

JUSTICE BEYOND RIGHTS: A PHILOSOPHICAL INQUIRY INTO INTELLECTUAL PROPERTY THROUGH DERRIDA'S DECONSTRUCTION

I Made Wirya Darma¹, I Gede Agus Kurniawan^{2*}, Tjokorda Mirah Ary Mahadnyani³, Nar Yan Thapa⁴

^{1,2,3} Universitas Pendidikan Nasional, Denpasar, Bali, Indonesia

⁴ Tribhuvan University, Nepal

*Correspondence: gedeaguskurniawan@undiknas.ac.id

Received: October 22, 2024; Accepted: June 02, 2025; Published: December 30, 2025

Abstract

Intellectual property law, which aims to protect creators of intellectual works, faces significant justice-related challenges in the context of globalisation and access inequality. These issues can be critically examined through Jacques Derrida's deconstruction approach, which reveals contradictions and limitations in the pursuit of substantive justice. This study aims to critique the legal conception of justice within intellectual property law (IPL) through Derrida's philosophical framework of deconstruction and to examine the implications of applying this theory to the interpretation and implementation of justice in IPL. This research employs a normative legal methodology with a conceptual approach, analysing primary, secondary, and tertiary legal materials through a literature study and applying qualitative data analysis techniques to assess the notion of justice in IPL through the lens of Derrida. The findings reveal normative contradictions and conceptual instabilities within the IPL system, particularly concerning foundational principles such as originality, exclusive rights, and intellectual ownership. By deconstructing the binary oppositions underlying IPL, the study reveals that exclusionary and biased legal structures frequently influence the application of justice principles in IPL. This study contributes to legal scholarship by advocating for a more inclusive and equitable legal framework that ensures access to knowledge, thereby opening up new interpretive possibilities in the discourse on justice within intellectual property law.

Keywords: *access; deconstruction; globalization; intellectual property; justice.*

Abstrak

Hukum kekayaan intelektual yang bertujuan melindungi pencipta karya intelektual menghadapi tantangan keadilan dalam konteks globalisasi dan kesenjangan akses. Hal ini dapat dikritisi menggunakan pendekatan dekonstruksi Jacques Derrida untuk mengungkap kontradiksi dan keterbatasan dalam upaya mencapai keadilan substansial. Penelitian ini bertujuan untuk mengkritisi konsepsi hukum mengenai keadilan dalam hukum kekayaan intelektual (HKI) melalui pendekatan filsafat dekonstruksi Jacques Derrida, serta mengkaji implikasi penerapan teori tersebut terhadap interpretasi dan implementasi aspek keadilan dalam hukum kekayaan intelektual. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, menganalisis bahan hukum primer, sekunder, dan tersier melalui studi kepustakaan, serta menerapkan teknik analisis data kualitatif untuk mengkaji konsep keadilan dalam hukum kekayaan intelektual menggunakan teori dekonstruksi Derrida. Hasil penelitian menunjukkan bahwa terdapat kontradiksi normatif dan ketidakstabilan konseptual dalam sistem HKI khususnya terkait

prinsip dasar seperti orisinalitas, hak eksklusif, dan kepemilikan intelektual. Dengan melakukan dekonstruksi oposisi biner yang mendasari HKI, penelitian ini menunjukkan bahwa penerapan prinsip keadilan dalam HKI seringkali dibentuk oleh struktur yang eksklusif dan bias. Penelitian ini diharap mampu memberikan kontribusi terhadap bidang keilmuan dengan mendorong kerangka hukum alternatif yang lebih inklusif dan adil dalam menjamin akses terhadap pengetahuan. Dengan demikian penelitian ini membuka ruang interpretatif baru dalam wacana keadilan pada HKI.

Kata Kunci: akses; dekonstruksi; globalisasi; kekayaan intelektual; keadilan.

Introduction

Intellectual property law (IPL) is a rapidly evolving branch of law that has developed in tandem with technological advances and economic globalisation. Regulations regarding intellectual property rights aim to protect an individual's creations or intellectual works, ensuring they can be used exclusively by their creators. In this context, various forms of intellectual property, such as copyright, patents, trademarks, and industrial designs, are regulated to protect the interests of creators and rights holders.¹ Justifications for IPL are commonly grounded in several foundational legal theories. Locke's labour theory posits that individuals acquire property rights by mixing their labour with resources, thereby legitimising exclusive rights over their intellectual creations.² However, this view often neglects the realities of collective authorship and unequal access to creative resources. The utilitarian approach regards IPL as a necessary incentive to stimulate innovation for the greater good. However, in practice, it frequently consolidates monopolies and privileges actors with access to markets and technology.³ Moral rights theory, by contrast, emphasises the personal and emotional connection between creators and their work, affording non-economic rights such as attribution and integrity. Nonetheless, it tends to be individualistic and Eurocentric, often failing to accommodate communal and traditional knowledge systems.⁴

On the other hand, Marxist critiques view IPL as an extension of capitalist relations of production, commodifying knowledge and reinforcing class-based inequalities, especially between the Global North and South.⁵ Finally, postcolonial theory challenges the global intellectual property (IP) regime as a

¹ Nanda Dwi Rizkia and Hardi Fardiansyah, *Hak Kekayaan Intelektual Suatu Pengantar* (Bandung: Widina Bhakti Persada Bandung, 2022).

