



## Notary's Authority in Making Non-Disclosure Agreements to Protect Trade Secrets

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### Abstract

*Non-Disclosure Agreement (NDA) is a crucial legal instrument for protecting trade secrets, which are a vital component of intellectual property in the modern business landscape. This agreement, often referred to as a confidentiality agreement, can be reinforced through notarial deeds to enhance its legal strength. This research aims to analyze the role and legal authority of notaries in drafting NDAs and to assess their contribution to the protection of trade secrets. Using a normative juridical method with statutory and conceptual approaches, this paper examines notarial deeds in terms of their legal validity and evidentiary value. The findings indicate that notaries, as public officials, possess significant legal authority and play a strategic role not only in formalizing contracts but also in ensuring their enforceability. Their involvement contributes to greater legal certainty and strengthens the legal framework for protecting trade secrets in contractual relationships.*

**Keywords:** *agreement; confidentiality; legal protection; notary; trade secret*

### A. Introduction

In the era of rapid economic globalization and digitalization, information has become one of the most valuable commodities in the business world.<sup>1</sup> Not only as a tool to support operations, information is now the main source of a company's competitive advantage.<sup>2</sup> One form of strategic information that falls into the category of intellectual property is trade secrets.<sup>3</sup> Trade secrets include all technical and/or business information that is confidential, not known to the public, has economic value due to its confidentiality, and is properly maintained by its owner.<sup>4</sup> This information can be in the form of a product formula, manufacturing process, marketing strategy, client list, or unique company operational method.<sup>5</sup> Protection of this information is crucial, especially in sectors that are highly dependent on innovation and research such as technology, manufacturing, food and

<sup>1</sup> I K S Pujangga dan I M Sarjana, "Intellectual Property Rights in Franchise Agreements According to Indonesian Positive Law," ... *Hukum Udayana (Udayana Master Law ...* (ojs.unud.ac.id, 2025), 29, <https://ojs.unud.ac.id/index.php/jmhu/article/download/119116/59209>.

<sup>2</sup> H Wu dan Y Dong, "Data Intellectual Property Registration and Remedies: Yinmu (Shanghai) Technology Co, Ltd v Shujutang (Beijing) Technology Co, Ltd," *Journal of Intellectual Property Law and ...*, 2025, 65, <https://doi.org/10.1093/jiplp/jpaf016/8088281>.

<sup>3</sup> R G Vacca, "Investigation Expenses," ... *Missouri School of Law Legal Studies Research Paper*, 2025, 93, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5162645](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5162645).

<sup>4</sup> S M Wagner, A A Fink, dan ..., "Supporting Intellectual Property Protection: Blockchain Technology as a Catalyst for Open Innovation," *California ...*, 2025, 54, <https://doi.org/10.1177/00081256251320366>.

<sup>5</sup> F D Navisa, "THE RELATIONSHIP BETWEEN NOTARIES AND MONEY LAUNDERING CRIMES," *Progressive Law Review*, 2025, 98, <https://progresiflawreview.ubl.ac.id/index.php/plr/article/view/254>.



beverage, and the pharmaceutical industry.<sup>6</sup> The importance of trade secrets in the intellectual property structure lies in their nature which does not require registration to obtain legal protection, unlike patents or trademarks.<sup>7</sup>

In the Indonesian legal system, the protection of trade secrets is regulated under Law No. 30 of 2000 on Trade Secrets, which emphasizes the owner's obligation to maintain confidentiality as the basis for legal protection. Legal protection of trade secrets arises from the owner's real actions in maintaining the confidentiality of the information.<sup>8</sup> However, amidst the rapid flow of workforce mobility, the rise of business partnerships, and the massive use of digital technology and cloud systems, the vulnerability to information leaks is increasing. Internal parties such as employees or external parties such as business partners have the potential to become sources of leaks that endanger business continuity. Therefore, legal steps are needed that are not only repressive when violations occur, but also preventive in order to minimize risks early on.<sup>9</sup>

One of the preventive efforts commonly applied in the business world is the preparation of a Non-Disclosure Agreement (NDA) or confidentiality agreement. NDA is a form of legal contract between the owner of the information and the party given access to ensure that the information is not disclosed to third parties without permission.<sup>10</sup> The main function of NDA is to create clear and firm legal obligations regarding the protection of confidential information. However, in practice, agreements made underhand (underhand agreements) although legally valid, often have weaknesses in terms of proof and implementation, especially if disputes must be resolved through litigation. This type of agreement does not have perfect evidentiary power and is easier to dispute its validity in court.<sup>11</sup>

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<sup>6</sup> A Budiawan dan Y Yahanan, "Marriage Agreement in the Perspective of Islamic Law and Positive Law: Between the Protection of Assets and Family Harmony," *Pena Justisia: Media Komunikasi dan ...* (jurnal.unikal.ac.id, 2025), 122, <http://jurnal.unikal.ac.id/index.php/hk/article/download/6022/3688>.

