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Non-Disclosure Agreement in Its Application to Breach of Contract Lawsuits Referred to From Article 1320 of The Civil Code

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Abstract

Indonesia, as a nation governed by law, as stipulated in the 1945 Constitution, makes law the fundamental regulatory framework for all aspects of life, including employment relationships. In its implementation, protecting trade secrets is crucial due to the increasing risk of leaking information of significant economic value. The legal instruments used are:*Non-Disclosure Agreement* (NDA), although until now there are no specific provisions in the law. This study aims to analyze whether the NDA is valid and legally binding in employment relations, referring to Article 1320 of the Civil Code. This study also examines the impact of violations of the agreement on breach of contract lawsuits, using a case study that occurred at PT Foom Lab Global. The method in this study uses a juridical-normative approach and focuses on the provisions of the law and analyzes the case that occurred. The legal materials include primary legal materials in the form of the Civil Code, Law 30/2000 concerning Trade Secrets, and court decisions, then secondary legal materials in the form of scientific readings. The study proves that the NDA is legally valid and binding if it is in line with the provisions of a valid agreement. In the case of PT Foom Lab Global against Sulfa Sopiani, the Defendant was proven to have committed a breach of contract in the form of violations of resignation procedures, violations of the non-competence clause, and potential violations of information confidentiality. The Defendant was sentenced to pay compensation of 800 million. This ruling states that NDAs can be legally enforced as long as they are drafted correctly and in a balanced manner. The study concludes that NDAs are an effective legal tool for protecting trade secrets, but their implementation must adhere to the principles of fairness and balance in employment relationships to avoid harming workers' rights.

Keywords: *Non-Disclosure Agreement*; Default; Dispute

INTRODUCTION

Indonesia as a rule of law, in its context is managed in Article 1 paragraph (1) of the 1945 Constitution. A state based on law means that all matters in managing the state of Indonesia must be regulated by law, and state officials are obliged to comply with the laws made by the state of Indonesia (2). Because law plays a role as a basis for regulation, law functions to ensure the creation of order, security, and comfort. Therefore, it is very important to realize a state based on law (3).

An agreement is the basis of a relationship between two or more individuals who are bound, so an agreement is formed, not only based on law. An agreement is created officially and has legal force and applies as a rule that must be followed by all parties concerned. Further review of the provisions of Article 1338 of the Civil Code, paragraph (1), which reads:

> *"Every agreement created officially becomes like a law for the parties involved in the agreement."*

Law, like rules in the form of norms and sanctions, is created to guide human behavior, maintain harmony and justice, and prevent harm. The role of law is essential in ensuring legal certainty for the public. In relation to contract law in Indonesia, justice and certainty in the implementation of agreements are crucial to preventing contract violations.

Default is a condition where one party in an agreement fails to carry out their duties or obligations in accordance with the mutual agreement, thus triggering legal consequences for the subject who suffers losses (4). Default is a term in national civil law used to describe the condition of one party failing to carry out their obligations properly and in accordance with what is determined. Default occurs when one party in an agreement fails to carry out their duties as agreed. The legal consequences are in the form of demands for compensation, fulfillment of obligations, the agreement being cancelled, and other additional sanctions as agreed in the contract or valid legal regulations. In the civil law system in Indonesia, the provisions for default are listed in Articles 1238 to 1243 of the Civil Code.

The issue of breach of contract requires a deeper examination because it can affect legal certainty and fairness for the parties involved in the agreement. By clearly understanding the legal impact of breach of contract, we can create better contracts, thereby reducing the possibility of violations and future legal disputes. Protection of trade secrets is currently a crucial issue in global business development, as information with economic value is now increasingly easy to misuse, steal, or leak by parties inside and outside the company. In various books and explanations regarding Intellectual Property Rights, trade secrets are considered a very important asset. Trade secrets not only help businesses overcome competition but also ensure their survival and growth, especially in industrial sectors that require innovation and technology. This is regulated in Law Number 30 of 2000 concerning Trade Secrets. The reality shows that many local businesses are at risk of information breaches, primarily due to worker migration, the use of digital technology, and the lack of internal information security controls (5). In this situation, companies hope that legal protection for trade secrets can provide a sense of security and stability in carrying out their operations. Furthermore, workers want an agreement that doesn't restrict their freedom to work. The tension demonstrates the importance of having fair legal regulations that protect both parties.

