

## Juridical Analysis of Proof in Intellectual Property Rights Disputes that Contain Trade Secrets

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### ABSTRACT

*The aim to be achieved from this research is to analyze and find out the legal protection for trade secret holders; to analyze and find out the contractual relationship between employees and companies in maintaining and protecting Trade Secrets; and to analyze and find out the application of information confidentiality proving law in cases of violations of boiler machine trade secrets based on Supreme Court Decision No. 3305/K/Pdt/2016 dated 24 January 2017 and the Lunpia Express trade secret violation case based on Supreme Court Decision No. 2535K/Pdt/2016 dated 8 December 2016. This research used a documentation study approach with qualitative data analysis. The results of the study show that the Supreme Court's Decision No. 3305/K/Pdt/2016 dated 24 January 2017 stated that PT. HCMI was proven to have violated trade secrets by using the same production and sales methods as PT. BPE obtained from Calvin Jonathan Barus, et al as former employees of PT. BPE. This is inseparable from the verification process which proves that PT. BPE is the first distributor of boiler machines that have economic value and keep their production methods secret.*

**Keywords:** Intellectual Property Rights (HKI), Trade Secrets; Dispute

### INTRODUCTION

Intellectual Property Rights (IPR) were initially only considered as ordinary matters whose existence did not need to be protected by laws and regulations (gesetze). Corpus juris was the first to notice the presence of new property rights which were creations in the form of writing or painting on paper. However, his opinion has not reached the distinction between real objects (material-les eigentum) and intangible objects (immaterielles eigentum) which are products of human creativity. The term immaterialis eigentum is what is now called IPR which is a translation of the word "geistiges eigentum", or "intellectual property right". Legal instruments that are included in providing protection for innovation so that inventors enjoy economic rights over their findings. IPR is a right that arises as a result of brain processing that produces a product or process that is useful for humans. IPR in general is divided into 2 (two) parts, namely: (a) copyright; and (b) Industrial Property Rights which include: Patents; Industrial Design; Trademarks; Repression of Un-fair Competition; Layout Design of Integrated Circuits; and Trade Secrets.

The danger of unprotected Trade Secrets has quite a negative impact on the continuity of a business considering that a company can survive in the business world by winning the existing competition. Therefore it is open to exploitation without rights, theft or business espionage in order to obtain Trade Secrets from business opponents, resulting in fraud in competition which is far from the principles of fairness and honesty. Bearing in mind that the owner of a Trade Secret is the most entitled to an ownership, this is no exception for Trade Secrets which are included in the category of intangible assets that have a very valuable economic value for their owners because they are useful for carrying out industrial and trading business activities.

The need for legal protection for Trade Secrets is also in accordance with one of the

provisions in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) which is an attachment to the Agreement Establishing the World Trade Organization, as ratified by Indonesia with Law Number 7 of 1994. Regulations concerning Trade Secrets contained in Law Number 30 of 2000 concerning Trade Secrets (Trade Secret Law). This law was made in order to advance industries that are able to compete in the scope of national and international trade, where it is necessary to guarantee the protection of Trade Secrets, especially from fraudulent acts of competition,

The company, in this case as the owner of the Trade Secret, has the right to use the company's Trade Secret himself or can grant a license to a third party, in this case the employee as the holder of the Trade Secret. The company as the owner of the Trade Secret also has the right to prohibit other parties from using the Trade Secret or disclosing the Trade Secret to third parties for commercial purposes, especially the disclosure of company Trade Secrets which leads to unfair competition. An act of fraudulent competition resulting in the leaking of data or documents without rights violates the agreement to safeguard a company's trade secret. Trade Secret Rights Holders or Licensee recipients can sue anyone who intentionally and without right uses their own Trade Secrets or grants licenses to or prohibits other parties from using Trade Secrets or disclosing Trade Secrets to third parties for commercial purposes in the form of lawsuits, compensation; and/or termination of all of these actions by filing a lawsuit to the District Court.

