



TRADE SECRET CASE COMPARATIVE (CASE STUDY: DECISION NO. 332 K/PID.SUS/2013 (INDONESIA) WITH DECISION CIV. NO. 3:13-CV-00098-AA (UNITED STATES))

Jessica Kirana Budi

Faculty of Law, Universitas Indonesia
jesticakirana@yahoo.com

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Abstract

The importance of trade secrets being well understood by the public or business firms has become the subject of increasing domestic and international policymaking. So it is essential to analyze a trade secret case, which in this case is the case of CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC. This research compares cases of trade secrets between CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC? Then, from these comparisons, what appropriate solutions can be given from this research? This study uses a normative legal writing research method with a case approach. The results showed that in the case comparison analysis between CV Bintang Harapan with CV.

Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC. Is divided into 6 (six) analysis as follows: the first is related to evidence regarding trade secrets, then the second is related to the existence of work agreement arrangements regarding confidentiality agreements with researchers with employees, the third relates to decisions or acquittals of pure or impure free on a CV Bintang Harapan with CV Tiga Putra Berlian, whereas in the case of trade secrets Reser's Fine Foods, INC with Bob Evans Farms, INC does not recognize impure decisions or acquittals, but decisions with prejudice decisions without prejudice or Voluntary Dismissal Without Prejudice. The fourth relates to the arrangement of attorney fees. The fifth is related to compensation, and the last one is related to the Economic Espionage Act. The 6th is related to the law enforcement process in court. Based on this comparison, the authors suggest that protecting trade secrets can be done through work agreements, and in solving trade secret cases, it can be done by proving the misuse of trade secrets.

Keywords: *Comparative Analysis; Case; Trade Secret.*

A. Introduction

Indonesia itself began to regulate the Legislative Regulations in Intellectual Property Rights Law or commonly abbreviated as IPR, since the 1840s when Indonesia first recognized the Intellectual Property Rights Law or IPR when the Dutch Colonial Government colonized Indonesia in 1844.¹ When Indonesia became independent on August 17 1945, based on the transitional provisions of the 1945 Constitution or the so-called UUD 1945, all the laws and regulations from the Dutch colonial heritage remained valid as long as they did not conflict with the 1945 Constitution or the so-called UUD 1945.² After its independence, Indonesia has also ratified or participated in several international conventions in the IPR sector.³ IPR is attached to each person only because they are human being and not because it is given by other parties, including the state.⁴

Intellectual Property Rights (IPR) is defined as thinking that produces a product or process that is useful to humans.⁵ IPR is one (1) product of developing ideas and human mindsets, which is currently a complex problem in world trade both nationally and internationally, making it a severe matter handled by the national and international world.⁶ One part of the IPR system is that trade secrets that deserve protection are trade secrets.⁷ Trade secrets are kinds of information that have value because they are not generally known.⁸ Trade secrets are protected if the information is confidential, has economic value, and is kept confidential.⁹ Trade secret itself is a reasonably high right in the development of business activities in Indonesia.¹⁰ Trade secrets do not have a protection period as long as the owner can keep the trade secret from public access, so the trade secret will be protected that long.¹¹

The seriousness of the government in dealing with trade secret issues with the establishment of Law Number 30 of 2000 concerning Trade Secrets¹² and the background is by the ratification of the WTO/TRIP's agreement through Law Number 7 of 1994 and the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices

¹ Reni Alfiani, "Hak Kekayaan Intelektual di Bidang Hak Cipta Paten dan Merek", *OSF Preprints*, (2019): 1-12, 2, DOI: 10.31219/osf.io/47ha6.

² <https://dgip.go.id/sejarah-perkembangan-perlindungan-kekayaan-intelektual-ki>, Accessed on 26 April 2020.

³ Direktorat Jenderal Industri Kecil Menengah Departemen Perindustrian, *Kebijakan Pemerintah Dalam Perlindungan Hak Kekayaan Intelektual dan Liberalisasi Perdagangan Jasa Profesi di Bidang Hukum* (Jakarta: Direktorat Jenderal Industri Kecil Menengah Departemen Perindustrian, 2007), 5.

⁴ NENI SRI IMANIYATI, "Perlindungan Hki Sebagai Upaya Pemenuhan Hak Atas Iptek, Budaya dan Seni", *Jurnal Media Hukum* 17, no. 1 (2010): 162-176, 167.

⁵ Maria Alfons, "Implementasi Hak Kekayaan Intelektual dalam Perspektif Negara Hukum", *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 301-312, 305.

⁶ Achmad Zen Umar Purba, *Hak Kekayaan Intelektual Pasca TRIPs* (Bandung: Alumni, 2005), 1.

