

Implementation Of Trade Secret In Indonesia (Study Of Industrial Area Medan)

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Abstract:- Trade Secrets under the terms of the positive law of Indonesia (Law No. 30 of 2000). In determining the system of trade secret law, however, we must mengedapankan national interest. Therefore, in selecting the legal system should be considered public awareness including national entrepreneurs to understand and associate Rights Intellectual Property especially the system of trade secrets with a business strategy that is national and international level and their ability to master trade secrets and use them in the competitive arena of business, too, need assessed the level of understanding of the law enforcement agencies (such as judges, prosecutors, and police), including officials of government agencies (eg, officials at the department of justice and human rights, department of industry and commerce, health department, directorate general of customs and excise, finance department) to Intellectual Property rights in general and in particular trade secrets.

Keywords: *Trade Secrets and Protection Law.*

I. INTRODUCTION

In broad outlines of state policy stated that the main target of long-term development is the creation of a strong foundation for the Indonesian people to grow and develop on its own power towards a just and prosperous society based on Pancasila. As for the focus, is the economic sector with the main objective the realization of balanced economic structure in which there are capabilities and advanced industrial powers.¹

Especially for the emergence of any trade secrets Law No. 30 of 2000 show that the government has made the implementation of regulations in the form of laws regulating and classifying trade secrets as a specific piece of intellectual property rights in accordance with the clarification of TRIPs.² Indonesia's participation in the International treaties will create liability for Indonesia to conduct a number of amanademen against its laws and regulations. If there is legislation to the contrary it must be harmonized with the International agreements are followed, such as in the field of Intellectual Property Rights (IPR) from 2000 to 2002, as an obligation under TRIPs, Indonesia has amended the Patent Law, Trademark Law, Law OF Copyrights, even introduce the Trade Secrets Act, Industrial Design Act, and the Act of layout Designs of Integrated Circuits.³

With regard to the direction and development targets as mentioned above, especially those related to building industrial strength factor to consider is the need for the technology. This factor is important, because it basically is one of the keys that are determining the life of the industry even more than that technology is a decisive factor in pertumbuhan and developments in the industries and the technology is coming from another country, or the result of the discovery and development of the Indonesian people themselves who have the same meaning importance.

Having regard to the significance and role and the role of technology is so important in the industry, it is not possible when the achievement of the objectives of national industry development can be done by ignoring the technology. Therefore, measures to create a climate and a good atmosphere and capable mendonong passion or spirit of technological invention, it becomes very important at least the climate in which the Indonesian people to learn and improve their ability to master the technology.

The technology basically born of intellectual work as a human intellectual work. Then the technology has value and economic benefits. Therefore, it is natural that the rights to the invention which is given legal

¹ Kansil, *Hak Milik Intelektual, Hak Milik Perindustrian Dan Hak Cipta*, Sinar Grafika, P. 5-6. Look Article 5, paragraph (1), Article 20 and Article 30 of the Constitution of the Republic of Indonesia Year 1945.

² <http://icelis.BRN.Com/article01-18.htm> 29-08-2002, htm2.

³ Hikmahanto Juwono, Scientific Oration Law For Political Instrument: Intervention On Sovereignty In Legislative Process In Indonesia, Delivered on Anniversary Faculty of Law, University of North Sumatra 50th, the Ministry of National Education Faculty of Law, University of North Sumatra, Medan January 12, 2004, p 7.

protection.⁴

As a developing country, Indonesia perlu seek tough competition among businesses. This is in line with the global conditions in trade and investment. Such competitiveness has long been known in the system of intellectual property rights, such as patents. In the patent, in return for the rights granted by the state executive, the inventor must disclose the findings or invention. However, not all the inventors or businessmen willing to disclose the findings or the invention. They wanted to maintain the confidentiality of their intellectual work. In Indonesia, the issue of confidentiality in several separate rules, which do not constitute a single integrated system.

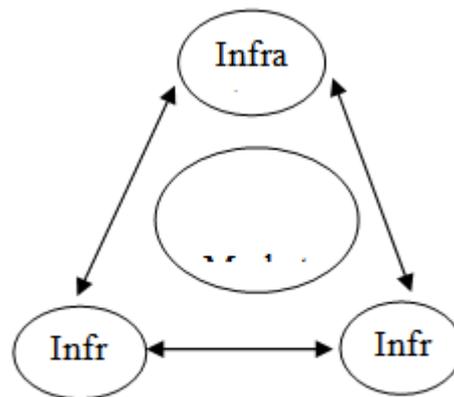
Indonesia as a developing country needs to promote industrial sector by improving competitiveness. One of competitiveness is to utilize the role of industrial design that is part of the Intellectual Property Rights. Cultural diversity combined with efforts to participate in the globalization of trade, by providing legal protection also against the industrial design will accelerate the development of national industry.

In addition to make a commitment to the TRIPS Agreement, setting the industrial design is intended to provide the foundation for effective protection against various forms of plagiarism, piracy or imitation of an industrial design that has been widely known. The principle of regulation is the recognition of ownership of the intellectual work which gives aesthetic impression and can be produced repeatedly and can produce the goods in the form of two or three dimensions.⁵

Trade secrets as part of Intellectual Property Rights (IPR) has become one of the objects of protection in the agreement on Trade Related Aspects of Intellectual Property Rights Including Trade in Counterfiet goods (TRIPs-WTO). Thus Indonesia in international had an obligation to protect trade secrets in accordance with the standards of protection TRIPs embracing the principles of full compliance.⁶

To create a trade that is free from all kinds of barriers and obstacles, to abolish distinctions treatment by one or more countries of the goods or services of the national production of goods and or services produced by other countries, which are expected to create a market competition free and balanced between the goods or services that have been circulating in the community (the world) which in turn is expected to society or the world sebgai consumers will only be able to obtain the best, according to their capacities.⁷

II. CHART TRANSFORMATION COMMUNITY INDUSTRIES



⁴ Kansil, *Hak Milik Intelektual, Hak Milik Perindustrian Dan Hak Cipta*, Sinar Grafika, P 5-6. Look at Bismar Nasution, *Pengaruh Globalisasi Ekonomi Pada Hukum Indonesia*. Look at Peter D Sutherland, *Global Trade-The Next Challenge*, Pidato disampaikan pada World Economis Forum, Davos, tanggal 28 Januari 1994. Look at Erman Rajagukguk, *Globalisasi Hukum dan kemajuan Teknologi: Implikasinya Bagi Pendidikan Hukum dan Pembangunan Hukum Indonesia*, Pidato pada Dies Natalis Universitas Sumatera Utara Ke-44, Medan 20 November 2001.