<sup>7</sup> E N S Dauly dan A B Cahyono, "Legal Protection for Heirs with Non-Fungible Token Heritage Objects," *Journal of Law, Politic and Humanities*, 2025, 76, <https://dinastires.org/JLPH/article/view/1198>.

<sup>8</sup> H C P Virgani, F Setyawan, dan Y Adiwibowo, "Legal Certainty of Land Sale and Purchase Agreements Carried out Through Name Loans (Nominee)" (allsocialsciencejournal.com, 2025), 322, [https://www.allsocialsciencejournal.com/uploads/archives/20250121170806\\_SER-2025-1-009.1.pdf](https://www.allsocialsciencejournal.com/uploads/archives/20250121170806_SER-2025-1-009.1.pdf).

<sup>9</sup> Q Feng et al., "A survey on privacy protection in blockchain system," *Journal of network and ...*, 2019, 3228, <https://www.sciencedirect.com/science/article/pii/S1084804518303485>.

<sup>10</sup> Asry Rismawaty, "Non Disclosure Agreement Sebagai Perlindungan Hak Kekayaan Intelektual Dalam Perjanjian Kerjasama," *Aktualita (Jurnal Hukum)* 2, no. 1 (2019): 339–53, <https://doi.org/10.29313/aktualita.v2i1.4706>.

<sup>11</sup> F Adoranti, *The managers guide to understanding confidentiality agreements* (books.google.com, 2006), 221, [https://books.google.com/books?hl=en&lr=&id=d8ka9GR\\_uLsC&oi=fnd&pg=PR5&dq=agreement+confidentiality+notary+trade+secret+legal+protection&ots=nOm2IeDqIs&sig=-TLFStyibsODhJMMDSj\\_1Cc\\_CM](https://books.google.com/books?hl=en&lr=&id=d8ka9GR_uLsC&oi=fnd&pg=PR5&dq=agreement+confidentiality+notary+trade+secret+legal+protection&ots=nOm2IeDqIs&sig=-TLFStyibsODhJMMDSj_1Cc_CM).



This is where the importance of involving a notary in making an NDA lies. Notaries as public officials appointed by the state have the authority to make authentic deeds that reflect the wishes of the parties to the agreement legally and formally.<sup>12</sup> Notarial deeds have perfect evidentiary power as regulated in Articles 1868 and 1870 of the Civil Code, and can be a solid legal basis when a dispute arises. The involvement of a notary not only provides formality to the agreement, but also emphasizes the intention and sincerity of the parties in maintaining the confidentiality of protected information. Moreover, the role of the notary also creates legal certainty and reduces the potential for default because the contents of the deed are considered to have been read and agreed to consciously and freely by the parties involved.

Therefore, a study of the authority of a notary in making a confidentiality agreement deed is relevant and significant to be carried out, especially in the context of legal protection of trade secrets in Indonesia. The limited literature that specifically reviews collaboration between the notary and intellectual property fields, especially in the form of preventive protection of confidential information through authentic deeds, indicates an academic gap that needs to be filled.<sup>13</sup> This study is here to analyze normatively and legally the strategic role of notaries in strengthening the effectiveness of NDA law as part of the trade secret protection system, while at the same time emphasizing the urgency of strengthening this legal instrument in an era of increasingly complex and open business competition.

However, legal studies that specifically discuss the role and authority of notaries in the context of trade secret protection are still very limited. Most studies only highlight the substance of trade secrets from the perspective of Law Number 30 of 2000 or the practice of work agreements, without exploring the involvement of notaries as parties authorized to prepare authentic deeds. In fact, in practice, the existence of notarial deeds can be a key component in a contract-based legal protection system.<sup>14</sup>

Several previous studies have discussed the Non-Disclosure Agreement (NDA) as an instrument of legal protection for confidential information, especially in the context of employment relationships and business agreements. Asry Rismawaty in "Non-Disclosure

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<sup>12</sup> K Burns, "Notaries, truth, and consequences," *The American Historical Review*, 2005, 38, <https://academic.oup.com/ahr/article-abstract/110/2/350/25560>.