⁷ Taufik Effendy, "Rahasia Dagang Sebagai Bagian Dari Hak Kekayaan Intelektual", *Al'Adl* 6, no. 12 (2014): 53-68, 53, DOI: 10.31602/al-adl.v6i12.205.

⁸ Andry Setiawan, Dewi Sulistianingsih, Rindia Fanny Kusumaningtyas, "Eksistensi Pendaftaran Rahasia Dagang dan Implementasi Perlindungannya (Studi di Kanwil Kemenkumham Jawa Tengah)", *Jurnal Law and Justice* 3, no. 2 (2018): 73-81, 74.

⁹ Syahriyah Semaun, "Perlindungan Hukum Terhadap Rahasia Dagang", *Jurnal Hukum Diktum* 9, no. 1 (2011): 30-42, 37.

¹⁰ Anastasia E. Gerungan, "Perlindungan Hukum Terhadap Rahasia Dagang Ditinjau Dari Aspek Hukum Perdata dan Pidana di Indonesia", *Jurnal Hukum UNSRAT* 22, no. 5 (2016): 69-84, 70.

¹¹ Kadek Dinda Agustina, Made Nurmawati, "Perlindungan Hukum Terhadap Rahasia Dagang Dalam Usaha Franchise di Bidang Makanan dan Minuman", *Kertha Semaya* 6, no. 11 (2018): 1-15, 8.

¹² Riandhani Septian Chandrika, "Perlindungan Hukum Perjanjian Lisensi Rahasia Dagang di Indonesia", *Jurnal Hukum Bisnis Bonum Commune* 2, no. 1 (2019): 11-22, 12.

and Unfair Competition.¹³ This shows that the main idea of the Trade Secret Law in Indonesia is in line with the thought of TRIPS as part of the agreement in the WTO where in this era of business competition, it is vital to provide trade secret protection.¹⁴ Protection of trade secrets cannot be negotiated because the uncertainty over this issue can lead to unfair competition, which can damage the business climate.¹⁵ Various large companies utilize the Trade Secret protection system to protect their innovative recipe formulas, namely Coca-Cola and Pepsi Cola.¹⁶

In the United States itself, many companies, both large and small, tend to think that trade secrets are essential. In practice, trade secrets have several identifiable advantages over types of IP protection. Firstly it can be seen from their broad coverage covering almost all types of commercial information, which in this case is carried out by providing reasonable measures to protect confidentiality. Furthermore, companies in the United States are also doing "do-it-yourself" IP Right; that is, companies can use internal measures (such as contracts and security procedures) to protect their confidentiality rather than waiting for government review. So when the importance of trade secrets becomes something that the public or business firms already understand, they have become the subject of increased domestic and international policymaking.¹⁷

If seen from the description, it is crucial to maintain trade secrets for people or company owners who have trade secrets in this study, we can see in the case of CV Bintang Harapan with CV Tiga Putra Berlian VS Research Fine Foods, INC with Bob Evans Farms, INC. Based on this case, this study's problem is how the trade secret case between CV Bintang Harapan and CV Tiga Putra Berlian VS Reser's Fine Foods, INC and Bob Evans Farms, INC is compared? What can appropriate solutions be given from the research of comparison?

This study uses a normative legal writing research method with a case approach.¹⁸ This research was conducted to determine the comparison of trade secrets between Indonesia and the United States itself. Researchers also researched how to resolve trade secret cases in Indonesia and the United States (CV Bintang Harapan case) with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC) which adhere to different systems and solutions drawn from each case that is considered relevant to be included or used in each country, namely Indonesia and the United States.

B. Discussion

1. Comparative Analysis of Trade Secret Cases Between CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC

A description will describe a case comparison analysis between CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC are as follows:

- a. In the case in Indonesia, namely the case between CV Bintang Harapan with CV Tiga Putra Berlian at the District Court level stated that HI PIN did not violate Trade Secrets

¹³ Ayup Suran Ningsih, "Implikasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat Pada Pelaku Usaha Mikro Kecil dan Menengah (UMKM)", *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 207-217, 207, DOI: 10.30641/dejure.2019.V19.207-215

¹⁴ Ghiand Carlo Legrands, "Perlindungan Hukum Bagi Pemilik Rahasia Dagang", *Lex Privatum* 1, no. 4 (2013): 159-169, 159.

¹⁵ Gunawan Widjaja, *Rahasia Dagang Seri Hukum Bisnis*, (Jakarta: Raja Grafindo Persada, 2001), 100.

¹⁶ Yanni Lewis Paat, "Penyelesaian Sengketa Rahasia Dagang Menurut Hukum Positif Indonesia", *Lex et Societatis* 1, no. 3 (2013): 34-46, 43.