² M. Yakub Aiyub Kadir et al., "The Reform of Consumer Protection Law: Comparison of Indonesia, Vietnam, and Ghana," *Jurnal Suara Hukum* 6, no. 2 (2024): 255–78.

³ I Gede Agus Kurniawan et al., "The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana," *Substantive Justice International Journal of Law* 7, no. 2 (December 2024): 114–41, <https://doi.org/10.56087/substantivejustice.v7i2.297>.

⁴ Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Srinijaya Law Review* 6, no. 2 (2022): 268–85, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885>, pp268-285.

⁵ Igor Shokhedbrod, *Revisiting Marx's Critique of Liberalism*, Marx, Engels, and Marxisms (Cham: Springer International Publishing, 2019), <https://doi.org/10.1007/978-3-030-30195-8>.

continuation of epistemic and legal colonialism, where Western categories of ownership are imposed on non-Western systems of knowledge. This often results in the exclusion and exploitation of indigenous and traditional knowledge, which cannot be neatly contained within the Western legal framework. These critical perspectives collectively reveal that IPL is far from a neutral legal system; instead, it is embedded within broader structures of power that demand philosophical and structural reconsideration.⁶

The current global regime of intellectual property protection has been increasingly criticised for reinforcing the economic dominance of the Global North and multinational corporations, often at the expense of public access to knowledge in the Global South. Although such critiques have gained momentum, existing scholarship has rarely applied post-structuralist legal philosophy, particularly Jacques Derrida's theory of deconstruction, to examine the deeper ontological and epistemological contradictions within IPL. Derrida's theory of deconstruction challenges the traditional view that tends to regard law as a stable and fixed system. Instead, Derrida argues that law inherently contains internal contradictions and ambiguities, which ultimately render justice unstable and constantly evolving.⁷ In the context of IPL, Derrida's deconstruction can be used to examine more deeply how the concept of justice within it often conflicts with the social and economic realities that occur, especially in modern societies that are increasingly globally connected.

One of the fundamental problems in intellectual property law is the unfair distribution of rights and access to intellectual works, which often benefits parties with economic and technological power.⁸ Although IPL, on the one hand, provides excellent benefits to creators or innovators, in reality, this law often only benefits a handful of actors who have access to legal mechanisms and global markets.⁹ In the context of globalisation, the challenges of justice in IPL are becoming increasingly complex due to the widening gap between developed and developing countries. Developed countries often dominate control of global intellectual property, primarily through patents and copyrights held by multinational companies. Developing countries, which typically act only as consumers, are at a disadvantage due to limited access to technology and resources for creating new intellectual works. In this

⁶ Alpana Roy, "Intellectual Property Rights: A Western Tale," *Asia Pacific Law Review* 16, no. 2 (December 2008): 219–39, <https://doi.org/10.1080/10192557.2008.11788187>.

⁷ Seradona Altiria, "Dekonstruksi Derrida Pada Kajian Linguistik Kognitif," *Prosiding Konferensi Linguistik Tahunan Atma Jaya (KOLITA)* 21, no. 21 (October 2023): 270–80, <https://doi.org/10.25170/kolita.21.4857>.

⁸ Aftab Sohail, Nurhafilah Musa, and Mohamad Rizal Abd Rahman, "Justice, Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 297–321.

⁹ Neni Sri Imaniyati, "Perlindungan Hki Sebagai Upaya Pemenuhan Hak Atas Iptek, Budaya Dan Seni," *Jurnal Media Hukum* 17, no. 1 (2015), <https://doi.org/https://doi.org/10.18196/jmh.v17i1.374>.

regard, Derrida's theory of deconstruction can provide a critical analytical framework for this domination and question whether global intellectual property law is truly just.¹⁰

The concept of justice in intellectual property rights (IPR) is often interpreted as the protection of individual rights to control the results of their creations. However, when viewed from Derrida's perspective, this concept contains ambivalence because there is an imbalance between personal and collective interests.

For example, in the case of copyright, the creator has exclusive rights to exploit his work for a specific period, but after that, the work must become public property.¹¹ However, in practice, copyright is often extended and expanded so that specific intellectual works never truly become public property. This is contrary to the principle of social justice that should guarantee public access to intellectual property after the protection period ends. Derrida's deconstruction also highlights how IPL, like other laws, is a result of social and linguistic construction that creates certain boundaries and categories. In this case, IPL often creates a clear boundary between creator and consumer, between intellectual products and their use. These boundaries are typically artificial and overlook the complexity of genuine social relationships. For example, in the context of traditional cultures and local knowledge, intellectual property laws are often inadequate to protect knowledge that is passed down from generation to generation and collectively. Large companies often exploit this traditional knowledge without providing fair benefits to the communities that own it.¹² In this case, Derrida's deconstruction can help illuminate the contradictions in IPR and demonstrate how this law often falls short of achieving substantial justice. Furthermore, Derrida's concept of deconstruction opens up space to review whether justice in IPR can truly be achieved through existing law or whether it requires a more radical reconstruction of the legal structure itself. Derrida asserts that justice cannot be fully achieved through the existing legal system, as law is inherently limited by the specific language and logic it employs.

