

## The Role of Non-Disclosure Agreements in Protecting Trade Secret Holders in Micro, Small, and Medium Enterprises (Comparative Study of Indonesian-Azerbaijan Law)

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### ABSTRACT

*This research addresses the growing risk of trade secret violations by business actors, especially within the MSME sector, involving confidential economic information in technology and business. It aims to analyze legal regulations on NDAs as tools for protecting trade secrets in Indonesia and Azerbaijan. Employing normative legal methods, the study reviews library research, statutory regulations, NDA violation cases in Indonesia, and literature on NDA practices in Azerbaijan. Findings reveal that Indonesia does not specifically regulate NDAs by law; however, they hold legal validity under the freedom of contract principle, as stated in Article 1338 of the Civil Code. In contrast, Azerbaijan's NDA enforcement is more effective due to supportive government policies and legal institutions that help MSMEs safeguard confidential business information. This comparison highlights the need for Indonesia to strengthen regulations and improve legal awareness concerning NDAs to better protect MSMEs' trade secrets. The study suggests that practical protection for MSMEs requires not only well-structured contracts but also institutional backing and legal literacy initiatives. For policymakers, it recommends Indonesia develop specific NDA regulations and create institutions akin to Azerbaijan's KOBİA, which assists MSMEs in drafting and enforcing confidentiality agreements, thereby enhancing their competitiveness in the digital economy.*

**KEYWORDS** Trade Secrets; Confidentiality Agreements; MSMEs; Comparison of Azerbaijani Law



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### INTRODUCTION

Information is one of the most valuable assets in carrying out business activities in various sectors. In practice, not all information can or needs to be made public, especially information that has high strategic and economic value, such as recipes, formulas, customer data, marketing strategies, or certain production methods. This kind of information falls under the category of trade secrets, which are part of non-registered Intellectual Property Rights (IPR) (Ramadhan et al., 2021). This means that the legal protection of such information does not depend on the registration process, but on the owner's efforts to maintain its confidentiality.

Intellectual Property Rights (IPR), or in English known as Intellectual Property Rights (IPR), are exclusive rights given by the state to individuals or groups for the results of thought that have use and economic value (Zade et al., 2023). Intellectual Property Rights include various works born from human intellectual abilities, such as creations, inventions, and designs that have commercial potential (Chazawi, 2003). The main purpose of Intellectual Property Rights protection is to provide legal recognition for creativity, while encouraging people to continue to innovate without worrying about the risk of plagiarism or unauthorized use. With this legal protection, both individuals, groups, and business entities get the certainty to enjoy the economic benefits of their creations (Amalia et al., 2024).

Trade Secrets are a form of Intellectual Property Rights, Trade Secrets are also not new in Indonesia, many companies or MSMEs have trade secrets and have applied them in their businesses. This Trade Secret is confidential and private information. This means that in this case, trade secrets are very confidential, and only certain parties are allowed to know about it. Trade secrets in Intellectual Property Rights are included in non-registered Intellectual Property Rights, which means that they do not have to be registered in the DJKI. This Trade Secret has also been regulated in Law Number 30 of 2000 concerning Trade Secrets (Thalib et al., 2022). In this trade secrets law, there are also many regulations regarding the scope of protection, rights owners, forms of violations, and legal remedies that can be taken in the event of a violation of trade secrets. Article 1 paragraph (1) of Law No. 30 of 2000 defines trade secrets as information that is unknown to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is maintained confidential by the owner of trade secrets (Indonesia, 2000). Because it is non-registration, the protection of trade secrets does not require official registration with the Directorate General of Intellectual Property (DJKI), but depends on the business owner's efforts in maintaining the confidentiality of the information. This form of protection is usually carried out through internal mechanisms, such as document security, access restrictions, and the use of written agreements such as Non-Disclosure Agreements (NDAs). An NDA is a contractual tool that is commonly used to ensure that parties who receive confidential information will not share it without permission. Thus, the role of NDA is very important in maintaining the sustainability of trade secret protection, especially in the business sector that relies heavily on competitive advantage based on exclusive information (Sassoon Cymrot Law, 2023). In today's digital era, the implementation of NDA is becoming increasingly relevant because the risk of data and information leakage is getting higher.

