

Binding Force of Non-Disclosure Agreement as Means of Trade Secret Protection in Decision No. 832/Pdt.G/2023/PN.Jkt.Brt

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Abstract. *This research is entitled “Binding Force of Non-Disclosure Agreement as Means of Trade Secret Protection in Decision No. 832/Pdt.G/2023/PN.Jkt.Brt” The object of this study is the regulation and implementation of NDAs within the framework of Indonesia’s positive legal system. The purpose of this research is to explain the form of overlap between civil law and intellectual property law, which results in weak legal certainty in the protection of trade secrets. The research method applied is normative juridical research with a statutory and case study approach, focusing on Decision No. 832/Pdt.G/2023/PN.Jkt.Brt. The results show that NDAs are legally recognized as innominate agreements under Article 1338 of the Indonesian Civil Code. However, their application in the context of trade secret protection remains ineffective due to differences in legal regimes and institutional arrangements under Law No. 30 of 2000. The case analysis demonstrates that the court still interprets NDA violations narrowly as contractual breaches rather than as infringements of intellectual property rights. This condition reflects that the function of NDAs as instruments for trade secret protection has not yet been fully optimized. The findings of this research illustrate the need to strengthen the synergy between civil law and intellectual property law in the practice of trade secret protection in Indonesia.*

Keywords: *Agreement; Consideration; Judicial; Secret; Trade.*

1. Introduction

The development of the global economy and digital transformation have changed the way companies perceive information. In the era of a knowledge-based economy, information is no longer merely administrative data but has become a form of wealth with high economic value. Customer data, business strategies, product designs, and internal systems are now categorized as intangible assets that determine corporate success. However, the rapid flow of information simultaneously creates new legal risks in the form of leakage, transfer, or misuse of data that

may harm business actors. This situation makes the need for a legal mechanism that guarantees information confidentiality and legal certainty in business activities increasingly urgent (Saidin, 2019).

One form of legal protection that has developed in business practice is the Non-Disclosure Agreement (NDA) or confidentiality agreement. This agreement serves to regulate the legal responsibilities of parties involved in employment or partnership relations to guarantee the preservation of confidentiality and prevent any unauthorized release of protected information. (Mahfuzzah et al., 2024). In Indonesian law, the Non-Disclosure Agreement is not explicitly regulated in statutory provisions; however, its existence is validly grounded in the contractual freedom doctrine embodied in Article 1338 of Indonesia's Civil Code. (Subekti, 2005) explains that the principle of freedom of contract grants parties the liberty to make agreements as long as they do not conflict with laws, public order, or morality. This means that a Non-Disclosure Agreement belongs to the category of an innominate contract—an agreement arising from social and business needs but not specifically regulated by law, yet recognized as valid under the principle of consensualism in Indonesian civil law. (Salim H.S., 2005)

The distinction between confidential information and trade secrets is also essential to affirm the function of a Non-Disclosure Agreement. Confidential information covers all information kept secret based on a relationship of trust or contractual obligation, without necessarily possessing economic value. In contrast, a trade secret is a part of confidential information that holds economic value because it provides a competitive advantage to its owner and is protected through tangible legal measures (Saidin, 2019). From this perspective, a Non-Disclosure Agreement functions as a distinguishing instrument: through this agreement, information that was initially ordinary confidential information may obtain the status of a trade secret due to the existence of a legal commitment to protect it.

Although rooted in civil law, the existence of a Non-Disclosure Agreement carries a strategic dimension as it serves as a civil law instrument supporting the enforcement of intellectual property rights, particularly in the protection of trade secrets. Despite having its legal basis within the civil law regime, the absence of specific regulation concerning Non-Disclosure Agreements creates a normative legal vacuum. This condition causes the content and structure of such agreements to depend entirely on the parties' will. In practice, especially in employment relationships, confidentiality agreements are often unilaterally drafted by companies in the form of standard contracts, leaving employees with no bargaining position to negotiate their clauses (Afdal & Purnamasari, 2021). This situation demonstrates an imbalance in the legal position between employers and employees, potentially leading to injustice in the application of the principle of freedom of contract. This aligns with the view of (Satjipto Rahardjo, 2000), who emphasizes that law should not merely pursue certainty but must also ensure substantive justice for parties who are socially or economically disadvantaged.

