

KNOWING COMPANY SECRETS THROUGH EMPLOYEE POSTS ON SOCIAL MEDIA

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Abstract

In today's digital era, many young employees like to upload their activities every day. Uploads in the form of activities, feelings to the outpour of the heart. Company activities include meeting activities, company announcements, to computer screens that display reports that are being made. In addition to company activities, employees also like to upload complaints about work, colleagues, superiors, companies, business partners to customers. There are also employees wearing company uniforms but uploading an activity that does not represent the company but is personal. These posts may leak company secrets or defame the company and coworkers. These posts create legal events. This research uses normative judicial. This study aims to determine whether uploads of company activities or uploads regarding company information can be subject to applicable legal sanctions? This study concludes that uploads that offend personally can be subject to sanctions if any offended party makes a report. Employees upload company secrets, trade secrets, or material company information. Companies can impose sanctions in the form of warning letters to termination of employment. The company's relationship with employees is based on work agreements and company regulations.

Keywords: *Social Media; Posting; Company Information*

1. Introduction

In this digital era, many social media users post their statuses. These statuses represent their feelings. Their feelings may range from happy, upset, sad, restless, worried, to fearful of a situation. Most of those who post on social media are young employees. Someone posts in the private domain will not affect, as long as it does not offend other parties. However, someone posts and attacks someone else. Then there is accountability for what he did.

Social media has created a dilemma for society. On the one hand, people want to get information quickly. Companies also want to get accurate competitor information. However, social media also makes information more transparent in human life. We can easily find out what other people are doing quickly. We will also be able to find out damaging information about other people easily. Social media has opened up the positives and negatives about a person or a company. Positive information is a good thing to publish, but negative information should be avoided from publication. Confidential things must also be covered so that it is not easily spread and known by competitors.

Many young employees have posted their complaints against colleagues, superiors, companies, and customers. Some employees post the conditions of office meetings, computer

screens displaying company reports, essential company documents that display a logo, or performing activities by wearing company uniforms. Some employees have also posted narratives containing complaints against the company. An open narrative becomes public knowledge.

Social media is a place to express human emotions. Human shows their dissatisfaction of life through social media. There is a group of people who constantly post whatever they do on social media. Social media has become a means of mass communication for the community.

Several companies prohibit employees from posting work activities by wearing company uniforms or company identities on their social media accounts. The company limits these activities in the company regulations. Information about the company can be found through employee social media accounts. Some employees post about the annual work meeting. Some employees accidentally reveal the company's business plan for the next few years. Employees may also add narration to the company's business plan. Employees are unaware that this information is company secret. Competitors obtain information about the company's business plans through their employees' social media accounts.

Some employees post the situation in the office on social media. Employees make live uploads of birthday parties or special events at the office. Employees post-birthday videos on personal social media such as Facebook, Instagram, YouTube, and others. Competitors will easily map company conditions. People who have criminal desires will also find it easy to find out about interior design in the company

Competitors will quickly obtain information from other companies through social media. Many companies face challenges in regulating their rights and obligations in the use of social media. On the one hand, companies want promotion through social media. On the other hand, social media has become a source of leakage of confidential information about companies. Companies have difficulty regulating corporate activities on social media.

The Indonesian National Armed Forces (TNI) allows Indonesian National Armed Forces members to be narcissistic on social media. The Indonesian National Armed Forces regulate what is allowed and not allowed to be uploaded by Indonesian National Armed Forces members on social media. The Indonesian National Armed Forces prohibit Indonesian National Armed Forces members from posing inappropriately in uniforms, commenting, or opining on a view that favors one of the groups, and posting operational and strategic matters regarding national defense. Everything uploaded on personal social media accounts will still be associated with the

Indonesian National Armed Forces identity.¹ State apparatus, especially the Indonesian National Armed Forces and Indonesian National Police, need social media regulations for their soldiers' activities. This rule regulates what is allowed to be uploaded and what is not allowed to be uploaded on social media.² Weapons and battle training are secrets of the state. Foreign countries will know the type of training carried out, and the weapons used if posted on social media.

A civil servant (PNS) was fired for posting hate speech on social media. The staff violated the code of ethics and disciplinary regulations. The discipline of civil servant members has been regulated by existing regulations, including a Presidential Regulation.³

There are many activities on personal social media accounts associated with companies in various parts of the world. A female police officer uploads a vulgar selfie wearing a police uniform in an Asia country. The police unit fired the female officer because of the vulgar selfie.⁴ The vulgar photos have damaged the reputation of the state police. Photos of officers wearing official uniforms will affect the reputation of state institutions.

