



NON-COMPETITION CLAUSE: BUSINESS PROTECTION OR LIMITATION OF WORKER RIGHTS

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Abstract

This research analyses the legal validity and limitations of non-competition clauses in employment contracts under Indonesian law, focusing on their position between business protection and workers' constitutional rights. In Indonesian legal doctrine, employment relationships are based on elements of work, wages, and subordination as regulated in Law Number 13 of 2003 concerning Manpower. From a civil law perspective, non-competition clauses fall within contractual obligations under Indonesian Civil Code, particularly Article 1234 concerning the obligation "not to do something" and Article 1320 on the validity requirements of agreements. Using normative legal research with conceptual and comparative approaches, this study analyses statute regulations, legal doctrines, and comparative practices in Singapore, Malaysia, and the United States. The findings indicate that non-competition clauses are legally permissible in Indonesia provided they fulfil subjective and objective contractual requirements, including consent, capacity, specific object, and lawful cause. However, contractual freedom is limited by constitutional guarantees, particularly Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which protects the right to work and earn a decent living. Comparatively, Singapore applies proportionality and legitimate interest tests, Malaysia generally voids post-employment non-compete clauses; and the United States adopts a state-based reasonableness

approach. Indonesia occupies a middle position, relying on general contract principles and constitutional safeguards without specific statutory regulation. The study concludes that non-competition clauses may function as legitimate business protection instruments only if drafted proportionally, with clear limitations on duration, territory, and scope, while respecting workers' fundamental rights.

INTRODUCTION

The employment contract is a legal connection between workers and employers that creates rights and obligations for the parties bound by an agreement. In Article 1 number 15 of Law Number 13 of 2003 concerning Manpower, it is emphasized that the employment relationship has three main elements, namely the existence of work, wages, and orders (Prasetyono, 2023). The work element indicates the activity performed by the worker, the wage element is the reward for that work, while the order element reflects the subordinate relationship between the worker and the employer. Therefore, the employment relationship is not only economically dimensioned but also has binding legal consequences protected by legislation.

In the perspective of civil law, as governed in Book III of the Civil Code, liabilities may develop from an agreement or from the law. Article 1234 of the Civil Code implies that all liabilities are intended to give something, do something, or not do something. The obligation to "not do something" means that someone must refrain from performing certain actions that have been agreed upon in the contract. This concept becomes relevant in employment relationships when the parties agree to certain restrictions binding the employee, including in the form of non-competition clauses.

The non-competition clause is a provision in a contract of employment that contains the worker's agreement not to engage in similar businesses or work for competing companies within a certain period and area after the termination of the employment relationship. According to Black's Law Dictionary, a non-competition clause is "a promise usually in a sale of business, partnership, or employment contract, not to engage in the same type of business for a stated time in the same market as the buyer, partner, or employer" (Sutarko & Sudjana, 2018). The main

purpose of this clause is to prevent harm to the company's interests, particularly regarding trade secrets, strategic information, and to prevent the transfer of labour that could potentially harm the company. However, the application of non-competition clauses has the potential to cause legal conflicts if the restrictions are too general and unjustified. On one hand, the company has the right to protect its business interests, but on the other hand, workers have a constitutional right to work and earn a decent living.

The urgency of discussing non-competition clauses lies in the increasing dynamics of the business world and the rising mobility of the workforce in general. Without clear and proportional regulations, this clause has the potential to be misused, consequently harming workers, or vice versa. Therefore, a comprehensive study is needed to assess the validity, limitations, and implementation of non-competition clauses in Indonesian manpower law to create a balance between protecting business interests and fulfilling the rights of employees.

