Legal Force of Non-Disclosure Agreements in Protecting Corporate Confidential Information under Fixed-Term Employment Agreements: A Contract Law Perspective

Kospiyandi, Siti Nurhayati

Abstract

A Non-Disclosure Agreement (NDA) accompanying or integrated into a Fixed-Term Employment Agreement (*Perjanjian Kerja Waktu Tertentu*/PKWT) is key to safeguarding corporate competitive advantage. However, the time-limited nature of the PKWT creates uncertainty as to whether confidentiality obligations remain binding after employment ends. This study analyzes the legal force of NDAs in PKWT and the legal protection available to companies against their breach. It employs normative legal research with statute and conceptual approaches, analyzing the Civil Code, Law No. 30 of 2000 on Trade Secrets, and post-Job Creation Law labor regulations. The results show that: (1) NDAs in PKWT are valid and binding under Articles 1320 and 1338 of the Civil Code unless contrary to law, morality or public order, and constitute private deeds with evidentiary value; (2) confidentiality obligations may survive the end of the PKWT if expressly stipulated in a proportionate survival clause; and (3) a breach of an NDA entitles the company to claim damages for breach of contract or unlawful act, to seek the cessation of infringing acts, and to file a criminal complaint under the Trade Secrets Law. Precise, balanced NDA drafting is needed for legal certainty without curtailing the right to work.

***Keywords**: Non-Disclosure Agreement; PKWT; Trade Secret; Legal Force; Survival Clause*

Kospiyandi
Master of Law Program, Universitas Pembangunan Panca Budi, Medan, Indonesia
e-mail: kospiyandi04@gmail.com

Siti Nurhayati (Corresponding Author), Universitas Pembangunan Panca Budi, Medan, Indonesia
e-mail: sitinurhayati@dosen.pancabudi.ac.id
2nd International Conference on Islamic Community Studies (ICICS)
Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

Introduction

In the digital, knowledge-based economy, confidential business information, such as formulas, customer databases, pricing and marketing strategies, source code and production know-how, has become one of the most valuable assets a company owns and a principal source of its competitive advantage [1]. Unlike tangible assets, such information loses most of its value the moment it is disclosed, and its leakage can cause significant and often irreversible financial loss [2], [3].

Companies increasingly engage workers under Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu*/PKWT) for specific projects that frequently require access to sensitive data. To manage that risk, employers commonly require PKWT workers to sign a Non-Disclosure Agreement (NDA), either as a separate instrument or as a confidentiality clause within the employment agreement. Although NDAs are widely used, the protection they offer faces three juridical challenges. First, NDAs are usually drafted unilaterally by the employer on a take-it-or-leave-it basis, which raises questions under the principles of propriety and fairness [4]. Second, a PKWT is by definition limited in time [5], [6], which raises the question of whether confidentiality obligations survive the end of the contract. Third, although NDAs rest on the principle of freedom of contract under Article 1338 of the Civil Code [7] and are supported by Law No. 30 of 2000 on Trade Secrets [2], their limits within labor law remain insufficiently defined.

Previous studies have examined NDAs as instruments for protecting intellectual property in cooperation agreements [8], the legal force of NDAs in preventing the leakage of confidential corporate information [9], legal protection and trade secret clauses against leaks by former employees [10], NDAs for workers from the perspective of Indonesian contract law [11], and trade secret protection in employment agreements and after their termination [12], [13], [14]. This study differs in two respects. It focuses specifically on the PKWT, in which the employment relationship is short but access to sensitive information is often extensive; and it integrates the Trade Secrets Law with post-Job Creation Law labor regulation, namely Law No. 6 of 2023 [15], Government Regulation No. 35 of 2021 [6] and Constitutional Court Decision No. 168/PUU-XXI/2023 [16], to assess the enforceability of survival clauses after the contract term ends from both civil and criminal perspectives.

Accordingly, this paper addresses two research problems: (1) what is the legal force of an NDA signed by a PKWT worker under Article 1320 of the Civil Code and the Trade Secrets Law; and (2) what legal protection is available to a company for breaches of an NDA committed by a PKWT worker after the employment contract has ended? The objectives are to analyze the validity, evidentiary value and limits of NDAs in PKWT, and to map the civil and criminal remedies available to companies against former PKWT workers.