Protection of confidential information is actually regulated under Law No. 30 of 2000 concerning Trade Secrets. Article 1 paragraph (1) of the law stipulates that a trade secret is information not known to the public, possessing economic value because it is useful in business activities, and kept confidential by its owner (Law Number 30 of 2000). Although trade secrets are part of the intellectual property rights regime, unlike patents or trademarks, they do not require registration to obtain legal protection. Such protection arises automatically as long as the owner takes reasonable steps to maintain the confidentiality of the information. One common legal measure to satisfy this requirement is the establishment of a Non-Disclosure Agreement. Therefore, confidentiality agreements play an important role in the trade secret protection system, as they serve as evidence that the information owner has undertaken proper legal actions to preserve the secrecy of their assets. (Sihombing & Suyanto, 2024).

However, in judicial practice in Indonesia, the relationship between Non-Disclosure Agreements and trade secrets has not yet been comprehensively understood. Many disputes regarding violations of confidentiality agreements are treated merely as cases of contractual breach without being connected to the trade secret legal regime. This can be seen in the Decision of the West Jakarta District Court No. 832/Pdt.G/2023/PN.Jkt.Brt, in which the plaintiff (PT. Prisma Harapan) accused the defendant (Roslina) of violating a Non-Disclosure Agreement by using the company's internal data for the benefit of a competitor (PT. Pandora Artha Media). Although the disputed information included purchase orders, client data, and offers, neither the plaintiff nor the panel of judges linked it to the trade secret regime. The judges only considered the defendant's actions as a civil contractual breach without addressing the intellectual property dimension involved.

From an institutional perspective, another problem arises concerning the forum for dispute resolution. This fact reflects a gap between positive legal norms and their judicial implementation. Normatively, trade secrets are part of the intellectual property rights regime; however, in practice, disputes involving trade secrets are examined by the District Court. According to Article 11 paragraph (2) of Law No. 30 of 2000, trade secret disputes are indeed settled through the District Court rather than the Commercial Court, as is the case with trademark, patent, or copyright disputes. This placement creates a legal anomaly, as trade secrets, being part of intellectual property rights, should ideally be adjudicated by a specialized court possessing technical competence. Such a setting generates systemic inconsistency in the enforcement of intellectual property law in Indonesia. Conceptually, specialized courts such as the Commercial Court are established to ensure efficiency, consistency, and legal certainty in handling technical and complex disputes (Saidin, 2019).

Specialized forums in intellectual property cases are essential to ensure consistent law enforcement and provide certainty for business actors. Therefore, the provision on the absolute competence of District Courts in trade secret cases needs to be reconsidered to align with the spirit of judicial specialization in commercial matters. Theoretically, this phenomenon reflects that Indonesian law has not yet fully functioned as a tool of social engineering. Roscoe Pound (1954) asserts that law should not merely serve as an instrument of certainty but also as a means of balancing individual and social interests. (Gustav Radbruch, 1946) further emphasizes that ideal law must embody three fundamental values: justice (*gerechtigheit*), expediency (*zweckmäßigkeit*), and legal certainty (*rechtssicherheit*). When legal practice, as seen in the *quo* case, focuses solely on formal certainty (contractual breach) without considering substantive justice and expediency (protection of economic assets), the law loses its social function. In this context, the regulation and implementation of Non-Disclosure Agreements in Indonesia should reflect a balance among these three fundamental legal values.

Based on the foregoing description, this research aims to analyze in depth the legal regulation of Non-Disclosure Agreements (NDAs) as a means of trade secret protection under Indonesia's positive law, including the authority in resolving its disputes. Furthermore, this study examines the legal construction and judicial considerations in Decision No. 832/Pdt.G/2023/PN.Jkt.BrT, which involves the use of confidential corporate data related to the trade secret legal regime, as well as its implications for legal certainty guarantees for holders of confidential information in Indonesia.