A company fired an employee at the funeral home after posting a selfie of himself with Diego Maradona's body while resting at the Argentine State Palace. The employee's actions angered Diego Maradona's family. The employee's actions also infuriated the people of Argentina.⁵ Maradona is one of the legendary sports figures in Argentina whose passing has caused deep grief in the heart of Argentina's people.

Garuda Indonesia, an Indonesian airline, has banned people from taking pictures on its aircraft as an appeal to respect the privacy of other passengers and crew on duty on flights. This is done because of reports, suggestions, and feedback from customers or passengers who are uncomfortable and disturbed by taking pictures or documentation done without the permission of those concerned.⁶

¹ Rachmatunnisa, "TNI Boleh Narsis Di Medsos, Tapi Ada Aturannya," *Detikinet*, August 19, 2017, <https://inet.detik.com/cyberlife/d-3606201/tni-boleh-narsis-di-medsos-tapi-ada-aturannya>.

² Ging Ginanjar, "TNI-Polri Perlu Aturan Medsos Bagi Prajurit," *BBC News Indonesia*, March 28, 2016, https://www.bbc.com/indonesia/berita_indonesia/2016/03/160327_indonesia_medsos_tni.

³ Kompas, "Dapatkah PNS Dipecat Karena Unggah Soal Ujaran Kebencian?," *Kompas*, October 13, 2019, <https://www.kompas.com/tren/read/2019/10/13/181300965/dapatkah-pns-dipecat-karena-unggah-soal-ujaran-kebencian-?page=all>.

⁴ Maria Flora, "Gara-Gara Selfie 'Vulgar', Polwan Cantik Ini Dipecat," *Liputan 6*, May 12, 2016, <https://www.liputan6.com/global/read/2504656/gara-gara-selfie-vulgar-polwan-cantik-ini-dipecat>.

⁵ CNN Indonesia, "Selfie Dengan Jenazah Maradona, Karyawan Rumah Duka Dipecat," *CNN Indonesia*, November 27, 2020.

⁶ Pramita Tristiawati, "Dilarang Ambil Foto Di Pesawat, Ini Penjelasan Garuda Indonesia," *Liputan 6*, July 16, 2019.

The company's reputation is the responsibility of every employee. The negative and confidential information must be kept for the sustainability of the company. Employees should not publish negative information to outsiders. Confidential information also may not be published. However, the awareness of publication impact is still shallow. Many companies have not regulated this issue.

Many companies have prohibited employees from posting company activities on their personal social media account. Research that addresses the specifics of the law is scarce. This study explicitly discusses the risk of an employee who posts company activities and a company whose data is published by employees through their personal social media account. Discussions will focus on legal accountability.

Many academic types of research have been done on the function of social media for employees and companies. Researches conclude that there are positive and negative aspects of social media for employees and companies. Researches suggest that regulations govern the use of social media.

This research aims to discuss employees' posting of information about the company regarding existing laws and regulations. Research on employee posts on social media is still scarce in Indonesia. This study aims to know that posting on personal social media accounts about company information be categorized as violating statutory regulations.

Companies want to have access to social media accounts owned by employees. This access has both positive and negative effects. Regulations governing this matter are still rare.⁷ Portraits are photographic creations with human objects in them. Personal data contains information about an individual's activities (domestic sphere) and includes their professional activities and public life (professional and public life). Personal affairs can overlap with related public activities (interpersonal relationships). The use of portraits or photos without someone's permission for commercial purposes can harm the owner of the photo, not only economically, this action can damage the identity or reputation of that person, which can create a bad image for the person the photo is used. The unauthorized use of portraits as personal data for commercial purposes may be subject to criminal penalties under the Copyright Law and civil suits under the Electronic Information and Transactions Law.⁸

⁷ M. ; C. Dent. Brown, "Privacy Concerns over Employer Access to Employee Social Media," *Monash University Law Review* 43, no. 3 (2018): 796–827, <https://doi.org/https://doi.org/10.26180/5db8098f58642>.

⁸ Desyanti Suka Asih K ; Ratmini Tus, "Potret Sebagai Data Pribadi Yang Dikomersilkan," *Jurnal Ilmiah Raad Kerta* 53, no. 9 (2019): 1689–99.

With the rapid development of technology, law enforcers need to adapt to social media's increasing use.⁹ Law enforcers also use social media as a means of communication with the public.