¹⁷ Katherine Linton, "The Importance of Trade Secrets: New Directions International Trade Policy Making and Empirica; Research", *Journal of International Commerce and Economics* (2016): 1-17, 2.

¹⁸ Bambang Sugano, *Metodologi Penelitian Hukum*, ed. 1 (Jakarta: Raja Grafindo Persada, 2006), 41-42

because they considered that HI PIN was not legally proven and was convincingly guilty of committing a criminal act as charged by the Public Prosecutor. Meanwhile, after entering the cassation, the Panel of Judges of the Supreme Court stated that HI PIN was guilty because in this case, the evidence made by the Public Prosecutor related to trade secrets was deemed sufficient. Before entering into evidence, we must first know the basis of the decision, which states that HI PIN is innocent.

Meanwhile, after entering the cassation, the Panel of Judges of the Supreme Court stated that HI PIN was guilty because in this case, the evidence made by the Public Prosecutor related to trade secrets was deemed sufficient. Before entering into evidence, we must first know the basis of the decision, which states that HI PIN is innocent. Where in the scope of trade secret protection as referred to in Article 2 of Law Number 30 of 2000 includes:¹⁹ “The scope of protection of Trade Secrets includes production methods, processing methods, sales methods, or other information in the field of technology and/or business that has economic value and is not known to the general public”. After seeing the scope of trade secret protection, the scope of trade secrets is alternative so that the assessment and description of the evidence should be described one by one.

Furthermore, concerning HI PIN being guilty of violating trade secrets, it is due to sufficient evidence in the form of matters that are juridically relevant for the purpose or intention of making ground coffee produced by CV Tiga Putra Berlian is the same as ground coffee produced by CV Bintang Harapan and other matters relating to breaches of confidentiality because it involves production methods, processing methods or processing recipes as well as marketing or sales methods as well as other product information which in this case is a trade secret and can result in the company experiencing market loss and ultimately suffering significant losses,²⁰ Whereas in the case of Reser's Fine Foods, INC with Bob Evans Farms, INC has 3 (three) decisions, namely in the first decision is Preliminary Injunction where the decision can only be requested if there are 4 (four) reasons needed to take a preliminary order: *the likelihood of success on the merits, a likelihood of irreparable harm if the injunction is not issued, the balance of the hardships tips in the movant's favor* and lastly *is an injunction is in the public interest*.

Furthermore, two types of Preliminary Injunction will be given by the Judge if the four reasons are fulfilled, the first is a prohibition order where the party requesting an order wants to maintain the status quo, and the second is a mandatory order where the party is requesting the order and demand action that goes beyond the *status quo*. The second decision relates to the Voluntary Dismissal without Prejudice, and the third judgment relates to the counterclaim from the BEF. In this case, Reser requested the Preliminary Injunction to the Judge regarding the breach of contract claims and misuse of trade secrets committed by BEF.²¹ In terms of trade secret misuse by BEF, Reser's opinion is that in producing this complementary fill out food Bob Evans has violated Reser's trade secrets by violating the Uniform Trade Secrets Act and at OUTSA. The definition of the Trade Secret itself can be seen in Section 1 point (4) of the Uniform Trade Secret Act with 1985 Amendments.²² After looking at trade secrets, to determine whether the information is a trade secret, the court considers whether the information in question is generally known in the relevant community, whether the information is more valuable because it is not generally known and whether reasonable efforts

¹⁹ Article 2 of Law Number 30 of 2000, concerning Trade Secrets (State Gazette No. 242 of 2000, Supplement to the State Gazette No. 4044).

²⁰ Supreme Court of the Republic of Indonesia, Decision No. 332 K / PID.SUS / 2013, pg. 7-10.

²¹ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA (Putusan *Preliminary Injunction*).

²² United States, *Uniform Trade Secrets Act With 1985 Amendments*, 6, Section 1 paragraph (4) defines the same with OUTSA.

have been made to keep it secret.²³ Courts may issue court orders for alleged trade secret infringement where the abuse itself has the following meaning:

- 1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means
- 2) Disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret.
- 3) Disclosure or use of a trade secret of another without express or implied consent by a person who, before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
- 4) Disclosure or use of a trade secret of another without express or implied consent by a person, who at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:²⁴
 - a) Derived from or through a person who had utilized improper means to acquire it.
 - b) Acquired under the circumstances giving rise to a duty to maintain its secrecy or limit its use.
 - c) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

Based on the notion of misuse of trade secrets itself, Reser's argues that the baking process uses many trade secrets, including how the product is pasteurized and browned, timing, product line, product packaging, and sealing processes, including the use of ovens to kill bacteria in food and the fact that Reser's roasting process lasts up to 40-50 days is a trade secret in which Reser's said that the baking process was developed over the years to produce a unique product. The process obtained an independent economic value because it is not generally known.