2. Research Methods

This research employs a normative juridical method, which focuses on the study of written law (positive legal norms) that regulates legal relationships between legal subjects. The research focuses on analyzing the binding force of the Non-Disclosure Agreement (NDA) as a form of civil contract in employment relations and its application based on Decision No. 832/Pdt.G/2023/PN.Jkt.BrT. (Sunggono, 2007; Marzuki, 2017)

The approaches used in this study include the statute approach, conceptual approach, and case approach. The statute approach is carried out by examining relevant legal provisions, including the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code (KUHPidana), the Indonesian Criminal Code (KUHPidana), Law No. 30 of 2000 on Trade Secrets, Law No. 13 of 2003 on Manpower, Law No. 6 of 2023 on Job Creation, Law No. 2 of 2004 on Industrial Relations Dispute Settlement, and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. In addition, to enrich the analysis, a comparative study is conducted on the principles contained in the Uniform Trade Secrets Act (UTSA) of the United States as a conceptual reference for the protection of confidential information.

The conceptual approach is used to examine the legal principles and theories underlying the formation of agreements, such as the principle of freedom of contract, the principle of good

faith, the principle of legal certainty, and civil liability. Meanwhile, the case approach is used to examine the implementation of legal norms in judicial practice through the analysis of the judges' considerations in Decision No. 832/Pdt.G/2023/PN.Jkt.Brt, with the aim of finding the relevance between legal theory and practice (Sudjana, 2022).

The data in this research consist of secondary data divided into three categories of legal materials. Primary legal materials include statutory regulations, court decisions, and binding legal documents. Secondary legal materials include textbooks, academic journals, legal articles, student research papers, and expert opinions that provide interpretations of primary legal materials. Tertiary legal materials consist of law dictionaries, encyclopedias, and online sources that help clarify the legal concepts used in this study.

The data collection technique was carried out through library research, which involved tracing, reading, and analyzing legal materials from various sources. The legal materials were analyzed qualitatively and descriptively using content analysis, which interprets the substance of legal norms, theories, and judicial considerations systematically. The objective is to obtain a logical, factual, and scientific understanding of the binding force of Non-Disclosure Agreements (NDAs) within Indonesia's positive legal system and their conformity with the principles of trade secret protection and civil law.

3. Results and Discussion

3.1. Legal Regulation of Non-Disclosure Agreements (NDAs) as a Means of Trade Secret Protection and the Authority for Dispute Settlement in Indonesia

The development of Indonesia's legal system has always evolved alongside economic and social dynamics, giving rise to new forms of legal relationships beyond the classical contractual constructions recognized in the Indonesian Civil Code. One such form is the Non-Disclosure Agreement (NDA), a contract that substantively imposes on one party a duty to safeguard any information acquired in the course of cooperation. The NDA has become increasingly significant in the modern era, which is characterized by the growing economic value of information. Confidential information is no longer merely technical data but has become an intangible asset that determines the success or failure of a business entity. Therefore, the NDA functions as a legal instrument to protect trade secrets owned by a company, both in business partnerships and employment relationships.

However, upon closer examination, Indonesia's legal system does not yet have explicit regulation regarding Non-Disclosure Agreements. There are no statutory provisions that specifically regulate the form, content, or legal consequences of such agreements. Unlike countries such as the United States, Singapore, or Japan, which have developed legal standards and implementation guidelines for confidentiality agreements, Indonesia still relies entirely on the principle of freedom of contract as contained in Article 1338 of the Indonesian Civil Code,

which stipulates that “all legally made agreements shall act as law for those who make them.” Under this principle, the parties are free to determine the content, form, and scope of their obligations, including those within an NDA. This principle serves as the main legal basis legitimizing the validity and binding force of such agreements, as long as the contract meets the conditions stipulated in Article 1320 of the Civil Code namely, mutual consent, legal capacity, a specific object, and a lawful cause.

