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# THE IMPORTANCE OF NON-DISCLOSURE AGREEMENTS IN EMPLOYMENT CONTRACTS: PROTECTING TRADE SECRETS BEYOND THE TERMS OF STANDARD EMPLOYMENT CONTRACTS

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**Abstract**

This study examines the importance of trade secret protection in Indonesia. Trade secret protection is crucial for maintaining honesty and fairness in business competition. Without it, companies can face theft and espionage, which harm the owners of these valuable intangible assets. An NDA is legally binding, meaning that the parties signing the agreement are obligated to comply with all agreed terms. If one party violates the NDA, for example by leaking confidential information, the injured party has the right to seek compensation through legal channels. Law Number 30 of 2000 stipulates criminal sanctions for violations of Article 17 of Trade Secrets or actions that violate Articles 13 or 14, which can be punished with a maximum of two years' imprisonment or a fine of up to Rp 300 million, or through arbitration and alternative dispute resolution methods such as

negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999.


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## Introduction

A company can be defined as any form of business that carries out any type of business that is permanent and continuous, established, operating and domiciled within the territory of the Republic of Indonesia with the aim of obtaining profit.[1] The presence of the term "company" in Indonesian law is closely linked to the history and development of commercial law. Commercial law is a specific form of civil law created for business actors in buying and selling activities. Initially, this law applied only to traders. The term "company" emerged as a manifestation of developments in the business world, which were later incorporated into the Commercial Law Code (KUHD).[2]

The definition of a company according to Law No. 1938-376, besides having a legal meaning, also has an economic meaning. This definition of a company contains the following elements:

a. Continuously;
b. Openly;
c. n certain positions;
d. With the intention of seeking profit;

A business that does not have the elements as mentioned above cannot be called a company, but can only be classified as a job or position. Based on this meaning, the difference between a company (*bedrijf*) and *an onderneming* can be understood, namely that if a company has the meaning of a financial-economic entity, then *an onderneming* is a work unit (*werkeenheid*) that only has economic meaning. Both have non-legal meanings, while *a vennootschap* has a legal meaning.[3]

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[1] Gilang Prabowo, Comparison of the Legal Forms of State-Owned Companies in Indonesia and Brunei Darussalam,Dharmasisya, Vol.2 Article 18, (2022): 1281 https://scholarhub.ui.ac.id/dharmasisya/vol2/iss3/18

[2] Ibid, p.442

[3] Devi, R. S, Legal status and responsibilities of PT (limited liability company) subsidiaries in a group of companies, Cohesion scientific journal, volume 4 Article 1, (2020) : 86

In Indonesia, there are also many regulations governing companies that have been enacted in addition to the regulations still in use today in the Civil Code (KUHPer) and Commercial Code, such as industrial companies, trading companies, finance companies, and service companies. In a contract or agreement between workers and parties requiring workers, a mutually binding legal relationship arises and must be obeyed. The contract or agreement relationship that arises between workers and parties requiring workers.

This is in line with Article 1338 paragraph (1) of the Civil Code, which stipulates that "all agreements made legally are valid as laws for those who make them." In the context of employment relationships, these agreements not only cover general terms and conditions related to work, but may also include more specific agreements, such as confidentiality agreements. The latest forms of legal protection for companies cover aspects such as trade secret protection, investor protection, and legal aspects of electronic transactions in the digital era, which are regulated through various laws and regulations in Indonesia. In addition, intellectual property rights (IPR) protection is the legal foundation of business, especially for creative businesses and startups. For example, how should startups protect their intellectual property, such as copyrights, trademarks, patents, and trade secrets, so that intellectual assets can be maintained and optimized.[4]

Trade secret protection is essential to maintain honesty and fairness in business competition. Without this protection, companies may face theft and espionage, which are detrimental to the owners of these valuable intangible assets. In Indonesia, a developing country, strong business competition is necessary and recognized in corporate law. However, there is still a need for an integrated protection system to maintain confidentiality. Maintaining confidentiality is one of the most important aspects important. Therefore, many policies and regulations have been developed on this matter. One of the most popular is the NDA or non-disclosure agreement.

The need for legal protection of trade secrets is also in line with one of the provisions in *the Agreement on Trade Related Aspects of*

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[4] Willy Jayandi Parasian Sinaga, & Dewa Gde Rudy. (2024). Legal Protection of Intellectual Property in Startup Businesses. *Amendment: Journal of Indonesian Defense, Politics and Law*, Vol.*1* No. 2, H.248

*Intellectual Property Rights (TRIPs Agreement)*, which is an annex to *the Agreement Establishing the World Trade Organization*. Legal protection of confidential information supports innovation and commercial development by ensuring that the knowledge and information possessed by entrepreneurs is not stolen or copied without permission. Awareness of the economic value of information as a competitive advantage has triggered the need for legal protection. Law No. 30 of 2000 on Trade Secrets stipulates that information that has economic value and is useful in business must be kept confidential by its owner. In addition, agreements, which are defined as legal commitments between two or more parties, are also regulated in the Civil Code. According to J. Satrio, this includes agreements in which the parties bind themselves to each other..[5]

## Method

The type of research used in this study is normative. Normative legal research is a type used in legal research that is conducted by examining existing literature. The type of research that will be applied is normative juridical research. The normative legal research method is a method used to examine library materials.