⁵ Law of the Republic of Indonesia Number 30 of 2000 on Trade Secrets, p 105.

⁶ Ahmad M. Ramli, *Perlindungan Rahasia Dagang*, Dalam UU No 30/2000 Dan Perbandingannya Dengan Beberapa Negara, Penerbit CV Mandar Maju, Bandung 2001, P. v.

⁷ Gunawan Widjaja, *Segi Hukum Bisnis, Rahasia Dagang*, Penerbit PT Raja Grafindo Persada, Jakarta 2001, P. 16. Look also the paper presented at the work meeting the Draft Law on Food held on 15-16 June 1994 by Sunaryati Hartono, p 10.

The process of transformation that departed from the philosophy: Start and End and ending at the Beginning ". This philosophy is a groundbreaking step in the transformation of technology are integrated in a process that is very progressive. Any world should always start at the beginning and ending at the end. But this is different altogether is a philosophy that is to absorb advanced technology (which has been growing, especially in developed countries) is a progressive and gradual process integral to produce a product-oriented needs of the domestic market and abroad, do not have to be started from everything paced starters.

So for us the transformation process can be done by starting from the stage of product assembly by using lesensi. From this we can master the assembly of three kinds of technologies:

- (1) Controlling and quality control
- (2) Controlling and control the production scheduling
- (3) Controlling and control costs.⁸

When compared with other countries, especially with neighboring countries, how industrialization in Indonesia? The industrial structure in Indonesia is different clearly, because the modern industrial sector is dominated by a single industry.

Currently, Indonesia has the largest manufacturing industry in Asean, accounting for approximately 30% of the region's output. Unfortunately, with the rapid growth, Indonesia is still an underdeveloped country's most industrialized in comparison with the other five countries, without involving the newest member of ASEAN, namely Brunei. dalam many things, the Indonesian industry in much the industry is owned by India of the industry held by other countries in other southeast Asian countries and West Asian countries whose economies are more oriented power out.⁹

Japan and Malaysia countries have similarities in terms of characteristics of industrial development. Both are countries through implementing industry (late industrializer) compared with western countries that has developed. You see why Japanese are saying through this, become the most victorious country in the fields of industry, and even more victorious from countries that had earlier carry out basic perindustriannya? Is the heyday of Japan's recipes? No doubt, this is a triumph of persistence Japanese disebankan awaken human resources in line with the development in technology.¹⁰

One of the steps recently taken RI is participation in the GATT negotiations that would later be followed by the ratification of the Agreement Establishing the World Trade Organization (WTO) through Law - Law No. 7 of 1994 sheets of the Republic of Indonesia Year 1994 No. 57. From so many trade issues set out in the agreement GATT - WTO, the issue of protection of intellectual property rights covered by the TRIPS, is one of the issues that should get the attention really - really, because the new Uruguay Round of IPR is included as the substance of agreements in the field of world trade ,

As an international treaty, GATT is a series of rules of the game in the field of trade which govern the procedures of trade between member states and agreed to. Thus the GATT can be part of a study on public international law as well as special studies on international commercial law.¹¹

⁸ FOKKOPEN RI Cooperation Information Department of the National Resilience Institute, Ambon 1994, p 96-98.

⁹ Sri Bintang Pamungkas, *Investasi asing dan industrialisasi di Indonesia*, cetakan pertama februari 1991, penerbit LP3ES Jakarta, P. 23-24.

¹³ [http://www.jpa.gov.nny/buletinjpa/j2biH/PEMBAGUNAN% 20 TEKNOLOG/.html](http://www.jpa.gov.nny/buletinjpa/j2biH/PEMBAGUNAN%20TEKNOLOG/.html)

¹¹ H.S. Kartadjoemena, *Substansi Perjanjian GATT/WTO dan Mekanisme penyelesaian Sengketa*, Penerbit Universitas Indonesia, 2000, P. 55.

Look Margaret Barret, *Intellectual Property*, 1996, p 3, which includes the business methods into the trade secrets. Also compare with R. Mark Halligan which classifies the following information as a trade secret, •Technical Information/Research & Development: proprietary technology information, proprietary information concerning research and development, formulas, compounds, prototypes, processes, laboratory notebooks, experiments and experimental data, analytical data, calculations, drawings-all types, diagrams-all types, design data and design manuals, vendor/supplier information, R & D report-all types, R & D know-how and negative know-how (i.e., what does not work); Production/Process Information : cost price data, proprietary information concerning production/processes, special production machinery, process/manufacturing technology, specifications for production processes and machinery, production know-how & negative know-how; vendor/Supplier Information : vendor/supplier information, cost/price data; Quality Control Information : Information concerning quality control record, quality control procedures, quality control manuals, quality control records, maintenance know-how & negative know-how; Sales and Marketing Information : proprietary information concerning sales and marketing, sales forecasts, marketing and sales promotion plans, sales call reports, competitive intelligence information, proprietary information, concerning customers, proprietary customer list, customer needs and buying habits, know-how concerning the management of customer

TRIPS is a norm of international law that carries very significant change for the development of intellectual property in general, because besides the one hand introducing various legal devices that has not previously accommodated by various international convention in this field, it also provides a standard - a new standard for the protection of intellectual property, such as a problem the term of protection that the longer, as well as changing views and theory - old theory IPR adopted various countries, as well as trade secrets.

TRIPs as an international treaty intended to give specific legal consequences. TRIPs itself is a reality which indicates the success of countries - developed countries led by the United States and Japan, which previously was very dissatisfied with the World Intellectual Property Organization (WIPO) which was considered too pro countries - developing countries.

The emergence of the provisions - IPR provisions in TRIPS for developing countries is often a dilemma, on the one hand, developing countries are concerned with the implementation and enforcement of intellectual property rights which will encourage creativity and independence of his country's economic actors and to avoid the possibility of severe sanctions from the state forward for violations in this area, but on the other hand countries - developing countries also face a situation that is quite heavy because it must pay dearly for the use of intellectual property rights from the state - developed countries, due to its dependence during this time on foreign technology.

Cultural attitudes of society in Indonesia itself is often prohibitive and difficult to support the implementation and enforcement of this. IPR people who do not understand fully and are not supported by an adequate legal awareness often misunderstand that the protection of intellectual property points to the fact so high precisely individualistic nature of man sometimes be inconsistent with the local culture. Such circumstances should be corrected and continue to be directed so that respect for intellectual property rights can be enforced realistically. Because if the state is the low esteem of intellectual property rights continues, in addition to the climate will impact the loss of creativity, and violation of the rights - a fundamental individual rights will also result in isolation of the country from the international association.