Trade Secret Violations raised in this study are cases in the Bekasi District Court No. 280/Pdt.G/008/PN.Bks between PT. Basuki Pratama Engineering as the Plaintiff and PT. Hitachi Construction Machinery Indonesia and 7 (seven) former employees of PT. Basuki Pratama Engineering as the Defendants. PT Basuki Pratama Engineering is a national company engaged in the production of boiler machines using wood fuel and has received a boiler machine industry permit from the Ministry of Industry since 1996. The production of boiler machines has at least gone through 6 stages, namely measuring and determining equipment (sizing equipment), engineering process, detailed blueprints, shop drawings, instrument and piping diagrams, and production which takes 6 (six months). The boiler machine production method is claimed to be confidential because it is only known by a limited number of people and has economic value. In this case PT Basuki Pratama Engineering suspects that employees who previously worked at the production and managerial level were recruited by PT Hitachi Construction Machinery Indonesia and these employees committed a Trade Secret violation by disclosing to PT Hitachi Construction Machinery Indonesia the production method and/or method sale of boiler machines without the permission of PT Basuki Pratama Engineering.

The case was decided based on the Bekasi District Court Decision based on No. 280/Pdt.G/2008/PN.Bks dated 14 April 2009 which basically states that the Bekasi District Court is not authorized to examine and adjudicate case No. 280/Pdt.G/2008/PN.Bks. At the appeal level, the first level decision was upheld by the Bandung High Court as in the Bandung High Court Decision No. 328/PDT/2009/PT.BDG dated 5 January 2010. Then at the cassation level, the Supreme Court decided the case based on Supreme Court Decision No. 1713/K/Pdt/2010 dated 6 September 2011 which essentially canceled the Bandung High Court Decision No. 328/PDT/2009/PT.BDG which strengthens the Bekasi District Court Decision based on No. 280/Pdt.G/2008/PN. Bks and therefore tried himself by declaring that the Bekasi District Court

had the authority to examine and adjudicate case No. 280/Pdt.G/2008/PN.Bks. The case continues until it is reviewed and has been decided based on the Supreme Court Decision No. 362/PK/Pdt/2013 dated 20 November 2013 which basically rejected the request for review.

## **LITERATURE REVIEW**

### **Legal Protection Theory**

According to Philipus M. Hadjon, legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. Meanwhile, according to Setiono, legal protection is an action or effort to protect society from arbitrary acts by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to history from the West, the birth of concepts regarding the recognition and protection of human rights is directed at restrictions and the laying down of community obligations. and government.

### **Proof Theory**

Proof is the most important stage in resolving cases in court, because it aims to prove that an event or certain legal relationship has occurred which is used as the basis for filing a lawsuit in court. It is through the proving stage that the judge will obtain the grounds for making a decision in resolving a case. Proof is carried out by both the plaintiff and the defendant in court to prove the existence of events or incidents, as well as to prove the existence of a right. This verification process is a unified arrangement to achieve a goal, which is to prove the truth of the arguments put forward by the parties, be it events, incidents, or rights.

## **METHODS**

The type of research used in this paper is normative juridical law research or doctrinal legal research, namely legal research that uses secondary data sources or data obtained through library materials by examining reading sources that are relevant to the research theme, including research on the principles legal principles, legal sources, legal theory, books, statutory regulations that are scientific in nature and can analyze the issues discussed

This study uses a statutory approach (statute approach) and a case approach (case approach). The statutory approach is used to find out all legal regulations, especially trademark law in Indonesia. As for the laws that become references, among others:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 30 of 2000 concerning Trade Secrets;
3. Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization;
4. Law Number 13 of 2003 concerning Manpower;
5. Code of Civil law;
6. Criminal Code;
7. Republic of Indonesia Government Regulation Number 36 of 2018 concerning Recording of Intellectual Property License Agreements.