On the contrary, justice, according to Derrida, is something that is constantly sought, something that is always beyond the reach of the law itself.¹³ In the context of IPR, this can be interpreted to mean that legal protection of intellectual property does not immediately create justice but must be continually criticised and improved to ensure that the law does not only protect a handful of powerful parties. For example, patents on medicines are often a contentious topic

¹⁰ Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional," *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 2011, 213–38.

¹¹ Yulia Nizwana and Rahdiansyah Rahdiansyah, "Perlindungan Hak Kekayaan Intelektual (HaKI) Ditinjau Dari Epistemologi," *UIR Law Review* 3, no. 2 (March 2020): 34, [https://doi.org/10.25299/uirlrev.2019.vol3\(02\).4006](https://doi.org/10.25299/uirlrev.2019.vol3(02).4006).

¹² Mangihut Siregar, "Kritik Terhadap Teori Dekonstruksi Derrida," *Journal of Urban Sociology* 2, no. 1 (May 2019): 65, <https://doi.org/10.30742/jus.v2i1.611>.

¹³ Inayatul Anisah, "Dekonstruksi Hukum Sebagai Strategi Pembangunan Hukum Di Indonesia Pasca Reformasi," *De Jure: Jurnal Hukum Dan Syaria* 2, no. 1 (2010).

of debate in IPR studies, especially in the context of developing countries. Many large pharmaceutical companies hold patents on important medications, which makes them very expensive and unaffordable for people in the least developed countries. In this case, Derrida's theory of deconstruction can be employed to demonstrate that patent laws, although formally intended to encourage innovation, actually create structural injustices that exacerbate inequalities in access to healthcare.¹⁴ In this case, justice is not only about granting rights to innovators but also about creating fair access to the benefits of innovation for the entire society.

In addition, in the context of an increasingly connected global culture, Derrida's deconstruction can also be used to re-examine how the concept of originality and intellectual property itself is constructed. IPR is often based on the assumption that intellectual creation or work is the result of a unique and original individual.¹⁵ However, in many cases, intellectual works are the result of collaboration or influence from various parties, either directly or indirectly. In this case, the concept of intellectual ownership becomes blurred because it is difficult to determine with certainty who truly "owns" a particular idea or work.

This paper addresses that gap by proposing Derrida's deconstruction not merely as an innovative lens but as a necessary theoretical intervention to challenge the metaphysical assumptions embedded in the legal language and logic of IPL. Derrida's notion that justice is always "to come" (*à venir*) and cannot be fully captured by legal structures invites a radical rethinking of how IPL conceives of fairness, originality, ownership, and access. Unlike conventional critical theories that argue from within the structure of IPL, Derrida's approach destabilises its very conceptual foundations by exposing internal aporias and binary oppositions, such as creator/consumer, private/public, and original/derivative, that underpin its normative claims.

Methods

In this study, the research method used is the normative legal research method. This method is also known as doctrinal research that focuses on written legal norms, legal theories, and relevant concepts. Normative legal research seeks to analyse, interpret, and evaluate the legal regulations and principles of justice contained in intellectual property law (IPR). In this context, Derrida's philosophical approach through deconstruction is employed to assess whether the concept of justice regulated in IPR aligns with genuine, substantive justice. The conceptual approach is the approach used in this study. The conceptual approach is a method that aims to understand the basic concepts and principles underlying intellec-

¹⁴ Ivan Fauzani Raharja and Retno Kusniati, "Analisis Model Pengaturan Hukum Hak Kekayaan Intelektual Pengetahuan Tradisional Masyarakat Adat," *Jurnal Ilmu Hukum Jambi* 3, no. 1 (2012).

¹⁵ Koeswinamo, "Dekonstruksi Dan Representasi Kebudayaan Untuk Memahami Model Komunikasi Kaum Marginal," *Jurnal Masyarakat Telematika Dan Informasi* 3, no. 1 (2012).

tual property law and Derrida's deconstruction theory. In this case, the conceptual approach enables a thorough examination of the concept of justice as applied to the IPR system, as well as its deconstruction and reinterpretation through Derrida's perspective. Thus, this study not only focuses on the analysis of legal texts but also explores the meaning and boundaries of the concept of justice itself by the deconstructive framework of thinking.

The sources of legal materials used in this study comprise three types: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials comprise laws and regulations relevant to intellectual property, including Copyright Law, Patent Law, and Trademark Law, as well as international regulations such as the Berne Convention and the TRIPs Agreement (Trade-Related Aspects of Intellectual Property Rights), among other agreements related to IPR protection at the global level. Secondary legal materials include scientific literature, books, academic journals, and writings that discuss legal theory, legal philosophy, and specialised studies on Derrida's deconstruction and the application of his theory in legal analysis. Tertiary legal materials, including legal encyclopedias, legal dictionaries, and academic indexes, are used to enhance the understanding of the legal terms and concepts employed in this study.

