

# Customer List Protection in Avoiding Unfair Business Competition Based on Law Number 30 of 2000 concerning Trade Secrets and Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition

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ARTICLE INFO	ABSTRACT
<b>Submitted</b> :02-03-2023 <b>Received</b> :05-03-2023 <b>Approved</b> :15-03-2023 <b>Keywords:</b> <i>legal protection, trade secrets, customer list.</i>	Trade secrets are part of intellectual property, because the information contains economic value, however, the Trade Secret Act does not specifically state what can be classified as information with economic value, such as customer lists. Customer lists can be classified as information that can be protected by trade secret laws in Indonesia. Therefore, legal efforts are needed to protect this confidential information from acts of violation that can lead to unfair business competition.

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## 1. Introduction

At this time the development of the business world is increasing, in line with the increasing flow of globalization that is growing. This is certainly marked by the opening of international markets and the convenience provided by technological advances, giving rise to the emergence of new entrepreneurs. Entrepreneurs strive to produce quality products to meet the needs of an increasingly diverse society. These quality products are produced from the company's mechanism in the form of information in processing and selling both in the field of goods and / or services. Due to the importance of the information is kept confidential by the company, which is for the benefit of the company or with the permission of the company the information is used.

As a form of protection for confidential information in Indonesia, it is regulated in the Law and classified into intellectual property rights. This is because confidential information used by companies in running their business is of economic value and is seen as the result of human thinking which is included in the scope of intellectual property rights that have been regulated in Law Number 30 of 2000 concerning Trade

Secrets. Based on Article 1 point 1 of Law Number 30 of 2000 concerning Trade Secrets, the trade secret itself is information that is not publicly known in the field of technology and / or business that has economic value because it is useful in business activities and is kept confidential by the owner of the trade secret. Based on this, basically trade secret information is an important asset in a business and must be protected confidentially, where information included in the scope of trade secrets based on article 2 of Law Number 30 of 2000 concerning Trade Secrets is a production method, processing method, sales method, or other information in the field of technology and / or business that has economic value and is not known to the general public.

Departing from this that in addition to production methods, processing methods, sales methods there is also other information in the field of business or technology that has economic value. However, the provisions of the law are not further explained related to the classification of information of economic value in the field of business or technology included in it. So that it can provide knowledge to business actors who make certain information that can be information of economic value to be given trade secret protection that is only known by the subject of trade secret protection, namely the owner or holder of the trade secret rights. Just as a customer list is an organized comprehensive collection of data about customers and potential customers, prospect qualification, product or service sales or customer relationship maintenance, where the customer list is an important asset for the company to know its customers.

In practice, there are several other business actors who want information on the company's customer list that has a customer list for their business interests that are carried out unlawfully, which without the rights and permission of the customer list is used. Of course, this can cause unhealthy business competition. As in the case of employees of PT Oto Multiartha has provided its customer list to employees of PT BFI Finance which is a company engaged in the same field as PT Oto Multiartha without the rights and permission of the owner of the customer list to obtain personal benefits. This makes the owner of customer list information suffer losses as a result of actions taken by his employees.

Based on this, the author in conducting this study will analyze how customer lists can be classified as confidential information of economic value to companies so that they can be protected by Indonesian law and customer list protection against violations under the Trade Secret Law and the Law on Prohibition of Monopoly Practices and Unfair Business Competition.

## **2. Materials and Methods**

The research method used is a normative juridical approach method, where research is carried out by researching literature or skunder data as the main research material (Soerjono Soekanto & Sri Mamuji, 2015). Research specifications are used in an analytical descriptive way, which explains and analyzes an existing problem systematically, accurately and factually by taking into account applicable laws and

regulations as well as theories from legal experts and the implementation of the law itself.

### 3. Results and Discussion

#### **Customer list as confidential information of economic value to the Company so that it can be protected under the provisions of the Trade Secret Law**

Trade secrets known as Undisclosed Information or Confidential information or Trade Secret is information that can be used in a trade that is not general information and has economic value, which has an important role in the development of global business included in the scope of intellectual property rights. Trade secret information is given the same protection as other intellectual property because it is generated from the human mind that has used thought, energy, cost and so on to obtain it.

