

DECONSTRUCTING TRADEMARK AUTHENTICITY: A COMPARATIVE STUDY OF LEGAL INTERPRETATIONS IN INDONESIA, OMAN, AND THE PHILIPPINES

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Abstract

This study examines the concept of trademark authenticity in Indonesia, Oman, and the Philippines through Jacques Derrida's deconstruction theory. In trademark law, authenticity is commonly perceived as a stable attribute of a product and its origin. However, this notion is contested by the varying ways national legal systems apply trademark law. In this pluralistic context, authenticity is not a fixed legal fact but a matter of interpretation. By employing Derrida's theory, this research investigates how the meaning of authenticity is constructed, destabilized, and reconstructed across different intellectual property frameworks. It also explores how each country's legal system addresses or resists the inherent instability of trademark meanings. Using a comparative legal analysis, doctrinal research, and a post-structuralist interpretive approach, the study finds that in Indonesia, authenticity is closely tied to consumer perception; in Oman, it is linked to origin and moral identity; and in the Philippines, fairness and commercial honesty play a significant role. The novelty of this research lies in its assertion that brand authenticity is a legal construct subject to reinterpretation, challenging the notion of fixed legal definitions. The findings urge a reconsideration of national intellectual property systems, advocating for a more flexible, culturally situated view of brands that accommodates the evolving global context. This study also reveals that the legal understanding of trademark authenticity in these jurisdictions is shaped by a logocentric and hierarchical legal structure, opening space for critique of the dominance of a single legal narrative over diverse social realities. A limitation of this study is its reliance on conceptual analysis without empirical data, suggesting the need for further research through case studies to strengthen the findings.

Keywords: *Deconstruction; Derrida; Trademark Law; Authenticity; Intellectual Property.*

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1. Introduction

In the realm of trademarks, authenticity is an essential component for the legal safeguarding of a product's identity. ¹ "Authenticity" is often understood as something objectively

¹ Muh. Ali Masnun et al., "Reconstructing Indonesia's Trademark Registration System Through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (2024): 891–912, <https://doi.org/10.15294/jllr.v5i3.7547>.

measurable, without considering extra-legal factors behind a brand's creation.² This concept is deemed inconsistent with global practice, where countries with complex legal traditions, such as Indonesia, the Philippines, and Oman, cannot separate a brand's characteristics from its social and cultural constructs. David Tan³, in *Law and Literature*, demonstrates that intellectual property law is not value-free, but rather a narrative construct filled with mere symbols. This research emphasizes the importance of a post-structural approach to understanding how law is not merely a technical instrument, but a discursive space that can be critically reconstructed and deconstructed through popular culture and disruptive practices.

Umaira Hayuning Anggayasti and Ardina Nur Amalia⁴, in the *International Journal Of Multidisciplinary Research And Analysis*, look at how legal narratives regarding copyright law and morality fail to respond to evolving cultural practices such as fanfiction. The research shows that a narrow legal focus on "originality" ignores the role that users, consumers, or cultural communities can play in grasping meaning. Moreover, the concept of authenticity in intellectual property rights needs a reconstruction approach. In the context of trademarks, the meaning of "authentic" is established when the state and corporations agree on what is legally defined as "authentic," without allowing for diverse interpretations. Both studies emphasize the need for a theory capable of reconstructing neutral legal assumptions; in this research, that theory is Derrida's deconstruction. Noam M. Elcott, in *Grey Room*, demonstrates historically and visually that markers of authenticity are not rigid, but rather created through perception, interpretation, and social dialogue. Using paintings as a metaphor for branding systems, Elcott explains that the meaning of authenticity is always flexible and subject to reinterpretation. Another study, conducted by Muzakki et al.⁵ emphasized that one of the orientations of legal protection for well-known brands is to anticipate the potential for monopoly in business practices. This research is highly relevant in highlighting that brands are not only rigid product identities but also ambiguous symbols. However, this research does not directly examine legal aspects nor does it examine legal practices in pluralistic jurisdictions. Therefore, this research serves as an intermediary, focusing on legal aspects and their application in three different countries.⁶

From the various previous studies mentioned, this research differs by examining how the concept of "authenticity" in trademarks is constructed within the legal systems of Indonesia, the Philippines, and Oman, through the interpretive lens of Jacques Derrida's deconstruction theory. Previous scholarship has paid little attention to how legal texts in developing and pluralistic jurisdictions replicate or subvert the presumed stability of meaning in trademark law. In Indonesia, the problem is how courts define and interpret the concept of trademark authenticity as a static indicator of origin or commercial reputation in disregard of socio-linguistic diversity. Indonesian trademark law tends to overlook the fact that meanings originate and evolve in a plural, multilingual society. Derrida's deconstruction helps us see the cracks that legal definitions of authenticity rely upon. They are cracks within the structure and language of institutional discourse and market ideology.