In Indonesia, Micro, Small, and Medium Enterprises (MSMEs) play an important role in supporting national economic growth. Based on data from the Ministry of Cooperatives and SMEs, MSMEs contribute more than 60% to Gross Domestic Product (GDP) and absorb most of the workforce (DJPb, 2020). However, behind their great contribution, MSMEs also face various challenges, including a lack of understanding and protection of Intellectual Property Rights, especially trade secrets. Many MSME actors are not aware of the importance of maintaining strategic and confidential business information, and are not familiar with legal instruments such as Non-Disclosure Agreements as a means of protection. As a result, not a few MSMEs experience information leakage, falsification, and misuse of recipes or production systems by other parties without adequate legal protection. This indicates the urgency to increase understanding and implementation of NDA among MSME actors as part of efforts to protect trade secrets (Sulasno & Nabila, 2024).

Interestingly, the regulation regarding trade secrets and the use of NDA is also found in the legal systems of other countries, such as Azerbaijan. This comparative study between Indonesia and Azerbaijan is particularly significant for several reasons. First, both countries operate under civil law systems, which provides a relevant framework for legal comparison. Second, Azerbaijan represents an emerging economy with a relatively well-developed institutional framework for trade secret protection, offering valuable lessons for Indonesia. Third, the cultural and economic contexts differ substantially: Indonesia, as a Southeast Asian archipelago with a diverse economy heavily reliant on MSMEs, faces unique challenges in The Role of Non-Disclosure Agreements in Protecting Trade Secret Holders in Micro, Small, and Medium Enterprises (Comparative Study of Indonesian-Azerbaijan Law)

implementing legal protections compared to Azerbaijan, a Caucasus nation with stronger centralized institutional support through agencies like KOBIA (Small and Medium Business Development Agency). This comparison illuminates how different approaches to MSME support—Indonesia's more decentralized, principle-based system versus Azerbaijan's institutionally-supported framework—affect the practical implementation and effectiveness of NDAs in protecting trade secrets. Understanding these contextual differences is crucial for developing policy recommendations tailored to Indonesia's specific socio-economic landscape.

Based on the results of initial interviews conducted by the author with several Indonesian MSMEs, it was found that most of these business actors did not know and implement the Non-Disclosure Agreement (NDA) in carrying out their business activities (Dani, personal communication, April 30, 2025). This condition shows that legal awareness regarding the protection of trade secrets is still relatively low in the MSME and start-up sectors. The lack of use of NDA can pose potential risks, including business information leakage, loss of strategic value of the company, and triggering unfair business competition. These findings are in line with interviews that stated that the implementation of NDA among MSMEs and start-ups is still limited, but it is starting to show a positive trend in certain business sectors (Lie & Yusuf, 2024). This phenomenon also confirms the gap between the need for trade secret protection and real implementation on the ground.

## **METHOD**

The research used in this study was normative (juridical-normative) legal research, focusing on laws and regulations relevant to the topic. This method provided a structured legal framework to address the legal issues examined. Additionally, a comparative approach was employed by analyzing regulations regarding Non-Disclosure Agreements (NDAs) in Indonesia and Azerbaijan and reviewing NDA violation cases in Indonesia to illustrate their practical application.

Cases were selected using purposive sampling, focusing on documented NDA violation cases adjudicated in Indonesian courts. The study examined representative cases where MSMEs faced trade secret breaches despite confidentiality clauses, such as the UD Mebel Indah Pasuruan case discussed in the findings. These cases highlighted practical enforcement challenges and revealed gaps between legal theory and practice within the Indonesian MSME context. Although documented public NDA violation cases involving MSMEs in Indonesia were limited due to many disputes being resolved informally, the selected cases demonstrated significant enforcement patterns relevant across the sector.

