

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER 30 OF 2000
CONCERNING TRADE SECRETS**

Considering:

- (a) that to advance the industry which is competitive both in the national and international trade, it is necessary to create a conducive climate for the creations and innovations of the people by providing legal protection for trade secret as a part of the intellectual property rights system;
- (b) that Indonesia has ratified the Agreement Establishing the World Trade Organization that includes the Agreement on Trade Related Aspect of Intellectual Property Rights/TRIPS with the enactment of Law no. 7 of 1994, it is necessary to regulate provisions regarding trade secret;
- (c) that based on the considerations as referred to in items (a) and (b), it is necessary to stipulate a law on Trade Secret;

In view of:

- (1) Article 5 paragraph (1), Article 20, and Article 33 of 1945 Constitution of the Republic of Indonesia;
- (2) Law no. 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization, (State Gazette of 1994 no. 57, Supplementary State Gazette no. 3564);
- (3) Law no. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Competition (State Gazette of 1999 no. 33, Supplementary State Gazette no. 3817).

With the endorsement of the People's Representative Assembly of the Republic of Indonesia it has been decided to declare the effectiveness of the Law of Trade Secrets.

Chapter I - General

Article 1

For the purpose of this Law, the following shall mean as defined:

- (1) Trade Secret is information that is not publicly known, on technology and and/or business, having economic value for its being exploitable in business activities, and is kept a secret by the owner thereof.

- (2) Trade Secret Right is the trade secret right arising from this Law.
- (3) Minister is the Minister whose ministry has the tasks and responsibilities including the administration of Intellectual Property Rights including Trade Secrets.
- (4) Directorate General is the Directorate General of Intellectual Property Rights in the ministry headed by the Minister.
- (5) License is the permit granted by a Trade Secret Right holder to another party in an agreement based on a granting of right (not an assignment of right) to get the economic benefits of a Trade Secret that is protected in a specified time and under specified conditions.

Elucidation: As a developing country, Indonesia should provide the means that promote the competitive edge of its business sector. This is in line with global conditions in the trade and investment sector. Such competitiveness has since long been known in the Intellectual Property Right system, such as Patent. In a Patent, the inventors are required to, in compensation to the exclusive right granted by the state, expose their inventions. However, not all inventors or businesses are prepared to expose their inventions. They want to keep the secrecy of their intellectual works. In Indonesia, such secrecy is provided in a number of separate rulings instead of a single, integrated ruling. The need to provide legal protection to Trade Secrets is also in observance of one ruling in the Agreement on Trade Related Aspects of Intellectual Property Rights (Agreement on TRIPs) that is an attachment to the Agreement Establishing the World Trade Organization, already ratified by Indonesia under Law Number 7 of 1994. The provision of such protection will encourage increase of inventions that despite their being treated as secrets, are protected by law, with respect to property, control as well as the utilization thereof by the inventor. For the registration of Trade Secret Rights, the government has now assigned the Ministry of Justice and Human Rights Affairs, Directorate General of Intellectual Property Rights to undertake the services. In view of the extensive tasks and responsibilities in these affairs, it is potential that the Directorate General in charge of Intellectual Property Rights will in the future become an independent unit of the administration, including the financial administration of the affairs.

Chapter II - Scope of Trade Secret

PART ONE – TRADE SECRETS THAT GET PROTECTION

Article 2

The scope of protection of Trade Secrets includes production methods, processing methods, sales methods, or other pieces of information on technology and/or business that has economic value and are not known by the general public.

Article 3

- (1) A Trade Secret shall be protected if the information is a secret, has economic value, and is maintained of its secrecy through proper efforts.

Elucidation: "Proper efforts" are all steps within the parameters of properness, viability, and suitability that must be observed. For example, a company should apply in it a standard procedure based on the general practice applied in other locations and/or are translated into internal rules and regulations of the company itself. Similarly, the company may in its internal rules and regulations of determine how the Trade Secret must be kept and name the staff who is responsible for keeping it a secret.

- (2) A piece of information shall be regarded a secret if the particular information is only known by a particular party or is not known by the general public.
- (3) Information shall be regarded having economic value if the secrecy of the information may be utilized for running activities or business of commercial importance or that which may bring about economic advantages.
- (4) A piece of information shall be regarded being kept as a secret if the owner or the party in control thereof has taken proper and reasonable steps therefor.