One tool frequently used to safeguard trade secrets is the NDA, an agreement that compels the recipient of confidential information not to disclose it to others. NDAs are frequently used in employment because workers are the closest subjects to a company's strategic information, such as formulas, product designs, production methods, and consumer data (6). Reality proves that NDAs, as mandatory documents, must be signed from the initial recruitment phase until the end of employment, play a role in preventing information leaks. However, the way NDAs are created locally often neglects the principle of fairness in contracts, which in turn causes legal problems that are difficult to resolve. Furthermore, the provisions in the agreement only apply one way and are detrimental to employees. This fact means that the implementation of NDAs does not always achieve its original purpose, namely to protect the interests of the company while not harming the basic rights of workers. This condition reinforces the need for further in-depth research into restoring the position of NDAs in employment relations (7).

Protection using an NDA is crucial, as evidenced by the dispute between PT Foom Lab Global and their former employee, Sulfa Sopiani. Sulfa Sopiani demonstrated how she breached a confidentiality agreement signed on July 4, 2023, resulting in a breach of contract lawsuit. The now-retired employee resigned without giving the required one-month notice, and it was later revealed that she had joined a competitor in the same business sector. The company considered this action a violation of the previously signed NDA and decided to file a lawsuit for breach of contract. In the official decision of the panel of judges at the South District Court, in Court Decision 155/Pdt.G/2024/PN Jkt.Sel, it was stated that the Plaintiff's (PT Foom Lab Global) lawsuit was partially accepted. The decision stated that the Defendant (Sulfa Sopiani) was proven to have violated or negligently complied with the agreement that had been made, namely the Non-Disclosure and Non-Compete Agreement number 0187/NDA/FLG/VII/2023 dated July 4, 2023. The decision also stated that the agreement was valid and binding, and ordered Sulfa Sopiani to comply with and carry out all the provisions contained in the agreement. The decision also sentenced the Defendant to pay sanctions for the violation of the agreement stated to the Plaintiff in the amount of IDR 800,000,000.00 (eight hundred million rupiah) no later than 14 (fourteen) calendar days after the decision of the a quo case contains permanent legal force (*inkracht van gewijsde*); gave a penalty to the COO-DEFENDANT to comply with the decision in the following case; gave a penalty to the Defendant to pay all funds in this case, namely IDR 351,500.00 (three hundred fifty-one thousand five hundred rupiah); dismissing the remainder of the Plaintiff's lawsuit (8).

This case has sparked differing opinions regarding the extent to which an NDA agreement has binding force in employment relationships. In civil law, an NDA agreement can be valid if it meets several conditions, such as an agreement between the two parties, both parties have legal capacity, there is an object of the agreement being discussed, and the purpose or reason for making the agreement is lawful (9). If all these conditions are met, then the NDA has the force of a legal rule that binds the parties, or can be called *pacta sunt servanda.* (10).

Violating the obligation to maintain confidentiality can be considered a breach of contract, so the perpetrator is obliged to provide compensation for the losses incurred. As stated in Law/2000 concerning Trade Secrets. However, in using confidentiality agreements, we must also pay attention to the principles of equality and fairness in the contract so as not to excessively hinder workers' rights, including their right to work elsewhere (11). It is necessary to analyze the role of NDA in employment relations and how to apply it in dealing with breach of contract lawsuits by referring to the framework of Article 1320 of the Civil Code. The author's analysis is expected to provide clear information regarding the application of NDA in employment relations in Indonesia (12).