The case approach aims to study the application of legal norms or rules in legal practice.

The cases to be investigated are trade secret disputes as stated in case 280/Pdt.G/008/PN.Bks dated 27 July 2015 and No. 148/Pdt.G/2015/PN Smg 25 August 2016.

## **RESULTS AND DISCUSSION**

### **Trade Secret ViolationBased Boiler MachineSupreme Court DecisionVerdict No. 3305/K/Pdt/2016 Dated 24 January 2017**

This case involved PT Basuki Pratama Engineering (PT. BPE) and his former employees and also with PT. Hitachi Construction Machinery Indonesia (PT. HCMI). PT BPE is a company engaged in the manufacturing sector that produces boiler machines, pollution control systems, heaters, timber impregnation plants, and centrifugal fans which have penetrated and been exported to several countries around the world. Meanwhile PT. HCMI is a joint venture company that produces hydraulic excavators, wheel loaders, and other products such as heavy equipment, pressure vessels and boiler products.

The beginning of this case when PT. BPE feels that its trade secret has been used by its former employees who have worked at PT. HCMI. Disclosure of trade secrets belonging to PT. BPE started when some of its employees moved to work at PT. HCMI in 2003. In 2005, ex-employees allegedly disclosed blueprints on the production and sales methods of boiler machines owned by PT. BPE to PT. HCMI. After that, PT. HCMI produces the same boiler machine with the method used by PT. BPE. In this case PT. BPE claims that there has been theft and use of trade secret information on boiler machines without permission from PT. BPE carried out by several former employees who have worked at PT. HCMI.

On that basis, PT. BKE filed a lawsuit at the Bekasi District Court against:

1. PT. Hitachi Construction Machinery Indonesia, a legal entity established under the Law of the Republic of Indonesia, domiciled at Jalan Raya Bekasi, KM. 28.5, Rawapasung, Bekasi 17133, West Java as Defendant I;
  2. Shuji Sohma, in his capacity as ex. Director of PT. Hitachi Construction Machinery Indonesia, having its address at Jalan Raya Bekasi, KM. 28.5, Rawa Pasung, Bekasi 17133, West Java as Defendant II;
  3. Gunawan Setiadi Martono, in his capacity as ex. Director of PT. Hitachi Construction Machinery Indonesia, having its address at Jalan Raya Bekasi, KM. 28.5, Rawa Pasung, Bekasi 17133, West Java as Defendant III;
  4. Calvin Jonathan Barus, in his capacity as a former employee of the Plaintiff as Defendant IV;
  5. Faozan, in his capacity as a former employee of the Plaintiff as Defendant V;
  6. Yosaphat Widiastanto, in his capacity as a former employee of the Plaintiff as Defendant VI;
  7. Agus Riyanto, in his capacity as a former employee of the Plaintiff as Defendant VII;
  8. Aries Sasangka Adi, in his capacity as a former employee of the Plaintiff as Defendant VIII;
  9. Muhammad Syukri, in his capacity as a former employee of the Plaintiff as Defendant IX;
  10. Roland Pakpahan, in his capacity as a former employee of the Plaintiff as Defendant X.
- Responding to the lawsuit filed by PT. BPE, PT. HCMI filed an exception which

essentially contained that the lawsuit filed by PT. BPE is a lawsuit that is or belongs to Intellectual Property Rights, especially industrial designs, so the lawsuit must be filed with the Commercial Court, not the District Court. For this lawsuit, the Bekasi District Court Council accepted the exception of PT. HCMI and decided Interlocutory Decision No. 280/Pdt.G/008/PN.Bks dated 14 April 2009 which basically states that the Bekasi District Court absolutely has no authority to examine and adjudicate case number 280/Pdt.G/2008/PN.Bks

