

# A NEW PARADIGM IN TRADE SECRET LAW ENFORCEMENT BY THE PROSECUTOR'S OFFICE OF THE REPUBLIC OF INDONESIA TO PROTECT PUBLIC INTERESTS

**Rismanto, Universitas Padjajaran**  
**Tarsisius Murwadji, Universitas Padjajaran**  
**Rika Ratna Permata, Universitas Padjajaran**  
**Somawijaya, Universitas Padjajaran**

## ABSTRACT

*The Prosecutor's Office of the Republic of Indonesia has the authority to protect public interests. This authority, however, cannot be exercised with regards to trade secrets because it is not authorized in the Law Number 30 of 2000 on Trade Secrets. To take a case in point, there is no recording of information on the Indonesian H5NI influenza strain sample as the legal sovereign of public health information as it is commercialized in the form of vaccines by the Global Influenza Surveillance Network. The Prosecutor's Office is unable to protect this information because it does not have legal standing in the Trade Secret Law. Indonesia needs a breakthrough by creating a trade secret legal system that grants an authority to the Prosecutor's Office to protect the public interest. This study applies a multidisciplinary doctrinal method, namely, investigates issues in terms of law, health and security related to the public interest that affect the development of a trade secret legal system. This study analyzes the concept of the public interest protection with regards to trade secrets, including the processes and authorized institution, i.e, the Indonesian Prosecutor's Office. Results show that, firstly, to protect the public interest of trade secrets, the trade secrets should be recorded and the record shall determine the right owner as a legal subject if a lawsuit is filed. Secondly, the Prosecutor's Office can file a lawsuit for the cancellation of trade secret rights to the Commercial Court if the trade secret is detrimental to the public interest.*

**Keywords:** Law, Prosecutor's Office, Public Interest, Trade Secret.

## INTRODUCTION

The Prosecutor's Office In law enforcement has a very strategic role. As one of the law enforcement institutions, the Prosecutor's Office of the Republic of Indonesia is mandated to keep upholding the rule of law, protecting public interests, advocating human rights, as well as eradicating corruption, collusion and nepotism. In civil and state administration, the Prosecutor's Office of the Republic of Indonesia has the authority for and on behalf of the state or government as a plaintiff or defendant. In implementing their duties and authorities, the Prosecutor's Office does not only provides consideration or defends the interests of the state or government, but also the interests of public.

The 'interest' as a concept is becoming more relevant to note, because this concept speaks for two interests, namely the interests of the state (public) and social (society) (Pound, 1954). The concept of 'public interest' influences the legal reform of a nation.

As a nation that is based on the rule of law, Indonesia continues to carry out legal reforms in the context of developing national law while still emphasizing on the national

interests and the effects of globalization. The influence of globalization on national legal instruments in the field of Intellectual Property Rights (IPR) began after Indonesia authorized its participation and ratified the Convention Establishing the World Trade Organization. The positive impact of globalization on Indonesia with regards to its legal system is the establishment of regulations that are impartial and beneficial to the interests of the people (Musa, 2015).

Indonesia ratifies TRIPs through Law Number 7 of 1994 on The Ratification of the Establishment of the World Trade Organization (WTO) as a consequence of Indonesia's membership in the WTO. Indonesia harmonizes all statutory regulations in the field of Intellectual Property Rights with norms and standards agreed upon by the WTO Members. The WTO Rules reinforce provisions on the prevention of unfair competition in the trade sector as stated in Article 10 bis of the Paris Convention 1967 by including the convention in Article 39 of TRIP's Agreement on Protection of Undisclosed Information. Indonesia approves this provision based on Law Number 30 of 2000 on Trade Secrets (National Law Development Agency of the Ministry of Law and Human Rights, 2010).

The scope of secrets protected under Article 2 of Law Number 30 of 2000 on Trade Secrets includes production methods, processing methods, sales and marketing methods, or other information in the field of technology and/or business that has economic value and is not known to the general public.

Law on Trade Secret has provided the scope of protected secrets, however, it has not regulated rights holders as legal subjects and criteria for public interest. This is different to Patents, Trademarks, Industrial Designs, Layout Designs of Integrated Circuits, and Copyrights that have determined the right holder as the legal subject as well as criteria of the public interest, including the possibility of granting compulsory licensing as well as enforcement of trade secrets by the governments such as for Patents.