Companies are very interested in knowing about their employees' behavior on social media. The company can monitor employee activities based on employee uploads. The employee's right to express an opinion is an employee's right. Both parties have their respective rights and obligations in social media.¹⁰

The faster and more widespread information dissemination gives social media advantages over traditional lines of communication. This has raised ethical and legal challenges.¹¹ The results show that people want social media responsibility and the consequences of violating personal information on social media. Company and employees must be able to distinguish between personal information and company information in social media uploads.¹²

Companies that prohibit employees from using social media without the company's consent are against the law.¹³ Many employers want to know that they want employees to use social media. The use of social media is representative of the company, but employees' online behaviors are not per the expectations of their superiors.¹⁴

Employees always emphasize the constitutional rights to freedom of expression and personal rights against unfair acts in social media posts.¹⁵ Many teachers reported low use of social media, especially the misuse of images.¹⁶ In the use of social media, an employee must consider laws and regulations, statements of opinion in the capacity of an employee, especially

⁹ Bryan Goode, *Social Media and Its Use by Law Enforcement* (Texas: The Bill Blackwood Law Enforcement Management Institute of Texas., 2017).

¹⁰ Adrienn Lukács, "To Post, or Not to Post – That Is the Question: Employee Monitoring and Employees' Right to Data Protection," *Masaryk University Journal of Law and Technology* 11, no. 2 (2017): 185–214, <https://doi.org/https://doi.org/10.5817/MUJLT2017-2-1>.

¹¹ Brenda Kubheka, "Ethical and Legal Perspectives on Use of Social Media by Health Professionals in South Africa," *South African Medical Journal* 107, no. 5 (2017): 386–389, <https://doi.org/https://doi.org/10.7196/SAMJ.2017.v107i5.12047>.

¹² Jason J. ; Puteri Sofia Amirnuddin Turner, "Social Media Privacy and the Law: Perspectives from Malaysian and UK Consumers," *SEARCH: The Journal of the South East Asia Reseach Center* 10, no. 2 (2018): 31–58.

¹³ Jessica A. ; Jonathan S Sales Magaldi, "Employers' Right to Use Employment Policies to Regulate Employee Activity on Social Media: Exploring the Limits in the Age of Facebook and Twitter," in *Tri-State Academy of Legal Studies in Business Proceedings* 798, 2017, 1–33.

¹⁴ Marie Cécile ; Pamela Lirio Cervellon, "When Employees Don't 'like' Their Employers on Social Media," *MIT Sloan Management Review* 58, no. 2 (2017): 63–70, <https://doi.org/https://doi.org/10.7551/mitpress/11633.003.0022>.

¹⁵ Sherilyn Munian, *An Analysis of the Labour Relations Act 66 of 1995 as It Relates to Derogatory Commment Posted By Employess on Social Meida* (University of Kwazulu-Natal., 2018).

¹⁶ Marlynn and Cordelia Zinski Griffin, "Fun and Friendly or Wild and Offensive? Preservice Teachers' Use of and Image Conveyed by Social Media," *Australian Journal of Teacher Education* 45, no. 2 (2020): 44–64, <https://doi.org/https://doi.org/10.14221/ajte.2020v45n2.3>.

as civil service staff, and consider posts related to medical, financial, or personal relationships. These things can affect a company's reputation.

Authorized access can violate personal privacy, so companies may get employee approval to view employees' private social media pages. However, the state legislature saw this practice as an invasion of privacy "akin to asking for someone's house key."¹⁷

On the contrary, the spread of hoaxes had violated the provisions of Article 28 paragraph (1) of Law No.11/2008 on Information and Electronic Transactions and could be subject to criminal sanctions per Article 45 paragraph (2) of Law No.11/2008 on Information and Electronic Transactions in connection with Article 45A paragraph (1) of Law No.19/2016 on amendments to Law No.11/2008 on Information and Electronic Transactions.¹⁸

Regulations and employee dismissals in connection with the use or misuse of social media are debatable topics. Social media represents a new way for employees to connect and is the one-way companies conduct their business. Company policy is the company's primary way of regulating employee behavior, including procedures for employee dismissal.¹⁹

In the world of sports, policymakers have an essential role in making decisions about social media. Companies adopt social media policies that conform to "sports interests" standards.²⁰

In the media industry, five areas will be used as guidelines in formulating newsroom social media policies: the reporter's personal and professional social media activities, social media sources and content, public complaints on social media, use of social media when reporting in the field, and social media account ownership. Five fields are prohibited from posting by employees on social media.²¹

The socialization of social media is still way behind the ideal standard. Understanding cyber media about internet ethics of vocational school students in Jakarta still needs to be improved. It is recommended that similar activities be carried out to understand the ethics of

¹⁷ Tess Traylor-notaro, "The Global Business Law Review Workplace Privacy in the Age of Social Media," *The Global Business Law Review* 7, no. 1 (2018).