However the globalization of trade has now become a world selection, then the decision to ratify the deal RI GATT - WTO is hard to avoid, that must be anticipated and prepare the next steps - steps that should be undertaken include the preparation of various juridical institutions, so that the national interest would be maintained.¹²

That to advance the industry able to compete in national and international trade scope is necessary to create a climate that encourages creation and innovation society by providing legal protection for trade secret as part of the intellectual property rights system. That Indonesia has ratified the Agreement Establishing the World Trade Organization, which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) by Act No. 7 of 1994 so it is necessary to regulate provisions concerning the Trade Secret.¹³

There is a link very closely between the protection of trade secrets or also known as undisclosed information that is part of the Right to Intellectual Property (hereinafter: IPR) with the globalization of trade, because today's problems international trade not only be related to the goods and services solely, but it also terliat other resources in the form of technology. In addition, investments may also be intellectual property rights such as trade secrets, patents, trademarks, industrial designs, copyrights and other rights within the scope of intellectual property rights.¹⁴

confidence, proprietary sales and marketing studies and reports; internal Financial Information : proprietary financial information, internal financial documents, budgets, forecasts, computer printouts, product margins, product cost, operating reports, profit and loss statements, proprietary administrative information; Internaladministrative Information: internal organization, keys decision makers, strategic business plans, internal computers software ”

Look at Terrence F. MacLaren, *Licensing Law Handbook*; Licensing Intelegen the Pacific Rim, Clark Boardman Company Ltd., N.Y., 1990, P. 140. Look at Wendy L Brown, *Update to Attorney's Guide to Trade Secrets*, Continuing Education of the Bar, Berkeley, C.A., 1986, P. 3. H.S. Kartadjoemena, *Substance agreement GATT / WTO and the dispute settlement mechanism*, Indonesian University Publishers, 2000, p 55.

¹² Ahmad M. Ramli, *Teori Dasar Perlindungan Rahasia Dagang*, Penerbit Mandar Maju/2000/Bandung, P. 12, 13,14.

¹³ http://be-8-mail.eudoramail.lvcol&bool_next_on_disp_pg=true&booljrev_on_disp_pg:fals.

¹⁴ Ahmad M. Ramli, *HAKI Hak Atas Kepemilikan Intelektual (Teori Dasar Perlindungan Rahasia Dagang)*, Penerbit CV. Mandar Maju, 2000, P. 1.

Look also highly monumental verdict shows the application of Article 1365 of an unlawful act, the act of this kind can only be qualified as onrechtmatige daad if first of all that it is an act.

Arrangements regarding undisclosed information or trade secrets is also called the possibility of an alternative form of protection for an invention. In the case of products marketed shall not disclose or describe the composition or production process and the products related to the field discovery or technology that does not allow others to independently discover or invent the same invention, it would be beneficial if its protection as a trade secret and not patents. Trade secret know-know can protect confidential which can not be patented, and inventions that can be patented. In addition to being protected as trade secrets, inventions can also be protected alongside the patent. Trade secrets to protect inventions before filing of the patent application and at the time the patent application is still in process. Protecting trade secrets related know-know, that know-know were not disclosed and are not required to be disclosed in the patent application. If the patent is granted, then there is a patent and trade secret protection.

For Indonesia, in terms of international trade has a very important meaning. Era of economic development which will be superimposed on the industrial sector, especially export-oriented require security for its marketing. As noted by Robert M. Sherwood, developing countries can expect benefits from a lot of things if developing countries to fully implement the TRIPS agreement.

In Indonesia steps to improve IPR protection in a more coordinated and integrated has started since 1986 with the establishment of the Working Group under Presidential Decree No. 34 of 1986 on July 30, 1986, known as the Presidential Team. 34. Tim decree. 34 This has spawned legislation in the field of IPR, namely Law No. 7 of 1987 on the Amendment of Act No. 6 of 1982 On Copyright, Act No. 6 of 1988 on Patents in force since August 1, 1991 and then Law Number 19 of 1992 on Marks in force since April 1, 1993, which is an improvement and refinement and Commerce. Third Act has been improved and perfected by Act No. 12, 13 and 14 in 1997, which has been agreed by the government and Parliament and entered into force on 7 May 1997. However, until today one must for members of GATT (WTO), to regulate the protection of trade secrets is still in the planning in Indonesia.¹⁵

Indonesia, which is part of the international community that helped ratify the WTO agreement, by itself subject to the trading rules contained in the agreement. For that Indonesia without bargaining, must adapt its legislation, the framework of the WTO, especially in relation to the fields set out in the WTO where the IPR included in it. Especially with regard to the protection of Intellectual Property Rights, Indonesia has had the legislation has largely been referred to the TRIPs agreement. IPR Intemasional actual birth process can not be separated from the interests of the advanced industrial countries, especially the US. In fact it can be said that the role of Uncle Sam was very large in the birth of the Intemasional IPR rules. They want to rely on economic activity and trade in the products produced on the basis of the ability of the human intellect as research yielding discoveries in the field of technology. For example, the software giants Microsoft, Intel microprocessors, and food products McDonald which are all based in the United States, now has a lot to enjoy the benefits of royalties, fees and other licensing forms of the sale of the patent to its spread in many countries including Indonesia.¹⁶

History industrialized countries did not face competition. They were the first to be in it and the results they get tends to be cumulative. Meanwhile, countries that are trying to promote industrial sector in the present market situation clearly facing foreign manufactured goods were very different to the situation faced by developed countries in the past. However, there are also terms that benefit them. Advances in science and technology are painstakingly developed by the developed countries are now easily diverted by developing countries in a relatively short time. The problem now is whether human resources in developing countries can be adjusted to society in the form of the advanced industrial countries and whether such patterns is required. At the present time no longer takes a long time, as with the development pattern of the nineteenth century, to achieve economic take off.¹⁷

Different from almost all Western countries and the United States, was evident in the early stages of development of the industry that the Japanese are very poor for raw materials that are needed in the process of

Look at *Moh. Koesnoe*, Suatu Catatan Tentang Penggunaan Pasal 1365 BW Dalam Praktek Hukum Kita Selama Ini, *Varia Peradilan*, No. 61 Oktober 1990, P. 145.

Look at *Sudargo Gautama*, Arbitrase Bank Dunia Tentang Penanaman Modal Asing di Indonesia dan Yurisprudensi Indonesia Dalam Perkara hukum Perdata, 1994, P. 76.

¹⁵ Cita Citrawinda Priapantja, *Budaya Hukum Indonesia Menghadapi Globalisasi, Perlindungan Rahasia Dagang Dibidang Farmasi*, Chandra Pratama, cetakan pertama, Desember 1999, P. 5.