Compared to previous research, there are similarities in the topics discussed, namely regarding national NDA Agreements, but the focus of the discussions in each is not equivalent. In the 2025 period, Gabriela Angel et al. conducted a study "Legal Review of Non-Disclosure Agreement (NDA) Violations from the Perspective of Contract Law. This study confirms that violations of the confidentiality of information that has been agreed upon are classified as acts of breach of contract (1). In a similar period, research by Putri Triani, et. al. with the research title"Non Disclosure Agreement (NDA) for Workers: A Legal Perspective on Contracts in Indonesia". The following study analyzes the position and application of*Non-Disclosure Agreement*(NDA) or confidentiality agreement in the context of employment relations in Indonesia. The main focus is how the NDA functions as an instrument to protect a company's intellectual assets as well as the legal limitations surrounding it so as not to violate workers' human rights (13). The focus of this research is a legal analysis of the validity and binding force of NDA in employment relationships and its implications for breach of contract lawsuits through a case study of PT Foom Lab Global, legal liability and compensation due to breach of NDA, and opinions regarding the applicability of Article 1320 of the Civil Code. Therefore, a study in the form of a scientific paper was conducted regarding: **"NON-DISCLOSURE AGREEMENT IN ITS APPLICATION TO BREACH OF CONTRACT LAWSUIT REFERRED TO FROM ARTICLE 1320 OF THE CIVIL CODE".**

RESEARCH METHODS

In his research, the author uses a juridical-normative approach with a case study of PT Foom Lab Global and a method that focuses on the analysis of legal norms found in the laws, legal theories, and court decisions that are in line with the problem being studied. (12).This research uses a case study focusing on a dispute between PT Foom Lab Global and its former employee regarding a breach of an NDA. The legal sources include primary legal materials, including the Civil Code, Law 30/2000, and court decisions. Secondary legal materials include scientific publications and media coverage.

RESULTS AND DISCUSSION

1. Application of Article 1320 of the Civil Code in the legal status of Non-Disclosure Agreements in employment relations in Indonesia

Non- Disclosure Agreement(NDA) is an increasingly essential legal tool in the scope of modern employment relations in Indonesia, especially considering the increasing risk of leaking important information of significant economic value. Legally, NDA serves to ensure that employees do not reveal, misuse, or use trade secrets other than for the company's needs, either during employment or after the employment relationship ends (14). NDA agreements are included in the category of innominate contracts. Innominate contracts are a type of agreement that exists in everyday life, but are not specifically regulated in the Civil Code. The following agreement arises based on the principle of freedom to contract as stated in Article 1338 of the Civil Code. This principle gives the parties the freedom to decide whether or not to make a contract, determine the content, promises, conditions, parties involved, and the form of the agreement, whether verbally or in writing. This also confirms that *Pacta Sunt Servanda is* the principle that every formal agreement applies according to law to all parties (15). The status and power of NDA agreements have been recognized in court practice. One example is the District Court decision number 155/Pdt.G/2024/PN Jkt.Sel, which emphasized that the protection of confidential company information and the prohibition of fair competition are part of the definite law and modern business ethics. This decision strengthens that NDAs are a valid legal tool and can be enforced in the business world.

Breach of contract is an action taken by a debtor when he does not fulfill his obligations as promised. In general, default is a situation where a debtor does not fulfill or carry out the actions specified in an agreement. In this case, the Civil Code does not explicitly define the concept of default itself, but this is regulated through a series of articles relating to the implementation of obligations or agreements (16).

In the context of employment relationships, the legal status of an NDA is based on the principle of freedom of contract recognized in the Indonesian contract law system. Article 1320 of the Civil Code stipulates four elements that must be simultaneously fulfilled for an agreement constituting an NDA to be legally valid. The application of each requirement in the context of an employment relationship under an NDA can be explained as follows:

a. An agreement between the parties, in which both parties agree that the employer, as the owner of confidential information, and the employee, as the recipient of such information, must have the same understanding. The agreement must be given freely, without any element of coercion, error, or fraud. In practice, NDAs in employment relationships are often drawn up in a standard contract format which is drawn up unilaterally by the company (17). This condition gives rise to problems related to an imbalance in bargaining position between employers and employees. Even if employees have signed an NDA, an important question arises: whether the agreement was truly made voluntarily or whether it was forced due to the imbalance of power in the employment relationship. Research shows that employees will not be punished for refusing to sign an NDA. This suggests that legally, NDAs should still be

