

Utilitarianism versus Communalism: A Legal Theory Analysis of Intellectual Property Rights Ethics in Global North and South

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Abstract

The development of the idea of intellectual property has become a separate debate related to countries in the Global South and countries in the Global North. Global South and Global North are concepts used to distinguish between developed and developing countries in social, economic, and political contexts. This study aims to analyze the views of utilitarianism versus communalism in understanding intellectual property rights in Global North and Global South countries. This study is a normative legal

study that prioritizes conceptual, historical, and philosophical approaches. The results of the study confirm that the differences in views between Global North and Global South countries on intellectual property reflect global economic and political inequality. Global North countries support strict intellectual property protection to maintain their economic and technological dominance, while Global South countries want a more flexible system to ensure fair access to technology, medicines, and protection of traditional knowledge. Global North countries see IP protection as a driver of innovation and economic growth, based on the theory of utilitarianism, while Global South countries prioritize the principle of communalism to ensure fair access to technology and knowledge. To achieve balance, inclusive policies, international cooperation in research and development, and integration of communal values in IP policies are needed, in order to create social justice and redistribution of global wealth.

Keywords: Communalism, Global North, Global South, Intellectual Property, Utilitarianism.

A. Introduction

Intellectual Property is an important aspect of the global economy that deals with the protection of intellectual works and innovation. IPR includes various forms of rights, such as copyright, patents, trademarks, and industrial designs, which aim to protect these works from unauthorized use and provide incentives for innovation.¹ Intellectual property is defined as intangible property resulting from human creativity in various fields, including art, literature, science, and technology. Intellectual property gives the creator the right to enjoy economically the results of human creativity.²

Intellectual property is actually divided into two main categories, namely copyright which aims to protect works of art and lit-

1 Yosef Nugraha Siregar, "TRIPS Dalam Perspektif Hukum Atas Perlindungan Rahasia Dagang Terhadap Tindakan Pekerja (Studi Kasus CV. Bintang Harapan Dan CV Tiga Putra Berlian)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 4 (2021): 1522–29.

2 Nurul Barizah, "Analysis Regional Regimes for the Protection of Intellectual Property Rights Related to Biodiversity and Community Rights," *Talent Development & Excellence* 12, no. 2 (2020): 1995–2006.

erature, giving the creator exclusive rights to control the use of the work. Furthermore, it relates to industrial property rights which include the rights to inventions, designs, trademarks, and patents, giving the owner exclusive rights to exploit the results of their innovations.³ Globalization has accelerated economic interactions around the world, which has had an impact on intellectual property legal systems.⁴ In this context, harmonization of intellectual property laws is important to create a stable environment for innovators and businesses. This can reduce barriers to international trade and encourage investment in innovation.⁵ However, this harmonization process faces significant challenges. Various interests must be considered to ensure that all stakeholders benefit. Moreover, the development of digital technology adds complexity to intellectual property protection with new threats such as cyber theft and online copyright infringement.

Intellectual property protection contributes to economic growth by fostering innovation and enhancing the competitiveness of companies in the global market.⁶ With legal protection, companies are more motivated to invest in research and development because they are confident that the results of their hard work will be protected. Overall, intellectual property not only protects individual rights but also serves as a driver for economic progress in an increasingly competitive era of globalization.⁷

3 Sara Amoroso and Albert N. Link, "Intellectual Property Protection Mechanisms and the Characteristics of Founding Teams," *Scientometrics* 126, no. 9 (2021): 7329–50.

4 Stefan Koos, "Digital Globalization and Law," *Lex Scientia Law Review* 6, no. 1 (2022): 33–68.

5 Hari Sutra Disemadi and Lu Sudirman, "Unleashing Indonesia's Traditional Knowledge: Navigating Legal Challenges in a Changing Landscape," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 33–46.

6 Péter Mezei, "Digital Higher Education and Copyright Law in the Age of Pandemic - The Hungarian Experience," *Journal of Intellectual Property, Information Technology and E-Commerce Law* 14, no. 2 (2023): 330–50.

7 Fenny Wulandari, "Protection of Communal Intellectual Property Rights Through Geographical Indication System," *Veteran Law Review* 5, no. 2 (2022): 115–34.