¹⁶ OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, Publisher PT. Raja GRafindo Persada, Jakarta, 2003, p. 27-30.

¹⁷ Alan B. Mountjoy, *Industrialisasi dan Negara-negara Dunia Ketiga*, Publisher Bina Aksara, Jakarta, 1983, p. 88.

industrialization, so that from the very beginning of the country should become an exporter of industrial goods in order to guarantee the availability of foreign exchange either technology and expertise needed to "catch up" advanced industrial countries. However, Japan is not merely implementing the strategy of export-oriented industries that simple. Almost since the beginning steps towards industrialization.¹⁸

In 1986, at the urging of the United States and other developed countries, the topic of the protection of intellectual property in developing countries raised as an issue in the context of the international trading system. Starring other developed countries, the European Community and Japan, wearing a rather radical approach in negotiations perundingah compared with the United States. Japan and the European Community supporting the objectives toward better protection of intellectual property in the world. Efforts to elaborate new regulations and order and public order, as well as an explanation of the rules of GATT trade has been driven by the growing awareness that in many countries, the level of protection for intellectual property rights or the tightness is not adequate or effective for protecting innovation and karya- the work of the creativity. Variegated level surveys have been conducted in countries that provide protection of intellectual property. Survey which stands out is the results of a questionnaire circulated by the International Trade Commission (the International Trade Commission) USA, February 1988 hundreds and hundreds of international active company with explaining the reasons for inadequate protection of intellectual property in countries outside the United States, namely that companies experiencing difficulties caused by weak IPR protection systems in more than 40 countries most of which are developing countries.¹⁹

In the United States alone in its development appears to have started there is a desire to do this unification trade secret law, it is seen from the birth of the Uniform Trade Secret Act (UTSA), which has been adopted by 39 states.²⁰

The purpose of the GATT not to implement free trade in the sense of free trade without barriers but to apply the rules of the game so that international trade can develop in a transparent and predictable with an opportunity to liberalize gradually through a series of talks hosted regularly. It should be stressed that the implicit, implied principle that liberalization in trade will further support efforts to increase economic growth and increased prosperity. But we realize that many people who wanted to keep their protection.

With pragmatism, GATT was originally a nature interim arrangement, pending the establishment of ITO gradually become permanent. As an institution, the GATT was able to survive and gradually increasingly play a significant role. However, it should be noted characteristic that reflects the limitations of GATT. Unlike the IMF and the World Bank, GATT is a "contract" between the participating countries, which binds the parties who participated in the agreement, or the contracting parties, to adhere to a set of principles and rules of the game in the field of trade stipulated in the agreement.

In the GATT agreement are not listed in the provisions concerning the institutional aspects of the GATT. Institutional development arising in GATT is that it also reflects a pragmatic approach in the GATT. This development is also an aspect that is quite interesting in the institutional development of GATT. In 1970, Kenneth Dam, one of the legal experts in the field of GATT, has summed up the situation quite unique from GATT as an organization as follows:

In legal and institutional patrimony, the GATT is one of the most humble, if not deprived, of the international bodies on the current world scene. But in positive accomplishments, the GATT must surely rank near the top. In large measure this initial handicap has been overcome through the persistence and resourcefulness of a dedicated and pragmatic secretariat and through the will of the leading contracting parties. But a number of institutional arrangements adopted in the past twenty years have also contributed to the accomplishments of GATT.

If taken literally, GATT is not an international organization but a multilateral agreement with the possibility to carry out a joint action under Article XXV (article 1) of the agreement.

Given the background of the kind described above, we can trace the development of institutional GATT

¹⁸ Helen Hughes, *Keberhasilan Industrialisasi di Asia Timur*, Publisher PT. Gramedia Pustaka Utama, Jakarta, 1992, p. 338.

¹⁹ Helen Hughes, *Keberhasilan Industrialisasi di Asia Timur*, Publisher PT. Gramedia Pustaka Utama, Jakarta, 1992, p 154.

²⁰ Ahmad M. Ramli, *Op.Cit*, p 43. Look at *Jhon C Dem Bach & Richard V Singleton II, A Practical Guide to Legal Writing and Legal Method, Fred B. Rothman & Co, Littleton, Colorado, 1981, hlm. 46-47*. Look at *Arthur H. Seidel & David R. Crichton, What The General Practitioner Should Know About Trade Secrets and Employment Agreement, Third Edition, The American Law Institute, United States of America, 1995*.

with an appreciation of the institutional experience that is fairly typical of this GATT.²¹

Some of the considerations underlying the stipulated Trade Secrets Act and are listed in the preamble and the explanation is as follows:

a. That to advance the industry able to compete in national and international trade scope is necessary to create a climate that encourages creation and innovation society by providing legal protection for trade secrets as part of the system of Intellectual Property Rights;

b. That Indonesia has ratified the Agreement Establishing the World Trade Organization (the Agreement Establishing the World Trade Organization), which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) by Act No. 7 of 1994 so it is necessary to regulate provisions concerning trade secrets;

c. That the legal basis for the establishment of the Law of Trade Secret is Article 5, paragraph (1), Article 20 and Article 33 of the Constitution of the Republic of Indonesia Year 1945, and Law No. 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization (Agreement Establishing the World Trade Organization), (State Gazette of the Republic of Indonesia Year 1994 Number 57, Supplement to the State Gazette of the Republic of Indonesia Number 3564) and Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia Year 1999 Number 33, Supplement to State Gazette of the Republic of Indonesia Number 3817).²²

Regarding the protection of creativity, Ruth L. Gana said that the recognition and protection of the products of the work of human creativity intelektualita agrarian society very different from industrial society treats intellectual property, and this situation is caused by such things as the following:

1. The presence of different forms of ownership of the property;
2. The difference in the treatment of intellectual property for the purpose of protection itself (the main objective of IPR laws Anglo American is to encourage creativity, while in a third country is for the purposes of social, political and economic).

3. different theories about the "creation or creativity" (for example, on Aboriginal law, the right to create paintings and other creative works depicting stories of dreams or fantasies derived from traditional owners, and by understanding theocratic Ancient Israel, creativity is recognized as a provision God, so it can not be traded).

4. The embodiment of the works of creation found in indigenous communities considered to be owned jointly by the group as a whole; and

5. The principles governing the intellectual property rights of indigenous peoples and the industrialized countries is associated with the ownership rights of individuals.

