



## Intellectual Property Rights and Ethics: A Comparison of Philosophical Approaches in Northern and Southern Countries

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### Abstract

The philosophical differences between Northern countries, which adopt utilitarian and libertarian perspectives emphasizing strict Intellectual Property Rights (IPR) protection, and Southern countries, which prioritize distributive justice and universal access, create tensions in implementing global IPR policies, particularly concerning important issues such as access to medicines and technology. This research aims to analyze the influence of philosophical approach differences between Northern and Southern countries on Intellectual Property Rights (IPR) policies and implementation, as well as their ethical implications for public access to knowledge and technology. This research employs normative legal research methods with a conceptual approach, analyzing primary, secondary, and tertiary legal materials through literature study, and uses qualitative analysis to interpret the differences in philosophical approaches to IPR policies between Northern and Southern countries along with their ethical implications. The research findings show that philosophical differences between Northern countries, which adopt a utilitarian-libertarian approach with strict IPR protection, and Southern countries, which emphasize distributive justice-collectivism with a more flexible approach, have significant ethical implications for public access to knowledge and technology, as seen in the HIV/AIDS crisis in Africa and access to education, where strict patent policies of Northern countries often hinder developing countries' access to important technology and knowledge, while Southern countries advocate for universal access especially for basic needs such as health and education, creating tension between IPR protection and fulfillment of society's basic needs.

**Keywords:** intellectual property rights, philosophy, north-south, ethics

## I. Introduction

In an era of globalization characterized by knowledge-based economic growth and innovation, Intellectual Property Rights (IPR) have become one of the important pillars that support economic and social development in various countries. IPRs include copyrights, patents, trademarks, and industrial designs, which grant exclusive rights to creators, inventors, and entrepreneurs for their works or inventions.<sup>1</sup> Recognition of IPR not only provides economic benefits to the owner, but also stimulates innovation, creativity, and knowledge transfer between countries. However, the issue of IPR cannot be separated from the ethical aspects that surround it, because the exclusive rights granted to IPR owners often raise moral debates, especially regarding the general public's access to protected knowledge and technology.<sup>2</sup>

Different countries around the world have different approaches to IPR, depending on their social, cultural, economic, and political contexts. Countries often referred to as "Northern" countries such as the United States, Canada, and most Western European countries generally have an approach that favors strict protection of IPRs. They consider IPRs to be a vital instrument in maintaining innovative excellence, protecting knowledge-based economies, and promoting competitiveness in the global marketplace. Meanwhile, "Southern" countries, including developing countries in Africa, Latin America, and Asia, tend to have a more flexible and critical approach to the application of IPRs.<sup>3</sup> They often face the challenge of balancing the need to protect local innovation and the rights of communities to access essential knowledge, technology and products, such as medicines.

This difference in approach is basically influenced by the philosophical perspectives that developed in each region. Northern countries tend to adopt utilitarian and libertarian perspectives on IPR issues, which emphasize the importance of recognizing individuals for their achievements in the form of exclusive property rights, as a form of appreciation for the innovations they produce.<sup>4</sup> On the other hand, Southern countries often favor distributive justice and collectivism approaches, which focus on the importance of universal access to knowledge and technology, especially for the poor who may not be able to afford IPR-protected products. This has resulted in different approaches in IPR policies in Northern and Southern countries.<sup>5</sup> In Northern countries, the utilitarian philosophy tends to assume that IPRs can improve general welfare by providing incentives for innovators to continue to produce new products and technologies. By granting exclusive rights to IPR owners, society is expected to gain long-term benefits in the form of innovations that can improve the quality of life. This approach is supported by the assumption that without economic incentives, people are less likely to invest in research and development. Meanwhile, the libertarian perspective supports the idea that every individual has the right to own and control the results of their creative thinking and hard work, including in the form of IPR.<sup>6</sup> As such, Northern countries generally implement strict IPR policies, to protect the exclusive rights of IPR owners.

However, this approach is often considered controversial, especially in Southern countries that face different social and economic conditions. In Southern countries, strict IPR policies are thought to widen social inequalities and hinder people's access to basic needs.<sup>7</sup> For example, in the pharmaceutical industry, strict patent protection often results in essential medicines becoming prohibitively expensive and out of reach for low-income people in developing countries. The philosophical approach adopted by many countries in the South tends to favor the

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<sup>1</sup> Fakhry Amin et al., *Hukum Kekayaan Intelektual* (Banten: PT. Sada Kurnia Pustaka, 2024).

<sup>2</sup> Bernard Nainggolan, *Pelindungan Hukum Kekayaan Intelektual Di Era Digital* (Yogyakarta: Publika Global Media, 2021).

<sup>3</sup> nuryanto Lanontji, *Rekonstruksi Sistem Pendaftaran Merek Dan Indikasi Geografis Pada Produk Usaha Mikro, Kecil, Menengah (Umkh) Yang Berbasis Keadilan* (Semarang: Universitas Islam Sultan Agung, 2021).

<sup>4</sup> Gregory S. Alexander and Eduardo M. Peñalver, *An Introduction to Property Theory* (Cambridge University Press, 2012), <https://doi.org/10.1017/CBO9780511978548>.

<sup>5</sup> dekki Umamur Rais And Dody Setyawan, *Kebijakan Sosial Sejarah, Teori, Konsep, Dan PraktiK* (Malang: Forind, 2022).

<sup>6</sup> Zulkifli Makkawaru, *Perlindungan Hukum Ekspresi Budaya Tradisional; Upaya Pengelolaan Aset Kekayaan Intelektual Bangsa* (Sukabumi: Farha Pustaka, 2019).

<sup>7</sup> E. Peterson, "Is Economic Inequality Really a Problem? A Review of the Arguments," *Social Sciences* 6, no. 4 (December 4, 2017): 147, <https://doi.org/10.3390/socsci6040147>.

principles of social justice and universal access, which emphasize the importance of equitable distribution of the benefits of science and technology.<sup>8</sup> They see IPR as a right that must be balanced with a social responsibility to ensure wider access to products and technologies, especially those essential for public health and education.

This difference triggers ethical tensions in various international forums that discuss IPR issues, such as in meetings of the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). Northern countries, which wield great economic and political power, often push for the implementation of strict IPR standards globally through trade deals and multilateral agreements.<sup>9</sup> In contrast, Southern countries often advocate for more flexible arrangements and push for exemptions, especially in cases related to health and education. One example is the Doha Declaration on the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement and Public Health, which grants developing countries the right to waive patents in health emergency situations to produce or import generic drugs.<sup>10</sup>

This conflict illustrates how different philosophical perspectives influence IPR policies in different countries and trigger complex debates within the international community. IPRs are not just neutral legal instruments, but also tools that reflect the ethical and philosophical values of a society or country. From this point of view, a study on the comparison of philosophical approaches to IPR between Northern and Southern countries is very relevant to dig deeper into how ethical issues related to IPR are understood and debated in different contexts.

Research on Intellectual Property Rights (IPR) and ethics has become a topic of interest among academics, particularly in the context of comparisons between countries in the Global North and Global South. Previous studies have focused on analyzing IPR policies as instruments of economic growth, comparing IPR systems between developed and developing countries, and the protection of intellectual works from a civil law perspective.

One notable study is the work of Narayan, Ranjan, and Raghuraman (2021) titled "*Comparing Intellectual Property Policy in the Global North and South -- A one-size-fits-all policy for economic prosperity?*" This research analyzes policymaking in the field of Intellectual Property (IP) as an instrument for economic growth in countries of the Global North and Global South. The study begins by examining the relationship between economic growth and IP, followed by an exploration of the development of Intellectual Property Rights in the United States as a key proponent of strong international IP protection. Subsequently, the research compares IP in the Global North and South and analyzes the various factors that contribute to these differences. Through a case study of the Indian Pharmaceutical Industry, the study concludes that there may not yet be a one-size-fits-all policy in the implementation of Intellectual Property Rights.<sup>11</sup>

Furthermore, Salma et al. (2024), in their study titled "*Comparison of Intellectual Property Rights Systems in Developing and Developed Countries: A Case Study of Indonesia and South Korea*," aimed to analyze the implementation and enforcement of intellectual property rights (IPR) laws in developing and developed countries by examining the approaches to IPR in Indonesia and South Korea. This research employs a normative juridical method by studying literature materials and/or secondary data. The findings indicate that IPR systems in Indonesia and South Korea each have their strengths and weaknesses. Indonesia has adequate legislation, a sufficient registration system, and extensive international cooperation. However, it still faces challenges in integrating IPR with the national legal system, raising public awareness and understanding, and

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<sup>8</sup> Basuki Antariksa, "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia," *Jurnal Ekonomi Kreatif* 1, no. 1 (2012).