¹⁸ Guntarto ; Purgito ; Reni Suryani Widodo, "Aspek Hukum Delik Penyebaran Berita Bohong (Hoax) Berdasarkan Undang Undang Nomor 9 Tahun 2016 Tentang Perubahan Atas Undang Undang Nomor 11 Tentang Informasi Dan Transaksi Elektronik (1):," *Pamulang Law Review* 3, no. 1 (2020): 57–66.

¹⁹ Adrian Faeli, *Are Social Media Policies Necessary? Analysing Company Policy and Its Importance in The Regulation and Dismissal of Employees* (Melbourne, 2016).

²⁰ A. Garry Gabison, "The Gray Problem: Should Athletes Be Punished for Their Social Media Posts?," *De Paul Law Review* 13, no. 1 (2017): 31.

²¹ Anthony C. ; Suzanne Lysak Adornato, "You Can't Post That!: Social Media Policies in US Television Newsrooms," *Electronic News* 11, no. 2 (2017): 80–99, <https://doi.org/https://doi.org/10.1177/1931243117710279>.

using the internet, especially social media.²² A student needs to know about his rights and obligations as a member of an institution. Social media is not a natural world of expression. Social media have restrictions that every member of society must consider.

Knowledge and regulation regarding social media activities are still low. Companies need to do continuous outreach to employees so that the use of social media is more effective. The laws and regulations that regulate upload violations are still not specific.

Does the research have research questions, namely the legal basis and criteria for determining whether the information is included in company secrets? How companies can impose restrictions on employees in posting on social media.

2. Methods

This research studies social media posts by employees. This study uses the normative judicial method. Information and data are secondary and tertiary information and data sources. This study obtained data from various news sources. This research studies the applicable laws and regulations as the primary source.

Primary resources are applicable laws and regulations. Meanwhile, Secondary data sources are data sources that describe the sources of primary materials. Secondary material sources consist of literature study materials. Tertiary legal materials are sources of additional data or information that explain secondary data in websites and articles.

3. Results and Discussion

3.1. Company Secrets, Trade Secrets, and Material Information

Business secrets are one of the primary keys to the company's success. Many competitors want to acquire this secret. Competitors who get the business secrets of other companies could compete in a better way. Competing companies will look for ways to find out the business secrets of competitors.

This secret can be obtained by gathering information from insiders or through illegal retrieval. One of the company's secrets is a trade secret. Taking secrets through hacking will violate the laws and regulations. Hacking is an illegal act that results in a violation of the law.

²² Dadan ; Abdul Hadi; Mukhamad Khotib Herdiana, "Sosialisasi Undang-Undang ITE Dalam Mempersiapkan Siswa SMK Cyber Media Memasuki Lingkungan Kampus," *Journal of Community Service in Humanities and Social Sciences* 1, no. 2 (2019): 92–103.

In addition to hacking, uploads of confidential information are also carried out accidentally by company employees. Employees take selfies during meetings, employees upload directors' decrees, or employees upload other company secrets. This post is not classified as a violation of existing law. Information uploaded on social media can be seen by all parties. The company has a challenge so that employees do not just upload company information on social media. This electronic information has become a sensitive issue at this time.

The company can impose sanctions on employees if they violate this. The imposition of this sanction can be done if it has been regulated in company regulations or employee work agreements. The company can give sanctions warning letters to termination of employment.

Electronic documents are any electronic information that is created, sent, forwarded, stored, or received in analog, electromagnetic, digital, optical, or the like, which can be seen, heard, or/and displayed through computer equipment or electronic systems, including but not limited to sound, writing, maps, pictures, photographs, designs, or the like, letters, numbers, signs, access codes, perforations or symbols which have meaning or can be understood by someone who can understand them. An electronic document is any electronic information that can be shown, heard, and displayed through an electronic system based on the explanation.

Based on the explanation above, every employee who uploads a matter about the company can be classified into an electronic document. Anyone who knowingly and without right or against the law in any way transfers or transfers electronic information and electronic documents to the electronic system of other people who are not entitled. Anyone can file a lawsuit against other parties who operate an electronic system and use information technology that causes harm. These losses can be both material and immaterial. Based on this article, people can file a lawsuit against the party administering the electronic system.

