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Corporate Secrets and the Ambiguity of Article 23: A Critical Analysis of KPPU's Interpretation

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Abstract

This paper examines the application of the company secret concepts in KPPU decisions number 19/KPPU-L/2007, number 35/KPPU-I/2010, and Number 8/KPPU-L/2024, and how KPPU determines the corporate secrets. This paper employs a normative approach utilising secondary data supported by primary data from interviews with KPPU. The interesting findings indicate that the guidelines of Article 23 of Law Number 5 of 1999 remain unratified in regulations, often leading to company secrets and their criteria being equated with trade secrets as regulated in Law Number 30 of 2000 on Trade Secrets. Then, the objects of corporate secrets differ in the three decisions; the three discuss corporate secrets that must be kept confidential due to their economic value, potentially causing company losses if made public. The paper recommended that the amendments to Law No. 5 of 1999 should include a distinct definition of "company secrets" aligned with global business developments and international best practices. Furthermore, KPPU should adopt a structured *rule-of-reason* analysis in assessing Article 23 violations by considering the economic impact of information leakage, the perpetrator's intent, and proportionality to competitive harm to ensure predictability and prevent abuse of authority.

KEYWORDS *Company Secrets; KPPU; rule-of-reason and Unfair Business Competition.*

Introduction

The government's commitment to advancing people's welfare is reflected in efforts to encourage business sector growth as part of national economic development.[1] The rapid flow of globalisation and technological advancements has significantly changed the business landscape, giving birth to a wide range of new companies and startups in various sectors. This development tightens market dynamics and requires business actors to innovate and maintain competitiveness amid changing consumer preferences and increasingly high global standards.

In an increasingly competitive environment, business actors engaged in the same market cannot avoid competition to expand market share. While such competition is important for encouraging innovation and efficiency, it also has the potential to give rise to unfair practices that can undermine market mechanisms and harm consumers.[2] Therefore, balancing healthy competition and legal oversight is crucial to maintaining market integrity and public interest.

Although there is a legal framework that regulates business competition, there is still ambiguity in determining the boundary between legitimate competitive conduct and actions that violate competition law. This ambiguity is all the more pronounced because few in-depth studies have highlighted how law enforcement authorities interpret and apply the principles of competition in

1 Salendu Salendu, "The Productivity of the Agricultural Sector and Industrial Sector as a Driving Force of Economic Growth and Community Welfare in Indonesia," *Benchmarking: An International Journal* 28, no. 7 (August 2, 2021): 2216–31, https://doi.org/10.1108/BIJ-07-2019-0349.

2 Yuhao Kang, "Research on Unfair Competition in the Digital Economy: Innovation, Regulation, and Balancing Strategies," ed. K. Ntalianis and W. Szpringer, *SHS Web of Conferences* 200 (October 31, 2024): 01007, https://doi.org/10.1051/shsconf/202420001007.

complex cases. This condition creates uncertainty for business actors in determining business strategies that remain competitive but do not violate the law. In this situation, companies must understand and manage their inherent value as a competitive advantage that sets them apart. The development of these values requires not only careful planning but also protection against possible access from outside parties. Therefore, maintaining information confidentiality is a strategic step to prevent competitors from copying or utilising the company's important information. This confidential information, once mastered and managed properly by the company, has high economic potential; So that if it is open to the public, it can be used by competitors and lead to losses for the company.[3]

An illustrative example is the deliberate actions of certain individuals who conspire to leak company secrets for their personal gain, disregarding the potential repercussions on the affected company. Recognising the risks, there exists a prohibition against activities involving the conspiracy to divulge company secrets.[4] As stipulated in Article 23 of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Law Number 5 of 1999). This provision states, "Business actors are prohibited from conspiring with other parties to obtain classified company secrets of their competitors, leading to unfair business competition".[5] Therefore, when confidential information, particularly about a company, falls into unauthorised hands, its confidentiality is compromised, potentially disrupting business operations. If the data is acquired by parties with malicious intent or competing firms, it can inflict losses upon the original owner of the confidential information.[6]

In KPPU Decision Number 8/KPPU-L/2024**,** KPPU considers that the market concerned is in the customised machinery industry segment with a high level of competition and high sensitivity to technical and customer information leaks. This ruling expands the scope of competition law towards the protection of strategic business information as part of the mechanism of keeping the market competitive and fair. Therefore, KPPU decided that it violated Article

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3 Nikolaos Tzenios, *Corporate Espionage and the Impact of the Chinese Government, Companies, and Individuals in Increasing Corporate Espionage* (Apollos University, 2023).

4 Mathieu Alemany Oliver, "Navigating Between the Plots: A Narratological and Ethical Analysis of Business-Related Conspiracy Theories (BrCTs)," *Journal of Business Ethics* 175, no. 2 (January 14, 2022): 265–88, https://doi.org/10.1007/s10551-020-04612-3.

5 Article 23, Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition

6 Andi Fahmi Lubis et al., "Hukum Persaingan Usaha: Buku Teks," 2017.pp.29

23 of Law No. 5 of 1999. That all elements of Article 23 are fulfilled and impose a fine of Rp3,000,000,000 on PT Maruka Indonesia.

Decision number 19/KPPU-L/2007, issued by KPPU in 2007, addressed a case of conspiracy to leak company secrets, resulting in unfair business competition. In this decision, KPPU aligned the definition of company secrets stipulated in Article 23 with that of trade secrets specified in Article 1, sub-article 1 of Law 30 of 2000. On the other hand, KPPU, as a supervisory institution overseeing business competition, issued a draft of Article 23 Guidelines, highlighting a distinction between company secrets and trade secrets. According to the draft, trade secrets are always related to Intellectual Property Rights (IPR), possessing economic value if licensed to other parties, while company secrets may not. Drawing from the continental European legal system, trade secrets fall under the category of *recht op voorbrengselen van de geest,* protecting human creations subject to copyright. In contrast, company secrets do not necessarily fall under IPR.[7]

Further regulation of the implementation of Law No. 5 of 1999, particularly Article 23, is crucially needed to address its ambiguous provisions and other unregulated matters. This urgency stems from the necessity to clarify each article and provide guidance. Presently, Article 23 lacks specific regulations, as KPPU has yet to endorse the draft Guidelines for Article 23 as a universally applicable and publicly recognised regulation. Consequently, the definition of corporate secrets remains subject to multiple interpretations, potentially leading to confusion in determining whether an action constitutes the disclosure of company secrets or trade secrets.

Violation of Article 23 of Law No. 5 of 1999 occurs when disclosed information pertains to business activities categorised as company secrets. However, not all business activity information falls under this category; Article 23 primarily governs information deemed confidential by its owner. The information can be classified into two categories,[8] Such as open information, which is freely accessible to the public due to its value to the wider community, and closed information, also known as confidential information, is restricted and accessible only to individuals with authorisation and responsibilities to maintain its confidentiality.

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[7] Muannif Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia," *Varia Hukum* 3, no. 1 (2021): 49, https://doi.org/https://doi.org/10.15575/vh.v3i1.12335.

[8] Anna Maria Tri Anggraini, Ahmad Sabirin, and Yoel Nixon A Rumahorbo, "The Form and Pattern of Business Actors Requirements in Exclusive Dealing: A Rule of Reason Approach," *Yustisia Jurnal Hukum* 12, no. 2 (August 1, 2023): 107, https://doi.org/10.20961/yustisia.v12i2.73316.

Trade secrets are explicitly regulated in Law No. 30 of 2000. According to Article 1, sub-article 1 of this law, a trade secret is defined as information not publicly known in the technology and/or business realm, possessing economic value because of its utility in business activities, and kept confidential by its owner.[9] If corporate secrets are equated with trade secrets, KPPU lacks the authority to decide upon cases related to corporate secrets. This authority instead falls under the purview of district courts, as stipulated in Article 11, paragraph (2) of Law No. 30 of 2000.

Irmayanti conducted a relevant paper on this topic. His research examines actions that may lead to unfair business competition as regulated in Law No. 5 of 1999, with the focus on KPPU decision number 19/KPPU-L/2007.[10] Analysing the elements of leakage of company secrets in relation to employment contracts, the study identifies an oligopoly market structure, characterised by imperfect market conditions. Additionally, it analyses conspiratorial acts aimed at leaking company secrets, which could lead to unfair business competition.[11]

A paper conducted by Pace, published by the Harvard Journal of Law & Technology, explains that legal ambiguities related to corporate secrets often arise due to inconsistent definitions and subjective protection criteria, particularly in the context of competition and antitrust law. This ambiguity can be exploited by companies to hide anti-competitive practices behind trade secret protection claims, thereby hindering transparency and enforcement of competition laws. In fact, the purpose of protecting corporate secrets is to set clear and measurable criteria so that there is no abuse that is detrimental to healthy business competition.[12]

Based on these two papers, what distinguishes this paper lies in the Indonesian contacts and the study of the decisions that have been decided by KPPU by concentrating on the application of corporate secrets through the examination of two specific KPPU decisions: number 19/KPPU-L/2007, number 35/KPPU-I/2010, and number 8/KPPU-L/2024, analyzed within the framework of Article 23 of Law No. 5 of 1999. This study also delves into KPPU's procedures for applying and resolving disputes regarding corporate

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9 Article 1(1), Law Number 30 Year 2000 on Trade Secrets.

10 Ardila Irmayanti, "Persekongkolan Membocorkan Rahasia Perusahaan Dalam Kaitannya Dengan Kontrak Kerja Dalam Perspektif Hukum Persaingan Usaha" (Universitas Airlangga, 2010).

11 Gordon L. Doerfer, "The Limits on Trade Secret Law Imposed by Federal Patent and Antitrust Supremacy," *Harvard Law Review* 80, no. 7 (May 1967): 1432, https://doi.org/10.2307/1339362.