<sup>13</sup> L W Fernald Jr, "Intellectual property rights & associated challenges for small business," *Journal of Business and Entrepreneurship*, 1995, 87, <https://search.proquest.com/openview/1a9eefc62ddfbf13fad0991abacd9d98/1?pq-origsite=scholar&cbl=33312>.

<sup>14</sup> Yapiter Marpi et al., "Legal effective of putting 'Business as Usual' clause in agreements," *International Journal of Criminology and Sociology* 10 (2021): 98, <https://doi.org/10.6000/1929-4409.2021.10.09>.



Agreement as Protection of Intellectual Property Rights in Cooperation Agreements" (2019)<sup>15</sup> emphasizes the urgency of including a confidentiality clause in a contract as protection for intellectual property rights, but does not review the form or evidentiary strength of the agreement. Syadzwina Hindun Nabila (2024)<sup>16</sup> in her research shows that NDA has legal force in protecting company information and can be used as evidence in cases of violation. However, the focus is more on the substance of protection, without mentioning formal strengthening through notarial deeds.

Likewise, Talitha Shabrina Faramukti and Sukirno (2022)<sup>17</sup> discuss trade secrets in the form of food recipes in employment agreements, but without highlighting the evidentiary aspects or legal form of the agreement. On the other hand, studies that touch on notarial aspects such as those conducted by Ivan Chairunanda Kusuma Putra (2018)<sup>18</sup> in a study on legal protection for sales and purchase agreements and debt recognition show the importance of notarial deeds in providing higher legal force, but have not been linked to the context of trade secrets. Research by Cokorde Istri Dian Laksmi Dewi et al. (2024)<sup>19</sup> also emphasizes more on the protection of employee personal data as company secrets through NDA, without discussing the aspect of formalizing the agreement.

Thus, there has been no study that specifically examines the role and authority of notaries in making NDAs as an effort to strengthen the legal protection of trade secrets. This paper is here to fill this gap with a normative legal approach that combines aspects of intellectual property protection and notarial functions. Based on this background, this paper aims to normatively analyze the role and authority of notaries in making agreements aimed at protecting trade secrets. With a statutory and conceptual approach, the discussion focuses on the relevance of notarial deeds as an instrument of legal protection, while evaluating the

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<sup>15</sup> Rismawaty, "Non Disclosure Agreement Sebagai Perlindungan Hak Kekayaan Intelektual Dalam Perjanjian Kerjasama," 281.

<sup>16</sup> Syadzwina Hindun Nabila, "Kekuatan Hukum Non Disclosure Agreement Dalam Mencegah Bocornya Confidential Information Perusahaan," *Bacarita Law Journal* 4, no. April (2024): 157.

<sup>17</sup> T S FARAMUKTI, *Perlindungan Hukum Rahasia Dagang Atas Informasi Bisnis Dalam Perjanjian Kerja Di Kabupaten Sleman (Studi Cafe "Ideologi Cafe" di Sleman)* (dspace.uii.ac.id, 2019), 189, <https://dspace.uii.ac.id/handle/123456789/13941>.

<sup>18</sup> Ivan Chairunanda Kusuma Putra, "Perlindungan Hukum Notaris Terhadap Perjanjian Perikatan Jual Beli yang Diikuti Dengan Adanya Pengakuan Hutang," *Jurnal Lex Renaissance* 3, no. 2 (2018): 97, <https://doi.org/10.20885/jlr.vol3.iss2.art8>.

<sup>19</sup> Dian Ekawati, "Perlindungan Hukum Terhadap Nasabah Bank Yang Dirugikan Akibat Kejahatan Skimming Ditinjau Dari Perspektif Teknologi Informasi Dan Perbankan," *UNES Law Review* 1, no. 2 (2018): 188, <https://doi.org/10.31933/law.v1i2.24>.



effectiveness of notary involvement in strengthening the legal position of trade secret owners in contractual relationships.

## **B. Research Method**

This research is a normative legal research aimed at examining the authority of a notary in making a non-disclosure agreement as an effort to protect trade secrets legally. The approach used is the statute approach and the conceptual approach.<sup>20</sup> The legal materials used consist of primary legal materials such as Law Number 30 of 2000 concerning Trade Secrets and Law Number 2 of 2014 concerning the Position of Notary, as well as secondary legal materials in the form of literature, scientific journals, and opinions of relevant legal experts. The technique of collecting legal materials is carried out through library research, while the data analysis technique is carried out qualitatively with a descriptive analytical method, namely describing legal regulations and doctrines and then analyzing them systematically to answer the formulation of the problem. This research does not use field locations or informants because it is not empirical. The analysis focuses on the legal validity of notarial deeds and their contribution to strengthening the protection of trade secrets in civil contracts.