The data collection technique employed in this study utilised the library research method. Through library research, researchers collected, reviewed, and analysed various legal and philosophical literature related to intellectual property law and Derrida's deconstruction theory. All data collected were derived from written legal documents, including rules and regulations, court decisions, legal doctrines, and relevant previous research results. Secondary and tertiary literature was used to enrich the analysis and provide additional perspectives in understanding justice in intellectual property law. Researchers also accessed academic databases and international journals to obtain up-to-date and relevant data sources. After the data was collected, this study used qualitative data analysis techniques. This technique involves a systematic interpretation of legal regulations, doctrines, and concepts of justice discussed in legal theory and Derrida's deconstruction. The researcher will analyse Derrida's legal texts and philosophy by examining the logical structure and contradictions they contain. Through a deconstructive approach, this study aims to dismantle the assumptions underlying the concept of justice in IPR and expose the ambiguities or paradoxes inherent therein. The results of this analysis are then used to assess whether the current intellectual property legal system can create substantial justice or perpetuate structural injustice.

Result and Discussion

The Derrida's Deconstruction Theory as the Basis for the Concept of Justice in Intellectual Property Law

Jacques Derrida's deconstruction theory provides a critical philosophical lens through which justice in intellectual property law can be reassessed. Deconstruction challenges the stability of legal concepts, revealing inherent contradic-

tions and exposing the power structures embedded within legal discourse. Intellectual property law, traditionally built upon notions of ownership, exclusivity, and authorship, operates on binary distinctions such as original versus derivative,¹⁶ public versus private, and creator versus user. Derrida's approach compels a reexamination of these binaries by questioning their rigidity and uncovering the marginalised perspectives they obscure.¹⁷

In the context of justice, deconstruction does not seek to replace existing legal frameworks with alternative fixed structures but instead exposes the fluidity and instability of legal meanings. Intellectual property law is often justified as a means of balancing economic incentives with the public interest; however, deconstruction reveals how this balance is skewed in favour of dominant interests, often at the expense of marginalised communities, Indigenous knowledge holders, or those who lack access to legal mechanisms. By scrutinising the assumptions underlying intellectual property law, deconstruction offers a way to reimagine justice beyond rigid legal formalism, emphasising ethical responsibility and openness to difference.

One of the key insights that Derrida's deconstruction brings to intellectual property law is the reconsideration of authorship and originality. Intellectual property regimes largely depend on the concept of an individual, identifiable creator, reinforcing hierarchical legal structures that privilege certain forms of knowledge production while dismissing others. Derrida's notion of *aporia*—a logical impasse that emerges when foundational concepts collapse under their assumptions—complicates the presumed coherence of these binaries. For instance, copyright doctrine rests on the premise of a singular, original author, yet collaborative, cumulative, and cultural forms of creativity constantly undermine this notion of authorship.

The doctrine of "original work" thus sits at an aporetic threshold. It requires originality while functioning within a cultural ecosystem of repetition, influence, and co-creation. Deconstruction destabilises this notion by demonstrating that authorship is never entirely autonomous but always intertextual, shaped by prior influences and collective contributions. This challenges the conventional justice claims in intellectual property law, which often fail to account for the communal and iterative nature of creativity.¹⁸

The legal definition of originality is doctrinally vague. Courts frequently rely on minimal creativity standards (as seen in *Feist Publications v. Rural Telephone Service*

¹⁶ Adil S. Al-Busaidi et al., "Redefining Boundaries in Innovation and Knowledge Domains: Investigating the Impact of Generative Artificial Intelligence on Copyright and Intellectual Property Rights," *Journal of Innovation & Knowledge* 9, no. 4 (October 2024): 100630, <https://doi.org/10.1016/j.jik.2024.100630>.

¹⁷ Abdul Fattah, "Rethinking Jacques Derrida's Deconstruction and Its Relevance to the Study of Islam," *Uhumuna* 23, no. 1 (June 2019): 113–34, <https://doi.org/10.20414/ujs.v23i1.349>.

¹⁸ Hugo Keiper, Christoph Bode, and Richard J. Utz, *Nominalism and Literary Discourse* (BRILL, 1997), <https://doi.org/10.1163/9789004455009>.

Co. in U.S. law). Yet, such definitions are institutionally enforced as though they express universal, objective truth. Derrida's concept of iterability, the idea that any sign (including legal language) must be repeatable across different contexts, and in doing so, its meaning is always deferred—reveals the fragility of legal meaning in such doctrines. The repeated application of “originality” across vastly different creative works and jurisdictions fails to preserve fixed meaning, thus challenging the doctrinal stability IPL purports to maintain.