12 Christopher Rebel J Pace, "Case for a Federal Trade Secrets Act," *Harv. JL & Tech.* 8 (1994): 427, https://jolt.law.harvard.edu/assets/articlePDFs/v08/08HarvJLTech427.pdf.

secrets, which may result in unfair business competition. Based on the points above, the author's interest lies in examining the application of corporate secrets that may lead to unfair business competition. This examination centres on KPPU Decision No. 19/KPPU-L/2007 regarding EMI, a song recording company, Decision No. 35/KPPU-I/2010 regarding the Donggi-Senoro Project Beauty Contest Process within the oil and gas sector, and Decision Number 8/KPPU-L/2024 Company Secrets related to Business Strategy and Corporate Marketing.

Conspiracy in Competition Law

A conspiracy is characterised as a collaborative effort involving two or more persons to engage in unlawful activities.[13] Within unfair business practices, conspiracy represents a significant form of misconduct. The term conspiracy originates from competition law in the United States (US), the Sherman Act of 1980, particularly Article 1, which states:

> *"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court..."*[14]

Referring to Article 1 of the Sherman Act, any agreement, combination of trusts, or conspiracy obstructing trade between countries or foreign nations is prohibited. Any person or party involved in such conspiracy activities is subject to penalties, including fines and imprisonment. Under the Sherman Act, any business actor accused of unlawful conduct must demonstrate the existence of a conspiracy arising from an agreement.[15] This agreement may not always be a written agreement binding the parties; rather, it can be a simple agreement with

13 "Regulation of the Business Competition Supervisory Commission Number 2 of 2010 on the Guideline of Law Number 5 of 1999, Article 22, p.7," n.d.

14 Legal Information Institute of Cornell University Law School, "15 U.S Code $1 Trust Etc, in Restraint of Trade Illegal; Penalty," *Cornell Law School*, May 2, 2023, https://www.law.cornell.edu/ code/text/15/1.

15 Mustafa Kamal Rokan, *Hukum Persaingan Usaha: Teori Dan Praktiknya Di Indonesia* (RajaGrafindo Persada, 2012).pp.31

a shared purpose. In the legal context of the US, conspiracy is interpreted as an agreement resulting from deliberations among parties in pursuit of a common goal.[16]

The US Supreme Court has characterised conspiracy as concerted action because it has the potential to impede the flow of trade.[17] Furthermore, the US Supreme Court also established a principle requiring proof in trials demonstrating the' detrimental impact of irregularities on trade during dispute examination.[18]Based on this principle, conspiracy is perceived as a collaborative agreement with consequences for the perpetrators corresponding to the circumstances at the time of dispute examination (*conspiracy is an agreement that has the result of concerted action*).[19]

Moreover, a conspiracy can be viewed as a business conspiracy carried out through cooperation among entrepreneurs aiming to dominate a market for the benefit of the conspiring parties. The conspiratorial behaviour, where business actors collaborate to manipulate and control the market, constitutes unfair business competition because it is considered an unjust and fraudulent practice.[20]

The definition of conspiracy involves an agreement made by at least two (2) people to carry out unlawful actions jointly. Conspiracy is also often likened to Collusion, which is " a secret agreement of two or more people for deceptive or fraudulent purposes."[21] This implies that collusion entails a secret agreement to achieve an unfavourable goal, such as fraud or embezzlement. Both conspiracy and collusion share the characteristic of secret agreements to achieve unfavourable goals, typically with negative connotations.

According to Wulan, business conspiracy is generally defined as cooperation among individuals or groups with other parties to gain an advantage over competitors through unfair means. This cooperation may

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16 Asril Sitompu, *Praktik Monopoli Dan Persaingan Usaha Tidak Sehat, Tinjuan Yuridis Terhadap UU No.5 Tahun 1999*, 1st ed. (Bandung: Citra Aditya Bhakti, 1999).pp.47

17 Abraham S Goldstein, "Conspiracy to Defraud the United States," *The Yale Law Journal* 68, no. 3 (1959): 405–63, https://doi.org/https://doi.org/10.2307/794457.

18 Elizabeth Pollman, "The Supreme Court and the Pro-Business Paradox," *Harv. L. Rev.* 135 (2021): 220, https://heinonline.org/HOL/LandingPage?handle=hein.journals/ccum38&div=3&id=&page= accesessed by 27 Oct 2025.

19 Anna Maria Tri Anggraini et al., "Ensuring Justice And Utility: Addressing Alleged Monopolistic Practices in Ibu Kota Nusantara," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 2 (January 3, 2025): 274–308, https://doi.org/10.18860/j.v15i2.28765.

20 Arie Siswanto, *Hukum Persaingan Usaha* (Ghalia Indonesia, 2002).pp.11

21 Sitompu, *Praktik Monopoli Dan Persaingan Usaha Tidak Sehat, Tinjuan Yuridis Terhadap UU No.5 Tahun 1999*.pp.34

involve one or more entrepreneurs aligning with influential figures to secure a competitive edge. Entrepreneurial conspiracy to gain a competitive advantage contradicts the sense of justice, constituting a fraud for business actors. Those seeking market dominance may resort to various ways, including fraudulent activities such as conspiring to leak company secrets. This action is very unfair because in the realm of business within a company, numerous individuals are involved, and such a conspiracy can unfairly disadvantage parties who maintain a working relationship with the implicated company.[22]

Fairness, in this context, entails providing equal opportunities for all actors to fulfil business needs and compete fairly and healthily in the relevant market.[23] The repercussions of such a conspiracy may impede honest entrepreneurs' ability to enter the market, resulting in numerous obstacles. This situation could widen price disparities without prompt intervention, undermining market stability.

Apart from the definition of conspiracy above, Japan, through the provisions of *Shiteki Dokusen No Kinshi Oyobi Kosei Torihiki Ni Kansuru Horitsu* or Law Concerning the Prohibition of Private Monopoly and Preservation of Fair Trade 1947, refers to conspiracy as "Dango." Dango activities occur when companies reach an agreement that mutually benefits the parties involved but creates substantial obstacles contrary to the public interest.[24]

The Federal Trade Commission Act has long established the doctrine prohibiting conspiracy in commerce. This legislation explicitly states that any conduct aimed at knowingly restraining trade and monopolising market prices, in whatever form, is unlawful and prohibited. In the landmark Book Paper and Crown case, price conspiracy remained banned despite initial efforts to improve trading conditions due to its adverse impact on the continuous trade flow. Therefore, stringent regulations are necessary to curb market price manipulation, ensure price equilibrium, and foster fair business competition.

[22] Dewi Nawang Wulan, Ainul Masruroh, and Rusydi Rusydi, "Persekongkolan Tender Dalam Persaingan Usaha Menurut Uu No. 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat," *Mimbar Yustitia* 3, no. 2 (December 2, 2019): 105–23, https://doi.org/10.52166/mimbar.v3i2.1959.

[23] Nigel D White, Neil Boister, and Hilaire McCoubrey, *Textbook on Jurisprudence* (Oxford University Press, 2003).pp.286

[24] Andryan Dwi Prabawa and Hernawan Hadi, "Analisis Kedudukan Hukum Panitia Tender Dalam Kasus Persekongkolan Tender Di Indonesia Berdasarkan Undang- Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat," *Jurnal Privat Law* 6, no. 2 (October 2, 2018): 168, https://doi.org/10.20961/privat.v6i2.24762.

The equilibrium of business competition can only be achieved when market prices remain stable and balanced, goods are evenly distributed, and there is no undue influence on production or distribution costs from certain parties.[25]

In the most recent case brought to trial, the US FTC found evidence indicating that conspiratorial practices had effectively resulted in market control. Over the preceding decade leading up to the prosecution, a staggering 85% of market prices had remained unchanged, with minimal competition observed among businesses.[26] This lack of market competition ultimately led to a single-party monopoly on trade. Consequently, since the conclusion of the last trial, the Federal Trade Commission has strictly prohibited the practices of conspiracy, collusion, and market monopoly.[27]

Conspiracy falls within the purview of business competition law as delineated by Law No. 5 of 1999. The definition of the conspiracy, as outlined in Article 1, paragraph 8, encompasses activities carried out through collaboration between entrepreneurs to control the market to advance the interests of the conspiring parties. The provision specifies that a conspiracy must involve at least two people cooperating and fulfil the criteria of participating parties, as well as demonstrating an agreement to conspire, whether orally or in writing.

The act of conspiracy represents a malevolent endeavour capable of impeding, obstructing, and curtailing fair trade (conspiracy in restraint of business). Therefore, Article 23 of Law No. 5 of 1999 categorises conspiracy as a form of unfair business competition characterised by dishonest and legally prohibited actions or activities conducted by business actors.[28]

Conspiracy activities typically involve an agreement between two parties, which can be formalised in writing or remain unwritten, and may occur between fellow entrepreneurs, work providers, or similar parties. The primary purpose of a conspiracy is to impose restrictions on competitors capable of competing in the relevant market, thereby hindering their participation in

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25 Michael Conant, "Consciously Parallel Action in Restraint of Trade," *Minn. L. Rev.* 38 (1953): 797, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=2944&context=mlr. accesessed by 27 Oct 2025

26 Kevin G Rivette and David Kline, *Rembrandts in the Attic: Unlocking the Hidden Value of Patents* (Harvard Business Press, 2000).

27 Orley Ashenfelter and Kathryn Graddy, "Anatomy of the Rise and Fall of a Price-Fixing Conspiracy: Auctions at Sotheby's and Christie's," *Journal of Competition Law & Economics* 1, no. 1 (January 1, 2005): 3–20, https://doi.org/10.1093/joclec/nhi003.

28 S H Rachmadi Usman, *Hukum Persaingan Usaha Di Indonesia* (Sinar Grafika, 2022).pp.477

market competition.[29] This aligns with the stipulation in Article 22 of Law Number 5 of 1999, which prohibits business actors from conspiring with other parties to manipulate and determine the outcome of tenders, resulting in unfair business competition."