On the other hand, Bob Evans / BEF argues that the information claimed by Reser's trade secret is a trade secret that does not meet the requirements under the law because the information is publicly known or known in the industrial world. This was supported by the Judge, where some components of the baked response's process were indeed disclosed to the public or were generally known by the food industry. Reser's case could not qualify as a trade secret because it had no economic value for Reser's. However, by compiling the information in the compiled form, it may, under certain circumstances, meet the legal definition of a trade secret, in which case Reser's spent a lot of time and money doing the baking process.

So to the extent that Reser thinks that the baked process is a trade secret is correct according to the Judge, the baked process can qualify as a trade secret under the OUTSA and Uniform Trade Secrets Act. In this case, the Judge is of the view that Reser 'has also taken reasonable steps in protecting baked goods such as only disclosing information about baked processes to Bob Evans/BEF under the NDA and employees are required to sign confidentiality agreements as well as limiting access to the production line only to persons who sign non-disclosure agreements. However, if the baked process is a trade secret, Reser's has failed to show clearly that Bob Evans / BEF misused it or did not present the evidence to the Judge as opposed to Bob Evans/BEF, who provided the evidence.²⁵

The Preliminary Injunction decision is made if the trade secret is urgent and used by other business actors. For example, in the case: Case No.4: 16-cv-1181-JAR, this initial order decision was made because Michael R. Nettles stopped working from Panera, LLC and would like to work for a competitor company from Panera, LLC, namely Papa John's International, in this case, Michael R. Nettles is the Vice President of Architecture at Panera Company, LLC

²³ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA (Putusan *Preliminary Injunction*).

²⁴ The United States, *Oregon Uniform Trade Secret Act, Section 2* paragraph (2).

²⁵ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA (*Preliminary Injunction*).

which in this case has valuable access to trade secrets including information relating to Panera's past strategic business plan when Michael R. Nettles asked Panera to quit Panera will not allow Michael R. Nettles to move to a company that competes with Panera, namely Papa John's International where in this case Panera also offers to find Michael R. Nettles a job in another company, but Michael R. Nettles refuses and still wants to work at Papa John's International.

After that, it turned out that Michael R. Nettles copied all of Panera's strategic business plan data onto his cellphone and laptop. So with this proof, Panera's motion to temporarily suspend not to use Panera's trade secrets was given by a judge at the United States District Court (Eastern District of Missouri).²⁶ This example is one (1) example of proof of trade secrets that can be accepted by the United States even though in this case, Reser's has failed to show clearly that Bob Evans misused it or did not show the proof but still the Baked process is a Reser's appropriate trade secret with the provisions of OUTSA and the Uniform Trade Secrets Act which will continue in the decision without prejudice or Voluntary Dismissal Without Prejudice. If seen from the evidence to support trade secrets, the case between CV Bintang Harapan with CV The Panel Judge accepted the Three Putra Berlian because they had fulfilled the elements of trade secrets, namely Article 2 of Law Number 30 of 2000 concerning Trade Secrets and the elements in Article 17 paragraph (1) of Law Number 30 of 2000 concerning Trade Secrets while in the case Reser's Fine Foods, INC with Bob Evans Farms, INC. States that the baked process is a trade secret, but Reser cannot prove his claim is inversely proportional to Bob Evans, who can provide evidence of trade secrets.

b. In CV Bintang Harapan's case with CV Tiga Putra Berlian is related to employees who resigned from CV Bintang Harapan to CV. This HI PIN persuaded Tiga Putra Berlian employee witnessed Noldhy Lagindawa, an employee of the Production and Marketing Division of the Bintang Harapan Coffee Factory. Then HI PIN persuaded witness Noldhy Lagindawa to recruit his coworker at CV Bintang Harapan, who in this case was recruited by witness Noldhy Lagindawa, was Parian who worked in the Production Section, Arsand in the Production Section, Markum Yambese in the Frying and Packing Section, Jumadi in the Production and Marketing Section who in this case was asked to stop working from CV Bintang Harapan and moved to CV Tiga Putra Berlian because his salary was twice higher than that of CV Hope Star.