The development of the idea of intellectual property has become a separate debate in relation to countries in the Global South and countries in the Global North. Global South and Global North are concepts used to distinguish between developed and developing countries in the social, economic, and political context.⁸ The Global North refers to countries that are generally considered developed countries, with high levels of prosperity and good infrastructure. These countries are often located in the northern hemisphere, although not all developed countries are there. These countries have strong economies, good education systems, and access to advanced technology. They are also often centers of global political and economic power. In this context, intellectual property is synonymous with the “source” of wealth for Global North countries, so that intellectual property becomes an important aspect in increasing financial resources in Global North countries.⁹

Unlike Global North countries, the Global South encompasses nations considered developing or underdeveloped. This term emerged in response to the inequality between developed and developing countries, and to replace the Cold War-era term “Third World.” These nations often face challenges such as poverty, income inequality, and difficult living conditions. While mostly located in the Southern Hemisphere, some Global South countries like China and India are in the Northern Hemisphere. Many Global South countries are former colonies that experienced the negative impacts of imperialism and colonialism, shaping their perspectives on international relations.¹⁰ For Global South countries, intellectual property can be considered a “new commodity” or a “product of Western countries” because, generally, Global South nations maintain strong communi-

8 Ulrich Volz, “Addressing The Debt Crisis In The Global South: Debt Relief For Sustainable Recoveries” (Think 7, 2022).

9 Brian Z. Tamanaha, “Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences,” in *Washington University in St. Louis Legal Studies Research Paper No. 21-06-01*, 2021, 30–33.

10 Günther Maihold Sebastian Haug, Jacqueline Braveboy-Wagner, “The ‘Global South’ in the Study of World Politics: Examining a Meta Category,” *Third World Quarterly* 42, no. 9 (2021): 1927.

tarian cultures where works, such as literary works, are considered common property.

This difference in perspective between the Global North and South concepts reflects not only geographical location but also power dynamics, economic disparities, and historical relationships. Despite significant differences between these groups, there is potential for Global South countries to strengthen their international standing through collaboration and the development of collective policies. In this context, differing viewpoints on intellectual property between the Global North and South will be the primary focus of this research. This study aims to analyze utilitarian versus communitarian perspectives on intellectual property rights in Global North and Global South countries.

Previous research on intellectual property rights has been conducted. First, Ayu Mustika Pamungkas & Hikam Hulwanullah¹¹ examines the protection of intellectual property rights in the digital era. The primary objective of the research is to analyze the legal challenges that arise in the enforcement of intellectual property rights amidst the rapid development of information technology. The study employs a normative juridical method, utilizing statutory and literature approaches. The findings reveal significant gaps between existing legal regulations and the actual needs for legal protection in the digital environment. The study recommends that national legal frameworks be updated to become more adaptive to technological advancements and the evolving global requirements for intellectual property protection.

Second, Zulfikri & Zulkarnaini¹² focuses on the issue of distributive justice concerning intellectual property rights within local communities. The aim of this research is to explore how principles of distributive justice can be integrated into the legal framework gov-

11 Ayu Mustika Pamungkas, Hikam Hulwanullah, "Celebrity Persona: Can Intellectual Property Law in Indonesia Provide Adequate Protection?" *Jambura Law Review* 7, no.1 (2025).

12 Zulfikri Zulfikri and Zulkarnaini Zulkarnaini, Legal Protection of Intellectual Property Rights: What is Urgency for The Business World?. *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (2022): 12–25.

erning intellectual property rights in Indonesia. The study adopts a normative legal approach, employing conceptual and comparative methodologies. The results indicate that the current legal regime remains predominantly utilitarian in orientation and inadequately accommodates the communal values inherent in indigenous societies. The research recommends the reformulation of intellectual property policies to more inclusively reflect the collective interests of local communities.

The novelty of the present study lies in its comparative analysis of utilitarianism and communalism as ethical foundations in the context of intellectual property rights, across both the Global North and Global South. This research does not limit its scope to a single jurisdiction or legal system but seeks to construct a transnational understanding of how ethical principles are operationalized in the protection of intellectual property. Furthermore, it provides an in-depth examination of the tensions between individualistic and collective approaches within the framework of legal theory. As such, this study contributes to the global discourse on intellectual property reform, advocating for a more equitable and sustainable legal framework. It also proposes a new conceptual model that may serve as a reference for policy development in various jurisdictions.