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based on the principle of voluntariness. However, in reality, refusing to sign an NDA can influence a company's decisions regarding recruitment or continuation of the employment relationship; (4)

b. Competence in making a contract, namely the ability to make the agreement requires that the bound parties must have legal capacity. In an employment relationship, both the employer represented by the authorized officers and the employee are required to comply with the provisions of expertise as stipulated in Articles 1329-1331 of the Civil Code. Employees are considered capable if they are adults, namely 21 years old or married, and are no longer under parental supervision. Meanwhile, the company must be represented by someone who has the authority to legally bind the company with third parties;

c. The existence of the subject matter, namely requiring the object of the agreement to be clear and can be determined. In NDA, the information is confidential data or trade information that must be kept confidential by employees. A problem that often occurs in implementation is the explanation of "confidential information" which is too general or unclear. Unclearness about its scope can cause legal confusion for workers, regarding which information is considered confidential and which may be used freely. In referring to Article 3 paragraph (1) of Law 30/2000, trade secret information must meet three criteria, namely: (1) it is confidential, (2) it has economic value, and (3) its confidentiality is maintained through appropriate efforts (5). Therefore, in compiling the NDA object, it is necessary to refer to these parameters so that it complies with the provisions of "a certain object" as stipulated in Article 1320 of the Civil Code;

d. Lawful cause, it means that the agreement must have a reason that does not violate the law, customs, and public order (18). NDA which aims to protect confidential company information basically has a legitimate reason because it is in line with the provisions of Law number 30 of 2000. However, several clauses in the NDA may not be halal if: They limit the constitutional rights of workers to work and earn a decent living disproportionately; They contain prohibitions on competition that are too strict, thus hindering the ability of workers to move to other jobs; They do not comply with mandatory employment provisions *(dwingend recht).*

2. Settlement of Default Lawsuit in Case*Non-Disclosure Agreement* (NDA) on PT. Global Lab Form

The agreement between a business entity and its employees is a confidentiality agreement. NDA is a way for companies to organize cooperation agreements so that sensitive information remains protected. Maintaining confidentiality is the same as a positive relationship between employees and employers, as well as a collaborative relationship in business where one or both parties have an obligation to maintain confidential information. To ensure good cooperation between employees, employers, and business partners runs smoothly, the parties involved must be able to manage and control confidential information so that it does not leak and does not cause losses to the parties concerned (19). Currently, regulations regarding NDA agreements are not clearly managed in Indonesian positive law. However, NDAs can be based on law, referring to Article 1338 of the Civil Code:

"All agreements created under the law are valid as they are for the parties making them. Agreements cannot be revoked unless there is mutual consent from both parties or for reasons stated in the law. Agreements must be executed in good faith." (9).

An NDA is an agreement that explains that a company has sensitive information that must be protected, protects copyright, and defines clear boundaries. This is regulated in Article 3 paragraph (1) of Law Number 30 of 2000 concerning Trade Secrets. Trade secrets will be protected if the information is truly confidential, has economic value, and its confidentiality is maintained with appropriate efforts. This is further explained in Article 3 paragraphs (2) to (4):

1. Information is considered confidential if the information is only known to certain people or is not accessed by the general public.
2. Information is considered to have economic value if its confidential nature is utilized by business activities in a commercial context, or is capable of generating profits.
3. Information is considered confidential if the owner or the authorized party has taken an appropriate and reasonable strategy (5).

Logical consequences of the application of the principle*Agreements must be kept.*is the birth of absolute legal responsibility if one party violates the agreement that has been made. In this case, violation of the restrictive provisions, both regarding confidentiality and non-competition, is no longer considered normal in employment relationships, but is legally considered an act of breach of contract. The main point of dispute in decision 155/Pdt.G/2024/PN Jkt.Sel is the essence of the problem, where the court focuses more on proving the elements of breach of promise and the truth of the claim for compensation filed due to breach of commitment in the contract. Based on the background and legal analysis that has been explained, violation of the contract clauses causes complicated legal consequences, especially in terms of proving breach of promise and the mechanism for recovering rights for the party who suffered losses (20). Therefore, the author's study needs to be focused on analyzing two main legal issues that are the core of the dispute. The issues to be discussed are the problem of breach of contract in the non-disclosure agreement and the non-competition agreement, determining compensation and the responsibility of co-defendants in the case of breach of confidentiality and non-competition agreements that apply (21).

