The Development of Intellectual Property Law: A Comparison of Northern and Southern Countries

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Abstract

The development of intellectual property rights (IPR) law in the world has experienced significant dynamics along with technological advances and globalization. A comparison between Northern countries (developed countries) and Southern countries (developing countries) shows profound differences in the way IPR law is protected and implemented. Northern countries have more mature legal systems, strong infrastructure, and the ability to encourage innovation and effectively protect intellectual property rights. Digital technology, patents, copyrights, and trademarks in these countries are strictly protected, which drives the growth of a knowledge-based economy. On the other hand, Southern countries face major challenges related to IPR law enforcement, limited access to technology, and limited resources to protect and optimally utilize IPR. Although technology provides opportunities for developing countries to access global knowledge, gaps in protection and enforcement systems hinder their potential to innovate and compete in the international market. This article aims to analyze these differences and explore the challenges and opportunities that exist for Southern countries in facing increasingly complex and global IPR law developments.

INTRODUCTION

Intellectual Property Rights (IPR) are rights granted to individuals or groups over the creations they produce. Legal protections safeguard these rights from infringement or misuse. Copyright means "the right to copy a creation" or "the right to enjoy a creation." Copyright also allows the rights holder to prevent unauthorized exploitation of a creation. Copyright owners possess a number of exclusive rights that enable them to authorize others to use their creations; they also have the right to prohibit others from using those creations (Disemadi & Batam, 2024). The protection of Trade Secrets, also known as undisclosed information, which is part of Intellectual Property Rights (IPR), is closely related to the globalization of trade (Asiva Noor Rachmayani, 2015). IPR encompasses ideas that must be protected economically, such as Copyright, Patents, and Trademarks, including Trade Secrets. Therefore, adequate regulations on IPR ensure that IPR provides legal protection. There is a connection between IPR protection of Trade Secrets, also known as undisclosed information, which is part of Copyright (Ariyanti, 2021).

The business world is evolving rapidly. Additionally, with globalization, boundaries and barriers no longer exist. The business world is expanding due to numerous opportunities to start businesses. The growth of the business world is driven by technological advancements and the internet. Free trade has invigorated entrepreneurs. Both developing and developed countries pay significant attention to free trade to sustain their economic growth. Not only are economic elements related to the business world, but legal elements are also crucial to maintaining fair and equitable free trade among all countries. Law is an essential part of business operations both domestically and internationally. Products resulting from the evolution of human ideas and mindsets are among the complex issues faced in national and international trade. Therefore, this is a serious issue being addressed by both the international and national communities. These products are referred to as intellectual property. They are part of the system and lifestyle of modern entrepreneurs.

Intellectual property is increasingly attracting international attention. The numerous scientific and technological collaborations conducted by various countries, accompanied by the development of international economics and trade, have made the protection of intellectual property play a crucial role in international relations (Salma et

al., 2024). The granting of patents, copyrights, and trademark registrations for inventions, publications, products, and broadcasts, especially in industrialized countries, is an effort by states to protect Industrial Design Regulations, which essentially serve as a basis for protecting against various infringements in the field of Industrial Design, such as piracy, plagiarism, or imitation of Industrial Designs. Additionally, the regulation of Industrial Design in legislation will continuously stimulate the creative activities of designers to create new designs, thereby rapidly growing the economy of a country in accordance with the General Explanation of the Industrial Design Law. Industrial Design is not only regulated by Northern countries, which are mostly developed countries, while Southern countries are still developing (Yulianti, 2020). Intellectual Property Law (IPR) is one of the important aspects of the global legal system that functions to protect the creative works of humans, such as patents, copyrights, trademarks, and industrial designs. However, the implementation and development of IP law can differ significantly between countries in the "Global North" and "Global South."