This research, examining utilitarian versus communitarian perspectives on intellectual property rights in Global North and Global South countries, is a normative legal study focusing on an analysis based on utilitarian and communitarian theories, as well as theories in the field of intellectual property rights, and the concepts of the Global North and Global South.¹³ Primary legal materials will consist of legislation and international conventions governing intellectual property. Secondary legal materials will include journal articles, books, and research findings on utilitarian and communitarian theories, intellectual property rights theories, and the concepts of the Global North and Global South. Non-legal materials will include dictionaries. The research approach will be conceptual, philosophical,

13 Tunggal Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

and historical.

B. The Development of Intellectual Property and its Relevance to the Global North and Global South Dichotomy

Intellectual property (IP) is intangible wealth created through human ingenuity or creativity, possessing economic value. Theoretically, intellectual property encompasses a wide range of creations in the fields of art, literature, science, and technology.¹⁴ This grants creators the right to economically benefit from their work and protects their interests from unauthorized use. Intellectual property can be defined as the right of ownership over works born from human intellectual capabilities. The primary goal of intellectual property protection is to encourage innovation and technological advancement by providing economic incentives to creators.¹⁵ Legal protection allows creators to use, reproduce, and distribute their work for a specific period, thus preventing counterfeiting.

According to Black's Law Dictionary, intellectual property is defined as rights relating to property resulting from human intellectual capabilities.¹⁶ This encompasses various forms of creations and inventions protected by law, such as patents, copyrights, trademarks, and trade secrets. Intellectual property grants creators exclusive rights to use, reproduce, and distribute their work, thereby encouraging innovation and protecting creative ideas. Intellectual property is also considered a form of intangible property, meaning that despite lacking a physical form, its economic value remains significant in commercial and legal contexts.

Intellectual property is categorized into several types, including:¹⁷

14 Richard M Re et al., "Developing Artificially Intelligent Justice," *Stanford Technology Law Review* 22, no. 2 (2019): 243–88.

15 Fauzan Indra and Faisal Santiago, "Intellectual Property Rights in Legal Perspective in Indonesia," in *MIC*, 2022, 4.

16 Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (Minnesota: West Publishing Co, St. Paul, 2019).

17 Jyh An Lee, Reto M. Hilty, and Kung Chung Liu, "Artificial Intelligence and Intellectual Property," *Artificial Intelligence and Intellectual Property*, 2021,

- a. Patents: Exclusive rights granted to inventors for their inventions in the field of technology for a specific period.
- b. Copyrights: Protection for creators of artistic, musical, film, and literary works to control the use of their creations.
- c. Trademarks: Distinctive identities that differentiate the products or services of one company from another.
- d. Industrial Designs: Protection for the visual aspects of a product.
- e. Geographical Indications: Indicate the origin of a product possessing specific quality or reputation.
- f. Trade Secrets: Business information not known to the public that provides a competitive advantage.
- g. Integrated Circuit Layout Designs: Protection for the design of circuits in electronic devices.

Understanding intellectual property and its various types allows individuals and companies to better protect their innovations and creative works in an increasingly competitive marketplace. Intellectual property plays a crucial role in enhancing a nation's global competitiveness. The protection of intellectual property rights, such as patents and copyrights, incentivizes individuals and companies to innovate. With legal protection, creators can secure their rights to their work and receive fair compensation for their innovations. Countries with strong intellectual property protection systems tend to be better equipped to develop new products that can compete in the global market.¹⁸ This is crucial in the creative and technology industries, where innovation is a primary factor for success. Countries with strong intellectual property protection are often more attractive to foreign investors. They tend to feel more secure investing in countries with clear legal systems that can protect their innovations. Intellectual property is a key factor in international trade expansion. A product's competitiveness is often determined by innovations protected by intellectual property rights, thus countries must shift

1–449.

18 Chunyan Li et al., "Do Geographical Indication Products Promote the Growth of the Agricultural Economy? An Empirical Study Based on Meta-Analysis," *Sustainability (Switzerland)* 15, no. 19 (2023): 4–8.

from reliance on natural resources to more creativity and innovation-based sectors.¹⁹

Effective intellectual property protection helps reduce infringements such as plagiarism and counterfeiting, which harm rights holders and the national economy as a whole.²⁰ Strong law enforcement helps create a healthier business environment. In the context of globalization, intellectual property protection also requires international cooperation. Countries need to collaborate to create effective intellectual property protection standards so that all parties can benefit from innovation. Overall, good intellectual property management and protection not only supports innovation and economic growth but also strengthens a nation's position in global competition.²¹ By raising awareness of the importance of intellectual property and strengthening its regulations, a country can create an environment conducive to economic and social progress.