PT. HCMI and other defendants filed a legal effort to review the Supreme Court Decision No. 1713 K/Pdt/2010 dated 6 September 2011. The legal action for review was terminated based on Supreme Court Decision No. 362 PK/Pdt/2013 which basically rejected the request for review from the defendants. With the aforementioned decision, the Bekasi District Court again tried the case between PT. BPE against PT. HCMI, et al to examine the subject matter of the lawsuit. For this case, the Bekasi District Court finally handed down Decision No. 280/Pdt.G/2008/PN. Bks dated 27 July 2015 which principally stated that the Defendants had violated the trade secret of the production method and sales method of boiler machines belonging to the plaintiff, thereby punishing the Defendants to pay compensation for material and immaterial losses jointly and severally in the amount of Rp. 1,214,869,362,- (one billion two hundred fourteen million eight hundred sixty nine thousand three hundred sixty two rupiah).

PT. HCMI and other Defendants filed an appeal against Decision No. 280/Pdt.G/2008/PN.Bks dated 27 July 2015. At the appeal level, the Bandung High Court decided based on Decision No. 567/PDT/2015/PT.BDG dated March 23, 2016 with a decision which basically revises Decision No. 280/Pdt.G/2008/PN.Bks dated 27 July 2015 specifically regarding compensation which instructs the Defendants to pay compensation for material and immaterial losses jointly and severally in the amount of Rp. 83,241,370,910,- (eighty three billion two hundred forty one million three hundred seventy thousand nine hundred and ten rupiah). Still not satisfied with Decision No. 567/PDT/2015/PT.BDG dated 23 March 2016, PT. HCMI and other Defendants filed an appeal to the Supreme Court. At the cassation level, the Supreme Court decided based on Decision No. 3305/K/Pdt/2016 dated 24 January 2017 which amended Decision No. 567/PDT/2015/PT.BDG dated March 23, 2016, with a directive in essence reading as follows:

1. Ordered the Defendants both individually and jointly to stop the use, production, distribution and/or trade, and to withdraw from the market all production of boiler machines that use the Plaintiff's trade secrets.
2. Declare the Plaintiff as the holder of trade secret rights for the production method and sales method for boiler machines in Indonesia.
3. Stating that Defendant I, Defendant II and/or Defendant III had used, produced and/or used the trade secret of the production method and/or sales method of the Plaintiff's boiler machine.
4. Stating that Defendant IV, Defendant V, Defendant VI, Defendant VII, Defendant VIII, Defendant IX and/or Defendant X either directly or indirectly disclosed the Trade Secret of the production method and sales method of the Plaintiff's boiler machine.
5. Declare that the Defendants have violated the trade secret of the production method and sales method of the plaintiff's boiler machine.
6. Punish the Defendants to pay compensation for material and immaterial losses jointly and



severally in the amount of Rp. 1,214,869,362,- (one billion two hundred fourteen million eight hundred sixty nine thousand three hundred sixty two rupiah).

Verdict No. 3305/K/Pdt/2016 dated 24 January 2017 above has permanent and binding legal force for the parties. The decision in favor of PT BPE above was inseparable from the considerations of the panel of judges who found facts in the trial that PT. BPE is true as a manufacturer that produces boiler machines since 1996 and PT. BPE has joined as a member of the Indonesian Steam Boiler and Pressure Vessel Industry Association (AUBBI). Based on the results of local investigations, it was found that the legal facts were that PT. BPE maintains the secrecy of boiler machine production where the production room only has 1 (one) door, equipped with a finger print that only employees on duty can enter. In addition there are 3 (three) CCTVs that record the situation for 24 (twenty four) hours continuously. Specifically for employees who serve as drafters, they can only view, change and save their work on a server in the server room equipped with an access code. Boiler Machine manufactured by PT. BPE is also proven to have economic value, where there are net sales of boiler machines by PT. BPE in 2005-2007.