This research method refers to legal regulations established by the government. Normative legal research is conducted by collecting data and analyzing relevant legal norms. Normative legal research aims to describe the application of positive law and legal norms. Furthermore, this research also aims to solve existing problems or cases and make decisions based on applicable legal regulations. Furthermore, this normative legal research aims to align legal regulations with existing legal norms and individual behavior with applicable legal principles.[6]

## Result and Discussion

Molengraaff's definition of a company does not emphasize the company as a business entity, but only mentions the company as an

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[5] Utari Nadia, 2024, *Legal Protection for Companies as Owners of Trade Secrets in the Event of Termination of Employment*, Journal of Civil and Criminal Law: Volume. 1 No.3, p.32

[6] Lukman Hakim, Normative Juridical Method: Definition, Characteristics and Examples, Deepublish store, (2025) accessed via https://deepublishstore.com/blog/metode-yuridis-normatif/ , on November 27, 2025

activity or only specifically as a type of business. Although this definition has legal aspects of a company, namely in the form of agreements with other parties. The clear legal definition of a company was first formulated in Article 1 letter (b) of Law Number 3 of 1982 concerning Mandatory Company Registration, which is defined as follows: A company is any form of business that carries out any type of business that is permanent and continuous and is established to operate and is located within the territory of the Republic of Indonesia with the aim of obtaining profits and/or gains.

There are also several definitions of a company according to Article 1 paragraph 1 of Law Number 8 of 1997 concerning Company Documents, which reads: "A company is any form of business that carries out activities on a regular and continuous basis to obtain profits and/or earnings, whether organized by individuals or business entities in the form of legal entities or non-legal entities, which are established and domiciled within the territory of the Republic of Indonesia". The two definitions of companies according to the Law not only regulate the type of business in the form of economic activities, but also regulate the form of business in the form of a business entity that is established, operates, and is domiciled within the territory of the Republic of Indonesia.

The definition of a company according to Law No. 1938-376, besides having a legal meaning, also has an economic meaning. This definition of a company contains the following elements:

a. Continuously;
b. Openly;
c. In certain positions;
d. With the intention of seeking profit;

## A. Business law can protect confidential information and resolve trade secret breach disputes.

Corporate Law is all legal regulations governing all types and forms of business. The definition of a company can be found in Article 1 of Law Number 3 of 1982 concerning Mandatory Company Registration, which states that a Company is any form of business entity that carries out any type of business that is permanent and continuous, established, operating, and domiciled in Indonesia with the aim of obtaining profits. The concept of legal protection is actually a long-established concept in law. As a general rule, all civil law relationships can be problematic. Therefore, the concept of legal

protection is a prerequisite for the concept of civil law. Legal protection encompasses many legal means and institutions.

Corporate law regulates core concepts such as legal status or legal personality, limited liability, separation of ownership and management, and rules regarding the purpose/role of companies in society as well as the balance between private and public interests.[7]

The concept of legal protection is actually a long-established concept in law. As a general rule, all civil legal relationships can be problematic. Therefore, the concept of legal protection is a prerequisite for the concept of civil law. Legal protection encompasses many legal means and institutions.

The need for legal protection for Trade Secrets is also in accordance with one of the provisions inAgreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) which is an attachment to Agreement Establishing the World Trade Organization (Agreement Establishing the World Trade Organization). Legal protection of confidential information supports innovation and commercial development by ensuring that the knowledge and information held by entrepreneurs is not stolen or copied without permission.

Awareness of the economic value of information as a competitive advantage triggers the need for legal protection. Law Number 30 of 2009 2000 on Trade Secrets emphasizes that information that has economic value and is useful in business must be kept confidential by its owner. Furthermore, agreements, defined as legal commitments between two or more parties, are also regulated in the Civil Code. According to J. Satrio, this includes agreements in which the parties bind themselves to each other.[8]

According to Article 1313 of the Civil Code (KUHPer), an agreement is an act in which one or more people bind themselves to one or more other people. However, this legal act creates a legal relationship called a contract. Therefore, an agreement can be

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[7] Armour, John, et al., 2017, 'What Is Corporate Law?', *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd edn Oxford; online edn, Oxford Academic

[8] Utari Nadia, Legal Protection for Companies as Owners of Trade Secrets in the Event of Termination of Employment Relationships, Journal of Civil and Criminal Law: Volume 1 Article 3, (2024):32 DOI: https://doi.org/10.62383/referendum.v1i3.64

considered the initial form of contract. An employment contract can serve as strong evidence in resolving disputes in the event of a disagreement or breach of the contract.

