

LAW OF THE REPUBLIC OF INDONESIA

NUMBER 30 YEAR 2000

REGARDING

TRADE SECRET

WITH THE MERCY OF GOD ALMIGHTY,

PRESIDENT OF THE REPUBLIC OF INDONESIA,

- 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 the 1945 Constitution;
 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 approval of

THE HOUSE OF REPRESENTATIVES

DECIDES:

To Enact: LAW ON TRADE SECRET

CHAPTER I

GENERAL PROVISIONS

Article 1

In this Law:

1. Trade Secret shall mean information in the field of technology and/or business that is not known by the public and has economic values as it is useful in business activities, and the confidentiality of which is maintained by its owner.
2. Right to Trade Secret shall mean the right to trade secret that emerges based on this Law.
3. Minister shall mean the minister who heads a governmental department of which the scope of duties and responsibilities includes guidance in the field of intellectual property rights including trade secret.
4. Directorate General shall mean the Directorate General of Intellectual Property Rights under the department presided over by the Minister.
5. License shall mean a permission which is granted by the Right Holder to Trade Secret to another party by means of an agreement based on the grant of right (not the transfer of right), to enjoy the economic

benefit of a trade secret which is granted a protection for a given period of time and with certain requirements.

CHAPTER II
SCOPE OF TRADE SECRET

Article 2

The scope of protection on Trade Secret shall include methods of production, methods of processing (preparation), methods of selling, or other information in the field of technology and/or business that has economic values and is not known by the public in general.

Article 3

- (1) Trade Secret shall be given protection if the information is confidential and has economic values and the secrecy of which is maintained with necessary efforts.
- (2) Information shall be secret (confidential) if such information is only known by a certain people or such information is not known by the public in general.
- (3) Information shall be deemed to have economic values if the confidentiality of the information can be used to run commercial activities or business or can improve the benefit economically.
- (4) The confidentiality of information shall be deemed to be maintained if the owner or the parties that control the information have taken necessary and appropriate efforts.

CHAPTER III
RIGHTS OF OWNER OF TRADE SECRET

Article 4

The owner of Trade Secret shall have the rights:

- a. to personally use his trade secret;
- b. to grant a license to or to prohibit other parties to use his Trade Secret or to disclose the Trade Secret to any third party for commercial purposes.

CHAPTER IV
TRANSFER OF RIGHTS AND LICENSE

Part One

Transfer of Rights

Article 5

- (1) The Right to Trade Secret may be transferred by:
 - a. inheritance;
 - b. donation;
 - c. testament;
 - d. written agreement; or
 - e. other reasons recognized by the Law.
- (2) The transfer of Right to Trade Secret as referred to in paragraph (1) shall be furnished with the documents on the transfer.

- (3) All forms of transfer of Right to Trade Secret as referred to in paragraph (1) shall be recorded at the Directorate General with the payment of fee as regulated in this Law.
- (4) A transfer of Right to Trade Secret that is not recorded at the Directorate General shall have not any legal consequences on any third party.
- (5) The transfer of Right to Trade Secret as referred to in paragraph (3) shall be announced in the Official Gazette of Trade Secret.

Part Two

License

Article 6

The Right Holder to Trade Secret shall be entitled to grant a license to a third party on the basis of a licensing agreement to conduct acts as referred to in Article 4, unless agreed otherwise.

Article 7

Without prejudice to the provisions as referred to in Article 6, the Right Holder to Trade Secret may still personally exploit or to grant a license to a third party to conduct acts as referred to in Article 4, unless agreed otherwise.

Article 8

- (1) A licensing agreement shall be recorded at the Directorate General with the payment of fee as regulated in this Law.
- (2) A licensing agreement that is not recorded at the Directorate General shall not have any legal consequences on any third party.
- (3) The licensing agreement as referred to in paragraph (1) shall be announced in the Official Gazette of Trade Secret.

Article 9

- (1) A licensing agreement shall not contain any provisions that may directly or indirectly damage the Indonesian economy or any provisions that can create an unfair competition as regulated in the prevailing laws and regulations.
- (2) The Directorate General shall refuse any request for the recording of a licensing agreement that contains the provisions as referred to in paragraph (1).
- (3) Provisions regarding the requirements and procedure of licensing agreement shall be further regulated by Presidential Decree.