Discussion concerning the protection of intellectual property rights in developing countries have not managed to pay attention to cultural differences that affect the understanding of "property", or anything that belongs to an individual. Intellectual property rights is also important to connect with the realities of socio-cultural developing countries as a more effective approach to ensure the enforcement of intellectual property rights in developing countries.

On the contrary, this situation is no longer encountered in modern societies, where social mobility becomes increasingly complex society, the division of labor increasingly widespread, prominent individuality, competition among members of the public is getting stronger, the different levels of economic life is also increasingly sharp, and planting foreign capital is a factor spur an increase in the practice of law, while also improving the economy. Economic development in the developed countries has been oriented to the pursuit of economic growth and prosperity. The meaning of development for the developed countries is the struggle for development and progress for the benefit of the present and future of the nation. Meaning of economic development for developing countries is the struggle to master science, technology, expertise, and information, and the struggle to resist economic pressures from developed countries.²³

Rapid progress taking place in the field of information technology, communications and transportation,

²¹ H.S. Kartadjoemena, *Substansi Perjanjian GATT/WTO dan Mekanisme penyelesaian Sengketa*, Publisher Universitas Indonesia, 2000, p. 21-25. Look at Analytical Index: Guide to GATT Law and Practice, Vol.II (Geneva: World Trade Organization, 1995).

Look at Anderson, Kym (ed)., *Strengthening the Global Trading System: From GATT to WTO* (Adelaide: Centre for International Economic Studies, University of Adelaide, 1996)

Look at Anderson, Kym dan Richard Blackhurst (eds.), *Regional Integration and the Global Trading System* (London: Harvester Wheat-sheaf, 1993).

²² Insan Budi Maulana, *Langkah Awal Mengenal Undang-Undang Rahasia Dagang*, Publisher PT Citra Aditya Bakti, Bandung, 2001, p. 16-17

²³ Citra Citrawinda Priapantja, *Budaya Hukum Indonesia Menghadapi Globalisasi, Perlindungan Rahasia Dagang Dibidang Farmasi*, Chandra Pratama, first printing, Desember 1999, p. 103.

which plays a major role in the process of globalization of trade, is also a factor in triggering heavy IPR globalization with all its problems. The economies of scale of an investment especially those that are technology-intensive, are also more likely to measure the feasibility of their business by using the size of the larger market than just a national territory. Such businesses often penetrated and growing by counting and making a region and even the world as a market. Globalization of trade is increasingly becoming the real thing.

With such a tendency, a product which is essentially a work of art or literature or literary works, including scientific works which basically is an intellectual work protected Copyright (as part of the IPR), and traded globally, in turn, will require also effective legal protection of all violations. Similarly, industrial or other manufacturing products. The involvement of the choice of technology (including process technology) either in the form Patented or trade secrets that took place at the planning stage and continues until the stage of manufacture, or use of the mark when the products in question are marketed, indicating the involvement of intellectual property rights from the beginning to the end of production. It can be said, IPR has been present since the beginning of production until the time of marketing. Therefore, it is no exaggeration to say that the globalization of products, in the end also means globalization.²⁴

International economic theory can indeed justify protection of young industries based on the "theory of protection for young industries" (infant-industry argument for protection). Temporary protection for young industries such as tariffs on imported goods can be justified because in the early days of these industries still face many difficulties in the production process due to lack of experience and skills, so that the production cost becomes high. Only after some time has passed can be developed managerial capability and adequate technical that will lower the cost of production, so as to achieve a comparative advantage (comp Development of Manufacturing Industry in Indonesia in general shift from the state Agriculture to the State Industrial, Industrial Manufacturing plays an important role in the development of Indonesia in the year 1973. To improve the competitiveness of National manufacturing should terns in galakkan one of them is through the increasing application of technology informasi on all aspects of the manufacturing industry in advanced countries.

Comparison of Japanese and Malaysian state's general characteristics have similarities in terms of industrial development. Both are countries through implementing industry (late industrializer) compared with western countries that has developed. Japan became the country's most victorious in the fields of industry, and even more victorious from countries that had earlier implement perindustriannya basis.²⁵

III. Discussion

1. Trade Secrets Legal Protection For Company

One of the problems faced by developing countries, including Indonesia is the issue of protection and legal certainty. The destruction of the national economic system that occurs at this time due to the prolonged economic crisis actually partly due to the loss of public confidence and the international community due to weak implementation and enforcement of the law itself.

Optimizing development in the legal field should soon konkretkan realistically to consistently carry out all statutory provisions that support the core legal climates to justice in order to achieve certainty and order and the rule of law

In addition to achieving certainty and order, further development of the law is intended to ensure the implementation of community life harmonious and dynamic and the creation of a healthy climate that pro-actively encourage the creativity of the community. Creativity society itself can be developed if there is a healthy climate for creativity and competition, protection of trade secrets and intellectual property rights are

²⁴ Belongs to the Paris Convention for the Protection of Industrial, March 20, 1883 (Revised Stockholm, July 14, 1967), p 3.

Paris Convention for the Protection of Industrial Property (Paris Convention for the Protection of Industrial Property) was signed in Paris, France on March 20, 1883 is one of the international treaties on intellectual property. Paris Convention is a treaty that most signed by the countries in the world.

This agreement also uphold the right of priority convention or the right of priority of the Paris Convention (the right of priority Union) which guarantees the applicant's intellectual property rights of the participating countries to use the date of filing of the first application (in one of the participating countries) as the effective date of submission of application in other countries has also become participants, provided that the applicant submit an application within 6 months (for industrial designs and trademarks) or 12 months (for patents and utility models) from the date of filing the application.

Paris Convention administered by the World Intellectual Property Organization (WIPO) based in Geneva, Switzerland.

²⁵ <http://www.iDa.aov.mv/buletiniDa/i2bill/PEMBANGUNAN TEKNOLOGI.html>.

generally adequate and have the assurance is one of the drivers for the community to continue to develop their creativity.

This is in line with the basic theory of trade secret protection that can be expressed as follows:

First, the theory About Properties is one of the basic protection of trade secrets. Several court decisions in the United States shows that there is a link between the trade secret with the concept of property rights. Thus the trade secret protection is based on the theory of property rights is also synonymous with the protection of know-how, which is one form of trade secrets. In this position it is a trade secret can be aligned as a form of property rights even identical with assets or investments bari individuals or companies

As proprietary trade secrets are proprietary and can be defended against those who seek to abuse it or plow it. The owner has the right to the widest possible to use it for the benefit of the proprietary rights or private company.