In labor law, an employment contract is a written agreement made by an employer to regulate various aspects of the employment relationship between them and their employees. This contract serves as a legal basis that protects the rights and obligations of both parties. An employment contract contains information about the identity of the employee and employer, a description of the work to be performed by the employee, the agreed working hours, the amount of salary and benefits received by the employee, as well as provisions regarding working hours, leave, social security, and occupational safety.

Before starting work on the first day, workers must know that an employment agreement is a verbal or written agreement between workers and employers for a fixed or indefinite period that contains the terms and conditions of employment, rights, and obligations. In the business world, an employment agreement is very important for both parties, namely the employee and the company providing the job. An employment agreement is considered important because it serves as a guideline for both parties in carrying out their work.

The following are three types of employment agreements commonly used in Indonesia:[9]

1. Fixed-Term Probationary Employment Agreement (PKWTP) An employment agreement for PKWTP employees is an employment agreement with a term of 1-6 months that is used to assess the quality of an employee's work before they become a permanent employee of the company. PKWTP is useful for both parties to determine their compatibility with each other.
2. Fixed-Term Employment Agreement (PKWT) Meanwhile, an employment agreement for PKWT employees is an employment agreement between an employee and a company to establish an employment relationship for a specific period or for specific

[9] Rizka Maria Merdeka, 2025, Pay Attention to the Important Components in This Employment Agreement!, Human Resource (HR), accessed via https://greatdayhr.com/id-id/blog/surat-perjanjian-kerja/ on December 10, 2025

employees. Based on Law Number 13 of 2003, it should be noted that not all companies can grant PKWT status to all types of jobs. Generally, PKWT regulates the relationship between the company and the employee in several aspects such as the duration of the contract, rights and obligations, position, compensation, allowances, facilities, and other matters governing the personal employment relationship.

3. Indefinite Term Employment Agreement (PKWTT) The employment agreement for PKWTT employees is an employment agreement between the employee and the company to establish a permanent employment relationship. PKWTT is also continuous and not limited in time.

Additionally, the employment contract also includes a dispute resolution mechanism and provisions regarding the employee's obligations to meet the requirements as an employee. The employment contract defines the rights and obligations of the employer and the employee.

Law Number 30 of 2000 stipulates criminal sanctions for violations of Trade Secrets. Article 17 states that the use of Trade Secrets Trading without a permit or actions that violate Articles 13 or 14 are punishable by a maximum of two years' imprisonment or a fine of up to IDR 300 million, and violations of this right constitute a criminal offense. Trade secret rights holders can sue the perpetrator through a lawsuit for damages or to stop the infringing act. Trade secret disputes can be resolved in the District Court or through arbitration and alternative dispute resolution methods such as negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999.

With firm legal protection, it is hoped that similar cases can be minimized in the future, while also providing better protection for innovation and business sustainability, especially in highly competitive industries. Thus, Indonesia has a comprehensive and inclusive legal basis by providing a criminal mechanism through a complaint offense. If the injured party files a lawsuit in court, then the trade secret infringement action can only be prosecuted. This also provides an opportunity for nonlitigation resolution, such as through mediation or arbitration.

## A. Civil Liability of Telemedicine Providers under Indonesian Law

In the Indonesian legal context, the liability of telemedicine providers is primarily governed by two fundamental doctrines under the Civil Code (Kitab Undang-Undang Hukum Perdata): breach of contract (wanprestasi) and tort (perbuatan melawan hukum). In addition, the Consumer Protection Law (Law No. 8 of 1999) introduces the concept of strict liability for business actors, which may also apply to digital health platforms.

### Breach of Contract (Wanprestasi) in Telemedicine Services

The legal relationship between patients and telemedicine providers can be classified as an electronic therapeutic contract, where obligations arise once the patient consents to receive medical services digitally. Failure to perform professional or contractual duties such as misdiagnosis, delay in response, or breach of confidentiality constitutes wanprestasi under Article 1243 of the Indonesian Civil Code.

A juridical analysis by Muhammad Alfitho Badjuka (2025) explains that electronic health consultations represent legally binding service contracts, and that any failure to meet expected standards of care may trigger contractual liability for damages. The study further discusses how technological failures, such as interrupted connectivity or software malfunction, can be treated as a form of contractual breach within the framework of civil law[10].

Similarly, Andrianto and Athira (2022) note that telemedicine practices constitute valid private-law agreements since the exchange of consent (consensus ad idem) occurs through electronic means. Consequently, failures in the performance of such agreements may be prosecuted under breach of contract principles[11].

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[10] Muhammad Alfitho Badjuka, 'Analisis Yuridis Terhadap Penentuan Unsur Wanprestasi Dan Kerugian Dalam Kasus Fraud Telemedicine : Studi Perspektif Hukum Perdata Pada Era Layanan Kesehatan Digital' 4, no. 2 (2025): 515–23, https://jurnal.erapublikasi.id/index.php/JEL/article/view/1456/921.

