

CHAPTER I

INTRODUCTION

A. Background of Study

Currently, the involvement of foreign companies in domestic investment has increased significantly. According to data from the BPS, the amount of investment by foreign companies was recorded at \$1,138 million from 2008 and is expected to reach \$70,898 million by 2023.¹ We are seeing the potential for such a sharp increase. This phenomenon encourages domestic companies to collaborate with foreign companies to develop their business. As a strategic step to increase business scale, domestic companies often enter into agreements with foreign companies aimed at creating cooperative solid ties.

Nevertheless, a nation's economic progress will have an impact on its public welfare. One way this prosperity can be realized is to create regulations that regulate all financial activities for these businesspeople. Rules regulating the implementation of economic or business sector activities are called business law. In general, business law encompasses the entirety of written and unwritten legal regulations that govern the rights and obligations arising from contractual agreements or engagements in business practices. In everyday interactions,

¹ Adi Ahdiat. Makin Banyak Investasi Asing Masuk Indonesia, Tembus Rekor pada 2023. <https://databoks.katadata.co.id/datapublish/2024/03/07/makin-banyak-investasi-asing-masuk-indonesia-tembus-rekor-pada-2023> diakses pada 4 April 2025

humans are never free from the law; the same is true in business. Law plays a crucial role in ensuring healthy competition in the business sector.² Businesspeople must pay attention to the signs regulated by law and refrain from deviating or engaging in fraudulent or unfair competition. The existence of law creates boundaries by considering the principles and norms of life. However, when running a business, things do not always run smoothly. Sometimes, differences of opinion and even disputes arise between the parties; for this reason, it is necessary to have rules as a guide to facilitate collaboration and business during and after implementation. The rules that will serve as a binding basis for the parties are made in a contract.

In general, a contract or agreement is "an event where someone makes a promise to another person or where two people promise each other to do something. From this event, a legal relationship arises between the parties, called an agreement." An agreement is a legal relationship between two parties, based on which one party has the right to demand something from the other party. The other party is responsible for fulfilling that demand."³

We carry out contracts or agreements almost daily, both verbally and in writing. Without a contract, it is impossible to establish and maintain business relationships. Contracts or agreements are binding. Article 1233 of the Civil

² Tambunan, T. S., & Tambunan, W. R. (2019). *Hukum bisnis*. Prenada Media.

³ Chen-Wishart, M. (2012). *Contract law*. Oxford University Press, USA.

Code states that each. Engagement arises from agreements and laws. Therefore understanding of matters relating to a contract, including What a contract is, the conditions for the validity of a contract, the principles of a contract, the object of a contract, the terms of the contract, the form of the contract, the parties involved, the rights and obligations of the parties, the structure and contract for making anatomy, completion, and termination of the contract.

The aim of making a contract is the same as the aim of law in general, namely, the creation of peace, tranquility, and legal certainty. Contracts or agreements give rise to engagements, which in turn give rise to legal relationships that establish rights and obligations for each party. Article 1320 of the Civil Code determines four conditions for the validity of an agreement, namely:

1. There is an agreement between both parties.
2. The ability to take legal action.
3. The existence of the object of the agreement
4. There is a lawful cause.⁴

Apart from that, we pay attention to the conditions for the validity of a contract or agreement. It must also be based on several general principles or principles found in contract or agreement law: the principle of freedom of

⁴ Setiawan, I. K. O. (2021). *Hukum perikatan*. Bumi Aksara pg 34-37.

contract, the principle of consensualism, the principle of *pacta sunt servanda*, the principle of good faith, and personality. Additionally, there are other principles, including the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the moral principle, the principle of propriety, the principle of custom, and the principle of protection. Book III of the Civil Code adheres to an open system (open system), which means that parties are free to enter into contracts with anyone to determine the terms, implementation, and form of the contract in oral or written form. It is also permissible to make contracts either known in the Civil Code or outside the Civil Code. However, its implementation often causes problems.⁵

To overcome this, a contract or agreement should be based on the conditions regulated in contract law. It can be concluded that the purpose of making contracts or agreements in doing business is the same as the general purpose of law, namely, the creation of justice, demand, and legal certainty. To make this happen, businesspeople must carry out specific activities.

The business must maintain social life in an orderly and peaceful manner. Apart from serving a purpose, the law also functions as a means of resolving disputes, achieving inner and outer happiness, and promoting societal renewal. Through law, it is hoped that public awareness will grow and develop,

⁵ Roesli, M., Sarbini, S., & Nugroho, B. (2019). Kedudukan perjanjian baku dalam kaitannya dengan asas kebebasan berkontrak. *DiH: Jurnal Ilmu Hukum*, 15(1), pg 1-8.

enabling people to live according to existing rules, thereby creating peace and prosperity.⁶

Freedom of contract in civil law in Indonesia can be found in Article 1338, paragraph (1) of the Civil Code, which states, "All agreements made legally are valid as law for those who make them. From the word 'all,' it can be interpreted that every legal subject can agree with any content; there is freedom for legal subjects to determine the form of the agreement. Freedom of contract is defined as the freedom of legal subjects to enter into or refrain from entering into agreements, the freedom to choose with whom to agree, and the freedom to decide the content and form of the agreement. Thus, freedom of contract originates from the freedom of legal subjects to fulfill their interests. Therefore, to meet individual interests, individuals are free to make agreements.

However, the principle of freedom of contract is not absolute. The operation of this principle is limited by Article 1337 of the Civil Code, which stipulates that "a cause is prohibited if it is prohibited by law, or if it is contrary to good morals or public order."⁷

It can be concluded that as long as it is not due to a cause (*causa*) that is *halal* (prohibited) by law, everyone is free to agree. Regarding freedom of

⁶ Turagan, A. F. (2019). pelaksanaan perjanjian dengan itikad baik menurut pasal 1338 KUHPerdara. *Lex Privatum*, 7(1).

⁷ Ibid

contract, in Indonesia, parties have the right to enter into confidentiality agreements that protect trade secrets. Confidentiality is needed to protect business activities. This is under the words of Article 1 Number (1) of Law No. 30 of 2000 concerning Trade Secrets that state:⁸

"Trade secrets are information that is not known to the public in the field of technology and business has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret."

Based on the normative understanding of this law, it can be concluded that trade secrets are essential and valuable information owned by the Company, so every member must keep this information confidential carefully. According to the Trade Secrets law, confidentiality restrictions include: "production methods, processing methods, sales methods, or other information in the field of technology and business that has economic value and is not known to the general public."⁹

In implementation, the Company's trade secrets must be included in an agreement to protect them from leakage, which is currently found in many practices of disseminating trade secrets that impact the Company's losses. To prevent losses to the Company, the parties are bound by an agreement,

⁸ Semaun, S. (2011). Perlindungan Hukum Terhadap Rahasia Dagang. *DIKTUM: Jurnal Syariah dan Hukum*, 9(1), 30-42.

⁹ Effendy, T. (2014). Rahasia Dagang Sebagai Bagian Dari Hak Kekayaan Intelektual. *Al-Adl: Jurnal Hukum*, 6(12).

specifically a Confidentiality/Non-Disclosure Agreement (NDA), which aims to ensure optimal cooperation and prevent undesirable events from occurring in the future. To maintain confidentiality, the parties involved, namely the NDA, have various functions, including preventing company data leakage, identifying protected information, and safeguarding sensitive company data, such as product R&D, margin levels, short-term plans, long-term plans, copyrights, financial cash flows, etc. An NDA also helps control the information conveyed and handle conflicts.¹⁰.

However, the confidentiality agreement in the contract contains content that raises significant problems regarding the substance of the contract. In addition, the agreement's substance contradicts public policy and applicable laws and regulations. On the other hand, parties bound by this agreement cannot take action, considering that there is an agreement clause regulating the disclosure of information in the substance of the agreement. In the event this clause is violated, consequences will be imposed by the agreed-upon terms.

B. Problem Formulation

1. Whether or not the NDA across borders is valid, particularly when it is subjected to differing legal standards, as illustrated by the TDM v. WWM case?

¹⁰ Jeffrey, M. (2021). Akibat Hukum Wan Prestasi Dari Salah Satu Pihak Dalam Non Disclosure Agreement (Perjanjian Kerahasiaan) Yang Sulit Dibuktikan Kebenarannya. *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 20(3), pg 408-418.

2. Whether or not the validity of the NDA affects its enforceability, particularly in the context of the TDM v. WWM case?