Literature Review

2.1 Theoretical Framework

This study is grounded in three layers of theory. At the level of grand theory, it draws on Hadjon's theory of legal protection, which distinguishes preventive protection, intended to prevent disputes, from repressive protection, which resolves disputes once they arise [17]. An NDA in a PKWT is essentially a preventive instrument: it determines, before any disclosure occurs, what information is protected and what conduct is prohibited, both during and after the employment relationship. Repressive protection is then realized through civil claims and criminal proceedings when the obligation is breached.

At the level of middle theory, the study uses the theory of legal certainty associated with Gustav Radbruch, who placed legal certainty alongside justice and utility as the basic values of law [18]. This theory is used to test whether NDA clauses satisfy the requirements for a valid agreement and are sufficiently clear to be enforced when a PKWT worker discloses confidential information. At the level of applied theory, the study relies on trade secret law and contract law,

in particular the principle of *pacta sunt servanda* embodied in Article 1338 paragraph (1) of the Civil Code, under which a lawfully made agreement binds the parties as law [7], [19].

2.2 Non-Disclosure Agreements and Fixed-Term Employment Agreements

An NDA is an agreement under which one or both parties undertake to keep certain information confidential and not to use it for purposes other than those agreed. Indonesian law does not regulate NDAs in a single statute; their validity derives from the general law of obligations in Book III of the Civil Code, particularly Articles 1320 and 1338, and from the Trade Secrets Law, which expressly recognizes a breach of a written or unwritten obligation to maintain confidentiality as an infringement of trade secret rights [7], [2]. An NDA may be unilateral, binding only the worker, or mutual, and may stand separately from or be embedded in the employment agreement [8].

A PKWT is an employment agreement between a worker and an employer to establish an employment relationship for a specified period or for the completion of certain work [5], [20]. Following the Job Creation Law, Government Regulation No. 35 of 2021 sets the maximum duration of a time-based PKWT at five years and entitles the worker to compensation money when the PKWT ends [6]; Constitutional Court Decision No. 168/PUU-XXI/2023 further affirmed that the duration of a PKWT may not exceed five years [16]. The temporary character of the PKWT is precisely what makes the post-contractual effect of an NDA a practical concern.

2.3 Trade Secret Protection

Under Article 1 point 1 of Law No. 30 of 2000, a trade secret is information in the field of technology and/or business that is not known to the public, has economic value because it is useful in business activities, and is kept confidential by its owner. Article 3 sets three cumulative conditions for protection: the information must be confidential, have economic value, and be kept confidential through appropriate measures [2]. Doctrinally, an NDA is one of the most important appropriate measures by which the owner demonstrates that it has actively kept the information secret [3], [21], [22], [23]. Without such measures, information disclosed by a worker may fail to qualify as a trade secret at all.

Research Methodology

This study is normative (doctrinal) legal research that examines legal principles, legal rules and legal systematics. Two approaches are used: the statute approach, which analyzes the Civil Code, Law No. 13 of 2003 on Manpower as amended by Law No. 6 of 2023, Government Regulation No. 35 of 2021 and Law No. 30 of 2000 on Trade Secrets; and the conceptual approach, which examines the doctrines of freedom of contract, the requirements for a valid agreement, trade secrets and confidentiality. The study relies on secondary data consisting of primary legal materials (legislation and court decisions) and secondary legal materials (books, journal articles and prior theses). The legal materials were analyzed qualitatively using a descriptive-analytical technique and deductive reasoning, moving from general legal norms to the specific problem of NDAs in PKWT.

Results and Discussion

4.1 Legal Force of NDAs Signed by PKWT Workers

The validity of an NDA is measured first against Article 1320 of the Civil Code, which requires the consent of the parties, legal capacity, a certain object and a lawful cause [7]. Consent exists when the worker signs the NDA freely, without mistake, duress or fraud (Articles 1321–1328). Capacity is generally satisfied because PKWT workers are adults. The requirement of a certain object is the one most frequently problematic: an NDA must identify, at least by category, what information is confidential. Clauses that declare “all information of any kind” to be confidential blur the line between protected trade secrets and the general skills and experience that a worker is entitled to take to future employment, and may be too

indeterminate to be enforced. Finally, a lawful cause requires that the NDA not contravene the law, morality or public order (Article 1337).