For Azerbaijan, data were collected from official legislative databases and legal publications, including the Civil Code and Law on Trade Secrets. Secondary sources encompassed academic papers, government reports from the Small and Medium Business Development Agency (KOBIA), and comparative legal studies in international journals. Online legal databases and institutional websites supplemented information on Azerbaijan's legal and institutional frameworks for MSMEs. Although no direct field research in Azerbaijan was conducted, this combination of sources provided a sufficient basis for comparative analysis. The study acknowledges limitations in assessing practical implementation in Azerbaijan, focusing primarily on formal legal frameworks and institutional support.

## **RESULT AND DISCUSSION**

### **What are the arrangements regarding Non-Disclosure Agreements as an instrument to protect trade secrets in Indonesia?**

To understand the role of Non-Disclosure Agreements (NDAs) as an instrument for the protection of trade secrets, it is important to first outline the basis of the law and the concept of its regulation in the Indonesian legal system. This discussion will review the relationship between NDA and the law of agreements in the Civil Code and its relation to Law Number 30 of 2000 concerning Trade Secrets. According to Mallor et al. (2013), trade secrets include any form of information, formula, or method used in business activities that provide a competitive advantage for their owners. Protection of trade secrets is not carried out through registrations such as patents or copyrights, but depends on the owner's efforts to maintain the confidentiality of the information, one of which is by using a Non-Disclosure Agreement. This is in line with the concept of protection of trade secrets in Indonesian law which is regulated in Law Number 30 of 2000 concerning Trade Secrets. The law affirms that the protection of trade secrets arises automatically when information has economic value, is kept confidential, and is not known to the public. Therefore, the trade secret system is non-registration, meaning that protection is obtained through the active actions of the owner to maintain the confidentiality of the information (Neltje et al., 2024).

The Non-Disclosure Agreement (NDA) contains the matter of a cooperation agreement in black on white, meaning that it contains a statement that it is not allowed to quote or notify the content of the work to parties who are not related to the agreement. This NDA is also very legal in force that maintains confidentiality between the contracting parties (Siregar et al., 2024). NDA is also a form of application of the principle of due diligence and legal responsibility which is in line with the principle of freedom of contract as stipulated in article 1338 of the Civil Code. Based on the principle of freedom of contract that has been regulated in article 1338 of the Criminal Code, everyone is free to make agreements as long as they do not conflict with the law, morality, or public order. Although there are no specific rules that explicitly govern the NDA, the agreement still has binding legal force for the parties.

The validity of an agreement in Indonesian law is regulated in Article 1320 of the Civil Code, which specifies four main conditions, namely: (1) the agreement of those who bind themselves, (2) the ability to make an agreement, (3) a certain thing, and (4) a halal cause. The element of agreement is the main foundation of the formation of an agreement, because it shows the existence of free will between the parties to cause legal consequences. In contract law, an agreement occurs when there are an offer and acceptance. An offer indicates an intention to create a binding legal relationship, while acceptance describes unconditional consent to the contents of the offer. When these two elements are met, a legally valid agreement is formed (Mallor et al., 2013). In the principle of freedom of contract regulated in article 1338 of the Civil Code, everyone is free to make agreements as long as they do not conflict with law, decency, or public order, as NDA is a space of the principle of freedom of contract in the form of a new agreement (Putri, 2015). In addition to the legal basis of the Civil Code, NDA also has a strong relevance to the concept of trade secret protection as part of non-registration Intellectual Property Rights (IPR).

The protection of trade secrets has been regulated in law Number 30 of 2000 concerning trade secrets, which emphasizes that trade secrets are protected as long as the information has