An employment agreement is the beginning of the formation of a working relationship between workers and employers, including an NDA. In the case between PT Foom Lab Global (the Plaintiff) and Sulfa Sopiani (the Defendant), the main legal instrument used as the basis for the lawsuit is the Non-Disclosure Agreement on Confidential Information and Non-Competition No. 0187/NDA/FLG/VII/2023. Based on the trial facts, the agreement meets the requirements to be considered valid as stipulated in Article 1320 of the Civil Code.

a. Agreement: Voluntarily signed on July 4, 2023;
b. The parties are legally competent and conscious adults;
c. A specific subject matter: what is protected is the company's confidential information and what is restricted is competition after work is completed;
d. Justifiable Reason: The prohibition on competition aims to protect legitimate business interests.*(legitimate business interest)*, not to absolutely eliminate the right to earn a living.

If these conditions are met, the principle applies*Agreements Must Be Kept*, meaning that the agreement has binding force and is equivalent to the law for PT Foom Lab Global and Sulfa Sopiani.

In decision number 155/Pdt.G/2024/PN Jkt.Sel, the Panel of Judges declared that the Defendant had failed to fulfill his promise. The Defendant's breach of contract was cumulative:

1. Violation of Resignation Procedures: The Defendant failed to comply with the obligation to provide one month's notice before resigning. This constitutes a formal breach of the employment contract, resulting in operational losses for the Plaintiff.
2. Violation of non-competition provisions: The Defendant was proven to have participated in working at a competitor's business entity which ran a similar business immediately after leaving PT Foom Lab Global;

3. Breach of Non-Disclosure Agreement (NDA): With the Defendant's move to a competitor company, there is a high probability of disclosure of valuable confidential information, such as trade secrets, marketing strategies, or technical data obtained during the course of employment (8).

The judge considered that the Defendant's action of immediately working at a competitor company shortly after resigning suddenly was a form of bad faith that undermined the agreement. One of the important things in this decision was the demand to pay a fine of IDR 800,000,000.00 (eight hundred million rupiah) was granted. This has been regulated in Article 1243 of the Civil Code which explains the obligation to pay compensation for costs, losses, and interest due to non-fulfillment of an agreement. Although the plaintiff's claim was not fully accepted (partly rejected), the figure of 800 million rupiah is a form of recovery of rights for PT Foom Lab Global for potential leaks of trade secrets that could reduce the company's competitive value in the market.

The breach of contract lawsuit against PT Foom Lab Global has been resolved with a partial victory for the plaintiff. The panel of judges stated that Sulfa Sopiani committed serious violations by failing to comply with resignation procedures and non-competition provisions. The penalty of IDR 800,000,000.00 (eight hundred million rupiah) serves as a warning to professionals to always maintain integrity after employment and comply with all signed legal documents.

The District Court's decision, numbered 155/Pdt.G/2024/PN Jkt.Sel, is a concrete example of how NDAs are applied in breach of contract disputes in Indonesia. This decision not only confirms the validity of NDAs as binding agreements but also illustrates how courts view the protection of trade secrets in employment relationships. Therefore, it is important to examine the strengths and weaknesses of this decision and relate them to the provisions of Law 30/2000 concerning Trade Secrets.

In terms of strength, the judge's decision shows strong consistency with the principles of contract law in Article 1320 and Article 1338 of the Civil Code. The panel of judges has correctly assessed that the NDA agreement between PT Foom Lab Global and Sulfa Sopiani has fulfilled the requirements of a valid contract, namely the existence of an agreement between the parties concerned, a clear subject matter, and a legitimate purpose. Once all requirements are met, the agreement becomes valid and binding for all parties involved, as is the law, based on the principle that agreements must be complied with. This provides legal certainty to business actors that the NDA can function, namely as a strong legal basis to protect their business interests.

Furthermore, the application demonstrates a bias towards protecting trade secrets. Although Law 30/2000 does not explicitly state the requirements for an NDA, the judge implicitly acknowledged that an NDA is a valid legal tool for protecting corporate information. This aligns with Article 3 of the Law on Trade Secrets, which explains that information is protected if it is confidential, has economic value, and is strictly confidential. With an NDA, the "confidentiality" aspect can be considered fulfilled, thus strengthening the company's legal position in protecting its intellectual property.