After witnessing Noldhy Lagindawa and his friends stopped working at CV Bintang Harapan and moved to CV Tiga Berlian belonged to Defendant, who was also a newly established coffee factory. This Defendant ordered witness Noldhy Lagindawa and his friend to make a frying pan and coffee mill according to their experience while working at CV Bintang Harapan and other things that violate CV Hope Star's trade secrets.²⁷ After seeing the description above, it is necessary to have a work agreement regarding confidentiality agreement with researchers where employees are given an understanding before signing a work agreement regarding confidentiality agreement with this researcher so when the employee signs the work agreement, the employee knows that at while he is still working in the company or after he stops working at the company it is prohibited to disclose trade secrets, samples of raw coffee, documentation and frying and production machines, taking ground coffee filters on the mill and take the plastic packing at the coffee factory CV Bintang Harapan or anything related to trade secrets CV Bintang Harapan, where if we look at this case, there is no explanation or explanation of the work agreement regarding confidentiality

²⁶ United States District Court Eastern District Of Missouri, Putusan No.Case No.4:16-cv-1181-JAR, 10.

²⁷ Supreme Court of the Republic of Indonesia, Decision No. 332 K/PID.SUS/2013, 1-2.

agreement with researchers to safeguard the CV Bintang Harapan coffee factory's trade secrets.²⁸

This is inversely related to the case of Reser's Fine Foods, INC and Bob Evans Farms, INC where Reser's makes its employees obliged to sign a confidentiality agreement and restricts access to the production line only to those who sign a confidentiality agreement and Reser's also discloses the company's trade secrets only. To its partners, namely BEF with a Non-Disclosure Agreement/NDA which contains one of the contents are "Prohibit one party to use or disclose certain information from the other party except to enhance their mutual relationship".²⁹ This proves that it is imperative to maintain trade secrets reasonably, as referred to in Law Number 30 of 2000, namely Article 1 number (1) in the case of CV Bintang Harapan with CV Tiga Putra Berlian³⁰ And in the case of Reser's Fine Food, INC with Bob Evans Farms, INC referred to in the OUTSA and Uniform Trade Secrets Act comments section.³¹

- c. In the case of trade secrets CV Bintang Harapan with CV Tiga Putra Berlian recognized the verdict or exemption from being pure or impure. In contrast, in the case of trade secrets, Reser's Fine Foods, INC with Bob Evans Farms, INC. do not recognize pure or impure free decisions or acquittals but rather decisions with prejudice and decisions without prejudice or decisions without prejudice or voluntary dismissal without prejudice. The following will explain the verdict or acquittal of pure or impure acquittal with a decision with prejudice and a decision without prejudice or a decision without prejudice or voluntary dismissal without prejudice.

Where an impure or free decision or acquittal was born because of jurisprudence through the Supreme Court Decision Reg No. 275 K / PID / 1983 regarding Natalegawa's acquittal, which was imposed by the public prosecutor in which in this case the Supreme Court accepted the pure argumentation of whether or not an acquittal decision was made so that since then in procedural law practice in Indonesia has recognized the term pure or impure acquittal. In this case, the Criminal Procedure Code does not divide decisions into pure or impure acquittal decisions, but rather acquittal decisions, acquittal decisions, convictions, convictions, and rulings that are not authorized to judge. A decision states that the charges cannot be accepted and a decision stating that the charges are null and void by law.³²

If we look at the case verdict CV Bintang Harapan with CV The previous three Putra Berlian that were carried out at the Palu District Court, the Judge of the Palu District Court used a decision that was not a pure acquittal, in this case, the Panel Judge had misinterpreted the law of proof in that it did not apply the law of proof appropriately and correctly in other words the release was not purely because the evidence is sufficient. However, the Panel Judge stated that it was not proven.

Then the Panel Judge was mistaken and inaccurate in considering his decision, which only assessed the inequality/difference in the use of technology at John Satria Salim's Harapan Bintang coffee factory with a medium steam system at the Defendant's Tiga Putra Berlian Coffee Factory, which was done manually. There was no evidence of a letter or expert or laboratory examination of whether the coffee produced by Bintang Harapan and Tiga Putra

²⁸ Cita Citrawinda Noerhadi, *Kekayaan Intelektual (Diktat Kuliah)* (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2020), 12.

²⁹ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA (Putusan *Preliminary Injunction*, Putusan *Voluntary Dismissal Without Prejudice*, counterclaim decision of Reser's Fine Food, INC.).

³⁰ Article 1 paragraph 1 Law Number 30 of 2000 concerning Trade Secrets (State Gazette No. 242 of 2000, Supplement to the State Gazette No. 4044).

³¹ The United States, *United Trade Secrets Act With 1985 Amendments*, 7-8, *Comment*.

³² Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2010), 347-358.

