nomor 30 Tahun 2000 tentang Rahasia Dagang. *Padjadjaran Law Review*, 10(2), 1–14.
- Bintarto, M. A. I. (2022). Cryptocurrency as a Digital Property in Indonesian Law Perspective. *Jurnal Penegakan Hukum Dan Keadilan*, 3(2), 104–113. <https://doi.org/10.18196/jphk.v3i2.15134>
- Cavalieri, A. (2022). Legislative Regulation of Legal Goodwill Protected by Geographical Indication and Trademark (Comparative Analysis). *Journal of Law*, 118(1), 2625–2630.
- Darwance, D., Yokotani, Y., & Anggita, W. (2020). Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual. *Progresif: Jurnal Hukum*, 15(2), 193–208. <https://doi.org/10.33019/progresif.v15i2.1998>
- Disantara, F. P., Permatasari A. B, R. M., Ilmiah, F., & Chansrakaeo, R. (2023). The Integralistic State Idea: Reconstruction of Administrative Efforts Perspective. *Jurnal Daulat Hukum*, 6(2), 130. <https://doi.org/10.30659/jdh.v6i2.30982>
- Durkin, A., Maria, P. A. S., Willmore, B., & Kapczynski, A. (2021). Addressing the Risks That Trade Secret Protections Pose for Health and Rights. *Health and Human*

- Rights*, 23(1), 129–144.
- Fakunmoju, S. K., Banmore, O., Gbadamosi, A., & Okunbanjo, O. I. (2022). Effect of Cryptocurrency Trading and Monetary Corrupt Practices on Nigerian Economic Performance. *Binus Business Review*, 13(1), 31–40. <https://doi.org/10.21512/bbr.v13i1.7305>
- Fanani, A. Z. (2021). *Hermeneutika Hukum Sebagai Metode Penemuan Hukum: Telaah Filsafat Hukum* (p. 3). <http://pa-bengkulukota.go.id>.
- Habibi, H. (2021). Reformulation Of Business Competition Law Enforcement Based On A Hybrid Model. *Prophetic Law Review*, 3(2), 135. <https://doi.org/10.20885/plr.vol3.iss2.art2>
- Hernoko, A. Y. (2014). *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial* (4th ed.). Kencana.
- Hidayanti, S. dan M. R. (2021). Perlindungan Hukum terhadap Rahasia Perusahaan di Indonesia. *Jurnal Forum Studi Hukum Dan Kemasyarakatan*, 3(1), 40–41.
- Intellectual Property Theft: a Threat To Working People and the Economy* (pp. 1–7). (2021).
- Kock, M. A. (2021). Open intellectual property models for plant innovations in the context of new breeding technologies. *Agronomy*, 11(6). <https://doi.org/10.3390/agronomy11061218>
- Kurniawan, I. G. A. (2022a). Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme. *JURNAL USM LAW REVIEW*, 5(1), 282–298. <https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>
- Kurniawan, I. G. A. (2022b). The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties. *Jurnal Akta*, 9(1), 104–119. <https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20970>
- Kurniawan, I. G. A., Lulo, L. de D. M., & Disantara, F. P. (2023). IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty. *Jurnal IUS Kajian Hukum Dan Keadilan*, 11(1), 31–45. <https://doi.org/https://doi.org/10.29303/ius.v11i1.1170>
- Liu, J. (2021). A Brief Analysis on the Legal Issues of Trade Secret Protection in China's High-Tech Industry. *Open Journal of Social Sciences*, 09(05), 488–501. <https://doi.org/10.4236/jss.2021.95027>
- Maskus, K. E. (2022). Intellectual Property Rights and Economic Inequality: Theory and Evidence. *Stockholm IP Law Review*, 5(1), 44–51. <https://doi.org/10.53292/2d3a6004.50f031e5>
- Maulidda Hafsari, Y. (2021). Hak Atas Kekayaan Intelektual, Hak Merek, Rahasia Dagang, Dan Pelanggaran Hak Merek Dan Rahasia Dagang Serta Hak Patent (Literatur Review Artikel). *Jurnal Ilmu Manajemen Terapan*, 2(6), 733–743. <https://doi.org/10.31933/jimt.v2i6.637>
- Maurid Rizki, D. S. H. M. (2021). Efektivitas Alternatif Penyelesaian Sengketa Dalam Sengketa Rahasia Dagang. *University of Bengkulu Law Journal*, 6(2), 163–177.