[11] Wahyu Andrianto and Amira Budi Athira, 'Telemedicine (Online Medical Services) Dalam Era New Normal Ditinjau Berdasarkan Hukum Kesehatan (Studi: Program Telemedicine Indonesia/Temenin Di Rumah Sakit Dr. Cipto Mangunkusumo)', *Jurnal Hukum & Pembangunan* 52, no. 1 (2022), https://doi.org/10.21143/jhp.vol52.no1.3331.

In such cases, breach of contract may also encompass technological failure for instance, system downtime or communication disruption which impedes the provider's ability to fulfill contractual obligations. Therefore, telemedicine introduces a shared responsibility model, where both medical professionals and digital platform operators share liability for service failures.

Therefore, in telemedicine, contractual duties are hybrid in nature shared between the physician who provides medical advice and the digital platform that facilitates the interaction. This reflects a growing shift toward shared contractual accountability in digital health ecosystems.

**Tort Liability (Perbuatan Melawan Hukum) in Digital Health Contexts**

Under Article 1365 of the Civil Code, any act that unlawfully causes harm to another person and is attributable to fault (culpa) gives rise to tort liability. In telemedicine, tort-based claims may arise even without a direct contractual relationship for example, in cases involving data breaches, cyberattacks, or algorithmic errors that result in patient harm.

According to Widiyastuti (2020), modern Indonesian civil law defines the essential elements of an unlawful act as an act that violates legal norms, fault or negligence (culpa), loss or damage, and a causal relationship between the act and the harm caused[12].

A study titled Indonesian Telemedicine Regulation to Provide Legal Certainty for Patients argues that patients retain the right to pursue tort claims against digital health service providers, particularly when harm results from system negligence rather than physician error[13].

A recent systematic review by Cestenaro et al. (2023) indicates that when AI-based diagnostic tools are used in medical practice, medical liability becomes complex and may straddle both contractual and

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[12] Y. Sari Murti Widiastuti, *Asas - Asas Pertanggungjawaban Perdata*, *Cahaya Atma Pustaka*, 2020, https://repository.uajy.ac.id/id/eprint/22778/7/Asas asas Pertanggungjawaban Perdata 8 juli mohon ACC.pdf.

[13] Tiara Tiolince, 'Indonesian Telemedicine Regulation to Provide Legal Protection for Patient', *Journal of Sustainable Development and Regulatory Issues* 1, no. 2 (2023): 75–97, https://doi.org/10.53955/jsderi.v1i2.9.

tortious domains, depending on the degree of formal agreement and the nature of algorithmic error[14].

A recent doctrinal analysis by Alvina et al. (2025) emphasizes the necessity of establishing a shared liability framework within Indonesia's telemedicine regulation. The study explains that liability in digital healthcare should not rest solely on physicians as individual practitioners, but must also extend to telemedicine platforms and artificial intelligence developers whose systems participate in medical decision-making. This approach reflects the evolving nature of civil responsibility in the digital era, where contractual and tortious obligations may overlap. Accordingly, legal accountability should be proportionate to each party's role and degree of control over the telemedicine system, ensuring a fair allocation of liability consistent with the principles of Article 1365 of the Indonesian Civil Code[15].

**Consumer Protection and Strict Liability**

Beyond civil law foundations, Indonesia's Consumer Protection Law (Law No. 8 of 1999) establishes that business actors are obligated to provide compensation when their goods or services cause harm to consumers, even in the absence of proven negligence, under the doctrine of strict liability. This principle reflects the state's commitment to ensuring consumer safety and legal certainty in transactions involving both tangible goods and service-based industries.

Legal scholarship reinforces this principle. Ariyanto (2021) argues that strict liability functions as a corrective mechanism to balance the inequality of power between consumers and business actors, thereby shifting the burden of proof to producers or service providers[16].

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[14] Clara Cestonaro et al., 'Defining Medical Liability When Artificial Intelligence Is Applied on Diagnostic Algorithms: A Systematic Review', *Frontiers in Medicine* 10, no. November (2023), https://doi.org/10.3389/fmed.2023.1305756.

[15] Dyah Permata Budi Asri Alvina, Markoni, I Made Kanthika, 'Legal Protection of Patients and Responsibilities of Artificial Intelligence- Based Telemedicine Health Services in Indonesia' 5, no. 9 (2025): 11050–56, https://www.researchgate.net/publication/395494752_Legal_Protection_of_Patients_and_Responsibilities_of_Artificial_Intelligence-Based_Telemedicine_Health_Services_in_Indonesia.

[16] Banu Ariyanto, Hari Purwadi, and Emmy Latifah, 'Tanggung Jawab Mutlak Penjual Akibat Produk Cacat Tersembunyi Dalam Transaksi Jual Beli

Likewise, Mahendra (2025) emphasizes that this doctrine is increasingly significant in the digital transaction era, as it extends liability to business actors providing online or technology-mediated services that may cause harm through system failures, misinformation, or data breaches even in the absence of direct human fault[17].

