



# CRIMINAL PENALTY FOR EMPLOYEES WHO LEAVE COMPANY CONFIDENTIAL ACCORDING TO THE ELECTRONIC INFORMATION AND TRANSACTION LAW

by  
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## ABSTRACT

*Company secrets are very essential; especially to prevent unfair business competition, from other business actors who own companies that produce similar goods or services, especially if it is related to the globalization of trade. So the legal protection of trade secrets will give birth to a form of honest business competition among business people and become a very valuable commodity because it has a high economic value;*

*Employees who reveal or leak company secrets (Corporate Secrets which should be kept secret except for the interests of the state, either through print media (newspapers, magazines, bulletins), or online (TV, Instagram, YouTube, Snapchat (WhatsApp, SMS), Tik-Tok, Facebook and Twitter)) whose contents contain insults and/or defamation, shall be subject to criminal penalties based on Article 27 paragraph (3) in conjunction with Article 42 of Law No.19 of 2016 concerning Amendments to Law No.11 of 2008 concerning Information and Electronic Transactions are subject to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00,- (one billion rupiah).*

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## 1. INTRODUCTION

### Background

Indonesia is a State of Law (rechtstaat). This means that the state and other state instruments must act and be bound by the rules that have been determined in advance by the competent authorities. Thus the rule of law has the highest power in our country and the embodiment of justice can be applied in various lines of life.

One form of legal protection is the existence of adequate arrangements that are very close between the protection of Corporate Secrets or also known as undisclosed information.

The development of Indonesian law related to the protection of Company confidentiality is marked by the existence of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and Law no. 30 of 2000 concerning Trade Secrets. Besides that, the practice of business contracts has also developed that contains clauses of Company confidentiality that bind the parties not to disclose confidential information exposed in business relationships or work relationships within the company.

Article 2 of Law no. 30 of 2000 concerning Company Secrets (Trade) which is intended to protect information, technology and business that have economic value. Company (Trade) secrets protected in this Law include production methods, processing methods, sales methods, or other information in the field of technology that has economic value and is not known by the general public.

Violations against employees, employees who reveal company secrets are also regulated in Article 322 paragraph (1) of the Criminal Code, this act is included in the scope of crime. Whatever the form and the reason, revealing company secrets that have economic value in any way without permission from the leadership is an act, an

act that violates even the law, so that it can be subject to criminal penalties, both under the Criminal Code, the Trade Law.

If the actions of unscrupulous employees, employees who divulge their company secrets through the media (print, online, social media) which are closely related to the protection of Corporate Secrets or also known as undisclosed information, are opened by employees, employees who its contents contain insults and/or defamation, then it is subject to criminal sanctions based on article 27 paragraph (3) in conjunction with article 42 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

#### **Formulation of the problem**

Based on the above background, the formulation of the problem in this paper is: Criminal penalties for employees who leak company secrets according to the Information and Electronic Transaction Law?

## **2. LITERATURE REVIEW**

### **Research purposes**

Departing from the formulation of the problem above, the purpose of this paper is expected to be able to examine and analyze criminal penalties for employees who leak company secrets according to the Electronic Information and Transaction Law.

### **Benefits of research**

The benefits of this research consist of academic, theoretical, and practical benefits, as follows:

1. **Academically**, this research is useful regarding criminal penalties for employees who leak company secrets according to the Information and Electronic Transaction Law.
2. **Theoretically**, this research can enrich the repertoire of literature in terms of the study of criminal penalties for employees who leak company secrets according to the Electronic Information and Transaction Law.

## **3. RESEARCH METHOD**

### **A. Online Data Search / Internet Searching**

Internet searching is a technique of collecting data through the help of technology in the form of tools/search engines on the internet where all information from various eras is available in it. Internet searching is very easy in order to help researchers find a file/data where the speed, completeness and availability of data from various years is available. Searching for data on the internet can be done by searching, browsing, surfing or downloading.

### **B. Types of Data and Data Collection Techniques**

#### **1.) Data Type**

##### **Secondary Data**

Secondary data is data obtained from secondary sources other than field data such as literature data from books, magazines, the internet, and the results of previous research. Secondary data is used as a complement to primary data. Secondary data in this study is in the form of data that researchers found on the internet or in books.