## **C. Results and Discussion**

The results of the discussion in this article show that the involvement of a notary in the preparation of a non-disclosure agreement provides a significant contribution to strengthening legal protection of trade secrets in Indonesia. Normatively, a notary has the authority to make an authentic deed that is valid and legally binding, which provides perfect evidentiary power in the event of a dispute. The discussion also reveals that the non-disclosure agreement stated in the notarial deed not only guarantees the validity and agreement of the parties, but also functions as a preventive instrument in preventing misuse of confidential information. Through a comparative analysis with practices in other countries, it is known that a similar approach has proven effective and can be a model for Indonesia in encouraging higher legal standards related to the protection of intellectual property, especially trade secrets.

### **1. The Role and Authority of Notaries in Making Non-Disclosure Agreements**

Notaries as public officials have an important role in the Indonesian civil law system, especially in ensuring the legality and legal certainty of agreements made by the parties. Law

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<sup>20</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016), 87.



Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Regulatory (UUJN),<sup>21</sup> especially Article 15 paragraph (1), expressly gives notaries the authority to make authentic deeds regarding all actions, agreements, and provisions desired by the interested parties. Thus, the making of a confidentiality agreement or Non-Disclosure Agreement (NDA) is entirely within the scope of the notary's authority. A Non-Disclosure Agreement (NDA) is a legally binding agreement between interested parties not to divulge certain confidential information. In the context of employment relationships, business partnerships, and technology transfers, NDAs are an important tool for protecting trade secrets or information of high strategic value. NDAs usually include definitions of confidential information, confidentiality obligations, exceptions, time periods, and legal consequences for violations. Although NDA can be made privately, this form is often weak in terms of proof if the dispute is brought to the realm of litigation. Therefore, making an NDA in the form of an authentic deed by a notary is a strategic solution to strengthen its legal standing.<sup>22</sup>

As a public official, a notary not only acts as a formal recorder of an agreement, but also carries out a preventive function against potential legal conflicts. This is in line with the principle of prudence in contract law. Notaries ensure that all valid elements of an agreement as regulated in Article 1320 of the Civil Code—namely agreement of the parties, legal capacity, certain objects, and lawful causes—have been fulfilled. In addition, notaries are also obliged to ensure that the contents of the agreement do not conflict with legal provisions, public order, and morality.

The presence of a notary in making an NDA provides an additional layer of legal protection. Deeds made before a notary have perfect evidentiary power as regulated in Articles 1868 and 1870 of the Civil Code. This means that an authentic deed becomes evidence that does not need to be proven again unless it can be proven otherwise by the party that denies it. In the case of NDA, this power is very significant because it can speed up the process of proof in court if there is a violation of the contents of the agreement, such as the leaking of confidential information.

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<sup>21</sup> P N Evrina, "Peran Notaris Terhadap Penyusunan Perjanjian Kredit Dalam Pemberian Fasilitas Kredit Oleh Bank (Studi Putusan Pengadilan Batam Nomor 36/PDT. G/2021/PN ...," *Indonesian Notary*, n.d., <https://scholarhub.ui.ac.id/notary/vol4/iss1/2/>.

<sup>22</sup> I Koto et al., "Perlindungan Hukum Atas Kekayaan Intelektual Perspektif Hukum Islam," *Jurnal Yuridis*, 2023, 23, <https://ejournal.upnvj.ac.id/Yuridis/article/view/7142>.



The role of a notary also involves educational and consultative aspects. Before drafting a deed, a notary is obliged to provide a legal explanation to the parties regarding the consequences of the contents of the agreement, the scope of information protection, and the obligations of each party. This is important to prevent misunderstandings and conflicts in the future. In addition, in the context of intellectual property such as trade secrets, many parties do not yet understand their legal position in the national and international legal systems. The role of a notary in providing an understanding of this aspect is crucial.<sup>23</sup>

From a normative perspective, the creation of an NDA by a notary is in line with the principle of freedom of contract as regulated in Article 1338 of the Civil Code, which states that all agreements made legally apply as laws for the parties who make them. However, the existence of an authentic deed provides additional legal value in the form of strengthening the good faith and intentions of the parties in implementing the contents of the agreement. This will make it difficult to cancel or deny the contents of the agreement in the future.

The authority of a notary also allows for the recording and archiving of deeds, which have important value in terms of legal audits and evidence in the future. Notaries are required to keep the minutes of the deed and can provide official copies (*grosse*, copies, or extracts) that have legal force. This means that, even though the NDA has been made a long time ago, a copy of the deed can be used as valid evidence later, without the need for additional proof.