Chapter III - Rights of Trade Secret Owners

Article 4

The Trade Secret Owners shall have the rights:

- (1) to utilize the Trade Secret he/she/they own;

- (2) to license or to prohibit other party to use the Trade Secret or to disclose the Trade Secret to a third party for a commercial purpose.

Chapter IV - Assignment and Licenses

PART ONE - ASSIGNMENT OF RIGHT

Article 5

- (1) A Trade Secret Right may be assigned or transferred through:

- (a) an inheritance;
- (b) a bequest;
- (c) a will and testimony;
- (d) a written agreement; or
- (e) other process acceptable by the prevailing laws and regulations.

Elucidation: As a property, a Trade Secret may be transferred to another party. Such a legal action may take the form of a bequest, will and testimony, or inheritance. For an assignment of right on an agreement, this provision requires that such an assignment be effected in a deed. This is important in view of the extent and complexity of the of the aspects it covers. "Other processes acceptable by the prevailing laws and regulations" include court decision concerning bankruptcy.

- (2) An assignment of a Trade Secret as referred to in paragraph (1) shall be accompanied by the document evidencing the assignment.

Elucidation: "Document evidencing the assignment" is the document that states the transfer of right to a Trade Secret. However, the Trade Secret remains not divulged.

- (3) The assignment of a Trade Secret Right as referred to in paragraph (1) shall be recorded with the Directorate General by paying the charge thereof as provided in this Law. What is to "be recorded" with the Directorate General shall be the data of administrative aspects of the document evidencing the assignment, but not the substance of the Trade Secret covered by the agreement.
- (4) An assignment of a Trade Secret Right that has not been recorded with the Directorate General shall not have a legal effect on the third party.
- (5) The assignment of a Trade Secret Right as referred to in paragraph (3) shall be promulgated in the Trade Secret Official Bulletin.

Elucidation: Promulgation in the Trade Secret Official Bulletin only covers the administrative aspects but not the substance of the Trade Secret covered by the agreement.

PART TWO - LICENSES

Article 6

A Trade Secret Right holder shall have the right to License other parties under a License agreement to exercise all the acts referred to in Article 4, except otherwise agreed.

Elucidation: Unlike the agreement that makes the basis of an assignment of a Trade Secret, a License only provides limited right in a limited period. Accordingly, a License is only provided for the use of a Trade Secret in a particular period of time. As the Trade Secret is actually kept closed to other parties, Licensing is implemented by assigning or attaching an expert who can keep the Trade Secret. This is different from, for instance, the provision of technical assistance that is common in the implementation of a project, operation of a new machinery or other activities programmed under a technical assistance scheme.

Article 7

Without prejudice to the provision of Article 2, a Trade Secret Right holder reserves the right to exercise himself/herself/themselves or to License a third party to exercise the acts referred to in Article 4, except otherwise agreed. This provision is meant to express that the principle of a License is non-exclusive. This means, even under a License, the right holder of the Trade Secret may still License the Trade Secret to another third party. If processed the other way, this must be expressly provided in the License agreement.

Article 8

- (1) A License agreement shall be recorded with the Directorate General and charged a cost as provided in this Law. What is to "be recorded" with the Directorate General shall be the data of administrative aspects of License agreement, but not the substance of the Trade Secret covered by the agreement.
- (2) A License agreement that is not recorded with the Directorate General shall not apply to a third party.
- (3) The License agreements as referred to in paragraph (1) shall be promulgated in the Trade Secret Official Bulletin.

Elucidation: Promulgation in the Trade Secret Official Bulletin only covers the administrative aspects but not the substance of the Trade Secret covered by the agreement.

Article 9

- (1) A License agreement shall not contain any provisions that may adversely affect the economy of Indonesia, nor contain any provisions that may create unhealthy competition as provided in the prevailing laws and regulations.
- (2) The Directorate General shall reject the recording of License agreements that contain provisions as referred to in paragraph (1).

Elucidation: Recording shall be rejected by the Directorate General if the content of the License agreement is potential of producing an adverse effect on the economy of Indonesia. This may be that the agreement provides the obligations that may be considered unfair for the Licensee, such as precluding the process of transfer of technology to Indonesia.

- (3) Provisions on the recording of License agreements shall be determined in a Presidential Decree.