#### **2.) Data collection technique**

This research was obtained from various sources, including journals, books, online news and websites, media reviews, websites and other relevant sources.

## **4. RESULTS AND ANALYSIS**

One of the must employees, employees who understand the protection of company secrets, must maintain the confidentiality of the company where they work, because good employees must have a sense of belonging and high loyalty to the company where they work. The concept of mutual need and belonging is called "*symbiotic mutualism*".

### **Understanding Company Secrets By Terms**

Company secret is a translation of the terms "*undisclosed information*", "*trade secret*", or "*know how*". Company secrets should not be known to the public, because apart from having a technological value, it also has an economic value that is useful in business activities and is kept confidential by the owner.

### **According to the Law**

According to the provisions of Article 23 of Law no. 5 of 1999, corporate confidential is information about the business activities of business actors classified as company secrets.

The KPPU's definition of corporate secret is emphasized in the Guidelines for Explanation of Article 23 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition,



which defines company secrets as: “*information on business activities that the owner has never disclosed to anyone, except to persons people who are directly related to the business activities of the owner of the information on business activities categorized as company secrets*”.

### Company Secret Elements

The company secret element includes various information, provided that:

- Has a confidential nature and is kept confidential;
- Disclosure of information causes losses to the company, because it moves and is used by competitors; and
- Has economic value.

### Company Secret Protection Concept

*Why company secrets should be protected and punished:*

Violation of disclosing Company Secrets in the Criminal Code is included in the scope of crime. The legal basis used is Article 322 paragraph (1) of the Criminal Code, where it is stated that a person who deliberately discloses a secret that must be kept because of his position or work, whether it is now or in the past, can be sentenced to imprisonment for a maximum of 9 (nine) months or a maximum fine of **Rp. 9000** (*nine thousand rupiah*)).

Disclosure of company secrets carried out by unscrupulous employees, employees who leak company secrets either through print media, or social media directly or indirectly are not in accordance with the principles of Good Corporate Governance (GCG), especially the principles of accountability and responsibility. responsibilities). So that it has a negative impact on the good name and degree of the company's stakeholders in corporate governance (the role of stakeholders in corporate governance) in the eyes of the public.

Regarding company secrets, let me cite a source from the Netherlands, because the Indonesian legal system comes from the Netherlands.

“The concept of corporate secrecy has been explained since January 31, 1919 by the Dutch Supreme Court in its decision known as *Lindenbaum Cohen Arrest*, a decision of the Dutch Supreme Court regarding unlawful acts. “*dat onder onrechtmatige daad is te verstaan een handelen of nalaten, dat óf inbreuk maakt op eens anders recht, óf in strijd is met des daders rechtsplicht óf indruischt, hetzij tegen de goede zeden, matzij tegenighe ten aanzien van eens anders persoon of goed, terwijl hij door wiens schuld ten gevolge dier daad aan een ander schade wordt toegebracht, tot vergoeding daarvan is verplicht.*”

**The translation of Indonesia:** "Bahwa termasuk pengertian perbuatan melawan hukum adalah suatu perbuatan atau kelalaian yang membentur hak orang lain atau bertentangan dengan kewajiban hukum si pelaku atau berjalan, apakah bertentangan dengan kesusilaan baik, ataukah bertentangan dengan kehati-hatian, yang berlaku umum dalam masyarakat berkenaan dengan orang lain atau harta orang lain, sedangkan si pelaku, sebagai akibat dari perbuatannya telah menyebabkan kerugian terhadap orang lain, yang membuatnya wajib membayar ganti rugi”.

### Criminal Violation Opening Company Secrets

Before discussing the criminal penalties for employees who leak company secrets according to the Information and Electronic Transactions Act, the ITE Law, first allow the author to review the punishments based on the Civil Code, the Criminal Code and the White Collar Law (KPPU Law, Trade Law) and others, this is to enrich and strengthen legal sources so that the basis for their studies is stronger.