Determining the holder of a trade secret as a legal subject is critical to realize the rights and obligations of the trade secret holder. A trade secret right will affect the rights of others, for example if the right involves public interests such as security, health and public safety. It is difficult to determine the responsible party without legality of trade secrets holder.

Based on Article 8.1 of TRIPs, it is possible for WTO member countries to draft or amend their laws and regulations, to take the necessary measures to protect public health and nutrition, as well as to promote the public interest in sectors that are critical to socio-economic development and the technology. The definition and criteria of 'public interest' are not regulated in detail in the TRIPs, rather, it is open to the WTO member countries. Consequently, there can be multiple interpretations with regards to how to define 'public interest'. A number of steps have been taken to avoid multi-interpretation in defining 'public interest' as it is difficult to be precisely defined. One of the ways to define "public interest" is by finding criteria for the public interest based on the needs of the community and nation to make comparisons.

The IPR provisions in TRIPs are oftentimes a dilemma for developing countries. On the one hand, the developing countries have the interest in the application and enforcement of IPR as it encourages creativity and independence of economic actors in their countries. It also minimizes the possibility of severe sanctions from developed countries if there is a violation with regards to IPR. On the other hand, the IPR provisions put developing countries in difficult situation as they have to pay a high price for the use of IPR obtained from developed countries due to dependence and lack of access to develop foreign technology (Ramli, 1999).

It is mandatory that the concept of 'public interest' be emphasized by the developing countries such as Indonesia in international forums to protect the country of the expensive obligation to pay for the use of IPR from developed countries. TRIPs is a reality that

showcases the success of developed countries driven by the United States and Japan because their dissatisfaction with the World Intellectual Property Organization (WIPO) that they deemed favoring the developing countries (Gautama, 1998)

The earliest case of trade secrets occurred in England in the 18<sup>th</sup> century, involving the secret of drugs prescription in business competition (Hardiarianti, 2010). Even in the 21<sup>st</sup> century, developing countries depend on developed countries with regards to trade secret of drugs prescription. To take a case in point, the fact that Indonesia is still depended on developed countries can be seen when dealing with state interests regarding vaccine. In 2005, based on International Health Regulations, Indonesia is obliged to disclose and send information on Indonesian H5NI strains of influenza specimens to the World Health Organization (WHO) through the Global Influenza Surveillance Network (GISN). This was said to be an attempt to create a bird flu virus vaccine for the sake of public health. The Indonesian strains were chosen as they are deemed more virulent (malignant) than those of others countries, hence, the vaccine will be more cross protective. Anomalies arose when Indonesia asked WHO for information on Indonesia's H5NI sequencing. The WHO did not provide the results. The access to information with regards to the DNA sequencing was restricted and confidential. The data was apparently stored at Los Alamos National Laboratory in New Mexico under the auspices of the United States' Ministry of Energy. This incident was exacerbated when it was discovered that GISN is not part of the WHO structure, rather, it is part of the United States government structure, so that Indonesia did not have any rights from GISN other than sending the virus to GISN (Rahmadi, 2012).

The WHO involvement has become a field of interest for pharmaceutical companies such as Merck, Baxter, Roche, and Sanofi Pasteur to market Indonesian H5NI vaccine products. A number of pharmaceutical companies take advantage of the results of Indonesian strains by selling them to the Indonesian people. This is based on WHO manipulative actions by making propaganda that there is a threat of a bird flu pandemic in Indonesia. When the Indonesian government had prepared funds to buy vaccine from WHO, it turned out that the vaccine, *i.e.*, Tamiflu, had been sold to developed countries as they reserve. It was strange that when it was discovered that the countries buying Tamiflu from WHO were countries with no cases of bird flu. Inequality in the global health access system proves that there are still inequalities in the health systems of developing and developed countries (Rahmadi, 2012).

The commercialization by GISN is an unfair act and violates the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The United States and Australia are countries that are known to develop and manufacture vaccines from Indonesia's bird flu virus strain without permission from Indonesia. It is unfair that even though the virus strain originates from Indonesia and patients suffering from bird flu are Indonesians, the vaccine had to be purchased from another country because the information on the H5NI sequencing from Indonesia was kept secret by the WHO (Rahmadi, 2012).