The research is structured into four sections. The first section presents the introduction, beginning with the general framework of employment contracts and narrowing down to the specific issue of non-competition clauses in employment contracts. The second section outlines the research methods, providing details on how the research was conducted, including the research approach and data analysis techniques. The third section contains the analysis and discussion, which covers three main aspects: (1) the legality of non-competition clauses in employment contracts in relation to Article 1234 of the Civil Code and the principles of employment relations under applicable legislation; (2) the limitations on the application of non-competition clauses to ensure they do not conflict with the constitutional rights of workers to work and earn a decent living; and (3) the regulations and restrictions on non-competition clauses in other countries, such as Singapore and Malaysia, particularly concerning duration, territorial scope, and compensation for workers. Finally, the fourth section presents the conclusions, summarizing the main findings of the research

RESEARCH MRTHODS

This research uses normative legal research, Normative legal research is a type of legal study that emphasizes a doctrinal approach, focusing on the review of relevant positive legal norms. In the context of the topic Non-Competition Clause: Business Protection or Limitation of Worker Rights, this research examines the existing legal framework governing non-competition clauses within Indonesian civil and manpower law. The analysis is carried out by reviewing relevant statutory regulations and assessing their consistency with legal principles concerning freedom of contract, protection of trade secrets, and the constitutional right to work.

Consistent with the focus of this study, a conceptual approach is use to explore the fundamental legal doctrines underlying employment agreements and contractual restrictions, particularly the principle of “not to do something” as stipulated in Article 1234 of the Civil Code, as well as principles of proportionality and fairness in labour relations. This approach enables a deeper understanding of whether non-competition clauses function primarily as legitimate instruments for business protection or instead constitute disproportionate limitations on workers’ rights. Comparative approach is used in this research to compare the application of law in Indonesia, Malaysia, Singapore, and the United States

In conducting this research, the author relies on primary, secondary, and tertiary legal materials relevant to the issue. Primary legal materials include

legislation related to employment and contract law. Secondary legal materials consist of scholarly journals, legal textbooks, academic articles, and expert opinions discussing non-competition clauses and labour rights. Tertiary materials, such as legal dictionaries and official documents, are also used to clarify legal terminology and concepts.

Data collection is conducted through literature review and keyword searches related to non-competition clauses, employment agreements, trade secret protection, and workers' constitutional rights. Through this normative and conceptual framework, the study aims to critically analyze the validity, limitations, and practical implications of non-competition clauses in Indonesia, while also identifying balanced legal solutions that can safeguard business interests without undermining the fundamental rights of workers.

RESULT AND DISCUSSION

The legality of an employment contracts on a non-competition clause related to the provisions of Article 1234 of the Civil Code and the principles of employment relations according to the legislation

According to the Civil Code, Article 1234 states that fulfilling in an obligation can consist of giving something, doing something, or not doing something. In the context of a non-competition clause, the relevant form of performance is "not doing something," namely the obligation of the employee not to work for a competing company or not to engage in a similar business after the employment relationship ends. This clause is essentially meant as a way to protect the interest of the company, such as maintaining trade secrets, preventing unfair competition, and avoiding an unlawful relocation of employees to competing companies.

However, for a non-competition clause to be valid and binding, it must meet the legal requirements of a contract as specified in Article 1320 of the Civil Code, namely a basis of an agreement, capacity, a specific subject matter, and a legitimate reason. Agreement means that the parties freely consent to the contract without any coercion, fraud, or error. In an employment contract, the employee must be aware of and understand the existence of the non-competition clause and agree to it voluntarily; if there is an element of coercion, the contract can be dismissed. Competence requires that the parties have the legal capacity to perform legal acts, and those who fall into the category of being incompetent as regulated in Article 1330 of the Civil Code cannot legally bind themselves. (Prasetiyono, 2023)

Furthermore, the element of "a certain thing" requires that the object of the agreement must be clear and specific. In a non-competition clause, this means that the restrictions must be stated clearly, including the types of businesses that are prohibited, the duration of the prohibition, and the area where the restrictions apply. Clauses that are too general and do not provide clear limitations have the potential to not meet this requirement. Finally, "lawful cause" requires that the contents of the agreement do not contradict the law, public order, or the basic rights of workers. If a non-competition clause is enforced disproportionately to the extent that it eliminates the worker's opportunity to earn a decent living, then the clause may be deemed to lack lawful cause and potentially void by law. Thus, the fulfilment of both subjective and objective requirements in Article 1320 of the Civil Code becomes the main benchmark in assessing the validity of non-competition clauses.