The Global North refers to developed countries, primarily located in the northern hemisphere, such as Western European countries, North America (the United States and Canada), and some countries in East Asia (such as Japan and South Korea). These countries generally have advanced economies and high technology. Meanwhile, the Global South refers to developing or poor countries, mostly located in the southern hemisphere, such as in Africa, South Asia, and Latin America. These countries generally face challenges related to poverty, inequality, and resource limitations. The development of intellectual property law between the Global North and South shows significant differences in terms of legal strength, economic policies, and access to technology and innovation. The Global North has advantages in terms of resources and stronger legal infrastructure, while the Global South often faces significant challenges related to the implementation of Intellectual Property Law and the need to ensure social and economic justice for their societies. Moving forward, it is important to encourage dialogue and cooperation between these countries to create a more equitable and inclusive system at the global level (Mandala & Khoirunurrofik, 2021).

The type of research used in this writing is the normative legal research method (Marzuki, 2017). The normative legal method is an approach that utilizes library data, which involves legal research conducted by examining or studying issues from the perspective of legal rules, as well as reviewing literature or secondary data. In other

words, this scholarly work employs a normative legal approach by investigating literature, which constitutes secondary data, also referred to as library legal research. Based on the background of the issues presented, the author is interested in further discussing this topic through a written work entitled "The Development of Intellectual Property Law: A Comparison of the Global North and Global South."

RESULT AND DISCUSSION

The Differences in the Approach and Implementation of the Intellectual Property Rights (IPR) System Between the Global North and Global South

The approach and implementation of the Intellectual Property Rights (IPR) system are influenced by various social, economic, and legal factors that significantly affect how Northern and Southern countries apply and enforce IPR systems. Northern countries typically have more sophisticated and organized systems for protecting IPR, while Southern countries face challenges in implementing and adapting these systems to meet local needs (Hardianti, 2023). Northern countries adopt a very formal and standardized approach to the enforcement of IPR. They have generally adopted and implemented strict international laws such as TRIPS (Trade-Related Aspects of Intellectual Property Rights), which were agreed upon within the framework of the World Trade Organization (WTO). These countries often lead in the establishment of international regulations that set high standards for IPR protection, prioritizing the economic benefits derived from such protections, including patents, copyrights, and trademarks (Hardianti, 2023).

IPR is viewed as a highly valuable asset that provides incentives for innovation and industrial development. In contrast, Southern countries often take a more pragmatic and adaptive approach to IPR, considering local social and economic challenges. Many of these countries view IPR not only as a protective instrument but also as a tool for economic development and more equitable access to innovation and technology (Edyson et al., 2024). Northern and Southern countries have copyright laws that are largely similar, primarily because both have incorporated several international copyright conventions into their legislation. In Indonesia, copyright law differs. Article 50 of the Copyright Law prohibits any person from announcing, disseminating, or communicating works that contradict religious morality, decency, public order, or national defense and security. Northern countries have their own rules regarding the duration of copyright, which

stipulate that copyright lasts for the lifetime of the creator, plus fifty years after their death, meaning that copyright will be inherited by their heirs for the next fifty years.

A comparison of the laws between Northern and Southern countries shows that both have the same objectives for copyright protection, which applies from the moment the rights are created until the Creator or Copyright Holder passes away. The only difference between the two is the duration of copyright protection in Indonesia, which is granted for the lifetime of the creator plus seventy years (Pelupessy, 2023). The development of intellectual property law (IP) in developed countries reflects a response to technological advancements, globalization, and the need to protect innovations across various industrial sectors. Developed countries, such as the United States, European nations, and Japan, have sophisticated legal systems that continuously adapt to changing times. Below are some significant developments in intellectual property law in developed countries (Jainah, 2017):