Theories on Property Rights is also known under Indonesian law, Article 570 BW states:

"Property rights are the right to menikanti an object completely and to control it with the freest, the origin is not used contrary to the laws or regulations of commonly held by the authority which has the authority to the origin and does not interfere with the rights of other people; kesemuanyan it by not reducing the possibility of revocation of the right to public kepentingan, with payments offset a decent and in accordance with the provisions of the law "

Second, the contract theory is the basis of the most frequently raised in court proceedings regarding trade secrets in the United States, for example, put forward this theory in the case of American Eutetic Weldingn Alloys Sales Co. v. Aloys Dytron Corp. 439 F 2d 428 (snd Cir. 1971). This case shows how the effect of contractual provisions set forth explicitly in the form of agreements between the parties affects the settlement of trade secrets.

Contracts under Indonesian law is one of the more basic form of engagement that include the obligation not to do something as an achievement, which can take the form obligation not to divulge trade secrets or make a rival product by trade secrets that have been learned.

Third, the protection of trade secrets can also be done based on the theory of tort. This is one way out as a consequence of the protection of intellectual property that is not registered as a trade secret as this. This principle widely applied in various countries to address anti-competitive activities (unfair competition) conducted by kompetitor.yang not acting in good faith. In line with the theory of a civil tort is then in addition, it can also be applied to other principles that form the principles of criminal sanctions. This principle is applied against the perpetrators of theft of trade secrets can be sanctioned under the provisions of Article 322 paragraph (1) in conjunction with subsection 323 (1) Criminal Code and Article 382 bis Criminal Code.

Creativity of society among others, will involve national IP is a right which arises because of the creative act of man so that this right should receive adequate protection. Protection of intellectual property rights will be closely related to aspects of science technology, and economics.

The basic theory supporting the enforcement of intellectual property rights is that micro enforcement of intellectual property rights will encourage motivation for all the parties in accordance with the duties and their own profession to grow and develop as a human being creative and innovative, while at the macro level it can create a work productivity level national will be able to encourage the accelerated pace of national development.

Good protection of trade secrets and intellectual property rights in general also have a strategic role in improving the welfare of scientists, inventors, researchers, and the community itself.²⁶

If you pay attention to the Indonesian legal system in general or *lex generalis*, in fact Indonesia already have provisions which provide protection against the owner or holder of a trade secret. The provision was set civilly in article 1365 of the Civil Code relating to unlawful acts in its broadest sense. That article states:

"Every act is unlawful, that brings harm to others, require a person who due to his fault publish those losses, to replace those losses".²⁷

Article 3 (1) requires three elements that must be met in order for a trade secret protected by law:

a. Should be confidential. The information will be considered confidential if it is only known by a particular party or not known by the general public: Article 3 (2), it is similar to the process of testing in most countries as discussed above.

²⁶ Ahmad M. Ramli, *Teori Dasar Perlindungan Rahasia Dagang*, Publisher Mandar Maju/2000/Bandung, p. 9-12. Look Rahardi Ramelan, *Hak Atas Kekayaan Intelektual Dalam Era Globalisasi*, Papers Scientific Meeting Faculty of Law, Padjadjaran University, Bandung in 1996. Look at Cabanellas Guilarmo & Massaguer Jose, *Know-How Agreements and EEC Competition Law*, IIC Studies, Vol. 12, hlm. 50.

²⁷ Insan Budi Maulana, *Langkah-langkah Mengenal Undang-undang Rahasia Dagang*. (Bandung : PT Citra Aditya Bakti, 2001) p. 19.

- b. Must have commercial value. Information will be considered confidential commercial value that can be used for the betterment of the business or commercial activities or to increase the economic benefits: Article 3 (3).
- c. Owner information should have taken the steps necessary and appropriate to preserve or protect the confidential nature of such information: Article 3 (4). The obligation of the owner to take positive steps to maintain the confidentiality of information is perhaps more severe in the law of other countries as discussed above. There is a possibility the owner information can not rely on commercial context in terms of information provided to prove the existence of an obligation to maintain the secrecy of information.²⁸

Trade Secrets Act as stipulated in Article 17 paragraph (1) sanction imprisonment of 2 (two) years and / or a fine of Rp 300,000,000.00 (three hundred million rupiah), and it is not a criminal offense complaint.²⁹

2. Legal Protection of Trade Secret Relationship With Industry Sector

Industry is a field that uses skill, and diligence work (English: Industrious) and use tools in the processing of agricultural products, and distribution as a baseline. So the industry is generally known as the chain of efforts to further meet the needs (economic) associated with the earth, that is, after agriculture, plantation, and mining is closely linked to the land. Position the industry further away from land, which is the base of economy, culture, and politics.³⁰

Human life in its activities at this time will not be separated from the objects and utensils in the form of handicraft products, household products industry, as well as major industry. The product stems from the human desire to live better and easier. The desire circles foster creativity and work in the field of design, particularly in the field of industrial design. The design is the work of someone outcome form the outpouring of intellectual ability, which is manifested not only in the real form an object having value for human life. The realization of these benefits, especially concerning industrial design results can be felt setela undergo stages of production process through regular hand work or in household and industrial fabrication processes masinal, it was all done by the perpetrators in order to obtain economic added value. It shows that the design is basically a process of creation, discovery and determination are not separate from the aspects of the product include a blend of the supporting factors and the factors that (often) opposed to a spin concept of three dimensional and material reality could reproducible mechanical equipment.³¹ Industrial design is part of the Intellectual Property Rights. Protection of the industrial design concept is based on the idea that the birth of the industrial design can not be separated from the ability of copyright creativity, taste, and imagination possessed by humans. So, it is a product of human intellectual, human civilization. There are similarities between the copyright field of painting (graphic art) to industrial design, but the difference will be more noticeable when the industrial design that they form closer patents. If the industrial design was originally realized in the form of paintings, caricatures or pictures / graphics, a dimension that can be claimed as copyright then, at a later stage he was drafted in the form of two or three dimensions and can be manifested in a pattern that gave birth to the product material and can be applied in industrial activity. In the form that then he formulated as industrial design.

Normative definition of industrial design is formulated as follows:

"Industrial Design is a creation on the shape, configuration or composition of lines or colors, or lines and colors, or a combination in the form of three-dimensional or two-dimensional gives aesthetic impression and can be realized in a pattern of three-dimensional or two-dimensional and can be used for produce a product, goods, industrial commodity or handicraft".

Referring to the above definition then, the characteristics of the industrial design can be formulated as follows:

1. The creation of shape, configuration or composition of lines or colors, or lines and colors or a combination of both.
2. Forms configuration or composition should be in the form of two or three dimensions.
3. The form should also provide aesthetic impression.