Interpreting the article above reveals that conspiracy activities depend on two situations: the requirement for participating parties and the necessity for parties to agree to engage in collusive activities together. In this context, the participating party may originate from various sources, including entrepreneurs directly or initial competitors.[30] These participating parties can exert significant influence, indicating that the prohibition of conspiracy extends beyond horizontal relationships (between bidders) to encompass vertical relationships (between the committee and the bidders). Conspiracy can theoretically be differentiated into intra-company conspiracies and deliberate parallel conspiracies, as described below:

1. *Intrabrand Competition*[31]

Intra-company conspiracy occurs when two or more parties from the same company agree to engage in activities that hinder market competition. For example, these actions may be carried out by parties within the same company but in different divisions, exploiting differences in roles and responsibilities to carry out harmful actions.

2. *Interbrand Competition*[32]

Parallel conspiracy, on the other hand, involves deliberate acts by irresponsible parties. It occurs when a company imitates the actions and strategies of a market-leading competitor to compete. This type of conspiracy has the potential to result in the leakage of company secrets due to intense competition among multiple entrepreneurs operating in the same industry.

However, Law No.5 of 1999 does not explicitly address tender rigging as an expressly prohibited act. The United Nations Conference on Trade and

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29 Anna Maria Tri Anggraini, "Sinergi Bumn Dalam Pengadaan Barang Dan/Atau Jasa Dalam Perspektif Persaingan Usaha," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 25, no. 3 (March 31, 2014): 446, https://doi.org/10.22146/jmh.16072.

30 A M Tri Anggraini, *Larangan Praktek Monopoli Dan Persaingan Tidak Sehat: Perse Illegal Atau Rule of Reason* (Universitas Indonesia, Fakultas Hukum, Pascarsarjana, 2003).pp.300

31 Kamal Saggi and Nikolaos Vettas, "On Intrabrand and Interbrand Competition: The Strategic Role of Fees and Royalties," *European Economic Review* 46, no. 1 (January 2002): 189–200, https://doi.org/10.1016/S0014-2921(00)00092-1.

32 Leonard Fong-Sheng Wang and Ya-Chin Wang, "Brand Proliferation and Inter-brand Competition," *Journal of Economic Studies* 35, no. 3 (August 1, 2008): 278–92, https://doi.org/10.1108/01443580810887823.

Development (UNCTAD) categorises tender rigging, particularly collusive tenders, as agreements between related parties that mutually agree on restrictive terms.[33] This classification aligns with that of the US Supreme Court, which prohibits agreements based on a malicious intention to harm others, whether formal or informal, written or unwritten.[34]

Based on the explanation above regarding the definition of conspiracy and its correlation with business competition law, it can be inferred that it arises when two or more parties consciously enter into an agreement or collaboration to engage in activities that contravene the law and public interest. Business competition law unequivocally prohibits any actions undertaken with malicious intent in conducting trade. Prohibited conspiracy in competition law encompasses actions where multiple parties cooperate in carrying out malicious, unlawful activities that impede others. Without meeting these criteria, an action cannot be categorised as a harmful conspiracy.[35]

Law No. 5 of 1999 was enacted to regulate prohibitions related to business activities that may lead to unfair business competition. The regulations concerning prohibited activities are delineated in Chapter IV of Law No. 5 of 1999. While the law does not explicitly define the term "activities. The term "activities" pertains to unilateral legal action taken by an entrepreneur or a specific group, devoid of any direct legal relationship with other entrepreneurs.[36] From this definition, it is clear that activities denote various business actions or unilateral legal actions without involving other business actors.

Furthermore, an activity denotes implementing actions by one or more parties that are always related to conducting business activities.[37] Thus, no stipulation requires these prohibited activities to involve two or more business actors; they can be carried out unilaterally without any connection to other parties. Based on the insights of the experts as mentioned earlier, it can be

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33 Berend R Paasman, *Multilateral Rules on Competition Policy: An Overview of the Debate* (ECLAC, 1999).

34 Aditya Purnama, Masri Rumita, and Dedy Handoko, "Tinjauan Yuridis Tentang Persekongkolan Tender," *Privat Law* 2, no. 4 (2014): 26564. https://www.neliti.com/publications/26564/tinjauan-yuridis-tentang-persekongkolan-tender, accesessed by 22 April 2025.

35 John M. Connor, "U.S. Government Prosecution of the Cartels," 2001, 339–98, https://doi.org/10.1007/978-1-4613-0293-3_13.

36 Fred Luthans, Alexander D Stajkovic, and Elina Ibrayeva, "Environmental and Psychological Challenges Facing Entrepreneurial Development in Transitional Economies," *Journal of World Business* 35, no. 1 (March 2000): 95–110, https://doi.org/10.1016/S1090-9516(99)00035-8.

37 Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha Di Indonesia* (Kencana Prenada Media Group, 2008).pp.38

inferred that activities refer to unilateral actions taken by business actors as they carry out their business activities independently of other business actors.

Conspiracy is among the activities prohibited in Law No. 5 of 1999. The definition of conspiracy is outlined in Article 1, sub-article 8, which states that an activity or action can be deemed to constitute unfair business competition if it involves dishonesty on the part of business actors in market competition, conducting unlawful activities to gain a competitive advantage, and intending to hinder other competitors from entering the market

Article 22 requires an element of collusion between a person and another party. In this context, the term "another party" is broadly interpreted, indicating that it does not necessarily refer to a competitor or another business actor. Conspiracy inherently entails cooperation between multiple parties. Law No. 5 of 1999 restrictively specifies that conspiracy aims to control the market to generate substantial profits for the conspiring parties.[38] Law No. 5 of 1999 categorizes conspiracy into 3 (three) forms: 1) Conspiracy to determine the winner of a tender (Article 22), 2) Conspiracy to obtain information on the business activities of competitors classified as company secrets (Article 23), 3) Conspiracy to impede the production or marketing process of goods and or services owned by competitors (Article 24).

As previously discussed, a conspiracy constitutes unfair business competition because of its fraudulent elements. Fraud in the business realm can be classified as follows:

1. *Restrictive Practices with Horizontal Implications*[39]

This involves cooperation between business actors and suppliers to set prices that hinder other competing business actors. It may also encompass pricing strategies aimed at undercutting competitors. Moreover, there may be restrictions on output from producers involved in the conspiracy, limiting competitors' access to goods. In addition, conspiracies may entail exchanging commercially sensitive information among competing parties, such as pricing, output, or product quality details. These actions aim to stifle competition by preventing other business actors from effectively participating in the market.

2. *Restrictive practices with vertical implications*[40]

[38] Yakub Adi Krisanto, "Analisis Pasal 22 UU No. 5 Tahun 1999 Dan Karakteristik Putusan KPPU Tentang Persekongkolan Tender," *Jurnal Hukum Bisnis* 24, no. 2 (2005).pp.42

[39] Roger Clarke and Eleanor J Morgan, "5. Horizontal Agreements and Restrictive Practices Policy in the UK and EU," *New Developments in UK and EU Competition Policy*, 2006, 110.

[40] Patrick Rey and Thibaud Vergé, "Economics of Vertical Restraints," *Handbook of Antitrust Economics* 353 (2008): 390.

These policies or actions restrict or influence relationships between business entities at different hierarchical levels within a distribution channel or supply chain. Vertical implications arise when these rules or practices affect entities at different levels, such as manufacturers, distributors, or retailers. Two examples of restrictive practices with a vertical impact are: 1) Resale Price Maintenance: Manufacturers may impose rules that limit the retail price that distributors or retailers can set. This can restrict price competition among retailers, thereby ensuring prices remain high. 2) Price Discrimination: Manufacturers may charge different prices to distributors or retailers, depending on geographic location or sales volume levels. This practice can create inequality among business partners. The existence of an agreement executed by an entrepreneur with a producer not to sell output to competitors, parties to the contract are treated differently from those who disagree, and there are restrictions on marketing products distributed to businesses.[41]

For a company to effectively manage, develop, and improve its business operations, it must continuously innovate its products, offering goods and services that are attractive, unique, different, and provide added value to consumers. Consequently, the company's management and governance system consistently strives to maintain its company secrets to prevent unauthorised replication or theft by others. Company secrets have a very high selling value for the company, closely related to its reputation and development. These secrets, also known as "undisclosed information", "trade secret", or "know-how,[42]" encompass vital aspects of the company’s operations, possessing both technological and economic values for its business activities. Therefore, access to this information is restricted, and strict confidentiality obligations bind those with authorised access.[43]

Law No. 5 of 1999 expressly prohibits collusion aimed at acquiring competitors' business information categorised as company secrets, because this practice fosters unfair business competition. Such confidential information constitutes proprietary data owned by the respective company. Consequently,

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41 Muhammad Ali Hanafiah Selian and Indra Rahmatullah, “Pembuktian Tidak Langsung (Indirect Evidence) Dalam Praktik Kartel Pada Industri Minyak Goreng (Studi Kasus Putusan No. 24/KPPU-I/2009 Jo. No. 03/KPPU/2010/PN. JKT. PST Jo. No. 582K/PDT. SUS/2011.)” (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, n.d.).pp.66

42 Valeria Falce, “Trade Secrets – Looking for (Full) Harmonization in the Innovation Union,” *IIC - International Review of Intellectual Property and Competition Law* 46, no. 8 (December 24, 2015): 940–64, https://doi.org/10.1007/s40319-015-0409-x.

43 Susanti Adi Nugroho, *Hukum Persaingan Usaha Di Indonesia* (Prenada Media, 2014).pp.303

no one is allowed to steal, access, or even use company secrets without the explicit knowledge or permission of the rightful owner.

Maintaining the confidentiality of company information is imperative to safeguarding company assets from unauthorised access. These protective efforts may involve stringent physical security measures, strict supervision, and adherence to legal regulations with strict sanctions. Consequently, every effort must be undertaken to prevent the disclosure of company secrets and mitigate potential losses. While some company secrets may exist in intangible or unwritten forms, most are now documented through various means such as writing, codes, symbols, drawings, schemes, and plans. According to Ramli, legal provisions have been established to protect company secrets, stipulating sanctions against those who pose a threat or cause harm to the owners.[44]

The significance of company secret information in business is that it serves as the primary target for entrepreneurs in the same field. This information has substantial commercial value, granting the company exclusive control over its secrets or the option to license them to third parties. Additionally, companies have the right to prohibit unauthorised parties from using or disclosing their company secrets to others without any interest in the company. Conspiracies aimed at revealing or leaking company secrets, whether for personal gain or collective interest.[45] They are highly detrimental to the affected company, leaving it feeling cheated by this action.