1. Developments in the field of copyright, protection of digital content and new media in developed countries, increasingly stringent copyright regulations related to digital content are a major concern. Rapidly developing digital technology, especially the internet, brings new challenges, such as online piracy and illegal distribution of copyrighted works. To this end, developed countries have introduced measures to tighten copyright protection on digital platforms, for example by implementing the Digital Millennium Copyright Act (DMCA) system in the United States, which allows copyright enforcement against infringement on the internet. Utilization of Technology for Copyright Protection The use of new technologies, such as Blockchain to track ownership of copyrighted works, is growing in developed countries. This allows creators to have authentic evidence of ownership of their work, as well as facilitating copyright enforcement in the digital world (Agung et al., 2024).
2. Improving Brand and Branding Protection, Developed countries, especially through the United States Patent and Trademark Office (USPTO) and European Union Intellectual Property Office (EUIPO) systems, are increasingly refining trademark and related rights registration procedures. These countries continue to update their laws to protect internationally recognized brands and to prevent confusing use or counterfeiting of well-known brands. Protection of well-known brands or "famous marks" is increasingly strengthened. Global

brands such as Coca-Cola or Nike now have stricter legal protection to prevent unauthorized use or imitation of brands that could damage their reputation (Wu Zhixiao, 2018).

3. The development of patents and technological innovation, Developed countries continue to dominate in patent registration, especially in high-tech fields such as artificial intelligence (AI), biotechnology, and software. Patents in this sector are increasingly becoming an important instrument to secure innovation and provide incentives for companies and individuals to innovate. The use of artificial intelligence in research and development (R&D) creates new challenges in the patent system. In developed countries, there is a debate about whether AI can be a patent holder or whether patent rights should be granted to the creator of AI. Some developed countries, such as the US and Europe, are starting to develop policies that regulate this. Large companies in developed countries often use patent pools and cross-licensing agreements to manage their patent portfolios, especially in high-tech areas such as telecommunications and semiconductors. This allows multiple parties to access bundled patents, while still protecting their respective intellectual property rights (Saputra, 2024).
4. International Agreements and Global Trade, Developed countries, through the TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), play a leading role in setting international standards for intellectual property rights. TRIPS, administered by the World Trade Organization (WTO), sets minimum requirements for the protection of copyright, patents, trademarks, and industrial designs, which have been adopted by many countries around the world (Purwogandi, 2022). Developed countries often include provisions on IP protection in free trade agreements with developing countries, thereby ensuring stronger protection of their intellectual property in the global market.

Meanwhile, the development of intellectual property (IP) law in developing countries has undergone significant transformation in recent decades, influenced by globalization, technological advances, and the need to protect increasingly complex copyrights, trademarks, patents, and industrial designs (Dr. H. Sanusi, S.H., 2016). The following is the development of intellectual property law in developing countries:

a. The influence of globalization and international trade, One of the main factors influencing the development of intellectual property law in developing countries is the influence of globalization and international agreements. Developing countries are starting to implement a more standardized IP legal system in order to participate in international trade and fulfill their obligations under agreements such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, which is part of the World Trade Organization (WTO) agreement (Kennedy et al., 2024). TRIPS sets minimum standards for IP protection, including copyright, patents, trademarks, and industrial designs. Developing countries often face challenges in balancing intellectual property protection with their need for access to affordable technology and medicines.
b. Patent Protection and Technological Innovation, In many developing countries, patents are becoming an increasingly important form of protection to encourage local innovation, especially in the technology and pharmaceutical sectors. However, issues regarding access to expensive medicines and patents held by large companies are often a topic of debate. Many developing countries struggle to find a balance between facilitating domestic innovation and preventing barriers to access to the technology that society needs. Several developing countries have adopted policies for patent exemptions on certain pharmaceutical products, so that they can produce more affordable generic drugs (Edyson et al., 2024).
c. Trademarks and Local Products, Trademark protection is very important for developing countries in promoting local products in the international market. In recent years, developing countries have increasingly implemented trademark systems to protect their traditional products, such as agricultural products and handicrafts. In addition, the use of geographical indications (GI) is also growing in developing countries to protect product names related to their geographical origin, such as coffee, tea, or traditional fabrics (Darwance, Rafiqa Sari, 2022).