Employees who knowingly and without rights or against the law in any way transfer or transmit electronic information and electronic documents to the electronic system of other people who are not authorized. Companies may not access employees' personal computers. Employees have the right to privacy. The company also has rights because the company owns work equipment.

Types of company secrets based on statutory regulations are listed in table 1. A trade secret is regulated in Law No. 30/2000. The company secret is regulated on Law 5/1999. Material information on the capital market is regulated in Law No. 8/1995.

The definition of the trade secret is information that is not known to the public in the field of technology and business, has economic value because it is helpful in business activities, and is kept secret by the owner of trade secrets per Article 1 Paragraph (1) of Law of the Republic of Indonesia Number 30 of 2000 on Trade Secrets (RD Law). According to Article 13 of the Trade Secrets Law, a trade secret violation occurs when someone deliberately discloses a trade secret, breaks an agreement or denies a written or unwritten obligation to safeguard the trade secret concerned.

Table 1.
Definitions of Trade Secrets, Company Secrets, and Material Information

	Trade Secret	Company Secret	Material Information
Legal Basis	Law of the Republic of Indonesia Number 30 of 2000 on Trade Secrets	Law of the Republic of Indonesia Number 5 the Year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition	Law of the Republic of Indonesia Number 8 of 1995 on Capital Market
Example	Production recipe	Business Development and Product Development Plans. The sales price policy is in the form of a discount or production cost structure.	Divestment of the Company
Company Type Effect	All businesses Competing firms can make the same product	All businesses Competitor companies can find out the company's strategy and work plan and make anticipatory strategies	Public company Company Share Price

Source: Research Result

Company secrets are distinguished from trade secrets. In Article 23 of Law of the Republic of Indonesia Number 5 of the Year 1999 on Anti-Monopoly and Unfair Business Competition, company secrets are stated. Company secrets are information about a company's business activities classified as company secrets. Company secrets are secrets that are linked to business competition. The law has restricted company secrets as information on business activities that the owner must protect confidentiality. The secret owner of the company is the company represented by the board of directors. Therefore, a secret is a secret, regardless of whether the information is financially valuable or not financially valuable. Company secrets must be kept confidential.

The company has company secrets, for example a business development plan for the next five years. The business development plan includes plans for mergers and acquisitions. This merger and acquisition plan can affect the company's stock price. Company executives must

keep this business development plan secret. If employees leak company secrets like acquisition plans, this secret leak has implications for company performance. Company performance is impacted by stock prices, acquisition valuation prices, or losses in company development. The company can impose sanctions on these employees. Warning penalties until termination of employment can be imposed on employees who leak company secrets. This information is categorized as material information based on the Law of the Republic of Indonesia Number 8 of 1995 on Capital Market.

This trade secret is an intellectual property right. Trade secrets include secrets for making food recipes or manufacturing trade products. These trade secrets are company secrets. If an employee leaks a trade secret, the employee may be subject to punishment per the Trade Secrets Act.

3.2. Company Regulations and Employment Agreements

Each employee will sign a work agreement with the company when joining the company. Employees will also sign a statement that they have read and are aware of applicable company regulations. Company regulations regulate the obligations and rights of each employee and company. Employee rights are in the form of receiving workers' compensation, obtaining work facilities, and obtaining work benefits. The company's right to obtain employee work. The work of the employees belongs to the company. Therefore, even though the results of the employees are intellectual property rights. The company will still be able to own it.

Presidential Regulation (PP) regulates employee hiring, promotions, transfers, to termination of employment. Employees are also subject to other company regulations, such as directors' decisions to internal memoranda. Employees are parties who must obey all decisions of the company directors. Employees who post status on social media. Employees will have implications for the upload. The implications can range from sanctions to termination of employment per company regulations.

Posts in the form of hate speech against coworkers, superiors, companies, or customers. Hate speech can be in the form of dislike for superiors, colleagues, or the company. Posts, such as statements about the company's condition that are not conducive or actions from a superior, are considered harmful. Employees are subject to the Electronic Information and Transactions Law. Employees who upload must be cautious in posting the post.