Not only that, but notaries can also certify other supporting documents, such as technical attachments, work schemes, process diagrams, and other forms of confidential information that can be part of the main agreement. In this way, the information protected in the NDA becomes more structured and clear, thus strengthening the object of the agreement and preventing multiple interpretations in the future.

In international practice, trade secret protection is generally regulated through technical and complex contracts. In countries with advanced legal systems, NDAs are often made with the assistance of legal counsel and formalized through notaries or other legal officials. In Indonesia, this practice has not become a general standard, even though the need for legal protection of confidential information is increasingly urgent. Therefore, encouraging the involvement of notaries in making NDAs is a proactive step in strengthening the legal protection of trade secrets.

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<sup>23</sup> D Sasongko, A Faishal, dan ..., "Peran notaris dalam transformasi hukum keranah perdata atas penyelesaian perkara pidana berdasarkan restorative justice," *Jurnal Justitia: Jurnal ...*, 2022, 231, <https://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/7102>.



From an economic law perspective, the involvement of a notary in the preparation of an NDA also provides certainty for investors and business partners. A legally drafted and notarized NDA will increase the trust of external parties in the professionalism and integrity of the company. This is especially important in international business relationships or joint ventures, where sensitive information is often part of the due diligence process.<sup>24</sup>

In addition, the development of information technology and the increasing risk of data leaks make it increasingly important to notarize NDAs. When information can be easily accessed and disseminated digitally, the clarity and legal force of the agreement become key factors. In this case, a notarial deed balances the ease of access to information and strong legal protection for confidential information.

In several court decisions, authentic deeds made by notaries have been proven to have higher legal force than ordinary agreements. For example, in disputes related to violations of NDAs, the court will consider the contents of authentic deeds as valid evidence rather than unofficial documents. Thus, making an NDA in the form of a notarial deed can minimize legal risks and provide a clearer path to dispute resolution.

The role and authority of a notary in making a confidentiality agreement deed cannot be underestimated. Notaries are not only technical implementers, but also guardians of the principles of fair, transparent, and legally binding contract law. In the context of protecting trade secrets, notaries become strategic actors who bridge the need for information protection and legal certainty, as well as strengthen the legal position of the parties in facing increasingly complex business challenges. Therefore, it is necessary to encourage the formal practice of making NDAs through notaries as a new standard in the Indonesian contractual legal system.

## **2. Contribution of Notarial Deeds to the Legal Protection of Trade Secrets**

Trade secret protection as part of intellectual property rights has unique characteristics in the Indonesian legal system. Unlike patents, trademarks, or copyrights, trade secrets do not require registration to obtain legal protection. This is as regulated in Law Number 30 of 2000 concerning Trade Secrets which emphasizes that protection of such information is

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<sup>24</sup> Wagner, Fink, dan ..., "Supporting Intellectual Property Protection: Blockchain Technology as a Catalyst for Open Innovation," 32.



highly dependent on the owner's efforts to maintain its confidentiality. Therefore, the aspect of evidence is a key element in maintaining a legal claim over a trade secret.<sup>25</sup>

In the civil law framework, evidence is the most crucial part in resolving a dispute. Without strong documents, such as authentic deeds, the plaintiff will have difficulty convincing the judge that certain information is indeed protected, and that the defendant has violated the obligation to keep the information confidential. This is the entry point for the contribution of notarial deeds in the context of trade secrets. Notarial deeds not only document the existence of confidentiality obligations, but also become formal evidence that is legally binding.

One of the main advantages of authentic deeds is their "full and perfect" nature in terms of evidence, as emphasized in Article 1870 of the Civil Code. This provides a strategic advantage for the owner of the trade secret when facing a lawsuit or trial. In the event of a leak of information, the injured party can immediately refer to the authentic deed as evidence of a breach of legal obligation. This position is much stronger than a private agreement whose validity must still be tested. Furthermore, a notarial deed also provides legal certainty regarding the time of the agreement.<sup>26</sup> This chronology aspect is very important in cases of trade secret violations, because disputes often concern when exactly information was shared and since when the other party has an obligation to keep the information confidential. The notary, through a structured system of protocols and deed numbers, ensures that the date of the document is reliable and recognized by the judicial system.