²⁸ Tim Lindsey, Blitt, Eddy Daiman, Simon Butt, TomiSuryo Utomo, *Hak Kekayaan Intelektual*, (Bandung: P.T. Alumni, 2011), p. 249-250.

²⁹ Insan Budi Maulana, *Langkah-langkah Mengenal Undang-undang Rahasia Dagang*, (Bandung : Publisher PT Citra Aditya Bakti, 2001), p. 38.

³⁰ <https://id.wikipedia.org/wiki/Industri>, last accessed October 26, 2016, at 9:28 pm.

³¹ Muhammad Djumhana, *Aspek-Aspek Hukum Desain Industri*, (Bandung : PT Citra Aditya Bakti, 1999), p. 1. Look John Heskett, *Desain Industri*, translation Chandra Johan (Jakarta, Rajawali, 1986), p. 5.

4. All of it (items 1, 2 and 3 above) must be used to produce a product, in the form of goods, industrial commodity or handicraft.

Elements contained on the characteristics of 1, 2 and 3 closer to copyright protection, but the elements contained in item 4 is an indispensable element in the patent.

Once the importance of art or aesthetic element in the design of this industry. Art that contains elements of beauty or aesthetic creations or it is the result of human creativity, so it is a work of intellect

Once the importance of art or aesthetic element in the design of this industry. Art that contains elements of beauty or aesthetic creations or it is the result of human creativity, so it is the work of the human intellect that should be protected as property rights. On the other hand if the work intelektualitas it can be applied and produce a product in the form of goods or commodities industry, the combination of the two (between the aesthetic value and the value of the product) is formulated as an industrial design.

That's why the right to industrial design is formulated as an exclusive right. Only designers are allowed to obtain such rights from the state.

Nevertheless, even though it is the exclusive rights holder of design rights can allow others to enjoy the economic benefits of the industrial design by means lisensiyakni form of agreements granting the right and not the transfer of rights. Why assignment of rights can not be done, because the meaning of the transfer of the shift also caused the moral rights (moral rights), whereas it is the right moral rights highly exclusively reserved for the designer, who can not be transferred under any circumstances.

There are two philosophical approaches of the industrial design as part of Intellectual Property Rights, namely:

- 1 Approach copyright rooted in European countries with a view of industrial design as a work of creativity, taste and intention (culture).
- 2 The approach of patents, which originate in the countries of Japan and the United States to see industrial design as a product business value.

Differences in how the philosophical approach of the industrial design as part of Intellectual Property Rights, causing differences in the makeup of normative legislation about it in various countries.

Perspectives for example copyright, industrial design as an outcome in which thoughts or feelings expressed in a creative way and manifested in the form of work aesthetic value. While the perspective of patents, industrial designs seen as an attempt to encourage invention by improving aspects of protection and usability are also contributing to the advancement of the industry. Most certainly, the protection of industrial design is a combination of protection of copyrights and patents, but between copyrights, patents and industrial designs still have differences. There is a copyright on aesthetic value, the effect of ratio and taste as well as the effects of usability, while on patents, especially patents over mendedapankan simple material elements that can be applied in the field of technology and industry and prioritizes ratio and usability effect. In the industrial design emphasis is on material that bears the impression of aesthetic and emphasis on flavor and aesthetic effect.

The purpose of legal protection against their respective fields of intellectual property rights is also different. Copyright Act, for example, aims to establish the rights of creators and ensure the protection of his work, which deals with exploitation of culture (science, art and literature) fair and true and can thus contribute to the progress of human civilization.

In contrast to the purpose of protection of copyright law, patent law (simple) aims to encourage the creation of a piece of equipment with advanced aspects of protection and usability of equipment relating to the shape or arrangement, which can contribute to the development of the industry.

While the purpose of the law of industrial design, its uses is to encourage the creation of a work of design with the advanced elements of protection and usability, which can contribute to the advancement of the industry.

Same with the protection of Intellectual Property Rights protection of industrial designs in addition to being protected by the law in each country, is the international protection of industrial designs embodied in:

1. The Paris Convention for the Protection of Industrial Property of 1883.
2. The Haque Agreement Concerning the International Deposit of Industrial Designs of 1925.
3. The Locarno Agreement Establishing an International Classification for Industrial Designs of 1968.
4. TRIPs Agreement under the World Trade Organization Agreement.
5. The Berne Convention for the Protection of Literary and Artistic Works of 1886.
6. The Universal Copyright Convention of 1952.

Especially with regard to the London Act 1934 and Haque Act 1960, not all countries subject to both the convention. Indonesia for example, only subject to the London Convention Act, 1934 together with Spain, Tunisia, Egypt, and Holysee. In detail, the following table will show each country subject to the respective

conventions.³²Not all industrial design generated by the designer can be protected as industrial design. Only new industrial design which by the state could be given to the designer. Limitation of the new industrial design was by the Law on Industrial Designs stated that: "The industrial design protection is given to the design of a new industry". Industrial design is considered new if on the date of receipt, the industrial design is not the same as the disclosure of which has been there before. Previous disclosure is the disclosure of which before:

1. The date of receipt; or
2. priority date, if the application is filed with priority rights; has been published or used in Indonesia or outside Indonesia.

An industrial design is not deemed to have been announced, if within a maximum period of six months prior to the date of receipt, the industrial design;

1. has been displayed in a national or international exhibition in Indonesia or abroad are recognized as official or official; or
2. have used educational purposes, research or development.

Industrial design rights can not be granted if the industrial design is contrary to the legislation in force, public order, religion and morality.

In addition, in countries that uphold the moral, religious and legal restrictions on what is allowed in the design and what not to do should refer to the size of the moral, religious, and the law. For example the industrial design is not given to the design work is pornographic, in which there is an element of humiliation or design on the face of the prophet or apostle of certain religious beliefs, including the prohibited act.

As an intellectual rights, the rights of industrial design at any time should be publicly owned and run social function. Therefore grace period of protection is limited.

In Indonesia Industrial Design Act, the right to protection of industrial design is only granted for a period of 10 years starting from the registration date, which was published in the General Register of Industrial Designs which was announced in the Official Gazette of Industrial Designs RI Department of Justice.

Those who can be given the right to obtain the right to industrial design are:

- 1 designer or those who receive the right from the designer.
- 2 In case the designer of several persons jointly, industrial design rights granted to them jointly, unless agreed otherwise.
- 3 If an industrial design is created in an official relation with another party within the working environment, the holder of industrial design rights is a party to and / or whom the industrial design is created, unless there are other agreements between the two parties without prejudice to the right of the designer when the use of design the industry expanded beyond the official relation.
- 4 The provisions referred to in point 1 shall also apply to the industrial design created by others based on orders that apply in the relationship department.
- 5 If an industrial design is created in employment relationships or under orders, the person making the industrial design is considered as a designer and holder of industrial design rights, unless otherwise agreed by both parties.

