

TRADE SECRETS IN THE PERSPECTIVE OF ISLAMIC LAW

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Abstract

In business, there must be some information that is confidential, has economic value and is kept confidential by the business owner. This confidential information is called a trade secret. The concept of trade secrets is more related to the legal protection of valuable business information, such as product formulas, product designs, recipes, production methods, or customer data. The method used in this study is the normative legal research method, namely library legal research based on legal materials. The results of this study indicate that Trade Secrets are information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret. A trade secret will receive protection if it meets the requirements, namely: 1) It is confidential, 2) It has economic value, 3) There are efforts to maintain confidentiality. According to the Islamic view, trade rights, copyright, trade secrets and non-material rights which have economic value are equivalent to material rights which are protected by sharia. Islam really respects and protects property which is a form of a person's ownership. Islam provides protection for individual rights regarding al-mal in the concept of al-masalih al-khamsah (five maslahah that must be safeguarded) which is included in the category of hifdz al-mal (protecting property). This is stated in the holy verses of the Qur'an and authentic hadiths which state that trade secrets are property rights that must be protected, so that anyone who leaks trade secrets to other people is violating the rules of Islam.

Keywords: Trade Secrets, Islamic Law

A. Introduction

Intellectual Property Rights have rapidly evolved, extending beyond national jurisdictions and growing significantly within an increasingly globalized industrial environment. Over time, the recognition and implementation of intellectual property rights have been adopted not only by developed nations but also by developing countries—including those with predominantly Muslim populations such as Indonesia, Malaysia, Saudi Arabia, and others

Product innovation is a form of intellectual activity in which individuals transform their concepts or ideas into intellectual property. This intellectual property plays a vital role for business actors who possess information, ideas, or concepts related to their current or future ventures, helping ensure the smooth operation of their businesses. Any business that holds confidential information with economic value and maintains its secrecy is referred to as a trade secret.¹

The terminology used for trade secrets varies across regions; for example, the WTO/TRIPs refers to it as *Undisclosed Information*, in the United Kingdom it is known as *Confidential Information*, and in the United States it is called a *Trade Secret*. Despite these differences in naming, the underlying concept remains essentially the same.² A trade secret is a form of intellectual property consisting of formulas, practices, processes, designs, instruments, patterns, or compilations of information that are not publicly known and have economic value due to their usefulness in business operations, while being kept confidential by their owner.³

Business actors recognize the need to protect trade secrets due to their close connection with industrial and commercial activities. Within this context, trade secret protection has emerged as part of the broader intellectual property (IP)

¹ Andry Setiawan, Dewi Sulistianingsih, dan Rindia Fanny Kusumaningtyas, “Eksistensi Pendaftaran Rahasia Dagang Dan Implementasi Perlindungannya (Studi Di Kanwil Kemenkumham Jawa Tengah),” *Law and Justice* 3, no. 2 (2019): 73–81, <https://doi.org/10.23917/laj.v3i2.7123>.

² Syarif Mahila, “Perlindungan Rahasia Dagang Dalam Hubungannya Dengan Perjanjian Kerja,” *Jurnal Ilmiah Universitas Batanghari Jambi* 10, no. 3 (2010).

³ Taufik Effendy, “Rahasia Dagang Sebagai Bagian Dari Hak Kekayaan Intelektual,” *Al-Adl : Jurnal Hukum* 6, no. 12 (1 Juli 2014), <https://doi.org/10.31602/al-adl.v6i12.205>.

framework. Legally, safeguarding trade secrets is essential as it supports fair business competition and preserves the economic value of proprietary knowledge.⁴

Trade secrets differ from other forms of intellectual property, although they share certain similarities. For instance, when a business develops an innovation, it can choose to patent the invention or keep the underlying idea confidential as a trade secret. If the business opts for secrecy, the information is protected under trade secret law as long as confidentiality is maintained. However, once the idea is patented, its confidential nature is lost. Patent holders receive legal protection for a fixed period, and once that period expires, the invention is no longer protected.⁵

Trade secrets have evolved alongside industrialization and cultures characterized by competition and individualism. In Western societies, trade secrets are generally viewed as *private rights*, as they stem from human intellectual efforts that involve significant mental, physical, and financial investment. In contrast, many Eastern cultures perceive trade secrets as *public rights*, viewing them as communal property. This cultural difference often leads to weaker protection for trade secrets in general.