C. Research Objective

1. The purpose of this study is to find out, study, and analyze the implementation of confidentiality agreements covering two or more countries regarding civil regulations in Indonesia.
2. To find out, study, and analyze the legal consequences of confidentiality agreements that conflict with a country's public policy.

D. Research Benefit

This research is expected to provide benefits, both theoretically and. Moreover, practically as follows:

1. Theoretical Use

It is hoped that the results of this research will contribute to the development of scientific legal knowledge, particularly in Civil Law, regarding credit agreements and dispute resolution.

2. Practical Use

It is hoped that the results of this research can be used as a guide through contributions to:

- a. Specifically for practitioners working in the field of Civil Law.
- b. Renewal and development of science, especially in the field of law.

- c. It is hoped that the results of this research will provide information for institutions and practices related to confidentiality agreements between countries and considerations in determining policies relating to confidentiality agreements and dispute resolution.

E. Originality of Research

In researching Cross Jurisdictional Challenges in Non-Disclosure Agreement Implementation: Insights from WEST WIST MINING v. TOBACCO DEL MANDIRI, the author explores several previous studies related to the author's research to avoid plagiarism. From the table below, we can conclude the differences between each topic. First, writers discuss the Legal protection of trade secrets for company owners after the termination of the employment agreement, as outlined in a confidentiality agreement, which is regulated by the Trade Secrets Act (UURD) and the Civil Code (KUH Perdata). In the case of Ramart.Co Printing, the company, has made efforts to protect its trade secrets, which it deserves to receive legal protection. However, in practice, the company owner faces obstacles in understanding and implementing the legal remedies available, so he does not file a lawsuit in court. Violation of the confidentiality agreement that results in the leakage of trade secrets can be categorized as a breach. It can be subject to civil sanctions by Article 11 paragraph (2) of the UURD, which is linked to Article 1242 of the Civil Code. However, Article 11 of the UURD does not regulate the method of calculating commercial losses

arising from violations of trade secrets, resulting in a legal vacuum that hinders the accurate determination of compensation amounts.

Second, writers primarily discuss how confidentiality agreements are a crucial legal instrument for protecting trade secrets for business owners. This agreement is not only intended to maintain the confidentiality of information from external parties, but also to anticipate potential violations committed by internal parties, such as company employees. With this agreement, the owner of the trade secret has a strong legal basis to sue the party that violates it. Violations of trade secrets, whether committed by internal or external parties, can result in legal consequences, including civil and criminal sanctions. Employees who leak trade secrets can be subject to termination of employment (PHK) as an internal company sanction. In addition, based on applicable legal provisions, violators can also be subject to civil lawsuits for losses incurred and criminal threats if they meet the elements of a criminal act in violating trade secrets.

Next, the third writer discusses the rights and obligations outlined in a Non-Disclosure Agreement (NDA), which can be expanded according to the parties' agreement to provide stronger legal protection for trade secrets. An NDA serves as a legal tool to protect confidential information from misuse by the recipient. The owner of the trade secret has the right to demand legal protection in the event of a violation. At the same time, the recipient is obligated

to maintain the confidentiality of the information as stipulated in the agreement. A common form of breach of contract in an NDA is the unauthorized disclosure or misuse of confidential information without the owner's consent. In the case of PT. Basuki Pratama Engineering with PT. Hitachi Construction Machinery Indonesia experienced a breach of contract due to the unauthorized use of confidential information. Settlement of this violation can be done through a civil lawsuit in court. In the cassation decision No. 3305 K/Pdt/2016, the judge decided to hold the defendants responsible for both material and immaterial losses. This decision is based on evidence and statements from the parties to ensure justice for the owner of the trade secret. However, in practice, proving violations of NDA often faces obstacles, especially in demonstrating the existence of violations and their economic impacts.

Moreover, the next writers primarily discuss various strategies to safeguard trade secrets in their use, each with a distinct purpose. PT takes similar measures. Bahagia Idkho Mandiri to preserve its trade secrets. The measures taken by PT. Bahagia Idkho Mandiri to safeguard trade secret information, particularly in the areas of production and processing methods, including limiting the number of individuals and divisions permitted to enter the lab and the production of goods, putting a no-entry sign on the door of the production room for those who are not involved, and requiring employees to sign a confidentiality agreement regarding trade secrets that must not be shared.

Continually, the writers discuss about compliance with the notarial oath found in Article 4 paragraph 2 of the UUJN and the notarial obligations regulated in Article 16 paragraph (1) letter f of the UUJN, which stipulates that notaries must keep confidential all information about the deed they have made and all information obtained to make the deed by the oath/promise of office, unless the law specifies otherwise, notaries must apply the principle of confidentiality of the contents of the credit agreement deed. Suppose the notary is required to provide a photocopy of the minutes to support the legal procedure for the public or state interest. In that case, the concept of secrecy regarding the contents of the credit agreement deed may be suspended. Article 66, paragraph (1) of Law Number 02 of 2014, concerning amendments to Law Number 30 of 2004 regarding the Position of Notary, stipulates that, for the sake of the Judicial Process, investigators, public prosecutors, or judges must obtain the approval of the Notary Honorary Council.

Another writer emphasizes the importance of including confidential information in the cooperation agreement clause to provide legal protection for Intellectual Property Rights and the company's strategic information. With a confidentiality agreement (Non-Disclosure Agreement/NDA), the parties can regulate their respective rights and obligations regarding the maintenance of confidentiality for sensitive information. A confidentiality agreement (NDA) is crucial in providing legal

protection for the parties involved in a cooperation agreement. An NDA serves to prevent the misuse of confidential information by interested parties, thereby minimizing the risk of information leakage that can harm either party.

Next, writers discuss that Confidentiality clauses in franchise agreements are essential to protect the franchisor's business information and intellectual property. The inclusion of this clause aims to prevent the dissemination or misuse of confidential information, such as business strategies, product formulas, and operational methods that can harm the franchisor. The franchisee's obligation to maintain the confidentiality of information extends not only during the term of the franchise agreement but also after the agreement has ended. Confidentiality clauses in franchise agreements are crucial for protecting the franchisor's business information and intellectual property. The inclusion of this clause aims to prevent the dissemination or misuse of confidential information, such as business strategies, product formulas, and operational methods that can harm the franchisor. The franchisee's obligation to maintain the confidentiality of information extends not only during the term of the franchise agreement but also after the agreement has ended. This is to ensure that business information remains protected in the long term by the agreement. The term of this obligation can vary, ranging from several years to perpetual, depending on the agreement reached. This ensures that business information remains protected in the long

term by the agreement. The term of this obligation can vary, ranging from several years to perpetual, depending on the agreement reached.

Next, another writer discusses how trade secret protection of business information in investment cooperation agreements is crucial for maintaining a competitive advantage and ensuring business sustainability. In the context of investment cooperation, the inclusion of a trade secret protection clause in the agreement is an effective legal instrument to prevent the misuse of business information by investors or other parties involved in the agreement. There are several obstacles to trade secret protection, including a lack of understanding among parties regarding the legal aspects of business information protection, weaknesses in the implementation of agreements, and difficulties in providing evidence in the event of a violation. This can hinder the effectiveness of legal protection provided to business owners. Legal solutions that can be applied include the inclusion of a Non-Disclosure Agreement (NDA) clause in the investment cooperation agreement, the application of strict sanctions in the event of a trade secret violation, and increasing legal awareness for business actors and investors regarding the importance of protecting business information. In such cases, Non-competition clauses in confidentiality agreements still face legal uncertainty in Indonesia. This is due to the absence of regulations that specifically regulate the formation and enforceability of such clauses in a business agreement. Violation of a non-competition clause in a

confidentiality agreement gives rise to two possible legal consequences, namely, default or unlawful acts. In practice, this depends on how the agreement is drafted and how the judge interprets it in the event of a dispute. There is a need for legal certainty regarding non-competition clauses in confidentiality agreements to provide clear protection for the parties involved. More specific regulations will help create justice and avoid differences in interpretation that can harm one of the parties to the agreement.

Another example is the confidentiality clause, a crucial legal provision in international trade contracts that ensures the confidentiality of technical data related to the agreement's subject matter. This clause is based on the agreement of the parties and serves to protect vital information from external parties. The validity of the confidentiality clause in the sale and purchase contract for warship engines between the Department of Defense and Motoren und Turbinen Union Friedrichshafen GmbH is subject to legal limitations that depend on the national regulations of each party. In this case, the national law where the foreign legal entity is located also affects the effectiveness of the clause. The EU Code of Conduct, as a national legal instrument of the European Union, limits the implementation of the confidentiality clause in the trade of defense equipment.