Once these requirements are met, Article 1338 paragraph (1) gives the NDA binding force as law for the parties, and Article 1339 extends that force to what is required by propriety, custom and law [7], [4]. The standard-form, take-it-or-leave-it character of most NDAs does not in itself invalidate them; however, under Article 1338 paragraph (3) the agreement must be performed in good faith, and courts may decline to enforce clauses that are manifestly one-sided or disproportionate [4], [9]. In the employment context, the NDA must also be read together with labor law: under Article 54 paragraph (2) of Law No. 13 of 2003, the content of an employment agreement, including any confidentiality clause embedded in it, may not conflict with company regulations, collective labor agreements or prevailing legislation [5].

The Trade Secrets Law reinforces this contractual basis. Article 13 provides that a trade secret is infringed when a person intentionally discloses it or breaches an agreement or a written or unwritten obligation to protect it [2]. An NDA signed by a PKWT worker therefore performs a dual function: it is a source of contractual obligation under the Civil Code and, at the same time, proof of the appropriate confidentiality measures required by Article 3 and of the obligation whose breach constitutes infringement under Article 13 [3], [22].

As evidence, a signed NDA is a private deed (*akta di bawah tangan*). Under Articles 1874 and 1875 of the Civil Code, a private deed whose signature is acknowledged by the party against whom it is used has the same perfect evidentiary force between the signatories as an authentic deed [7]. As with other legal documents, the certainty such an instrument provides depends on the integrity and verifiability of the underlying record [24]. For this reason, employers are well advised to attach a clear definition or schedule of confidential information, obtain the worker's signature on every page or schedule, and, for particularly sensitive positions, have the NDA legalized by a notary to reduce the risk of the signature being denied.

The legal force of an NDA is, however, not unlimited. Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution guarantee the right to work [25], and Article 31 of Law No. 13 of 2003 grants every worker the right to choose and change employment [5]. An NDA must therefore be distinguished from a non-compete clause. An NDA restricts the use and disclosure of specific information, whereas a non-compete clause restricts the worker from working for a competitor and is subject to stricter limits, including Article 1601x of the Civil Code [7]. An NDA drafted so broadly that it effectively prevents a former PKWT worker from working in the same field risks being treated as a disguised non-compete clause and assessed against the required balance of rights and obligations between company and worker [26].

4.2 Survival of Confidentiality Obligations after the PKWT Ends

Under Article 61 paragraph (1) of Law No. 13 of 2003, an employment agreement ends, among other things, upon the expiry of its term [5]. The end of the employment relationship, however, does not automatically extinguish every obligation arising from it. The Civil Code allows the parties to agree that certain obligations continue after the main contract ends, and such a stipulation is binding under Article 1338 [7], [19]. In NDA practice this is achieved through a survival clause, which expressly provides that confidentiality obligations remain in force for a stated period after the PKWT expires or is terminated.

Where an NDA contains no survival clause, the position is less certain. The employer may still rely on Article 1339 of the Civil Code and, more importantly, on Article 13 of the Trade Secrets Law, which protects a trade secret for as long as it remains confidential and does not depend on the continuation of the employment relationship [2], [27], [10]. Reliance on implied obligations nevertheless weakens legal certainty, because the employer must prove that the information qualifies as a trade secret and that the former worker knew it was to be kept confidential. An express survival clause is therefore the instrument that best realizes the value of legal certainty in this context [18].

The survival period should be proportionate to the nature of the information. Information with a short commercial life, such as pricing for a specific tender, justifies only a short period, whereas formulas or core technical know-how may justify protection for as long as the information remains secret. A reasonable and clearly defined period strengthens enforceability, while an indefinite obligation covering all information may be challenged as contrary to propriety and to the worker's right to work [26], [11].

4.3 Legal Protection for Companies against Post-Contractual Breaches

When a former PKWT worker discloses confidential information in violation of an NDA, the company has both civil and criminal avenues. On the civil side, the primary basis is breach of contract (*wanprestasi*). Because the survival clause is a continuing contractual obligation, its breach entitles the company to claim reimbursement of costs, losses and interest under Articles 1243 and 1246 of the Civil Code once the debtor has been declared in default [7]. Where the NDA contains a penalty clause, the company may claim the agreed penalty under Articles 1304 to 1307, subject to the court's power under Article 1309 to reduce it where the obligation has been partly performed. Alternatively, where a valid contractual obligation cannot be proven, the company may base its claim on an unlawful act (*perbuatan melawan hukum*) under Article 1365, including against a third party that knowingly uses the information [7], [9].