From a normative perspective, the application of Articles 1338 and 1320 of the Civil Code cannot be interpreted as granting unlimited contractual freedom. These provisions must be construed systematically in accordance with the principles of justice and good faith. The principle of freedom of contract entails both moral and legal obligations to ensure that contractual relationships remain within the bounds of propriety and balance.

In practice, NDAs frequently take the form of standard form contracts in which the bargaining position of the parties is unequal, such as between employers and employees. In this context, Article 1338 paragraph (1) must be interpreted systematically and limited by Article 1338 paragraph (3) which embodies the doctrine of good faith. This doctrine emphasizes that every contractual performance should reflect fairness and equitable conduct. Exploitative clauses such as non-compete provisions that prohibit an employee from working in similar fields indefinitely without adequate compensation potentially violate the principle of good faith and contravene the constitutional right to work guaranteed under Article 27 paragraph (2) of the 1945 Constitution.

This reliance on general civil law creates a fundamental weakness, as an NDA is not an ordinary agreement; it is an instrument whose object of protection—confidential information—is specifically governed within the Intellectual Property Rights (IPR) regime. Here lies the crucial intersection between the Civil Code and Law No. 30 of 2000 on Trade Secrets. Article 1 point (1) of the Trade Secret Law defines a “Trade Secret” as information in the field of technology and/or business that is not generally known, has economic value, and “is maintained in its confidentiality by the owner.” The latter element forms the legal bridge between contract law and intellectual property law.

Interpretively, the NDA represents the most concrete and formal legal embodiment of the “reasonable efforts” required by Article 3 paragraph (1) of the Trade Secret Law to obtain legal protection. The explanation of Article 3 paragraph (1) further clarifies that such efforts may include “standard procedures” or “internal company regulations,” of which the NDA is one form. More importantly, Article 13 of the Trade Secret Law explicitly constructs that contractual breaches may constitute violations of intellectual property rights. The provision states that “a violation of a trade secret shall also occur when a person intentionally breaches an agreement or a written or unwritten obligation to maintain the relevant trade secret.” Thus, the Trade Secret Law affirms that a breach of an NDA can simultaneously be classified as a trade secret infringement. (Ali, J. 2023).

Nevertheless, Law No. 30 of 2000 does not provide any guidance regarding the form or content of the efforts to maintain confidentiality, nor does it clarify the legal meaning of “maintained in its confidentiality.” Consequently, divergent interpretations have emerged in judicial practice. In some court decisions, the existence of an NDA is accepted as proof that the element of “maintaining confidentiality” has been satisfied; however, in many other cases, the NDA is treated merely as evidence of an ordinary contractual relationship. This inconsistency poses a dilemma for trade secret owners: without an NDA, it is difficult to prove that reasonable efforts were taken; but even with an NDA, legal protection remains weak because no substantive standards are recognized by law.

A comparative reference can be made to the legal system of the United States through the Uniform Trade Secrets Act (UTSA). The UTSA explicitly recognizes NDAs as a primary legal instrument in proving trade secret violations. Section 1(4)(ii) of the UTSA requires that the information must be subject to “efforts that are reasonable under the circumstances to maintain its secrecy.” The official commentary explains that such “reasonable efforts” may take the form of “advising employees of the existence of a trade secret.” The signing of an NDA thus serves as the primary formal evidence of the fulfillment of such “reasonable efforts.” This approach should be adopted within Indonesia’s legal system to provide courts with clear guidelines in adjudicating trade secret disputes. (Nizliandry, 2022).