A similar situation occurred during the global smallpox epidemic. At that time, WHO instructed countries affected by the smallpox epidemic not to make their own vaccines even though Indonesia was able to produce smallpox vaccine. Subsequently, there were new rules from WHO that all countries had to buy vaccines from WHO. This was detrimental to developing countries such as Indonesia. Indonesia succeeds to produce its own vaccines; it is proven that currently the Covid-19 vaccine is being developed by Biofarma. It is hoped that Indonesia will not be the adverse party anymore even though currently the government has signed a Knowledge Transfer cooperation agreement with the Sinovac Company originating from the People's Republic of China as well as a cooperation agreement to supply 10 million doses of vaccine between PT Kimia Farma and the G42 health technology company (Hakim, 2020)

Besides confronting with state interests as aforementioned, trade secrets can also oppose the public interests. To take a case in point, the use of asbestos chemicals in the production process, starting from roofs, pipes, and cosmetic products was classified as trade secret, hence the product information was disclosed. It turned out that the use of asbestos chemicals, is very dangerous, many researchers firmly state that asbestos can cause mesothelioma and asbestosis (a type of cancer caused by asbestos exposure). It was almost impossible for consumers to know whether substance contained in a product is harmful, because many substances are considered trade secrets (Kupang, 2020)

Information that is categorized as a trade secret object of a company can have legal consequences if the company carries out production, processing, sales or other activities that are detrimental, in some cases, the company can hide behind trade secrets. To take a case in point, in 2016, Samsung Company in South Korea that produces various kinds of electronic devices was reported by the occupational safety agency called Banolim that there were more than 200 cases of serious diseases such as leukemia, lupus, lymphoma and others found in Samsung semiconductor and LCD workers. At that time, 76 people had died. The company utilized various chemicals to produce a chip, but the information about the chemicals was not disclosed because it was said to be part of a trade secret. Based on the results of the health examination, the workers had been poisoned by N-hexane (an alkane hydrocarbon compound) that was used as a screen cleaner. The victim's family suspected that Samsung was hiding the information. The Associated Press reported that Samsung once wrote a request to the government not to disclose details about the levels of chemicals in the factory. In the letter, it was stated, it was because of the fear that the information disclosure would reduce the technological gap between Samsung and its rivals and reduce Samsung's competitiveness (Hutomo, 2016).

If those cases happened in Indonesia, Article 15 letter a of Law Number 30 of 2000 on Trade Secrets repressively determines that the disclosure of trade secrets with regards to chemical production methods that endanger public health is not a violation of trade secrets. The Trade Secret Law has not yet regulated who has the authority to disclose trade secrets if they are detrimental to the public interest, nor does it regulate the conditions of trade secret rights that can be listed as preventive measures to protect the public such as what happened in South Korea, or disclosure of medical information that the public needs. The Trade Secret Law mandates registration of rights transfer of trade secrets and licensing agreements, but does not require trade secret rights to be registered.

As property rights, trade secrets are exclusive and can be used against anyone attempting to abuse trade secrets, as the holder has all the rights on the property (Cabanellas et al, 1991). The exclusive nature of trade secrets has not yet determined the criteria for its use or implementation in case the trade secrets are contrary to the applicable laws and regulations, public order, public interest or morals.

With regards to the use or implementation of trade secrets that are against the ideology, laws and regulations, morality, religion, decency, public order, or detrimental to the public interest, the Indonesian trade secret law has not accommodated the institution authorized to handle and settle such matters. In contrast, if a patent or trademark contradicts the state ideology, law and regulation, morality, religion, decency, public order, or detrimental to the public interest, the Law on Patent and Trademark mandates the Prosecutor's Office with the authority to file lawsuit to remove the patent and cancel the trademark.

In law enforcement, the Prosecutor's Office plays a very strategic role as one of the law enforcement institutions that uphold the rule of law, protect public interests, advocate human rights, as well as eradicate corruption, collusion and nepotism. In the field of Civil and State Administration, the Prosecutor's Office has the authority for and on behalf of the state

or government as the plaintiff or defendant that not only provides legal opinions or defends the interests of the state or government, but also defends and protects the interests of the people.

In an attempt to build a new paradigm in order to create a trade secret legal system that protects the public, state and trade secret rights holders, this study aims to discuss how the concept of protecting the public interest of trade secrets be implemented, including the authorized institution and processes, in this case, the Prosecutor's Office of the Republic of Indonesia.