<sup>9</sup> Kharisma and Umar Mansur, "Studi Hukum Dan Etika Bisnis Dalam Isu Pelanggaran Haki Di China," *Seniman Transactions on Management and Business* 1, no. 1 (2019), <https://seniman.nusaputra.ac.id/index.php/seniman/article/view/20>.

<sup>10</sup> T. G. Agitha, "TRIPS Agreement and Public Health: The Post Doha Crises," *Journal of Intellectual Property Rights* 18 (2013).

<sup>11</sup> S Sidhartha Narayan, Malavika Ranjan, and Madhumitha Raghuraman, "Comparing Intellectual Property Policy in the Global North and South -- A One-Size-Fits-All Policy for Economic Prosperity?," *Papers 2107.06855, ArXiv.Org*, 2021, <https://doi.org/http://dx.doi.org/10.48550/arXiv.2107.06855>.

securing government support. On the other hand, South Korea boasts a strong legal framework, effective law enforcement, and broad international cooperation. Nevertheless, it continues to face challenges in copyright protection, safeguarding traditional intellectual property rights, and promoting public awareness and understanding. The results of this study are expected to enhance public awareness of the importance of IPR and the enforcement of IPR laws, particularly in Indonesia.<sup>12</sup>

Limbong (2023), in his article titled "Copyright and Civil Law: A Comparison of Intellectual Property Protection in Various Countries," compares intellectual property protection across different countries, focusing on civil law aspects within the framework of copyright. This comparison includes countries with different legal systems, including common law and civil law systems. The study reveals differences in the copyright legal frameworks across countries, including definitions of intellectual works, the rights granted to creators, the duration of protection, and the procedures for enforcing copyright. The study also identifies similarities and differences in the civil law approaches to copyright between common law countries and civil law countries. The importance of this research lies in the in-depth understanding of how civil law regulates copyright in various countries and how these differences impact the rights and protection of creators. The findings of this study can serve as a basis for deeper comparisons and updates in the protection of intellectual works in various countries.<sup>13</sup>

Wardana and Ekaningsih (2024), in their research titled "Comparison of Criminal Law on Copyright Infringement in Various Countries: Lessons for Indonesia," investigate the comparison of criminal law on copyright infringement in several countries with the aim of exploring lessons that can be drawn for Indonesia. This study highlights significant differences in the criminal law approach to copyright infringement across the countries examined. The European Union, for example, implements a strict legal framework focused on intellectual property protection, while the United States takes a more punitive approach with firm criminal sanctions against copyright violations. In Asia, various countries have diverse approaches influenced by regional cultural and economic contexts.<sup>14</sup>

Yusuf and Hasima (2019) in their article titled "Legal Protection of Intellectual Property Rights in Baubau City" examine the conditions of intellectual property rights protection in Baubau City and the model for developing legal protection of intellectual property rights in the city. The research concludes that Baubau City has a great potential for intellectual property rights protection due to its cultural diversity and creative industry outputs. However, no one has yet received intellectual property protection because of several obstacles, including the low level of public and government knowledge about intellectual property rights, the lack of government incentives or recognition for the community's creations, and insufficient information about intellectual property rights.<sup>15</sup>

Although these studies have made significant contributions to understanding the differences in intellectual property systems and legal approaches across various countries, there remains a gap in the literature that compares the philosophical approaches to intellectual property rights (IPR) and ethics between countries in the Global North and South. The research titled "Intellectual Property Rights and Ethics: A Comparison of Philosophical Approaches In Northern and Southern Countries" aims to fill this gap by analyzing how different philosophical perspectives influence IPR policies and implementation in both hemispheres. The novelty of this

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<sup>12</sup> Azkia Salma et al., "Perbandingan Sistem Hak Kekayaan Intelektual Di Negara Berkembang Dan Negara Maju Antara Indonesia Dengan Korea Selatan," *Jurnal Hukum Dan HAM Wara Sains* 3, no. 1 (2024), <https://doi.org/https://doi.org/10.58812/jhhws.v3i01.934>.

<sup>13</sup> Nurjannah Nasution, "Tinjauan Yuridis Peran Lembaga Perlindungan Saksi Dan Korban Dalam Melindungi Anak Korban Kekerasan Seksual Di Lingkungan Keluarga," *Judge: Jurnal Hukum* 4, no. 01 (April 17, 2023): 21-34, <https://doi.org/10.54209/judge.v4i01.361>.

<sup>14</sup> Surya Kusuma Wardana and Lailasari Ekaningsih, "Perbandingan Hukum Pidana Pelanggaran Hak Cipta Di Berbagai Negara: Pelajaran Untuk Indonesia," *Jurnal Cahaya Mandalika* 4, no. 1 (2023), <https://doi.org/https://doi.org/10.36312/jcm.v4i1.3288>.

<sup>15</sup> Haris Yusuf and Rahman Hasima, "Perlindungan Hukum Hak Kekayaan Intelektual Masyarakat Kota Baubau," *Halu Oleo Law Review* 2, no. 1 (June 6, 2018): 335, <https://doi.org/10.33561/holrev.v2i1.4194>.

study lies in its comprehensive approach that combines philosophical analysis with cross-cultural comparative studies, which is expected to provide a deeper understanding of the dynamics of IPR and ethics at a global level.

## **II. Research Problems**

Based on the background explanation above, the author is interested in conducting a study entitled "IPR and Ethics: A Comparison of Philosophical Approaches in Northern and Southern Countries". The problem formulation for this research is:

1. How different philosophical approaches in Northern and Southern countries affect the policy and implementation of Intellectual Property Rights (IPR)?
2. What are the ethical implications of the differences in IPR policies between Northern and Southern countries on public access to knowledge and technology?

## **III. Research Methods**

This research uses the normative legal research method, which is often referred to as doctrinal legal research or library legal research. This method aims to analyze legal concepts, regulations, and legal documents that are relevant in understanding the different approaches to Intellectual Property Rights (IPR) and their ethical implications in Northern and Southern countries. This normative legal research is conducted by analyzing data in the form of legal rules, legal principles, and legal theories relating to IPR and ethics. Normative legal research is relevant for this research, because it focuses on the study of legal documents and texts to gain an understanding of the comparative philosophy underlying IPR policies in various countries, especially with regard to the ethical dimensions associated with IPR.

A conceptual approach was chosen as an analytical tool to develop an in-depth understanding of the key concepts that form the basis of this research, namely Intellectual Property Rights (IPR) and ethics. This approach is done by identifying, describing, and analyzing philosophical concepts related to IPR and how they are applied in Northern and Southern countries. Through a conceptual approach, this research aims to highlight the philosophical differences underlying IPR policies, with reference to key concepts such as distributive justice, utilitarianism, collectivism, as well as the ethical principles underlying intellectual property rights. This approach is crucial for establishing a strong theoretical foundation that allows for a comparison between the two different perspectives, as well as revealing the ethical implications of the existing policy differences.

The sources of legal materials in this research are divided into primary, secondary, and tertiary legal materials. Primary legal materials include international and regional regulations related to IPR, such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, the Doha Declaration on Public Health, and national regulations on IPR from the Northern and Southern countries that are the subject of the study. Secondary legal materials include relevant scientific literature or references, such as law journals, books on legal philosophy, and scientific articles that discuss the ethical and philosophical aspects of IPR, especially in the context of comparisons between developing and developed countries. Tertiary legal materials used include legal encyclopedias, legal dictionaries, and other documents of a supporting nature to clarify the concepts involved in this study. The use of these three types of legal materials aims to provide a comprehensive understanding of the issues studied, both from a normative and philosophical perspective.

Data collection in this normative legal research is done through literature study or document study. The desk study involved the collection of relevant legal materials through a search of legal documents, academic literature, and other secondary sources relating to IPR and ethics in Northern and Southern countries. In addition, this technique includes the collection and analysis of international policy documents, such as World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) regulations that influence IPR policies in different

countries. This data collection involved a selective process to obtain relevant and reliable sources to support the research arguments. This desk study is important for collecting normative and philosophical data required in the comparative analysis of IPR policies.