Institutionally, IPL structures, such as patent offices, courts, and treaties, operate under the assumption of linguistic clarity and categorical precision. However, Derrida's work demonstrates that such clarity is illusory. Take, for example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which defines IP protections in terms that assume universality, yet member states interpret and apply these standards within diverse cultural, economic, and legal traditions. This iterability causes semantic drift. What constitutes “invention”, “utility”, or “novelty” in one jurisdiction may not be recognised in another, thereby rendering the legal coherence of international IP norms inherently unstable.¹⁹

Derrida's insights also critically illuminate the *role of the state* in enforcing IPL. While legal texts such as Indonesia's Law No. 28 of 2014 on Copyright ostensibly function to empower creators, they also construct a normative hierarchy that privileges rights holders over users. The state's codification of exclusive rights becomes a site of institutional aporia—where the promise of justice (e.g., fair access to cultural materials) collapses under the weight of enforcement mechanisms that favour proprietary control. The justice envisioned in the preambles of IP legislation thus becomes inaccessible in practice, particularly for marginalised communities, indigenous knowledge holders, or public institutions like libraries and universities.

Furthermore, deconstruction invites us to reexamine the temporal structure of IPL. Copyright and patent protections are time-bound yet subject to extension and reinterpretation. These extensions, seen in repeated lobbying for copyright term prolongation, reveal how the legal notion of “limited monopoly” is iterated to the point of undermining its temporal justification. The legal deferral of works into the public domain reflects Derrida's insight that justice is always *à venir*—always promised, never fully delivered within legal time.

Finally, a deconstructive reading of access and exclusion in IP law reveals that legal boundaries are not merely protective but constitutive—they actively define who is included or excluded from the domain of legal recognition. For instance, “fair use” doctrines aim to mediate user access, but their ambiguity often leads to litigation in ways that disproportionately favour entities with greater

¹⁹ 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>.

legal resources. The fact that users must prove *their exception* within a law designed to enforce exclusivity reveals the aporetic condition of user rights: they are both legally permitted and institutionally precarious.

Derrida's deconstruction provides a valuable analytical tool for understanding the complexities of justice in intellectual property law. By challenging the fundamental assumptions underlying the law, deconstruction enables us to explore more deeply how justice is understood, applied, and often overlooked in this context. This approach reveals the uncertainties and tensions inherent in the intellectual property legal system, encouraging us to consider reforms that might bring the system closer to principles of justice that are more inclusive and responsive to the needs of the broader community.

The Implications of the Application of Derrida's Deconstruction Theory on the Interpretation and Implementation of Justice Aspects in Intellectual Property Law

Derrida's deconstruction theory attempts to deconstruct established meanings and concepts in human thought, including in the legal field. When applied to IPR, this theory challenges the fundamental principles underlying the understanding and application of justice in the legal system. Derrida believes that the meaning of a concept is always unstable, depends on its context, and always has hidden meanings.²⁰ In this context, the implications of deconstruction theory on the interpretation and implementation of the justice aspect of IPR raise fundamental questions about how IPR law functions and who benefits from this system.

The application of Derrida's deconstruction theory to intellectual property law necessitates a careful examination of how abstract philosophical concepts intersect with legal principles and contemporary challenges. Intellectual property law, designed to regulate the ownership and distribution of creative and innovative works, operates within a framework that privileges certain forms of authorship, originality, and economic interests. Deconstruction, by revealing the inherent instabilities in legal texts and concepts, sheds light on the implicit hierarchies and exclusions within this legal domain, challenging the assumptions that sustain current intellectual property structures.²¹

A critical area where deconstruction has significant implications is the legal definition of authorship and ownership. Traditional intellectual property regimes rely on the notion of an identifiable creator who possesses exclusive rights over an original work. However, Derrida's concept of *différance* suggests that meaning

²⁰ Natasha Constantin and Fitzgerald Kennedy Sitorus, "Dekonstruksi Makna Dan Bahasa Dalam Perspektif Jacques Derrida," *JKOMDIS: Jurnal Ilmu Komunikasi Dan Media Sosial* 3, no. 3 (December 2023): 795–801, <https://doi.org/10.47233/jkomdis.v3i3.1315>.

²¹ Ofonmbuk Esther Ekong, *The Role of Intellectual Property Rights as a Development Tool for Women Entrepreneurs in Third World Countries: The Case of the Cosmetics Sector in Nigeria* (University of Ottawa, 2023).

and, by extension, creative expression is never fixed but is instead continuously deferred and shaped by intertextual influences. This challenges the rigid classification of intellectual property rights by emphasising the collaborative and evolving nature of knowledge production.²² In practical terms, this requires a reassessment of legal mechanisms that overlook communal, indigenous, and open-source contributions, which frequently fall outside the traditional scope of protection.