Under Article 1(3) of the UUPK, telemedicine platforms qualify as business actors, as they provide digital health services for commercial purposes. Consequently, if patients experience harm due to technological malfunction, data breaches, or inaccurate medical information transmitted via such platforms, the provider bears strict liability toward consumers regardless of proven fault. This interpretation aligns with the preventive and compensatory purposes of consumer protection law.

In practice, Heriani (2021) demonstrates the implementation of UUPK principles through a case study on consumer protection in healthcare services, illustrating how courts may impose liability on service providers even without proven fault. Although her study does not focus specifically on telemedicine, the reasoning can be applied analogically to digital health services, where patients rely on the accuracy, confidentiality, and reliability of the information provided through telemedicine platforms[18].

Therefore, from a consumer law perspective, telemedicine providers both healthcare institutions and digital platform operators share responsibility with medical practitioners in ensuring reliability, safety, and transparency of services. The integration of consumer protection principles into telemedicine regulation provides an additional layer of accountability beyond contractual and tortious frameworks, establishing a broader legal foundation for patient protection in Indonesia's digital healthcare ecosystem.

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Daring', *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 1 (2021): 107–26, https://doi.org/10.24246/jrh.2021.v6.i1.p107-126.

[17] I Gede Agus Kurniawan I Gede Yudi Mahendra, Kadek Januarsa Adi Sudharma, 'The Doctrine of Strict Liability as an Inclusive Mechanism for Consumers Harmed by Mismatches Between Products and Images in E Commerce Transactions: An Inclusive Legal Perspective' 24, no. 2 (2025): 2920–34, https://jurnal.unikal.ac.id/index.php/hk/article/view/7032/4219.

[18] Istiana Heriani, 'Perlindungan Hukum Bagi Konsumen Kesehatan Dalam Hal Terjadi Malapraktik', *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): 191, https://doi.org/10.31602/al-adl.v10i2.1363.

**Fragmented Legal Framework and the Absence of a Lex Specialis**

While Indonesia has recently enacted Law No. 17 of 2023 on Health and Government Regulation No. 28 of 2024 to regulate telemedicine as part of healthcare services, these instruments predominantly address administrative, licensing, and procedural aspects, leaving major gaps in civil liability, compensation mechanisms, and technological accountability. For example, Law 17/2023 provides the legal foundation for telemedicine, but does not detail standards for diagnostic liability or conditional obligations of platform operators.

Telemedicine Regulation in Indonesia: Legal Frameworks, Challenges, and Future Directions oleh Mutiah et al (2025) mencatat bahwa meskipun regulasi baru hadir, penerapannya belum memperjelas tanggung jawab antara dokter, institusi, dan platform[19].

Additionally, the urgency of PP 28/2024 is highlighted in recent research by Harinawantara et al. (2025), which examines its role in aligning health policies with digital consumer protection. The study points out that PP 28 still lacks robustness in regulating liability, data protection, and service quality standards in telemedicine practices[20].

Empirical and normative legal studies also emphasize that existing regulation is fragmented across multiple domains: health law lacks clear civil liability mechanisms, consumer protection law addresses services generally but not medical- digital services, and technology law (e.g., data protection) remains disconnected from clinical accountability. As one article Telemedicine: Between Opportunities, Expectations, and Challenges observes, "telemedicine regulations that exist in Indonesia are still inadequate to cover all actions in telemedicine transactions, especially for legal protection for doctors as legal subjects in digital health"[21].

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[19] *Ibid*

[20] Ahmad Ma'mun Fikri B. Hangga Harinawantara, Nadya Zhafira Asfihani, 'Assessing the Urgency of Government Regulation Number 28/2024 on Telemedicine and Digital Consumer Protection' 05, no. 02 (2025): 97–108, https://journal.lifescifi.com/index.php/RH/article/view/725.

[21] Cut Khairunnisa et al., 'Telemedicine : Between Opportunities , Expectations , and Challenges in Health Development in Remote Areas of Indonesia Abstract ':, no. 1 (2025): 286–94, telemedicine: Between Opportunities, Expectations, and %0AChallenges in Health Development in Remote Areas of %0AIndonesia.

Thus, in the absence of a lex specialis specifically governing digital medical liability, Indonesia's legal landscape remains diluted and uncertain, with overlapping statutes and interpretive ambiguity weakening consumer protection and undermining confidence in telemedicine services.

**Toward Distributed Accountability: A Doctrinal and Comparative Perspective**

Classical doctrine in Indonesian civil law holds that liability arises from fault and causation. However, the rise of telemedicine compels rethinking this model by introducing technological fault errors or failures in systems, algorithms, or network infrastructure that may not directly stem from human negligence.

Recent scholarship reflects this shift. Holčapek et al. (2023) in Frontiers in Public Health discuss the challenges to defining a proper standard of care in telemedicine, noting that the traditional elements of negligence, causation, and damage still apply but must be adapted to account for risks inherent in digital mediation, such as connectivity failures or algorithmic inaccuracies[22].

