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Analysis of implementation of trade secret legal protection in franchise businesses

Gadis Reyatezar Karmana*, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Dini Septiani, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Waskim, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Alip Rahman, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia
Diky Dikrurahman, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, West Java, Indonesia

*Email for Correspondence: gadisreyatezark24@gmail.com diniseptianii691@gmail.com waskim84@gmail.com alip.rahman@ugj.ac.id diky.dikrurrahman@ugj.ac.id

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ABSTRACT

Franchising has significant potential but also high risks due to trade secret violations. Law Number 30 of 2000 regulates trade secrets, but these violations can be detrimental to the party providing the secret. Research on the feasibility of establishing legal protection for trade secrets in franchise companies is crucial. This research aims to examine how franchise businesses have used trade secret legal protections. A qualitative methodology was used, and data collection techniques involved collecting relevant documents. The findings indicate that if trade secrets meet the criteria regulated in Article 1 Paragraph 1 of the Trade Secrets Law, they are entitled to legal protection. Violations may result in criminal sanctions, including imprisonment for up to 2 years or a fine of up to Rp. 300 million.

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INTRODUCTION

The rapid expansion of franchise businesses poses several academic challenges in terms of feasibility, particularly regarding the scalability and sustainability of such ventures (Mulyani, 2022; Rusdi Hidayat Nugroho & Indah Respati Kusumasari, 2022). Despite the notable increase in the number of franchise establishments, reaching over 5,500 by 2023 (Pusparisa, 2023), including those within the Food and Beverage (F&B) sector, there remains a need to evaluate the long-term viability and economic impact of this growth. While the proliferation of franchise businesses undoubtedly contributes to job creation and economic development, the feasibility of sustaining these ventures amidst evolving market dynamics warrants investigation. Furthermore, the design and governance principles inherent in franchise agreements merit scrutiny to ensure equitable partnerships and mitigate potential risks (Monika Teguh, Jeremy Santoso, 2020). Understanding the underlying principles governing franchise operations is essential for policymakers and stakeholders to facilitate informed decision-making and foster a conducive environment for sustainable economic growth (Katrinasari, 2017).

The franchise or franchise agreement should be maintained by each franchise user in accordance with the agreed agreement, so that it does not cause losses to other parties (Benia, 2022). In fact, there are quite a lot of franchise businesses in Indonesia, one of which is Food and Beverage or franchise businesses in the food and beverage sector. The spread of franchise businesses in the F&B sector is quite fast. Moreover, if the franchise business requires not much money to participate in the desired franchise (Irma Rachmayani, Irvan Iswandi, 2022).There are several food and beverage franchise businesses in Indonesia such as KFC (Sukma Sopiyan Ardiansyah, Della Slsabilla, Vinni Qisthi Arini, Yogi Triwidyatmoko, 2021), Wendy's and McDonald's, Ayam Sabana, Kebab Baba Rafi, and so on.

The expansion of franchise companies in Indonesia is very important for economic growth along with the decline in unemployment (Mohammad Rizky Axell Putranto, 2023; Rahmah, 2022). Franchise businesses are regulated in Government Regulation Number 42 of 2007 concerning Franchising, in which there are many rules that must be followed when making a franchise agreement, such as a sincere agreement, the franchisor providing information to the franchisee before making the agreement, and the franchise agreement being

registered with the Director General Domestic Trade. Existing regulations are implemented by business people in the franchise sector to protect businesses that have been developed and minimize losses. Moreover, in a franchise business of course there are trade secrets that will be used by the franchisee. So the rules regarding trade secrets also need to be known and analyzed in order to minimize the various losses that can be caused.

Trade secrets are vital in the F&B business because they contain various recipes that can be used by franchisees so that the merchandise offered can be sought after by many people with its distinctive taste (Rivaldo Avianto, Ni Luh Made Mahendrawati, 2022). Moreover, F&B franchises are growing quite quickly because they adapt to various trends that are being loved by many parties, so this business is quite profitable. If trade secrets are leaked to irresponsible parties, the creator could suffer losses, which could impact the growth of the franchise business. Trade secrets as intended in Law Number 30 of 2000 are information that cannot be known to the general public in the field of technology and/or business, has economic value that is useful in business activities, and is kept confidential by the owner of the trade secret. Trade secrets are confidential, although article 5 of the Trade Secrets Law allows the owner to transfer them through a signed agreement.

The rapid proliferation of franchise businesses brings forth a pressing concern regarding the protection of trade secrets within these ventures. Despite franchisees' agreements to maintain confidentiality with the franchisor, the risk of trade secret leakage remains, posing significant economic repercussions for both franchisors and those who discover the trade secrets. Thus, the imperative implementation of Law No. 30 of 2000 concerning trade secrets becomes paramount to ensure a secure and conducive environment for the operation of franchise businesses in Indonesia. While numerous studies have explored aspects of trade secrets and franchise operations, such as the legal protection of trade secrets in cocoyo franchise agreements (Tanaya et al., 2021) and the legal analysis of trade secret protection at Bread Life Mall Center Point Medan (Sari Butar-Butar et al., 2019), none have specifically examined the implementation of legal protection for trade secrets within franchise businesses. Yet, this knowledge holds critical significance for trade secret owners and franchisees alike, enabling entrepreneurs to conduct and expand their businesses effectively and efficiently without the looming threat of violations hindering their progress. Thus, this research endeavors to address this gap by conducting an analysis of the implementation of trade secret legal protection in franchise businesses, aiming to provide valuable insights into safeguarding intellectual property within this context. By conducting a comprehensive analysis, this study seeks to provide valuable insights into the intricate dynamics of safeguarding intellectual property in franchise operations. These insights have the potential to inform policymakers, franchise owners, and stakeholders about best practices for protecting trade secrets, thereby enhancing the overall legal framework governing franchise operations and fostering a more secure and conducive environment for business development.