#### **Application of Law on Proving Confidentiality of Information in Cases of Trade Secret Violations Lunkia Express Based on Putworn outSupreme Court Decision No.2535k/Pdt/2016 Dated 8 December 2016**

This case involved Soegiyanto Winarso against Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto. Soegiyanto Winarso is the owner of the Lunkia Express business, meanwhile, Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto own the Lunkia Delight business which is close to Soegiyanto Winarso's business location. In this case, Soegiyanto Winarso suspects that the work system implemented in the Lunkia Delight business which includes production methods, processing methods and sales methods is a method that is imitated by Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto by recruiting most of the business employees. Lunkia Express. Likewise with other methods that have been created and implemented by Soegiyanto Winarso, namely the free delivery system for delivery of lunkia orders, use of work uniforms to aprons and their attributes, greetings at the counter, promotional techniques, work hours systems, menus, prices, product packaging, computer systems and payroll systems. In addition, Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto also took over 99% (Ninety-Nine percent) of Soegiyanto Winarso's Lunkia Express employees to become Lunkia Delight employees owned by Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto.

On the basis of the alleged trade secret violation above, Soegiyanto Winarso filed a lawsuit at the Semarang District Court against Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto. Regarding this lawsuit, the Semarang District Court has decided based on Decision No. 148/Pdt.G/2015/PN.SMG dated 25 August 2015 which basically rejected the Plaintiff's claim in its entirety. In this decision, the Panel of Judges considered that Soegiyanto Winarso's sales method was visible to the public, and had been known and used by other business actors in promoting their business services. Soegiyanto Winarso cannot prove that Soegiyanto Winarso was the first person to use the lunkia selling method. Besides that, according to the panel of judges, the argument for selecting adjacent locations is irrelevant. Furthermore, according to the Panel of Judges, employee takeover is not the realm of trade secret law.

Based on the decision No. 148/Pdt.G/2015/PN.SMG dated 25 August 2015, Soegiyanto Winarso then filed an appeal, and the appeal was decided by the Semarang High Court with Decision No. 543/Pdt.2015/PT.SMG dated February 22, 2016 which essentially canceled Decision No. 148/Pdt.G/2015/PN.SMG dated 25 August 2015 and issued a decision stating that the Defendants/Appeals had violated trade secrets and sentenced the Defendants/Appeals jointly and severally to pay immaterial damages to the Plaintiff/Appeal in a sum of Rp. .500,000,000.- (five hundred million rupiah).

Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto then filed an appeal against the Semarang High Court Decision No. 543/Pdt.2015/PT.SMG dated 22 February 2016. The appeal was decided by the Supreme Court based on Decision 2535K/Pdt/2016 dated 8 December 2016 with a ruling which essentially canceled the Semarang High Court Decision No. 543/Pdt.2015/PT.SMG dated 22 February 2016 and rendered a decision rejecting the plaintiff's claim in its entirety. The Panel of Supreme Court Judges is of the opinion that the method of production, the processing and marketing of Lunpia Express products was discovered and used by Soegiyanto Winarso when he was in a legal marriage period with Meliani Sugiarto so that the processing and marketing method is a joint right between Soegiyanto Winarso (Plaintiff/Appellant) and Meliani Sugiarto (Defendant II/Appeal II) and by Therefore Meliani Sugiarto (Defendant II/Appellant II) has the right to the object of the dispute with Soegiyanto Winarso (Plaintiff/Appellant). In addition, the Panel of Supreme Court Justices was of the opinion that there was insufficient consideration regarding the similarity in production, processing and marketing methods between Lunpia Express and Lunpia Delight products so that the lawsuit was not based on valid reasons.

The decision handed down by the judge must be based on clear and sufficient considerations in accordance with the applicable laws and regulations. Decisions that do not meet these provisions are categorized as decisions that are not considered enough or onvoldoende gemotiveerd. The reasons taken into consideration may be in the form of certain articles of legislation, customary law, jurisprudence or legal doctrine.