In international comparative discourse, Telemedicine Regulation: Legal Challenges and Opportunities (Orsayeva et al., 2025) examines how courts in multiple jurisdictions address liability in telemedicine, emphasizing that shared liability among system providers, platform operators, and physicians is increasingly seen as necessary when digital infrastructure contributes to patient harm[23].

Therefore, for Indonesia, the way forward is a hybrid liability model one that integrates contract, tort, and consumer protection doctrines so that responsibility is allocated proportionally among human and technological actors. Such a model reconciles professional duty with technological accountability in telemedicine services, ensuring fairness and consistency in digital health jurisprudence.

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[22] Tomáš Holčapek, Martin Šolc, and Petr Šustek, 'Telemedicine and the Standard of Care: A Call for a New Approach?', *Frontiers in Public Health* 11 (2023), https://doi.org/10.3389/fpubh.2023.1184971.

[23] Raissa Orsayeva et al., 'Telemedicine during COVID- 19: Features of Legal Regulation in the Field of Administrative Liability for Errors Committed by Medical Institutions', *Egyptian Journal of Forensic Sciences* 15, no. 1 (2025), https://doi.org/10.1186/s41935-025-00443-3.

**B. Characteristics of the clause NDA (Non-Disclosure Agreement) which can provide legal certainty for companies in Indonesia.**

In a business context, trade secret infringement not only directly harms one party, but can also disrupt fair competition in the market. This case also highlights the importance of companies protecting their trade secrets through proactive measures, such as *non-disclosure* agreements (NDAs) or restricting employee access to information. On the other hand, former employees must understand the legal limitations regarding the information they have obtained from their previous employers.

A confidentiality or *non-disclosure* clause is a specific form of legally binding agreement. If a confidentiality clause complies with applicable laws, it is considered legally valid for establishing a confidential relationship between the party possessing sensitive information and the party that will access such information. This relationship requires one or both parties to maintain confidentiality and not disclose the information. Confidentiality clauses focus on maintaining the confidentiality of personal or company information, unlike other business contracts such as service or sales agreements that emphasize the terms and conditions of service or transactions. There are two main purposes of confidentiality clauses, namely to maintain confidentiality and protect information. Information protected by confidentiality clauses can include various things, such as product specifications and client lists.

The implementation of information protection agreements must be comprehensive in order to provide legal certainty for companies, especially in the event of a dispute between an employer and an employee. This agreement can serve as proof that the company has confidential information that is specifically used in its business operations.[24]

In accordance with Article 4 of Law No. 30 of 2000 concerning Trade Secrets, which states that the owner of a trade secret has the right to:

a. use their own Trade Secrets;

[24] Gerungan, Anastasia E. 2026, "Legal Protection of Trade Secrets from the Perspective of Civil and Criminal Law in Indonesia." Unsrat Law Journal 22, no. 5

b. grant a license to or prohibit other parties from using the Trade Secret or disclosing the Trade Secret to third parties for commercial purposes.

NDAs are created to protect confidential information of strategic and financial value. There are several reasons why NDAs are essential, including:[25]

1. Protecting Innovation and Technology. Companies developing new products or technologies certainly don't want their ideas or inventions leaking to competitors. NDAs help protect intellectual property rights by ensuring that information remains secure.
2. Securing Business Data. Business data such as expansion plans, financial reports, or marketing strategies is highly sensitive information. A confidentiality agreement ensures that this information is only shared with authorized parties.
3. Ensuring Trust in Collaboration. In business collaboration, trust is key. With an NDA, both parties can be more confident in sharing important information without worrying about leaks.

Drafting a data confidentiality agreement requires a deep understanding of what data needs to be protected and the legal rules that must be complied with. To ensure that your agreement is legally sound, here are some important steps to take: [26]

1. Identify the Information to be Protected The first step you must take is to specifically determine the

[25] Indonesian Chamber of Commerce and Industry Secretariat, 2024,What is a Non-Disclosure Agreement (NDA)? Here's a Complete Explanation!KADIN INDONESIA Indonesian Chamber of Commerce and Industry, Accessed via https://kadin.id/analisa/perkerjaan-kerahasiaan-nda-itu-apa-ini-penjualancepatnya/#:~:text=Ya%2C%20NDA%20berbuat%20binding%20inaway,replacing%20losses%20through%20jalur%20law , on November 28, 2025

[26] Septian, 2025, The Importance of Confidentiality Clauses in Your Business Agreements, accessed via https://kontrakhukum.com/article/pentingnya-klausul-kerahasiaan-dalam-perjanjian-bisnis-anda/ on December 10, 2025

type of data or information you want to protect, such as trade secrets, technological innovations, or customer personal data. You need to write down in detail the types of information included in the scope of the agreement, so that no disputes arise in the future.