International intellectual property is primarily governed by several important conventions that regulate intellectual property protection. Two main conventions that form the basis for this protection are the Paris Convention and the Berne Convention. The Paris Convention is one of the first international agreements governing industrial property rights, including patents and trademarks.²² The eleven initial countries that signed this convention were Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain, and Switzerland. It was signed on March 20, 1883, in Paris. The main objective of the Paris Convention is to provide

19 Aram Sinnreich, "Music, Copyright, and Technology: A Dialectic in Five Moments," *International Journal of Communication* 13, no. 1 (2019): 422–39.

20 Yanghuan Li et al., "A Decentralized Music Copyright Operation Management System Based on Blockchain Technology," *Procedia Computer Science* 187, no. 1 (2021): 458–63.

21 Muhamad Rosyid Jazuli, Maimanah Mohammed Idris, and Penlope Yaguma, "The Importance of Institutional Quality: Reviewing the Relevance of Indonesia's Omnibus Law on National Competitiveness," *Humanities and Social Sciences Communications* 9, no. 1 (September 2022): 334.

22 Rani Fadhila Syafrinaldi and David Hardiagio, "Trips Agreement Dan Standarisasi Hukum Perlindungan Hak Kekayaan Industri Di Indonesia," *UIR Law Review* 5, no. 1 (2021): 19–29.

equivalent protection for citizens of member states in other countries.²³ This means that a French inventor who patents their work in France will also receive the same protection in other member countries, such as Brazil. Each member country must provide the same protection to other citizens as it provides to its own. Inventors can apply for patents in other countries within a specific timeframe after the initial application in their home country, thus protecting their rights from potential imitation.

The Berne Convention, signed in 1886, governs the protection of copyrights for artistic and literary works.²⁴ Like the Paris Convention, the Berne Convention also applies the principle of national treatment and grants fundamental rights to creators of artistic and literary works to protect their works in member countries. The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) is part of the WTO agreement that incorporates elements from both the Paris and Berne Conventions.²⁵ TRIPS sets minimum standards for the protection of intellectual property rights in all WTO member countries.²⁶ TRIPS covers not only patents and trademarks but also copyrights. Its aim is to reduce barriers to international trade and support innovation and technology transfer. Overall, these conventions form an important legal framework for protecting intellectual property internationally, encouraging innovation and global trade by providing legal guarantees to inventors and creators.

Referring to the above development of global intellectual property regulations, it can be seen that the development of intellectual

23 Ali Oksy Murbiantoro et al., "A Legal Protection for Domestic Well-Known Mark on Impersonation of Different Kind of Goods under Indonesia's Trademark Law," *International Journal of Research in Business and Social Science* 9, no. 4 (2020): 444–50.

24 A. D. Ingole et al., "Geographical Indication of Fruit Crops in India and Its Protection Abroad," *International Journal of Environment and Climate Change* 13, no. 11 (2023): 1026–43.

25 Elsa Savira et al., "Principle of National Treatment in Applying Trademark Registration in Indonesia," *Journal of Finance and Business Digital* 2, no. 2 (2023): 181–92.

26 Vikas H. Gandhi, "Intellectual Property Disputes and Resolutions," *Journal of Intellectual Property Rights* 26, no. 1 (2021): 14–19.

property is essentially a development and impetus from developed countries, commonly known as the Global North. The terms Global South and Global North reflect the economic, political, and social inequalities between developed and developing countries. This terminology was first introduced by Alfred Sauvy in the 1950s to describe countries not included in the Western bloc (First World) or the Eastern bloc (Second World) during the Cold War.²⁷ These countries often experience neo-colonialism and feel marginalized in the world order.

The term Global South emerged in the late 20th century as a replacement for “Third World,” which was considered to have negative connotations. Carl Oglesby is credited as one of the first to use the term in 1969, referring to the dominance of Northern countries over the South during conflicts such as the Vietnam War.²⁸ Following the independence of many nations from colonial rule, the term Global South began to be used to signify solidarity among countries sharing similar historical experiences, including colonialism and global injustice. In 2003, the UNDP launched the “Forging a Global South” project to encourage cooperation among Southern countries in development.²⁹ With changing geopolitical landscapes, the term Global South has undergone reinterpretation. In the context of international relations, it’s used to describe nations that have experienced colonialism or neo-colonialism.