#### IV. Result And Discussion

##### 1. The Differences in Philosophical Approaches in Northern and Southern Countries Affect Intellectual Property Rights Policies and Implementation: What & How?

Intellectual Property Rights (IPRs) play an important role globally in fostering innovation, creativity, and economic growth by granting creators, innovators, and brand holders exclusive rights to their works or inventions. However, IPR policies and regulations vary across the world, reflecting the different philosophical backgrounds, cultures, and economic conditions of each country or region. In developed countries, IPR policies are generally stricter to protect investments in research and development, while in developing countries, they are often more flexible to expand people's access to knowledge and technology needed for social and economic development.<sup>16</sup> Countries known as the "North," such as the United States, the United Kingdom, and Western European countries, generally implement stricter and more exclusive Intellectual Property Rights (IPR) policies, aiming to protect innovation and encourage investment in research and development. In contrast, countries of the "South," comprising developing countries in Asia, Africa, and Latin America, tend to propose more flexible and inclusive IPR policies, focusing on improving people's access to knowledge and technology.

This approach reflects the differences in priorities and socio-economic contexts between the two groups of countries, with the South seeking to address challenges in access to resources critical to social and economic development.<sup>17</sup> The difference in philosophical approach between Northern and Southern countries stems from the basic principles regarding ownership, justice, and access to knowledge, where Northern countries generally adopt a utilitarian and libertarian approach in Intellectual Property Rights (IPR) policy, emphasizing economic benefits and respect for individual efforts in creating works or inventions. This perspective is reflected in stringent IPR protection systems, designed to provide incentives for innovators and companies to continue innovating, thereby promoting economic growth and technological advancement, while Southern countries tend to focus more on social justice and accessibility, considering the importance of knowledge and technology distribution for society at large.<sup>18</sup> National regulations in Northern countries are often based on strict international standards, such as those stipulated in the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement that came into force in 1995 under the World Trade Organization (WTO).

TRIPS sets minimum standards of Intellectual Property Rights (IPR) protection worldwide, and many Northern countries adopted these standards or even tightened them in their domestic regulations, thus creating a legal framework that favors exclusive protection for IPR creators and owners.<sup>19</sup> For example, the United States regulates its IPR policies very strictly to support a knowledge-based economy, where patents, copyrights, and trademarks are considered key drivers of growth in the technology and pharmaceutical industries. Through laws such as the Copyright Act and Patent Act, the United States grants strong exclusive rights to IPR owners to maximize the economic potential of their innovations. The utilitarian approach in IPR policy in the United States is based on the belief that economic incentives will result in greater benefits to society in the long run. This view is supported by the assumption that without exclusive rights,

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<sup>16</sup> Frengky Desiroto and Hudi Yusuf, "Analisis Terhadap Implementasi Perlindungan Hak Kekayaan Intelektual Di Pasar Global," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024).

<sup>17</sup> Mike W. Peng et al., "History and the Debate Over Intellectual Property," *Management and Organization Review* 13, no. 1 (March 13, 2017): 15–38, <https://doi.org/10.1017/mor.2016.53>.

<sup>18</sup> Vinsensio Dugis, *Teori Hubungan Internasional Perspektif-Perspektif Klasik* (Surabaya: Cakra Studi Global Strategis (CSGS), 2016).

<sup>19</sup> Lidya Shery Muis, "Hak Atas Aksesibilitas Obat Paten Bagi Masyarakat," *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum* 1, no. 1 (February 1, 2019): 36–64, <https://doi.org/10.37631/widyapranata.v1i1.259>.

people may not be encouraged to make large investments in research and development, as they would not have a guarantee of profits from their innovations.<sup>20</sup>

However, this strict approach to IPR is often deemed less appropriate for Southern countries that face different socio-economic challenges. In developing countries, people's basic needs such as health, education, and access to essential technologies are often more pressing than the economic benefits of exclusive IPR protection.<sup>21</sup> Southern countries tend to adopt a more flexible approach and consider aspects of social justice and accessibility. They emphasize the importance of universal access to knowledge and technology, which they see as a basic right of society. In this context, the dominant philosophical approach in the South is closer to the principles of distributive justice and collectivism, where access to knowledge resources is considered as a means to improve the overall well-being of society.<sup>22</sup> A clear example of this disparity is seen in the case of access to medicines. Strict patent protection in Northern countries allows large pharmaceutical companies to control the prices of essential medicines, such as antiretrovirals for the treatment of HIV/AIDS. This often makes medicines very expensive and unaffordable for people in developing countries, who have an urgent need for them.

Southern countries, for their part, have long fought for the right to produce more affordable generic drugs, especially in health emergency situations. Their support for the Doha Declaration on the TRIPS Agreement and Public Health in 2001 demonstrates their commitment to prioritizing public health over the economic interests of patent owners. The Doha Declaration provides developing countries with an exception to waive patents in health emergency situations to produce or import more affordable generic drugs.<sup>23</sup> This collectivist philosophical approach is also evident in the IPR policy in India. The country, which has a large generic pharmaceutical industry, implemented a policy that allows patent exceptions under certain conditions to ensure the availability of affordable drugs to its people. For instance, the Patents Act Amendment in 2005 introduced clauses allowing patent exceptions in the interest of public health. This step was taken with the view that knowledge, especially with regard to public health and welfare, is a shared resource that should be accessible to all. This approach is based on the principle that the public's right to health is more important than the profits of individuals or pharmaceutical companies.<sup>24</sup>

This difference in philosophical approach creates a real conflict in international negotiations on Intellectual Property Rights (IPR) standards, where Northern countries, which have high-tech industries and knowledge-based economies, consistently push for the adoption of strict IPR standards worldwide; they argue that the adoption of strict standards will ensure adequate protection for innovators and, in turn, increase global trade, although this approach is often met with resistance from Southern countries that want more flexible policies to support public access to technology and knowledge.<sup>25</sup>

Southern countries often feel that strict IPR standards can put them at a disadvantage and hamper their ability to fulfill basic societal needs, such as access to knowledge and technology that are crucial for social and economic development. Therefore, they advocate for flexibility in the implementation of the TRIPS agreement, as well as protection of people's right to access knowledge and technology, in order to improve welfare and support sustainable growth in their region.

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<sup>20</sup> Erlina, *Penegakan Hukum Kekayaan Intelektual* (Bandar Lampung: CV Anugrah Utama Raharja, 2013).

<sup>21</sup> Siti Nurbaiti, *Perbandingan Hukum Bisnis* (Sleman: PT. Penamuda Media, 2024).

<sup>22</sup> Anna-Lena Godhe, Jens Ideland, and Karin Ollinen, "Dilemmatic Spaces Pertaining to Digitalisation, Equity and Increased Goal Attainment in Swedish Schools and Preschools," *Pedagogy, Culture & Society*, December 26, 2023, 1–19, <https://doi.org/10.1080/14681366.2023.2298446>.

<sup>23</sup> Jennifer H. M. Mike, "Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection," *The Journal of World Intellectual Property* 23, no. 3–4 (July 29, 2020): 473–517, <https://doi.org/10.1111/jwip.12161>.

<sup>24</sup> Janice M. Mueller, "The Tiger Awakens: The Tumultuous Transformation of India's Patent System and the Rise of Indian Pharmaceutical Innovation," *University of Pittsburgh Law Review* 68, no. 3 (April 26, 2007), <https://doi.org/10.5195/lawreview.2007.79>.

<sup>25</sup> Kharisma and Mansur, "Studi Hukum Dan Etika Bisnis Dalam Isu Pelanggaran Haki Di China."