In line with his opinion, Eddy Damian stated that intellectual property rights are a form of alter ego (reflection of personality or the embodiment of the quality of taste, charsa and reasoning power of a human being, where the more diverse and quality an intellectual property created will provide added value to the dignity and material or economic benefits of an exclusive intellectual property creator (Henry Soelistyo, 2014). Basically trade secret information is used in a person's business and gives him the opportunity to gain an advantage over unknowing competitors and use it. This shows that confidential information has a very important role in the business world so that it is protected and kept confidential and there is a critical element in trade secrets, where trade secret information must have economic value. In line with the enforcement of legal protection of trade secret information, which protection is not required to register it first (First to file), but protection is provided to the owner of trade secret information from the moment the information is used for the first time (First to use). This is because the nature of trade secret information is of economic value and is kept confidential through appropriate efforts (Semaun, 2011).

Based on the scope of trade secrets contained in the Trade Secret Law, trade secret protection is provided to information on production methods, processing methods, sales methods or other information in the field of technology and / or business that has economic value and is not known to the public. Trade secret laws in Indonesia do not provide clearer restrictions on other information intended for information in the field of technology and/or business that has economic value.

In some countries, concepts or information that receive trade secret protection are customer lists, market research or technical research, food recipes or ingredients used to produce a particular product, a system that is quite profitable (Tim Lindsey, 2003). As well as customer lists, which are basically data owned by companies related to the business world of goods or services. Customer list is information from people whose activities buy or use a product, either goods or services on an ongoing basis that are collected systematically in the context of the interests of service providers companies and / or goods. Here's an example of the contents of a customer list:

1. Identity number
2. Customer name and address
3. Phone number
4. Email address
5. Mobile number
6. Transaction history
7. Purchase frequency
8. Products purchased
9. Purchase value
10. Payment methods
11. Number of purchases of a product

That in addition to the customer's name there is also information such as customer preferences and habits, which provides a function to help promote, introduction, new products, pricing, or find out consumer needs and create new products, pricing or knowing consumer needs and create new products or services. Based on this, it shows that the more detailed and extensive customer information in the customer list makes the customer list more economically valuable (Littmann, 1996). Furthermore, basically the customer list contains personal data of the customers or consumers themselves, the customers or consumers themselves. Personal data itself is information that is closely related to a person who distinguishes the characteristics of each individual or combined with other information either directly or indirectly through electronic or non-electronic systems (Kang et al., 1998). Based on Article 6 of Law Number 27 of 2022 concerning Personal Data Protection, the use or control of personal data can be carried out by companies or corporations, but it must be known the purpose and use by the personal data subject or the customer himself.

Trade secret protection is the protection of confidential business information that can provide a competitive advantage for the company and is not known by others. That's because basically the customer list is used to be able to serve customers well and keep these customers loyal. Such is the case in the state of the United States, namely Illinois which applies legal protection to customer lists as part of information categorized as trade secrets stated in the Illinois Trade Secret Act which reads (De Nardo & James P, 2018):

Trade Secret means information, including but not limited to technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

- 1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosures or use; and
- 2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality

Trade secrets are technical and non-technical information, such as formulas, patterns, compilations, programs, methods, techniques, process drawings, financial data, or lists of actual or potential customers or suppliers that are kept secret to obtain economic value, so that they are not known to the public or others who can benefit from their disclosure or use and are given reasonable efforts to maintain the safety of the information.

Based on this, the customer list also includes part of the scope of trade secret protection. Furthermore, based on the theory of property rights as the underlying theory of Intellectual Property protection, customer lists containing personal data are viewed as intangible movable objects that grant the holder or controller of such customer lists defensible rights to other parties. As contained in Article 499 of the Civil Code, what is meant by objects is every item and every right that can be controlled by property rights. Then, based on Article 570 of the Civil Code, what is meant by property rights itself is the right to enjoy the usefulness of something freely and to freely use the property with full sovereignty as long as it does not conflict with laws or general regulations that have been determined by the government which are implemented in the public interest. This is in line with the nature of objects that have economic value and can be transferred (Edmon Makarim, 2003). Based on this, the company as the owner or controller of the customer list has the widest right to use the list for the benefit of the company and is protected by law in Indonesia.

In practice, companies in some sectors use customer lists in their business activities, but not all customer lists are protected by trade secret laws. This is because only customer lists contain information that is of economic value and protected with appropriate efforts and steps so that it is not known by the general public. In some countries such as in America, some business sectors such as grocery stores, vegetable stalls, fruit or vegetable stalls on the roadside and others, cannot be given trade secret protection for customer lists because they do not have an exclusive nature to their customers so that they can be known to the general public. In the absence of reasonable efforts to maintain a customer list, it prevents the information from obtaining independent, actual, or potential economic value. Furthermore, in certain sectors of the product or service business activities that have regular, exclusive customers, which are highly customer-oriented can be trade secrets, as well as the business activities of video rental clubs, medical practices, accounting and others that give the owner of the customer list a demonstrable competitive advantage over others in the industry can be afforded trade secret protection (Silberberg & Lardiere, 1987).