The rights generated by intellectual property in the embodiment of an idea are not only legal rights, but also economic rights. IPR can essentially be exploited by creators to gain a profit (Khakim & Handoko, 2022). IPR can be traded, transferred, or licensed to third parties. There are three commercializations of IPR, namely:

- Non-exclusive license: the right received by the licensee to utilize or use IPR;
- Exclusive license: the right received by the licensee for exclusive rights such as a specified period, location, and industry. The licensor here maintains ownership of the IPR and is not entitled to grant a license to another party under the exclusivity that has been agreed to the previous licensee.
- Transfer of ownership or sale: IPR in this case is transferred from the grantor to the recipient. The recipient here is the new owner of the IPR who has rights related to the use of the IPR.

One of the things that stands out in the development of intellectual property rights is technology. Copyright law has changed a lot due to advances in information technology, especially the internet. If copyright previously protected conventional copyrighted works, now it must protect digital copyrighted works at the same time. With the development and influence of technology, copyrighted works can be digitized. On the other hand, this has advantages, such as making copyrighted works easier to distribute and announce (Simatupang, 2021). On the other hand, parties who do not have the right to distribute or distribute illegally often commit copyright infringement. In addition, copyright infringement often occurs and has increased in recent years. Digital copyrighted works are easy to copy, distribute, and change freely without reducing the quality of the original copyrighted work. Collaboration between technology and law is needed, such as including regulations on the use of security technology for copyright protection of digital works. Security technology or what is called Digital Rights Management (DRM) is a security or encryption system to protect digital copyrighted works, especially copyright on electronic media, including digital music, digital films, and other data that is stored and transferred digitally to control intellectual property and its rights. DRM uses encryption techniques or uses cryptographic algorithms to encrypt content that requires a secret password or keyword.

The influence of technology makes it possible to convert creative works into digital form. Where on the one hand this effort provides benefits, but on the other hand it is prone to copyright infringement by parties who do not have the right to distribute illegally (Ujang Badru Jaman et al., 2021). In Indonesia, copyright protection is stipulated in Article 1 paragraph (1) of Law No. 28 of 2014 concerning Copyright (UUHC). UUHC also states that protected creative works include science, art and literature. The creative works in question are in the form of computer programs, cinematography, photography,

databases and works resulting from adaptations whose protection is valid for 50 years from the first time they are announced. The rampant digital copyright infringement is caused by several factors, including the ease with which digital creative works are copied, distributed, and manipulated or modified freely without reducing the quality of the original creative work. Therefore, digital creative works require more protection than traditional creative works. (Ariyanti, 2021).

The Influence of Technology on the Development of Intellectual Property Rights Law in Northern and Southern Countries

The introduction of Intellectual Property Rights as intangible individual property rights and their clear elaboration in the positive legal order, especially in economic life, is something new in Southern Countries, including Indonesia. From the perspective of Intellectual Property Rights, these regulations are needed because an attitude of appreciation, respect and protection will not only provide a sense of security, but also create a conducive climate for increasing enthusiasm or passion to produce innovative, inventive and productive works (St Nurjannah, 2020). Entering a new era, intellectual property rights have become a very important issue that always receives attention in both national and international forums. The inclusion of TRIPS in the WTO Agreement package in 1994 marked the beginning of a new era of IPR development throughout the world. Thus, at this time, IPR issues cannot be separated from the world of trade and investment. The importance of IPR in economic and trade development has spurred the beginning of a new era of economic development based on science (Sinaga, 2020).