The issue is further complicated by the emergence of the concept of open access and the role of digital technology in facilitating knowledge dissemination, with many countries in the South arguing that the open access model is a more equitable and inclusive approach to knowledge distribution. This model allows free access to scholarly articles, research, and important publications that support education and research, without being hampered by strict copyright constraints. By utilizing digital technologies, open access offers opportunities for individuals and institutions in developing countries to obtain the information they need to improve the quality of education and drive innovation, thereby reducing the knowledge gap between developed and developing countries.<sup>26</sup> On the other hand, Northern countries, especially those with large publishing companies, are sticking to the subscription model with high fees that are seen as a form of appreciation for the contributions of authors and researchers. This approach reflects libertarian values, where individuals' rights to their intellectual work are upheld; however, this practice often limits access to knowledge for countries that cannot afford the subscription fees, creating a significant access gap between developed and developing countries.<sup>27</sup>

This philosophical conflict reveals the tension between individual and collective interests in the issue of Intellectual Property Rights (IPR), where Northern countries tend to view IPR as an individual right that needs to be protected to encourage innovation and economic growth. In their view, strict IPR protection is seen as an attempt to create incentives for the creation and development of science and technology, so they focus on protecting the exclusive rights of creators to ensure that investments in research and innovation are properly rewarded, although this often ignores the need for public access to knowledge and technology that can improve the overall welfare of society.<sup>28</sup> In contrast, Southern countries view Intellectual Property Rights (IPR) as part of the public interest that must be balanced with people's right to access knowledge and technology; they argue that strict IPR protection can hinder socio-economic development, especially for countries that still depend on access to technology and knowledge from developed countries, thus emphasizing the importance of flexibility in IPR policies to support the growth and progress of people in developing countries.<sup>29</sup>

At the international level, various treaties and conventions, such as the Bern Convention for the Protection of Works of Art and Literature and the Paris Convention for the Protection of Industrial Property Rights, reflect efforts to create globally applicable Intellectual Property Rights (IPR) standards. While these treaties seek to unify the legal framework and protection of IPRs in different countries, they still face the challenge of overcoming the different philosophical approaches underlying IPR policies between Northern and Southern countries. The stricter approach in Northern countries that focuses on protecting exclusive rights and incentivizing innovation often conflicts with the needs of Southern countries that prioritize public access to knowledge and technology. Therefore, while the treaties serve as guidelines, they have not fully bridged the gap in the understanding and application of IPRs in different parts of the world.<sup>30</sup> Southern countries continue to fight for exceptions in international agreements on Intellectual Property Rights (IPR) in order to prioritize public welfare in their IPR policies, emphasizing that IPR is not just a neutral legal issue, but also reflects different ethical and philosophical values in each country or region. This struggle demonstrates the importance of flexibility in IPR policies, so that developing countries can address the social and economic challenges faced by their

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<sup>26</sup> Muhaemin Muhaemin, "Pengaruh Kebijakan Perpustakaan Terhadap Akses Informasi," *Media Pustakawan* 31, no. 1 (July 31, 2024): 73-86, <https://doi.org/10.37014/medpus.v31i1.5147>.

<sup>27</sup> Ralf Schimmer, Kai Karin Geschuhn, and Andreas Vogler, "Disrupting the Subscription Journals' Business Model for the Necessary Large-Scale Transformation to Open Access," *ScienceOpen Research*, June 10, 2015, <https://doi.org/10.14293/S2199-1006.1.SOR-EDU.AJRG23.v1>.

<sup>28</sup> Fakhry Amin et al., *Ilmu Perundang-Undangan* (Banten: PT. Sada Kurnia Pustaka, 2023).

<sup>29</sup> Mikhalien Du Bois, "Justificatory Theories for Intellectual Property Viewed Through the Constitutional Prism," *Potchefstroom Electronic Law Journal* 21 (March 27, 2018): 1-38, <https://doi.org/10.17159/1727-3781/2018/v21i0a2004>.

<sup>30</sup> Rohaini et al., *Pengantar Hukum Kekayaan Intelektual* (Bandar Lampung: Pusaka Media, 2021).

societies, while ensuring wider access to the knowledge and technology needed to improve quality of life and promote sustainable development.<sup>31</sup>

In the face of this disparity, it is important to find a middle ground that allows for the protection of individual rights while recognizing society's right to access knowledge and technology. A more inclusive and flexible approach to IPR policy at the international level, such as that proposed in the Doha Declaration, could be a solution that helps address inequalities in access to technology and science. This approach allows Southern countries to adopt standards that suit their conditions without having to completely abandon the basic principles of IPR.

The philosophical differences between Northern and Southern countries have profound implications for the shaping of Intellectual Property Rights (IPR) policies and their implementation. Philosophical approaches from the North often emphasize utilitarian and libertarian ideals. Utilitarianism in IPR focuses on maximizing innovation for societal benefit through strict patent protections, creating incentives for innovators and researchers to invest heavily in developing new technologies. Libertarianism complements this by emphasizing the sanctity of individual property rights, including intellectual property, as an extension of personal freedom and labor.<sup>32</sup>

Conversely, the South adopts a collectivist and distributive justice approach. This perspective considers IPR policies as tools for equitable access and social good, advocating for flexibility in enforcement to address societal inequalities, especially in areas like health and education. Distributive justice underpins the argument that essential knowledge and technology, such as life-saving drugs, should be accessible to all, regardless of economic status, emphasizing societal welfare over individual profit. This divergence creates stark contrasts in IPR enforcement, with the North favoring rigid protections and the South advocating for adaptive policies that prioritize human development.<sup>33</sup> For example, Northern countries often integrate strict TRIPS (Trade-Related Aspects of Intellectual Property Rights) standards into their national laws. These standards enhance exclusivity for patent holders, as seen in the U.S. Patent Act or the EU's Directive 98/44/EC on biotechnological inventions, ensuring long-term economic benefits for innovators. However, in the South, such rigidity often translates into barriers for access. India's Patents Act, which allows for compulsory licensing under specific circumstances, is a reflection of the South's collectivist values, balancing patent protections with public health needs.<sup>34</sup>

This philosophical divide extends to international forums like the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO). The North's lobbying for global adoption of stringent IPR standards frequently conflicts with the South's call for flexibility. A key resolution to this tension was the Doha Declaration on TRIPS and Public Health (2001), which granted developing nations the right to bypass patents in health emergencies, exemplifying the South's push for balancing IPR with equitable access.<sup>35</sup>

From an ethical standpoint, these differences highlight a clash between utilitarian goals of long-term innovation and the immediate social justice imperative of addressing basic human needs. The North's strict policies, while fostering innovation, often marginalize vulnerable populations in the South, who may lack access to critical resources such as medicines or educational tools. Conversely, the South's flexible policies aim to rectify these inequities but may

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<sup>31</sup> Sufiarina Sufiarina, "Hak Prioritas Dan Hak Eksklusif Dalam Perlindungan HKI," *ADIL: Jurnal Hukum* 3, no. 2 (July 1, 2015): 265, <https://doi.org/10.33476/ajl.v3i2.57>.

<sup>32</sup> David McHardy Read, "Intellectual Property Rights: A Comparative Perspective on Asia, the EU, and North America," *Norteamérica, Revista Académica Del CISAN-UNAM* 7, no. 1 (2012), <https://doi.org/https://doi.org/10.22201/cisan.24487228e.2012.1.156>.

<sup>33</sup> Rahmad Lubis, Desi Purnama, and Heri Sulaiman, "The Right to Equitable Access to Higher Education: An Analysis Based on the Philosophy of Pancasila," *SIGn Jurnal Hukum* 6, no. 2 (December 23, 2024): 170-87, <https://doi.org/10.37276/sjh.v6i2.381>.

<sup>34</sup> Päivi Hutukka, "Patent Law in Comparative Context: Differences and Similarities of Patent Law in the European Union, the United States and China," *Maastricht Journal of European and Comparative Law* 30, no. 3 (June 25, 2023): 273-311, <https://doi.org/10.1177/1023263X231206007>.

<sup>35</sup> H. Sun, "The Road to Doha and Beyond: Some Reflections on the TRIPS Agreement and Public Health," *European Journal of International Law* 15, no. 1 (February 1, 2004): 123-50, <https://doi.org/10.1093/ejil/15.1.123>.

face criticism for potentially undermining global innovation incentives.<sup>36</sup> The global IPR framework would benefit from a middle-ground approach that integrates the North's innovation-driven policies with the South's accessibility-focused strategies. For example, expanding open-access initiatives in academia or promoting public-private partnerships for technology transfer could harmonize these contrasting philosophies. Such measures could ensure equitable access to technology and knowledge while preserving incentives for innovation, fostering a more inclusive and balanced IPR landscape globally.