Then because the information protected by trade secrets is of economic value, then at the time of a trade secret dispute that must be declared is the loss suffered by the owner of the customer list. The loss can be from the evidence that the court considers in deciding on damages for the owner of the trade secret. Based on this, losses as a matter of indicating that the information has economic value and efforts and steps

have been made that should be an obligation that must be proven in resolving trade secret disputes.

### **Customer List Protection Against Infringement Based on Law Number 30 of 2000 concerning Trade Secrets and Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition.**

The rapid development of science, technology and information in the business world has resulted in increased competition. Information that can easily be accessed through sophisticated technology to develop information that can be a company asset and is kept confidential. Information that is kept confidential because the information has the advantage to develop or provide benefits for the company. Indonesia as part of the world community, of course, needs to continue to follow the development of global business, it is marked by its participation in ratifying the Trips agreement through Law Number 7 of 1994 concerning the Ratification of the Agreement on the Establishment of the World Trade Organization, which is associated with Indonesian law providing protection of intellectual property rights harmonized with the Agreement on Trade Related Aspects of Intellectual Property (TRIPs). It is intended to provide legal protection to owners of intellectual property rights in business activities.

Trade secrets as part of intellectual property in Indonesia have been regulated in the Trade Secret Law. Initially, to avoid unfair business competition practices, it was regulated in Article 1365 of the Civil Code and Article 382 bis of the Criminal Code. Then the concept of unfair competition as a general law is more focused on laws that protect fraudulent practices that are commercially motivated through the Trade Secret Law which also generally complements Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

Based on Article 3 paragraph (4) of Law Number 30 of 2000 concerning Trade Secrets, information that is considered a trade secret must be kept confidential by taking appropriate and appropriate steps taken reasonably to keep the information confidential. This is done as a form of preventive effort carried out by the owner of the trade secret to prevent violations of his trade secret rights with the aim of avoiding and protecting the trade secret. as well as in the company there are standard procedures applicable in public places which are outlined in the company's internal provisions regarding maintaining trade secrets and who can be responsible for the confidentiality of trade secret information (Muhamad Jumhara Jubaedillah, 1993).

In practice the steps should be taken by: (Iman Sjahputra Tunggal & Heri Herjandono, 2005)

- a. Disclosure of trade secrets only to persons who need to comply on the basis of a trade secret agreement
- b. Make trade secret agreements with employees or third parties.
- c. Protect confidential information or data by creating a secret code
- d. Keep confidential documents in a safe place and cannot be accessed easily by employees or other parties.
- e. Include the word "confidential" on the outside of confidential documents

- f. Restricting the access of employees to enter other units or departments of a company
- g. Prohibit employees from working outside predetermined working hours.

That the agreement used in protecting trade secrets, is based on contract theory, which is based on Article 1233 of the Civil Code which states that every engagement is born either because of an agreement, both because of laws which are basically legal rules that regulate relationships between two or more parties based on the word agreement to cause legal consequences. Agreements used in efforts to protect trade secrets can be done through confidentiality agreements or what is called a Non Disclosure Agreement, which is a contract law between parties that authorize to provide confidential information to the party who receives confidential information to the party who receives the confidential information for certain purposes either employment agreements or for the company's business interests (Rismawaty, 2019)..

Based on this, confidentiality agreements are used to bind workers or employees of companies who know trade secrets because of their work. In addition, the agreement can also be applied to parties involved in and cooperating with companies that own confidential information. Then the provisions of this confidentiality agreement will still apply to the party who agreed to this agreement even if they no longer work in a company that has trade secrets or no longer cooperate with the company. In line with Article 1338 of the Civil Code as the basis of the agreement which states that all agreements made in accordance with the law will apply as a law (legal foundation) for those who make it. The agreement contained in the agreement is irrevocable other than by agreement of both parties, or for reasons prescribed by law which must be executed in good faith.

Based on the above, this confidentiality agreement is intended to provide clarity in the relationship between the owner of confidential information and the recipient of the information, which shows the boundary between what the recipient of the information can and cannot do. Then the confidentiality agreement is one of the steps to ensure legal certainty when violations occur by company workers or other parties who cooperate with the company, this agreement is authentic evidence that the company has trade secret information and has implemented efforts and measures to protect confidential information to avoid fraudulent acts that can cause unfair business competition.