This shows that the confidentiality clause cannot be enforced absolutely if it conflicts with national regulations or arms export regulations in the country

of origin of the party bound by the agreement. Writers emphasize post-employment trade secret protection in a local company context and, second, contractual freedom under domestic law. Additionally, writers highlight the difficulties in NDA breaches. While he focuses on domestic enforcement, the fourth writer focuses on violations of trade secrets under Indonesian law. And fifth, confidentiality in credit agreements. While her focus is niche in financial law, she examines NDAs as a form of intellectual property protection. The next writer discusses domestic-focused franchise agreements. Moreover, eight writers focus on investment cooperation agreements, and nine writers discuss non-competition clauses within NDAs, focusing on domestic legal challenges. And last but not least, technical data confidentiality in international trade agreements, which is more case-specific.

Renewal and Discovery on Writers' Topic:

International Focus: writer research introduces the cross-jurisdictional dimension, which has not been extensively covered in previous works. This renewal is crucial as global business transactions increase. Public Policy Conflict: The writer introduces a new perspective by examining how NDAs can conflict with public policy in various countries and how these conflicts impact the validity and enforceability of the agreement.

Legal Certainty Across Borders: While previous studies primarily focus on domestic contexts, this work aims to discover ways to ensure legal certainty

in international agreements, contributing a framework for resolving legal discrepancies. Writer study is innovative in addressing the complexities of global business law, with a focus on cross-border agreements and the conflict of laws. This area has not been deeply explored in most previous research.

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Second, writers primarily discuss how confidentiality agreements are a crucial legal instrument for protecting trade secrets for business owners. This agreement is not only intended to maintain the confidentiality of information

from external parties, but also to anticipate potential violations committed by internal parties, such as company employees. With this agreement, the owner of the trade secret has a strong legal basis to sue the party that violates it. Violations of trade secrets, whether committed by internal or external parties, can result in legal consequences, including civil and criminal sanctions. Employees who leak trade secrets can be subject to termination of employment (PHK) as an internal company sanction. In addition, based on applicable legal provisions, violators can also be subject to civil lawsuits for losses incurred and criminal threats if they meet the elements of a criminal act in violating trade secrets.

Next, the third writer discusses the rights and obligations outlined in a Non-Disclosure Agreement (NDA), which can be expanded according to the parties' agreement to provide stronger legal protection for trade secrets. An NDA serves as a legal tool to protect confidential information from misuse by the recipient. The owner of the trade secret has the right to demand legal protection in the event of a violation. At the same time, the recipient is obligated to maintain the confidentiality of the information as stipulated in the agreement. A common form of breach of contract in an NDA is the unauthorized disclosure or misuse of confidential information without the owner's consent. In the case of PT. Basuki Pratama Engineering with PT. Hitachi Construction Machinery Indonesia experienced a breach of contract due to the unauthorized use of

confidential information. Settlement of this violation can be done through a civil lawsuit in court. In the cassation decision No. 3305 K/Pdt/2016, the judge decided to hold the defendants responsible for both material and immaterial losses. This decision is based on evidence and statements from the parties to ensure justice for the owner of the trade secret. However, in practice, proving violations of NDA often faces obstacles, especially in demonstrating the existence of violations and their economic impacts.

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unless the law specifies otherwise, notaries must apply the principle of confidentiality of the contents of the credit agreement deed. Suppose the notary is required to provide a photocopy of the minutes to support the legal procedure for the public or state interest. In that case, the concept of secrecy regarding the contents of the credit agreement deed may be suspended. Article 66, paragraph (1) of Law Number 02 of 2014, concerning amendments to Law Number 30 of 2004 regarding the Position of Notary, stipulates that, for the sake of the Judicial Process, investigators, public prosecutors, or judges must obtain the approval of the Notary Honorary Council.

Another writer emphasizes the importance of including confidential information in the cooperation agreement clause to provide legal protection for Intellectual Property Rights and the company's strategic information. With a confidentiality agreement (Non-Disclosure Agreement/NDA), the parties can regulate their respective rights and obligations regarding the maintenance of confidentiality for sensitive information. A confidentiality agreement (NDA) is crucial in providing legal protection for the parties involved in a cooperation agreement. An NDA serves to prevent the misuse of confidential information by interested parties, thereby minimizing the risk of information leakage that can harm either party.

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intellectual property. The inclusion of this clause aims to prevent the dissemination or misuse of confidential information, such as business strategies, product formulas, and operational methods that can harm the franchisor. The franchisee's obligation to maintain the confidentiality of information extends not only during the term of the franchise agreement but also after the agreement has ended. Confidentiality clauses in franchise agreements are crucial for protecting the franchisor's business information and intellectual property. The inclusion of this clause aims to prevent the dissemination or misuse of confidential information, such as business strategies, product formulas, and operational methods that can harm the franchisor. The franchisee's obligation to maintain the confidentiality of information extends not only during the term of the franchise agreement but also after the agreement has ended. This is to ensure that business information remains protected in the long term, in accordance with the agreement. The term of this obligation can vary, ranging from several years to perpetual, depending on the agreement reached. To ensure that business information remains protected in the long term, by the agreement. The term of this obligation can vary, ranging from several years to perpetual, depending on the agreement reached.

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competitive advantage and ensuring business sustainability. In the context of investment cooperation, the inclusion of a trade secret protection clause in the agreement is an effective legal instrument to prevent the misuse of business information by investors or other parties involved in the agreement. Several obstacles exist to trade secret protection, including a lack of understanding among parties regarding the legal aspects of business information protection, weaknesses in the implementation of agreements, and difficulties in providing evidence in the event of a violation. This can hinder the effectiveness of legal protection provided to business owners. Legal solutions that can be applied include the inclusion of a Non-Disclosure Agreement (NDA) clause in the investment cooperation agreement, the application of strict sanctions in the event of a trade secret violation, and increasing legal awareness for business actors and investors regarding the importance of protecting business information. In such cases, Non-competition clauses in confidentiality agreements still face legal uncertainty in Indonesia. This is due to the absence of regulations that specifically regulate the formation and enforceability of such clauses in a business agreement. Violation of a non-competition clause in a confidentiality agreement gives rise to two possible legal consequences, namely, default or unlawful acts. In practice, this depends on how the agreement is drafted and how the judge interprets it in the event of a dispute. There is a need for legal certainty regarding non-competition clauses in confidentiality agreements to provide clear protection for the parties involved. More specific

regulations will help create justice and avoid differences in interpretation that can harm one of the parties to the agreement.

Another example is the confidentiality clause, a crucial legal provision in international trade contracts that ensures the confidentiality of technical data related to the agreement's subject matter. This clause is based on the agreement of the parties and serves to protect vital information from external parties. The validity of the confidentiality clause in the sale and purchase contract for warship engines between the Department of Defense and Motoren und Turbinen Union Friedrichshafen GmbH is subject to legal limitations that depend on the national regulations of each party. In this case, the national law where the foreign legal entity is located also affects the effectiveness of the clause. The EU Code of Conduct, as a national legal instrument of the European Union, limits the implementation of the confidentiality clause in the trade of defense equipment.

This shows that the confidentiality clause cannot be enforced absolutely if it conflicts with national regulations or arms export regulations in the country of origin of the party bound by the agreement. Writers emphasize post-employment trade secret protection in a local company context and, second, contractual freedom under domestic law. Additionally, writers highlight the difficulties in NDA breaches. While he focuses on domestic enforcement, the fourth writer focuses on violations of trade secrets under Indonesian law. And

fifth, confidentiality in credit agreements. While her focus is niche in financial law, she examines NDAs as a form of intellectual property protection. The next writer discusses domestic-focused franchise agreements. Moreover, eight writers focus on investment cooperation agreements, and the ninth writers discuss non-competition clauses within NDAs, focusing on domestic legal challenges. And last but not least, technical data confidentiality in international trade agreements, which is more case-specific.

