

Legal Protection of Companies for Violation of Non-Competition Clauses by Former Employees in Indonesia

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Abstract

The development of the business world in Indonesia requires effective legal protection for the interests of companies, especially related to business confidentiality and healthy business competition. One form of such protection is the non-competition clause in the employment agreement. However, in practice, there are many violations by former employees who established similar businesses by utilizing previous company information. This study aims to analyze the legal force of non-competition clauses in Indonesian labor law as well as legal remedies that can be carried out by companies. The research method used is normative juridical with a legislative approach and case studies. The results of the study show that the non-competition clause still has weaknesses in its application because it has not been explicitly regulated in laws and regulations, but it can still be enforced through the principles of agreement and good faith. Legal remedies that can be carried out include civil lawsuits and criminal reports in certain cases.

Keywords: *Non-competition, Employment, Employment Agreement, Legal Protection*

INTRODUCTION

The dynamics of the business world in Indonesia show a significant increase in competition, especially in the knowledge-based and technology-based sectors. In this context, companies are increasingly reliant on strategic information, trade secrets, and business relationships built through professional labor. To protect these interests, many companies include a non-compete clause in their employment agreements to restrict former employees from working for competing companies or establishing similar businesses within a certain period of time and territory.

However, the application of the non-competition clause in Indonesia still raises legal debates. On the one hand, this clause is considered a form of protection for the company's business interests. On the other hand, the restriction has the potential to conflict with the constitutional right of workers to obtain a decent job and livelihood. In addition, the absence of comprehensive special provisions in laws and regulations causes legal uncertainty regarding the validity, limitations, and enforcement of non-competition clauses.

The problem is even more complex when there are violations by former employees, both in the form of working for a competing company and leaking company secrets. This causes losses for companies, but law enforcement efforts often face obstacles in proving and interpreting the law. Therefore, it is important to examine what forms of legal protection can be provided to companies as well as the limitations of the application of non-competition clauses

in the Indonesian legal system.

METHOD

This research uses a normative juridical method with a statute approach and a conceptual approach. The legislative approach is carried out by examining legal provisions related to labor law, treaty law, and trade secret protection. Meanwhile, the conceptual approach is used to understand the principles of freedom of contract, the balance of interests of the parties, and the theory of legal protection.

The legal materials used include primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, scientific journals, and expert opinions, as well as tertiary legal materials such as legal dictionaries and encyclopedias. The technique of collecting legal materials is carried out through library research, which is then analyzed qualitatively with descriptive-analytical methods to obtain a comprehensive picture of legal protection for companies in cases of non-competition clause violations.

RESULTS AND DISCUSSION

1. Non-Competition Clause in the Perspective of Indonesian Law

A non-competition clause is a provision in an employment agreement that prohibits an employee from working or opening a similar business within a certain period of time after the employment relationship ends. In Indonesian law, this clause is not explicitly regulated in law, but may refer to:

- Article 1338 of the Civil Code (principle of freedom of contract)
- Article 1320 of the Civil Code (legal condition of the agreement)

As such, the non-compete clause is essentially valid as long as it qualifies:

- Agreed upon by both parties
- Not breaking the law
- Not contrary to public order

However, in practice, it is often considered illegal if it restricts a person's right to work too much.

2. Trade Secret Protection

In addition to the non-compete clause, companies can also use a legal approach through the protection of trade secrets.

Trade secrets include:

- Customer data
- Marketing strategy
- Company internal information

If a former employee uses such information, it may be subject to sanctions under the Trade Secret Act.

3. Violations by Former Employees

Violations usually occur in the form of:

- Bring in a customer database
- Using the company's contact number
- Opening a business with the same field
- Recruiting old employees

These actions can be categorized as:

- Unlawful acts
- Unfair business competition

4. Legal Remedies That Can Be Taken

a. Civil Lawsuit

The company can file a lawsuit based on:

- Default
- Unlawful acts

The goal:

- Indemnity
- Termination of business activities

b. Criminal Reports

Under certain conditions, it can be reported if there are:

- Abuse of trade secrets
- Embezzlement of corporate assets

c. Summons (Legal Warning)

The first step that is commonly taken is a summons before going to court.

5. Legal Weakness Analysis

Some of the disadvantages found:

- There are no specific non-competition regulations
- Judges' interpretations vary
- Difficult to prove loss

However, the clause can still be strengthened by:

- Reasonable time restrictions
- Region restrictions
- Compensation to employees.

Discussion

A non-compete clause is essentially a part of an employment agreement that is subject to the principles of contract law, including the principle of freedom of contract and the principle of good faith. In Indonesian law, the validity of this clause depends on the fulfillment of the legal conditions of the agreement, namely agreement, skill, certain objects, and halal causes. As long as the non-compete clause is agreed upon voluntarily and does not conflict with the law, it can be considered valid in principle.

However, the application of non-competition clauses must pay attention to certain limitations so as not to violate workers' basic rights. Restrictions that are too broad, both in terms of time, region, and type of work, have the potential to be considered disproportionate and can be reversed. Therefore, a balance is needed between the protection of the interests of the company and the right of workers to earn a living.

From the perspective of legal protection, the company can take civil action in the form of a default lawsuit if the former employee violates the clause that has been agreed. In addition, if the violation is related to the leakage of trade secrets, it can also be subject to sanctions based on the legal provisions that govern the protection of trade secrets.

However, in practice, companies often face obstacles in proof, especially in proving the existence of a causal relationship between the violation of the clause and the losses suffered. In addition, the absence of specific regulations regarding non-compete clauses causes differences in interpretation among law enforcement. This has an impact on legal uncertainty in the enforcement of these clauses.

Thus, there is a need for clearer arrangements regarding the limitations and enforcement mechanisms of non-competition clauses, including standards of reasonableness in restrictions as well as compensation mechanisms for workers bound by the clause. This approach is expected to create a balance between the protection of corporate interests and workers' rights.

CONCLUSION

Legal protection against companies for violations of non-compete clauses by former employees in Indonesia can basically be carried out through civil law mechanisms and, under

certain conditions, through provisions related to trade secrets. The validity of non-compete clauses depends on the fulfillment of the legal conditions of the agreement and the principle of balance between the interests of the parties.

However, the absence of specific provisions regarding non-compete clauses creates legal uncertainty in its application. Therefore, it is necessary to establish more comprehensive regulations to regulate limits, enforcement mechanisms, and protection for both parties, so as to create legal certainty and justice in employment relations in Indonesia.

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