## 2. Ethical Implications of Differences in Intellectual Property Policies Between Northern and Southern Countries

The difference in IPR policies between Northern and Southern countries has long been a topic of debate in the international arena. Northern countries, which include developed countries such as the United States, Western Europe, and Japan, generally apply very strict IPR protection to encourage innovation, research, and development of products that require large investments. This policy grants exclusive rights to IPR creators or owners, allowing them to control the distribution and price of their work or innovation for a certain period of time.<sup>37</sup> On the other hand, countries of the South, which include developing countries in Asia, Africa, and Latin America, tend to adopt a more flexible approach to Intellectual Property Rights (IPR), considering people's right of access to technology and knowledge as a basic necessity for social and economic development; this approach reflects an awareness of the importance of accessibility and sustainability in the utilization of innovations, especially in the context of facing health, education, and poverty challenges that threaten the progress of their societies.<sup>38</sup> Northern countries often view Intellectual Property Rights (IPR) as an important instrument to protect investment in research and development, where granting exclusive rights to creators allows companies to make significant profits and secure funds to support further innovation; an example of this can be seen in patent law in the United States, set out in The Patent Act of 1952, which grants inventors exclusive protection for 20 years over their copyrighted works.<sup>39</sup>

EU countries implemented Directive 98/44/EC on the Legal Protection of Biotechnological Inventions, which regulates patent protection for biotechnological innovations, with the aim of creating a favorable climate for the development of new technologies. However, this policy often neglects public access in developing countries that are in dire need of such technologies, especially in the health and education sectors, creating a gap in access to innovations that are essential for social and economic development in these countries.<sup>40</sup> In contrast, Southern countries tend to consider IPRs more critically. Many developing countries face limitations in resources to create new technologies and rely heavily on foreign technologies to improve the quality of life of their people. Under pressure from developed countries and through international agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) adopted by the World Trade Organization (WTO), Southern countries are forced to harmonize their IPR regulations with international standards.<sup>41</sup> TRIPS provides flexibility for developing countries to implement more adaptive policies, including exceptions for public health purposes, as stated in the Doha Declaration on TRIPS and Public Health; this declaration allows countries to waive patents in favor of producing generic medicines in health

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<sup>36</sup> Keith Humphreys et al., "Responding to the Opioid Crisis in North America and beyond: Recommendations of the Stanford-Lancet Commission," *The Lancet* 399, no. 10324 (February 2022): 555–604, [https://doi.org/10.1016/S0140-6736\(21\)02252-2](https://doi.org/10.1016/S0140-6736(21)02252-2).

<sup>37</sup> Ridwan, *Dinamika Pembangunan Global* (Yogyakarta: Yayasan Sahabat Alam Rafflesia, 2023).

<sup>38</sup> Marlane White, *Intellectual Property Regulation under International Law*, vol. 1 (Oxford University Press, 2017), <https://doi.org/10.1093/acrefore/9780190846626.013.221>.

<sup>39</sup> Gromyko Bongso and Vera Dumonda, *Inovasi Dan Hukum Dalam Bisnis* (Medan: PT. Media Penerbit Indonesia, 2024).

<sup>40</sup> Elizabeth Taruli Lestari Lubis, *Doktrin Experimental Use Sebagai Dasar Pembelaan Pelanggaran Paten* (Depok: Universitas Indonesia, 2012).

<sup>41</sup> Tri Bagus Prabowo and Rezya Agnesica Sihaloho, "Analisis Ketergantungan Indonesia Pada Teknologi Asing Dalam Sektor Energi Dan Dampaknya Pada Keamanan Nasional," *Jurnal Lemhannas RI* 11, no. 1 (May 9, 2023): 72–82, <https://doi.org/10.55960/jlri.v11i1.426>.

emergency situations, thus making room for wider access to essential medicines for people in need.<sup>42</sup>

The Differences in Intellectual Property Rights (IPR) policies between Northern and Southern countries have significant ethical implications for public access to knowledge and technology, especially in the South, where strict patent policies in Northern countries make essential medicines expensive and out of reach for the poor in developing countries, hindering efforts to improve their health and well-being.<sup>43</sup> Patents granted to pharmaceutical companies often prevent the production of cheaper generic drugs, hindering people's access to affordable healthcare, and creating a conflict between companies' exclusive rights to their intellectual property and people's fundamental right to access healthcare. When companies hold patents for essential medicines, they have complete control over pricing and distribution, often resulting in high and unaffordable drug prices for many individuals, especially in developing countries<sup>44</sup>. This results in social injustice, where only a handful of people are able to access necessary medical care, while the majority of people are forced to suffer due to limitations in obtaining drugs that are vital to their health. This conflict emphasizes the need for a fairer policy in IPR regulation, which not only protects the interests of companies but also prioritizes the welfare of society.<sup>45</sup>

A clear example of this implication can be seen in the HIV/AIDS crisis in Africa in the late 1990s and early 2000s. Many African countries were unable to afford antiretroviral (ARV) drugs patented by large pharmaceutical companies in Northern countries. This resulted in high HIV/AIDS death rates, even though the drugs were readily available on the global market. It was only after pressure from the international community and after the Doha Declaration that allowed patent exceptions for public health purposes that some countries began to produce or import cheaper generic drugs, resulting in greater access to treatment. Here, the difference in IPR policies between the North and the South has a huge ethical impact, as it limits access to healthcare in countries that need it most.<sup>46</sup>

Differences in IPR policies have a significant impact on access to knowledge in education in countries of the South, where academic books, scholarly journals, and digital learning materials are often protected by strict copyright, resulting in high prices and access difficulties for educational institutions in developing countries; this creates a gap in acquiring the latest information and knowledge, hindering their ability to compete globally and meet the pressing educational needs of their communities.<sup>47</sup> For example, scientific journals in Northern countries are usually sold at very high prices, making it difficult for universities and research institutions in developing countries to access the latest knowledge in science and technology. This leads to a knowledge and innovation gap between developed and developing countries, as educational institutions in the South do not have equal access to the knowledge resources needed to compete on a global level.<sup>48</sup>

Utilitarianism and Social Justice: Ethics in IPR Policy. From an ethical standpoint, these differences in IPR policies reflect the different ethical approaches between utilitarianism and social justice. Northern countries that subscribe to the utilitarianism approach to IPR see strict protection as a way to encourage innovation and long-term prosperity. By granting exclusive rights to inventors, it is hoped that there will be more investment in research and development that can lead to new products and technologies for the public good. However, this approach often ignores the pressing needs of people who are less able to access such technology and knowledge,

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<sup>42</sup> Muis, "Hak Atas Aksesibilitas Obat Paten Bagi Masyarakat."

<sup>43</sup> Saima Butt et al., "Patents and Public Health: State Responsibility to Opt for a Balanced Approach," *Societies* 14, no. 8 (August 13, 2024): 152, <https://doi.org/10.3390/soc14080152>.

<sup>44</sup> Agitha, "TRIPS Agreement and Public Health: The Post Doha Crises."

<sup>45</sup> Mike, "Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection."

<sup>46</sup> S. Dixon, "The Impact of HIV and AIDS on Africa's Economic Development," *BMJ* 324, no. 7331 (January 26, 2002): 232-34, <https://doi.org/10.1136/bmj.324.7331.232>.

<sup>47</sup> Tana Pistorius and Odirachukwu S. Mwim, "The Impact of Digital Copyright Law and Policy on Access to Knowledge and Learning," *Reading & Writing* 10, no. 1 (June 26, 2019), <https://doi.org/10.4102/rw.v10i1.196>.

<sup>48</sup> Fitri Amalia et al., *Ekonomi Pembangunan* (Bandung: Widina Bhakti Persada Bandung, 2022).

especially in developing countries.<sup>49</sup> In contrast, many Southern countries that prioritize the principle of social justice argue that technology and knowledge that are essential to the well-being of society should be widely accessible. This perspective considers that IPRs are not just economic tools, but also have a social responsibility to ensure that technologies, especially those related to basic needs such as health and education, are accessible to everyone without barriers. This approach is also reflected in the application of IPR policies in some developing countries that are more flexible and consider aspects of public access to technology and knowledge.<sup>50</sup>

Several international laws and agreements have important relevance in the context of IPR policy differences between Northern and Southern countries<sup>51</sup>. Besides the TRIPS Agreement and the Doha Declaration on TRIPS and Public Health, which provide flexibility for developing countries to address the challenges of access to essential medicines and technologies, there is also the Universal Declaration of Human Rights (UDHR) which affirms the right of every individual to an adequate standard of living, including health. In this context, Article 27 of the UDHR states that everyone has the right to take part in scientific progress and its benefits, indicating that the right to knowledge and technology is part of human rights<sup>52</sup>. However, in developing countries, these rights to health and education often clash with the heavily regulated intellectual property rights of developed countries, which often promote strict protection of the exclusive rights of IPR owners, hindering public access to the technology and knowledge needed to improve people's quality of life, thus creating inequities and disparities in access to scientific progress and its benefits<sup>53</sup>.