No	Source	Discussion
1	Nida Sonia Labiba, Legal Protection of Owners of Trade Secrets After The Expiration of The Employment Agreement In The Confidentiality Agreement is Reviewed By Law Number 30 of 2000 Concerning Junto Trade Secrets Book III of The Civil Code (Case Study of Ramart.Co Printing In Tangerang), Postgraduate of Law, Universitas Sultan Agung Tirtayasa, 2022.	<p>Problem Formulation:</p> <p>1. What is the form of legal protection for business owners against trade secrets after the termination of the employment agreement in a confidentiality agreement, according to the Trade Secrets Act (UURD), which is linked to the Civil Code (Case</p>

		<p>Study of Ramart.co Printing)?</p> <p>2. What are the legal consequences of a violation of trade secrets in a confidentiality agreement made between a business actor and its employees based on the UURD linked to the Civil Code (Case Study of Ramart.co Printing)?</p> <p>Discussion:</p> <p>Legal protection of trade secrets for company owners after the termination of an employment agreement is regulated in the Trade Secrets Act (UURD) and the Civil Code (KUH Perdata). In the case of Ramart.Co</p>
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		<p>Printing has made efforts to protect its trade secrets, which it deserves to have protected legally. However, in practice, the company owner faces obstacles in understanding and implementing the legal remedies available, so he does not file a lawsuit in court. Violation of the confidentiality agreement that results in the leakage of trade secrets can be categorized as a breach. It can be subject to civil sanctions by Article 11 paragraph (2) of the UURD, which is linked to Article 1242 of the Civil Code. However, Article 11 of the</p>
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		<p>UURD does not regulate the method of calculating commercial losses arising from violations of trade secrets, resulting in a legal vacuum that hinders the accurate determination of compensation amounts.</p>
2	<p>Muhammad Fadhlán Ghifari Irawan, Confidentiality Agreement As A Form of Legal Protection Against The Owner of Trade Secrets, Postgraduate of Law, Universitas Andalas, 2024.</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. What is the form of legal protection for trade secret owners through confidentiality agreements? 2. What are the legal consequences of trade secret violations? <p>Discussion:</p> <p>A Confidentiality Agreement is a crucial legal instrument for protecting</p>

		<p>trade secrets in the business world. This agreement is not only intended to maintain the confidentiality of information from external parties, but also to anticipate potential violations committed by internal parties, such as company employees. With this agreement, the owner of the trade secret has a strong legal basis to sue the party that violates it. Violations of trade secrets, whether committed by internal or external parties, can result in legal consequences, including civil and criminal sanctions. Employees who leak trade secrets can be</p>
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		<p>subject to termination of employment (PHK) as an internal company sanction.</p> <p>In addition, based on applicable legal provisions, violators can also be subject to civil lawsuits for losses incurred and criminal threats if they meet the elements of a criminal act in violating trade secrets.</p>
3	<p>Michael Jeffrey, Consequences of Breach of Contract of One of the Parties In A Non-Disclosure Agreement (Agreement Which is Difficult to Prove the True), <i>Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat</i>, 20(3), 408-418, Tahun 2021.</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. What are the rights, obligations, and legal protection of trade secrets in a Non-Disclosure Agreement (NDA)? 2. What form of breach of contract occurred in the case of PT? Basuki

		<p>Pratama Engineering with PT. Hitachi Construction Machinery Indonesia?</p> <p>3. How is the analysis of the judge's considerations and decisions in the cassation decision Number: 3305 K/Pdt/2016, which is difficult to prove the truth?</p> <p>Discussion: The rights and obligations in a Non-Disclosure Agreement (NDA) can be expanded according to the agreement of the parties to provide stronger legal protection for trade secrets.</p>
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		<p>An NDA serves as a legal tool to protect confidential information from misuse by the recipient. The owner of the trade secret has the right to demand legal protection in the event of a violation.</p> <p>At the same time, the recipient is obligated to maintain the confidentiality of the information as stipulated in the agreement.</p> <p>A common form of breach of contract in an NDA is the unauthorized disclosure or misuse of confidential information without the owner's consent. In the case of PT. Basuki Pratama Engineering with PT. Hitachi Construction</p>
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		<p>Machinery Indonesia experienced a breach of contract due to the unauthorized use of confidential information. Settlement of this violation can be done through a civil lawsuit in court. In the cassation decision No. 3305 K/Pdt/2016, the judge decided to hold the defendants responsible for both material and immaterial losses. This decision is based on evidence and statements from the parties to ensure justice for the owner of the trade secret. However, in practice, proving violations of NDA often faces obstacles,</p>
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		especially in demonstrating the existence of violations and their economic impacts.
4	Muhammad Fikry Haikal, Implementation of Confidential Protection Trade In Law Number 30 of 2000 Concerning Trade Secrets Case Study At PT. Happy Idkho Independent, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta Year 2022.	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. How is the practice of implementing Trade Secret protection carried out by PT? BIM? 2. How is the compliance with the implementation of Trade Secret protection carried out by PT? BIM with Law Number 30 of 2000 concerning Trade Secrets? <p>Discussion:</p> <p>There are several strategies to safeguard trade secrets in their use, and each has a</p>

		<p>distinct purpose. PT takes similar measures. Bahagia Idkho Mandiri to preserve its trade secrets. The measures taken by PT. Bahagia Idkho Mandiri to safeguard trade secret information, particularly in the areas of production and processing methods, including limiting the number of individuals and divisions permitted to enter the lab and the production of goods, putting a no-entry sign on the door of the production room for those who are not involved, and requiring employees to sign a confidentiality agreement</p>
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		regarding trade secrets that must not be shared.
5	Anita Resky Cahyani, Application of The Principle of Confidentiality of The Contents of The Act Credit Agreement (Case Study At The Notary Office of Dr. H. Abdul Muis, S.H., M.H.), Universitas Muslim Indonesia Makassar, Tahun 2023.	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. Does the Notary apply the Principle of Confidentiality of the Contents of the Credit Agreement Deed? 2. When can the Principle of Confidentiality of the Contents of the Credit Agreement Deed be Waived? <p>Discussion:</p> <p>In compliance with the notarial oath found in Article 4 paragraph 2 of the UUJN and the notarial obligations regulated in Article 16 paragraph (1) letter f of the UUJN, which stipulates that</p>

		<p>notaries must keep confidential all information about the deed they have made and all information obtained to make the deed by the oath/promise of office, unless the law specifies otherwise, notaries must apply the principle of confidentiality of the contents of the credit agreement deed. Suppose the notary is required to provide a photocopy of the minutes to support the legal procedure for the public or state interest. In that case, the concept of secrecy regarding the contents of the credit agreement deed may be suspended. Article 66,</p>
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		<p>paragraph (1) of Law Number 02 of 2014, concerning amendments to Law Number 30 of 2004 regarding the Position of Notary, stipulates that, for the sake of the Judicial Process, investigators, public prosecutors, or judges must obtain the approval of the Notary Honorary Council.</p>
6	<p>Asry Rismawaty, Non-Disclosure Agreement as Protection of Rights Intellectual Property In The Agreement of Cooperation, Master of Law Study Program Bandung Islamic University Postgraduate.</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1) Why does confidential information need to be included in a cooperation agreement clause? 2) How urgent is a confidentiality agreement (Non-

		<p>Disclosure Agreement) in providing legal protection to the parties in a cooperation agreement?</p> <p>Discussion: The inclusion of confidential information in the cooperation agreement clause is essential to provide legal protection for the company's Intellectual Property Rights and strategic information. With a confidentiality agreement (Non-Disclosure Agreement/NDA), the parties can regulate their respective rights and obligations regarding the maintenance of</p>
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		<p>confidentiality for sensitive information. A confidentiality agreement (NDA) is crucial in providing legal protection for the parties involved in a cooperation agreement. An NDA serves to prevent the misuse of confidential information by interested parties, thereby minimizing the risk of information leakage that can harm one or both parties.</p>
7	<p>Rena Puspita Putri, Confidentiality clause in a franchise agreement, Universitas Airlangga, 2014.</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1) Why is it essential to include a confidentiality clause in a franchise agreement? 2) What are the franchisee's obligations

		<p>in maintaining the confidentiality of business information and knowledge transfer after the franchise agreement ends?</p> <p>Discussion:</p> <p>Confidentiality clauses in franchise agreements are crucial for protecting the franchisor's business information and intellectual property. The inclusion of this clause aims to prevent the dissemination or misuse of confidential information, such as business strategies, product formulas, and operational methods that can harm the franchisor. The franchisee's obligation to</p>
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		<p>maintain the confidentiality of information extends not only during the term of the franchise agreement but also after the agreement has ended. This is to ensure that business information remains protected in the long term, in accordance with the agreement. The term of this obligation can vary, ranging from several years to perpetual, depending on the terms of the contract.</p>
8	<p>Muhammad Akmal Ilyasa, Measures to Protect Trade Secrets of Business Information In The Investment Cooperation Agreement Between Bang Panji Avocado Shop And</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. What is the form of trade secret protection for business information in the investment cooperation agreement

