

## Legal Review of Marketing Document Information of PT Flux Asia Solusindo under the Trade Secrets Law

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### ABSTRACT

Trade secrets constitute important corporate assets with significant economic value and are therefore vulnerable to misuse and misappropriation. Accordingly, legal protection through confidentiality agreements or Non-Disclosure Agreements (NDAs) is necessary. This study aims to analyze the forms of legal protection afforded to the trade secrets of PT Flux Asia Solusindo and to assess whether the agreement between PT Flux Asia Solusindo and Fuad Fajar Samudera is sufficient to protect information contained in Van Houten Kitchen marketing documents. This study employs a normative legal research method with a descriptive-analytical approach. Data were obtained from primary and secondary legal materials, supported by primary data collected through interviews. The data were analyzed qualitatively, and conclusions were drawn deductively. The findings indicate that PT Flux Asia Solusindo protects its trade secrets through a confidentiality agreement that satisfies the elements stipulated in Article 3 of the Trade Secrets Law. However, in Decision No. 1035/Pdt.G/2022/PN South Jakarta, weaknesses in legal protection arose because the claim was based on Article 1365 of the Indonesian Civil Code rather than the Trade Secrets Law. Consequently, the court's decision focused primarily on general civil-law aspects and did not create a sufficient deterrent effect. Nevertheless, PT Flux Asia Solusindo had undertaken preventive measures through a confidentiality agreement prohibiting the use and disclosure of confidential information for up to three years after the agreement ended.

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## 1. Introduction

Trade secrets have developed alongside cultural dynamics and rapid industrialization across increasingly competitive and individualistic sectors.<sup>1</sup> As part of intellectual property rights, trade secrets consist of information that must be kept confidential. The responsibility to maintain such confidentiality rests not only with business actors as owners of trade secrets but also with the workers or employees involved.<sup>2</sup> The Indonesian Government's commitment to protecting trade secrets is reflected in the enactment of Law No. 30 of 2000 on Trade Secrets.<sup>3</sup> Trade secrets play a highly important role in commercial activities because information such as formulas, recipes, specific methods, and product-specific features constitutes valuable assets that must be protected from disclosure to other parties and from imitation or infringement.<sup>4</sup>

Confidential information within a company comprises data or essential knowledge that has economic value and must not become known to other parties, particularly competitors.<sup>5</sup> Trade secrets encompass information whose confidentiality must be maintained by its owner, namely a company engaged in commercial business activities, because such information has strategic value. Based on the foregoing, from the perspective of legal protection, trade secrets may be understood as having characteristics similar to copyright in that registration or recordation is not required to obtain legal protection.<sup>6</sup> Therefore, business actors, as owners or holders of trade secrets, should establish specific binding agreements between the company and its employees to ensure that important company information remains confidential and protected.<sup>7</sup>

A trade secret is infringed when a person intentionally discloses confidential information, breaches an agreement, or fails to fulfill a written or unwritten obligation to maintain the confidentiality of the trade secret.<sup>8</sup> Information categorized as a trade secret has substantial economic value and is directly related to the quality of the goods or services produced; therefore, its disclosure may cause losses to the company.<sup>9</sup> One form of protection commonly used by business actors is a Non-Disclosure Agreement (NDA), which serves as a specific instrument for preserving trade-secret confidentiality.<sup>10</sup> Such an agreement binds not only employees who have access to confidential information, both during and after their employment, but may also apply to other parties entering into a business relationship with the company. In practice, an NDA is generally executed before the principal agreement is concluded in order to prevent trade secrets from being disclosed to unauthorized parties.<sup>11</sup>

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<sup>1</sup> Faisal Santiago, *Introduction to Business Law*, 1st ed. (Jakarta: Mitra Wacana Media, 2012), p. 66.

<sup>2</sup> M. Ahmad Ramli, *Intellectual Property Rights: Basic Theory of Trade Secret Protection* (Bandung: Mandar Maju, 2000), p. 9.

<sup>3</sup> Gerungan, A. E., "Legal Protection of Trade Secrets from the Perspective of Civil and Criminal Law in Indonesia," *Jurnal Hukum Unsrat*, Vol. 22, No. 5, January 2016, p. 70.

<sup>4</sup> Dzulfania, R., Karyati, S., & Haerani, R., "Juridical Review of Trade Secret Regulation under Positive Law in Indonesia in the Digital Era," *Iuris Notitia: Journal of Legal Studies*, 2(2), 64–69 (2024).

<sup>5</sup> Rachmadi Usman, *Intellectual Property Rights Law* (Bandung: PT Alumni, 2003), p. 395.

<sup>6</sup> Faramukti, T. S., "Legal Protection of Trade Secrets over Business Information in Employment Agreements in Sleman Regency (A Study of 'Ideologi Cafe' in Sleman)," *Journal of Intellectual Property*, 4(2), 35–50 (2021).