In addition, at the national level, several Southern countries have begun to adopt more inclusive policies regarding Intellectual Property Rights (IPR), with India being one significant example through the implementation of the Indian Patents Act. Within the framework of this act, India allows the practice of compulsory licensing for medicines deemed essential for public health. This compulsory licensing allows the Indian government to grant permission to local companies to manufacture patented medicines without having to obtain approval from the patent holder, provided that the application meets certain criteria, which are usually related to public health needs. This policy is an important step in ensuring that access to essential medicines is expanded, especially in countries where a large proportion of the population faces serious economic deprivation. Thus, this compulsory licensing policy not only serves to meet the urgent need for treatment, but also creates a more equitable model in the distribution of access to healthcare and medicines, so that people can receive the benefits of medical innovations without being hindered by the high-cost constraints of patent protection.

The differences in Intellectual Property Rights (IPR) policies between Northern and Southern countries carry significant ethical implications for public access to knowledge and technology, where Northern countries, which generally apply strict IPR policies, are more concerned with incentivizing innovation by granting exclusive rights to inventors and creators, thereby encouraging investment in research and development, but often neglect public access to the technology and knowledge they produce, whereas Southern countries, which tend to be more flexible in their IPR approach, focus on the importance of social justice and universal access to knowledge and technology, especially in the health and education sectors, with the aim of ensuring that people, including the underprivileged, can enjoy the benefits of technological and

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<sup>49</sup> Afriva Khaidir, *Pengantar Analisis Kebijakan Publik Dan Implementasinya Dalam Bidang Pendidikan* (Bloomington: Program Scheme for Academic Mobility and Exchange (SAME), 2017).

<sup>50</sup> George Nicholas and Catherine Bell, "Intellectual Property and Archaeology: Research Concerns and Considerations," in *Handbook of Intellectual Property Research* (Oxford University Press/Oxford, 2021), 305-30, <https://doi.org/10.1093/oso/9780198826743.003.0021>.

<sup>51</sup> Bryant Walker Smith, "New Technologies and Old Treaties," *AJIL Unbound* 114 (April 2020): 152-57, <https://doi.org/10.1017/aju.2020.28>.

<sup>52</sup> Merryl Lawry-White, "Inter-State Human Rights Disputes," *International Human Rights Law Review* 13, no. 1 (June 2024): 5-40, <https://doi.org/10.1163/22131035-13010002>.

<sup>53</sup> Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Sriwijaya Law Review* 6, no. 2 (2022): 268-85, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>.

knowledge developments without being hampered by the strict restrictions of IPR protection applied by developed countries<sup>54</sup>.

Southern countries emphasize distributive justice and universal access, arguing that technology and knowledge should be shared resources accessible to all, especially in areas like healthcare and education. This perspective highlights the ethical obligation to balance individual rights with societal welfare. For instance, the Doha Declaration on TRIPS and Public Health reflects the collective stance of many Southern countries, advocating for exceptions in patent laws to ensure access to affordable medicines during health emergencies. Such policies underscore the collectivist ethos prevalent in the South, which prioritizes public welfare over the economic gains of IPR holders.<sup>55</sup>

The ethical implications of these differing approaches are particularly evident in the healthcare sector. Strict patent laws in Northern countries often lead to exorbitant drug prices, limiting access for low-income populations in developing nations. The HIV/AIDS crisis in Africa exemplifies this disparity, where patented antiretroviral drugs were initially inaccessible to many due to high costs. The eventual production of generic drugs, enabled by international agreements like the Doha Declaration, highlighted the importance of flexible IPR policies in addressing global health crises.<sup>56</sup> In education, the restrictive copyright systems of Northern countries exacerbate the knowledge gap by making academic resources prohibitively expensive for institutions in the South. This limits the ability of developing countries to access cutting-edge research, thereby hindering innovation and global competitiveness. Open-access initiatives, often championed by Southern countries, offer a more inclusive model, promoting equitable access to knowledge and reducing disparities.<sup>57</sup>

The philosophical divide also influences international negotiations on IPR standards. Northern countries, with their strong economic and technological bases, advocate for stringent global IPR norms, as seen in the TRIPS Agreement. In contrast, Southern countries push for greater flexibility to accommodate their developmental needs. This ongoing tension reflects a deeper ethical conflict between the protection of individual rights and the promotion of collective well-being.<sup>58</sup> Addressing these disparities requires a balanced approach that integrates the strengths of both philosophies. For example, incorporating flexible provisions in international agreements, such as compulsory licensing for essential medicines, can help bridge the gap. Additionally, fostering collaborative efforts between Northern and Southern countries in technology transfer and research can promote global equity. Ultimately, aligning IPR policies with ethical principles that balance innovation incentives with societal needs is crucial for fostering a fair and inclusive global knowledge economy.<sup>59</sup>

The ethical implications of the divergence in Intellectual Property Rights (IPR) policies between Northern and Southern countries highlight the urgent need for a more balanced and inclusive approach, which not only takes into account the economic interests of IPR owners but also considers the needs of the general public to gain access to knowledge and technology essential for daily life and social development. In this context, the existence of international legislation, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights

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<sup>54</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge: Cambridge University Press, 2020), <https://doi.org/10.1017/9781108612524>.

<sup>55</sup> Putu Ayu Sriasih Wesna, "Doha Declaration Sebagai Perlindungan Masyarakat Atas Akses Obat Esensial Di Negara Berkembang Pasca Trips Agreement," *Kertha Wicaksana* 14, no. 1 (2020), <https://doi.org/https://doi.org/10.22225/kw.14.1.2020.56-62>.

<sup>56</sup> Veronika J Wirtz et al., "Essential Medicines for Universal Health Coverage," *The Lancet* 389, no. 10067 (January 2017): 403-76, [https://doi.org/10.1016/S0140-6736\(16\)31599-9](https://doi.org/10.1016/S0140-6736(16)31599-9).

<sup>57</sup> Luthfi Widyantoko, "Rights to Education for Poor Peoples: How The Country Protect Them?," *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (March 31, 2020): 29-42, <https://doi.org/10.15294/ijicle.v2i1.37322>.

<sup>58</sup> Dewi Sulistianingsih and Raden Muhammad Arvy Ilyasa, "THE IMPACT OF THE TRIPS AGREEMENT ON THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAWS IN INDONESIA," *Indonesia Private Law Review* 3, no. 2 (December 14, 2022): 77-88, <https://doi.org/10.25041/iplr.v3i2.2579>.

<sup>59</sup> Sahlan Sahlan et al., "Compulsory Licensing in Intellectual Property Rights (IPR): Current Application and Future Prospects in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 2 (July 11, 2024): 127-50, <https://doi.org/10.25041/fiatjustisia.v18no2.3399>.

(TRIPS) and the Doha Declaration <sup>60</sup>, is a positive step that can create flexibility for developing countries in addressing the challenges of access to technology and knowledge, especially in the fields of health and education. However, while both documents provide a legal foundation that allows developing countries to protect public health and access to education through the use of compulsory licenses or certain exceptions, there is a need for continued efforts to ensure that these regulations are effectively implemented on the ground, so that they can have a real impact on society and ensure that the right of access to knowledge and technology becomes a universal right and is not limited by economic status or geographic location.

## V. Conclusion

The difference in philosophical approach between Northern and Southern countries greatly influences their IPR policies and implementation, where Northern countries (such as the US and Western Europe) adhere to a utilitarian and libertarian approach that emphasizes strict IPR protection to encourage innovation and maximize economic benefits, reflected in the adoption of strict or even stricter TRIPS standards in their domestic regulations. Meanwhile, Southern countries (developing countries in Asia, Africa, and Latin America) adopt a more flexible and collectivist approach by prioritizing distributive justice and universal access to knowledge, which is seen for example in the case of India allowing patent exceptions in the interest of public health, or Southern countries' support for the Doha Declaration allowing the production of generic drugs in health emergency situations, as they view knowledge and technology as a shared resource that should be accessible to all for the welfare of society.