## LITERATURE REVIEW

There are laws and regulations that stipulate proprietary of public interests, namely Article 33 Paragraph 2 of the 1945 Constitution, stating that the production chains that are important in the livelihood of the people are controlled by the state. The Decree of the People's Consultative Assembly Number I/MPR/2003 on the Details of the Practices of the Fifth Principle of Pancasila states that a proprietary right shall not be used against or detrimental to the public interest. In addition, Article 570 of BW provides that the proprietary right shall not be contrary to the rules of law, to the general rules, and infringing the rights of others. Further, Article 5 Paragraph 1 of Law Number 30 of 2000 on Trade Secrets considers trade secret as a proprietary right.

To analyze, answer, and formulate ideal concepts for the issues, this research will apply the Theory of the Welfare State, Theory of Legal Development, and Theory of Interest,

The key to a Welfare State is to ensure the wellbeing of a state. Jurgen Habermas postulates that the guarantee of the welfare of all citizens is fundamental to the modern state and is embodied in the protection, such as the protection of the risks of unemployment, accident, illness, old age, and death (Pound, 1954).

The Welfare State theory was initiated by Prof. Kranenburg, who stated that the State must actively strive for prosperity and act fairly to all people equally, not for the welfare of certain groups.

The purpose of a welfare state, as emphasized by Prof. Kranenburg is the welfare for all people, instead of a certain group of people. Besides, the objective of a legal state, as stated by Mochtar Kusumaatmadja, is to provide protection, thus the State must be active in creating order that raises predictability, peace, justice, noble moral development based on the One True God, and welfare for all people, not just for certain groups.

The Welfare State theory is applied by the author to answer the need of welfare for all Indonesian people based on principle of social justice so as to create humane social conditions, natural social processes, and eradication of exploitative action by individuals or by the state. This theory is utilized to respond the Western counterpart that imposes individual Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of which is about trade secrets.

Mochtar Kusumaatmadja's theory of Legal Development has three important aspects, namely aspects of law as a rule, as a value and as a means of community renewal. Law as a rule can be defined as a function of law to create order; law as value is law that prioritizes justice; and law as a means of renewal that is interpreted as an aspect of expediency.

The effectiveness of law and regulations require emphasis on the authorized institutions and required procedures in the implementation. Therefore, an adequate definition of law should not only as a set of rules and principles governing human life, but must also include the institutions and processes required to realize the law ( Kusumaatmadja, 2006)

In this study, Mochtar Kusumaatmadja's theory on Legal Development is applied to explain the societal needs in relation to the role of the state and individual holder of trade

secret rights to avoid conflicts of interest in realizing order in the framework of development by promoting justice. In addition, the author utilizes the Legal Development theory to explore the roles and functions of the Prosecutor's Office as an institution that protects the public interest, as well as the process of claims against trade secrets to create justice and welfare for all Indonesian people based on the principles of Pancasila.

The author applies Ahmad M Ramli's Theory of Interest due to an aspect of public interest in trade secrets. This theory emphasizes on appreciating holder of trade secrets as an exclusive property right that is protected by the state. This theory implies that the protection of trade secrets is part of the appreciation for the rights of the people for the efforts and creative endeavour to create inventions that can be used to achieve welfare and a wider public interest and avoid the possibility of theft (Ramli, 2006).

As a counterbalance to the principle of exclusivity, it is necessary to observe another factor, *i.e.*, the public interest (including social and state interests). This is related to the fact that exclusive rights in IPR must also be balanced by the public interest, provided that it requires clear criteria about what is meant by the public interest (Ramli, 2006).

The theory of interest is applied to test the exclusivity of proprietary rights over a trade secret on its use or implementation whether it is potentially contrary to the applicable laws and regulations, public order or morality.