<sup>7</sup> Adrian Sutedi, *Intellectual Property Rights* (Jakarta: Sinar Grafika, 2009), p. 56.

<sup>8</sup> H. OK. Saidin, *Legal Aspects of Intellectual Property Rights* (Jakarta: Rajawali Pers, 1995), p. 464.

<sup>9</sup> Andry Setiawan, Dewi Sulistianingsih, and Rindia Fanny, "The Existence of Trade Secret Registration and Implementation of Its Protection (Study at the Central Java Regional Office of the Ministry of Law and Human Rights)," *Jurnal Law & Justice*, 3(2) (2018), pp. 73–76.

<sup>10</sup> Iqbal Asnawi, M., Fitriani, R., Syafrina Tala, W., Aikel Primsa Tarigan, J., Maulana Daffa, T., & Habibi, W., *Locus: Journal of Legal Concepts*, 5 (July 2024).

<sup>11</sup> Ni Ketut Supasti Dharmawan, *Harmonization of Indonesian Intellectual Property Law* (Denpasar: Swasta Nulus, 2018), p. 111.

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Accordingly, legal protection of trade secrets is indispensable and constitutes a crucial measure, particularly for preventing unfair business competition. Such protection safeguards the interests of business actors against other parties conducting similar business activities who might exploit or imitate confidential information that provides the company with a competitive advantage.<sup>12</sup> For example, in 2021, a case involving an alleged unlawful act related to trade secrets arose in which PT HONG GUANG PLASTIKATAMA INDONESIA (PT HGPI), as the defendant, employed a foreign worker. While still employed by the company, the foreign worker established another company with a third party and sold products identical to those sold by PT HGPI. This caused PT HGPI to suffer material losses totaling IDR 4,841,000,000 (four billion eight hundred forty-one million rupiah) and non-material losses valued at IDR 2,000,000,000 (two billion rupiah).

In several cases, employees have undertaken part-time work, contributing to a high frequency of employee movement from one company to another; this has become one factor that may trigger trade-secret violations.<sup>1314</sup>

In the Jakarta dispute, PT Flux Asia Solusindo (PT FAS) filed a claim against Fuad Fajar Samudera (FFS) and PT Jelajah Andaliman Indonesia (PT JAI). FFS, a former employee of PT FAS under Indefinite-Term Employment Agreement No. 027/PKWTT-FLUX/II/2020 dated 5 February 2020, allegedly used and/or disclosed a trade secret belonging to PT FAS, namely information contained in the Van Houten Kitchen marketing documents based on the January 2022 Van Houten Kitchen Report. FFS allegedly used PT JAI, a limited liability company he had established, to submit an offer to a client without PT FAS's authorization. PT FAS subsequently sent three formal demand letters.

In response to those demand letters, FFS admitted that he had used PT FAS's trade secrets but was unwilling to compensate PT FAS for material losses of IDR 35,000,000 (thirty-five million rupiah) and non-material losses arising from an estimated decline in revenue of IDR 500,000,000 (five hundred million rupiah). Consequently, PT FAS filed a claim under Article 1365 of the Indonesian Civil Code concerning an unlawful act. Based on the foregoing, the legal issue examined in this study is how the marketing document information of PT Flux Asia Solusindo, as a trade secret, is legally protected under Law No. 30 of 2000 on Trade Secrets in Decision No. 1035/Pdt.G/2022/PN South Jakarta.

## **2. Research Method**

This study employs normative legal research with a descriptive-analytical approach, examining law as norms or rules applicable in society through a review of legal literature. The approaches used are the statutory approach and the case approach, particularly in relation to trade-secret protection under Law No. 30 of 2000 on Trade Secrets and Decision No. 1035/Pdt.G/2022/PN.Jkt.Sel. The principal data are secondary data comprising primary legal materials, including the Indonesian Civil Code, the Trade Secrets Law, and court decisions, as well as secondary legal materials such as books, journal articles, scholarly publications, and literature relevant to intellectual property law. These secondary data are supported by primary data obtained through interviews with relevant parties, namely representatives of PT Flux Asia Solusindo and academics specializing in intellectual property law. Data were collected through literature review and unstructured interviews. All data were analyzed qualitatively by

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<sup>12</sup> Ahmad M. Ramli, *Intellectual Property Rights: Basic Theory of Trade Secret Protection* (Bandung: Mandar Maju, 2000), p. 1.

<sup>13</sup> Gunawan Widjaja, *Trade Secrets, Business Law Series*, 1st ed. (Jakarta: PT Raja Grafindo Persada), p. 81.