This highlights the existing inequalities between the Global North and South. The Global South refers not only to geographical location but also encompasses ideologies, political movements, and visions for development. Countries within this category strive to build solidarity and cooperation to address global injustices. Global

27 Nusrat Jahan Mim, “Religion at the Margins: Resistance to Secular Humanitarianism at the Rohingya Refugee Camps in Bangladesh,” *Religions* 11, no. 8 (2020): 1–17.

28 Enrico Buono, “Columbus’ Mistake, Bridging the Gap in the Global South: Intercultural Constitutional Engineering Between India and Las Indias,” *Revista General De Derecho Publico Comparado* 1, no. 26 (2019): 1–32.

29 Sebastian Haug, Jacqueline Braveboy-Wagner, “The ‘Global South’ in the Study of World Politics: Examining a Meta Category.”

South nations often criticize the international system as unfair, particularly regarding trade and the management of natural resources.³⁰ They strive for changes in global governance that are fairer and more equitable. Overall, the evolution of the term Global South reflects the dynamics of international relations and the efforts of developing countries to assert their identity and position on the world stage.

The Global North's perspective on intellectual property generally focuses on strong protection and regulations that benefit rights holders, often aiming to maintain their competitive advantage in the global market. Global North countries, particularly the United States, employ pragmatic and protectionist policies in intellectual property protection. They seek to maintain monopolies over technology and innovation through stringent protection standards, often seen as tools to hinder the development of industries in the Global South. Through international agreements like TRIPS (Trade-Related Aspects of Intellectual Property Rights), developed countries attempt to regulate intellectual property standards globally. TRIPS adopts a "one-size-fits-all" approach, often failing to consider the differences in economic development levels between countries, potentially harming developing nations.

Intellectual property policies in the Global North are often viewed as a way to maintain their economic hegemony. For example, legislation like the "Protecting American Intellectual Property Act" is designed to expand intellectual property protection and increase penalties for infringement, potentially forcing other countries to follow US-set standards. Overall, the Global North's view on intellectual property reflects their interest in protecting innovation and technology while maintaining economic dominance in the global arena.

Global South countries, comprising developing nations in Asia, Africa, and Latin America, hold a unique perspective on intellectual property shaped by their social, economic, and cultural contexts. Many Global South nations view intellectual property as a commu-

30 Sedwivia Ridena et al., "Testing the Existence of Natural Resource Curse in Indonesia: The Role of Financial Development," *Jurnal Ekonomi & Studi Pembangunan* 22, no. 2 (2021): 213–27.

nal rather than individual asset. For instance, Indonesia considers geographical indications (GIs) as part of natural heritage that should be collectively protected to empower local communities and preserve cultural traditions. These countries often see the intellectual property protection established by developed countries as an attempt to maintain economic and technological dominance. They argue that international standards, as set in the TRIPS Agreement, often don't reflect local needs and realities but rather benefit developed countries. Faced with the demands of globalization, Global South countries try to adapt their intellectual property laws to comply with international norms while preserving local characteristics. This includes protecting cultural and traditional rights often threatened by global trade practices. Although many Global South countries have adequate legal frameworks to protect intellectual property, they often face challenges in enforcement. Issues like piracy and counterfeiting remain prevalent, potentially leading to economic sanctions from developed countries. These countries recognize that international cooperation is crucial to strengthening their intellectual property protection. However, they also emphasize the need for fairer dialogue in setting global standards to avoid harming their interests. Overall, the Global South's view on intellectual property reflects a desire to protect their cultural heritage and natural resources while confronting challenges from an international legal system often dominated by the interests of developed nations.

The views of Global South and Global North countries on intellectual property often differ, particularly regarding the use, protection, and sharing of profits from intellectual property. These differences are influenced by the history of colonialism, disparities in economic development levels, and the development priorities of each country. Global North countries, such as the United States, European Union nations, Japan, and Canada, tend to support strong protection of intellectual property, whether in the form of patents, copyrights, trademarks, or industrial designs.³¹ The main reason be-

31 Hongyuan Li, "Research on the Path to Breakthrough in the Dilemma of Chinese Traditional Medicine Intellectual Property Protection," *Advances in*

hind this viewpoint is to protect innovation and ensure that companies and individuals who create new products or technologies can reap the economic benefits of their creations. These countries prioritize free-market mechanisms and protecting intellectual property rights to encourage innovation and create jobs. They see intellectual property as a key factor in increasing global competitiveness and driving economic growth. Many large corporations originate from these countries, holding numerous patents and copyrights. Strict intellectual property protection gives them greater power in dominating global markets.