Thus, this research adds to the literature by showing that in Indonesia, the "authentic" identity of a trademark is perpetually reconstructed in legal-administrative settings. It also

² Felicia Caponigri, "Archival Authenticity and Intellectual Property Law," *Journal of Intellectual Property Law & Practice* 17, no. 11 (December 2022): 891–95, <https://doi.org/10.1093/jiplp/jpac105>.

³ David Tan, "De(Re)Constructing Narratives in Intellectual Property Law: Transformative Play, Culture Jamming, and Poststructural Disruptions," *Law and Literature* 32, no. 1 (January 2020): 75–106, <https://doi.org/10.1080/1535685X.2018.1506410>.

⁴ Umaira Hayuning Anggayasti and Ardina Nur Amalia, "Deconstructing Intellectual Property Rights in Fanfiction: A Case Study on Copyright Protection and Moral Rights," *International Journal of Multidisciplinary Research and Analysis* 07, no. 04 (April 2024): 1564–78, <https://doi.org/10.47191/ijmra/v7-i04-17>.

⁵ Moch Alfi Muzakki, Kholis Roisah, and Rahandy Rizki Prananda, "Legal Political of Well-Known Trademark Protection Reviewed From Development of Trademark Law in Indonesia To Avoid Fraudulent Competition," *Law Reform* 14, no. 2 (2018): 176, <https://doi.org/10.14710/lr.v14i2.20865>.

⁶ Noam M. Elcott, "The Manufacturer's Signature: Trademarks and Other Signs of Authenticity on Manet's Bar at the Folies-Bergère," *Grey Room*, no. 94 (January 2024): 114–63, https://doi.org/10.1162/grey_a_00396.

enables to compare and evaluate other developing countries' IP laws and culture identity such as Oman and Philippines. The study is novel in that it utilizes, for the first time, Derrida's post-structural method to analyze trademark law. It uses a deconstructionist approach to identify hidden instabilities within trademark law and illuminate fears about the harmonization of international intellectual property laws.

2. Method

This research employs normative legal methods focusing on the scrutiny of legal documents and statutes. It focuses on analyzing the positive legal norms in Indonesia, Oman and the Philippines concerning trademark authenticity. The method used is a comparative law method and a philosophical approach to the concept of "authenticity." Data collection is conducted through library research, which includes reviewing the national legislation of each country. In addition, the study reviews books and academic journals targeting to discuss the issues both at a domestic and international level.

Data analysis uses qualitative methods, namely legal interpretation and deconstruction techniques based on Jacques Derrida's theory of deconstruction. This study's goal is to identify the intricacies and contradictions within the legal definitions of trademark "authenticity." This analysis seeks to dismantle the seemingly solid structures of meaning within positive law and challenge the boundaries imposed by legal language on thought. The research is also expected to obtain a new and more contextual insight into how the "authenticity" of trademarks as brands is conceptualised within intellectual property systems.

3. Results and Discussion

3.1. The Construction of the Meaning of Trademark "Authenticity" in the Legal Systems of Indonesia, the Philippines, and Oman

Authenticity in trademark law is a complex and contextual concept. In modern legal theory, authenticity refers not only to the factual meaning of "authenticity" but also to the legal legitimacy conferred through registration, use, and recognition by the public and state institutions.⁷ The construction of the meaning of "authenticity" is not singular; it is shaped by national legal systems that accommodate values, culture, and legal traditions. Indonesia's trademark law system is contained within Law Number 20 of 2016 concerning Trademarks and Geographical Indications (*Undang-Undang Merek* or Trademark Law).⁸ Trademark law does not define authenticity, but constructs it through registration requirements. Article 20 states that any trademark to be registered must have distinguishing features and cannot be misleading or contrary to law, morality, or public order.⁹ A trademark is "authentic" if it meets substantive and administrative conditions. It neglects the fact that brand identity relates to local wisdom which is, in most cases, not documented. The "stolen" batik incident shows that the concept of authenticity in Indonesia's intellectual property law system is constructed solely through a formal registration process and thus cannot fully protect the brand's identity.¹⁰ The concept of brand "authenticity" demands not only proof through administrative documents but also social and historical recognition of product use by the community. Geographical Indications are presented

⁷ Stefan Bechtold and Christopher Jon Sprigman, "Intellectual Property and The Manufacture of Aura," *Harvard Journal of Law & Technology* 36, no. 2 (2023): 292–357, <https://doi.org/10.2139/ssrn.4002717>.

⁸ I Gede Agus Kurniawan et al., "The Philosophical Approach to the Existence of Business Law: Comparison of Indonesia, Vietnam, and Ghana," *Jurnal Hukum Bisnis Bonum Commune* 8, no. 1 (2025): 55–76, <https://doi.org/10.30996/jhbbc.v8i1.12382>.

⁹ I Gede Agus Kurniawan et al., "Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand," *Journal of Law and Legal Reform* 6, no. 2 (April 2025): 69–116, <https://doi.org/10.15294/jllr.v6i2.21128>.