#### 1. Implementation of Proof of Confidentiality of Boiler Machine Information

In the case between PT. BPE against PT. HCMI and former employees of PT BPE have at least 3 (three) arguments that must be proven by PT. BPE namely First, PT. BPE as the holder of trade secret rights over the boiler machine production method receives protection as outlined in Article 3 of the Trade Secret Law; Second, PT. HCMI uses, manufactures and/or uses the trade secret of production methods and/or sales methods of boiler machines belonging to PT. BPE; and Third, Calvin Jonathan Barus, et al, both directly and indirectly, have disclosed the Trade Secret of the production method and sales method of boiler machines belonging to PT. BPE.

Article 3 of the Trade Secret Law outlines the conditions that must be met for the owner of a trade secret if his rights are to be protected, namely:

- a. Trade secrets receive protection if the information is confidential, has economic value and is kept confidential through appropriate efforts.
- b. Information is considered confidential if the information is only known by certain parties or not generally known by the public.
- c. Information is considered to have economic value if the confidential nature of the information can be used to carry out activities or businesses that are commercial in

nature or can increase economic benefits.

- d. Information is considered to be kept confidential if the owner or parties controlling it have taken proper and proper steps.

In order to prove that PT. BPE as the holder of trade secret rights over the boiler machine production method which is protected as outlined in Article 3 of the Trade Secret Law, PT. BPE submits evidence, namely:

- a. Expansion Permit No. 122/M/SK/ILMK/VII/1996 dated 23 July 1996;
- b. Certificate of Membership of the Indonesian Pressurized and Steam Boiler Industry Association (AUBBI) No. 225/DIN/LM/BB/XI/1995;
- c. DVD corporate profile PT. BPE; And
- d. Copy of the official website of PT. BPE.

Boiler engine technology produced by PT. BPE has economic value. To prove this, PT. BPE submitted evidence of PT. BPE from 2005 to 2010. On the basis of written evidence and the results of local inspections, it is evident that PT. BPE can prove that its trade secret has complied with applicable legal provisions, where information on boiler machine production methods owned by PT. BPE is information in the field of technology, and this is kept confidential by PT. BPE and are confidential or not known to the public and have economic value.

Based on PT. HCMI uses, manufactures and/or uses the trade secret of production methods and/or sales methods of boiler machines belonging to PT. BPE was proven based on legal facts at trial. Based on a copy of the boiler machine design owned by PT. BPE and a copy of Hitachi's membrane wall section manufactured by PT. HCMI can see that the series of visualizations show similarities/similarities between the two products in question. The two copies of the design were proven by PT. BPE and was considered by the panel of judges to decide that PT. HCMI uses, manufactures and/or uses the trade secret of production methods and/or sales methods of boiler machines belonging to PT. BPE.

Supreme Court Decision Decision No. 3305/K/Pdt/2016 dated 24 January 2017 has been right in considering all the evidence and legal facts presented at the trial by linking information confidentiality provisions as stipulated in the Trade Secret Law. PT. HCMI and Calvin Jonathan Barus, et al have been proven to fulfill the elements of a trade secret violation so that they deserve to be punished. In a different case, namely the case between Soegiyanto Winarso against Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto, there are at least 2 (two) arguments that must be proven by Soegiyanto Winarso, namely First, Soegiyanto Winarso as the holder of trade secret rights over the Lunpia production method Express gets protection as outlined in Article 3 of the Trade Secret Law; Second, Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto used, produced and/or used the trade secrets of the production method and/or sales method of Soegiyanto Winarso's Lunpia Express in marketing Lunpia Delight products.

In order to prove the argument that Soegiyanto Winarso is the holder of the Lunpia Express trade secret rights and his rights are protected under the Trade Secret Law, Soegiyanto Winarso submitted evidence namely:

- a. Small Trade Business License (SIUP) No. 2579/11.01/PK/X/2005 dated 31 October 2005 issued by the Industry and Trade Office of the City of Semarang.
- b. Registration Certificate of Individual Company No. TDP 11.01.5.52.18212 dated 9 November 2005 issued by the Industry and Trade Office of Semarang City.