The act of conspiring to obtain information on a competitor's business activities falls under the category of company secrets, as regulated in Article 23 of Law No. 5 of 1999. Every business actor is prohibited from conspiring with any party to acquire confidential information about their competitors, because this will impact the flow of market competition, leading to fraud and injustice that undermines healthy market competition. The elements of conspiring to obtain information from competitors, as regulated in Article 23, are as follows:

a. *Elements of business actors*: Defined in Article 1 sub-article 5, as any individual or business entity, whether legally established or not, engaging in business activities within the territory of Indonesia. These activities may be conducted independently or through agreements with others to generate economic benefits.

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44 Ahmad M Ramli, *HAKI, Hak Atas Kepemilikan Intelektual: Teori Dasar Perlindungan Rahasia Dagang* (Mandar Maju, 2000).

45 Novelinda S G Sembel, "Pelanggaran Pengungkapan Rahasia Dagang Menurut Undang-Undang No. 30 Tahun 2000 Tentang Rahasia Dagang," *Lex Privatum* 6, no. 1 (2018). https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/19447

b. *Element of conspiracy*: This element involves actions taken to achieve negative goals, employing various means to control the market. Entrepreneurs and other parties carry out these actions to impede their competitors.
c. *Involvement of other parties*: Refers to any individual business actor or non-business actor, whether in the business sector or not, who participates in seeking information on competitors' business activities, thus breaching company secrets.
d. *Information*: Encompasses insights derived from learning, experience, and implementation, with a broad interpretation depending on the context. In this case, the information pertains to competitors' business activities categorised as company secrets.
e. *Competitors' business activities:* Refers to businesses carried out within the same market as those engaged in collusive actions.
f. *The element of company confidentiality*: Encompasses all information, documents, assets, and other related aspects of the business activities being carried out.[46]

Under Law No. 5 of 1999, prohibitions against monopolistic and unfair competition practices are generally carried out in two ways: the theory of per se illegality or the rule of reason. Not all prohibited activities can be automatically punished under the articles of the Anti-Monopoly Law; thorough investigation and evidence gathering are required to determine that the act could lead to unfair business competition.

Referring to the provisions of this Article 23, the act of conspiring to obtain confidential information from competitors can be assessed using a rule of reason approach. This means that if someone conspires to obtain confidential information from a competitor, the impact of this action must be evaluated. If, upon investigation, it is determined that the act could lead to unfair competition, then it violates Article 23. Four main aspects can serve as guidelines for proving Article 23,[47] namely: Proof to assess whether an act of conspiracy occurred or not; proof to evaluate information, determining whether it qualifies as a company secret or not; proof related to competing business

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46 Ahmad Sabirin and Raafid Haidar Herfian, "Dampak Ekosistem Digital Terhadap Hukum Persaingan Usaha Di Indonesia Serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) Di Era Ekonomi Digital," *Jurnal Persaingan Usaha* 1, no. 2 (December 31, 2021): 75–82, https://doi.org/10.55869/kppu.v2i.23.

47 Sih Yuliana Wahyuningtyas, "Regulating Algorithms in the Digital Market: A Revisit of Indonesian Competition Law and Policy," *International Review of Law, Computers & Technology* 38, no. 1 (January 2, 2024): 21–42, https://doi.org/10.1080/13600869.2023.2202290.

actors; and proof indicating the potential for unfair business competition. Article 23 necessitates proof that the obtained company secrets resulted from unlawful activities, such as conspiratorial acts with other parties.

The Concept of Company Secrets in Law No. 5 of 1999

Company secrets are defined similarly to trade secrets, both possessing the same levels of confidentiality. As regulated in the provisions of Article 23 of Law No. 5 of 1999, confidential company information encompasses all aspects related to business activities. The law sets boundaries on this definition, encompassing any information on business activities that the owner keeps confidential, regardless of its value, thus classifying it as a company secret.

Despite sharing the characteristic of confidentiality, company and trade secrets differ. The difference lies in the type of information between the two; each company's secrets are unique and tailored to the specific characteristics of the industry. Additionally, trade secrets focus on regulations related to the rights of the information holder, which typically arise from copyrighted works necessitating registration as intellectual property rights (IPR), thereby ensuring their economic value. Meanwhile, company secrets may qualify for registration as IPR if they meet trade secret requirements but do not inherently possess economic value.

Based on the Draft Guidelines for Article 23 of Law No. 5 of 1999, the concept of company secrecy traces back to a Dutch Court decision dated 31 January 1919, known as the Lindenbaum Cohen Arrest, which pertained to unlawful acts. This landmark decision delineated company secrets as any information safeguarded by the owner to ensure its confidentiality, restricted to individuals directly involved in the business activities.[48]

Article 23 of Law No. 5 of 1999 explicitly regulates the prohibition on business actors conspiring to obtain confidential information about their competitors' companies to prevent unfair business competition practices. According to Article 23 of Law No. 5 of 1999, company secrets are information about business activities of business actors classified as company secrets. This

48 Sukarmi Sukarmi et al., "The Qualified Effects Doctrine in the Extraterritorial of Competition Law Application: An Indonesia Perspective," *Sriwijaya Law Review* 5, no. 2 (July 28, 2021): 192, https://doi.org/10.28946/slrev.Vol5.Iss2.1050.pp192-204.

information can be in the form of technical data, business strategies, internal financial statements, product formulas, and other specific information that has economic value for the company.[49]

The main elements of company secrets under this provision include:[50]

1. *Confidential nature and kept confidential:* The information must be stored and strictly guarded by business actors, so that it cannot be freely accessed or known by the public or competitors.
2. *If it is open to the public,* the disclosure of information to other parties can cause economic or strategic losses for the company because competitors may use it to their advantage.
3. *Have economic value:* The information must be valuable for the company's business activities because it provides an advantage in market competition.

Often, the terms company secrets and trade secrets are used interchangeably. However, there are fundamental differences:

1. Company Confidential refers to all types of internal information of business actors considered confidential, including extensive business information such as marketing strategies, production data, organizational structure, and other information related to the company's operations.[51]
2. Trade Secrets refer specifically to information in the field of technology and/or business that is not known to the public, has economic value, and is kept confidential. Trade secrets focus on technological and business aspects that provide competitive advantages.[52]

In Indonesia, the protection of trade secrets is specifically regulated in Law No. 30 of 2000 concerning Trade Secrets, while company secrets are regulated in the context of business competition by Law No. 5 of 1999. However, both have the same goal, which is to keep important information from being misused by

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[49] Adri Sadewa Sirait et al., "Pembocoran Rahasia Dagang Perusahaan Oleh Mantan Karyawan : Perlindungan Hukum Dan Klausula Rahasia Dagang," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. 3 (June 24, 2025): 196–204, https://doi.org/10.55606/jurrish.v4i3.5746.

[50] Ghiand Carlo Legrands, "Perlindungan Hukum Bagi Pemilik Rahasia Dagang," *Lex Privatum* 1, no. 4 (2013), https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/3073.

[51] Haykal Azmi, Fifiana Wisnaeni, and Irma Cahyaningtyas, "Perlindungan Hukum Rahasia Dagang (Studi Pada PT. Haifa Paraestetiderma)," *Notarius* 14, no. 1 (May 17, 2021): 259–75, https://doi.org/10.14710/nts.v14i1.38913.

[52] Faranita Ratih Listiasari, "Rahasia Dagang Sebagai Salah Satu Perlindungan Hak Kekayaan Intelektual Dari Hasil Penelitian Hibah Sekolah Vokasi Ipb Tahun 2020," *Jurnal Sains Terapan* 11, no. 1 (September 18, 2021): 104–15, https://doi.org/10.29244/jstsv.11.1.104-115.

other parties to create healthy business competition. Article 23 of Law No. 5 of 1999 regulates the prohibition for business actors to conspire with other parties in order to obtain confidential information about their competitors' companies. The main elements in this article are:[53]

1. *Business actor:* A legal subject who carries out business activities, whether an individual, a legal entity, or a company.
2. *Conspiracy:* Carrying out acts of cooperation or collusion secretly with unlawful purposes, in this case illegally obtaining the secrets of a competitor's company.
3. *Other parties:* It can be individuals, business entities, or third parties who help business actors to obtain the confidential information.
4. *Confidential company information:* Information that has been described beforehand, which is confidential, of economic value, and is kept confidential.

This ban aims to prevent unfair business competition practices that harm other business actors and cause market distortions. In Law No. 5 of 1999, the protection of company secrets is more directed to create a healthy business competition climate by regulating limits on monopoly and collusion practices involving the leakage or theft of confidential company information.

In addition, in the context of corporate law, access to company secrets is also regulated in the Limited Liability Company Law No. 40 of 2007 on Limited Liability Companies (Law No. 40 of 2007), where the board of directors is responsible for the management of daily business activities and has the authority to maintain the confidentiality of the company's internal information. Shareholders and other organs of the company have limited access to maintain company secrets.

One approach to discerning what constitutes company secrets involves assessing the type of business carried out. For example, in the case of a PT, insights into its business activities can be gleaned from Article 3 of its Articles of Association, which elucidates the company's aims and objectives. These aims and objectives outline the scope within which the PT operates and carries out its business activities.

53 Rachel Fayza Rabbani and Suherman Suherman, "Urgensi Pengaturan Confidentiality Agreement Sebagai Optimalisasi Perlindungan Kerahasiaan Informasi Bernilai Ekonomi," *Jurnal USM Law Review* 6, no. 3 (November 23, 2023): 1020–39, https://doi.org/10.26623/julr.v6i3.7830.

A limited liability company functions as an association whose business operations are funded by shares, with each owner possessing shares proportional to their ownership. Because the capital is derived from tradeable shares, changes to company ownership can be made without the need to dissolve the company. A Limited Liability Company (PT) serves as an association where multiple private entrepreneurs unite to manage a joint business, offering opportunities for broader capital investment in the company by purchasing company shares.