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economic value and is kept confidential. NDA functions as a legal mechanism to maintain confidentiality, so as not to be misused by the party who obtains access to the information, meaning as a bridge between the theory of treaty law and the law of trade secret protection (Rismawaty, 2019). This NDA preventively prevents information leakage, as well as repressive in the event of a violation because it can be used as the basis for a lawsuit for default or violation of trade secrets. As stipulated in article 4 of Law Number 30 of 2000 concerning Trade Secrets mentions Granting licenses to or prohibiting other parties to use Trade Secrets, and explained in article 6 the holder of Trade Secret Rights has the right to grant a license to another party based on the License agreement to carry out the act as referred to in Article 4, unless otherwise agreed, and the Trade Secrets Act contains criminal provisions in it for those who knowingly leak such trade secrets. However, it is necessary to analyze whether the existing legal arrangements are sufficient to provide legal certainty for the enactment of NDA in Indonesia. Until now, there is no special regulation that details the form, conditions, or legal consequences of NDA violations (Faramukti & Sukirno, 2022). However, this regulatory vacuum does not mean that the NDA does not have legal force. Through freedom of contract and law Number 30 of 2000 concerning trade secrets, the NDA can still be enforced if it meets the legal elements of the agreement. The weakness lies in MSME actors who do not understand the mechanism of making and proving the application of NDA in court. It can be concluded that NDA has a strong legal basis in theory, although its legal implementation is still indirect and requires more specific regulation. Thus, the legal regulation of NDA in Indonesia is based on the Civil Code through the principle of freedom of contract and the Trade Secrets Law as the basis for substantial protection (Putri & Kurniawan, 2025). However, the absence of specific regulations on NDAs means that its implementation still depends on the interpretation of general law and the awareness of the parties in maintaining trade secrets.

### **What is the role (replacing the previous implementation) of the Non-Disclosure Agreement to protect trade secrets of MSME business actors in Indonesia and Azerbaijan?**

In Indonesia itself, the use of NDA by MSME business actors is still very low. Based on the results of interviews, several MSME business actors do not understand the legal function of NDA as a protector of trade secrets. They tend to rely only on personal trust in business cooperation relationships. The low level of legal literacy and limited access to legal assistance are the main factors that hinder the implementation of NDA among MSMEs. However, some companies have implemented NDAs recognizing its benefits in maintaining business strategies and customer data from being misused by others.

In practice, NDA is widely used by digital start-ups, for example in collaboration with investors or third parties, NDA is the initial requirement to maintain product formulas, algorithms, or user data. However, the main challenge faced is the lack of legal awareness and weak enforcement of NDA violations, so that there are still many MSMEs that do not use this instrument formally because they think it is very complicated and if there is indeed a violation, they argue that court fees are very expensive and do not necessarily guarantee that this law is strong for MSME actors. For example, the case of the leak of trade secrets that occurred at UD Mebel Indah Pasuruan shows that even though there is a Non-Disclosure Agreement (NDA) clause in the employment agreement, its implementation is still not fully effective. Settlement

is carried out in a non-litigation manner through negotiation, but only compensates for material losses without taking into account material losses and without binding on the receiving of information (Hidayatullah et al., 2024). To understand the extent to which the role of this NDA is optimized by comparing its application in other countries that have similar legal systems such as Azerbaijan.

Azerbaijan, as a country that also adheres to the Civil Law system, has more explicit arrangements regarding the protection of trade secrets. In the Law on Trade Secrets and the Civil Code of Azerbaijan, an NDA is recognized as part of a business contract that must be included in a cooperation involving confidential information (Baker & McKenzie, 2018). Through legal assistance institutions and training for micro, small and medium-sized business entities (MSMEs) to understand the importance of maintaining the confidentiality of business information. This effort is carried out by the Small and Medium Business Development Agency (KOBİA) as an official institution tasked with fostering and protecting the MSME sector, including in terms of drafting business agreements, legal consultation, and training on intellectual property protection. With this institutional support, the implementation of NDA in Azerbaijan is not only contractual, but also part of the government's policy in strengthening the culture of legal compliance and the protection of trade secrets among business actors (Gasimova, 2020). In terms of business actors' awareness, MSMEs in Azerbaijan are more proactive due to government support, while in Indonesia the implementation is still limited and depends on individual initiatives. Furthermore, based on the journal *The Role of a Non-Disclosure Agreement on the Protection of Intellectual Property Rights*, an NDA is basically not just a confidentiality document, but is a comprehensive legal instrument that includes four main elements, namely:

1. Owner Of Inventions

An NDA specifies who owns the intellectual property rights to ideas or innovations made in the employment relationship. This provision is important to prevent disputes between employers and workers regarding ownership of work products.