- c. Micro Trading Business License (SIUP) No. 517/3228/II.01/Mikro/X/2013 dated 7 October 2013 issued by the Semarang City Integrated Licensing Service Agency.
- d. Individual Company Registration Certificate (PO) No. 11.01.5.47.18212 dated 11 October 2013 issued by the Semarang City Integrated Licensing Service Agency.
- e. Application for Mark Registration dated 14 September 2004, entry date 23 December 2004 No. Agenda D00.2005.029389
- f. Work Registration Letter, author: Soegiyanto Winarso, copyright holder: Soegiyanto Winarso, work title: Lunpia Express, date and place announced for the first time: 4 September 2005 in Semarang, protection period: 50 (fifty) years, number and date registration 029454, 22 December 2005, issued by the Ministry of Law and Human Rights, on 1 March 2006.
- g. Lunpia Express brochure free delivery.
- h. Permit for the Implementation of Permanent Advertising No. 510.1/055/TS/BPPT/IV/2015 dated 9 April 2015 issued by the Semarang City Integrated Licensing Service Agency.

In addition to the above evidence, Soegiyanto Winarso also submitted evidence of the Lunpia Express sales report dated August 18, 2013, September 8, 2013, and December 15, 2015. Related to Soegiyanto Winarso's legal standing as the holder of the Lunpia Express trade secret rights, it turns out that legal facts were found that Soegiyanto Winarso (as Plaintiff) and Meliani Sugiarto (as Defendant II) are a former married couple who have been divorced. The Lunpia Express business was founded by the two of them during their marriage, and after the divorce, Meliani Sugiarto (as Defendant II) founded the Lunpia Delight business. It can be said that the Lunpia Express business is a joint property referring to Article 119 of the Civil Code which reads:

"From the time the marriage took place, according to law there is a total joint property between the husband and wife, as long as there are no other provisions in the marriage agreement. The joint property, as long as the marriage is in progress, may not be abolished or changed by an agreement between the husband and wife ." This was also explained by the expert presented at the trial, namely Prof. Dr. Budi Santoso, SH, M.Sc and Tri Junianto, SH, MH who explained that:

"Regarding trade secrets that become joint ventures of husband and wife, if they divorce, then each partner (husband and wife) remains entitled to use said Trade Secret, unless previously agreed upon which prohibits one of the parties from using trade secrets." According to Wahjono Darmabrata and Surini Ahlan Sjarif, joint assets are assets acquired as long as the marriage lasts and from the time the marriage takes place until the marriage ends or the marriage ends due to divorce. Shared assets include:

- a. Assets acquired throughout the marriage.
- b. Assets obtained as a gift, gift or inheritance if not specified as such.
- c. Debts arising during the marriage except for those which are the personal property of each husband and wife.

Soegiyanto Winarso could not prove that the production method of Lunpia Express was confidential information and Soegiyanto Winarso could not prove that the confidentiality of this information had been properly guarded by Soegiyanto Winarso. On the other hand, there is a Decree of the Minister of Education and Culture Number 153991/MPK.A/DO/2014 dated

October 17, 2014 which stipulates that Lunpia Semarang has been designated as an Intangible National Cultural Heritage so that the essence of secrecy of the Lunpia Express production method is not fulfilled because it is known by the general public (notoir feiten).

Supreme Court Decision No. 2535K/Pdt/2016 dated 8 December 2016 was right in considering all the evidence and legal facts presented at the trial by linking information confidentiality provisions as stipulated in the Trade Secret Law. The production/sales method of Lunpia Express is not included as information in the field of technology and Soegiyanto Winarso does not make any effort to safeguard the production/sales method of Lunpia Express which he considers a trade secret. Therefore the actions of Budi Djatmiko Sugiarto (Tan Yok Tjay) and Meliani Sugiarto are not a trade secret violation because they do not fulfill the elements of a trade secret violation as stipulated in the Trade Secret Law.