Chapter V - Charges

Article 10

- (1) The recording of an assignment and recording of a License agreement shall be charged a cost in the sum determined in a Government Regulation.
- (2) Further provisions of the conditions, periods, and procedures of payment of the charges as referred to in paragraph (1) shall be determined in a Presidential Decree.
- (3) The Directorate General on an approval of the Minister and the Minister of Finance may manage the charges referred to in paragraph (1) and paragraph (2) based on the prevailing laws and regulations.

Chapter VI - Settlement of Disputes

Article 11

- (1) A Trade Secret Right holder or a Licensee shall be entitled to sue anyone who deliberately and without the permit therefor take an act as referred to in Article 4, in the form of:
 - (a) a claim for a compensation; and/or
 - (b) ending of all the acts as referred to in Article 4.
- (2) The claim as referred to in paragraph (1) shall be filed to the District Court.

Article 12

Besides settlement, as provided in Article 11, the parties may seek settlement through arbitration or an alternative settlement of disputes.

Elucidation: "Alternative settlement of disputes" here means a negotiation, mediation, conciliation, and other means the parties choose in accordance with the prevailing laws and regulations.

Chapter VII - Violation of a Trade Secret

Article 13

The violation of a trade secret shall also occur if an individual person deliberately divulges the Trade Secret, against the agreement or against the written or unwritten obligations to keep the particular Trade Secret.

Article 14

A person shall be deemed to have violated the Trade Secret of another person if he/she/they has obtained or has taken control of the Trade Secret in the manner against the prevailing laws and regulations.

Article 15

The act as referred to in Article 13 shall not be deemed a violation of a Trade Secret if:

- (a) such act of divulging the Trade Secret or the use of the Trade Secret is for the interests of the defense and security, health, or safety of the general public.
- (b) the act of reverse-engineering of a product made by using the Trade Secret owned by another person is used merely for further development of the product.

Elucidation: Reverse engineering is an analytical action and evaluation to find information on an existing technology.

Chapter VIII - Investigation

Article 16

- (1) Besides the Officers, Investigators of the Indonesian National Police; Officials, Investigators of the Civil Service in the ministry that has the tasks and responsibilities including supervision of the Intellectual Property Rights, are assigned special authority as investigators as referred to in Law Number 8 of 1981 concerning Civil Law Procedures, to conduct technical investigations of criminal acts in Trade Secrets.
- (2) The investigators as referred to in paragraph (1) shall have the authority:
 - (a) to investigate the facts of any complaints or information with respects to criminal acts in the Trade Secrets;
 - (b) to interrogate the parties who are alleged of having committed criminal acts in Trade Secrets;
 - (c) to request information and evidence from parties with respect to any criminal acts in Trade Secrets;

- (d) to examine the bookkeeping, records, and other documents with respect to criminal acts in Trade Secrets;
 - (e) to investigate in particular places which are supposed to be the locations of evidence in the forms of bookkeeping, recording and other documents.
 - (f) to confiscate materials and/or goods obtained through violations for evidence in cases of criminal acts in Trade Secrets; and/or
 - (g) to request expert assistance in conducting investigation works of criminal acts in Trade Secrets.
- (3) The Officials, Investigators of the Civil Service as referred to in paragraph (1) shall in doing their tasks inform of the commencement of an investigation and report the results of their investigation to the Officers, Investigators of the Indonesian National Police.
- (4) The Officials, Investigators of the Civil Service shall upon completion of their investigation as referred to in paragraph (1), report the results of their investigation to the Public Prosecutor through the Officers, Investigators of the Indonesian National Police with due observance of the provision of Article 107 of Criminal Law Procedure.

Chapter IX - Criminal Penalties

Article 17

- (1) Anyone who deliberately without the right thereof uses the Trade Secret of another party or commits an act as provided in Article 13 and Article 14 shall be imprisoned for a maximum period of two (2) years and/or fined a maximum of two hundred million rupiah (Rp. 200,000,000).
- (2) The criminal act referred to in paragraph (1) shall be a delict of complaint.

Chapter X - Other Provisions

Article 18

At the request of the parties to a criminal case or a civil case, the judge may order that the court be made closed.

Chapter XI - Closing Provisions

Article 19

This Law becomes valid as from the date it is enacted. In order that everyone knows about it, it is hereby ordered that this Law be promulgated in the State Gazette of the Republic of Indonesia.