¹⁰ Nina Kurnia Hasanah et al., "Malaysia's Claim to Indonesian Batik: Background and Conflict Resolution," *SOSIAL: Jurnal Ilmiah Pendidikan IPS* 3, no. 1 (February 2025): 95–106, <https://doi.org/10.62383/sosial.v3i1.650>.

as a protective measure by the Indonesian government to accommodate the diverse characteristics of Indonesian culture.

Article 56 of the Trademark Law states that any geographical indication to be registered must be distinctive, not misleading, and not contrary to law, morality, or public order. This provision is also considered to be merely administrative. Although substantively it considers sociocultural aspects, it still reflects a rigid, singular meaning of “authenticity” in the context of geographical indications. There is still a need for awareness that “authenticity” in the context of trademarks and geographical indications is not limited to the administrative realm alone, but also to the mechanism of community recognition of what is owned and has become tradition. Recognition in the Trademark Law is limited to the phrase “proven true” legally.

The failure to comprehend the communal value indicates that the national legal system lacks adequate solidarity regarding how authenticity connects to the existence of trademarks and geographical indications as a collective identity.¹¹ This is evident from how regional products such as Kopi Gayo are treated in law.¹² Although the products have received trademark or geographical indication (GI) protection, this is exclusively economic in nature. Therefore, the protection of trademarks and geographical indications in Indonesia needs to be more reflective of the context and meaning of “authenticity” in a multicultural society.

Intellectual Property Code of the Philippines (Republic Act No. 8293) is the legal basis for trademark protection in the Philippines.¹³ The Philippines adopts a hybrid legal system, where the legal system used is a combination of legal systems *common law* and *civil law*.¹⁴ This background means that the concept of “authenticity” in the context of trademarks in the Philippines is not only constructed through the formal registration process but also through doctrine “*goodwill*”, “*distinctiveness*” and “*secondary meaning*”. *Good will* places “authenticity” on the reputation and economic value inherent in a brand due to consumer use and recognition. *Distinctiveness* demonstrates the brand's ability to have a distinctive value in the market. *Secondary meaning* translates “authenticity” of a brand not only as a descriptive element to gain legitimacy, but also as something achievable through community consensus on the brand due to long-term use.¹⁵ Goodwill is the concept that a brand's commercial reputation and economic value are genuine and worthy in the eyes of consumers. Distinctiveness refers to a mark's capability, either inborn or established over time, to set apart one trader's goods or services from those of others in the marketplace. Meanwhile, the doctrine of secondary meaning clarifies that a descriptive term can achieve independent trademark status if it has been used sufficiently to allow the public to associate it with one producer. Trademark authenticity is an ever-evolving concept in the Philippines, as it needs to reflect both established statutory tenets and consumers' perception of a given brand.¹⁶

Brand authenticity in the Philippines is determined not only by the registration mechanism but also by how the products are used in the market and whether consumers can link them to

¹¹ Ni Ketut Supasti Dharmawan et al., “The Existence of Collective Management Organization for Copyrights Protection: Do Its Roles Applicable for Dance Copyright Work?,” in *Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)* (Paris: Atlantis Press SARL, 2023), 861–71, https://doi.org/10.2991/978-2-494069-93-0_100.

¹² Alif Muhammad Gultom and Sri Wartini, “Preserving Indigenous Cultures: Analyzing Geographical Indication Registration for Indigenous People Protection in Indonesia,” *Journal of Judicial Review* 25, no. 1 (2023): 33, <https://doi.org/10.37253/jjr.v25i1.7647>.

¹³ Venson Sarita and Shiella Mae Inutan, “Technology Transfer Management Practices among Selected State Universities and Colleges in Davao Region, Philippines,” *Journal of Interdisciplinary Perspectives* 3, no. 4 (2025), <https://doi.org/10.69569/jip.2025.070>.

¹⁴ Irene Calboli, “The Protection against Unfair Competition and Passing off in ASEAN Member States: A Review and Commentary,” *Journal of Intellectual Property Law and Practice* 19, no. 2 (February 2024): 126–34, <https://doi.org/10.1093/jiplp/jpad084>.

¹⁵ Ferdinand M. Negre and Jonathan Q. Perez, “The State of Intellectual Property Protection in the Philippines: What Lies Ahead?,” in *Intellectual Property Law in South East Asia* (Edward Elgar Publishing, 2023), 80–127, <https://doi.org/10.4337/9781035308392.00009>.

¹⁶ M. Negre and Q. Perez, “The State of Intellectual Property Protection in the Philippines: What Lies Ahead?”

their owners. The Philippine legal system allows brand owners to maintain the authenticity of their products through a legal concept known as prior use.¹⁷ It also broadens the scope of “authenticity” from just being an administrative requirement to encompass historical proof that the brand was used in commerce. This approach gives better and fairer protection to MSMEs or local businesses that have yet to register their brands but have used them widely over a long period. It creates a possibility for the system to be more attuned to economic and social realities, which is significant in the long term because “authenticity” is not only state-imposed but also market-driven.