Countries that follow the Anglo-Saxon legal system regard trade secrets as proprietary information, where any breach is classified as a specific tort known as misappropriation. This contrasts with the approach of continental European legal systems, which treat the violation of trade secrets as a general unlawful act or civil wrongdoing.⁶

The concept of trade secrets has existed since ancient times, although the terminology used may have varied. At its core, a trade secret involves keeping important information about a product or business process confidential, preventing it from being accessed by competitors or unauthorized parties. One of the earliest known examples of trade secret practices can be found in ancient China, where silk

⁴ Riandhani Septian Chandrika, “Perlindungan Hukum Perjanjian Lisensi Rahasia Dagang Di Indonesia,” *Jurnal Hukum Bisnis Bonum Commune* 2, no. 1 (1 Januari 2019): 11, <https://doi.org/10.30996/jhbbc.v2i1.2310>.

⁵ Syahriyah Semaun, “Perlindungan Hukum Terhadap Rahasia Dagang,” *Jurnal Hukum DIKTUM* 9, no. 1 (2011): 30–42.

⁶ Suyud Margono, *Hak Kekayaan Intelektual, Komentar Atas Undang-Undang Desain Industri dan Desain Tata Letak Sirkuit Terpadu* (Jakarta: CV Novindo Pustaka Mandiri, 2001).

production methods were tightly guarded. Silk artisans carefully protected their techniques and production processes, with very little information ever leaking to the outside world. During the Middle Ages in Europe, the development of craftsmanship and trade led to legal protections for trade secrets. In certain cases, artisans and craftsmen were granted exclusive rights to produce specific goods, and their trade secrets were safeguarded by law. In modern contexts, the concept of trade secrets is more closely tied to legal protection of valuable business information, such as product formulas, design blueprints, recipes, manufacturing processes, or customer data.

Trade secrets can be examined from the perspective of positive law, such as written legislation and other binding legal sources currently in force, which are enforced by government institutions or courts. They can also be analyzed from the standpoint of Islamic law by referring to its primary sources, including the Qur’an, Hadith, and the scholarly interpretations (ijtihad) of Islamic jurists.

Although Islamic law does not explicitly address trade secrets, it acknowledges them as a form of property ownership. As such, trade secrets are entitled to the same protection as other forms of personal property. Recognizing another person's right to something as their private property is, in essence, a recognition of intellectual property rights. Therefore, it is important to conduct an in-depth examination of trade secrets from the perspective of Islamic law.

B. Research Methodology

This study employs a legal literature research method. Legal literature research refers to a methodology used in legal studies by examining existing library materials or legal sources. The approach taken in this research is qualitative, which involves generating data that is then analyzed using descriptive methods. Additionally, content analysis techniques are applied to interpret the meanings contained within the data gathered through this doctrinal legal research.

C. Discussion

1. The Concept of Trade Secrets in Intellectual Property Rights

There are various terms used to refer to trade secrets, such as "confidential information" or "undisclosed information." From the perspective of property law (a subset of civil law), trade secrets are not easily classified as a form of intellectual property because they lack the tangible characteristics typically associated with property rights. Since all elements of trade secrets are kept confidential, it is difficult to determine the specific attributes that qualify for legal protection, making it challenging to categorize them as proprietary rights in the conventional sense.

While intangible property rights are inherently embedded in the protection of trade secrets, the exact nature of what is being kept secret is never publicly disclosed. In reality, the subject of a trade secret could often qualify for protection under patent or copyright law. However, once such protection is sought through patents or copyrights, the information becomes public, thus losing its confidential status. As a result, others may replicate the invention, or once the protection expires, the knowledge enters the public domain and can be freely used by anyone.

To avoid this risk, owners of economically valuable technologies or business information often prefer to protect their assets as trade secrets rather than applying for patents or copyrights. This strategy allows them to maintain exclusive control over the information for a longer period and to safeguard their products from imitation while continuing to benefit from them commercially

Information that is not known to the public is considered exclusive, meaning that only the holder of the information has access to and knowledge of the secret. This type of confidential information typically relates to technology or is connected to business activities.⁷ The philosophical basis for protecting confidential information lies in the fact that such information is obtained through significant effort, specialized expertise, and substantial investments of time and resources.

⁷ Tomi Suryo Utomo, *Hak Kekayaan intelektual (HKI) di Era Global: Sebuah Kajian Kontemporer* (Yogyakarta: Graha Ilmu, 2010), hlm. 451-452.

Therefore, legal protection is necessary to safeguard the efforts made in acquiring this economically valuable information.⁸

A trade secret will be granted legal protection if it meets the following requirements:⁹

a. Confidential in Nature

Information is considered confidential if it is known only to certain parties and is not generally accessible or known to the public.

b. Possesses Economic Value

Information is deemed to have economic value if its confidentiality can be utilized in commercial activities or if it contributes to increasing economic profit.

c. Efforts to Maintain Confidentiality

Information is regarded as protected if the owner or controlling parties have taken reasonable, appropriate, and fair measures to maintain its secrecy. These efforts may include the implementation of standard procedures set out in internal company policies, including the designation of specific individuals responsible for safeguarding the confidential information.