	<p>Investors, Universitas Lampung, 2022.</p>	<p>between Toko Avocado Bang Panji and investors?</p> <p>2. What are the obstacles faced in protecting trade secrets in investment cooperation agreements?</p> <p>3. What legal solutions can be applied to overcome the problem of protecting trade secrets in investment cooperation agreements?</p> <p>Discussion:</p> <p>The protection of business information as a trade secret in investment cooperation agreements is crucial for maintaining a competitive</p>
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		<p>advantage and ensuring business sustainability. In the context of investment cooperation, the inclusion of a trade secret protection clause in the agreement is an effective legal instrument to prevent the misuse of business information by investors or other parties involved in the agreement. Several obstacles exist to trade secret protection, including a lack of understanding among parties regarding the legal aspects of business information protection, weaknesses in the implementation of agreements, and difficulties in providing evidence in the</p>
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		<p>event of a violation. This can hinder the effectiveness of legal protection provided to business owners. Legal solutions that can be applied include the inclusion of a Non-Disclosure Agreement (NDA) clause in the investment cooperation agreement, the application of strict sanctions in the event of a trade secret violation, and increasing legal awareness for business actors and investors regarding the importance of protecting business information.</p>
9	<p>Napitupulu, Stefanus Sunggul H, Juridical Review of Non-Competition Clauses with Case Study Decision</p>	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. What is the legal force of a non-competition

	<p>Number 31/Pdt.G/2022/PNTng (2023) Juridical Review of Non-Competition Clauses with a Case Study of Decision Number 31/Pdt.G/2022/PNTng, Bachelor's thesis, Universitas Kristen Indonesia, 2023.</p>	<p>clause contained in a confidentiality agreement?</p> <p>2. Is it a violation of a confidentiality agreement, especially a non-competition clause, included in a breach of contract or an unlawful act?</p> <p>3. How is the legal certainty related to confidentiality agreements in the business world in Indonesia?</p> <p>Discussion: Non-competition clauses in confidentiality agreements still face legal uncertainty in Indonesia. This is due to the</p>
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		<p>absence of regulations that specifically regulate the formation and enforceability of such clauses in a business agreement. Violation of a non-competition clause in a confidentiality agreement gives rise to two possible legal consequences, namely, default or unlawful acts. In practice, this depends on how the agreement is drafted and how the judge interprets it in the event of a dispute. There is a need for legal certainty regarding non-competition clauses in confidentiality agreements to provide clear protection for the parties involved. More specific regulations</p>
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		will help create justice and avoid differences in interpretation that can harm one of the parties to the agreement.
10	Ramadana Yulriski, Confidentiality of Technical Data In International Trade Agreements (Case Example: Contract between the Indonesian Ministry of Defense and MTU Germany), Universitas Airlangga, 2009.	<p>Problem Formulation:</p> <ol style="list-style-type: none"> 1. What is the legal basis for confidentiality clauses in international trade contracts? 2. What are the limitations of the applicability of confidentiality clauses in the agreement between the Department of Defense and Motoren und Turbinen Union Friedrichshafen GmbH? 3. How do national laws and the EU Code of Conduct affect the

		<p>application of confidentiality clauses in warship engine purchase contracts?</p> <p>4. Can confidentiality clauses be implemented absolutely in international trade contracts involving foreign legal entities?</p> <p>Discussion:</p> <p>A confidentiality clause is a crucial legal instrument in international trade contracts, serving to maintain the confidentiality of technical data related to the subject matter of the agreement.</p> <p>This clause is based on the agreement of the parties and serves to protect vital</p>
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		<p>information from external parties. The validity of the confidentiality clause in the sale and purchase contract for warship engines between the Department of Defense and Motoren und Turbinen Union Friedrichshafen GmbH is subject to legal limitations that depend on the national regulations of each party. In this case, the national law where the foreign legal entity is located also affects the effectiveness of the clause. The EU Code of Conduct, as a national legal instrument of the European Union, limits the implementation of the confidentiality clause in</p>
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		<p>the trade of defense equipment. This shows that the confidentiality clause cannot be enforced absolutely if it conflicts with national regulations or arms export regulations in the country of origin of the party bound by the agreement.</p>
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F. Literature Review

A. Contracts

1. Definition of Contract

In terminology, a contract is understood as an event where two or more people promise each other to do or not do a particular act, usually done in writing. According to Black's Law Dictionary, a contract is defined as an agreement between two or more parties that creates a legally binding obligation to do or not do something specific.¹¹ So it can be said that an agreement and a contract have more or less the same meaning.

¹¹ Black's Law Dictionary, 11th ed., s.v. "Contract."

Put, it can be understood that all contracts are agreements, but not all agreements are contracts. Other legal experts also have opinions regarding contracts, including:

- a. Wirjono Prodjodikoro, according to him, a contract is "A legal relationship regarding property between two parties in which one party promises to do something or not to do something, while the other party has the right to sue for the contract."¹²
- b. Salim H.S, says that contract law is: "The entirety of the legal rules that regulate legal relations between two or more parties based on an agreement to give rise to legal consequences."¹³
- c. Darus Badruzaman, describes a contract as "A legal act that creates an obligation, namely a legal relationship that occurs between two or more people, located in the field of wealth where one party has the right to performance and the other party is obliged to fulfill the performance."¹⁴
- d. Herlien Budiono, explains a contract as "A legal act that gives rise, changes, eliminates rights, or creates a legal relationship, and in this way, the contract or agreement has legal consequences which are the

¹² Wirjono Prodjodikoro, *Asas-Asas Hukum Perjanjian*, (Jakarta: Sumur, 1976), pg. 5.

¹³ Salim H.S., *Perkembangan Hukum Kontrak di Luar KUH Perdata*, (Jakarta: Rajawali Press, 1990), pg. 12.

¹⁴ Darus Badruzaman, *KUH Perdata Buku III Hukum Perikatan dengan Penjelasan*, (Bandung: Alumni, 1996), pg. 8.

objectives of the parties. If a legal act is a contract or agreement, the people who carry out the legal action are called parties."¹⁵

2. Elements of a Contract

To realize a contract, it has been legally grouped into three essential elements, namely;

a. Essential Elements

This element is the primary requirement that must be present in a contract, as the absence of agreement on this essential element renders the contract invalid. This element is intended as an object that becomes the achievement of the parties, so that the rights and obligations of the parties arise.¹⁶

b. Naturalia Element

This is an element that is generally inherent in the law. Still, in practice, it can be set aside by the parties if they have expressly waived its validity, typically found in the guarantee agreement or contract guarantee. This is regulated in Articles 1831 and 1833 of the Civil Code.

c. Accidentalial Element

¹⁵ Herlien Budiono, *Asas Keseimbangan bagi Hukum Perjanjian Indonesia*, (Bandung: Citra Aditya Bakti, 2006), pg. 25.

¹⁶ Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 1987), pg. 10.

This element essentially adopts the principle of freedom of contract, meaning that it exists or binds the parties if they agree to it, as long as the contract meets the requirements for contract validity, as outlined in Article 1320 of the Civil Code.¹⁷

d. Subject and Object of the Contract

1) Subject in Contracting

In the Big Indonesian Dictionary (KBBI), the subject is defined as the actor or someone who carries out an act. According to R. Soeroso, legal subjects are:

- a) something that, according to the law, has the proper/authority to carry out legal acts or who has the right and is capable of acting in law.
- b) Something that supports rights, which, according to the law, has the authority/power to act as a supporter of rights.
- c) Everything that, according to the law, has rights and obligations.¹⁸

Legal science recognizes 2 (two) parties that act as legal subjects, namely:

¹⁷ R. Subekti, Pokok-Pokok Hukum Perdata, (Jakarta: Intermasa, 1995), pg. 35

¹⁸ Soeroso, Pengantar Ilmu Hukum, pg. 47.

- 1) Humans are natural legal subjects, namely, natural legal subjects and not the result of human creation, but have a nature.
- 2) Legal entities as rechtspersoon, namely legal subjects that produce legal creations, such as Limited Liability Companies (PT), Foundations, Cooperatives.