The case *Mirpuri v. The Philippine Supreme Court* (G.R. No. 114508) ruled that a brand’s value is created through use and public awareness, which is the basis for the protection of the owner’s rights to its continuous use.¹⁸ In practice, the courts will assess the evidence of use such as advertisements, consumer opinions and distribution of goods before establishing exclusivity. Thus, authenticity is not merely a matter of management but also of interaction and context. This means that Philippine law gives more space for the market and social factors in determining brand authenticity. Thus, the hybrid nature of Filipino law considers both the civil law and common law aspects of authenticity. It enables the courts and administrative agencies to look beyond the trademark application’s documents and investigate the facts concerning market behavior, consumer perceptions and brand history. This is especially the case in today’s digital economy where brands often become publicly and economically useful prior to any formal or legal registration.¹⁹

The Philippine framework is more inclusive and better accommodating of the realities of life. It empowers small businesses, creative entrepreneurs and indigenous producers to safeguard the value of their brands even if they cannot immediately afford formal registration. Moreover, it motivates them to complete the registration, which strengthens their rights and legal certainty. In this way, the notion of “authenticity” links statutory prerequisites for trademark protection with the real-life commercial experience to which trademark law relates.²⁰ Then, Oman, in a normative context, provides protection for trademarks through *Royal Decree No. 67/2008 about Industrial Property Rights Law*. Oman is an Islamic country with a mixed legal system combining *common law* and Sharia.²¹ Brand “authenticity” in Oman is based on both legalistic and Islamically moral considerations. A brand is “authentic” if it fulfills the administrative requirements and does not violate Sharia values like *haqq* (right) and honesty in trade. This shows that, for Oman, the meaning of authenticity is broader than just compliance with court rulings and includes ethical and spiritual dimensions. Just like Indonesia, trademark registration in Oman is based on technical criteria. However, the application will be denied if a trademark contains elements that are inconsistent with public morality and Islamic norms.

Spiritual and cultural worries are essential for brand authenticity in Oman, especially for products related to Islamic values or local cultural heritage. Products like attar and sidr honey are closely tied to the spiritual identity of their users, meaning their brands are not judged solely by commercial criteria. The products have to meet the set criteria for testing ethical and cultural

¹⁷ M. Negre and Q. Perez, “The State of Intellectual Property Protection in the Philippines: What Lies Ahead?”

¹⁸ Arvin Kristopher A Razon, “The Celebrity’s Right To Autonomous Self-Definition And False Endorsements: Arguing The Case For A Right Of Publicity In The Philippines,” *Canterbury Law Review* 26, no. 1 (2020): 65–90, <https://doi.org/doi/10.3316/informit.686345514922249>.

¹⁹ Leticia Arroyo Abad and Noel Maurer, “An Imperial Accident: Property Rights in the Philippines under U.S. Rule, 1902–1939,” *Journal of Historical Political Economy* 2, no. 2 (2022): 235–61, <https://doi.org/10.1561/115.00000029>.

²⁰ Hafiz GAFFAR and Saleh ALBARASHDI, “Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape,” *Asian Journal of International Law* 15, no. 1 (January 2025): 23–46, <https://doi.org/10.1017/S2044251323000735>.

²¹ Lena Salaymeh, “Middle Eastern and North African Legal Traditions,” in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), 360–68, <https://doi.org/10.1016/B978-0-08-097086-8.86142-5>.

parameters before being approved as legally permissible.²² This means that the concept of authenticity in the Omani legal framework has a much deeper meaning than merely the link between a product and its producer.²³ The legal construction of brand "authenticity" in Indonesia, the Philippines, and Oman is shaped by a combination of legal structures, social values, and distinctive interpretative approaches within each legal system. In Indonesia, "authenticity" tends to prioritize a formal legal approach, where "authenticity" is proven through a strict and administrative registration process. The Philippines adopts a more flexible approach, recognizing the meaning of "authenticity" as a result of the real-world relationship between the brand and consumers in the marketplace. Oman, meanwhile, presents a more normative and ethical approach, combining positive law and Sharia to assess authenticity not only based on legality but also on the moral values of trade.²⁴ These differences demonstrate that brand authenticity cannot be reduced to a single definition but is a discursive construct influenced by many factors. "Authenticity" in trademark law is a sign that is constantly open to reinterpretation and never fully stable.²⁵ This understanding is important so that the legal system is not hegemonic in determining value, but more inclusive of the diversity of meanings in a dynamic global society.