Another important contribution is the existence of a professional and standardized legal narrative or editorial. In practice, many private NDAs have ambiguous, incomplete formulations, or do not regulate dispute resolution mechanisms. This opens up gaps in interpretation and ultimately weakens the legal position of the information owner. By involving a notary, the contents of the NDA can be consulted and formulated neatly in accordance with positive legal provisions, including the latest relevant laws, doctrines, and jurisprudence.<sup>27</sup>

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<sup>25</sup> C Aisyiah dan D A Wisnuwardhani, "Notary, public official or public official: implications for the position of notary," *Jurnal Cakrawala Hukum* (Medan: lppm.unmer.ac.id, 2022), 76, <https://lppm.unmer.ac.id/webmin/assets/uploads/lj/LJ202305101683690345266.pdf>.

<sup>26</sup> Daulay dan Cahyono, "Legal Protection for Heirs with Non-Fungible Token Heritage Objects."

<sup>27</sup> A Berlee, *Access to personal data in public land registers: Balancing publicity of property rights with the rights to privacy and data protection* (cris.maastrichtuniversity.nl, 2018), 89, <https://cris.maastrichtuniversity.nl/en/publications/access-to-personal-data-in-public-land-registers-balancing-public>.



On the other hand, notarial deeds also function as a preventive tool against potential moral hazard from parties receiving confidential information. The impression of formality and caution in making authentic deeds can have significant psychological and legal effects, namely strengthening the moral and ethical responsibility of the recipient to maintain the confidentiality of information. Deeds signed before state officials (notaries) create the impression of seriousness and legal consequences that cannot be ignored.

In the context of civil procedural law, the role of authentic deeds is very prominent at the initial evidentiary stage (*prima facie* case). Many cases cannot proceed to the further evidentiary stage because the plaintiff is unable to show sufficient initial evidence. A notarial deed fulfills these elements and provides a strong basis for the judge to accept a request for further examination of a case of confidentiality violation.

Beyond the evidentiary aspect, a notarial deed also strengthens the bargaining position of the owner of a trade secret in a contractual relationship. For example, in business negotiations or strategic partnerships, a party that has an NDA in the form of a notarial deed can demonstrate greater seriousness and legal readiness. This creates trust from the partner and reduces the possibility of disputes in the future. An NDA in the form of an authentic deed can also be a requirement for eligibility in the process of mergers, acquisitions, or financing, where due diligence on legal aspects is a crucial part.

In addition to the perspective of contract law, the contribution of a notarial deed in the context of trade secrets can also be seen from the perspective of consumer protection and corporate compliance. Companies that use NDAs in the form of deeds demonstrate a commitment to protecting strategic data and information. This can have a positive impact on the company's reputation, as well as being proof that the company has made proper legal efforts (*due care*) in maintaining the confidentiality of its business.<sup>28</sup>

This contribution is also related to the aspect of strengthening legal culture in society. In practice, many business actors are not yet aware of the importance of the formal legality aspect in information protection. By popularizing the use of notarial deeds for NDA, public legal awareness of contractual rights and obligations can increase. This also supports the state's goal of creating legal certainty and a reliable justice system.

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<sup>28</sup> L Hanim, *Perlindungan hukum hak di dalam perjanjian waralaba di indonesia* (cyber.unissula.ac.id, 2011), 65, <http://cyber.unissula.ac.id/journal/dosen/publikasi/210392035/13563.pdf>.



Technically, the involvement of a notary also allows for the inclusion of complementary clauses that support the enforceability of the NDA. For example, penalty or compensation clauses, choice of dispute resolution forum (forum selection clause), arbitration clause, to governing law clauses that regulate the applicable legal jurisdiction. All of these elements, if stated in an authentic deed, will be easier to enforce legally both domestically and across countries.<sup>29</sup>

Especially in the context of cross-border trade, notarial deeds have an important role as an instrument that can be used in the recognition and enforcement of international judgments (recognition and enforcement of foreign judgments). Several foreign jurisdictions recognize authentic deeds made in the country of origin as official documents, especially if they have been legalized or given an apostille. Thus, an NDA in the form of an authentic deed can serve a dual function as domestic and international protection for trade secrets.

It should also be noted that the contribution of notarial deeds to the protection of trade secrets does not only apply when the agreement is made, but also afterwards. In the event of a change in the contents of the agreement, an extension of time, or a change in the parties, a notary can help make an addendum or deed of amendment that still has valid legal force. Thus, the dynamics of the agreement remain officially recorded and do not lose their legal legitimacy.