2. Determine the Parties Involved Clearly state who is part of the agreement. This includes the party providing the information and the party receiving it. If there are third parties helping to process the data, make sure you also mention them in the agreement. Set the Rights and Obligations of Each Party Explain the responsibilities and rights of each party. For example, the obligation to maintain the confidentiality of information, as well as restrictions on the use of data as agreed by both parties.
3. Determine the Term of the Agreement Confidentiality agreements generally apply for a specific period. You can stipulate, for example, that data must remain confidential for five years after the contract is signed. Adjust this duration according to your level of risk and business interests.
4. Include Penalties for Violations Ensure that the agreement contains strict provisions regarding the consequences if one of the parties violates the agreement. This could be in the form of an obligation to pay compensation or other legal measures to protect the interests of the party providing the information.

However, there are some individuals or former employees who violate confidentiality agreements. This will be detrimental to a company if the information is leaked. Information about the company is disseminated, such as product specifications, machinery, and client lists. Trade secret breaches occur when confidential company information is leaked or used by unauthorized parties, often former employees. Examples of trade secret leaks include:[27] including the case

[27] 7 Examples of Trade Secret Cases That Have Occurred and Can Be Lessons,smartlegal.id, accessed through

of KFC which allegedly leaked its recipe to competitors, the case of PT Chiyoda Kogyo Indonesia which involved former employees and other companies, and the case of former employees of PT Kota Minyak Automation who leaked tender proposals.

The legal basis for NDAs in Indonesia is primarily derived from the Civil Code (KUHPerdata). An example of a relevant article is Article 1320, which concerns the requirements for a valid agreement. In addition, there are other supporting laws, such as:[28]

1. Law Number 28 of 2014 concerning Copyright: Protection of confidential information of a copyright nature.
2. Law Number 13 of 2016 concerning Patents: Protection of information related to patents.
3. Law Number 30 of 2000 concerning Trade Secrets: This is the most specific law, where NDA is often used to protect trade secrets.

To be legally valid and effective, an NDA is a document that must contain the following elements:

1. Identity of the Parties Full names of the party providing and receiving the information, including official address and contact.
2. Definition of Confidential Information Specifically explain what information is considered confidential, such as financial data, business strategies, or product designs.
3. Limitations on Use of Information Confidential information may only be used for agreed purposes, for example developing joint projects.
4. Duration of the Agreement Determines the validity period of the NDA and how long the receiving party must maintain confidentiality after the collaboration ends.

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https://smartlegal.id/hki/2025/09/17/7contoh-kasus-rahasia-dagang-yang-pernahterjadidanbisajadipelajaransl/#:~:text=Indonesian%20PT%20Chiyoda%20Kogyo%20Case,sanction%20because%20you%20are%20not%20the%20perpetrator , on November 28, 2025

[28] Vida, NDA: Definition, Types, and Important Functions, (2025), Accessed via https://vida.id/id/blog/definisinda#:~:text=Landasan%20hukum%20untuk%20NDA%20di,rahasia%20yang%20bersifat%20hak%20cipta. on November 28, 2025

5. Sanctions for Violations Regulates the legal consequences if one party violates the provisions of the NDA.
6. Choice of Law (Governing Law) Explains the law or jurisdiction that applies in the event of a dispute.

Without these elements, the NDA may lose its legal force and function. as a safeguard of confidentiality. The signing process must also be carried out legally. Generally, NDAs are validated with a wet signature. However, if the NDA document is digital, the signature affixed is not just any digital signature. You must use a Certified Electronic Signature. The main legal basis is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016. Therefore, it is crucial to maintain the confidentiality of information you obtain in a work or business environment. Don't take your signed NDA lightly, as the legal consequences of violating it can be very serious.

## C. Comparison of Employment Contracts with and without NDA Clauses

General employment contracts and confidentiality agreements or *Non- Disclosure Agreements* (*NDAs*) have very different functions and purposes in the context of employment or business relationships. The following are the main differences between the two:

| MAIN FEATURES | EMPLOYMENT CONTRACT GENERAL | EMPLOYMENT CONTRACT CONFIDENTIALITY |
|---|---|---|
| MAIN OBJECTIVE | Regulating working relationships as a, includingrights and obligations of both parties. | Protecting sensitive or confidential information so that it is not disclosed to third parties. |
| SCOPE | Includes terms of employment (salary, | focuses only on the definition of |

| | | |
|---|---|---|
| | working hours, position, duties, length of service, etc.). | "confidential information" and obligations to protect it. |
| PARTIES INVOLVED | Employees and Employers (company) | The that discloses information (Disclosing Party) and the party receiving information (Receiving Party). |
| TERM | Valid for the duration of the employment relationship, and certain obligations often remain in effect after termination of employment. | The term may be specific (e.g., 2, 5, or 10 years) and oftencontinue *after* the employment relationship has ended or the project has ended . |
| LEGAL BASIS | LAW Labor Law (Law No. 13 of 2003 & Law Job Creation Law) Government Regulation derived from the Job Creation Law of | Civil Code (Articles 1338 & 1320) Law number 30 years 2000 Trade Secrets ITE Law |
| REGULATIONS | Relationships relationships formal, rights & employee obligations | Freedom to contract, Protection sensitive information |