Berlian is identical or not finally concluded that he did not find the use of trade secrets in terms of the method of production of John Satria Salim's Bintang Harapan ground coffee which the Defendant carried out at his Tiga Putra Berlian coffee factory., where the Panel of Justices of the Supreme Court stated that the use of trade secrets of other parties does not have to process technology systems, sales or other information in the field of technology and/or business and is not written. Furthermore, the Panel Judge also considered the absence of a coffee-selling witness. It was done incorrectly by calling witness John Satria Salim a *de auditu* witness who witness John Satria Salim as a victim-witness.³³

As for the case of Reser's Fine Foods, INC with Bob Evans Farms, INC regarding decisions with prejudice and decisions without prejudice or Voluntary Dismissal Without Prejudice, if the case is dismissed with prejudice, the loss of certain rights or privileges against cases dismissed with prejudice and means the case is permanently dismissed cannot be brought back to court and indictments cannot be re-filed. In contrast, for cases without prejudice, the opposite of cases are dismissed with prejudice, namely the privileges in question relating to whether the plaintiff can bring the same case to court or file another lawsuit based on the same reasons where a case can be dismissed without prejudice for several reasons, for example, a prosecutor can choose to dismiss a case without prejudice to have time to address weaknesses or problems with their case, or a judge can do it.

Furthermore, for the case of Voluntary Dismissal Without Prejudice, it can be shown that a prosecutor can choose to voluntarily dismiss a case without prejudice to file a more severe case and to overcome weaknesses or mistakes in some parts of the case.³⁴ So in the case of Reser's Fine Foods, INC with Bob Evans Farms, INC, Reser's asked the Judge for Voluntary Dismissal Without Prejudice because Reser's characteristics of the BEF lawsuit represent a significant difference between Reser's claims, which are currently still being filed for dismissal and four counterclaim affirmed by BEF to clarify Reser's claim, namely a breach of confidentiality of the agreement between the parties, misuse of trade secrets, and conversion. In contrast, the BEF counterclaim accuses intentional interference with economic relations, violation of the Lanham Act, unfair competition, and contract breach. This proves that BEF's counterclaim was filed with a different matter filed by Reser's so that the BEF lawsuit cannot be used in future litigation.³⁵ Even though, in this case, Reser's doing Voluntary Dismissal Without Prejudice, it indirectly provides an advantage for Reser's position compared to BEF's position.

- d. In the case of CV Bintang Harapan with CV Tiga Putra Berlian regarding trade secrets does not regulate the attorney fees associated with "the court can provide a reasonable attorney fee," which in this case is not regulated in Law Number 30 of 2000 concerning Trade Secrets while in the case of Reser's Fine Foods, INC with Bob Evans Farms, INC regarding this trade secret regulates the attorney fees as referred to in Section 4 and Comments on the Uniform Trade Secrets Act and OUTSA 646,465. This is related to the court being able to provide a reasonable attorney fee is indeed a trade secret misuse claim is made in bad faith, a motion to terminate the order is made or challenged in bad faith, and misuse of the trade secret is committed deliberately which in this case is found by the court or jury.³⁶ This can be seen from the court that will not reduce the payment of BEF's attorney's fees as long as BEF does not use the work product in connection with a

³³ Supreme Court of the Republic of Indonesia, Decision No. 332 K/PID.SUS/2013, 5-6.

³⁴ <https://www.robertmhelfend.com/criminal-defense/dismissed-without-prejudice-mean/>, Accessed on April 29, 2020.

³⁵ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA, 6 (*Voluntary Dismissal Without Prejudice*).

³⁶ United States, *United Trade Secrets Act With 1985 Amendments*, 13 and *Comment*.