2. Non-Disclosure Provisions

This section regulates the prohibition of the use and dissemination of confidential information, both during and after the employment relationship ends, including the mechanism for marking information as "confidential".

3. Non-Solicitation Provisions

A provision that prohibits the receiving party from taking or seducing the disclosing party's customers or business partners. But in some jurisdictions, including Azerbaijan, its enactment is debatable due to the protection of workers' rights.

4. Non-Competition Provisions

Prohibition for former workers to work for competing companies within a certain period and region. Its effectiveness depends on reasonable limits and does not violate freedom of work (Gasimova, 2020).

In the context of Azerbaijan, the NDA model as described in the journal is easier to implement because the country already has special arrangements regarding trade secrets as well as institutional support through KOBİA. This is different from Indonesia, where there are no technical guidelines or special regulations regarding the structure of NDAs, so MSME actors tend to use NDAs in a simple form that does not regulate all important aspects as discussed in *The Role of Non-Disclosure Agreements in Protecting Trade Secret Holders in Micro, Small, and Medium Enterprises (Comparative Study of Indonesian-Azerbaijan Law)*

the journal. In Azerbaijan, NDA violations are already regulated more strictly. They have special rules about commercial secrets that explain what information is considered confidential and how it is protected. The sanctions are also clear, ranging from fines to criminal penalties if the violation is severe (Hetiyasari et al., 2024). In contrast to Indonesia, which does not have a special regulation regarding sanctions for NDA violations. The settlement still relies on the civil mechanism and the principle of agreement in the Civil Code, so the protection for the owners of trade secrets is not as strong as Azerbaijan.

When compared to Azerbaijan, the position and effectiveness of NDA in Indonesia is still relatively weak because there is no special regulation that affirms the role of NDA in protecting trade secrets, especially for MSME actors. Indonesia only relies on the principle of freedom of contract in the Civil Code and general provisions in the Trade Secrets Law, without derivative rules that clearly govern the structure, conditions, and legal consequences of NDA violations. This condition is different from Azerbaijan which has more detailed regulations through Law on Trade Secrets and Civil Code of Azerbaijan, which explicitly recognizes the NDA as a mandatory legal instrument in cooperation involving confidential information (Azerbaijan Republic, 1999). Azerbaijan also provides for administrative, civil, and criminal sanctions for NDA violations, providing stronger legal certainty for trade secrets holders. In addition, the existence of institutions such as KOBİA strengthens the implementation of NDA because MSMEs receive legal assistance, training, and access to contract drafting in accordance with standards (Wikipedia, 2025). Thus, it is clear that although both are based on Civil Law, Azerbaijan already has a more firm and structured legal framework, while Indonesia is still in the early stages of strengthening regulations and literacy of MSME actors in utilizing NDA as a tool to protect trade secrets. By looking at these comparisons, it can be concluded that strengthening the role of NDA for MSME actors in Indonesia still requires increased legal literacy and clearer regulatory support, as has been implemented in Azerbaijan. Without these strengthening measures, the position of NDA as an instrument to protect trade secrets cannot function optimally.

## CONCLUSION

The Non-Disclosure Agreement (NDA) is grounded in the legal principle of freedom of contract under Article 1338 of the Civil Code, allowing parties to create agreements that do not violate law or public order. This makes NDAs vital tools for protecting trade secrets—such as production methods and marketing strategies—that hold economic value and must be kept confidential. In Indonesia, while there are no specific NDA regulations, their legal force is upheld through this contractual freedom, relying heavily on the parties' awareness and initiative. In contrast, Azerbaijan's NDA implementation benefits from stronger government support, including legal aid and training for MSMEs, enhancing protection effectiveness. Because NDAs provide crucial legal certainty for trade secret holders, especially vulnerable MSMEs, strengthening legal frameworks and institutional support is essential. Future research could explore empirical assessments of NDA enforcement effectiveness across different jurisdictions and investigate how tailored policies might better support MSME trade secret protection globally.

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