**Table of differences between employment contracts**

The differences in the regulations used to support these two types of contracts are highly dependent on the legal context in Indonesia. The following are the main legal bases underlying each type of contract:

1. Regulations for General Employment Contracts General employment contracts are specifically regulated by Indonesian labor law, which focuses on protecting employee rights and company obligations.
    - Law No. 13 of 2003 concerning Manpower (Manpower Law): This is the main legal umbrella that defines what an employment agreement is, its validity requirements, types of agreements (PKWT/PKWTT), leave entitlements, wages, termination of employment, and so on.
    - Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation (Job Creation Law/Omnibus Law): This law amends several provisions in the Labor Law, particularly those related to fixed-term employment agreements (PKWT), outsourcing, working hours, and severance pay. Its implementation regulations are further stipulated in various Government Regulations (PP).
2. Regulations for Non-Disclosure Agreements (NDAs) Non-disclosure agreements are not regulated by a specific law called the "Confidentiality Law." Instead, NDAs are based on the principles of general civil law and laws related to intellectual property protection.
    - Civil Code (KUH Perdata): NDAs derive their power from the principle of freedom of contract (Article 1338 of the Civil Code, which states that all agreements made legally are valid as law for those who make them) and the validity requirements of agreements (Article 1320 of the Civil Code).
    - Law No. 30 of 2000 on Trade Secrets: If the information protected by an NDA falls under the

category of trade secrets (information that is not known to the public, has economic value, and is kept confidential), this law provides a strong legal basis for prosecuting violations.

- Law on Electronic Information and Transactions (ITE Law): In the context of electronic data protection or misuse of digitally exchanged information, the ITE Law may also be relevant in law enforcement.

3. The benefits of an employment contract include the following:[29]
    - Providing legal certainty for both parties;
    - Reducing the risk of labor disputes;
    - Serving as a basis for problem resolution;
    - Protecting the interests of the company and employees.
4. Benefits of employment contracts using *NDA* clauses include:[30]
    - Protecting sensitive information
    - Safeguarding company patents
    - Providing clear information restrictions

Employment contracts are strictly bound by mandatory government regulations (must be followed), while confidentiality

[29] Sip Law Firm, 2024, How Employment Contracts Protect the Rights and Obligations Between Companies and Employees, accessed via https://siplawfirm.id/kontrakkerja/?lang=id#:~:text=Kontrak%20karyawan%20pada%20prinsipnya%20mengatur%20hubungan%20kerja,masa%20percobaan%2C%20dan%20prosedur%20pengakhiran%20hubungan%20kerja, On December 11,2025

[30] Mariska, 2025, Understanding Non-Disclosure Agreements (NDAs), Their Types, and Their Functions in Business!, legal contracts, accessed via https://kontrakhukum.com/article/nda-adalah/ , on December 11, 2025

agreements are more flexible and subject to the agreement of the parties as long as they do not violate the law and public order.

## Conclusion

In a business context, trade secret violations not only directly harm one party but can also disrupt fair competition in the marketplace. Legal protection of confidential information supports innovation and commercial development by ensuring that business owners' knowledge and information are not stolen or copied without permission. Awareness of the economic value of information as a competitive advantage has fueled the need for legal protection. Law Number 30 of 2000 concerning Trade Secrets stipulates that information with economic value and usefulness in business must be kept confidential by its owner. This case also highlights the importance of companies protecting their trade secrets through proactive measures, such as trade secret agreements.non-disclosure(NDAs) or restrictions on employee access to information. Former employees, on the other hand, should understand the legal restrictions regarding the information they hold from their former employers. The legal basis for NDAs in Indonesia is primarily derived from the Civil Code (KUHPerdata). An example of a relevant article is Article 1320, which stipulates the requirements for a valid agreement. NDAs are validated with a wet signature. However, if the NDA document is digital, the signature must not be just any digital signature. A Certified Electronic Signature is required. The primary legal basis is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016. Employment contracts are strictly bound by mandatory government regulations (must be followed), while confidentiality agreements are more flexible and subject to the agreement of the parties as long as they do not violate the law and public order. In addition, the employment contract also includes a mechanism for resolving potential disputes and provisions regarding the worker's obligations to meet the requirements as an employee. Law Number 30 of 2000 stipulates criminal sanctions for violations of Trade Secrets. Article 17 states that unauthorized use of

Trade Secrets or actions that violate Articles 13 or 14 are punishable by imprisonment for a maximum of two years or a fine of up to IDR 300 million and violations of this right are considered a complaint offense. Trade secret rights holders can sue the perpetrator through a lawsuit for damages or to stop the violating act. Trade secret disputes can be resolved in the District Court or through arbitration and alternative dispute resolution methods such as negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999. Therefore, it's crucial to maintain the confidentiality of any information you receive in a work or business environment. Don't take any signed NDA lightly, as breaches can have serious legal consequences.

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