The principle of freedom of contract is a fundamental basis in civil law that grants parties the authority to figure out the content, terms, and conditions of an agreement as long as it does not contradict applicable laws. This principle is rooted in

the idea that everyone is free to bind themselves and arrange their own interests through agreements. However, this freedom is not absolute. In practice, restrictions are necessary to prevent arbitrary actions or abuse of power by those in a stronger position, so that the law continues to perform its protective function for the weaker party. (Susanti, 2024)

One specific form of this issue can be seen while using standard contracts, which are agreements drafted by one party with standard clauses for general use without going through individual negotiation processes. The purpose of standard agreements is to create efficiency and effectiveness in legal relationships, so that administrative processes can proceed more quickly and uniformly. However, this unilateral form often creates an imbalance in bargaining positions, as the party accepting the agreement including workers does not have enough room to negotiate the content of the clauses. This condition has the potential to disadvantage workers, who are structurally in a lower bargaining position, especially if the clauses included disproportionately limit their rights (Susanti, 2024).

The relationship between employees and their employers, as previously explained, is regulated by the Manpower Law, which essentially constitutes a work agreement between the employee and the employer, whether made in written form or verbally in accordance with the applicable laws and regulations. The employment relationship has three main elements, namely the existence of work, wages, and orders. Article 31 Law No. 13 of 2003 concerning manpower provide three core element which is freedom to choose employment, to obtain or change employment and to earn decent income. Non-competition clauses are not explicitly regulated in Law No. 13 of 2003 concerning Manpower. However, Article 31 of the Manpower Law, which guarantees every worker equal opportunity to obtain employment, can be interpreted as reflecting a principal contrary to excessive post-employment restrictions, such as non-competition clauses. Meanwhile, non-competition clauses essentially fall within the area of civil law because they relate to agreements and obligations as regulated in the Civil Code, specifically Book III on Contracts, which contains guidelines on the legal requirements of an agreement. The Employment Law specifically regulates employment aspects in order to improve national development and the quality of the workforce while still considering the constitutional rights of citizens.

Protection of workers as parties who are structurally in a weaker position is a fundamental principle in manpower law. This principle arises from the awareness of the imbalance in bargaining positions between workers and employers. The Manpower Law is intended to guarantee the basic rights of workers/labourer's and ensure equal opportunities and treatment without discrimination thru the protective principle, which places workers as the party that must be guaranteed certainty and justice. In the context of non-competition clauses, the principle of worker protection requires that any restrictions on the right to work are not established unilaterally or disproportionately. The clause must consider the balance of interests between the protection of the employer's business and the worker's right to obtain employment and a decent living (Sinaga, 2018).

The absence of explicit regulations regarding non-competition clauses in the Labor Law initially suggests a reluctant to enforce toward restricting the right to work. However, the development of jurisprudence shows a more complex dynamic. In Supreme Court Decision Number 3549 K/Pdt/2023, the Supreme Court stated that the 12 month waiting period clause before working for a similar company does not contradict the Labor Law or the Human Rights Law, as long as it is related to the protection of trade secrets. Violations of that clause are considered as default based on

Article 1243 of the Civil Code. This indicates a shift toward recognizing the protection of the employer's interests as long as the restrictions are formulated clearly and proportionally.

The limitations on the application of non-competition clauses defined to ensure they do not conflict with the constitutional rights of workers to work and earn a decent living

Based on the 1945 Constitution of the Republic of Indonesia, every citizen has the right to work and a decent living for humanity as stipulated in Article 27 paragraph (2). The relationship between these constitutional rights and the limitations in private agreements lies in the principle of the hierarchy of norms, which states that any agreement reached by the parties must comply with and not contradict higher regulations. This means that the jointly agreed private agreement must still ensure that the constitutional rights of workers are not violated or eliminated through the agreed clauses.

On the other hand, the freedom to make contracts is recognized in the Civil Code through the principle of contractual freedom. This principle grants the parties the freedom to determine the content, form, and conditions of the agreement as long as it does not conflict with the law, public order, and morality. However, this freedom is not absolute. Every agreement must still comply with applicable regulations and must not eliminate or excessively limit the constitutional rights of citizens.