Despite the substantive link between NDAs and IPRs, the Trade Secret Law creates a serious institutional anomaly concerning dispute resolution. Article 11 paragraph (2) of the law surprisingly stipulates that “lawsuits as referred to in paragraph (1) shall be filed with the District Court.” This allocation of jurisdiction generates a fundamental normative issue and undermines the institutional framework of IPR enforcement in Indonesia. Trade secret disputes should fall under the absolute jurisdiction of the Commercial Court for three reasons. First, Specialized Expertise: trade secret cases involve complex IPR analyses regarding the “economic value” of information, proof of “production methods” or “marketing methods,” and other technical issues that require specialized judges in the Commercial Court. Second, Speedy Trial: trade secret assets are fragile, and the potential losses are massive. The Commercial Court operates under expedited procedures essential for IPR disputes, unlike the lengthy processes of the District Court. Third, Consistency and Harmonization: all other IPR regimes (trademark, patent, copyright, industrial design) are resolved in the Commercial Court. Assigning trade secret disputes to the District Court disrupts the consistency and specialization of the IPR judicial system.

This institutional weakness is evident in Decision No. 832/Pdt.G/2023/PN.Jkt.Br, in which the plaintiff filed a lawsuit for breach of an NDA by a former employee alleged to have disclosed company data and information. The panel of judges adjudicated the case purely as a contractual breach, without discussing the substance of the information from the perspective of trade secrets. The judges’ reasoning demonstrates that Indonesia’s legal system has not yet integrated the concept of the NDA with trade secret protection within the IPR regime. As a result, a breach

of an NDA is not regarded as an infringement of trade secret rights but merely as a violation of contractual obligations.

In this context, comprehensive legal reform both substantively and institutionally—is required. Such reform should encompass at least three key aspects. First, implementing regulations are needed to stipulate the minimum substantive requirements of NDAs, including provisions on duration, the extent of information covered and the boundaries of each party’s responsibility. These regulations are necessary to ensure that private agreements remain within the bounds of propriety and do not conflict with public law principles. Second, the Trade Secret Law should be revised to explicitly recognize NDAs as an integral component of the trade secret protection system. Third, jurisdiction over trade secret disputes should be transferred to the Commercial Court, which consists of judges with specialized expertise in intellectual property, thereby ensuring consistent and high-quality law enforcement.

Additionally, the legislature may consider developing an administrative mechanism for confidential recordation of trade secrets. Although trade secrets cannot be openly registered due to their confidential nature, a closed recordation system under a state institution could help trade secret owners establish proof of ownership and creation date in the event of disputes. Such systems have been implemented in several developed countries and have proven effective in strengthening legal certainty.

Ultimately, the current legal regulation of NDAs in Indonesia remains partial and weak. Harmonization between civil law and intellectual property law is necessary, particularly through the amendment of Article 11 of the Trade Secret Law to transfer dispute resolution authority to the Commercial Court. Moreover, the enforcement of NDAs in the future must apply the principle of balance. The protection of trade secrets must not become an absolute shield for capital owners to exploit weaker parties. The law must balance the economic interests of information owners with the fundamental rights of workers or business partners to earn a living. Substantive justice and proportionality in NDA clauses are key to ensuring that the law guarantees not only legal certainty but also social justice.

3.2. Legal Regulation of Non-Disclosure Agreements (NDAs) as a Means of Trade Secret Protection and the Authority for Dispute Settlement in Indonesia

The Decision of the West Jakarta District Court No. 832/Pdt.G/2023/PN.Jkt.Brt raises a fundamental issue in the practice of business law in Indonesia, namely how the judiciary interprets and assesses a breach of a Non-Disclosure Agreement (NDA) when the substance of the disputed information—bearing clear economic value—falls squarely within the scope of a trade secret. This case is particularly noteworthy because throughout the plaintiff’s claim, the defendant’s response, and the judges’ legal considerations, the terminology of “trade secret” as regulated under Law No. 30 of 2000 on Trade Secrets received virtually no analytical attention.

A case that substantively concerns the protection of intellectual property rights (IPR) was, instead, examined and decided solely through the lens of ordinary contractual obligations.