Global North countries typically push for stricter IP protection standards in international trade agreements, as seen in agreements like TRIPS (Trade-Related Aspects of Intellectual Property Rights) under the WTO.³² Conversely, Global South countries, encompassing many developing and impoverished nations in Africa, Asia, and Latin America, often hold a more critical view of stringent intellectual property protection. Global South nations frequently face challenges accessing new technologies or essential medicines due to high costs resulting from patents. For example, developing countries often argue that pharmaceutical patents inflate the prices of much-needed drugs for diseases like HIV/AIDS and malaria, which could be more affordably addressed if patents were removed or relaxed. In many Global South countries, resources for innovation and the development of new products are limited, and highly restrictive IP systems often only benefit developed nations that already possess the capacity for large-scale innovation. These countries prefer more flexible systems that support local capacity building, such as compulsory licensing for patents.

Global South countries often criticize the inequitable distribution of profits generated from intellectual property, particularly when large corporations from the Global North reap significant benefits while developing nations remain primarily consumers without

Social Science, Education and Humanities Research 517, no. 1 (2020): 286–89.

32 Barizah, “Analysis Regional Regimes for the Protection of Intellectual Property Rights Related to Biodiversity and Community Rights.”

receiving commensurate gains.³³ Some Global South countries emphasize the importance of protecting their traditional knowledge and natural resources from unfair exploitation. They desire better protection against the use of natural resources or traditional knowledge by large corporations without fair compensation. In general, Global North countries tend to support strong intellectual property protection to maximize economic gains, while Global South countries emphasize the importance of fairer access to technology and medicines, as well as the protection of traditional knowledge. This creates tension in many international agreements involving intellectual property issues, such as within the context of world organizations like the WTO and WIPO (World Intellectual Property Organization).

From the above discussion, it can be concluded that intellectual property is a right to the results of human creativity that has economic benefits, encompassing creations in art, literature, science, and technology. Intellectual property also plays a significant role in enhancing global competitiveness. Countries with strong intellectual property protection can encourage innovation and attract investors. This protection system is vital for the creative and technology sectors, which rely on innovation. However, weak law enforcement and intellectual property infringement remain challenges. Global South countries, comprised of developing nations, hold a critical view of stringent intellectual property protection. They emphasize the need for fairer access to technology and medicines, as well as protection for traditional knowledge and natural resources. Inequitable distribution of intellectual property profits, especially in the health sector, is often a major issue. These countries desire more flexible systems to support local innovation and reduce dependence on developed nations. Overall, these differing viewpoints create tension in international agreements involving intellectual property, with developed countries pushing for stronger protection, while developing countries

33 Mihajlo Jakovljevic et al., "Successes and Challenges of China's Health Care Reform: A Four-Decade Perspective Spanning 1985-2023," *Cost Effectiveness and Resource Allocation* 21, no. 1 (August 2023): 59.

seek solutions that are fairer and better suited to their local needs.

C. Utilitarianism Versus Communalism: The Intellectual Property Perspectives of Global North and Global South Nations

The development of utilitarianism, a philosophy grounded in liberalism, has strong roots in the thought of figures like Jeremy Bentham and John Stuart Mill. This philosophy focuses on achieving the greatest happiness for the greatest number of people, aligning with liberal principles that emphasize individual liberty.³⁴ Utilitarianism emerged in the 18th century as a reaction against more traditional moral systems. Jeremy Bentham was a key pioneer who developed this idea, stating that a right action is one that produces maximum utility—that is, the greatest happiness or satisfaction for the greatest number of people.³⁵ John Stuart Mill built upon Bentham's work by introducing new nuances to utilitarianism. In his work "Utilitarianism," Mill stressed the importance of the quality of pleasure, not just the quantity. He also put forward the "harm principle," which states that individuals are free to do as they please as long as they do not harm others. This reflects a liberal view of individual liberty.³⁶

Utilitarianism is often seen as a philosophical basis for the implementation of liberal policies. Liberal thinkers like Adam Smith and Richard Cobden used utilitarian principles to support free markets and social reform, arguing that public policy should aim to increase general welfare.³⁷ Utilitarianism provides legitimacy for government intervention in reducing poverty and improving societal well-being.