Law enforcement against violations of trade secrets often encounters obstacles not because of the absence of legal norms, but because of weak evidence and documentation. Therefore, the creation of an NDA in the form of a notarial deed is a concrete and strategic form of legal documentation. This step not only adds a layer of protection, but also supports a reliable evidentiary system in enforcing justice.<sup>30</sup>

Finally, it is important to emphasize that the existence of a notarial deed is not just a formality, but a substantive instrument that strengthens the legitimacy and legal enforceability of a confidentiality agreement. In the modern business era full of uncertainty and tight competition, preventive measures like this are an urgent need, not just an option. NDA in the form of a notarial deed must become the new standard in the business world,

<sup>29</sup> F Kalma, "Kesadaran Hukum Masyarakat Dalam Perlindungan Kekayaan Intelektual Di Kota Sungai Penuh," *Jurnal Administrasi*, 2018, 32, <http://lppmstianusa.com/ejurnal/index.php/jurnal/article/view/54>.

<sup>30</sup> H Adjie dan D Sumayyah, ... *Notaris Indonesia Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris* (Refika Aditama, 2015), 96, [https://senayan.iain-palangkaraya.ac.id/index.php?p=show\\_detail&id=10874&keywords=](https://senayan.iain-palangkaraya.ac.id/index.php?p=show_detail&id=10874&keywords=).



to ensure that the right to trade secrets is not only recognized, but also truly protected by law.

### 3. Comparative Analysis of Trade Secret Protection through Notaries in Other Countries

Trade secret protection is a global issue that is growing along with the increasing need for legal guarantees for strategic information in modern business practices. Each country has a different legal approach in regulating trade secret protection mechanisms, both in terms of contractual and formality of proof. This comparative analysis is important to see Indonesia's position in the global context and to identify best practices that can be adapted to strengthen the national legal system, especially regarding the role of notaries in securing trade secrets.

#### 3.1. Trade Secret Protection in the Common Law System

In countries with common law legal systems such as the United States, England, and Australia, protection of trade secrets is more contractual and jurisprudential.<sup>31</sup> There is no formal obligation to create an authentic deed by a public official. In the United States, for example, protection of trade secrets is regulated in the Uniform Trade Secrets Act (UTSA) and the Defend Trade Secrets Act (DTSA), which give the owner of the information the right to file a lawsuit in the event of misuse.

The protection mechanism is carried out through a Non-Disclosure Agreement (NDA) which is generally drafted by legal counsel and signed by the parties without the involvement of a notary. However, legal doctrines such as "reasonable measures" determine whether information is truly considered a trade secret. Therefore, companies must be able to prove that they have taken reasonable steps to maintain the confidentiality of the information, including through contracts, access restrictions, and internal company policies.<sup>32</sup>

In this system, the courts have a dominant role in assessing the validity of an NDA, and whether a violation has occurred. The legal force of an NDA depends on the formulation of the clause, the principle of consideration, and the track record of contract implementation. Without formal standards such as authentic deeds, much depends on actual evidence and the judge's interpretation.

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<sup>31</sup> B Arruñada, "12 Property titling and conveyancing," ... *handbook on the economics of property law*, 2011, 212, <https://books.google.com/books?hl=en&lr=&id=ZvwXKFcL-74C&oi=fnd&pg=PA237&dq=agreement+confidentiality+notary+trade+secret+legal+protection&ots=I8B6JxKCVt&sig=COFMHjVOSx4TfOQ7WvmbyWIqHck>.

<sup>32</sup> Wu dan Dong, "Data Intellectual Property Registration and Remedies: Yinmu (Shanghai) Technology Co, Ltd v Shujutang (Beijing) Technology Co, Ltd," 172.



### 3.2. Notarial Practice in the Civil Law System

In contrast to common law systems, civil law countries such as France, Germany, the Netherlands, and Italy place the role of notaries as an important element in the validity and legal force of contracts. In these countries, notarial deeds have a higher status than ordinary contracts, and are a common form in important legal transactions, including the protection of confidential information.<sup>33</sup>

For example, in Germany, although NDAs are not explicitly required to be made in the form of notarial deeds, the use of notaries in strategic agreements is very common to increase the credibility and evidentiary power of the document. In addition, the filing and legalization system by a notary strengthens the legal position of the information owner in the event of a violation. Similar practices are also seen in France, where notaries play a central role in the preparation of various types of business contracts.

In the Netherlands, the use of notaries is not only administrative, but also substantive. Notaries ensure that the parties understand the contents of the agreement and its legal consequences, thereby reducing the potential for disputes in the future. Thus, notarial deeds in the context of trade secrets function as a very effective legal risk prevention and mitigation mechanism.<sup>34</sup>

### 3.3. Advantages and Weaknesses of Each System

The advantages of the common law system are high flexibility and time efficiency, because it does not require the involvement of public officials to make a valid contract. However, the disadvantage is the uncertainty in proof in the event of a dispute, because the burden of proof lies entirely with the plaintiff. This often leads to a long and expensive litigation process.