In contract activities, the parties in question are those who are responsible for fulfilling the obligations agreed upon in the contract and, therefore, become legally bound. These subjects can be individuals, together, or legal entities¹⁹.

3. Object in Contract

According to KBBI, the word object³⁶ is defined as a thing, something, or object. In contract activities, the object of the contract itself is referred to as an achievement. Achievement, as defined in Article 1234 of the Civil Code, refers to every obligation to give something, to do something, or not to do something. Under the requirements for the validity of a contract, Article 1320 of the Civil Code.²⁰ The object in a contract is an absolute requirement that must be fulfilled, which, if not fulfilled, will result in consequences of being void by law; therefore, the object of the contract must be firmly and

¹⁹ ibid

²⁰ ibid

agreed upon because at the same time, this object will also provide legal rights to the parties who do it.

1) Legal Basis in Contracts

The Legal Basis or primary source of the regulatory system in contract activities initially adopted a closed legal system, influenced by the teachings of legism, which viewed that there was no law outside the law. However, along with the development of contract law, then in the Civil Code Book III it adopts an open system so that most of the provisions are only additional or regulating or completing, such nature has the consequence that the parties who enter into a contract agreement or make a contract have the freedom to determine the contents of the contract as long as it does not conflict with applicable laws and regulations so that the provisions that the parties have determined are binding and become a law for the parties. As Article 1338 paragraph (1) of the Civil Code states, "all agreements made legally apply as laws for those who make them".²¹

4. Types of Contracts

²¹ Indonesian Civil Code Book III.

Although it is said that all contracts are agreements, it is not impossible for contracts to also be classified into several types, based on their source, name, form, aspects of obligations, and aspects of prohibitions. Types of contracts include:

a) Named and unnamed contracts

A named contract (benoemd/nominaat) is an agreement that has been regulated and given a name by the legislator, because it is most widely used in everyday life. The regulations are in Book III of the Civil Code, Chapters V to XVIII. While the unnamed contract (Innominaat) does not have a specific name, the number is unlimited, and the name is adjusted to the needs of the parties who make it, such as cooperation agreements, marketing agreements, management agreements, and others, this contract generally grows and develops in society in practice. In terms of form, both are very similar to those mentioned in the types of agreements.²²

b) Commercial and consumer contracts

Commercial and consumer contracts. Commercial contracts are agreements in which the parties tend to have equal positions in negotiating their rights and obligations. As Ridwan Khairandy said, "The commercial contract dimension emphasizes more on the aspect

²² ibid

of respect for partnerships and business continuity. On the other hand, in consumer contracts, the principle of balance is difficult to implement. In consumer contracts, the bargaining position of the parties tends to be unbalanced, with the creditor holding a stronger bargaining position than the debtor. Creditors often use this unbalanced bargaining position to determine clauses that benefit themselves. Public and Private Contracts A public contract is partly or wholly controlled by public law because one party acts as the ruler (government), for example, a service bond agreement and a government procurement agreement. On the other hand, private contracts tend to be unbound and already have public provisions, for example, a lease contract. Domestic and International Contracts. What distinguishes Domestic and International Business Contracts is the presence or absence of international elements. International elements can be the parties, the substance regulated, and others. For example, if a business contract binds parties who are foreign citizens or legal entities, then this is already the case.

c) Termination of Contract

It is essential to understand that the termination of an agreement/contract differs from the termination of an obligation. A new agreement/contract will end if all obligations arising from the

agreement have been completely canceled. Several things can end an agreement/contract:

1. The parties in the contents of the agreement/contract have determined it.
2. Following the validity period of an agreement, such as in Article 1066 of the Civil Code concerning inheritance, which is only binding for five years.²³
5. As a result of an event carried out by the parties or the law, such as in Article 1603 of the Civil Code which determines that an employment agreement/contract ends when someone dies, Article 1646 of the Civil Code determines several terminations of an agreement/contract such as the destruction of goods or the completion of the main act, death or being declared bankrupt.
6. Statement of termination of the agreement by both parties or one of them, as stipulated in Article 1603 paragraph (1) of the Civil Code
7. The existence of a judge's decision
8. If the objective has been achieved.

B. Non-Disclosure Agreement.

a. Definition: Non-Disclosure Agreement

²³ *ibid*

Definition and Purpose: A Non-Disclosure Agreement (NDA) is a legally binding contract that establishes a confidential relationship between parties. The party or parties signing the agreement agree that any sensitive information they may obtain will not be disclosed to any others. NDAs are crucial in protecting trade secrets, proprietary information, and any confidential business practices. An NDA is a legally binding contract that preserves confidentiality between the parties to the contract. By signing the NDA, the parties agree and acknowledge that they will protect confidential information disclosed by any party to the other and undertake not to disclose, publish, distribute, divulge, release, copy, modify, or use such information without the written consent of the disclosing party. There are various situations where an NDA is applicable, one of which is to preserve IPR. NDAs prevent candidates, employees, and potential business partners from revealing confidential information about the company²⁴.

b. Types of NDA

NDAs can generally be categorized into the following types:

- 1) Unilateral NDA: In this type of agreement, one party agrees to keep the information provided by another party confidential. It is typically used when one party shares sensitive information with

²⁴ Irish, V. (2001). How to read an nda. *Engineering Management Journal*, 11(3), 111-114.

another for evaluation purposes, such as during a job interview or a potential business partnership²⁵.

- 2) Bilateral (or Mutual) NDA: This agreement is used when both parties share confidential information. It is commonly used in joint ventures, mergers, and partnerships where both parties need to protect their interests.²⁶
- 3) Multilateral NDA: In this type of agreement involving more than two parties, a multilateral NDA can be used. This agreement ensures that all parties involved protect the shared information from disclosure to external entities.²⁷

c. Purpose of Non-Disclosure Agreement.

The purpose of a Non-Disclosure Agreement (NDA) in Indonesia (and globally) is primarily to protect confidential information shared between parties, ensuring that the information is not disclosed, misused, or exploited. NDAs are vital in a range of business activities where sensitive data or proprietary knowledge is exchanged. Below are the primary purposes of NDAs in Indonesia:

- 1) Confidential Business Information

²⁵ Widerski, P. (2017). Non-Disclosure Agreement in the Process of Protection of Intangible Property. *Zeszyty Naukowe Wyższej Szkoły Finansów i Prawa w Bielsku-Białej*, (3), 129-150.

²⁶ Durham, M., & Odia, S. (2019). Non-Disclosure Agreements in the World of# MeToo. *NEV. LAW.*, 27, 16.

²⁷ Sharma, T., & Srivastav, R. (2020). Non-Disclosure Agreement: A Curve in a Glossy Path. *DME Journal of Management*, 1(01), 126-145.

Refers to a wide range of sensitive data that a business considers valuable and needs to protect to maintain its competitive edge and market position. Non-Disclosure Agreements (NDAs) play a crucial role in safeguarding this information by establishing clear legal obligations for parties involved to maintain their confidentiality and prevent unauthorized use or disclosure. Confidential business information can take many forms, and it is not limited to just trade secrets. It encompasses various categories of data that, if leaked or misused, could harm the business's operations, finances, reputation, or competitive advantage.²⁸

2) Preventing Unauthorized Use or Disclosure

Preventing Unauthorized Use or Disclosure of proprietary information is one of the primary objectives of Non-Disclosure Agreements (NDAs), especially when businesses engage in partnerships, joint ventures, or hire employees. NDAs establish a legal framework that protects sensitive business information from being misused, disclosed, or shared without consent, ensuring that confidential data remains in the hands of the trusted parties involved.²⁹ Moreover, businesses enter into relationships that

²⁸ Baily, S. (2017). The role of non-disclosure agreements in protecting business information. *Journal of Business Law and Ethics*, 15(2), 42-54. <https://doi.org/10.1177/1079732017716123>

²⁹ Cunningham, P. (2018). NDAs and intellectual property: A global perspective. *International Business Review*, 21(3), 23-29.

involve sharing proprietary information, such as collaborating on a project, negotiating a merger, or hiring new staff—they need assurances that their trade secrets, strategies, and business plans won't be exposed to competitors or misused. NDAs help secure this confidentiality and set clear boundaries regarding how information can be accessed, used, and protected.