34 Cucuk Endratno, "Refleksi Filsafat Hukum: Telaah Sintesa Keadilan," *Yustitiabelen* 8, no. 2 (2022): 97–117.

35 Bryan Green, "Jeremy Bentham's Social Ontology: Fictionality, Factuality and Language Critique," *Philosophy of the Social Sciences* 52, no. 3 (2022): 111.

36 John Lawrence Hill, *The Prophet of Modern Constitutional Liberalism: John Stuart Mill*, 1st ed. (Cambridge: Cambridge University Press, 2020).

37 Gabriela Palavicini, "Medicine, Health and the Human Side: Responsibility in Medical Practice," *Medicine, Health Care and Philosophy* 25, no. 2 (2022): 289–97.

While highly influential, utilitarianism also faces criticism, particularly concerning the potential neglect of individual rights for the sake of the majority. Some critics argue this approach can justify actions harming minority groups if deemed to produce greater happiness for the majority. In the modern era, utilitarianism remains relevant in discussions of public policy and social ethics. Many contemporary thinkers attempt to integrate utilitarian principles with values of social justice and human rights, creating new, more inclusive approaches.³⁸ Overall, the development of liberalism-based utilitarian philosophy demonstrates an evolving ethical thought process that continuously adapts to modern social and political challenges while adhering to the fundamental principle of achieving the greatest happiness for the greatest number.

The utilitarian view of intellectual property in Global North countries, such as the United States and the United Kingdom, is rooted in the principle that actions or policies should produce maximum benefit for the greatest number of people. Utilitarianism, developed by figures like Jeremy Bentham and John Stuart Mill, emphasizes the importance of the consequences of actions in determining their morality. In Global North countries, intellectual property protection is often seen as a way to create economic incentives for innovation and creativity. Through copyright and patent laws, states grant creators exclusive rights to commercially exploit their work, which is expected to increase overall economic well-being. Utilitarianism distinguishes between moral and economic rights in the context of intellectual property. Moral rights encompass the recognition of the creator's work, while economic rights focus on financial gain.³⁹ Global North countries tend to emphasize economic rights more, requiring formal registration to obtain legal protection. Utilitarianism also demands that intellectual property rights (IPR) policies benefit not only spe-

38 Indra Rahmatullah, "Filsafat Hukum Utilitarianisme: Konsep dan Aktualisasinya dalam Hukum di Indonesia," *Adalah: Buletin Hukum & Keadilan* 5, no. 2 (2021): 19–32.

39 Miguel Vatter, "Dignity and the Foundation of Human Rights: Toward an Averroist Genealogy," *Politics and Religion* 13, no. 2 (2020): 304–32.

cific individuals or companies but also consider their impact on society at large. This includes the need for public access to knowledge and innovation, as well as protection for cultural heritage and traditional expressions that might be threatened by exclusive ownership. Overall, the utilitarian view of intellectual property in Global North countries demonstrates an attempt to balance individual interests with overall societal well-being, although challenges in implementation remain.

In contrast to the utilitarian view adopted by Global North countries, in the Global South, intellectual property is viewed from a communalist perspective. The communalist perspective focuses on community and collective values, emphasizing the importance of social relationships and solidarity among community members.⁴⁰ In this context, communalism is often viewed as an alternative to the individualism dominant in many modern societies, especially in Western countries. Communalism emphasizes that individuals are inseparable from their communities. Individual well-being is seen as intrinsically linked to collective well-being. Therefore, decisions and actions must consider their impact on the community as a whole. In a communalist system, active participation from all community members is crucial. Decisions are made through democratic processes involving the voices and opinions of all parties, not just elites or specific individuals.

Communalism often promotes the concept of shared ownership of resources and wealth.⁴¹ This aims to reduce economic inequality and ensure that all community members have fair access to available resources. Communalism values local traditions, culture, and values. Community identity is considered important in building a sense of

40 Xiao Qu, "Confucianism and Human Rights - Exploring the Philosophical Base for Inclusive Education or Children with Disabilities in China," *Disability and Society* 1, no. 1 (2022): 7.