Based on Article 13 and Article 14 of Law Number 30 concerning Trade Secrets, Violation of trade secrets itself occurs if a person deliberately discloses a trade secret reneging on an agreement or avoids a written or unwritten obligation to safeguard the trade secret concerned and if it obtains or controls the trade secret in a manner contrary to applicable laws and regulations. Dispute resolution for trade secret violations can be carried out through the civil and/or criminal realm, where the criminal provisions of trade secrets in Article 17 of Law Number 30 of 2000 concerning Trade Secrets contain:

"Goods intentionally and without the right to use the Trade Secrets of other parties or commit acts as referred to in articles 13 or 14, shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp.300,000,000 (three hundred million rupiah). "

Trade secret crimes are categorized as criminal offenses with complaint offenses. Meanwhile, the settlement of disputes in trade secrets through the civil realm can be carried out by claim for compensation, as contained in article 11 of the Trade Secret Law, namely:

1. Trade Secret Rights Holders or licensees can sue anyone who intentionally and without the right to commit acts as referred to in article 4 of the Trade Secret Law, in the form of:

- a. Claims for damages; and/or
- b. Termination of all actions as stated in article 4 of Law Number 30 of 2000 concerning Trade Secrets.

2. The lawsuit as referred to in paragraph (1) shall be submitted to the District Court

That in addition to the settlement of claims in the district court, the disputing parties can resolve the dispute through arbitration or alternative dispute resolution. To that end, the confidential nature of the information is not lost and is considered to remain confidential because disclosure is limited to courts or dispute resolution sites and not to the general public. Furthermore, the occurrence of a trade secret violation related to unfair business competition as a result of the violation. Based on Article 1 point 6 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, unfair business competition is understood as competition between business actors in carrying out production or marketing activities of goods and or services carried out in a dishonest or unlawful manner or hindering business competition.

Unfair business competition itself is the impact of business competition practices. Competition conditions that have negative aspects, where it is carried out by economic actors who are not honest and contrary to the public interest are carried out by fraudulent practices because competition is considered as an opportunity to eliminate competitors in any way that is classified as unlawful.

In line with the definition of unlawful acts (*onrechtmatige daad*) which are acts that violate the rights of others or contradict decency or contradict the cautious attitude that needs to be considered in the community towards the external interests and property of others (Ghiand Carlo Legrands, 2013) . Such is the case that conspiracy is classified as a form of unfair business competition, where it is based on Article 1 number 8 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is an activity carried out with trade cooperation among business actors with the intention of controlling the relevant market for the interests of conspiring business actors or often referred to as conspiracies.



Associated with violations of trade secret information, in the provisions of unfair business competition, conspiracy to obtain confidential company information is a form of activity categorized as unlawful and prohibited by the provisions of the law contained in article 23 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition which states that:

*Business actors are prohibited from conspiring with other parties to obtain information on the business activities of their competitors which are classified as company secrets so that it can result in unfair business competition.*

That's because trade secrets are closely related to corporate secrets, but there are fundamental differences between the two secrets. Trade secret rights holders provide licenses or rights to other parties, because trade secrets have economic value while company secrets are information that must not be known by the public and have no economic value (Tan Kamelo, 2006).. Based on this, confidential company information that is categorized as information of economic value and kept confidential can be classified as trade secrets, protected by the provisions of trade secret law.

#### **4. Conclusion**

Customer list as information containing customer personal data can be classified as other information in the field of business that has economic value that can be protected by trade secret law in Indonesia, which is included in other information in the field of business that has economic value as part of the scope of trade secrets. That's because based on the theory of property rights underlying the protection of intellectual property rights, customer lists can be viewed as intangible movable objects and provide exclusive benefits to the owner of the confidential information. In line with the nature of objects that can be maintained because they have economic value and can be transferred. With the customer list the company can know its customers so that it can maximize services that can meet customer needs, but not all customer lists can be classified as trade secret information, only information that can increase economic profits and the information is kept confidential with reasonable and appropriate efforts and steps.

Customer lists classified as trade secret information of economic value to the company are important assets that must be protected and kept confidential from other parties outside the company. Customer list protection is carried out with appropriate efforts and steps to prevent unfair business competition, it is done as a preventive effort that must be done by the owner of customer list information, as well as by making confidentiality agreements to the parties concerned with the information and also repressive efforts when there is a violation of the customer list that can cause business competition unhealthy. This is contained in Law Number 30 of 2000 concerning Trade Secrets and Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition through dispute resolution carried out in court, both in the civil and criminal realms. That in addition to being resolved in court, it can also be resolved through arbitration or alternative dispute resolution.

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