Another important implication relates to the balance between private rights and the public domain. Intellectual property laws aim to incentivise innovation through exclusive rights; however, they also face criticism for disproportionately benefiting corporate interests while restricting access to knowledge and culture. Deconstruction exposes the contradictions within this balance, illustrating how legal discourse often frames intellectual property as a universal mechanism for justice while, in reality, reinforcing economic and geopolitical inequalities. This is evident in cases of pharmaceutical patents, where life-saving drugs remain inaccessible to vulnerable populations due to rigid intellectual property protections. A deconstructive approach highlights the need for more flexible and ethical interpretations of ownership that prioritise public welfare over rigid proprietary claims.²³

Additionally, Derrida's critique of binary oppositions such as public/private, original/derivative, and legal/illegal offers insights into contemporary challenges in intellectual property enforcement. Digital technologies and globalised creative industries have blurred these distinctions, making it increasingly difficult to apply conventional legal categories. The rise of remix culture, artificial intelligence-generated content, and blockchain-based intellectual property systems exemplifies how current legal frameworks struggle to accommodate new forms of creativity and ownership. Deconstruction necessitates an adaptable legal approach that acknowledges the fluidity of intellectual property and avoids overly rigid enforcement mechanisms that fail to capture the complexities of the digital age.

Thus, the practical relevance of deconstruction in intellectual property law lies in its ability to expose legal structures as contingent and historically situated rather than natural or absolute. By applying deconstructive analysis, legal scholars and policymakers can critically examine whether existing laws serve their intended purpose of fostering innovation and ensuring justice or whether they perpetuate exclusionary practices. This perspective does not call for the outright dismantling of intellectual property law. Instead, it advocates for a continuous reexamination and evolution of legal principles in response to shifting societal and technological landscapes.²⁴ In doing so, deconstruction offers a framework for more inclusive,

²² Joel Damon Gilberthorpe, *The Reste of Translation: Derrida and the Remains* (University of Technology Sydney, 2019).

²³ Al-Busaidi et al., "Redefining Boundaries in Innovation and Knowledge Domains: Investigating the Impact of Generative Artificial Intelligence on Copyright and Intellectual Property Rights."

²⁴ Mostafa Taherkhani and S. Mohamed Ghari. S. Fatemi, "Jacques Derrida and Deconstruction of Law," *Law Research Quarterly* 25, no. 100 (2023),

equitable, and ethically responsive intellectual property policies.

In intellectual property law, justice is usually seen as protecting creators or inventors from infringement of their exclusive rights to a work or innovation. IPR includes copyrights, patents, trademarks, and industrial designs, all of which give their owners exclusive rights to control the use and distribution of their creations.²⁵ Based on this perspective, justice is understood as giving appropriate credit to creators and inventors and efforts to prevent other parties from benefiting from the use of works without permission. However, by applying Derrida's theory of deconstruction, this concept of justice begins to be questioned. Deconstruction critiques the stability and objectivity of traditional ideas, including the concept of exclusive rights and ownership. Derrida would suggest that what is considered "justice" in IPR is a social and political construct that depends on the existing economic and power system. The IPR legal system, from this perspective, can be seen as perpetuating structural injustice, as it prioritises the interests of rights owners (generally large corporations or wealthy individuals) over the interests of the broader community, including access to knowledge, information, and technology.²⁶

One area where Derrida's theory of deconstruction can be significantly applied is in the copyright of art and music. In the IPR tradition, copyright protects the original expression of a particular creator, giving them exclusive rights to use the work. However, Derrida would question whether the notion of "originality" itself is truly tenable. In many cases, works of art and music are the result of interactions and influences between multiple artists and cultures. Deconstruction would view these works not as single creations that can be claimed by a single individual or entity but as texts that are constantly shaped and constructed within a broader historical, social, and cultural context. For example, Indonesian copyright law, regulated by Law Number 28 of 2014 concerning Copyright, provides exclusive protection for creators of original works of art, literature, music, and other works. However, in a deconstructive analysis, this originality could be considered illusory. Derrida might say that every work of art is a deconstruction of previous works, suggesting that the boundaries between originality and imitation are not as clear-cut as previously thought. Therefore, granting exclusive rights to an inventor can be questioned from a justice perspective. Is it fair to grant exclusive rights to one individual over a work that may have been primarily inspired by the work of others?

Patents are another key element of the intellectual property system, grant-

<https://doi.org/10.29252/JLR.2021.222358.1934>.

²⁵ Thamrin Arthata Hutajulu, "Konsepsi Public Domain Pada Pengaturan Hak Kekayaan Intelektual Di Indonesia," *Jurnal Darma Agung* 32, no. 1 (2024), <https://doi.org/http://dx.doi.org/10.46930/ojsuda.v32i1.4172>.