## RESEARCH METHOD

According to H.W. Arthurs, as quoted by Paul Chynoweth, a legal research is divided into two, namely doctrinal research (research in law) and interdisciplinary research (research about law). The doctrinal research focuses more on legal doctrines, while interdisciplinary research involves external perspective of the law, such as historical and social context (Chynoweth, 2008). This study applies a multidisciplinary doctrinal method because it analyzes the issues not only from a legal perspective, but also from the context of health and security related to the public interest that influences the development of the trade secret legal system. Further, Arthurs divides the interdisciplinary research into pure legal research (fundamental research) and applied legal research (law reform research). This dichotomy, basically, shows that fundamental research examines the implementation of law for academic interests such as sociology of law, law and economics, and so on. Meanwhile, law reform research discusses law implementation with specific objectives generally to facilitate change in the future. This research is a law reform research because the purpose of this study is to offer a new paradigm that the exclusivity of trade secret is not a super protection in the face of public interests. This study also provides solutions for the settlement process and authorized institutions if a trade secret is against the public interests. This is to realize justice and welfare for all Indonesian people based on the principles of Pancasila.

As a law reform research on theme that has not been discussed much in previous research, this study can be categorized as an exploratory research. The author explores a subject that has little or no previous study that focuses on the group, process, activity, or situation to be studied but still has reasons to believe that it contains elements feasible for research (Stebbins, 2001).

The approaches commonly used in legal research are the statutory approach, conceptual approach, case approach, historical approach, and comparative approach (Marzuki, 2008). This study applies a statutory approach focusing on the formation of statutory regulations and a comparative approach on the practice of using trade secrets that is detrimental to the state interests based on IPR and regulations of other countries.

## RESULTS AND DISCUSSION

Trade secret is also known as Undisclosed Information (WTO/TRIPs), Confidential Information (UK), or Trade Secret (The United States) (Robert, 2014). In Indonesia it is known as *Rahasia Dagang*, a direct translation of Trade Secret. The scope of trade secret protection is broad as it can even include the scope of patent protection and integrated circuit layout designs. The objects protected in trade secrets include formulas, chemical and food management methods, lists of debtor's ability to repay credit, planning, tabulation of data, manufacturing engineering information, design formulas, marketing plans, computer software, access codes, Personal Identification Numbers (PIN), marketing data, business plans, and ways to change/produce a product using chemicals or machines. If the scope comprises the invention, process or industrial product that puts forward a new function or solution to a problem, it is the point of contact for trade secrets and patents.

The wide range of trade secret protection is not balanced with protection of trade secret subjects and protection of the public interest. The Trade Secret Law does not state the holder of the trade secret rights, the procedure or process to obtain the right, the institution authorized to transfer the trade secret rights or to grant a license of the trade secret law.

This is different from the Uniform Trade Secret Act (UTSA), a trade secret law adopted by 39 States in the United States. The UTSA explicitly provides the terminology of who hold the trade secrets right, what is meant by personals, companies, business groups, associations, joint ventures, government, part of the government or agency, or other commercial legal entities (National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, 2010).

Law on Patent explicitly states the subject or party who obtains a patent, namely a person or a group of persons who jointly put their ideas into action that results in invention. In addition, Patent Law has clearly established procedure to obtain the patent rights, *i.e.*, an application for registration.

The process to determine a holder of a trade secret as a legal subject is critical to establish the rights and obligations of the trade secret holder. Besides, once a trade secret right is obtained, it will affect the rights of others, for instance, if the rights involve public interests, such as security, health and public safety. The Law on Trade Secret has regulated the public interest at a repressive (criminal) level, namely an act that is not considered a violation of trade secrets, if the disclosure of the trade secrets is against the national security, health or public safety. The Trade Secrets Law, however, has not elucidated matters at a preventive level as it has not elucidated specifics of the trade secrets that must not conflict with statutory regulations, religion, public order, morals and public interests.

In comparison to the United States' The Omnibus Trade and Competitiveness Act 1988, the Indonesian Trade Secrets Law is distinct in terms of the protection. The provision "Super 301" stipulates that the United States government will take a retaliatory action against US trading partners who are deemed unfair and harmful to the US economy (detrimental to the interests of the state).

Indonesia does not have a legal instrument like the United States. This is the reason that Indonesia became the aggrieved party in the case of commercialization of the information on the Indonesian strain H5NI influenza specimen carried out by GISN (under US jurisdiction). This is due to the fact that Indonesia's trade secret legal instruments cannot accommodate to protect domestic information that is commercialized by international organizations.

The United States observes the trade secrets involving the state or public interest. Those misusing trade secret information that impacted on state or public interests, will impose lighter sentences, to charge fines, and even be released by the court.