The duration of protection for a trade secret lasts as long as the information remains confidential. As long as the secrecy is preserved, the trade secret continues to receive legal protection. The scope of trade secret protection includes production methods, processing techniques, marketing strategies, or other forms of technological and/or business information that hold economic value and are not known to the general public. Examples include the Coca-Cola beverage formula, McDonald’s french fry processing methods, Apple’s product design secrets, and HiveFive’s rapid business formation systems.

The owner of a trade secret holds several rights, including the right to use the trade secret independently, to license it to third parties, and to prohibit others from using it without permission. The company that employs or is associated with

⁸ Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual* (Malang: Setara Press, 2017), hlm. 104.

⁹ Hidayah, hlm. 105.

the trade secret owner in conducting business activities inevitably has access to the confidential information. However, this access may sometimes be exploited by certain individuals within the organization for personal gain, misusing the confidential knowledge entrusted to them

A trade secret violation occurs when an individual intentionally discloses or uses the trade secret in breach of an agreement or fails to uphold written or unwritten obligations to maintain the confidentiality of the company’s proprietary information. Key elements in protecting sensitive company data include honesty, trustworthiness, and loyalty. These values are particularly relevant when assessing internal misconduct by members of the organization who misuse trade secrets.

D. Trade Secrets from the Perspective of Islamic Law

In mid-2005, the Indonesian Council of Ulama (Majelis Ulama Indonesia, or MUI) issued a fatwa affirming the protection of intellectual property rights. This fatwa was a response to growing societal demands for the legal safeguarding of intellectual creations. As mentioned earlier, the Qur’an and Hadith do not explicitly reference intellectual property; however, MUI based its position on the *ijtihad* (independent reasoning) of earlier Islamic scholars. One such reference is the resolution of the Islamic Fiqh Academy (Majma' al-Fiqh al-Islami) No. 43 (5/5) from the Fifth Conference in 1409 H/1988 CE, which affirms that trademarks, copyrights, and other intangible rights are treated as property rights protected under Islamic law. As a result, these intangible rights must not be violated.¹⁰

The fatwa states that, within Islamic law, intellectual property is considered a form of wealth that is entitled to legal protection and is therefore treated similarly to tangible property or assets. Islam recognizes trade secrets as a type of property ownership, and as such, they are protected just like any other form of personal wealth. Acknowledging someone’s ownership or rights over something is, in essence, a recognition of their intellectual property rights.¹¹

¹⁰ Ahmad M Ramli, *HAJI: Teori Dasar Perlindungan Rahasia Dagang* (Bandung: Mandar Maju, 2000), hlm. 86.

¹¹ Nugraha Pranadita, *Perlindungan Hak Kekayaan Intelektual Berdasarkan Prinsip Syariah dan Implementasinya Pada Negara Kesejahteraan* (Yogyakarta: Deepublish, 2018).

In Islam, trade secrets are regarded as a form of property (*al-mal*). Any businessperson who possesses a trade secret is considered to own a type of wealth. The term *mal* (plural: *amwal*) refers to something that brings benefit or satisfaction to people and is safeguarded by them, whether in the form of physical objects or intangible benefits. Some scholars also define *al-mal* as anything acquired by a person, whether visible or invisible, tangible or intangible.¹²

At its core, Islamic law respects intellectual property rights, recognizing them as the result of human creativity characterized by innovation and originality. Islam legally acknowledges that intellectual property should be protected just like physical and visible assets. Therefore, Islam demonstrates a tolerant and accommodating stance toward the protection of intellectual property.¹³

Islam provides clear guidance on the protection and preservation of property rights, as trade secrets are considered a form of wealth and personal ownership within the framework of *al-masalih al-khamsah* (the five essential protections), specifically falling under *hifdz al-mal* (protection of property).

In principle, Islam acknowledges and respects the seriousness of disclosing trade secrets as a criminal offense, thus ensuring legal certainty and social harmony. Although Islamic law does not explicitly define the crime of revealing trade secrets, such actions may be viewed as a form of theft (*sariqah*), since they involve the unauthorized taking of someone's property—particularly confidential information—from a place where it was meant to be securely kept.¹⁴

Property rights in Islam prohibit the taking over of another person's property intentionally or unintentionally without the owner's permission as stated in the Qur'an Surah An-Nisa verse 29:

¹² Mardani, *Fiqh ekonomi syariah: fiqh muamalah*, Ed. 1., cet. 1 (Rawamangun, Jakarta: Kencana, 2012), 59.

¹³ Budi Agus Riswandi dan Shabi Mahmashani, *Dinamika Hak Kekayaan Intelektual Dalam Masyarakat Kreatif* (Yogyakarta: Pusat Hak Kekayaan Intelektual Fakultas Hukum Universitas Islam Indonesia dan Total Media, 2009), hlm. 143.