In order to determine the level of confidentiality that must be held for information so that it can be categorized as a trade secret, it can be divided into 3 (three) things, namely:

- a. Generalia principle, meaning that confidentiality depends on whether or not many people know the information.
- b. The principle of difficulty means that obtaining confidential information is very difficult and complicated, so it requires a lot of time and money.
- c. Contractual Principle, meaning the confidentiality of the information because it was agreed that it must be kept confidential.

The nature of the confidentiality of information must be maintained by the party legally in control of the information properly so that it is not disclosed so that only he can benefit from the information. The imposition of the obligation to keep this confidential can occur because at the time the information was received, several things were mentioned:

- a. Strictly required an obligation to keep the information received confidential.
- b. Implied in this relationship is the existence of an obligation to keep information received confidential, for example the relationship between a doctor and a patient, a lawyer or notary and a client.
- c. There are no requirements whatsoever with parties who legally have control over the information. For example information obtained incidentally or accidentally or due to other relationships or through industrial espionage activities, computer data piracy. However, because this information occupies the same moral area as a breach of trust, then based on "good intentions" the recipient of the information still has an obligation to maintain confidentiality.

Lawsuits against trade secret violations will be accepted if it is proven that the holder has properly maintained confidentiality or has been obliged to maintain the confidentiality of the information because the information was given confidentially. The determination of whether there is an obligation to maintain confidentiality depends on when or under the circumstances the information was obtained. In general, it is regulated that there is an obligation to maintain confidentiality if it is considered "proper" for someone who is in the same position as the recipient of the information.

## **CONCLUSION**

Based on the results of the research that has been done, the authors draw the conclusion

that:

1. Provisions for the protection of trade secrets are regulated under Number 30 of 2000 concerning Trade Secrets. Trade secrets in Indonesia because of their confidential nature are not required to adhere to a first to file system and first to use system because in Number 30 of 2000 concerning Trade Secrets it states that trade secrets will receive protection if the information is confidential, has economic value, and is kept confidential through proper effort. Information is considered confidential if the information is only known by certain parties or not generally known by the public. Information is considered to have economic value if the confidential nature of the information can be used to carry out activities or businesses that are commercial in nature or can increase economic benefits.
2. The contractual relationship between employees and companies in maintaining and protecting trade secrets is reflected in a confidentiality agreement that requires employees to maintain the confidentiality of information on clauses regarding trade secrets intended to protect not only data and information that are classified as trade secrets, but also technical experience. ) regarding processing processes, equipment, tools, materials, operating procedures, quality control procedures, safety procedures and also includes information regarding formulas that have high commercial value. This agreement can be in the form of an agreement that is separate from the work agreement or combined in the form of clauses in one work agreement related. In this case, there are employee obligations that continue even after the job ends.
3. Supreme Court Decision Decision No. 3305/K/Pdt/2016 dated 24 January 2017 stated that PT. HCMI was proven to have violated trade secrets by using the same production and sales methods as PT. BPE obtained from Calvin Jonathan Barus, et al as a former employee of PT. BPE. This is inseparable from the verification process which proves that PT. BPE is the first distributor of boiler machines that have economic value and keep their production methods secret. In another case, Supreme Court Decision No. 2535K/Pdt/2016 dated 8 December 2016 rejected Soegiyanto Winarso's lawsuit which failed to prove that he was the right holder of Lunpia Express because the Lunpia Express business was joint property of Soegiyanto Winarso (as Plaintiff) and Meliani Sugiarto (as Defendant II) and the production method of Lunpia Express does not meet the elements of a trade secret, therefore Soegiyanto Winarso makes no effort to maintain its secrecy.

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