As commonly understood, PT business activities are carried out based on the board of directors' decision, through Lean Daily Management. As regulated in Article 75 paragraph (1) of the Law No. 40 of 2007, a PT's organs are basically at the General Meeting of Shareholders. The General Meeting of Shareholders has authority that surpasses that of the directors and board of commissioners, albeit within the limitations outlined in the articles of association, and vice versa.

Article 100 paragraph (3) of Law No. 40 of 2007 states that upon a written request from a shareholder, the board of directors must grant access to company information related to the shareholder registry, shareholder details, minutes of the General Meeting of Shareholders, annual reports, and copies of the information.[54] However, this article delineates the scope of shareholders' access to company information, limiting their exposure to confidential business activities. Even shareholders who have invested capital in a PT are subject to restricted access to information about the company's business activities. This limitation extends to external parties, who, without committing irregularities, have no access to such information.[55]

The absence of clear regulations that definitely define company secrets often results in an overlap between the definitions of trade secrets and company secrets. This overlap, particularly related to the regulation of IPRs, engenders conflicts regarding the inherent nature of these two terms.[56] However, the concept of company secrets serves as a safeguard, ensuring that businesses can protect their company information. Any unauthorized acquisition or possession of company secrets by individuals lacking the interest and authority violates the company's rights.

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[54] Article 100 Paragraph (3), Law No. 40/2007 on Limited Liability Companies.

[55] R.J. Anderson and F.A.P. Petitcolas, "On the Limits of Steganography," *IEEE Journal on Selected Areas in Communications* 16, no. 4 (May 1998): 474–81, https://doi.org/10.1109/49.668971.

[56] Valbona Muzaka, Linkages, Contests and Overlaps in the Global Intellectual Property Rights Regime,*European Journal of International Relations*17, no. 4 (December 17, 2011): 755–76, https://doi.org/10.1177/1354066110373560.

So, in fact, the concept of company secrets in Law Number 5 of 1999 focuses on protecting the confidential information of business actors in order to create healthy and fair business competition. Confidential information that is kept confidential and of economic value must not be obtained through unlawful conspiracy. This protection complements other trade secrets laws that strengthen the authority of business actors in maintaining their competitive advantage through strategic information protection.

Application of the Term "Company Secret" in KPPU Decisions

Even though the definition of corporate secrecy has not been explicitly regulated in statutory regulations or are there no Article 23 guidelines regarding corporate secrecy, the implementation of corporate secrecy can be seen in several decisions issued by the KPPU.

1. *Decision on Case Number 19/KPPU-L/2007 Concerning EMI*

Case Number 19/KPPU-L/2007 was decided as a case of unfair business competition which violated Article 23 of Law Number 5 of 1999, relating to the conspiracy to leak company secrets. During the investigation, it was revealed that the conspiracy occurred because the defendants worked together to obtain company secrets regarding contracts between artists and the overseeing companies, which is addressed by the material aspects of Article 23.

The company's secret leaked in this case was the contractual agreement between Dewa 19 as the artist and PT Aquarius Musikindo as the recording company overseeing Dewa 19. The contents of the agreement were related to Dewa 19's agreement with PT Aquarius Musikindo to sell one exclusive master recording, namely the album "Laskar Cinta Vol.7," and four new songs to be combined with the previous Dewa 19 songs for use in a compilation album titled "The Best of" or a repackage. Dewa 19 was obligated to submit these four new songs no later than 12 months after the sale of the "Laskar Cinta" album.

The contract in dispute in case Number 19/KPPU-L/2007 has significant confidentiality value. Because the contract agreed upon by the company is confidential and must not be leaked to competitors, it must remain undisclosed to other parties, especially other record companies. If an artist is still under contract with a record company, then the rights and obligations are still binding.

This includes the obligation to maintain the confidentiality of the contract's contents between the artist concerned and the company, ensuring it remains undisclosed to parties not included in the contract.

Apart from the contract in dispute in this case, the album "Laskar Cinta Vol." by PT Aquarius Musikindo is also within the scope of copyright. Copyright itself is an exclusive right for the creator or recipient of the right to publish or reproduce their work or grant permission to do so, without prejudice to restrictions according to applicable laws and regulations. However, besides being included in the scope of copyright, the Dewa 19 album and songs are also considered company secrets. This is because the Dewa 19 album and songs contain information about the business activities of PT Aquarius Musikindo as the record company overseeing Dewa 19 as an artist. Company secrets are known as information about a company's business activities that are confidential and not disclosed to the public except to those related to the information. If this information is leaked, it will cause losses to the company whose confidential information is leaked.

The leakage of company secrets to PT Aquarius Musikindo has resulted in unhealthy business competition, leading to significant material losses for PT Aquarius Musikindo. The loss reached IDR 4,295,627,881 as a result of Dewa 19's transfer from PT Aquarius Musikindo to EMI Music SEA. This move also has the potential to cause further loss at PT Aquarius Musikindo because, according to the previously agreed contract, Dewa 19 still has obligations to fulfil. Legally, the contractual agreement between Dewa 19 and PT Aquarius Musikindo remains valid and binding on each party.

The existence of a conspiracy in attempting to leak company secrets constitutes fraudulent practices in business competition, taking the form of restrictions that have horizontal implications. Restrictions with horizontal implications imply efforts to limit the output of producers in collaboration with other parties so that competitors cannot freely obtain the output. In this case, PT Aquarius Musikindo's knowledge of company secrets based on their contractual agreement with Dewa 19 presents an opportunity for EMI Music SEA to develop its business policies, limiting the output it produces to avoid competition from competitors in the industry. Thus, the company secret in this case includes the copyright owned by Dewa 19, which has sales value and is part of intellectual property. If disclosed to the public, this information would result in profits for the company that obtains the company's confidential information.

2. Decision on Case Number 35/KPPU-I/2010 Concerning the Donggi-Senoro

Project Beauty Contest Process

This case constitutes a violation of Article 23 relating to conspiracy to leak company secrets. The KPPU revealed that the conspiracy occurred because the reported parties deliberately leaked information about other companies to achieve certain goals, as outlined in the material aspects of Article 23.

Monopoly practices and unfair business competition in this case commenced during the Donggi-Senoro Project beauty contest process. The beauty contest served as a method for PT Pertamina (Persero) and PT Medco Energi International, Tbk to select potential partners for the LNG development project, concerning gas reserves from the Matindok Block and Senoro Block. The implementation of this beauty contest was considered detrimental to certain parties because attempts were made to leak the secrets of one of the companies competing in the beauty contest, thereby opening opportunities for other companies to conspire to take advantage of competitors' information to win the project.

The company secrets leaked in this case is related to confidential information belonging to LNG International Pty Ltd, which Mitsubishi Corporation obtained following a due diligence process. This confidential information includes detains regarding terminal capacity and domestic market obligations. Such information can also be classified as a trade secret because of its economic value, which is very useful in business activities and necessitates confidentiality from the owner of the trade secret.

This was evidenced when Mitsubishi Corporation through Mitsui & Co Ltd., conducted due diligence on LNG International Pty Ltd. Following this due diligence, a confidentiality agreement (CA) was executed, prohibiting Mitsubishi Corporation from providing or LNG International Pty Ltd's data to other parties. Thus, it is evident that this falls within the scope of trade secrets, as the information is kept secret or guarded by the owner. However, due to certain interests, Mitsubishi Corporation failed to fully comply with the terms of the confidentiality agreement (CA), resulting in the leakage of LNG International Pty Ltd.'s confidentiality and subsequent losses for them.

When presenting a joint presentation with PT Pertamina (Persero) and PT Medco Energi International Tbk., Mitsubishi Corporation discussed terminal capacity, domestic market obligation (DMO), and strategies for addressing the DMO issue. Before conducting due diligence with LNG International Pty Ltd, Mitsubishi Corporation did not mention these aspects in its proposal. Therefore, it is evident that Mitsubishi Corporation acquired this information after conducting due diligence on LNG International Pty Ltd. This information proves to be highly valuable for business activities. Consequently, the due diligence carried out by Mitsubishi Corporation on the information held by LNG International Pty Ltd. has been exploited for the benefit of Mitsubishi Corporation in formulating proposals both before and during the beauty contest.

The leakage of company secrets to LNG International Pty Ltd resulted in unhealthy business competition. This is evidenced by the exclusion of LNG International Pty Ltd. from the Beauty contest due to collusion between Mitsubishi Corporation and PT Pertamina (Persero), PT Medco Energi International, Tbk, and PT Medco E&P Tomori Sulawesi, resulting in Mitsubishi Corporation being selected as the winner. In exchange, the three PTs obtained information regarding their competitors' business activities, categorized as company secrets under the CA, from the due diligence process regarding LNG International Pty's initial work documents. Ltd. in the Senoro Project. This information was utilized by Mitsubishi Corporation in seeking investment partners for the Donggi-Senoro Project.

The KPPU views the beauty contest for the Donggi-Senoro project as a form of unfair business competition practice, specifically a type of tender, as all parties should have equal opportunities to win the beauty contest, and the leaking secrets of competing companies should not be justified. Based on suspicions of conspiracy in the procurement of services (bid rigging), the KPPU suspects a violation of two articles: Article 22 and Article 23 of Law Number 5 of 1999.

This unfair business competition practice falls under restrictive practices with horizontal implications. Restrictive practices with horizontal implications involve attempts to monopolise the market by taking actions that could potentially limit other parties through conspiring, thereby depriving other competitors of fair opportunities. The act of conspiracy in this case is evidenced by the exchange of confidential company information that should not be publicly known, thus affecting Commercial integrity.

3. *Decision on Case Number* 8/KPPU-L/2024 Company Secrets related to Business Strategy and Corporate Marketing

KPPU Decision Number 8/KPPU-L/2024 is one of the important milestones in the development of business competition law in Indonesia, especially because this case shows how the leakage of company secrets is not just a violation of employment contracts or civil issues, but can be a serious business competition violation and has a wide impact on market structure. In this case, the violation of Article 23 of Law No. 5 of 1999 is the center of the analysis, namely the prohibition for business actors to conspire to obtain confidential information from competitors so as to cause unfair business competition. This ruling sets a precedent because for the first time KPPU assesses the leak of company secrets as an instrument that significantly affects the dynamics of competition and produces market distortions.