Factually, the dispute originated from an employment relationship between the plaintiff, PT. Prisma Harapan (an advertising company), and the defendant, Roslina, a former Supervisor Account Executive. The plaintiff alleged that the defendant had committed a breach of contract (*wanprestasi*) concerning two principal documents: the Company Regulation dated 1 December 2021 and a Confidentiality Agreement dated 19 August 2014. The central violation alleged and proven in court was that the defendant performed similar work for a competitor company (PT. Pandora Artha Media) while still employed by the plaintiff. More specifically, the defendant was found to have used company facilities (a work laptop) to access and transfer confidential data belonging to the plaintiff such as purchase orders (POs) and client data to the competitor for specific projects, including collaborations with PT. Pintu Kemana Saja and JD.ID. The key evidence submitted by the plaintiff was the discovery of two email accounts registered under the competitor's domain (*rose.pandoramedia@gmail.com* and *liana.pandoramedia@gmail.com*) within the plaintiff's company laptop used by the defendant.

From a juridical perspective, the plaintiff's claim was explicitly built solely upon the doctrine of breach of contract grounded in Articles 1320 and 1338 of the Indonesian Civil Code. The plaintiff did not allege a trade secret violation under the Trade Secret Law. Conversely, the defendant based her defense on two main arguments: first, a procedural objection that the dispute fell within the jurisdiction of the Industrial Relations Court (*Pengadilan Hubungan Industrial/PHI*) as an employment dispute; and second, that the Confidentiality Agreement was formally defective and therefore null and void because it allegedly lacked a date and place of signing. This combination—the plaintiff's choice to frame the case as contractual breach and the defendant's procedural objection—effectively confined the entire judicial examination to the domain of private contract law.

In their judicial consideration, the judges consistently approached the case solely from a contractual standpoint. This is evident in the interlocutory decision rejecting the defendant's objection regarding absolute competence. The judges did not analyze whether the substantive nature of the dispute involved employment law or intellectual property law. Instead, they based the jurisdiction of the District Court entirely on the contractual choice-of-forum clause contained in Article 13 of the Confidentiality Agreement (Exhibit P-4.2), which states: "The Parties agree to settle the aforementioned dispute through the West Jakarta District Court." By grounding jurisdiction solely on this clause, the court effectively precluded examination of the case through any other legal framework and confined its reasoning strictly within the general civil law regime.

As a result of this initial construction, the judges' final considerations became highly positivist and formalistic. The court focused on proving two questions: (1) whether the agreement was legally valid; and (2) whether a breach had occurred. In its ruling, the court affirmed both. The

judges explicitly stated that the Confidentiality Agreement “is legally valid and binding,” thereby rejecting the defendant’s argument of formal defect. The court further held that “the Defendant has committed a breach of contract (wanprestasi),” concluding that the defendant’s actions violated both the Company Regulation and the Confidentiality Agreement. However, the court’s reasoning stopped there. Not a single paragraph of the final decision referenced the Trade Secret Law. The judges did not examine whether the stolen information (client data, POs, offers) met the three cumulative elements of a trade secret, namely: (1) confidentiality; (2) economic value; and (3) protection through “reasonable efforts.”

Yet, the Trade Secret Law provides a clear doctrinal bridge for this type of case. Article 13 of the law explicitly states: “A violation of a trade secret shall also occur when a person intentionally discloses a trade secret, breaches an agreement, or breaches a written or unwritten obligation to maintain the relevant trade secret.” Decision No. 832/Pdt.G/2023/PN.Jkt.Brt is, by its literal substance, a case in which the defendant clearly “breached an agreement” (the NDA), but the judges failed to link this fact to Article 13. Furthermore, the elucidation of Article 3 paragraph (1) of the same law explicitly clarifies that “reasonable efforts” may include the establishment of “standard procedures” or “internal company regulations,” of which the NDA signed by the defendant was the most concrete form. By failing to connect the contractual breach of the NDA to the substantive elements of trade secret violation, the decision missed a crucial opportunity to strengthen the jurisprudence of intellectual property protection in Indonesia. (Prawangsa 2023)