3) Legal Protection

In Indonesia, trade secrets are considered a valuable form of intellectual property and are protected under both Indonesian law and through specific legal instruments such as Non-Disclosure Agreements (NDAs). While the Indonesian Intellectual Property Law, especially Law No. 30 of 2000, provides a foundational legal framework for the protection of trade secrets, NDAs play an essential role in formalizing how sensitive business information is treated and establishing the specific obligations of parties involved. Together, these legal mechanisms work in tandem to enhance the protection of trade secrets, particularly in cases of misuse or theft.³⁰

4) Legal Basis Non-Disclosure.

In order for a Non-Disclosure Agreement (NDA) to be valid and enforceable under Indonesian civil law, it must meet

³⁰ Indonesian Ministry of Law and Human Rights. (2016). *Law No. 30 of 2000 on Intellectual Property*. Republic of Indonesia.

several essential criteria, as outlined in Article 1320 of the Indonesian Civil Code. These criteria ensure that the agreement reflects the fundamental principles of contract law and is legally binding.³¹

The first key component for an NDA to be legally valid is the mutual consent of the parties involved. In legal terms, this is referred to as "offer and acceptance," where one party makes a clear offer, and the other party accepts it unequivocally. This mutual agreement is a cornerstone in the formation of any contract, including an NDA. It is vital that both parties fully understand and agree to the terms, as any ambiguity or lack of consent could render the agreement unenforceable.³² Furthermore, the Civil Code of Indonesia (Kitab Undang-Undang Hukum Perdata) governs contractual relations and provides the general principles under which NDAs are executed. In particular, Article 1338 of the Civil Code upholds the principle of freedom of contract, permitting parties to negotiate the terms and conditions of an NDA freely, provided such terms do not contravene public policy, law, or good morals. Consequently, NDAs are legally enforceable agreements, and any breach of the confidentiality obligations contained therein

³¹ *ibid*

³² *ibid*

constitutes a violation of the contract. In the event of a breach, the aggrieved party is entitled to seek legal remedies for the breach of contract, including but not limited to damages, injunctive relief, or specific performance.

Another critical aspect of an NDA is the concept of consideration, or "prestasi" in Indonesian law. This refers to the value or obligation that each party agrees to exchange in the context of the agreement. While Indonesian law does not require consideration to be as strictly defined as in standard law systems, it is still necessary that there is a mutual exchange of obligations. For an NDA, this often means that one party agrees to maintain confidentiality in exchange for the other party sharing sensitive information. Even though the exchange may not always involve a direct monetary transaction, the agreement must involve some form of mutual benefit or responsibility.³³ Moreover, Law No. 13 of 2016 on Intellectual Property establishes the legal framework for protecting trade secrets as a form of intellectual property. Articles 85 to 92 of this law define the scope of trade secrets, detailing the conditions under which such information is protected and establishing the necessity for restricting access to authorized

³³ *ibid*

individuals or entities. NDAs play a crucial role in formalizing the obligation to maintain the confidentiality of trade secrets, thereby ensuring that both parties involved in a business relationship or transaction are legally bound to refrain from disclosing such confidential information. By executing an NDA, the parties affirm their agreement to uphold the confidentiality of proprietary information, in alignment with the provisions of this law³⁴.

Additionally, Trade Secret Law No. 30 of 2000 further governs the protection of trade secrets within Indonesia. This legislation outlines the criteria for classifying information as a trade secret and provides recourse for the misappropriation of such information. Specifically, this law stipulates that unauthorized disclosure or use of a trade secret is subject to both civil and criminal liability. NDAs function as an enforcement mechanism, establishing legally binding obligations for the parties to refrain from disclosing or using trade secrets without prior consent. Such agreements ensure that all parties involved are aware of their legal obligations and the consequences of violating the confidentiality provisions outlined in the Trade Secret Law.

³⁴ Law No.13 of 2016

Collectively, these legal provisions establish a comprehensive statutory framework that ensures the enforceability of NDAs and the protection of trade secrets in Indonesia, providing both civil and criminal remedies for the unauthorized disclosure or use of confidential business information. By executing NDAs, businesses establish a formal and legally binding commitment to preserve the confidentiality of their intellectual property, thereby mitigating the risks associated with the misappropriation of trade secrets.

Equally important is the intention of the parties to create legal relations. The parties must demonstrate a clear intention for the NDA to be legally binding. This intention is typically expressed through the formal language used in the contract and the circumstances under which the agreement is created. For instance, if the parties sign an NDA in a professional context, it is generally presumed that they intend for the agreement to have legal consequences. This intention is essential, as without it, the NDA could be considered a mere informal arrangement with no enforceable effect. The purpose of the NDA must also be lawful and not contrary to public order or morality. According to Indonesian law, any contract with an illegal or immoral purpose is void. Therefore, an NDA that seeks to conceal illegal activities, such as

fraud or corruption, would be considered invalid and unenforceable. This requirement ensures that NDAs cannot be used as a means to conceal actions that violate the law or ethical standards.

C. Law Definition

Law, by Definition, is a system of regulations in which there are norms and sanctions that aim to control human behavior, maintain order and justice, and prevent chaos. Some also say that the definition of law is a regulation or provision made, either written or unwritten, that regulates community life and there are sanctions/punishments for those who violate it. The existence of law aims to protect every individual from abuse of power and to uphold justice. With the existence of law in a country, everyone in that country has the right to justice and defense before the law.³⁵

a. The applicable law.

We can recognize law from its characteristics, namely;

- 1) There are orders/prohibitions, namely, something that may and may not be done by someone in society.

³⁵ Lubis, A. E. N., & Fahmi, F. D. (2021). Pengenalan dan Definisi Hukum Secara Umum (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, 2(6), 768-789.

- 2) Its nature is coercive, meaning that every individual is obliged to obey a law that applies without exception.
- 3) There are sanctions, namely, punishments given to parties who violate the law by the applicable provisions.³⁶

b. Definition of Law According to Experts

To better understand the definition of law, we can refer to the opinions of the following experts:

5) Prof. Dr. Mochtar Kusumaatmadja

According to Prof. Dr. Mochtar Kusumaatmadja, the definition of law encompasses all the rules and principles that regulate social interaction in society, aiming to maintain order. This is implemented through various institutions and processes, thereby realizing the validity of the rules as a reality in society.³⁷

6) J. C. T. Simorangki

According to J. C. T. Simorangkir, the definition of law is all regulations that are mandatory and determine all human behavior in society, which are made by an authorized institution.

7) S. M. Ami

³⁶ Suhayati, E. (2020). Definisi Hukum, Hukum Dan Masyarakat Serta Sistematika Hukum Perdata.

³⁷ Juanda, E. (2017). Hukum Dan Kekuasaan. *Jurnal Ilmiah Galuh Justisi*, 5(2), 177-191.

According to S. M. Amin, the definition of law is a collection of regulations consisting of norms and sanctions, to create order in human interaction within a society, thereby maintaining and preserving order and security.³⁸

8) Plato

According to Plato, the definition of law is a set of well-arranged and orderly regulations that are binding, both for judges and society.

9) E. M. Meyers

According to E. M. Meyers, the definition of law is rules that contain moral considerations aimed at regulating human behavior in a society of parties who are subject to the law according to applicable provisions.
legal definition

10) Prof. Dr. Van Kan

According to Prof. Dr. Van Kan, the definition of law encompasses the entirety of regulations that govern life, which are mandatory, to protect human interests within a country's society.³⁹

c. Elements of Law

Sanctions are given to lawbreakers. Every law that exists in the world has several elements in it. Some of the aspects of law are as follows:

³⁸ Soekanto, S. (2004). *Pengantar Sosial Hukum* [Introduction to Social Law]. Rajawali Pers.
³⁹ Kusumaatmadja, M. (1986). *Pengantar Ilmu Hukum* [Introduction to Legal Science]. Binacipta.

1. Regulating Community Behavior

As previously mentioned, the primary purpose of law is to regulate a person's behavior in society. This means that every behavior in human interaction in society is regulated by law.

2. Special Institutions make laws

Laws cannot be made by all parties, but through an official institution or body that has the authority to do so. For example, the Criminal Code (KUHP) was enacted by the State, and in this case, it was implemented by the Legislative Body.

d. Mandatory Regulations

Law is a mandatory regulation. So, every individual in a society must obey the applicable law and will be subject to sanctions if they commit a violation. For example, traffic regulations require every driver to have a Driving License (SIM) before driving on the highway. Drivers who do not have a Driving License will be subject to sanctions from the authorities.⁴⁰

e. Types of Law

Generally, there are eight types of law divisions in Indonesia.