The case began with the actions of Reported Person II, the former Marketing Director of PT Chiyoda Kogyo Indonesia, who after resigning joined Maruka Corporation and then led PT Unique Solutions Indonesia (Reported Party III), a new company formed with Reported Party I to compete directly with PT Chiyoda. In fact, Reported Party II is still legally bound by the confidentiality statement he signed on March 26, 2015. Even so, he still provided very strategic company data and documents to Reported Parties I and Reported Parties III.

The information leaked is not just general information available in the market, but in the form of confidential data that is at the core of PT Chiyoda's business strategy. The information includes customer data along with key contacts, a list of ongoing projects, technical design of special machines, including *welding jigs* and *welding positioners*, internal meeting technical documents, pricing, and even machine testing videos that are part of the manufacturing design process. Not only that, several key workers who have specific skills also moved to the competing company, so that internal knowledge transfer occurs massively and systematically.

This type of information leaked is a *competitive advantage* that determines the direction of PT Chiyoda's business. The information not only provides an overview of technology and products, but also opens up the company's strategy in maintaining prices, winning tenders, and retaining customers. When such information falls into the hands of competitors, the company's competitive bargaining position can change drastically. In the context of competition, this action is very dangerous because it allows new competitors to enter at much lower costs and risks than business actors who build a reputation through innovation and years of investment.

KPPU considers that the elements of violation of Article 23 of Law 5/1999 are strongly proven. Reported Parties I and III are business actors active in the industrial machinery market, while Reported Party II acts as a party that provides access to company secrets. The conspiracy in the form of cooperation between the former director and the competing company is clearly proven, especially because the information submitted was directly used by Reported Parties I and III to attract old customers of PT Chiyoda. As a result, a number of important projects that were previously almost certain to be won by PT Chiyoda, passed into the hands of PT Maruka Indonesia and PT Unique Solutions Indonesia without going through a fair competition process.

The market for *special-purpose machines* and *welding positioners* is a limited-scale market with a very small number of manufacturers. Competition in this market is largely determined by technical knowledge, long-term relationships with customers, as well as the ability to customize machine designs according to customer production needs. Because the product is not mass-produced, any specific information becomes of great value. In a *customized* market like this, the relationship of trust with customers is an invaluable asset. Therefore, when competitors get customer information directly from former key officials, then those competitors can enter the market easily without having to build a reputation organically.

Prior to this case, PT Chiyoda had a de facto dominant position in the market concerned. The company has long been trusted by large customers, has specialized technology that is difficult to replicate, and has an experienced workforce. However, the dominant position is not the result of anti-competitive practices, but rather the result of long-term investment, innovation, and technical reputation. The leak of company secrets that occurred actually undermines the structure of fair dominance because competitors gain instant profits from illegally obtained strategic information. KPPU noted that the change in market structure after the information leak was quite drastic. PT Maruka Indonesia and PT USI were able to take over PT Chiyoda's long-standing customers in a very short period of time, something that would have been almost impossible without access to the company's internal secrets.

The impact on PT Chiyoda is very significant. Its revenue fell sharply from Rp 112.2 billion in 2019 to Rp 40.2 billion in 2020, a decline that cannot be explained by just changes in market conditions. Major customers such as Sumitomo and Shinanoa are turning to new competitors, while some of the larger projects in progress are changing hands. Material losses reached IDR 63.78 billion and immaterial losses were estimated at IDR 2 billion. Not only that, but companies also lose production capacity and competence because experts who move to competitors bring with them internal knowledge that cannot be measured financially.

From a market perspective, such information leaks result in serious distortions of competition. A market that was previously competitive and allowed business actors to compete based on quality and innovation has turned into a market dominated by competitors who make profits illegally. Industrial consumers are ultimately disadvantaged by losing the options that should be available. When competition is no longer based on product quality, the risk of lowering industry standards increases.

This KPPU decision provides a strong signal that the company's strategic information is part of the healthy competition mechanism that must be protected. Access to company secrets is not only a matter of labor relations, but also of issues that can damage the market and cause a competitive imbalance. KPPU then imposed a fine of Rp 3 billion on PT Maruka Indonesia as a form of competition law enforcement as well as a warning for other business actors to maintain integrity in business practices.

KPPU Decision No. 8/KPPU-L/2024 is not only a settlement of specific violations committed by several business actors, but also an important step in establishing norms that healthy business competition must be based on ability, innovation, and efficiency, not on conspiracy and abuse of company secrets.

Based on the three descriptions of the case decisions above, it can be tentatively concluded that company secrets are essentially the same or can be categorized as trade secrets because they meet the qualifications of trade secrets. Trade secrets encompass information not publicly known in the fields of technology or business, which can include processes, methods, and distribution, all of which hold economic value and are kept confidential by the owner of the information. If such information were to be disclosed, competing business actors would gain insight into the company's strategies, potentially resulting in financial losses for the company whose confidential information is leaked. A piece of information can be considered a company secret if it meets several criteria, including the following:

TABLE 1: Application of the term "Company Secret" in Decision No. 19/KPPU-L/2007 and Decision No. 35/KPPU-I/2010

Corporate secrets	**Case No. 19/KPPU-L/ 2007**	**Case No. 35/ KPPU-I/ 2010**	**Case *Number* 8/KPPU-L/2024**
Subjects who give and receive information	The subjects providing information in this case were those affiliated with PT Aquarius Musikindo, namely Arnel Affandi, who subsequently conspired with Dewa 19, the party directly involved in implementing the agreement, and Irwan Sastra Wijaya, responsible for overseeing the agreement process. Meanwhile, the recipients of this information were EMI Music SEA and PT EMI Indonesia.	Mitsubishi Corporation acted as the subject providing confidential information to the company LNG International Pty. Ltd. Meanwhile, the subjects receiving this information were PT Pertamina (Persero), PT Medco Energi International Tbk, and PT Medco E&P Tomori Sulawesi.	Giver: Reported Party II (former Marketing Director of PT Chiyoda Kogyo Indonesia) who after leaving collaborated with Maruka Corporation and became President Director of Reported Party III. Still bound by a statement of confidentiality (March 26, 2015). Recipients: Reported Party I (PT Maruka Indonesia) and Reported Party III (PT Unique Solutions Indonesia), who received and utilized PT Chiyoda's strategic information.

Company Policy or Strategy	Dewa 19, as the party leaking confidential information about the company PT Aquarius Musikindo, lacks the right and authority to determine the policies or strategies of the company PT Aquarius Musikindo.	Mitsubishi Corporation as the party leaking confidential information about the company LNG International Pty. Ltd. lacks the right and authority to determine the policies or strategies of the LNG International Pty company. Ltd.	The leaked information is part of Chiyoda's business policy and commercial strategy, including: key customer data, cost of production, pricing strategies, custom machine designs, project plans, and technical documentation. This information is a company's competitive advantage
Leaked Objects	The contract agreement between Dewa 19 as the artist and PT Aquarius Musikindo as the recording company overseeing Dewa 19 encompasses details regarding advances, royalties, time frames, options, penalties, and other matters relating to the implementation of the collaboration with Dewa 19.	Confidential information about companies owned by LNG International Pty Ltd includes details regarding terminal capacity and domestic market obligation (DMO) and information related to addressing the DMO issue.	PT Chiyoda's customer and project data (Sumitomo, Shinanoa, HK-PATI), technical design of machines (jig welding, positioners), detailed drawings, log books, machine test videos, technical meeting documents, data of employees with special skills, as well as product multimedia that allows competitors to mimic designs
Impacts Caused	Confidential company information known to other business competitors, along with economic losses reaching IDR 3,814,749,520 (three billion eight hundred fourteen million seven hundred forty-nine thousand five hundred and twenty rupiah)	Company confidential information known to other business competitors, alongside the exclusion of LNG International Pty. Ltd from participants in the beauty contest for the Donggi-Serono project.	This resulted in the shift of strategic customers to competitors, a drastic decrease in revenue (from IDR 112.2 billion to IDR 40.2 billion), the loss of experts, and changes in the market structure. Competition becomes unfair as competitors take advantage of illegal access to company secrets. KPPU imposes a fine of IDR 3 billion on PT Maruka Indonesia

Source: *KPPU Decisions on Cases No. 19/KPPU-L/2007 and No. 35/KPPU-I/2010, and Number* 8/KPPU-L/2024

If something can be categorised as a company secret, it must meet several criteria. Firstly, the object of the company secret must be information that, if commercialised, could result in short-term or long-term losses for the company's sustainability. Secondly, subjects who can access company secrets are those with certain authority or positions and have the right to access information about related company secrets.

In essence, company secrets and trade secrets are the same, as trade secrets encompass the entirety of a company's operational mechanisms, from planning to implementation. However, distinctions exist between company secrets and trade secrets due to differences in their objects. Company secrets pertain to information held by the company which, if commercialised, can affect and harm the company.