In the context of a non-competition clause, restrictions on employees can only be considered valid if implemented within reasonable limits. The elements that must be considered include the duration of the restriction, the scope of the job field, territorial limits, and legitimate purposes, such as protecting trade secrets or business interests proportionally. On the contrary, if the clause prohibits workers from working for a lifetime or without a clear time limit, does not provide compensation, and unreasonably restricts workers' freedom to obtain employment, then such restrictions have the potential to violate workers' constitutional rights.

The regulations and restrictions on non-competition clauses in other countries, such as Singapore and Malaysia, particularly concerning the duration, territory, and compensation for workers

1. Regulation and restriction on Singapore

In Singapore, non-compete clauses are essentially considered *prima facie* void as a restraint of trade. *Prima Facie* as Restraint of Trade simply means that the responsibility of proof goes with the employer to prove that the restriction is fair, necessary, and proportional. Non-compete clauses can, however, be enforced if proven to be fair and necessary to protect legitimate business objectives. The court will dismiss the assumption of invalidity if the employer can prove that the restriction is proportional (Singapore Legal Advice, 2024).

Enforcement criteria emphasize the protection of legitimate interests such as trade secrets, confidential information, client connections, and workforce stability. In terms of duration, a restriction of 6–12 months is generally more acceptable, while longer restrictions must have strong justification. The geographical scope should be limited to areas where the employee truly has influence or business relationships, and the scope of activities should be restricted to those that could potentially harm the employer's interests.

If the clause is too broad, Singapore courts may apply the blue pencil doctrine or severance to remove the unlawful parts, as long as the remaining parts remain coherent. However, if the unfairness is too fundamental, the clause will be entirely rejected. Recent developments show that the courts are becoming stricter in testing the elements of fairness and proportionality (Chirnside, 2025).

2. Regulation and restriction on Malaysia

In Malaysia, the legal status of post-employment non-compete clauses is generally invalid under the Contracts Act 1950, specifically Section 28, which voids restraint of trade clauses after the termination of the employment contract, except in limited exceptions such as the sale of goodwill or partnership arrangements. This means that restrictions on former employees working for competing companies are almost always considered void by law.

From the enforcement criteria perspective, Malaysian courts are very restrictive. They do not recognize proprietary interest as a basis for justifying post-employment non-compete clauses in ordinary employment relationships. Therefore, companies generally rely on non-solicitation clauses (prohibition of soliciting clients or employees) and confidentiality as more enforceable protective instruments.

Regarding the interests protected, Under Malaysian law, non-disclosure agreements (NDAs) are typically used for protecting trade secrets and private information, rather than through prohibitions on working in the same field. Geographic scope and duration become irrelevant because post-employment non-compete clauses are fundamentally void. If the clause is formulated too broadly, the consequence is that it becomes completely void without modification. Recent developments indicate that contractual practices in Malaysia are increasingly prioritizing confidentiality clauses over direct competition restrictions (MahWengKwai & Associates, 2023).

3. Regulation and Restriction on United State

In the United States, the legal status of non-compete agreements varies substantially between states. Some states like California impose an almost total ban on post-employment non-compete agreements, while other states like Florida are relatively more flexible as long as the clauses are considered reasonable (ASC News, 2026). The Federal Trade Commission's (FTC) attempt at imposing a national ban in 2024 was canceled in 2025, so regulation returned entirely to the state level (Kennedys Law, 2024).

Enforcement criteria are generally based on the principle of reasonableness, covering duration (usually 6 months to 2 years), geographic scope, and the type of restricted activity. Many states set minimum salary levels so that non-compete agreements only apply to high-earning workers. Protected interests include valid business interests such as trade secrets, customer relationships, and training investments.

The geographical scope must be reasonable and related to the actual operational areas of the company. A duration of more than two years is often considered excessive, except in special circumstances. If the clause is too broad, the consequences vary: some states allow clause reformation, while others void it entirely. Post-FTC rule repeal, the 2026 trend shows that more states are tightening requirements, particularly through increased wage minimums and restrictions for low-level workers, causing the non-compete legal landscape in the US to continue evolving rapidly (Husch Blackwell, 2025).