Developed countries say that the protection of Intellectual Property Rights will bring three benefits, namely, increasing the amount of direct investment, increasing technology transfer, and increasing research and development activities of innovation at the global level (Saphira et al., 2024). However, in reality it is very different that the implementation of Intellectual Property Rights brings many economic and social problems. Especially for most artists, and art workers, the benefits obtained from copyright do not provide a significant amount for the incentive to create and perform art. The results they receive are not commensurate with the hard work that has been produced and enjoyed by the public. The royalties obtained are not in accordance with the circumstances or results of sales which should be a benefit for the artist who has produced his creations. In addition, with the emergence of new artists, market

competition for their creations also affects these royalties (Dita, 2022). The development of technology and information in developing countries, especially in Indonesia, has a negative impact on its society. One of the negative impacts is seen in the field of Intellectual Property Rights. This can happen because people who have had difficulty obtaining works from artists or other art workers, due to the diverse economic conditions of the community, are now inversely proportional to the ease of accessing works from artists, art workers, or other creators, whether in the form of songs, writings, books and so on.

This is due to the sophistication of technology where it is easy to access songs, videos, books, and others that are obtained for free. The influence of technology on the development of intellectual property rights includes (Dian Utami Amalia et al., 2024) :

(1) Piracy, which is being able to reproduce other people's creations without the permission of the creator himself and they will reap a lot of profit, so that it will harm the original creator. In addition, the losses experienced are also in the form of reducing research funds for development, can reduce the provision of local technical support products, and most significantly, it can harm the local economy due to reduced sales results from official distributors, and ultimately will reduce income and job opportunities. A digital environment does work on a system of copying and/or loading information from one medium to another, but what is said to be an act of piracy is when the copying and/or loading of information from one medium to another is permanent so that it increases the number of creations. The copying and/or loading which is an act of piracy often occurs to digital products, especially computer software. Whether we realize it or not, software piracy in Indonesia is indeed rampant, it is so easy for us to get pirated software at affordable prices in computer software shops, even from street vendors. Currently, according to the list issued by the USTR (United State Trade Representative), Indonesia is also still included in the "priority watch list" category because it is considered that there are still many cases of copyright piracy, especially VCDs and software (Kennedy et al., 2024). Whether we realize it or not, software piracy in Indonesia is indeed rampant, it is so easy for us to get pirated software

at affordable prices in computer software stores, even from street vendors. Advances in technology are felt to have made it easier for software piracy to occur. Although Indonesia already has legal instruments in the field of Copyright, it feels like law enforcement against software piracy is still difficult to achieve, and it seems that software piracy in Indonesia will continue to occur, and this problem will never be resolved.

(2) Cybercrime, namely crimes or unlawful acts committed by someone using computer facilities or carried out in cyberspace such as using the internet and computers, where the perpetrator understands computers and their programs well, one example is the crime of offense against intellectual property which is usually referred to as a crime committed by using the intellectual property rights of other parties on the internet (Habibi & Liviani, 2020). Article 1 point 7 of Law No. 12 of 1997 concerning Amendments to Law No. 7 of 1987 concerning Amendments to Law No. 6 of 1982 concerning Copyright (UUHC) states that a computer program is a program that is specifically created to enable the computer to perform certain functions. A clearer understanding of this software can be seen in the Australian Copyright Act, where it is explained that this software actually includes source code and object code which is a set of instructions consisting of letters, languages, codes or notations that are arranged or written in such a way as to create a tool that has the ability to process digital information and can perform certain work functions. Loading into the hard disk. This act is usually done if we buy a computer from computer stores, where the seller usually installs the operating system along with other software as a bonus to the computer buyer. Softlifting, which is where a license to use a software is used beyond its capacity. For example, buying one software officially but then installing it on a number of computers exceeding the number of licenses to install that are given. Counterfeiting, which is producing and selling pirated software usually in the form of CD ROMs, which are often found in bookstores or

shopping centers, Software rental, Illegal downloading, namely by downloading software from the internet illegally.