41 I Gede Mahatma Yogiswara Winatha, A.A.Gede Agung Indra Prathama, and Putu Chandra Kinandana Kayuan, "Comparative Analysis of Legal Protection and Criteria of Well-Known Marks (Indonesia, United States, India, China, and Germany)," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 43–54.

togetherness, contributing to social stability and cohesion. Overall, the communalist perspective offers a viewpoint that emphasizes the importance of social solidarity and collaboration in achieving shared well-being, although practical challenges in its implementation remain.

The communalist view of intellectual property emphasizes the importance of managing and protecting intellectual property that is collective in nature, resulting from the culture and knowledge of the community.⁴² In this context, communal intellectual property (CIP) encompasses various aspects such as traditional cultural expressions, traditional knowledge, and geographical indications. CIP not only reflects a community's cultural identity but also holds economic value that can improve societal well-being. CIP is collectively owned by a specific community or group, not by individuals. This means that the benefits of CIP should be shared by all community members. CIP serves as a marker of a region's cultural identity and has the potential to provide economic benefits. Through good management, CIP can become a source of income for the region or community. The state has a responsibility to protect and develop CIP as part of cultural human rights. This includes efforts to inventory and digitize existing intellectual property in society. In addition, the community also needs to play an active role in preserving and utilizing CIP for the common good. The communalist view of intellectual property emphasizes that intellectual property must be managed collectively to ensure that its benefits can be felt by all community members. With proper legal protection and active community participation, CIP can be a valuable asset that supports economic development and cultural preservation.

The Global South's view of communalism in the context of intellectual property often reflects efforts to protect and utilize the cultural wealth and traditional knowledge possessed by local communities. Global South countries encourage the recognition and

42 Nan Xia, "Intellectual Property Protection for Traditional Medical Knowledge in China's Context: A Round Peg in a Square Hole?," *Medical Law Review* 31, no. 3 (2023): 358–90.

protection of communal intellectual property as a form of collective right. Many communities in Global South countries possess traditionally inherited knowledge that is often not recognized in Western intellectual property systems. Efforts are made to protect cultural expressions, such as art, music, and rituals, from exploitation by outsiders who do not respect the original cultural context. Communal intellectual property is considered an asset that can empower the local economy. By utilizing CIP, communities can create value-added products, such as handicrafts or herbal-based products, which can increase their income. Through CIP management, communities can reduce their dependence on global economic models that often disadvantage them. The Global South's view of communalism in intellectual property emphasizes the importance of recognizing and protecting collective rights to local knowledge and culture. By utilizing CIP fairly and sustainably, communities can improve their economic well-being while preserving their cultural identity amidst the challenges of globalization.

Global North countries often view intellectual property protection as a driver of innovation and economic growth. They argue that without strong protection, incentives to innovate will decrease, which in turn can harm society as a whole. This approach reflects the utilitarian principle of assessing success based on maximum end results. Conversely, Global South countries often criticize the existing intellectual property system because it is considered more advantageous to developed countries. They argue that this system creates injustice in access to technology and knowledge, thus exacerbating global economic inequality. In this context, communalism becomes important to ensure that intellectual property is used for the benefit of the wider community, not just for the profit of individuals or large corporations.

To achieve a middle ground between these two perspectives, several steps can be taken: first, developing more inclusive policies that consider the needs of developing countries while still providing incentives for innovation; second, encouraging cooperation between developed and developing countries in research and development, as

well as sharing technology to increase local capacity; and third, integrating communalist values into the development of intellectual property policies, so that local communities have better access to knowledge and technology. With this approach, it is hoped that a balance can be created between the protection of intellectual property rights and the need for social justice and wealth redistribution at the global level.

D. Concluding Remarks

The differing views between Global North and Global South countries on intellectual property reflect global economic and political inequalities. Global North countries favor strong intellectual property protection to maintain their economic and technological dominance, while Global South countries desire a more flexible system to ensure fairer access to technology, medicines, and protection for traditional knowledge. This difference creates tension in international agreements, such as TRIPS, and highlights the need for stronger, fairer international cooperation in protecting intellectual property.

Global North countries view intellectual property protection as a driver of innovation and economic growth, based on utilitarian principles, while Global South countries criticize the system as favoring developed nations and exacerbating global economic inequality. Global South countries prioritize communalist principles to ensure fair access to technology and knowledge. To achieve balance, inclusive policies, cooperation between developed and developing countries in research and development, and the integration of communalist values into intellectual property policy are needed to create social justice and global wealth redistribution.

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