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In Indonesia, authenticity is based on the registration of cultural properties in governmental offices, as stipulated by Law No. 20 of 2016 on Trademarks and Geographical Indications. The law only recognizes a brand as genuine if it has been legally registered with the Directorate General of Intellectual Property (DGIP). It focuses on compliance, verification and documentation rather than the actual cultural or historical significance. As a consequence, "authenticity" becomes nothing more than a legal status bestowed by the state, rather than an inherent quality of the product. While the Geographical Indications regulatory system remains rigid and fails to accord due historical recognition to product origins. Cases like Malaysia's claim of batik show how easily a certain aspect of identity can be stolen when it relies entirely on swift registration.

In comparison, the Philippines takes a more relaxed and market-driven stance. The country's hybrid legal system equally recognizes and protects formally registered trademarks and those that have acquired goodwill, distinctiveness and a secondary meaning from prior use.

²² Abdul Rauf Mahar et al., *Financial Reporting for Islamic Financial Institutions* (London: Routledge, 2023), <https://doi.org/10.4324/9781003381525>.

²³ Maryam Rashid Said Alsaidi, Mohammad Khair' Al Adwan, and Saif Nasser Abdullah Al-Mamari, "Real Estate Registration and Its Legal Effects in Omani Legislation," *International Review of Law* 14, no. 1 (May 2025): 163–95, <https://doi.org/10.29117/irl.2025.0318>.

²⁴ M. Mhalla, A. K. Hamid, and A. Al-Riyami, "Jurisprudential and Legal Perspectives on the Protection of Rights and Freedoms in the 2021 Basic Statute of the Sultanate of Oman," *Information Sciences Letters An International Journal* 12, no. 7 (2023): 2735–43, <https://dx.doi.org/10.18576/isll/>.

²⁵ Emmanuel Kolawole Oke, "International Intellectual Property Law as Applicable Law in Investment Disputes," *ICSID Review - Foreign Investment Law Journal* 40, no. 1 (July 2025): 174–89, <https://doi.org/10.1093/icsidreview/siaf008>.

²⁶ Mhalla, Hamid, and Al-Riyami, "Jurisprudential and Legal Perspectives on the Protection of Rights and Freedoms in the 2021 Basic Statute of the Sultanate of Oman."

²⁷ Oke, "International Intellectual Property Law as Applicable Law in Investment Disputes."

²⁸ This empowers micro, small and medium enterprises (MSMEs), or local traders, to protect their brand names even if they have not been registered. Oman: Normative-Ethical Model of Business Ethics and Corporate Governance Seen in a comparative perspective, the ethical dimension conferred by sharia law on the trademark law system in Oman is an additional source of authenticity, which moralises the economic sphere. Haqq and honest dealing (*ṣidq*) embrace the fact that trademark rights, which result from registration and use, must be in harmony with social responsibility and religious awareness. It also shows that under Omani law, trademarks are more than just market names; they are bearers of trust and reputation.

This has practical effects for companies, especially those manufacturing products intended for religious practices. Sharia-based public morality is a strong element of the brand's legal and social legitimacy. Moreover, it enables the country to maintain international standards while remaining true to its values. It advocates for free trade while ensuring that ethical worries and cultural values are respected and upheld. Thus, Omani law can serve as a model for jurisdictions aiming to implement global harmonization of intellectual property rights in ways that respect local morality. When compared to Indonesia's formalistic approach and the Philippines' pragmatic perspective, Oman's attributes significantly supplement trademark law theory. It eschews the purely positivist comprehending of rights and authenticity in favor of a more pluralistic one, which sees them as embedded within a "complex web of law, morality and social tradition." This comparative insight underlines the necessity for intellectual property scholarship to engage with contextual variables, ensuring that protection mechanisms are not merely technical tools but also instruments for sustaining societal values and cultural diversity.

This table below presents a comparative overview of how "authenticity" in trademark law is constructed in Indonesia, the Philippines, and Oman, highlighting their respective legal bases, interpretive approaches, and the extent to which sociocultural and moral considerations inform trademark protection.

Table 1.
Comparative Overview in Trademark Law Is Constructed in Indonesia, The Philippines, and Oman

Aspect	Indonesia	Philippines	Oman
Legal Basis	Law No. 20 of 2016 on Trademarks and Geographical Indications	Intellectual Property Code (RA No. 8293)	Royal Decree No. 67/2008 on Industrial Property Rights
Core Approach	Formalistic and administrative; authenticity proven via registration and compliance with Article 20	Emphasizes a mixed approach between common law and civil law while recognizing prior use, goodwill, distinctiveness, and secondary meaning.	Emphasizing the positive aspects of law and Sharia which emphasize authenticity linked to legality and ethical principles (haqq, honesty)
Sociocultural / Moral Elements	Limited; mainly through Geographical Indications	Significant; consumer perception and reputation shape authenticity	Strong; ethical, spiritual, and cultural factors (e.g., Islamic values, heritage products)
Treatment of Unregistered Brands	Weak; minimal protection without formal registration	Protected via prior use and goodwill doctrines	May be protected if consistent with moral and cultural norms
Challenges	Rigid framework, insufficient communal recognition	Lack of clear administrative mechanisms for valuing goodwill	Balancing flexibility with Sharia and public morality

(Source: Author, 2025)

²⁸ Jafar Sidik, Asep Rozali, and Dewi Sulistianingsih, "The Implementation of Intellectual Property Dispute Resolution Through Mediation & Arbitration," *Masalah-Masalah Hukum* 52, no. 3 (November 2023): 237–48, <https://doi.org/10.14710/mmh.52.3.2023.237-248>.