4. Comparison with Indonesia

Regulations regarding non-compete clauses in Indonesia are not specifically regulated in regulations, but their existence cannot be separated from the general framework of civil law in the Civil Code, particularly Articles 1234 and 1320, as well as constitutional guarantees in the 1945 Constitution of the Republic of Indonesia. This arises due to the no specific regulation; the validity of this clause is determined based on general contract law principles and constitutional limitations. The non-competition clause does not automatically become void by law, but rather depends on the fulfilment of the valid agreement requirements in Article 1320 of the Civil Code, namely the existence of an agreement, the capacity of the parties, a specific object, and a lawful cause. Indonesia's approach is flexible but lacks legal certainty because there are no specific legislative guidelines regarding trade restrictions in employment relationships.

The main distinguishing factor lies in the guarantee of Article 27 paragraph (2) of the 1945 Constitution, which affirms the right of every citizen to work and a decent livelihood, thus making this constitutional protection a normative limit to the freedom of contract. Therefore, even if it formally meets Article 1320 of the Civil Code, a non-compete clause can still be opposed if it eliminates the realistic opportunity for workers to obtain employment, imposes disproportionate restrictions, or contradicts public order and fundamental rights. Compared to Singapore, which emphasizes the protection of legitimate business interests and proportionality tests, Malaysia, which tends to annul most post-employment restrictions in favor of trade freedom, and the United States, which applies fairness analysis and different economic approaches in each state, Indonesia places the protection of workers' constitutional rights as the main benchmark.

In practice, the duration of the restriction must be reasonable and clear, the territorial scope must align with the employer's operational area, and the type of restricted activities must be specific and directly related to legitimate business interests. Ambiguous clauses, those without a time limit, or those that are too geographically broad are at risk of being declared invalid. Although there are no explicit regulations regarding compensation obligations during the non-compete period, their absence can be a consideration in the proportionality and fairness test, especially if the restrictions significantly hinder the worker's ability to earn an income. Overall, Indonesia is in a middle position: not as strict as Malaysia, not as structured as Singapore, and not as fragmented as the United States, but heavily influenced by the principle of protecting workers' constitutional rights in assessing the validity of non-compete clauses.

CONCLUSION

Non-competition clauses in Indonesia are not explicitly regulated in specific manpower legislation, but their validity can be assessed under general contract law principles contained in Article 1234 and Article 1320 of the Indonesian Civil Code. As an obligation “not to do something,” such clauses are legally permissible as long as they meet the subjective and objective requirements of a valid agreement which an agreement, capacity, a specific subject matter, and a lawful cause. If a clause fails to meet these elements, particularly the requirement of lawful cause, it may be declared null and void.

Although freedom of contract allows parties to determine contractual terms,

this freedom is not absolute. The application of non-competition clauses must not violate the constitutional right of workers to work and earn a decent living as guaranteed by Article 27 paragraph (2) of the 1945 Constitution. Therefore, restrictions must be reasonable, proportionate, limited in duration and territory, and directly related to legitimate business interests such as the protection of trade secrets. Clauses that are overly broad, indefinite, or eliminate realistic employment opportunities risk being invalidated.

Comparative analysis demonstrates different approaches, Singapore enforces non-compete clauses based on proportionality and legitimate business interests; Malaysia generally voids post-employment non-compete clauses; and the United States applies a state-based reasonableness test. Indonesia occupies a middle position, relying on general contract principles and constitutional safeguards without detailed statutory regulation. This flexible yet uncertain framework underscores the need for clearer legislative guidelines to ensure legal certainty and balanced protection between business interests and workers' rights.

In conclusion, non-competition clauses in Indonesia can serve as legitimate tools for business protection, provided they are drafted carefully, proportionally, and in harmony with constitutional guarantees. The development of clearer regulatory standards would enhance legal certainty while maintaining fairness in employment relations.

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