The differences in IPR policies between the North and the South have significant ethical implications for public access to knowledge and technology, where the strict patent policies of the North that emphasize utilitarianism and the protection of exclusive rights often hinder the access of developing country communities to important technologies and knowledge, as seen in the case of the HIV/AIDS crisis in Africa where many countries cannot afford patented ARV drugs, or in the context of education where the high cost of accessing strictly copyrighted scientific journals and academic books limits the ability of educational institutions in developing countries to access the latest knowledge, while Southern countries that emphasize more social justice argue that technology and knowledge, especially those related to basic needs such as health and education, should be widely accessible to all, creating a tension between the protection of intellectual property rights and meeting the basic needs of society; So, to address the tension between IPR protection and public access to knowledge and technology, a more balanced and inclusive approach is needed in global IPR policy, such as strengthening the implementation of flexibilities in the TRIPS agreement and the Doha Declaration that allow patent exceptions in the public interest, encouraging a more effective compulsory licensing system such as India's to ensure access to essential medicines, developing open access models for academic publications and educational resources, and building more collaborative partnerships between North and South countries in technology development and transfer, so as to create a better balance between the protection of intellectual property rights and meeting the basic needs of the global community, especially in developing countries.

## References

- Agitha, T. G. "TRIPS Agreement and Public Health: The Post Doha Crises." *Journal of Intellectual Property Rights* 18 (2013).
- Alexander, Gregory S., and Eduardo M. Peñalver. *An Introduction to Property Theory*. Cambridge University Press, 2012. <https://doi.org/10.1017/CBO9780511978548>

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<sup>60</sup> I Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31-45, <https://doi.org/https://doi.org/10.29303/ius.v11i1.1170>.

- Amalia, Fitri, Roeskani Sinaga, Asyari, Rahmah Farahdita Soeyatno, Dikson Silitonga, Akhmad Solikin, Aulia Keiko Hubbansyah, et al. *Ekonomi Pembangunan*. Bandung: Widina Bhakti Persada Bandung, 2022.
- Amin, Fakhry, Saptono Jenar, Dian Dewi Khasanah, Rasyid Tarmizi, Suwandoko, Luluk Machmudah, Setiyo Utomo, et al. *Hukum Kekayaan Intelektual*. Banten: PT. Sada Kurnia Pustaka, 2024.
- Amin, Fakhry, Riana Susmayanti, Fuqoha, Femmy Silaswaty Faried, Suwandoko, Muhammad Aziz Zaelani, Asri Agustiwi, et al. *Ilmu Perundang-Undangan*. Banten: PT. Sada Kurnia Pustaka, 2023.
- Antariksa, Basuki. "Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia." *Jurnal Ekonomi Kreatif* 1, no. 1 (2012).
- Bantekas, Ilias, and Lutz Oette. *International Human Rights Law and Practice*. Cambridge: Cambridge University Press, 2020. <https://doi.org/10.1017/9781108612524>.
- Bois, Mikhalien Du. "Justificatory Theories for Intellectual Property Viewed Through the Constitutional Prism." *Potchefstroom Electronic Law Journal* 21 (March 27, 2018): 1–38. <https://doi.org/10.17159/1727-3781/2018/v21i0a2004>.
- Bongso, Gromyko, and Vera Dumonda. *Inovasi Dan Hukum Dalam Bisnis*. Medan: PT. Media Penerbit Indonesia, 2024.
- Butt, Saima, Kamran Shaukat, Talha Mahboob Alam, and Tony Jan. "Patents and Public Health: State Responsibility to Opt for a Balanced Approach." *Societies* 14, no. 8 (August 13, 2024): 152. <https://doi.org/10.3390/soc14080152>.
- Desiroto, Frengky, and Hudi Yusuf. "Analisis Terhadap Implementasi Perlindungan Hak Kekayaan Intelektual Di Pasar Global." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024).
- Dewi, Anak Agung Istri Ari Atu, Ni Ketut Supasti Dharmawan, Anak Agung Istri Eka Krisnayanti, Putu Aras Samsithawrati, and I. Gede Agus Kurniawan. "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia." *Sriwijaya Law Review* 6, no. 2 (2022): 268–85. <https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>.
- Dixon, S. "The Impact of HIV and AIDS on Africa's Economic Development." *BMJ* 324, no. 7331 (January 26, 2002): 232–34. <https://doi.org/10.1136/bmj.324.7331.232>.
- Dugis, Vinsensio. *Teori Hubungan Internasional Perspektif-Perspektif Klasik*. Surabaya: Cakra Studi Global Strategis (CSGS), 2016.
- Erlina. *Penegakan Hukum Kekayaan Intelektual*. Bandar Lampung: CV Anugrah Utama Raharja, 2013.
- Godhe, Anna-Lena, Jens Ideland, and Karin Ollinen. "Dilemmatic Spaces Pertaining to Digitalisation, Equity and Increased Goal Attainment in Swedish Schools and Preschools." *Pedagogy, Culture & Society*, December 26, 2023, 1–19. <https://doi.org/10.1080/14681366.2023.2298446>.
- Humphreys, Keith, Chelsea L Shover, Christina M Andrews, Amy S B Bohnert, Margaret L Brandeau, Jonathan P Caulkins, Jonathan H Chen, et al. "Responding to the Opioid Crisis in North America and beyond: Recommendations of the Stanford–Lancet Commission." *The Lancet* 399, no. 10324 (February 2022): 555–604. [https://doi.org/10.1016/S0140-6736\(21\)02252-2](https://doi.org/10.1016/S0140-6736(21)02252-2).

- Hutukka, Päivi. "Patent Law in Comparative Context: Differences and Similarities of Patent Law in the European Union, the United States and China." *Maastricht Journal of European and Comparative Law* 30, no. 3 (June 25, 2023): 273-311. <https://doi.org/10.1177/1023263X231206007>.
- Khaidir, Afriva. *Pengantar Analisis Kebijakan Publik Dan Implementasinya Dalam Bidang Pendidikan*. Bloomington: Program Scheme for Academic Mobility and Exchange (SAME), 2017.
- Kharisma, and Umar Mansur. "Studi Hukum Dan Etika Bisnis Dalam Isu Pelanggaran Haki Di China." *Seniman Transactions on Management and Business* 1, no. 1 (2019). <https://seniman.nusaputra.ac.id/index.php/seniman/article/view/20>.
- Kurniawan, I Gede Agus, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara. "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31-45. <https://doi.org/https://doi.org/10.29303/ius.v11i1.1170>.
- Lanontji, Nuryanto. *Rekonstruksi Sistem Pendaftaran Merek Dan Indikasi Geografis Pada Produk Usaha Mikro, Kecil, Menengah (Ukm) Yang Berbasis Keadilan*. Semarang: Universitas Islam Sultan Agung, 2021.
- Lawry-White, Merryl. "Inter-State Human Rights Disputes." *International Human Rights Law Review* 13, no. 1 (June 2024): 5-40. <https://doi.org/10.1163/22131035-13010002>.
- Lubis, Elizabeth Taruli Lestari. *Doktrin Experimental Use Sebagai Dasar Pembelaan Pelanggaran Paten*. Depok: Universitas Indonesia, 2012.
- Lubis, Rahmad, Desi Purnama, and Heri Sulaiman. "The Right to Equitable Access to Higher Education: An Analysis Based on the Philosophy of Pancasila." *SIGN Jurnal Hukum* 6, no. 2 (December 23, 2024): 170-87. <https://doi.org/10.37276/sjh.v6i2.381>.
- Makkawaru, Zulkifli. *Perlindungan Hukum Ekspresi Budaya Tradisional; Upaya Pengelolaan Aset Kekayaan Intelektual Bangsa*. Sukabumi: Farha Pustaka, 2019.
- Mike, Jennifer H. M. "Access to Essential Medicines to Guarantee Women's Rights to Health: The Pharmaceutical Patents Connection." *The Journal of World Intellectual Property* 23, no. 3-4 (July 29, 2020): 473-517. <https://doi.org/10.1111/jwip.12161>.
- Mueller, Janice M. "The Tiger Awakens: The Tumultuous Transformation of India's Patent System and the Rise of Indian Pharmaceutical Innovation." *University of Pittsburgh Law Review* 68, no. 3 (April 26, 2007). <https://doi.org/10.5195/lawreview.2007.79>.
- Muhaemin, Muhaemin. "Pengaruh Kebijakan Perpustakaan Terhadap Akses Informasi." *Media Pustakawan* 31, no. 1 (July 31, 2024): 73-86. <https://doi.org/10.37014/medpus.v31i1.5147>.
- Muis, Lidya Shery. "Hak Atas Aksesibilitas Obat Paten Bagi Masyarakat." *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 1, no. 1 (February 1, 2019): 36-64. <https://doi.org/10.37631/widyapranata.v1i1.259>.
- Nainggolan, Bernard. *Pelindungan Hukum Kekayaan Intelektual Di Era Digital*. Yogyakarta: Publika Global Media, 2021.
- Narayan, S Sidhartha, Malavika Ranjan, and Madhumitha Raghuraman. "Comparing Intellectual Property Policy in the Global North and South -- A One-Size-Fits-All Policy for Economic Prosperity?" *Papers* 2107.06855, ArXiv.Org, 2021. <https://doi.org/http://dx.doi.org/10.48550/arXiv.2107.06855>.
- Nicholas, George, and Catherine Bell. "Intellectual Property and Archaeology: Research Concerns and Considerations." In *Handbook of Intellectual Property Research*, 305-30.