CHAPTER V

FEES

Article 10

- (1) A fee, the amount of which shall be stipulated by Government Regulation, shall be paid for a request for the recording of the transfer of Right to Trade Secret and a request for the recording of a licensing agreement.
- (2) Provisions regarding the requirements, time frame and procedure of payment of fees as referred to in paragraph (1) shall be regulated by Presidential Decree.
- (3) The Directorate General with the approval from the Minister of Finance may manage by itself all fees as referred to in paragraph (1) and paragraph (2) based on the prevailing laws and regulations.

CHAPTER VI
SETTLEMENT OF DISPUTE

Article 11

- (1) The Right Holder to Trade Secret or the licensee may bring a lawsuit against any person who deliberately and without rights commits acts as referred to in Article 4, in the form of:
 - a. claim for damages; and
 - b. the ceasing of all acts as referred to in Article 4.
- (2) The lawsuit as referred to in paragraph (1) shall be filed at the district court.

Article 12

In addition to the settlement of dispute as referred to in Article 11, the relevant parties may settle their dispute through an arbitrary or an alternative dispute resolution.

CHAPTER VII
INFRINGEMENT ON TRADE SECRET

Article 13

An infringement on Trade Secret takes place when a person deliberately discloses the Trade Secret or breaks the agreement, or the obligation, either written or not, to maintain the confidentiality of the relevant Trade Secret.

Article 14

A person shall be deemed to have committed an infringement on a Trade Secret of another party if he obtains or possesses the Trade Secret in a manner that is contrary to the prevailing laws and regulations.

Article 15

The action as referred to Article 13 shall not be deemed an infringement on a Trade Secret if:

- a. the disclosure of the Trade Secret or the use of the Trade Secret is based on the interest for the security and defense, health, or safety of the public;
- b. the reverse engineering of a product that is produced from the use of the Trade Secret of another person is solely conducted for the interest of making further development of relevant products.

CHAPTER VIII
INVESTIGATION

Article 16

- (1) In addition to investigating officers at the State Police of the Republic of Indonesia, Civil Servants Investigators within the department of which the scope of duties and responsibilities include intellectual property rights shall be granted special authority as investigators as referred to in Law no. 8 of 1981 on Criminal Proceedings, to conduct an investigation of criminal offences in the field of Trade Secret.
- (2) The Civil Servant Investigators as referred to in paragraph (1) shall be authorized to:
 - a. conduct examination on the truth of reports or information relating to criminal offences in the field of Trade Secret;

- b. conduct examination on any party suspected of committing criminal offences in the field of Trade Secret;
 - c. collect information and evidence from any party in connection with incidents of criminal offences in the field of Trade Secret;
 - d. conduct examination of books, records and other documents relating to criminal offences in the field of Trade Secret;
 - e. inspect locations on which evidence, books, records, and other documents might be found;
 - f. confiscate materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of Trade Secret;
 - g. request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of Trade Secret;
- (3) The Civil Servant Investigators as referred to in paragraph (1) shall inform the investigating officers at the State Police of the Republic of Indonesia about the initiating and the result of an investigation.
- (4) After completing an investigation, the Civil Servant Investigator as referred to in paragraph (1) shall forward the results of an investigation to the Public Prosecutor through the investigating officers at the State Police of the Republic of Indonesia in view of the provision of Article 107 of Law no. 8 of 1981 on Criminal Proceedings.

CHAPTER IX CRIMINAL PROVISIONS

Article 17

- (1) Any person who deliberately and without rights uses the Trade Secret of another party, or conducts any acts as referred to in Article 13 or Article 14 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp300,000,000.00 (three hundred million rupiahs).
- (2) The criminal action as referred to in paragraph (1) shall constitute offense that warrants complaint.¹

CHAPTER X OTHER PROVISIONS

Article 18

Upon a request from the parties either in criminal cases or in civil cases, a judge may order that the hearing be conducted in private.

CHAPTER XI CLOSING PROVISION

Article 19

This Law shall take effect on the date of its enactment.

In order that every person may know of it, the promulgation of this Law is ordered by the placement in the Official State Gazette of the Republic of Indonesia.

Ratified in Jakarta on December 20, 2000

¹ Bahasa Indonesia = *delik aduan*

PRESIDENT OF THE REPUBLIC OF INDONESIA

(signed)

ABDURRAHMAN WAHID

Promulgated in Jakarta on December 20, 2000

STATE SECRETARY OF THE REPUBLIC OF INDONESIA

(signed)

DJOHAN EFFENDI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2000 NUMBER 242