The Trade Secrets Law adds a specific civil remedy: under Article 11, the owner of a trade secret may file a claim in the District Court (*Pengadilan Negeri*) for damages and/or the cessation of all infringing acts, and under Article 12 the parties may resolve the dispute through arbitration or alternative dispute resolution [2]; in the labor context, combined mediation-arbitration processes have likewise been promoted as a more efficient route than ordinary litigation [28]. Because a dispute arising after the PKWT has ended no longer concerns rights within an ongoing employment relationship, claims based on breach of contract, unlawful act or Article 11 of the Trade Secrets Law are generally brought before the District Court rather than the Industrial Relations Court, although the forum may be contested where the claim is closely tied to the employment agreement [27].

On the criminal side, Article 17 paragraph (1) of the Trade Secrets Law punishes any person who intentionally and without right uses another's trade secret or commits the acts referred to in Article 13 or Article 14 with imprisonment of up to two years and/or a fine of up to Rp300,000,000. Under Article 17 paragraph (2) this is a complaint-based offense (*delik aduan*), so prosecution depends on the owner's complaint [2]. Criminal proceedings do not in themselves compensate the company's loss, but they have a strong deterrent effect and may be pursued alongside a civil claim.

The effectiveness of these remedies depends heavily on preventive drafting. The analysis above indicates that an NDA for PKWT workers should at minimum: (a) define confidential information specifically and by category, excluding information in the public domain and the worker's general skills; (b) state the permitted purpose of use and the obligation to return or destroy materials when the PKWT ends; (c) include a survival clause with a proportionate period; (d) provide a reasonable penalty clause and a method for calculating losses; and (e) designate the forum or dispute resolution mechanism. Such drafting integrates preventive and repressive protection [17] and balances the company's interest in protecting its information against the PKWT worker's constitutional right to work.

Conclusion

An NDA signed by a PKWT worker is valid and binding as law for the parties under Articles 1320 and 1338 of the Civil Code, provided that its object is sufficiently determinate and its content does not conflict with the law, morality, public order or labor legislation. The signed NDA is a private deed with evidentiary value and serves as proof of the appropriate confidentiality measures required by the Trade Secrets Law. Its force is limited by good faith, proportionality and the worker's right to work, so that it may not operate as a disguised non-

compete clause. Confidentiality obligations may survive the end of a PKWT where they are expressly stipulated in a survival clause with a proportionate period; without such a clause, protection rests on the Trade Secrets Law and implied obligations and is therefore less certain. Where a former PKWT worker breaches the NDA, the company may claim damages or an agreed penalty for breach of contract, sue on the basis of an unlawful act, seek the cessation of infringing acts under Article 11 of the Trade Secrets Law, and file a complaint for the criminal offense under Article 17. These findings imply that companies should adopt precise and balanced NDA templates for PKWT workers, and that the Ministry of Manpower could issue guidance on confidentiality and post-contractual obligations in fixed-term employment to strengthen legal certainty for both parties.

References

[1] Z. Asyhadie, *Hukum Bisnis: Prinsip dan Pelaksanaannya di Indonesia*. Jakarta: Rajawali Pers, 2010.

[2] Republic of Indonesia, *Law No. 30 of 2000 on Trade Secrets*. Jakarta, 2000.

[3] A. M. Ramli, *Hak atas Kepemilikan Intelektual: Teori Dasar Perlindungan Rahasia Dagang*. Bandung: Mandar Maju, 2000.

[4] H. Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. Bandung: Citra Aditya Bakti, 2010.

[5] Republic of Indonesia, *Law No. 13 of 2003 on Manpower*. Jakarta, 2003.

[6] Republic of Indonesia, *Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment*. Jakarta, 2021.

[7] *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)* [Indonesian Civil Code], Book III on Obligations.

[8] A. Rismawaty, "Non Disclosure Agreement sebagai Perlindungan Hak Kekayaan Intelektual dalam Perjanjian Kerjasama," *Aktualita: Jurnal Hukum*, vol. 2, no. 1, pp. 339–353, Jun. 2019, doi: 10.29313/aktualita.v2i1.4706.