¹⁴ Ahmad Azhar Basyir, *Ikhtisar Fikih Jinayat (Hukum Pidana Islam)* (Yogyakarta: UII Press, 2001), hlm. 35.

Meaning: *"O you who have sent! Do not consume one another's property in falsehood, except in a trade that is based on mutual consent between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you."*

As also stated in the Qur'an Surah Al-Syu'ara Verse 183: *"And do not deprive people of their rights and do not be rampant on earth causing corruption."*

The verse above explains that Allah SWT forbids Muslims from taking other people's property except through business based on the principle of mutual consent. Intellectual property is one form of human wealth. Owners of intellectual property will certainly suffer losses if their work is copied without permission, because in producing a work many things are sacrificed such as time, energy, thoughts, work and so on.

Islam views trade secrets as a form of knowledge, which is ultimately a blessing granted by Allah (SWT). Allah is the Creator of all things—everything in the heavens, such as the sun, the moon, and the planets, as well as everything on earth, belongs to Him. Knowledge, including the secrets within it, is considered a creation of Allah. Humans, including those who possess trade secrets, are merely discoverers and recorders of this knowledge. According to Islamic teachings, Allah is the true and absolute owner of the universe, while humans are simply His stewards. Only Allah has the authority to bestow rights upon individuals.¹⁵

Hal ini beriringan dengan kandungan ayat al-Qur'an, yaitu :

a. Taha Verse 6

Meaning: *"To Him belongs whatever is in the heavens and whatever is on the earth and whatever is between them and whatever is under the soil."*

b. Ali Imran Verse 189

Meaning: *"And to Allah belongs the kingdom of the heavens and the earth; and Allah is Almighty over everything."*

The person who becomes the owner of the trade secret entrusts the management of his company to employees or company bodies that have a certain

¹⁵ A A Islahi, *Konsep Ekonomi Ihre Taymiyyak, Alih Bahasa Anshari Tayyib* (Surabaya: Bira Ilmu Offset, 1997), hlm. 129.

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place or position that is directly related to the trade secret. The parties usually make a special agreement, either written or unwritten, which is addressed to the employee to guard and never leak his trade secret to any party without the permission of the owner of the trade secret. Legally and ethically, employees who are given this trust or mandate are required to guard the confidential information and may not leak it.

Allah SWT says in the Qur'an Surah Al-Isra' verse 17:

Meaning: *"And do not approach the property of an orphan, except in a way that is better (beneficial) until he reaches maturity, and fulfill your promise, for every promise will be questioned."*

Honesty in Islam is the main foundation for upholding the values of truth because honesty is identical to truth. Allah SWT says in the Qur'an Surah Al-Ahzab verse 70 as follows:

Meaning: *"O you who believe! Fear Allah and speak the truthful word."*

The messenger must have his words in accordance with his actions and be honest, because it is a great sin for someone who is unable to adjust his words to his actions, and regardless of what is on the tongue or what is done, Allah SWT says in QS. As-Saff Verses 2-3 as follows:

Meaning: *"O you who have sent! Why do you say something that you do not do?"* (QS. As-Saff: 2)

Meaning: *"(It is) very hateful in the sight of Allah that you say what you do not do."* (QS. As-Saff: 3)

Imam Al-Ghazali stated that spreading secrets or leaking secrets is a betrayal that is difficult to accept. As the hadith of the prophet reads:

Meaning: *"(Other people's) secrets are prohibited (in religion) because they hurt and play with the rights of (people) acquaintances and friends."*

The Prophet Muhammad SAW said... *If someone tells a story and then turns around, then it is Amanah* (HR. Abu Dawud and At-Tirmidhi)."

E. Conclusion

Based on the discussion above, the following conclusions can be drawn: A trade secret refers to information that is not publicly known in the field of technology and/or business, possesses economic value due to its usefulness in business activities, and is kept confidential by its owner. Legal protection is granted to a trade secret if it meets the following conditions: It is confidential in nature; It has economic value; and There are efforts to maintain its secrecy. From an Islamic perspective, trademarks, copyrights, trade secrets, and other non-material rights that have economic value are treated on par with tangible property rights and are protected under Islamic law (*syar'ah*). Islam places great importance on and safeguards property as a form of individual ownership. It upholds the protection of personal rights to wealth (*al-mal*) within the framework of *al-masalih al-khamsah* (the five essential protections), specifically under *hifdz al-mal* (protection of property). This principle is affirmed through verses of the Qur'an and authentic Hadiths, which emphasize that trade secrets are a form of ownership that must be preserved. Therefore, anyone who discloses such secrets to others violates the ethical and legal norms established in Islam.

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