²⁶ Endang Sulistyowati, "Dekonstruksi Kemanusiaan Masyarakat Dalam Novel Galuh Hati Karya Randu Alamsyah," *Lentera: Jurnal Pendidikan* 14, no. 2 (November 2019): 42–52, <https://doi.org/10.33654/jpl.v14i2.845>.

ing inventors exclusive rights over the technological inventions they create. The patent system is based on the logic that granting these exclusive rights will encourage innovation,²⁷ as inventors will be rewarded for their efforts and have an incentive to continue research and development. However, Derrida would question this narrative.²⁸ From a deconstructive perspective, patents can be viewed as instruments that support certain economic powers, particularly multinational companies that possess the resources to monopolise patents on key technologies, such as those in the pharmaceutical sector. For example, Law Number 13 of 2016 concerning Patents in Indonesia grants inventors exclusive rights over their inventions for a specified period. This raises a complex dilemma of justice: while patents aim to encourage innovation, they also limit people's access to technologies or medicines that may be very necessary.²⁹

Derrida's theory of deconstruction highlights how the patent system often creates hierarchies and inequalities, where those with greater capital (usually large corporations) can control important patents, while the general public, especially in developing countries, lacks access to these innovations. These exclusive rights can be seen as legal constructs that support capitalist power structures, which in many ways contradict the idea of distributive justice that the legal system is supposed to strive for.³⁰ Derrida's notion of *aporia*—a conceptual impasse that arises from internal contradictions—illuminates the paradox of promoting public health while sustaining private monopolies. In contexts such as HIV/AIDS or COVID-19 treatment, patents hinder access to affordable medicine. TRIPS has been politically leveraged to sustain pharmaceutical monopolies at the expense of distributive justice.³¹

Moreover, Derrida's concept of iterability—the idea that meanings are never fully stable and always deferred—applies to how patent law operationalises terms like “novelty” or “usefulness”. These terms are iterated across jurisdictions, resulting in uneven application and selective recognition of knowledge. This disproportionately excludes traditional knowledge systems and low-capital inventors whose contributions are incompatible with Western legal definitions.³² In practice, this

²⁷ Fatima Muhammad Daoud, “The Role of Religion in Culture and Society,” *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 178–89.

²⁸ Stefan H. Pamolango, Merry Elisabeth Kalalo, and Feiby S Mewengkang, “Invensi Yang Dapat Diberi Paten Dan Invensi Yang Tidak Dapat Diberi Paten Berdasarkan Undang-Undang Nomor 13 Tahun 2016 Tentang Paten,” *Lex Privatum* 12, no. 1 (2023).

²⁹ Anggi Rahmadaniar, *Implementasi Perusahaan Multinasional Dalam Menunaikan Kewajiban Pajak Perspektif Undang-Undang Nomor 36 Tahun 2008 Tentang Pajak Penghasilan* (Jakarta: UIN Syarif Hidayatullah, 2018).

³⁰ Altiria, “Dekonstruksi Derrida Pada Kajian Linguistik Kognitif.”

³¹ 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>.

³² Guan Wenwei, *The Poverty of Intellectual Property Philosophy*. (Honkong: Hong Kong LJ 38, 2008), 359.

results in institutionalised exclusion, where multinational corporations secure protection for minor innovations. At the same time, entire communities are denied recognition for collective knowledge. Derrida's deconstructive reading exposes the law as a construct of hierarchical binaries—inventor/user, public/private, North/South—rather than a neutral arbiter of innovation. The privileging of inventors with capital and legal capacity underscores what Guan calls “the poverty of intellectual property philosophy”.

Some relief is offered under the TRIPS flexibilities. One of them is compulsory licensing—a mechanism that allows governments to authorise the use of patented inventions without the patent owner's consent during public health crises. However, as Derrida might suggest, these flexibilities themselves are aporetic: they offer an exception that acknowledges the failure of the rule without dismantling the structural injustice of the system itself.³³ In this light, deconstruction is not a call to abolish patent law entirely but rather to continually reexamine its moral and philosophical foundations. It asks: who does the law serve? Whose knowledge is protected? What forms of justice are silenced in the name of innovation? By applying Derrida's thought to patent law, scholars and policymakers are encouraged to envision a legal order that is more responsive to access, equity, and ethical responsibility—principles often marginalised by the logic of proprietary control.

The implementation of IPR laws in Indonesia, such as Law No. 19 of 2002 concerning Copyright, Patent, and Trademark Laws, has regulated various aspects of intellectual property protection. However, deconstruction opens up space to question whether this system is truly fair or instead prioritises a handful of parties that have the capital and resources to claim exclusive rights to critical knowledge and technology. The application of Derrida's theory of deconstruction in intellectual property law prompts a profound reflection on the concept of justice that underlies the system. Deconstruction challenges seemingly stable ideas, such as originality, exclusive rights, and intellectual property, by revealing the uncertainty and ambiguity inherent in these concepts. In the context of IPR, this raises questions about distributive justice, access to information and technology, and how the law should function to serve society more broadly rather than solely to protect the economic interests of those in power. Through deconstruction, the IPR system can be analysed as a social and political construct that must be continuously questioned and adjusted to become more inclusive and fair. The question is no longer simply about how to protect the interests of creators or companies but how to manage intellectual property rights in such a way that justice can be felt by all parties involved.

³³ Ikechi Mgbeoji, “Bio-Cultural Knowledge and the Challenges of Intellectual Property Rights Regimes for African Development,” *Dalhousie Law Journal* 35, no. 2 (2012): 397–423, <https://digitalcommons.schulichlaw.dal.ca/dlj/vol35/iss2/8/>.