The provisions referred to does not remove the right designer to have his name included in the Certificate of Industrial Design, the General Register of Industrial Designs, and the Official Gazette of Industrial Designs.

It is given to the holders of industrial design rights are exclusive rights or the right to carry out industrial design rights and to prohibit others without consent make, use, sell, import, export and / or distribute the products by industrial design rights. However, the implementation of such rights shall exclude the use of industrial design for kepentingan research and education does not damage the normal interest of the holders of industrial design rights. For the rights to the intellectual work that has economic value, limits the normal interest becomes very complicated, because education itself (including research on it) is now developing into the

³² OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights) Edisi Revisi*, (Jakarta :PT RajaGrafindo Persada, 2015).. 571-574. .

Look in legislation Indonesia formulation of industrial design was originally found in Law No. 5 of 1984 regarding industrial. The term is found in the law is "industrial design". While the term industrial design is often used by the people of Europe and Japan, more look Suyud Margono, *Intellectual Property Rights*, CV Novindo Pustaka Mandiri, Makarta, 2002, p. 31. In Indonesia, the current legal protection of industrial design is regulated in Law No. 31, 2000. The terms of industrial design that themselves had previously encountered also in Article 25 and 26 of the TRIPs Agreement. At least not with the Act No. 31 of 2000 that Indonesia has met the minimum standards on the protection of intellectual property rights under the TRIPS agreement in which the industrial design included.

business world. If the propagation of the right to industrial design that contains "elements" business or economic interest, then it can be considered to have violated the normal interest.³³

IV. OBLIGATIONS AND EFFORTS TO MAINTAIN CONFIDENTIALITY IN KEEPING AND TRADE

An owner of a trade secret is required to maintain and safeguard the confidentiality of the information it has. It can be done through measures such as through the creation of a contract whose contents are explicitly require the other party not to divulge information in writing. Written contracts of this kind would be very helpful, especially to avoid misunderstandings over the scope of which must be kept secret.

Obligations in maintaining this secrecy can also be reached through provisions that are implicit. In principle, the law will protect the confidentiality of it is based on principles of contract law which states that the agreement includes not only what has been explicitly agreed upon, but it includes also the habits though not expressly stated as contained in Article 1347 BW, which reads:

"Things are in the habit forever in the agreement, are considered tacitly included in the agreement, although not explicitly stated".

Trade secrets include information that has commercial value as information about production processes, formulas and designs, customer lists, corporate data, business secrets, marketing methods, and others.

Similarly, the agreement must be interpreted broadly in terms of the relationship of the appointment with the promise of another, so that each appointment should be interpreted systematically in the context of an overall agreement. This is in line with the provisions of Article 1348 BW, which reads:

"All the promises made in an agreement, must be interpreted in relation to each other; every promise must be interpreted in the context of approval to all".

Shape the maintenance of trade secrets can also be born because of the relationship between the providers of information and those who receive it based on the principle of balance in other words the one must do his duty fairly against the other party as evidence of the existence of a relationship of trust with each other, it is usually contained in an a contract whose contents will not divulge secrets from each other.³⁴

V. EMPLOYMENT CONTRACT COMPANY WITH EMPLOYEES

Someone before choosing to work with other people, the first to be held a working agreement, both in simple forms that are generally made verbally or formally made in the form of writing. All of these efforts were made for the purpose of protection and assurance of the rights and obligations of each party. The working relationship as the realization of the employment agreement, should indicate the position of each party that would basically describe the rights and obligations of employers against workers on a reciprocal basis.

In employment contracts put all the rights and obligations on a reciprocal basis between employers and workers. Thus both sides in implementing the employment relationship has been tied to what they agreed in the employment agreement and the legislation in force.³⁵ Understanding agreements governed by Article 1313 of the Civil Code, which reads: *"The agreement is an act by which one or more persons bind himself to one or more of them"*.

With the understanding of the agreement as specified above, it can be concluded that the position between the parties to the agreement are equal and balanced. It would be different if the terms of the agreement compared to the position of a work contract. Understanding the agreement according to the conception of Article 1313 of the Civil Code, the mere mention of parties or joined to the other party, and did not specify for what purpose an agreement was made. Therefore, an agreement will be wider too assertive means, if the understanding of the agreement is defined as an agreement by which two or more mutual undertaking to

³³ OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)* Edisi Revisi, (Jakarta :PT RajaGrafindo Persada, 2015). P. 576-578. Right to Industrial Design is an exclusive right granted by the Republic of Indonesia to the designer for his creation for a given period to yourself, or to give permission to another party to do so. Protection of industrial design rights granted by the state only for a period of 10 years from the date of receipt. Look Act No. 31 of 2000 on Industrial Designs, Article 2, the State Gazette of 2000 No. 243, Jakarta, December 20, 2000.

³⁴ Ahmad M. Ramli, *Hak Atas Kepemilikan Intelektual Teori Dasar Perlindungan Rahasia Dagang*, (Bandung : Penerbit Mandar Maju, 2000)., p. 82-83. Look at R. Subekti & R Tjitro,

³⁵ Djumadi, *Hukum Perburuhan Perjanjian Kerja Edisi Revisi*, (Jakarta : PT RajaGrafindo Persada, 2002), p. 6.

implement something in the field of wealth. In an agreement, known as the principle of freedom of contract or freedom of contract. The principle intent is that everyone basically allowed to make agreements that contain and kind whatsoever, as long as not contrary to law, morals and public order. Or in another sense the principle of freedom of contract provides the broadest freedom to the people, for an agreement that contains anything and in any form, provided they do not violate the law, public order and morality.³⁶

VI. CONCLUSION

Trade Secret is not new to the business world. Since the beginning of the nineteenth century, the problem of confidentiality, in particular those relating to commercial confidentiality, has gained attention not least by the Court. One well-known case, which was disconnected in the Netherlands is the case of Cohen vs. Lindenbaum. The importance of an information or data that is confidential to the business world, secrecy itself is essentially relative, and not absolute, as we can see in the case of Cohen vs. The Lindenbaum. An information confidential information is something that is not open to the public, in the sense of an outsider, and is no secret to those who are directly involved with the existence and use of the information itself, which in many terms are categorized as insiders.

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³⁶ Djumadi, *Hukum Perburuhan Perjanjian Kerja Edisi Revisi*, (Jakarta : PT RajaGrafindo Persada, 2002), p. 9-10.