Then despite these differences, we arrive at a shared grasping that authenticity is more than a product label; it is legitimacy and reputation. However, each country has its own way of implementing that law. Indonesia could use the following perspectives to improve its protection of trademarks and geographical indications as goodwill and secondary meaning (Philippines) and ethical, cultural, or moral issues (Oman). In addition, the sweeping reform of this trademark system would align with the western intellectual property laws and respect Indonesia's culture as a multicultural society.

3.2. Derrida's Deconstruction of the Meaning of "Authenticity" in Brands within the Legal Systems of Indonesia, the Philippines, and Oman

The concept of "authenticity" in trademark law is positioned as something objective, fixed, and legal. The legal systems of Indonesia, the Philippines, and Oman employ a formal legal approach to defining the "authenticity" of a brand. This practice is considered to ignore the cultural diversity and context behind the use of the brand itself. Jacques Derrida, through his deconstructive approach, rejects the premise that the meaning within a text can be final and stable. According to Derrida, there is no absolute meaning in a text,²⁹ including legal texts, because meaning is always in *différance*, a perpetual deferral and slippage.³⁰ When the legal system recognizes "authenticity" as absolute, this recognition can be interpreted as a form of dominance of the legal narrative over the diverse social meanings of "authenticity." The recognition of brand "authenticity" within the legal system should be a discursive construction, not limited to the reflection of a "truth" or essence. Intellectual property law establishes brand "authenticity" based on uniqueness, first use, and consumer association with the source of goods or services. Derrida's deconstruction argues that signs, symbols, and meanings are not always logically bound and fixed.³¹ Law constructs a narrative that the meaning of "authenticity," as expressed through legislation and court decisions, is final. This contrasts with Derrida's method of textual interpretation, which posits that texts are always open to other readings, even by their authors themselves. Deconstruction theory states that meaning is never fully present, but always deferred. This concept allows everyone the freedom to give meaning and interpret something.

In Indonesia, trademarks must be registered according to the requirements stipulated in Articles 20 and 21 of the Trademark Law. Article 21(1) of the Trademark Law states that registered trademarks may not have a "substantial similarity." The phrase "substantial similarity" means "similarity caused by the dominant elements between one trademark and another, creating an impression of similarity, whether regarding form, placement, writing style, or combination of elements, or similarity of pronunciation, found in the trademark." Derrida, through deconstruction theory, critiques the notion *Logocentrisme* and *Fonocentrisme*. He argues that the weakness of logocentrism is its erasure of the material dimension of language, and the weakness of phonocentrism is its subordination of writing by prioritizing speech. According to Derrida, spoken language is unstable because of the possibility of different meanings arising based on context.³² The phrase "substantial similarity" contains concepts of logocentrism and phonocentrism, where the trademark to be registered is not permitted to have similarities in form and sound. Both requirements must be met because "substantial similarity" is cumulative; it cannot be satisfied by meeting only one condition or element.³³

Derrida's deconstruction emphasizes that writing is the primary factor in textual interpretation. In his theory, Derrida demonstrates the weakness of speech in expressing

²⁹ William W. Sokoloff, "Between Justice and Legality: Derrida on Decision," *Political Research Quarterly* 58, no. 2 (June 2005): 341, <https://doi.org/10.2307/3595634>.

³⁰ John P. McCormick, "Derrida on Law; Or, Poststructuralism Gets Serious," *Political Theory* 29, no. 3 (2001): 395–423, <https://doi.org/10.1177/0090591701029003004>.

³¹ Cornelia Vismann, "Derrida, Philosopher of the Law," *German Law Journal* 6, no. 1 (January 2005): 5–13, <https://doi.org/10.1017/S2071832200013407>.

³² Eftichis Pirovolakis, "Law, Violence and Justice in Derrida's 'Force of Law,'" *Derrida Today* 17, no. 1 (February 2024): 97–112, <https://doi.org/10.3366/drt.2024.0328>.