- counterclaim, which cannot be used in this case future litigation.³⁷ This is to prevent accusations of misinterpretation of underhanded attempts to abuse (BEF) to end compensation and deliberate or malicious abuse.³⁸
- e. Furthermore, concerning compensation in the case of trade secrets CV Bintang Harapan with CV Tiga Putra Berlian, if seen in the provisions of Law Number 30 of 2000 concerning Trade Secrets in Article 17 paragraph (1), states that a maximum fine of Rp.300,000,000.00 (three hundred million rupiahs) for committing the act as referred to in Article 13 or Article 14.³⁹ If seen from this article, the maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs) will not be greater than that. This can be seen in the HI PIN decision subject to imprisonment for 1 (one) year and a fine. it is amounting to Rp. 5,000,000.00 (five million rupiahs) provided that it is replaced by a 2 (two) year imprisonment if the fine is not paid.⁴⁰ This is different in the case of trade secrets between Reser's Fine Foods, INC and Bob Evans Farms, INC where the Reser's loss is \$ 100,000, in which case if Reser's is entitled to compensation, it can be enlarged to two times the number of Reser's losses.⁴¹ but still, have to pay attention to the provisions of OUTSA 646.465, which reads as follows:⁴²
- 1) A complainant is entitled to recover damages adequate to compensate for misappropriation unless a material and prejudicial change of position by a defendant before acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable.
 - 2) Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in actual computing loss but shall not be less than a reasonable royalty for the unauthorized disclosure or use of a trade secret.
 - 3) Upon a finding of willful or malicious misappropriation, punitive damages may be awarded in an amount not exceeding twice any award made under subsections (1) and (2) of this section.”
- f. Trade secrets in Indonesia can be imposed in criminal cases as well as in civil cases. In this case, the Judge can also order that the trial be held behind closed doors as referred to in Article 18 of Law Number 30 of 2000 concerning Trade Secret can be seen or given an example with analysis of case CV Bintang Harapan with CV Tiga Putra Berlian, whose trade secret issues were criminally resolved. Whereas in the United States itself, Reser's case can be categorized as a civil trade secret suit based on the Uniform Trade Secrets Act Section 7 letter a.⁴³ Meanwhile, prosecution for trade secrets made by illegal means in the United States is a trade secret related to the Economic Espionage Act. The Economic Espionage Act relates to industrial espionage, the abuse or misappropriation of trade secrets and the National Information Infrastructure Protection Act and 4 (four) other actions deemed appropriate by the Congress and Law Commission of the United States or can be interpreted as economic espionage: criminalize the misuse or misappropriation of trade secrets (including conspiracy to misuse or tamper with trade secrets and acquire trade secrets for misuse) with the knowledge or intention that theft will benefit a foreign

³⁷ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA, 7- 8 (*Voluntary Dismissal Without Prejudice*).

³⁸ E.Todd Presnell dan David L. Johnson, *Attorneys' Fees in Trade Secrets Litigation*, [s.i.:s.n.,s.a.], 106-108.

³⁹ Article 17 paragraph 1 Law Number 30 of 2000 concerning Trade Secrets (State Gazette No. 242 of 2000, Supplement to the State Gazette No. 4044), Ps. 17 paragraph (1).

⁴⁰ Supreme Court of the Republic of Indonesia, Decision No. 332 K/PID.SUS/2013, pg.11.

⁴¹ United States District Court District of Oregon, Case No. 3:13-cv-00098, pg.9 *Complaint*.

⁴² The United States, *Oregon Uniform Trade Secret Act*, 646-465.

⁴³ United States, *United Trade Secrets Act With 1985 Amendments*, pg. 14, Section 7 point a.

power.⁴⁴ Researchers can provide one (1) case example, namely the United States of America v United Microelectronics Corporation, et al., namely that China's Taiwanese companies are on the United States government's cross line. This arises because of the latest indictment, which mentions the United Microelectronic Corporation (UMC), in which 3 (three) people named Stephen Chen, JT Ho, and Kenny Wang made a scheme to steal \$ 8.75 billion worth of trade secrets. The people named in the indictment mentioned above worked for a Micron Taiwan subsidiary that worked for UMC. The allegations suggest that the individuals planned to steal trade secrets from Micron (a US chipmaker) through Micron's subsidiary MMT. Where in this case, the senior Vice President and general adviser to Micron, Joel Poppen, stated: "that Micron has invested billions of dollars over the decades to develop its intellectual property."⁴⁵ This example is a trade secret of the United States, which is criminally punished if it is related to detrimental to the United States and benefiting foreign powers, whereas, in Indonesia, there are no regulations regarding the Economic Spionage Act and the distinction between trade secrets that are resolved criminally or civil where both civil and civil is a general trade secret issue that does not qualify as civil for the general public and criminal for the state.⁴⁶

2. Solutions that can be given to the Case CV Bintang Harapan With CV Tiga Putra Berlian VS Reser's Fine Foods, INC. With Bob Evans Farms, INC. After Seeing The Comparison Between the Cases

Based on a comparative analysis of Indonesia and the United States cases on the trade secret case between CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC. The solutions that can be given to the comparative case analysis described above are as follows:

- a. Solutions for CV Bintang Harapan with CV Tiga Putra Berlian that can be taken after seeing the case Reser's Fine Foods, INC with Bob Evans Farms, INC is related to a work agreement regarding confidentiality agreement with researchers, which CV Bintang Harapan can make for employees was right when the employee was still working at CV Bintang Harapan or when the employee is no longer working at CV Bintang Harapan. The subjects of the formation of a work contract include the existence of a trade secret owner or third party (three) licensee and employees whose respective parties have an interest. Employers or employers is contain the terms of employment and rights and obligations of the parties.