On the other hand, trade secrets, while confidential, can generate economic value if commercialized with the owner's permission for specific purposes. Therefore, company secrets encompass all forms of information related to a company's business activities that are confidential and are never disclosed to anyone by the original owner, except to those with a direct relationship or specific interest, with the permission and approval of the original owner of the company information in question. The following are the similarities and differences between company secrets and trade secrets:

TABLE 2: *Similarities and Differences between Company Secrets and Trade Secrets*

Company Secrets and Trade Secrets	Similarity	Difference
Information Holder	The legal subjects of company secrets and trade secrets are identical, taking the form of a business entity or a person running a business.	Subjects who know company secrets include directors, commissioners, and other parties vested with authority as regulated in the company's articles of association. Meanwhile, the subjects acquainted with the trade secrets comprise the original owner of the secret and other parties authorised by the original owner to access the trade secret
Confidential Content	Both manifest as information related to business activities.	In the realm of company secrets, confidential information may not always be readily commercialized but has the potential to influence and harm the company if disclosed to third parties. Meanwhile, trade secrets encompass information withheld from disclosure

		due to its commercial elements and direct economic value. When commercialized with the owner's permission for certain purposes, trade secrets can yield economic value, such as the acquisition of a trade license.
Recipients of Information Who Get Benefits	Whether it's company confidential information or trade secrets, if another party becomes aware of and accepts the information, both parties will gain benefits, including competitors in the related business field.	Trade secrets fall under the category of IPR and must be registered with the Directorate General of Intellectual Property. Consequently, only the owner and authorized parties are permitted to know the secret, affording the original owner complete control over the rights to the information. Meanwhile, company secrets cannot be registered as IPR unless they meet the criteria for trade secret information, such as product manufacturing processes, marketing services, and similar activities. Therefore, the party benefiting in this case is the original owner of the company's information. Isn't a trade secret an IPR that must be registered with the competent authority for that purpose? Meanwhile, company secrets cannot be registered, unless they meet the criteria for Trade Secrets, e.g. how to market/sell, serve food, etc

Source: *various literature and interview results, data processed.*

Determination and Method of KPPU Deciding on Company Secret in No.19/KPPU-L/2007, No.35/KPPU-I/2010, and *No.* 8/KPPU-L/2024 Decisions

As widely recognized, regulations concerning unhealthy business competition involving company secrets are outlined in Article 23 of Law

Number 5 of 1999, which reads: "Business actors are prohibited from conspiring with other parties to obtain information on their competitors' business activities classified as company secrets, thereby leading to unfair competition." The following presents the approach utilized by the KPPU in assessing cases of suspected unhealthy business practices:

1. *Case No. 19/KPPU-L/2007 concerning EMI*

In case No. 19/KPPU-L/2007, after receiving a report of alleged unfair business competition, the KPPU initiated a preliminary examination from 10 September 2007 until 19 October 2007. Subsequently, upon finding sufficient evidence of irregularities during the initial examination, further examinations were conducted from 31 October 2007 to 28 January 2008, which was extended until 24 March 2008. The subsequent examination revealed indications of business conspiracy and alleged violations of Article 23 of Law 5 of 1999. Evidence uncovered during the examination suggested an attempt to leak company secrets carried out by Dewa 19, EMI Music SEA, PT EMI Indonesia, Arnel Affandi, S.H., and Iwan Sastra Wijaya regarding confidential company information owned by PT Aquarius Musikindo. This leak of company secrets adversely affected the sales of the Dewa 19 album managed by PT Aquarius Musikindo.

Dewa 19's move to EMI Music SEA significantly impacted PT Aquarius Musikindo, given EMI Music SEA's broader business scope in the recording industry. Dewa 19's collaboration with EMI Music SEA, while still under contract with PT Aquarius Musikindo, resulted in assessed losses by the Commission Council at IDR 3,814,749,520 (three billion eight hundred and fourteen million seven hundred and forty-nine thousand five hundred and twenty rupiah). This loss calculation considered the proportional number of cassettes and the average sales of Dewa 19's albums. At the time the trial, Dewa 19 still had an obligation to deliver four new songs to PT Aquarius Musikindo.

The rule of reason approach adopted by the KPPU also examines the market share in the recording industry relevant to the activities of PT Aquarius Musikindo and EMI Music SEA. The market share assessment considers the respective markets of these companies, incorporating both product-based and geographic-based perspectives as defined in Article 1 sub-article 10 of Law No. 5 of 1999. In this case, the product market comprises Musical Works created by Dewa 19, marketed by PT Aquarius Musikindo in the form of Dewa 19 album cassettes and compact disks, subsequently taken over by Reported Party I (EMI Music SEA) through an agreement with Dewa 19. EMI Music SEA, as one of the largest music recording companies in Southeast Asia, dominates the international recording industry market.

Dewa 19 sought assistance from EMI Music SEA to go international, a feat unattainable by PT Aquarius Musikindo. Thus, the geographic market in this case extends abroad, especially the Asian continent. The substantial discrepancy in geographic market reach between PT Aquarius Musikindo and EMI Music SEA underscores the latter's dominant position. EMI Music SEA surpasses PT Aquarius Musikindo in the marketing of Dewa 19 works in terms of financial capability, supply access or sales, and capacity to adjust supply or demand for specific goods or services, thereby resulting in significant losses for PT Aquarius Musikindo and leading to unhealthy business competition.

2. *Case No. 35/KPPU-I/2010 Concerning the Donggi-Senoro Project Beauty Contest Process*

In case No. 35/KPPU-I/2010, following a report of alleged unfair business competition, the KPPU initiated a preliminary examination on June 3, 2010, which concluded on July 14, 2010. Subsequently, upon finding sufficient evidence of irregularities during the preliminary examination, further investigations were conducted from 15 July 2010 to 12 October 2010, with an extension until 24 November 2010. The subsequent examination revealed indications of business conspiracy and violations of Article 23 of Law 5 of 1999. Evidence uncovered during the examination suggested the involvement of Mitsubishi Corporation in collusion with PT Pertamina (Persero), PT Medco Energi International Tbk, and PT Medco E&P Tomori Sulawesi regarding company information belonging to LNG International Pty Ltd. Mitsubishi Corporation utilised this information to its advantage in presenting the material for the Beauty contest in the Donggi-Serono project.

The rule of reason approach employed by KPPU also takes into account market share, examining it from the perspective of the relevant market, as explained in Article 1 sub-article 10 of Law No. 5 of 1999. The definition of the relevant market encompasses two aspects: a product-based market and a geography-based market. In this case, the product market for LNG International Pty. Ltd involves technology services for purchasing, constructing, and operating mini LNG facilities. This service is offered in World LNG because of its advantage in providing small-scale technology for a small-scale refinery, not tested by baseload LNG. This positions the geographic market of LNG International Pty. Ltd. on an international scale, covering the entire world.

The construction of the Donggi-Senoro project submitted an offer to LNG International Pty. Ltd, because the company has demonstrated compatibility in this field. Meanwhile, Mitsubishi Corporation, a trading and investment company based in Japan, offers its expertise and financial strength in LNG development. PT Pertamina (Persero), PT Medco Energi International, and their subsidiary PT Medco E&P Tomori Sulawesi operate in the same field, providing oil and gas services across all regions of Indonesia. Their shared goal is to elevate Indonesian LNG to be on par with other countries through the Donggi -Senoro project.

All these companies are related to this case, particularly in connection with the holding of the beauty contest for the Donggi-Senoro project, where PT Pertamina (Persero) and PT Medco Energi International, Tbk. serve as the main organizers to select potential partners for the LNG development project for gas reserves from the Matindok Block and Senoro Block.

Therefore, the companies have higher or dominant authority in this beauty contest as the organizer. The leak of confidential company information belonging to LNG International Pty. Ltd. resulted in the cancellation of LNG International Pty. Ltd as a business partner of PT Pertamina (Persero) and PT Medco Energi International, Tbk in the Donggi-Senoro project, resulting in losses to LNG International Pty Ltd's long-term business activities, estimated at $790,000,000 (seven hundred and ninety million dollars).

The variance in the application of the rule of reason approach by the KPPU in assessing case No. 19/KPPU-L/2007 and case No. 35/KPPU-I/2010 lies in market share and dominant position. In case No. 19/KPPU-L/2007, market share is evaluated based on competing companies in the recording and music industry, each with differing market coverage. Meanwhile, in case No. 35/KPPU-I/2010, market share assessment differs due to the distinct business activities carried out by the involved companies, albeit with a shared goal of building the Donggi-Senoro project.

Similarly, the assessment of dominant position varies. In case No. 19/KPPU-L/2007, the dominant position is determined by the extent of geographical business coverage and marketing reach between the two companies. However, in case No. 35/KPPU-I/2010, the dominant position is determined based on the organizers of the beauty contest, given the collective aim of building the Donggi-Senoro project through partner selection for LNG development from the Matindok Block and Senoro Block.

3. *Decision on Case Number 8/KPPU-L/2024 Company Secrets related to Business Strategy and Corporate Marketing*

In Decision 8/KPPU-L/2024, KPPU uses a comprehensive analytical approach to determine that the information leaked by Reported Party II is a "company secret" as referred to in Article 23 of Law No. 5 of 1999. The assessment is carried out through a systematic method by examining facts, information characteristics, relationships between parties, and economic impact on the market. This approach reflects the application of the *rule of reason* which focuses on substantive analysis related to the effect of such information on business competition.

First, KPPU starts by identifying the subjects who provide and receive information. Reported II is the former Marketing Director of PT Chiyoda Kogyo Indonesia, who in that position has full access to internal information, technical documents, strategic data, and a list of the company's key customers. KPPU emphasized that a person's position in the organizational structure is a key factor in determining whether he or she has the authority and access to company secrets. Reported Party II is known to be still bound by the confidentiality statement dated March 26, 2015, so KPPU considers the act of leaking information after leaving the company as a clear violation of the obligation to maintain confidentiality. Meanwhile, the recipients of the information Reported Party I (PT Maruka Indonesia) and Reported Party III (PT USI) are considered to be actively utilizing the information to gain an unreasonable competitive advantage.

Second, in determining whether the information is classified as a company secret, KPPU assesses the nature and characteristics of the information. The information leaked included technical design of the machine, cost of production, pricing strategy, customer list, key client contacts, technical meeting documents, production data, and machine test videos. KPPU considers that this information is *non-public*, has economic value, and is part of PT Chiyoda's business strategy. That this information is a *competitive advantage* that can determine the company's competitiveness in the *special purpose machinery industry*. So that it fulfills *trade secrets*: confidentiality, economic value, and protection efforts.

Third, KPPU conducts specific verification of the object of information that is leaked through documentary evidence, video recordings, electronic messages, and witness statements. The evidence shows that Reported Party II gave a copy of the design of the Chiyoda engine to Reported Party III which was then used as a reference to produce a similar machine. KPPU also found evidence in the form of a video test of the Chiyoda machine containing technical instructions and test specifications, which were then used as the basis for developing competitor products. Other objects such as strategic customer lists and transaction history were also leaked. KPPU clearly distinguishes that such information cannot be obtained through ordinary market *observation*, but only through internal access.