#### According to the Civil Code

Disclosing company secrets is an unlawful act (PMH of Indonesian) as regulated in Article 1365 of the Civil Code, that: “*Every act that violates the law and causes harm to other people (including a corporate), obliges the person who caused the loss because of his mistake to replace the loss.*”

#### According to the Criminal Code

Prior to the existence of social media, the regulation on defamation was regulated in the provisions of the articles of the Criminal Code as follows:

Article 310 of the Criminal Code, which reads: (1) “*Anyone who intentionally damages someone’s honor or reputation by accusing him of committing an act with a clear intention to make the accusation public, shall be punished for blasphemy, with a maximum imprisonment of nine months or a fine. As much as Rp. 4.500, - (four thousand five hundred rupiah)*”. (2) If this is done by means of writing or pictures that are broadcast, shown to the public or posted, then the person who does this is punished for blasphemy with writing and is sentenced to a maximum imprisonment of 1 (one) year and four months or a maximum fine of Rp. 4.500, - (four thousand five hundred rupiah).

Article 315 of the Criminal Code, which reads “Every deliberate insult that is not in the nature of defamation or written defamation committed against a person, either in public orally or in writing, or in front of the person himself by word of mouth or deed, or by a letter sent or received to him, shall be threatened with light

contempt with a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiahs.

#### Law Number 23 Year 5 Year 1999

In Article 23 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition ("Law 5/1999"), jo. Constitutional Court Decision Number 85/PUU-XIV/2016/2016 which states that: "*Business actors are prohibited from conspiring with other business actors and/or parties related to other business actors to obtain information on their competitors' business activities which are classified as company secrets so that they can result in unfair business competition*".

#### Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008

If the actions of an employee, the employee leaks the secret of his company through the media (*magazine, newspapers, newsletters, online, social media*) which has a very close relationship between the protection of the Company's Secret (*Corporate Secret*) or also known as undisclosed information (*undisclosed information*) is opened by the employee, the employee whose contents contains insults and/or defamation, then they are subject to criminal sanctions based on Article 27 paragraph (3) in conjunction with Article 42 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, that: "Everyone intentionally and without the right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents containing insults and/or defamation".

Article 45 of the ITE Law, which reads: (1) Any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years. ) years and/or a maximum fine of **Rp. 1.000.000.000,00,-** (*one billion rupiah*).

#### Legal Sanctions

Why should it be given punish, because in addition to the act against the law (*onrechtmatige daad*), because the Company is also in an effort to manage and develop its business, it always strives to produce products in the form of goods and services that are interesting, unique, different and have added value for its consumers. For this reason, the company's management company always strives to keep its business secret, so that it is not easy to imitate or have information stolen because company secrets have a very high selling value for the company.

As for the sanctions according to the ITE Law, any person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to a maximum imprisonment of 6 (six) years and/or or a maximum fine of **Rp. 1.000.000.000,00,-** (*one billion rupiah*).

#### CONCLUSION

From the description above it can be concluded, that:

- **Legal protection of Company Secrets** is an absolute requirement and becomes a very essential factor, especially to prevent unfair business competition, from other business actors who own companies that produce similar goods or services, especially if it is associated with the globalization of trade. So with legal protection against Trade Secrets, it will give birth to a form of honest business competition among business people and become a very valuable commodity because it has a high economic value;
- If an employee has divulged or leaked company secrets that should be kept secret except for the interests of the state, in any way, especially through print and social media illegally (officially without the leadership's permission) it is a violation of law that falls within the scope of crime, so that can be subject to criminal penalties, both under the Criminal Code, the Trade Law, and the ITE Law, including these sanctions, namely: If the act of leaking company secrets is carried out by unscrupulous employees, employees who leak company secrets (*Corporate Secrets*) through print media (*Newspapers, magazines, bulletins*), or online (TV, Instagram, YouTube, Snapchat (*WhatsApp, SMS*), Tik-Tok, Facebook and Twitter)) whose contents contain insults and/or defamation, shall be subject to criminal penalties under article 27 paragraph (3) in conjunction with Article 42 of Law No.19 of 2016 concerning Amendments to Law No.11 of 2008 concerning Information and Electronic Transactions, shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

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