Provision of Article 5 Paragraph 1 of Law Number 30 of 2000 on Trade Secret establishes trade secrets as proprietary rights. Meanwhile, Article 570 BW regulates that proprietary rights must not conflict with statutory regulations, general regulations and interfere with the others' rights.

In Patents Law, as a comparison, an invention that cannot be granted a patent includes a process or product whose announcement, use or implementation is contrary to statutory regulations, religion, public order or morals, and whose methods of examination, treatment, medication and/or surgery involve humans and/or animals.

A trade secrets right is an exclusive right, namely the right to use the trade secret and to license or prohibit other parties from using or disclosing the trade secret to third parties for commercial purposes (Hull, 2009). The use of the exclusive rights without permission is categorized as an act that violates the intellectual property rights of other parties both from a civil and criminal aspect.

The nature of exclusivity of proprietary rights has shifted due to the emergence of various societal norms that limit proprietary rights. Likewise, trade secrets and IPR, despite the identical nature with the exclusive rights of IPR holders, in principle, should be restricted when it comes to the public interests. With regards proprietary rights, restriction occurs when the acquisition of the right is against the law, causing disturbance, possible revocation, or abuse of rights (Sofwan, 2000).

Trade secret protection mechanisms are fully at the effort of the trade secret holders, the confidentiality is kept from the public, the protection period is as long as trade secrets is valid, and does not require registration nor announcement for legal protection (Sarika et al, 2013).

Inconsistencies occur at the time of trade secret rights transfer or trade secret license agreements that must be registered, but the registration data is not found. The registration system for the transfer of trade secrets rights or trade secret license agreements is limited to administration, not in substance. Registration of trade secret rights has consequences for third parties, thus, the legal subject is clear. In contrast, if there is no registration of trade secrets, the rights and obligations of the secret right holder cannot be defined and no one can be hold accountable if a public interest is violated.

To protect the public interests, such as death cases in the Samsung company in South Korea under the pretext of trade secret interests so that the chemical causes of death are not disclosed; or a case to protect the state interests, such as the commercialization of the Indonesian strain H5NI influenza specimen by the GISN that is ultimately detrimental to Indonesia; as well as to protect the trade secret rights holders as legal subjects, a registration of trade secret rights needs to be carried out with due regard to its confidentiality as a trade secret such as the obligation to register the transfer of trade secret rights and registration of trade secret license agreement that is merely administrative.

In addition to the need for a legal instrument as a principle or rule that regulates the limitation of trade secret rights based on the Theory of Interest, it is also necessary to regulate institutions and processes as part of Legal Development Theory to resolve if the trade secrets conflict with the law, religion, and public order, morality or cause disturbance. This is to realize justice and welfare for all Indonesian people based on the principles of Pancasila, thus, it is expected to be able to provide an understanding of the true meaning of justice, that comes from the Indonesian nation itself, not an inheritance from foreign nations or based only on individual justice contained the Trade Related Aspects of Intellectual Property Rights (TRIPS).

Laws on Patents and Trademark authorizes the Prosecutor's Office to file a lawsuit for cancellation of trademarks and/or patents if the patent or trademark is contrary to state

ideology, laws and regulations, morality, religion, public order, or detrimental to the public interest. The Prosecutor's Office has the authority to file a lawsuit on trademark and/or patent cancellation based on the Attorney General's Regulation of the Republic of Indonesia Number: Per/0-25/A/JA/11/2015 on Guidelines for Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions and Legal Services in the Civil and State Administration.

The law enforcement is carried out by the Prosecutor's Office's by submitting a lawsuit or petition to the Court on Civil and Administration cases as stipulated by law in order to maintain legal order, legal certainty, and protect the state and public interests.

By making a comparison to patents and trademarks that authorizes the Prosecutor's Office to file claims for cancellation of trademarks and patent, trade secret legal instruments can also authorize the Prosecutor's Office to file a lawsuit to the Commercial Court if trade secrets are against state ideology, laws and regulations, morality, or state or/and public interest. This is conducted by the Prosecutor's Office to protect the state and public interests as well as the civil rights of the people in the context of law enforcement.