- Muhammad, R., & Ilyasa, A. (2022). The Impact Of Trips Agreement On The Development Of Intellectual Property Laws In Indonesia. *Indonesian Private Law Review*, 3(2), 85–98. <https://doi.org/10.2504/iplr.v3i2.2579>

- Negara, T. A. S. (2023). Normative Legal Research In Indonesia: Its Origins And Approaches. *ACLJ*, 4(1), 5.
- Nurhayati, B. R. (2019). Penyalahgunaan Keadaan Sebagai Dasar Pembatalan Perjanjian. *Komunikasi Hukum*, 5(1), 67.
- Pusat Bahasa Departemen Pendidikan Nasional. (2008). *Kamus Bahasa Indonesia*. Departemen Pendidikan Nasional.
- Raden Roro, F. S., Hernoko, A. Y., & Anand, G. (2019). the Characteristics of Proportionality Principle in Islamic Crowdfunding in Indonesia. *Jurnal Hukum & Pembangunan*, 49(2), 455. <https://doi.org/10.21143/jhp.vol49.no2.2013>
- Rahmatya, C., Arazi, F., & Victory, R. (2019). Legal Protection Against Trade Secrets in Indonesia. *Universitas Pelita Harapan Academic Journal*, 5(8), 241–262.
- Ramli, A. M., Dewi, S., Rafianti, L., Ramli, T. S., Putri, S. A., & Lestari, M. A. (2021). Pelindungan Rahasia Dagang dalam Industri Jasa Telekomunikasi. *Jurnal Ilmiah Kebijakan Hukum*, 15(2), 215. <https://doi.org/10.30641/kebijakan.2021.v15.215-230>
- Siregar, Y. N. (2021). TRIPS dalam Perspektif Hukum atas Perlindungan Rahasia Dagang terhadap Tindakan Pekerja (Studi Kasus CV. Bintang Harapan dan CV Tiga Putra Berlian). *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 5(4), 1522–1529. <https://doi.org/10.58258/jisip.v5i4.2592>
- Sudirman, L., & Disemadi, H. S. (2023). Rahasia Dagang sebagai Perlindungan Kekayaan Intelektual Usaha Mikro Kecil dan Menengah di Era Digitalisasi dan Globalisasi. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 12(1), 80–98.
- Sudjana. (2021). Potensi Kekayaan Intelektual Dalam Pengembangan Usaha Mikro, Kecil, dan Menengah. *Jurnal Hukum Sasana*, 7(1), 51–69. <https://doi.org/10.31599/sasana.v7i1.534>
- Sudjana, S. (2022). Principle of Good Faith in Confidentiality Agreements of Trade Secret Information. *Dialogia Iuridica*, 14(1), 052–075. <https://doi.org/10.28932/di.v14i1.5376>
- Taufiq, M., & Disantara, F. P. (2023). The Principle of People’s Authoritative Manifestation in Mining Management: An Inclusive Legal Perspective. *SASI*, 29(3), 442. <https://doi.org/10.47268/sasi.v29i3.1329>
- Trequattrini, R., Lardo, A., Cuzzo, B., & Manfredi, S. (2022). Intangible assets management and digital transformation: evidence from intellectual property rights-intensive industries. *Meditari Accountancy Research*, 30(4), 989–1006. <https://doi.org/10.1108/MEDAR-03-2021-1216>
- Wesna, P. A. S. (2021). Urgency of TRIPs Waiver in Patent Legal Protection against Covid 19 Vaccine. *Udayana Master Law Journal*, 10(4), 692. <https://doi.org/10.24843/JMHU.2021.v10.i04.p03>
- Winata, I. G. S., & Purwanto, I. W. N. (2023). Legal Protection of Patent Rights As Fiduciary Guarantees in Banking Credit. *Policy, Law, Notary and Regulatory Issues (Polri)*, 2(1), 88–95. <https://doi.org/10.55047/polri.v2i1.549>
- Xavier Nugraha, John Eno Prasito Putra, K. D. H. P. (2020). Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheden). *Galuh Justisi*, 8(1), 55.