Meanwhile, the civil law system that prioritizes notarial deeds offers stronger legal certainty. The evidentiary power of authentic deeds, clear narrative structures, and the involvement of public officials provide legitimacy and added value to the contract. The disadvantages are the possibility of bureaucracy and additional costs, as well as limited flexibility in drafting contracts.

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<sup>33</sup> M Wendler, B Tremml, dan B J Buecker, *Key aspects of German business law: a practical manual* (books.google.com, 2008), <https://books.google.com/books?hl=en&lr=&id=0eqQiZrUXB8C&oi=fnd&pg=PA2&dq=agreement+c+confidentiality+notary+trade+secret+legal+protection&ots=2Z6UWlJvF1&sig=BbAYVtr7t0ZY8QheA4L5sHZn-s4>.

<sup>34</sup> Enny Mirfa, "Perbandingan Hukum Jabatan Notaris Di Indonesia Dan Di Negara Belanda," *Jurnal ilmiah Research Sains* 2, no. 2 (2016): 65.



However, in the context of trade secrets that are very strategic and of high value, the civil law approach involving notaries is considered more capable of providing maximum protection. This is because the risk of loss due to violation of trade secrets is often much greater than the cost of making an authentic deed.

### **3.4. Relevance and Implications for the Indonesian Legal System**

Indonesia as a country with a civil law legal system actually has a strong foundation to utilize the role of notaries in protecting trade secrets. However, in practice, many business actors still rely on underhand agreements in preparing NDAs, either due to legal ignorance or reasons of efficiency.

From the comparison above, it appears that Indonesia has a great opportunity to adopt the practices of other civil law countries that have been proven to provide better protection for trade secrets. The practice of using notarial deeds as a standard contractual document in confidentiality agreements can be used as a model for national law, especially in strategic sectors such as technology, pharmaceuticals, defense, and energy.

In addition, there needs to be strengthening of regulations that explain the position of NDAs in the form of notarial deeds in the context of intellectual property law, for example by revising or enriching the norms in the Trade Secrets Law and the Notary Law. The development of technical guidelines for notaries in preparing NDAs is also important to ensure the consistency and quality of legal protection.<sup>35</sup>

Through this comparison, it can be seen that the role of notaries in the context of trade secrets is not only a legal-formal issue, but also concerns legal strategies to create certainty, security, and trust in the business world. Indonesia should not only maintain existing norms, but also develop progressive legal practices that are adaptive to the needs of the global economy.

Thus, learning from other countries shows that optimizing the role of notaries in protecting trade secrets through authentic deeds is a step that is not only legal-logical, but also economical and strategic for the future of intellectual property protection in Indonesia.

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<sup>35</sup> Ali Masum, . Sulistyandari, dan Tri Prihatinah, “The Responsibility of Notary in Making Nominee Agreements for Foreign Citizens in Indonesia,” *Problems of legality*, no. 161 (2023): 287–303, <https://doi.org/10.21564/2414-990x.161.278003>; Richard Nahuis dan Joelle Noailly, *Competition and quality in the notary profession*, vol. 31, CPB document (CPB Netherlands Bureau for Economic Policy Analysis, 2005), 212, <http://ideas.repec.org/p/cpb/docmnt/94.html%5Cnhttp://www.cpb.nl/sites/default/files/publicaties/download/competition-and-quality-notary-profession.pdf>.



#### **D. Conclusion**

This study confirms that notaries have a strategic role in strengthening legal protection of trade secrets by making a non-disclosure agreement in the form of an authentic deed. As a public official, a notary not only has the legal authority regulated in the Notary Law, but is also responsible for ensuring that the agreement made meets the requirements for a valid agreement, in accordance with the principles of civil law, and does not conflict with public order or morality. The perfect evidentiary power of a notarial deed provides significant legal advantages in the context of proof in the event of a violation of trade secrets. In addition, the involvement of a notary also reflects the caution and seriousness of the parties in maintaining strategic information owned by the company. Furthermore, through a comparative analysis with countries that adopt the civil law and common law systems, it is seen that the practice of using notaries in preparing NDAs has been proven to provide stronger and more systematic legal protection, especially in terms of proof, validity, and dispute prevention. Indonesia has great potential to adopt these best practices more widely, especially in business sectors that are highly dependent on information advantages. Therefore, it is recommended that the practice of using notarial deeds in NDA be socialized as a new legal standard, and supported by strengthening regulations and clear technical guidelines, so that the role of notaries in protecting trade secrets is not only potential, but also maximally functional in the national intellectual property law system.

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