The conditions that must be fulfilled in the work contract are regulated in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower, which consists of: the agreement between the two parties, the ability to carry out legal actions, and the existence of work that is agreed upon and the last is the work that is promised not to conflict with public order, morality and the provisions of the applicable laws. Then, to protect trade secret law in a just work contract, therein must regulate matters that can prevent and provide legal protection of trade secrets. In addition to the above, other ways or efforts that can be made to protect trade secrets through work agreements regarding confidentiality agreements with researchers, efforts to protect trade secrets can also go through several stages, namely as follows:⁴⁷

⁴⁴ <https://www.sciencedirect.com/topics/computer-science/economic-espionage-act>, accessed on 29 April 2020.

⁴⁵ <http://tsi.brooklaw.edu/cases/united-states-america-v-united-microelectronics-corporation-et-al>, Accessed on April 29, 2020.

⁴⁶ Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, *Laporan Akhir Tim Analisa dan Evaluasi (AE) Tentang Rahasia Dagang (UU NOMOR 30 Tahun 2000)* (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, 2011), 47.

⁴⁷ Cita Citrawinda Noerhadi, *Op. Cit.*, 12-13.

- 1) Sign the daily journal.
 - 2) Conduct security checks on all new employees.
 - 3) Surveillance towards visitors.
 - 4) Adding the word "confidential" to documents distributed within the company.
 - 5) Adding the word "confidential" in the blueprint, operational processors, specifications, and documents containing confidential information.
 - 6) Supervision or control of notebooks (should be submitted when no longer used and when an employee resigns from the company).
 - 7) When an employee resigns, the employee is reminded of the contract's obligations (prohibited from disclosing confidential information to anyone). The employee is also asked to submit company documents.
 - 8) Company safety guidelines.
 - 9) Data storage on non-photocopied paper.
- a. The solution to the trade secret case in the United States is Reser's Fine Foods, INC with Bob Evans Farms, INC, which can be drawn from a comparative case analysis of the CV case. Bintang Harapan with CV Tiga Putra Berlian is concerned with proving the misuse of trade secrets because, in this case, the Reser's has proved that the baked process is a trade secret following OUTSA qualifications Uniform Trade Secrets Act.⁴⁸ And this is also supported by the Judge's assessment, as explained above.

To prove that BEF abused trade secrets, Reser's can present Dee Hadley as a witness, but before being presented at trial Reser's must first find out the truth. Dee Hadley can be used as a witness at the trial because, in April 2010, Reser's allowed Dee Hadley to visit the oven facility located in Pasco, Washington where Reser's was used to make the baking process where Dee Hadley went on a tour to see the production process from start to finish. At the end and in this, Dee Hadley spent a long time observing Reser's desired achievement level. In this regard, BEF employees also visited the baking process in 2011 and 2012, carried out on several occasions.⁴⁹

Based on this description, we can hypothesize that whether the tour carried out was solely for the tour or to analyze, if Dee Hadley was solely for the annual tour, would it take hours to see the Reser's baked process and what time it took. In this case, Dee Hadley came to Pasco, Washington, just to tour, so it doesn't take that long to do a different tour by analyzing where it took a long time to apply to something. However, this hypothesis must also be proven by looking for relevant and robust evidence, for example relating to whether Dee Hadley made suspicious movements or took pictures or photos without permission from the employees who were there and in this case, must also pay attention to the provisions on Uniform Trade Secrets. Act Section 1 number (2).⁵⁰

C. Conclusion

Comparison analysis between CV Bintang Harapan with CV Tiga Putra Berlian VS Reser's Fine Foods, INC with Bob Evans Farms, INC is divided into 6 (six) analyses: Firstly, it is related to evidence regarding trade secrets. Secondly, it is related to work agreement arrangements regarding confidentiality agreements with researchers with employees. Thirdly, relates to decisions or acquittals of pure or impure free on the CV Bintang Harapan with CV Tiga Putra Berlian, whereas in the case of trade secrets, Reser's Fine Foods, INC with Bob Evans Farms, INC does not recognize impure decisions or acquittals, but decisions with

⁴⁸ United States District Court District of Oregon, Putusan Civ. No. 3:13-cv-00098-AA (*Preliminary Injunction*).

⁴⁹ United States District Court District of Oregon, Case No. 3:13-cv-00098 pg.6, *Complaint*.

⁵⁰ United States, *United Trade Secrets Act With 1985 Amendments*, 5, Section 1 paragraph (2).

prejudice decisions without prejudice or Voluntary Dismissal without Prejudice. Fourthly relates to the arrangement of attorney fees. Fifthly relates to compensation, and the last one is related to the Economic Spionage Act. Sixthly, it relates to the law enforcement process in court. Based on this comparison, the authors suggest that protecting trade secrets can be done through work agreements, and in solving trade secret cases, it can be done by proving the misuse of trade secrets.

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