<sup>14</sup> Maulidya, S. B. P. S. K. R., "Legal Protection for Trade Secret Owners under Law No. 30 of 2000 on Trade Secrets (Analysis of Supreme Court Decision No. 783K/Pid.Sus/2008)," *Diponegoro Law Review*, 5(2) (2016), 1–13.

describing, interpreting, and examining them in depth to obtain a comprehensive understanding of the legal protection of trade secrets. Conclusions were drawn using a deductive method, applying general legal provisions to specific legal issues, particularly those concerning trade-secret protection in Decision No. 1035/Pdt.G/2022/PN.Jkt.Sel.

### **3. Result and Discussion**

#### **3.1 Trade Secret Dispute between PT Flux Asia Solusindo and Fuad Fajar Samudera**

A trade-secret dispute arose between:

1. PT Flux Asia Solusindo (PT FAS);
2. Fuad Fajar Samudera; and
3. PT Jelajah Andaliman Indonesia (PT JAI).

In 2020, PT Flux Asia Solusindo (PT FAS) accepted Fuad Fajar Samudera's application for the position of Art Director under Indefinite-Term Employment Agreement No. 027/PKWTT-FLUX/II/2020 dated 5 February 2020. By virtue of his position, Fuad Fajar Samudera had access to PT FAS's trade secret in the form of the Van Houten Portfolio. After two years of employment, he ceased working for PT FAS on 27 May 2022. It was later discovered that he had established a limited liability company, PT Jelajah Andaliman Indonesia (PT JAI), and submitted an offer to PT Gemilang Indofa Konstruksi using PT FAS's confidential Van Houten Kitchen marketing document information without PT FAS's authorization. After learning of this conduct, PT FAS, through its legal counsel, issued a formal demand letter seeking compensation and requiring Fuad Fajar Samudera and PT JAI to cease using PT FAS's trade secrets, as stated in Demand Letter No. 03/SCO-IX/2022 dated 12 September 2022;

1. Demand Letter No. 04/SCO-IX/2022 dated 20 September 2022;
2. Demand Letter No. 07/SCO-IX/2022 dated 28 September 2022.

In response to the demand letters, Fuad Fajar Samudera, through Letter No. 09.2/Srt.Tanggapan-SOM-ALF&P/X/2022, admitted that he had used PT Flux Asia Solusindo's trade secrets for the benefit of PT Jelajah Andaliman Indonesia (PT JAI) and apologized. However, he refused to compensate PT FAS for the trade secrets used by the defendants. PT FAS therefore filed an unlawful-act claim against Fuad Fajar Samudera and PT JAI on the basis that it had suffered both material and non-material losses, consisting of:

1. Material Losses

As a result of the defendants' use of PT Flux Asia Solusindo's trade secrets, PT FAS suffered losses amounting to IDR 35,000,000 (thirty-five million rupiah);

2. Non-Material Losses

As a result of the defendants' use of PT Flux Asia Solusindo's trade secrets, PT FAS experienced an estimated decline in revenue of IDR 500,000,000 (five hundred million rupiah). Accordingly, PT Flux Asia Solusindo (PT FAS) claimed total material and non-material losses of IDR 535,000,000 (five hundred thirty-five million rupiah). PT FAS also requested that the defendants be ordered to pay a coercive penalty (*dwangsom*) of IDR 500,000 (five hundred thousand rupiah) per day for any delay in complying with the judgment after it becomes final and binding (*inkracht van gewijsde*).

#### **3.2 Analysis of the Legal Protection of PT Flux Asia Solusindo as a Trade Secret Holder**

A trade secret is generally understood as information that is not publicly known in the business community and has economic value because it is useful in commercial activities. Article 2 of Law No. 30 of 2000 on Trade Secrets provides that the scope of trade-secret protection includes sales methods, information, and processing methods. Based on this provision, trade secrets may take various forms. Tangible examples include recipes, product formulas, cost and pricing data, promotional materials, marketing techniques, and customer address lists. Intangible forms may include ideas and creative value inherent in an individual that can be commercially assessed or otherwise possesses economic value.

In Indonesia, trade secrets are not subject to registration in the same manner as certain other intellectual property rights. Accordingly, a trade-secret holder must take adequate

measures to prevent the information from becoming known to others. At the same time, the Trade Secrets Law does not specifically regulate alternative methods for protecting trade secrets from other parties or the means by which such protection may be proven.<sup>15</sup> Therefore, business actors or trade-secret holders employ various measures to preserve their trade secrets, including written agreements incorporated into employment contracts or, externally, licensing agreements intended to maintain legal protection. These measures may be described as follows:

1. Confidentiality Agreement

A confidentiality agreement is an agreement entered into between a company owner and an employee. At a minimum, an employment agreement should contain provisions concerning employment conditions, the parties' rights and obligations, and the obligation to maintain the confidentiality of the company's products or information. Such an agreement regulates an employee's responsibility to protect the company's trade secrets and should, at a minimum, explain certain matters relating to the duty of confidentiality, including: A description of the types or objects categorized as trade secrets; An express statement that a disclosure of trade secrets has occurred or may potentially occur; A description of acts that are permitted and prohibited for the purpose of maintaining trade-secret confidentiality; Provisions concerning the term or duration of the agreement; A description of conduct that may be classified as a violation of trade-secret rights.