Fourth, KPPU assesses the impact of information leakage on market conditions and business competition. Here, the economic approach is an important factor. KPPU analyzed how the information was then used by Reported Parties I and III to win projects that were previously in PT Chiyoda's portfolio. Data shows a significant decrease in PT Chiyoda's revenue from IDR 112.2 billion (2019) to IDR 40.2 billion (2020), as well as the loss of a number of large customers such as Sumitomo and Shinanoa. Such drastic changes cannot be explained by normal market factors; Therefore, KPPU concluded that information leakage is the main factor that encourages the occurrence of competitive distortions. In this context, KPPU applies *a cause-effect analysis* to prove a causal relationship between the disclosure of company secrets and changes in market structure.

Fifth, in determining whether the elements of Article 23 of Law 5 of 1999 are met, KPPU uses the method of reading elements cumulatively. KPPU verifies the existence of business actors who are conspiring, the purpose of obtaining confidential information about competing companies, and its impact in causing unfair competition. The existence of the conspiracy is evidenced through a series of communications between Reported Party II and the Maruka Group and the coordination of the establishment of PT USI as a competing entity that utilizes the information. Finally, KPPU uses the principle of proportionality in determining sanctions. Because Reported Party I is an entity that directly benefits from the information, KPPU imposed a fine of Rp 3 billion. The imposition of these sanctions also considers the impact of the market, the intensity of the violation, and the profits obtained by business actors.

Based on the description above, a comparison can be illustrated through the following table:

TABLE 3: *Rule of Reason Approach in KPPU Decision No. 19/KPPU-L/2007, No. 35/KPPU-I/2010, and No 8/KPPU-L/2024*

Rule of Reason Approach	**Case No. 19/KPPU-L/2007**	**Case No. 35/KPPU-I/2010**	**Case *No 8/KPPU-L/2024***
Alleged Violation	Violation of Article 23 of Law Number 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition. In this case, an act of leaking confidential company information by PT Aquarius Musikindo occurred.	Violation of Article 23 of Law Number 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition. In this case, an act of leaking confidential information about the company, LNG International Pty. Ltd and Mitsubishi Corporation's collusion with PT Pertamina (Persero), PT Medco Energi International Tbk, to organize a beauty contest to win beauty contest for the Donggi-Serono project occurred. In exchange for PT Pertamina (Persero), PT Medco Energi International Tbk received information on the business activities of its competitor (LNG International Pty. Ltd).	Violation of Article 23 of Law No. 5 of 1999 concerning the prohibition of conspiracy to obtain confidential information from competitors. In this case, Reported Party II (former Marketing Director of PT Chiyoda Kogyo Indonesia) unlawfully leaked confidential company information in the form of customer data, machine technical design, production cost structure, pricing strategy, active project documents, and machine test videos to Reported Party I (PT Maruka Indonesia) and Reported Party III (PT Unique Solutions Indonesia). The information was then used to win the project and take over PT Chiyoda's customers unnaturally.
Relevant Markets	Music Distribution services, using the Music Group system both nationally and internationally.	Liquefied Natural Gas (LNG) buying and selling market and the development of Liquefied Natural Gas (LNG) using Air Products and Chemicals Inc. technology (APCI) which includes supporting utilities, docks for supplies and equipment, LNG storage	The market in question is the market for special purpose machines and welding positioners for the automotive and heavy equipment manufacturing industry. Geographically, the market is focused on Indonesia, especially in the industrial areas of Greater Jakarta, Cikarang, and other large manufacturing

		tanks, and condensate tanks, and LNG loading docks and supporting administrative facilities in Banggai Regency, especially the Senoro Block.	areas where PT Chiyoda and Maruka compete directly.
Dominant Position	Based on the Music Group system owned by EMI Music SEA, they control at least 70% of the international music distribution market.	Mitsubishi Corporation controls at least 51% of the gas demand market in Indonesia.	Prior to the leak, PT Chiyoda Kogyo Indonesia held the de facto dominant position in the specialty industrial machinery market due to its unique technology, specialized design, and long-term customer relationships. After the company's secrets were leaked and used by competitors, PT Maruka Indonesia and PT USI gained an instant competitive advantage, resulting in a shift in dominant position through unauthorized means and not based on performance or innovation.
Impacts Caused	The cancellation of the agreement between PT Aquarius Musikindo and Dewa 19 resulted in losses amounting to IDR 4,295,627,881 (four billion two hundred ninety million six hundred twenty-seven thousand eight hundred and eighty-one rupiah). Then the Commission Council in its final decision determined the loss to be IDR 3,814,749,520 (three billion eight hundred fourteen million seven	LNG International Pty. Ltd.'s cancellation as a business partner of PT Pertamina (Persero) and PT Medco Energi International, Tbk in the Donggi-Senoro project, which caused long-term losses to LNG International Pty Ltd's business activities, estimated at \$790,000,000 (seven hundred and ninety million dollars).	The leak of company secrets caused significant losses to PT Chiyoda, including: a decrease in revenue from IDR 112.2 billion (2019) to IDR 40.2 billion (2020), the loss of key customers such as Sumitomo, Shinanoa, and HK-PATI, the loss of key technical workers recruited by competitors, the loss of strategic projects, as well as the distortion of market structures due to competitors gaining an unfair advantage from such confidential information. KPPU concluded that this

	hundred forty-nine thousand five hundred and twenty rupiah).		action gave rise to significant unfair competition, and imposed a fine of Rp 3,000,000,000 on PT Maruka Indonesia (Reported Party I).

Source: *KPPU Decisions No. 19/KPPU-L/2007 and No/35/KPPU-I/2010, and No. 8/KPPU-L/2024 data processed.*

Based on Table 3, it can be seen that the comparison between KPPU Decision No. 19/KPPU-L/2007, No. 35/KPPU-I/2010, and No. 8/KPPU-L/2024 shows that there are fundamental differences in the application *of the rule of reason* that have not been discussed in depth in these decisions. In the EMI case (2007), KPPU assessed that there was a leak of company secrets through internal-external collusion, but KPPU's analysis focused more on the chronology of the audit than on proving its economic impact. In fact, the *rule of reason* approach requires a clear assessment of changes in market structure and dynamics. When KPPU concluded that there was a breach due to a contract leak between Dewa 19 and PT Aquarius Musikindo, the assessment of the impact of the leak on the music market share and dominant position of EMI Music SEA was still descriptive, not analytical.

A similar situation occurred in the case of Donggi-Senoro (2010), where KPPU continued to use an analytical framework that tended to be procedural even though the LNG market was considered to have global complexity. The leak of strategic information by Mitsubishi actually has the potential to provide significant advantages for certain parties, but KPPU did not in-depth assess the extent to which this information affects the LNG market share or the dominance of Pertamina and Medco. As a result, the legal conclusions in the case are still formalistic and have not fully described the application of the *rule of reason* which takes into account market structure and dominant position.

Decision No. 8/KPPU-L/2024 emphasizes the pattern that KPPU does not yet have consistent analytical standards in cases related to Article 23. Although in this ruling KPPU began to assess economic impacts such as declining revenues and customer switching of PT Chiyoda, the analysis still does not fully illustrate how the leak of technical secrets changed the market structure of specialized industrial machinery. KPPU concluded that there was unfair competition, but its assessment focused more on factual relationships and evidence of behavior, rather than an in-depth evaluation of changes in market forces, barriers to entry, or measurable shifts in dominant positions.

The three decisions show that KPPU still relies on the framework of Law No. 30 of 2000 concerning Trade Secrets to fill the void of the concept of "company secrets" in Law No. 5 of 1999. This approach has juridical implications because it has the potential to blur the line between the protection of intellectual property rights and the enforcement of competition laws. By equating company secrets with trade secrets, KPPU risks expanding its jurisdiction into the civil realm which should be the authority of the general court. This indicates the need for a separate normative framework that regulates company secrets in the context of business competition so that there is no *overlapping jurisdiction* and inconsistency in legal judgment.

The difference in the economic impact of the three decisions, ranging from direct losses of IDR 3.8 billion in the EMI case, long-term losses of USD 790 million in the Donggi-Senoro case, to the drastic decline in PT Chiyoda's revenue in case 8/KPPU-L/2024 shows the need for a more structured approach in implementing *the rule of reason*. Market-based analytical instruments such as market strength assessments, competitive loss analysis, and efficiency evaluations should be standard in any assessment of Article 23 violations. Thus, Article 23 not only serves as a prohibition norm, but also as an evaluative instrument that balances the protection of confidentiality with transparency and the dynamics of healthy business competition.

Conclusion

Based on the foregoing discussion, KPPU Decision No. 19/KPPU-L/2007, No. 35/KPPU-I/2010, and No. 8/KPPU-L/2024 show that legal ambiguity regarding the concept of company secrets as stipulated in Article 23 of Law No. 5 of 1999 is still a structural weakness in the legal framework of business competition in Indonesia. KPPU's reliance on Law Number 30 of 2000 concerning Trade Secrets as an interpretive reference confirms no firm and independent legal definition regarding company secrets.

This ambiguity creates inconsistencies in legal reasoning and weakens legal certainty for business actors in distinguishing between legitimate company secrecy and acts of disguise, anti-competitive practices. To strengthen law enforcement, this paper recommends that the KPPU immediately ratify and operationalise the Draft Article 23 Guidelines into a binding regulation, containing explicit boundaries between company secrets and trade secrets. The codification will provide a clearer analytical framework for the assessment of violations while ensuring consistency of interpretation in future cases.

In addition, lawmakers need to consider amendments to Law No. 5 of 1999 to include a separate definition of "company secrets" that aligns with the development of the business world and international best practices. Furthermore, KPPU needs to adopt a structured rule-of-reason-based analysis model in assessing violations of Article 23 by considering the economic impact of information leakage, the intention of the perpetrator in obtaining data, and proportionality to competitive losses. This approach will increase the predictability of decisions and prevent abuse of authority.

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