METHOD

This research is qualitative research with a literature study approach. Specifically, this method emphasizes in-depth understanding of legal phenomena through descriptive, interpretive or text analysis approaches. Data collection and analysis was carried out qualitatively, with a focus on the context, meaning and social construction of law. Data collection techniques are carried out by collecting various documents related to the research focus. Then the data that has been collected will be analyzed and studied so that reliable research results can be known.

RESULTS AND DISCUSSION

Trade secrets are industrial property rights in intellectual property rights regulated in the Trade Secrets Law. The Trade Secrets Law protects trade secrets owned by individuals or business entities because they are special information that has economic value that differentiates business actors (Triasavira, 2021). Maintaining the confidentiality of trade secrets from outside parties reduces plagiarism which is detrimental to one or more parties. Trade secrets include production processes, processing procedures, sales methods, and information in other technological or business fields of economic value, according to the Trade Secrets Act. This information can include food and drink recipes, industrial manufacturing methods, and others. Trade secrets have several main characteristics, in accordance with article 1 paragraph 1 of the Trade Secrets Law. Based on article 1 paragraph 1 of the Trade Secrets Law, there are several important elements in a trade secret, namely (Haryani, 2019):

1. Important knowledge in the world of IT or business that is considered a trade secret includes things such as client lists, food and drink recipes, drug composition, internal methods for making products or services.
2. Trade secrets are valuable assets that can be utilized in various ways to develop a company.
3. Trade secrets must be kept confidential.

If these 3 elements are possessed or fulfilled then it can be said that the trade secret that is owned, especially in the Food and Beverage sector which has a variety of secrets that give rise to a unique taste, gets

legal protection, because the legal protection for this trade secret is automatic, meaning that it gets protection. in trade secret law, if the 3 elements mentioned above have been fulfilled then there is no need to register it to obtain legal protection. Trade secret protection also has no time limit. This explains that the owner of a trade secret will also enjoy legal protection for his secret as long as he hides it or does not disclose it. When someone has a trade secret, it automatically gets legal protection, has economic value, and can be kept confidential through various means, there is no need to register it (Tanaya et al., 2021) .

Many parties can benefit from their trade secrets, but other parties can also benefit if they sign an agreement that allows other people to use or exploit them (Safnul, 2018). The Trade Secrets Law regulates in article 1 paragraph 5 that permission from the owner of trade secret rights, which is also given legal protection for a certain period of time and with certain conditions, can be referred to as permission to use trade secrets. The license held is only an authorization to use, not a transfer, because the transfer of ownership of a trade secret from one party to another can be done through legal means such as a will, inheritance, gift, or written agreement.

However, there are still cases of business actors violating trade secrets, especially in the food and beverage industry franchise sector. Disclosure or dissemination of trade secrets in violation of a confidentiality agreement, whether written or unwritten, is a violation. Additionally, trade secret regulations can be violated if the methods used to obtain them do not meet the standards set by law. However, there are disclosures of trade secrets that are not included in the form of infringement, namely (Tanaya et al., 2021) :

1. Disclosure of trade secrets is driven by shared goals, such as protecting public health.
2. Because of the inherent nature of reverse engineering as a method of developing products based on other people's trade secrets, trade secrets are eventually revealed.

If a trade secret owned by an individual or business entity experiences problems or violations, the owner of the trade secret can take several legal steps after filing a complaint in court, namely(Benia, 2022):

First, temporary and permanent interim decisions. This means that a court decision gives a decision for the defendant to stop using trade secrets until the court decision is finalized. If the plaintiff wins the case, the defendant is not permitted to use information regarding trade secrets in the future.

Second, pay restitution. The court can order the defendant to pay compensation to the plaintiff if it is found that the defendant actually misused information about its trade secrets. However, because it is not easy to determine how much the defendant must pay to the plaintiff, a lot of evidence is needed, including (Tanaya et al., 2021):

1. The amount paid by the plaintiff to obtain the data.

2. The amount that the plaintiff requests from the defendant in the event that the plaintiff gives permission or permission to the defendant to use any information for the same purposes as the defendant's activities.

3. Profits lost by the plaintiff due to the defendant's activities.

Based on the results of the accountant's calculations, the plaintiff is entitled to maximum compensation of Rp. 300,000,000 (three hundred million rupiah) from the defendant. It is worth mentioning that Law Number 30 of 2000 concerning Trade Secrets outlines the criminal consequences of crimes with the following language, which makes it clear that trade secret violations can be criminalized:

1. Utilizing another party's trade secrets or committing acts as intended in articles 13 or 14 is punishable by a fine of up to Rp. 300,000,000 (three hundred million rupiah) and/or a maximum prison sentence of two years.

2. As intended in paragraph (1), criminal acts of complaint include criminal activities.

Therefore, if the law is enforced correctly, various problems regarding trade secret violations can be minimized so that business people, especially franchise business people, can develop their business safely and comfortably without any fear of detrimental violations. For this reason, business people or entrepreneurs should have the courage and intelligence to examine and collect various evidence in the event of a trade secret violation so that when they come to court the problem can be handled quickly and appropriately.

CONCLUSION

Trade secrets are confidential information used by a business owner to develop their business. Violation can result in criminal punishments like imprisonment or compensation. Users must protect trade secrets to avoid loss. However, disseminating trade secrets for human benefit or product improvement is not considered a violation. Franchise business owners should understand trade secret rules to protect their information and optimize business development. Research findings can serve as a basis for decision-making and benchmarks for future research.

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