³³ Pirovolakis, "Law, Violence and Justice in Derrida's 'Force of Law.'"

meaning using the word “*différance*,” derived from “*différence*.” In its pronunciation, the difference is not heard, but the difference in the use of the letter “a” to replace the letter “e” is only visible in writing. Derrida does this to show the blurring of meaning that logocentrism and phonocentrism cannot account for. According to Derrida, writing is a maximal language, because writing is detached from its author once it is on the page.³⁴ When read, writing is automatically open to interpretation by its reader.³⁵ Therefore, Derrida's deconstruction of the meaning of brand “authenticity” in the Indonesian legal system demands that the phrase “substantial similarity” focus on how the textual structure of the trademark to be registered is created, so that the meaning of “authenticity” can be interpreted freely without being limited by pronunciation. Binary opposition is a Western concept of thought that is also criticized by Derrida's deconstruction theory. The Indonesian legal system, in the context of trademarks, creates a binary opposition between “original trademark” vs. “counterfeit trademark” and “registered vs. unregistered.” Derrida calls this an exclusive system, where one pole is positive and the other negative.³⁶ This exclusive nature impacts trademarks that are not documented but are culturally recognized by society. This legal-formalistic registration system establishes legal validity as the sole standard of “authenticity.” This overlooks the position of indigenous communities and SMEs that have used their socially recognized trademarks for a long time. Derrida's deconstruction, in the context of the meaning of trademark “authenticity,” rejects this binary opposition because it makes trademark “authenticity” limited and exclusive to those with access.

Deconstruction theory states that meaning is never fully present, but always deferred.³⁷ The idea that meaning is always deferred means that meaning requires a long chain and is never final.³⁸ The meaning of trademark “authenticity” in Indonesia arises through a registration process that culminates in the issuance of a trademark certificate if successful, and rejection if there are objections from other trademark owners or if it fails the examination by the Directorate General of Intellectual Property (DJKI). Additionally, meanings can change when people argue. The meaning of “authenticity” is not immediate, but rather given by procedure and interpretation. Even a registered trademark can be challenged, canceled, or reinterpreted by the courts. Thus, Derrida's deconstructive viewpoint is proven correct because nothing has a final meaning. “Authenticity” always flows from one text to another. The Philippine legal system is hybrid (civil and common law systems). The Philippines has a practice of basing legal meaning on precedent. The “authenticity” meaning of the trademark is constructed in courts. Each such decision is a mere “authentic” interpretation of legal texts and social reality, although it is only one possible meaning that the legal materials can bear. As a result, phonocentrism was still practiced to create the “presence of meaning” through the court's voice. Because language is maximal, meaning interpretation should be tied to the text and Derrida's deconstruction appeals for that.³⁹ Philippine court decisions also tend to emphasize the dichotomy between registered and non-registered trademark owners. Binary oppositions structure practice “legitimate” owners have legal authority and “illegitimate” users are thieves.

Although the Philippine legal system normatively recognizes unregistered trademarks, in practice, courts still tend to favor registered trademark holders with strong documentary evidence. In other words, the law favors formal entities, not the history of the trademark's meaning itself. The practices of “good will” and “secondary meaning” are expected to function properly because these two things are in line with the spirit of Derrida's deconstruction. Similar to Indonesia, the meaning of trademark “authenticity” in the Philippines can also change when

³⁴ Simon Glendinning, “Derrida and the Philosophy of Law and Justice,” *Law and Critique* 27, no. 2 (July 2016): 187–203, <https://doi.org/10.1007/s10978-016-9183-2>.

³⁵ Glendinning, “Derrida and the Philosophy of Law and Justice.”

³⁶ Zhiron Khujadze, “Kafka, Benjamin, Derrida: On Violence, Law and Justice,” *Journal of Law* 2, no. 2 (December 2023): 21–37, <https://doi.org/10.60131/jlaw.2.2023.7692>.

³⁷ Pirovolakis, “Law, Violence and Justice in Derrida's ‘Force of Law.’”

³⁸ Pirovolakis, “Law, Violence and Justice in Derrida's ‘Force of Law.’”

³⁹ Mostafa Taherkhani and S. Mohammad Ghari Seyed Fatemi, “Jacques Derrida and Deconstruction of Law,” *Legal Research Quarterly* 25, no. 100 (2023): 59–85, <https://doi.org/10.29252/jlr.2021.222358.1934>.

disputes arise. This shows that meaning is not finally present, but deferred through the dialectic between old precedent and new interpretation. The Philippine legal system acknowledges that the meaning of “authenticity” is not fixed, but rather a meaning formed by a series of legal deferrals.

Derrida’s deconstruction reads law as an open text, and the meaning of “authenticity” is something that can always be reinterpreted by its creator and society. In the Omani legal system, trademark “authenticity” is determined not only by positive law but also by Sharia norms, which provide a moral and spiritual dimension. According to Article 36 (1) (b) of Royal Decree No. 67/2008, stipulates that registration will be refused for any trademark that is contrary to public morality or public order in the Sultanate of Oman, reflecting the influence of Islamic ethical principles (*akhlaqiyyat*) in assessing the legitimacy and “authenticity” of marks. This approach is not without criticism of logocentrism, where moral and religious values are considered more “authentic than written texts. Derrida criticizes metaphysical dogma and metaphysical language, which are long-standing traditions. He rejects the idea of thought culminating in something final. Derrida rejects the presence of meaning considered immediate through revelation or spiritual norms. According to Derrida, all meaning is a product of signs and language, including religious meaning.⁴⁰ Therefore, the meaning of trademark “authenticity” in the Omani legal system can be concluded as final and rigid.