This narrow legal construction stands in contrast with the legal framework in other jurisdictions, such as the Uniform Trade Secrets Act (UTSA) in the United States. The UTSA functionally integrates NDAs into the trade secret protection system. Its mechanism is straightforward. First, Section 1(4)(ii) of the UTSA stipulates that information can only qualify as a trade secret if reasonable measures are undertaken, considering the circumstances, to preserve its confidentiality.” The official commentary clarifies that such “reasonable efforts” include actions such as informing employees about the presence of trade secrets and restricting access to confidential materials. The signing of an NDA (as undertaken by PT. Prisma Harapan) serves as the principal legal evidence that a company has satisfied this standard of “reasonable efforts.” Second, Section 1(1) defines “improper means” as conduct including “breach... of a duty to maintain secrecy.” Under the UTSA framework, Roslina’s breach of the NDA would automatically qualify as misappropriation of a trade secret.

The relevance of the UTSA framework to Indonesia is significant because Article 13 of the Trade Secret Law (“breaching an agreement”) embodies the same spirit as the UTSA’s definition of improper means. However, the court’s failure in Decision No. 832/Pdt.G/2023/PN.Jkt.Brt to adopt a teleological interpretation of this provision exemplifies what may be termed an under recognition of trade secrets a judicial tendency to overlook the intellectual property nature of information that, substantively, already meets the protection criteria (client data, purchase orders, pricing information). Consequently, the ruling creates legal uncertainty for business

actors. Companies that have invested in protecting their data through NDAs as “reasonable efforts” receive compensation only on contractual grounds, without judicial acknowledgment that their intellectual assets have been infringed. This weakens the function of NDAs in essence undermines the role of NDAs as a key legal mechanism safeguarding trade secrets within Indonesia’s regulatory framework. It must be emphasized that a Non-Disclosure Agreement is not merely an administrative instrument but a concrete manifestation of legal responsibility in maintaining informational integrity. Within the civil law framework, it represents the exercise of freedom of contract, but within the intellectual property framework, it carries a dual function: as a mechanism for regulating private relationships and as evidentiary proof of economic rights protection. Therefore, in disputes involving NDAs, judges should not view such agreements solely from a formal civil perspective but also from the standpoint of protecting economic value. This approach aligns with the spirit of modern intellectual property law, which no longer treats economic rights as absolute, but as rights that must be protected because they contribute to social progress and innovation.

Ultimately, Decision No. 832/Pdt.G/2023/PN.Jkt.Brt highlights a major challenge for Indonesia’s legal system in harmonizing interplay between contract law and intellectual property law. The absence of substantive consideration of trade secrets reflects not only interpretive limitations but also the urgent need for reformulation within the Trade Secret Law. An explicit recognition of Non-Disclosure Agreements as a legal instrument for trade secret protection would strengthen the legal position of information owners and establish a new equilibrium between contractual freedom and social responsibility in business practices.

4. Conclusion

The legal regulation of Non-Disclosure Agreements (NDAs) in Indonesia remains fragmented between civil law and intellectual property law, resulting in legal uncertainty. Normatively, NDAs are valid as innominate contracts under the principle of freedom of contract contained in Article 1338 of the Indonesian Civil Code; however, their function as legal instruments for trade secret protection, as intended in Articles 3 and 13 of Law No. 30 of 2000 on Trade Secrets, has not been effectively implemented. This ineffectiveness is aggravated by the institutional anomaly in Article 11(2) of the same law, which grants jurisdiction over trade secret disputes to the District Court rather than the more competent Commercial Court, disrupting the harmonization of intellectual property adjudication. The analysis of Decision No. 832/Pdt.G/2023/PN.Jkt.Brt further reveals that the court interpreted the breach of an NDA solely as a contractual default without considering the trade secret dimension, reflecting the weak integration between contract law and intellectual property law. Therefore, a specific regulatory framework and the reassignment of judicial authority to the Commercial Court are urgently required to provide legal certainty and ensure that NDAs function effectively as instruments for trade secret protection in Indonesia.

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