[9] S. H. Nabila, "Kekuatan Hukum Non Disclosure Agreement dalam Mencegah Bocornya Confidential Information Perusahaan," *BACARITA Law Journal*, vol. 4, no. 2, pp. 155–166, 2024, doi: 10.30598/bacarita.v4i2.12887.

[10] A. S. Sirait, B. P. Ndruru, R. N. Kesuma, and B. Fitrianto, "Pembocoran Rahasia Dagang Perusahaan oleh Mantan Karyawan: Perlindungan Hukum dan Klausula Rahasia Dagang," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, vol. 4, no. 3, pp. 196–204, Jul. 2025, doi: 10.55606/jurrish.v4i3.5746.

[11] P. T. Dwijayanthi and D. A. D. Sawitri, "Non-Disclosure Agreement bagi Pekerja: Perspektif Hukum Perjanjian di Indonesia," *Acta Comitas: Jurnal Hukum Kenotariatan*, vol. 10, no. 3, pp. 658–673, 2025, doi: 10.24843/AC.2025.v10.i03.p15.

[12] B. Angelia, "Perlindungan Rahasia Dagang dalam Perjanjian Kerja antara Pemilik Coffeeshop dengan Karyawan," Undergraduate thesis, Universitas Ahmad Dahlan, Yogyakarta, 2024.

[13] J. Fernando, "Pelindungan Hukum terhadap Rahasia Dagang dalam Perjanjian Kerja antara Perusahaan dan Karyawan (Studi Kasus Putusan Pengadilan Negeri Bandung Nomor 973/Pid.Sus/2017/PN.Bdg)," Undergraduate thesis, Universitas Gadjah Mada, Yogyakarta, 2022.

[14] A. D. Pratiwi, "Perlindungan Hukum Rahasia Dagang setelah Berakhirnya Perjanjian Kerja," Thesis, Faculty of Law, Universitas Atma Jaya Yogyakarta, Yogyakarta, 2014.

[15] Republic of Indonesia, *Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law*. Jakarta, 2023.

[16] Constitutional Court of the Republic of Indonesia, *Decision No. 168/PUU-XXI/2023*. Jakarta, 2024.

[17] P. M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 1987.
[18] S. Mertokusumo, *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 2005.
[19] R. Subekti, *Hukum Perjanjian*. Jakarta: Intermasa, 2005.
[20] Djumadi, *Hukum Perburuhan: Perjanjian Kerja*. Jakarta: RajaGrafindo Persada, 2004.
[21] M. Djumhana and R. Djubaedillah, *Hak Milik Intelektual: Sejarah, Teori dan Prakteknya di Indonesia*. Bandung: Citra Aditya Bakti, 2003.
[22] R. Usman, *Hukum Hak atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia*. Bandung: Alumni, 2003.
[23] M. C. Ramadhan, *Perlindungan Hukum terhadap Rahasia Dagang Rumah Makan yang Ditinjau dari UU No. 30 Tahun 2000 tentang Rahasia Dagang*. Medan: CV. Merdeka Kreasi Group, 2023.
[24] E. B. H. L. Tobing, F. Rafianti, and Dahlan, "Legal Aspects of Electronic Land Certificates," in *Proc. Int. Conf. Islamic Community Studies (ICICS)*, Medan, 2025, pp. 4661–4670.
[25] Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*.
[26] F. A. Sugiawan and R. Rahaditya, "Non-Disclosure Agreement sebagai Instrumen Perlindungan Rahasia Dagang dalam Keseimbangan Hak dan Kewajiban Perusahaan dan Karyawan," *Indonesian Journal of Legality of Law*, vol. 8, no. 1, pp. 35–40, Dec. 2025, doi: 10.35965/ijlf.v8i1.7428.
[27] N. Utari, "Perlindungan Hukum terhadap Perusahaan sebagai Pemilik Rahasia Dagang dalam Hal Berakhirnya Hubungan Kerja," *Referendum: Jurnal Hukum Perdata dan Pidana*, vol. 1, no. 3, pp. 31–42, Aug. 2024, doi: 10.62383/referendum.v1i3.64.
[28] S. Nurhayati, F. Rafianti, E. Wakhyuni, and W. L. Hutabarat, "Legal Counseling on the Settlement of Industrial Relations Disputes between Trade Unions and Companies through Combined Process in Medan Krio Village," in *Proc. Int. Conf. Epicentrum of Economic Global Framework (ICEEGLOF)*, Medan, 2024, pp. 124–133.