Oxford University PressOxford, 2021.  
<https://doi.org/10.1093/oso/9780198826743.003.0021>.

- Nurbaiti, Siti. *Perbandingan Hukum Bisnis*. Sleman: PT. Penamuda Media, 2024.
- Nurjannah Nasution. "Tinjauan Yuridis Peran Lembaga Perlindungan Saksi Dan Korban Dalam Melindungi Anak Korban Kekerasan Seksual Di Lingkungan Keluarga." *Judge : Jurnal Hukum* 4, no. 01 (April 17, 2023): 21–34. <https://doi.org/10.54209/judge.v4i01.361>.
- Peng, Mike W., David Ahlstrom, Shawn M. Carraher, and Weilei (Stone) Shi. "History and the Debate Over Intellectual Property." *Management and Organization Review* 13, no. 1 (March 13, 2017): 15–38. <https://doi.org/10.1017/mor.2016.53>.
- Peterson, E. "Is Economic Inequality Really a Problem? A Review of the Arguments." *Social Sciences* 6, no. 4 (December 4, 2017): 147. <https://doi.org/10.3390/socsci6040147>.
- Pistorius, Tana, and Odirachukwu S. Mwim. "The Impact of Digital Copyright Law and Policy on Access to Knowledge and Learning." *Reading & Writing* 10, no. 1 (June 26, 2019). <https://doi.org/10.4102/rw.v10i1.196>.
- Rais, Dekki Umamur, and Dody Setyawan. *Kebijakan Sosial Sejarah, Teori, Konsep, Dan Praktik*. Malang: Forind, 2022.
- Read, David McHardy. "Intellectual Property Rights: A Comparative Perspective on Asia, the EU, and North America." *Norteamérica, Revista Académica Del CISAN-UNAM* 7, no. 1 (2012). <https://doi.org/https://doi.org/10.22201/cisan.24487228e.2012.1.156>.
- Ridwan. *Dinamika Pembangunan Global*. Yogyakarta: Yayasan Sahabat Alam Rafflesia, 2023.
- Rohaini, Harsa Wahyu Ramadhan, Nenny Dwi Ariani, Lindati Dwiatin, Siti Nurhasanah, Kasmawati, Yennie Agustin, et al. *Pengantar Hukum Kekayaan Intelektual*. Bandar Lampung: Pusaka Media, 2021.
- Sahlan, Sahlan, Ilham Nurman, Abdul Karim Uddin, and Andi Bustamin Daeng Kunu. "Compulsory Licensing in Intellectual Property Rights (IPR): Current Application and Future Prospects in Indonesia." *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 2 (July 11, 2024): 127–50. <https://doi.org/10.25041/fiatjustisia.v18no2.3399>.
- Salma, Azkia, Rula Zalfaa Tsabita, Hilda Fitriyani, and Amalia Purwanti. "Perbandingan Sistem Hak Kekayaan Intelektual Di Negara Berkembang Dan Negara Maju Antara Indonesia Dengan Korea Selatan." *Jurnal Hukum Dan HAM Wara Sains* 3, no. 1 (2024). <https://doi.org/https://doi.org/10.58812/jhhws.v3i01.934>.
- Schimmer, Ralf, Kai Karin Geschuhn, and Andreas Vogler. "Disrupting the Subscription Journals' Business Model for the Necessary Large-Scale Transformation to Open Access." *ScienceOpen Research*, June 10, 2015. <https://doi.org/10.14293/S2199-1006.1.SOR-EDU.AJRG23.v1>.
- Smith, Bryant Walker. "New Technologies and Old Treaties." *AJIL Unbound* 114 (April 2020): 152–57. <https://doi.org/10.1017/aju.2020.28>.
- Sufiarina, Sufiarina. "Hak Prioritas Dan Hak Eksklusif Dalam Perlindungan HKI." *ADIL: Jurnal Hukum* 3, no. 2 (July 1, 2015): 265. <https://doi.org/10.33476/ajl.v3i2.57>.
- Sulistianingsih, Dewi, and Raden Muhammad Arvy Ilyasa. "The Impact Of The Trips Agreement On The Development Of Intellectual Property Laws In Indonesia." *Indonesia Private Law Review* 3, no. 2 (December 14, 2022): 77–88. <https://doi.org/10.25041/iplr.v3i2.2579>.
- Sun, H. "The Road to Doha and Beyond: Some Reflections on the TRIPS Agreement and Public Health." *European Journal of International Law* 15, no. 1 (February 1, 2004): 123–50. <https://doi.org/10.1093/ejil/15.1.123>.

- Tri Bagus Prabowo, and Rezya Agnesica Sihaloho. "Analisis Ketergantungan Indonesia Pada Teknologi Asing Dalam Sektor Energi Dan Dampaknya Pada Keamanan Nasional." *Jurnal Lemhannas RI* 11, no. 1 (May 9, 2023): 72-82. <https://doi.org/10.55960/jlri.v11i1.426>.
- Wardana, Surya Kusuma, and Lailasari Ekaningsih. "Perbandingan Hukum Pidana Pelanggaran Hak Cipta Di Berbagai Negara: Pelajaran Untuk Indonesia." *Jurnal Cahaya Mandalika* 4, no. 1 (2023). <https://doi.org/https://doi.org/10.36312/jcm.v4i1.3288>.
- Wesna, Putu Ayu Sriasih. "Doha Declaration Sebagai Perlindungan Masyarakat Atas Akses Obat Esensial Di Negara Berkembang Pasca Trips Agreement." *Kertha Wicaksana* 14, no. 1 (2020). <https://doi.org/https://doi.org/10.22225/kw.14.1.2020.56-62>.
- White, Marlaine. *Intellectual Property Regulation under International Law*. Vol. 1. Oxford University Press, 2017. <https://doi.org/10.1093/acrefore/9780190846626.013.221>.
- Widyantoko, Luthfi. "Rights to Education for Poor Peoples: How The Country Protect Them?" *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (March 31, 2020): 29-42. <https://doi.org/10.15294/ijicle.v2i1.37322>.
- Wirtz, Veronika J, Hans V Hogerzeil, Andrew L Gray, Maryam Bigdeli, Cornelis P de Joncheere, Margaret A Ewen, Martha Gyansa-Lutterodt, et al. "Essential Medicines for Universal Health Coverage." *The Lancet* 389, no. 10067 (January 2017): 403-76. [https://doi.org/10.1016/S0140-6736\(16\)31599-9](https://doi.org/10.1016/S0140-6736(16)31599-9).
- Yusuf, Haris, and Rahman Hasima. "Perlindungan Hukum Hak Kekayaan Intelektual Masyarakat Kota Baubau." *Halu Oleo Law Review* 2, no. 1 (June 6, 2018): 335. <https://doi.org/10.33561/holrev.v2i1.4194>.