2. Licensing Agreement

Article 1 paragraph (5) of Law No. 30 of 2000 provides that:

"A license is a form of authorization granted by a trade-secret rights holder to another party through an agreement, conferring a right of use rather than transferring ownership of the right. Through such a license, the recipient is authorized to utilize the economic value of the protected trade secret for a specified period and subject to mutually agreed terms and conditions."

Based on the foregoing definition, a license constitutes permission granted by a trade-secret owner to another party under an agreement for commercial use. The agreement is subsequently recorded with the Directorate General of Intellectual Property (DGIP) and announced in the Trade Secret Gazette in order to have legal effect as provided in Article 8, which states:

1. "A Licensing Agreement shall be recorded with the Directorate General upon payment of the fee prescribed under this Law;
2. A Trade Secret Licensing Agreement that is not recorded with the Directorate General shall have no legal effect against third parties;
3. A Licensing Agreement as referred to in paragraph (1) shall be announced in the Trade Secret Gazette."

In relation to the PT Flux Asia Solusindo trade-secret case, the measure adopted by the company was the implementation of a Confidentiality Agreement. In the business sector, trade secrets may take many forms, one of which is corporate marketing document information.<sup>16</sup> Such information may be categorized as a trade secret because, during negotiations between a company and a third party, the company may provide its marketing document information in the form of a quotation letter to the prospective business partner. If negotiations are discontinued, the company must protect that marketing document information from being

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<sup>15</sup> Thalib, E. F., Sari, D. N., Rara, L. P., & Ratnaningrum, A., "The Importance of Trade Secret Protection in Indonesian Companies," YUSTHIMA: Journal of the Master of Law Program, Faculty of Law, Unmas Denpasar, 02(2), 82–91 (2022).

<sup>16</sup> Rabbani, R. F., & Suherman, S. (2023), "The Urgency of Regulating Confidentiality Agreements to Optimize the Protection of Economically Valuable Confidential Information," Jurnal USM Law Review, 6(3), 1020–1039.

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disseminated to other parties without the consent of its owner by entering into a Confidentiality Agreement or Non-Disclosure Agreement (NDA).<sup>17</sup>

In this case, PT Flux Asia Solusindo sought to preserve the confidentiality of its trade secrets by requiring employees to enter into employment agreements before commencing employment, thereby reducing the risk of trade-secret disclosure. This approach was applied to Fuad Fajar Samudera through Indefinite-Term Employment Agreement No. 027/PKWTT-FLUX/II/2020 dated 5 February 2020. The agreement also contained a clause concerning a Confidentiality Agreement or Non-Disclosure Agreement (NDA). The inclusion of this clause demonstrates that PT Flux Asia Solusindo sought to prevent information relating either to client projects or to the company itself from being disclosed to other parties and causing losses to the company. In this regard, the elucidation of Article 3 paragraph (4) states that appropriate and reasonable measures consist of two aspects: technical and legal measures. Technical measures relate to how the information is stored, whereas legal measures relate to agreements entered into by the trade-secret owner or to the company's internal regulations.

#### 4 Conclusion

PT Flux Asia Solusindo has provided legal protection for its trade secrets through internal corporate arrangements in the form of a confidentiality agreement that satisfies the elements of a trade secret under Law No. 30 of 2000. However, in Decision No. 1035/Pdt.G/2022/PN.Jkt.Sel, the legal basis of the claim was problematic because it relied solely on Article 1365 of the Indonesian Civil Code without linking the claim to the specific provisions governing trade secrets. As a result, the legal protection afforded was less than optimal and failed to create an adequate deterrent effect. In principle, the confidentiality agreement between PT Flux Asia Solusindo and Fuad Fajar Samudera was sufficient to protect the marketing document information because it prohibited the use and disclosure of confidential information for a specified period. Accordingly, the principal legal issue in this case arose from the application of the legal basis for the claim rather than from any deficiency in the confidentiality agreement established by the company.

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<sup>17</sup> Utari, N., “Legal Protection of Companies as Trade Secret Owners upon Termination of Employment: The Need for Legal Protection of Trade Secrets in Accordance with Provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,” *Referendum: Journal of Civil and Criminal Law*, 1(3), 31–42 (2024).

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