Referring to the definition of law, the following are some types:

⁴⁰ Nurhardianto, F. (2015). Sistem Hukum dan Posisi Hukum Indonesia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 11(1), 33-44.

1. Law Based on Its Content

- a. Private law is the law that regulates relations between fellow human beings based on their interests. Some examples of private law are civil law and commercial law.
- b. Public law, namely the law that regulates the relationship between each individual in society with the state, and is closely related to the public interest. For example, constitutional law, criminal law, and state administrative law.⁴¹

2. Law Based on Its Source

- a) Statutory law, namely the law that has been stated in statutory regulations.
- b) Customary law, namely the law made based on customary regulations in a region.
- c) Treaty law, which is an agreement made between two or more countries in the civil field.
- d) Jurisprudence law, which is a law made based on previous judges' decisions to resolve the same case.
- e) Doctrinal law, which is a statement made based on the opinion of one or several legal experts and agreed upon by all parties.⁴²

⁴¹ Hadisuprpto, P. (2011). Ilmu Hukum dan Pendekatannya. *Jurnal Hukum Progresif*, 2(2), 35.

⁴² Soemardi, D. (1986). Sumber-sumber hukum positif.

3. Law Based on Its Form

- a. Written law, which is the law contained in various statute books.
- b. Unwritten law, which is the law that applies in a society and is obeyed, even though it is not written down.

4. Law Based on Its Place

- a) National law, which is the law that applies only within the territory of a country.
- b) International law, which is the law that regulates relations between countries in the international world.

5. Law Based on Its Time

- a) Ius constitutum, which is the positive law that applies now to a particular society in a particular area.
- b) Ius constituendum, which is the law that is expected to apply in the future.
- c) Basic law, namely, natural law that applies in all places, at all times, and for all nations in the world.

G. Operational Definition

a. Confidentiality Agreement

A confidentiality agreement, also known as a Non-Disclosure Agreement, is an agreement that binds the parties involved not to disclose confidential

information belonging to one party to the other⁴³. This is because disclosing confidential information to other parties can result in losses for the owner of the confidential information.

b. Public Policy

The broad definition of public policy is "the relationship between a government unit and its environment".⁴⁴ This concept encompasses a broad definition of public policy. This includes less certainty because what is meant by 'public policy' can cover a wide range of things.⁴⁵

c. Confidentiality of information

Information security encompasses a set of methodologies, practices, and processes designed and implemented to protect personal information or data from unauthorized access, use, disclosure, interference, or modification.⁴⁶ Information security aims to protect data at various stages, including storage, transfer, and use.⁴⁷

⁴³ López-Quiñones, A. G. (2012). A secret agreement: the historical memory debate and the limits of recognition

⁴⁴ Deeks, A. S. (2017). A (Qualin the event that ied) Defense of Secret Agreements. *Ariz. St. LJ*, 49, 713.

⁴⁵ Dunn, W. N. (2015). *Public policy analysis*. routledge.

⁴⁶ Maurer, U. M. (1993). Secret key agreement by public discussion from common information. *IEEE transactions on information theory*, 39(3), 733-742.

⁴⁷ Oren, N., Norman, T. J., & Preece, A. (2006). Arguing with confidential information. *FRONTIERS IN ARTIN THE EVENT THAT ICIAL INTELLIGENCE AND APPLICATIONS*, 141, 280.

H. Research Methods

1. Type of Research

This research employs a normative juridical method with a case-based approach, focusing on the analysis of laws and regulations relevant to the use and enforceability of non-disclosure agreements (NDAs) in cross-border commercial transactions. The study will examine primary legal materials such as legislation, international treaties, and court decisions, as well as secondary legal materials including legal doctrines and scholarly commentaries. The case approach will be employed to analyze the practical application of legal norms through a focused examination of the dispute between PT Tobacom Del Mandiri (PT TDM) and West Wist Mining (WWM). This case study serves to illustrate the complexities surrounding the involvement of foreign companies in domestic investments and the contractual relationships established through an NDA. This research explicitly investigates the application of international contract law and the legal framework governing the creation, validity, and enforceability of NDAs in various jurisdictions, with a focus on comparative elements between Indonesian and Australian legal terms. This method involves interpreting and synthesizing primary legal materials—such as statutes and regulations—alongside secondary sources, like academic writings, to

derive conclusions about the legal status and enforceability of NDAs⁴⁸. The research is guided by a comparative perspective, juxtaposing Indonesia's civil law system, rooted in the Indonesian Civil Code (KUHPerdata), with Australia's standard law system, influenced by the Corporations Act 2001 and ASX Listing Rules. This comparative lens is essential for understanding how NDAs function across diverse legal traditions and regulatory environments, particularly when public policy considerations are at play.⁴⁹

2. Research Approach

This research employs a normative juridical method with a case study approach, focusing on the application of the Indonesian Civil Code (KUHPerdata), particularly Articles 1320 and 1337, to assess the validity and enforceability of Non-Disclosure Agreements (NDAs) in cross-jurisdictional commercial transactions. The case study centers on the 2016 dispute between PT Tobacom Del Mandiri (PT TDM), an Indonesian mining company, and West Wist Mining (WWM), an Australian company listed on the Australian Stock Exchange (ASX). This case exemplifies the challenges of enforcing confidentiality agreements when parties operate under divergent legal systems, specifically Indonesia's civil law framework and Australia's common law system, including ASX Listing Rule 3.1 and the Corporations

⁴⁸ Soekanto, S. (2004). *Pengantar Sosial Hukum (Introduction to Social Law)*. Rajawali Pers, pg.9.

⁴⁹ Australian Securities Exchange (ASX). (n.d.). *Listing Rules*. Retrieved from <https://www.asx.com.au/regulation/listing-rules.htm>

Act 2001. By analyzing the PT TDM v. WWM dispute, the study evaluates how NDA enforceability is affected by conflicts with public policy, such as environmental regulations (Intan Jaya RTRW 2013-2033) and mandatory disclosure requirements, highlighting the interplay between contractual confidentiality and statutory obligations across jurisdictions.

3. Research Data Source

The data used in this research is secondary data, which includes legal materials as follows:

Primary Legal Material, which consists of:

- 1) The Indonesian Civil Code of the Republic of Indonesia, Articles 1320-1338, concerning Freedom of Contract, which is the legal basis for NDAs
- 2) Law Number 30 of 2000 concerning Trade Secrets ("Trade Secrets Law").
- 3) Law Number 4 of 2009 and Law Number 23 of 2010 concerning Mining Law
- 4) Rome Convention on Contractual Obligations 1980
- 5) Spatial and Regional Planning of Intan Jaya, Papua
- 6) Australian Privacy Act 1988
- 7) Australian Corporation Act

Secondary legal materials, which consist of:

- 1) Books, papers, and legal journals related to the problem studied.

- 2) Results of research and seminars on non-disclosure agreement across borders, applied and unhealthy business competition
- 3) Online data
- 4) Tertiary legal materials, in the form of the Big Indonesian Dictionary.

I. Structure Of Writing

The systematics of writing the results of this study are divided into 4 (four) chapters, each of which is related to the others. The systematic writing is as follows.

CHAPTER I, INTRODUCTION. In this chapter, the author provides the background, which includes a general description of the considerations that led to the author's interest in conducting research with the title "Cross-Jurisdictional Challenges in NDA Implementation: Insights from WWM v. TDM." The author then describes the formulation of the problem arising from the background, as well as the objectives and benefits of this research. The author describes the research method used and explains the writing system employed.

CHAPTER II, THEORETICAL FRAMEWORK. In this chapter, the author explains the definitions, theories, and concepts derived from legislation and literature regarding the validity of non-disclosure agreements across different jurisdictions.

CHAPTER III, RESULTS AND DISCUSSION.. This chapter presents the results of research that address and analyze the formulation of the problem regarding legal certainty in non-disclosure agreements across different jurisdictions, as well as the mechanism of NDAs when they are contrary to public policy, as outlined in the Indonesian Civil Code and Law No. 30 of 1999 regarding trade secrets.

CHAPTER IV, CONCLUSION AND RECOMMENDATION. In this chapter, the author conveys the conclusions and suggestions. The author presents their findings regarding the formulation of the problem posed and provides suggestions as recommendations based on the study's results.