Law enforcement carried out by the Prosecutor's Office as a Public Prosecutor on trade secrets, other than through the criminal justice process as regulated in Article 13 and Article 14 of the Trade Secret Law, is if someone deliberately discloses a Trade Secret or obtains a trade secret in a manner that is contrary to the laws and regulations. The Prosecutor's Office can also file a lawsuit for the cancellation of trade secrets to the Commercial Court, if the trade secret is against the state ideology, laws and regulations, morality, religion, public order, or is detrimental to the public interest. The Commercial Court is appointed by the laws and regulations on Intellectual Property Rights on the competence of the institution that administers the judicial process for the revocation or cancellation of IPR.

## CONCLUSION

A new paradigm of Trade Secret Law enforcement in Indonesia in order to protect the public interest comprises of: firstly, the registration of trade secrets needs to be conducted as it determines the right holders as the legal subjects if a lawsuit is filed; secondly, the Prosecutor's Office can file a lawsuit for the cancellation of trade secret rights to the Commercial Court if the trade secret is detrimental to the public interest.

## RECOGNITION

Highest appreciation to Eka Tjipta Foundation for the support to finance this study and all parties involved in the making of this study.

## REFERENCES

- Bone, R.G. (2014). The (still) shaky foundations of trade secret law. *Journal Texas Law Review*, 92, 1803-1838.
- Susilo, A.B. (2010). *Final Report of the Analysis and Evaluation Team (AE) on Trade Secrets (Law NUMBER 30 YEAR 2000)*. National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia (2010).
- Cabanellas, G. & Massaguer, J. (1991). *Know-how agreements and EEC competition law,* IIC Studies (1st edition). Publisher : Wiley-VCH.
- Chynoweth, P. (2008). *Advanced research methods in the built environment*. Wiley-Blackwell publishing.
- Choudhary, S. (2013), Program and data protection: Copyright, patent, trade secret and trademark. *Indian Journal of Computer Science and Engineering (IJCSE)*, 4(3), 235-239.
- Gautama, S. (1998). *New intellectual property conventions for Indonesia*. Bandung, Indonesia, Citra Aditya

Bakti Publishing.

Hadiarianti, VS (2010). *Trade secret: Commercial information in the technology/business field*. Indonesia, Atma Jaya Catholic University of Indonesia..

<https://atmajaya.ac.id/web/KontenUnit.aspx?gid=artikel-hki&ou=hki&cid=artikel-hki-rahasia-dagang>

Hakim, R.N. (2020). The Foreign Minister said that the procurement of the Covid-19 vaccine was in collaboration with China and the UAE.

<https://nasional.kompas.com/read/2020/08/24/19340371/menlu-sebut-pengadaan-vaksin-covid-19-atas-kerja-sama-dengan-china-dan-uea?page=all>

Hull, J. (2009). Trade secret licensing: The art of the possible. *Journal of Intellectual Property Law & Practice*, 4(3), 203-212.

Hutomo, D.S. (2016). 88 Samsung employees died of cancer, is it true that one of the eelectric manufacturers?

<https://style.tribunnews.com/2016/09/18/88-karyawan-samsung-meninggal-karena-kanker-benarkah-salah-produsen-elektronik-itu?page=all>

Nurhaidah & Musa, M.I. (2015). The impact of globalization on the life of the Indonesian nation. *Basic Pesona Journal*, 3 (3), ISSN: 2337-9227.

Kupang. (2020). 11 chemicals make cosmetics dangerous, from lipstick to eye makeup, this is the result.

<https://kupang.tribunnews.com/2020/01/06/11-bahan-kimia-jadikan-kosmetik-berbahaya-mulai-dari-lipstik-hingga-riasan-mata-ini-akibatnya?page=all>

Marzuki, PM (2008). *Legal Research*. Jakarta, Indonesia: Kencana.

Pound, R. (1954). *An introduction to the philosophy of law*. New Haven, Connecticut, Yale: University Press.

Rahmadi, A. (2012). Mrs. Siti against America..

<https://www.kompasiana.com/alfirahmadi/550d6e8c813311822bb1e37a/bu-siti-melawan-amerika?page=all>

Ramli, A.M. (1999). Protection of trade secrets in the era of globalization is linked to regulations and practices in Indonesia. *Dissertation of Law Studies Program*.

Stebbins, R.A. (2001). *Exploratory Research in the Social Sciences*. SAGE Publications, Inc, pp. 2–17

Sofwan, S.S. (2000). *Civil law: Law of matter*. Yogyakarta, Indonesia: Liberty Publishing.