The development of intellectual property rights (IPR) in the world, especially in relation to technology, between countries in the North (developed countries) and the South (developing or poor countries), shows significant disparities (Salma et al., 2024). This difference affects the ability of these countries to develop and utilize technology. The following are some of the main factors that differentiate the development of IPR in the two hemispheres:

a. Access and Limitations to Technology, Countries in the Northern Hemisphere, such as the United States, Japan, and European countries, have long dominated the development of technology and innovation. They have large resources for research and development (R&D), as well as strong IPR systems that protect their innovations through patents, copyrights, and trademarks. With strict IPR protection, they can control the global market for certain technologies, creating large economic advantages. Meanwhile, Southern Countries (Developing Countries) Countries in the Southern Hemisphere, such as those in Africa, Asia, and Latin America, often face limitations in accessing advanced technologies. They are more dependent on technology transfers from developed countries and often face challenges in gaining access to new technologies due to binding patent fees and regulations. This hinders their ability to innovate independently and can lead to long-term dependence on technology from developed countries.
b. Regulation and Protection of IPR, Northern countries' IPR systems are usually highly organized and strictly enforced. Patents, copyrights, and trademarks are protected by strong legal systems. This provides a strong incentive for companies and individuals to invest in innovation, as they can protect their work from counterfeiting or unauthorized use. In the developing South, despite the introduction and improvement of IPR systems, enforcement remains problematic. Many countries in the South do not yet have a strong legal infrastructure or adequate mechanisms to effectively protect IPR. Some countries in the South even face challenges in creating IPR regulations that can balance copyright protection with the need for wider access to technology for economic development.

c. The Role of International Trade and Agreements The North often dictates global rules through international trade agreements such as the World Trade Organization (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Kennedy et al., 2024). TRIPS requires signatory countries to have strong and uniform IPR systems, which often benefit developed countries because they are the main owners of advanced patented technologies. The South Many developing countries are often trapped in international agreements that favor the interests of developed countries. For example, under TRIPS, countries in the South are required to provide stronger patent protection, even though this can increase the cost of accessing the technology they need. On the other hand, countries in the South also struggle to obtain the right to use patented technology at an affordable cost for their development needs, especially in health, agriculture, and education.
d. Innovation and Technology Development Capacity Northern countries are more often the source of innovation and advanced technology. They have well-funded universities and research institutions to create new inventions. These innovations are usually protected by patents and copyrights, which give them greater control over the distribution and use of technology. In countries in the South, the capacity to create new technologies is often limited. Most of these countries focus more on adopting and adapting existing technologies than on creating new innovations. While there are some examples of innovation in developing countries, such as India with its IT sector and Brazil with bioenergy, this development is often hampered by limited resources and infrastructure to protect their own IPR.
e. Technology Accessibility Issues Access to technology in Northern countries is relatively easier, with strong legal support and large companies funding the development of new technologies. They are also more likely to control key technologies such as software, pharmaceuticals, and advanced hardware that power the global economy. Global South countries face significant challenges in accessing patented technologies due to high costs and stringent regulations. For example, developing countries often face problems with accessing patented medicines, which hinder their ability to provide essential health services to their citizens..

Overall, technology plays a very important role in the development of intellectual property laws in both Northern and Southern countries. In Northern countries, technology provides opportunities for rapid innovation and strengthening of IPR protection, while in Southern countries, although technology provides greater access, there are still challenges in effective enforcement of IPR laws and equal access to new technologies. Therefore, a balance is needed between IPR protection and meeting the need for equitable access to technology, especially in developing countries.

CONCLUSION

The development of intellectual property rights (IPR) laws in Northern and Southern countries shows significant differences, especially in terms of access, enforcement, and the ability to innovate. Northern countries (developed countries) have strong and sophisticated IPR systems, which are able to support innovation and technology protection. In these countries, IPR is not only strengthened by strict laws, but also by infrastructure that supports research, development, and digital copyright. Rapidly developing technologies in these countries strengthen their position as leaders in global innovation, which in turn increases economic competitiveness and sustainability. Northern countries can protect various forms of IP, such as patents, copyrights, and trademarks, to encourage more investment in research and development (R&D). With more mature systems, they tend to be pioneers in new technologies and use IPR protection to gain economic advantages. Developed countries also have a major influence on international IPR standards, through agreements such as TRIPS. This facilitates a more uniform IPR protection system at the global level..

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