The Omani legal system creates a binary hierarchy in the construction of “authenticity,” such as between halal vs. haram. This means that local brand products can be rejected because they are considered to violate religious norms, even if they are widely accepted socially. This binary opposition seems natural because it is based on religious moral values, but in Derrida's deconstruction, this kind of structure is considered an attempt to simplify the complexity of the meaning of “authenticity” and create power through language. In this case, law in the context of the meaning of “authenticity” is expected to be not merely a reflection of morality, but an instrument that creates the legitimacy of one value over another. The meaning of “authenticity” is often deferred between formal legality and social legitimacy. A brand can be culturally significant and respected but fail to gain recognition if it does not meet ethical or administrative thresholds. This suggests that the notion of authenticity lies not within the law itself but rather in a long chain of institutional referrals. Derrida calls this deferral, which means that meaning only exists through social negotiation between different institutions. Omani law, however religious and ethical it may seem, would still have to defer in a trademark dispute. Jacques Derrida’s deconstructive analysis of the concept of “authenticity” in the trademark legal systems of Indonesia, the Philippines and Oman shows that “authenticity” is not a fixed and objective legal category but rather an endless chain of references and differences. Criticisms of logocentrism, phonocentrism and binary oppositions show that law is blind to the alternative meanings and experiences in a society because it only seeks to preserve the dominant ones. By viewing “authenticity” as something to be constantly deferred, it no longer sees law as a sole giver of meaning but a text to be read and considered critically and thoughtfully. Therefore, a deconstructive approach is also practically important for designing an intellectual property system that is just and contextually inclusive of social and cultural diversity.

4. Conclusion

The legal systems of Indonesia, the Philippines, and Oman approach the concept of “authenticity” in trademark law in distinct ways, influenced by their unique legal, cultural, and social contexts. In Indonesia, the definition of authenticity is primarily shaped by a formalistic and administrative perspective, focusing on the registration process stipulated in the Trademark Law (Law No. 20 of 2016). This approach emphasizes distinctiveness and compliance with legal standards, but it neglects the cultural and historical significance that a trademark may hold within local communities. This narrow view leads to situations where brands with deep local roots, such as batik, may be vulnerable to misappropriation, as the law prioritizes formal

⁴⁰ Pierre Legrand, “Derrida/Law: A Differend,” in *A Companion to Derrida* (Wiley, 2014), 581–98, <https://doi.org/10.1002/9781118607138.ch35>.

registration over the recognition of communal identity. On the other hand, the Philippines takes a more flexible, market-driven approach that incorporates both civil law and common law principles. In this system, authenticity is determined not just through formal registration but also by factors like goodwill, distinctiveness, and secondary meaning, which reflect the real-world relationship between brands and consumers. This hybrid legal framework allows for better protection of unregistered trademarks and is particularly advantageous for small businesses and local entrepreneurs, as it recognizes the evolving nature of brand authenticity through consumer perception and historical use.

In Oman, the legal framework introduces an additional layer by integrating both legal and moral considerations, grounded in Islamic principles. Authenticity in Omani trademark law is not only determined by administrative compliance but also by ethical standards such as honesty and fairness in trade. This integration of Sharia values ensures that authenticity in Oman is not a purely legal concept but also a moral and cultural one, especially for products tied to local heritage or religious practices. However, like Indonesia, Oman's system still maintains binary oppositions, such as halal versus haram, which may exclude culturally significant brands that do not meet legal or moral standards.

The concept of authenticity in trademark law, as examined through the legal frameworks of Indonesia, the Philippines, and Oman, highlights the complexities of defining a term that is inherently fluid and context-dependent. Derrida's deconstruction theory offers a critical perspective on this issue, arguing that meaning is never fixed or final. According to Derrida, the meaning of authenticity is always in a state of deferral, influenced by the interplay of legal texts, cultural values, and social recognition. His deconstruction challenges the traditional legal understanding of authenticity as something stable and objective. In Indonesia, the rigid focus on formal registration disregards the communal and cultural aspects of trademark identity. In the Philippines, while the system is more inclusive, it still places emphasis on formal documentation over the social realities of brand recognition. Oman's ethical approach adds further complexity, but like the other two systems, it maintains binary structures that limit a broader understanding of authenticity.

Derrida's deconstructive approach suggests that legal systems should move beyond rigid and formal definitions of authenticity, embracing a more flexible and contextually sensitive approach. This would enable trademark laws to better reflect the diversity of meanings of authenticity that exist in a globalized and multicultural society. The legal systems in Indonesia, the Philippines, and Oman each provide valuable lessons for creating a more inclusive and dynamic intellectual property system that balances legal standards with cultural and social realities.

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