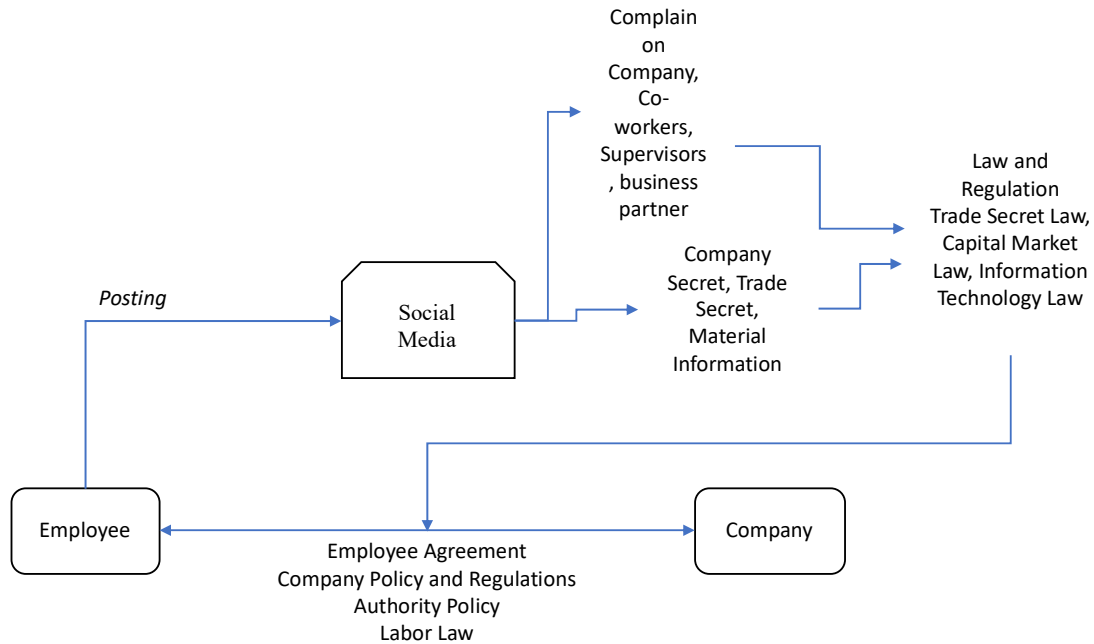


Figure 1. A framework of Posting Information

Source: Research Result

Any posts involving a company with a transparent company logo or name. Companies can put the contents in the work agreement and company regulations. The company can take action against the company per the prevailing laws and regulations. The company provides sanctions until termination of employment based on company regulations.

In addition to statements regarding the company, employees may also upload company documents such as board decisions, internal memoranda, or other company letters. The contents of company documents can include matters that are company secrets or trade secrets. The company can penalize employees. The employee has divulged company secrets or company trade secrets. This is illustrated in Figure 1.

Employee uploads posts about coworkers or superiors. These posts may affect the working atmosphere. Mutual uploads via social media will result in unsustainable conditions for the company. It is necessary to restrict social media posts about companies.

Posts of employees wearing uniforms or company-related status can result in a bad reputation for the company. Employee uploads regarding complaints to business partners or company customers can also have a negative effect. Employees represent the appearance of the company. Employee behavior reflects company ethics and professionalism.

Employees must distinguish between personal information and company information. Employees may only upload personal matters. Personal matters may be posted in personal accounts. The ethics of people's lives in the real world must also be done in cyberspace.

4. Conclusions

Information technology has developed rapidly. Social media has become one of the tools of mass communication in society. Technological developments have both good and bad effects. Users pour their feelings, hearts, and circumstances on social media status. Employees post on social media. The content of the upload can be in the form of information related to company secrets. Information about the company may include company secrets and trade secrets. This information may result in penalties for employees.

Employees post complaints, hate or hate speech to coworkers, superiors, and the company. This post may result in legal events. This type of posting can also be penalized by the company or sued by a coworker for defamation. The working relationship becomes a work atmosphere that is not conducive.

Companies need to establish clear regulations regarding the rights and obligations of posting on social media. The personal section continues to socialize this. This research shows that companies need to establish clear regulations. The company regulates the use of social media. Companies must consistently regulate this. Companies should not issue regulations with double standards. Companies want to know employees' social media activities, but on the other hand, companies prohibit employees from posting about the company. The company wants promotions but prohibits employees from playing social media.

Further research on employee responses regarding limiting the need for social media posts can be conducted. The effectiveness of socialization can also be analyzed. Future researchers can also consider research by including the variables of the company's economic implications due to employee uploads.

This study has limitations in terms of analysis only on the company's view and company issues. Further research can be developed on the issue of personal data. Research can also be developed related to other laws and regulations, such as good corporate governance and capital market laws regarding confidential information.

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