The judge also agreed that non-competition clauses are valid as long as they protect legitimate business interests. This recognition is important because, in practice, non-competition clauses often become a point of contention between company interests and employee rights. In this ruling, the judge considered that a prohibition on working for a competing company for a specified period is still a permissible form of protection. Furthermore, the imposition of compensation of IDR 800,000,000.00 demonstrates an attempt to recover losses caused by a breach of contract, as stipulated in Article 1243 of the Indonesian Civil Code.

This decision also has several weaknesses that need to be criticized. One major weakness is the judge's lack of in-depth understanding of the trade provisions outlined in Law 30/2000. The judge did not actually carry out the necessary procedures to prove whether the suspected information truly meets the criteria for a trade secret, namely being confidential, having economic value, and being protected by appropriate measures. The absence of this analysis may create uncertainty about the burden of proof in similar cases in the future. Furthermore, this decision does not thoroughly examine the limitations of non-competition clauses. In applying such clauses, is it proportional or does it have the potential to limit workers' rights to employment? In fact, from the perspective of labor law and international practice, non-competition clauses must follow the principle of fairness, whether in terms of duration, area, or type of work restricted. Without such analysis, there is a risk that similar clauses could be over-applied and disadvantageous to workers.

Another weakness is the lack of consideration of the imbalance of bargaining power between companies and workers. In practice, NDAs are often drawn up in the form of standard contracts formulated unilaterally by the company. Judges are unaware of whether the agreement was truly entered into voluntarily by all parties or whether it arose out of economic pressure and dependence on employment. This is crucial because the principle of agreement under Article 1320 of the Civil Code requires free and voluntary intent without coercion. Furthermore, the basis for compensation in these decisions tends to be based on potential losses rather than confirmed actual losses. While this implementation is understandable in the context of protecting commercial confidentiality, without clear evidence, this has the potential to create legal uncertainty in determining future compensation amounts.

Despite its strengths and weaknesses, this decision has final legal force. Decision No. 155/Pdt.G/2024/PN Jkt.Sel has become final and legally biding because the relevant parties did not pursue further legal action, either through appeal or cassation, as proposed by the parties. Therefore, the decision is final and binding, and all parties must comply with the court's decision. However, going forward, a more thorough examination of aspects related to trade secret protection and the balance of workers' rights is needed to ensure that the decision provides not only legal certainty but also justice for all parties involved.

CLOSING

Based on the results of research and discussions regarding the use of Non-Disclosure Agreements (NDA) in employment relationships and the resolution of breach of contract disputes in the case of PT Foom Lab Global, the following conclusions can be drawn:

a. Validity and Legal Status of NDA in Employment Relations

A Non-Disclosure Agreement (NDA) is legally binding under the national legal system as long as it complies with the applicable rules of agreement as regulated by Article 1320 of the Civil Code, namely an agreement between the subjects, the capacity or ability of the subjects involved, a clear object, and a lawful cause. In the context of employment relations, an NDA also reflects the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, so that a legally made agreement becomes a rule that applies to the parties bound by it.

b. The Role of NDA in Protecting Trade Secrets

An NDA serves as a legal instrument to protect a company's trade secrets with high economic value, similar to Law Number 30 of 2000 concerning Trade Secrets. This protection is increasingly essential in today's increasingly global and digital world, with the risk of data breaches increasing. However, when drafting an NDA, the principles of fairness and balance must be adhered to to avoid undue harm to workers.

c. Forms and consequences of default in the case of PT Foom Lab Global.

In case No. 155/Pdt.G/2024/PN Jkt.Sel, the Defendant was proven to have failed to fulfill his obligations, namely by failing to fulfill the obligation to notify the resignation; violating the non-competition clause; potentially violating the obligation to confidentiality of information. Based on the provisions of Article 1243 of the Civil Code, these violations give rise to an obligation to pay compensation. The judge's decision to order the Defendant to pay IDR 800,000,000 shows that violating the NDA agreement can have serious legal consequences.

d. Dispute Resolution and Legal Involvement

The resolution of the breach of contract dispute in this case demonstrates that Indonesian courts recognize and enforce NDAs as valid agreements. The ruling also serves as an example that violating NDAs, including non-compete provisions, is punishable by law, provided the provisions are drafted fairly and do not violate social norms, order, or principles of justice.

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