Conclusion

This article has demonstrated that Jacques Derrida's theory of deconstruction offers a robust critical framework for interrogating the concept of justice within IPL. Rather than accepting legal binaries—such as owner/user, public/private, or original /derivative—as fixed categories, deconstruction reveals their interdependence and the structural exclusions they often mask. By destabilising these oppositions, deconstruction unveils how legal meanings are contingent, historically situated, and susceptible to ideological bias.

The normative implication of this analysis is clear: justice in IP law cannot be reduced to a fixed legal formula or resolved through doctrinal consistency alone. Instead, justice must be understood as an open-ended, evolving pursuit—one that resists closure and remains attentive to silenced perspectives and marginalised claims. Deconstruction invites legal scholars and lawmakers to move beyond rigid textualism and embrace a mode of interpretation that is ethically responsive, contextually grounded, and institutionally self-reflective.

This article contributes to legal scholarship by introducing deconstruction not merely as a philosophical critique but as a method of legal interpretation that exposes the epistemic and distributive limitations of current IP regimes. In particular, it challenges the presumed neutrality of concepts like originality and ownership that underpin copyright and patent systems, revealing their complicity in reinforcing economic hierarchies and cultural exclusions. From a policy perspective, a deconstructive approach does not advocate for the abolition of IP law but rather for its continuous reinterpretation and reform. Legal structures must remain flexible and inclusive, capable of responding to technological shifts, cultural plurality, and global inequalities. Reform efforts might include expanding fair use doctrines, redefining the scope of originality to include collective or iterative creativity, and prioritising access to essential knowledge—especially in the context of pharmaceutical patents and indigenous knowledge systems.

Ultimately, the article argues that justice within IP law, while perhaps never fully attainable, should remain a regulative ideal—one that demands ongoing critique, re-articulation, and ethical engagement. In this way, deconstruction serves not to devalue legal structures but to remind us that their legitimacy depends on their openness to revision and their responsiveness to those they too often exclude.

References

- Al-Busaidi, Adil S., Raghu Raman, Laurie Hughes, Mousa Ahmed Albashrawi, Tegwen Malik, Yogesh K. Dwivedi, Thuraiya Al- Alawi, et al. "Redefining Boundaries in Innovation and Knowledge Domains: Investigating the Impact of Generative Artificial Intelligence on Copyright and Intellectual Property Rights." *Journal of Innovation & Knowledge* 9, no. 4 (October 2024): 100630. <https://doi.org/10.1016/j.jik.2024.100630>.
- Altiria, Seradona. "Dekonstruksi Derrida Pada Kajian Linguistik Kognitif." *Prosiding Konferensi Linguistik Tabunan Atma Jaya (KOLITA)* 21, no. 21 (October 2023):

- 270–80. <https://doi.org/10.25170/kolita.21.4857>.
- Anisah, Inayatul. “Dekonstruksi Hukum Sebagai Strategi Pembangunan Hukum Di Indonesia Pasca Reformasi.” *De Jure: Jurnal Hukum Dan Syar’iah* 2, no. 1 (2010).
- Constantin, Natasha, and Fitzgerald Kennedy Sitorus. “Dekonstruksi Makna Dan Bahasa Dalam Perspektif Jacques Derrida.” *JKOMDIS: Jurnal Ilmu Komunikasi Dan Media Sosial* 3, no. 3 (December 2023): 795–801. <https://doi.org/10.47233/jkomdis.v3i3.1315>.
- Daoud, Fatima Muhammad. “The Role of Religion in Culture and Society.” *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 178–89.
- Dewi, Anak Agung Istri Ari Atu, Ni Ketut Supasti Dharmawan, Anak Agung Istri Eka Krisnayanti, Putu Aras Samsithawrati, and I. Gede Agus Kurniawan. “The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia.” *Srinwijaya Law Review* 6, no. 2 (2022): 268–85. <https://doi.org/10.28946/slrev.Vol6.Iss2.1885>.pp268-285.
- Ekong, Ofonmbuk Esther. *The Role of Intellectual Property Rights as a Development Tool for Women Entrepreneurs in Third World Countries: The Case of the Cosmetics Sector in Nigeria*. University of Ottawa, 2023.
- Fattah, Abdul. “Rethinking Jacques Derrida’s Deconstruction and Its Relevance to the Study of Islam.” *Ulumuna* 23, no. 1 (June 2019): 113–34. <https://doi.org/10.20414/ujs.v23i1.349>.
- Gilberthorpe, Joel Damon. *The Reste of Translation: Derrida and the Remains*. University of Technology Sydney, 2019.
- Hutajulu, Thamrin Arthata. “Konsepsi Public Domain Pada Pengaturan Hak Kekayaan Intelektual Di Indonesia.” *Jurnal Darma Agung* 32, no. 1 (2024). <https://doi.org/http://dx.doi.org/10.46930/ojsuda.v32i1.4172>.
- Imaniyati, Neni Sri. “Perlindungan Hki Sebagai Upaya Pemenuhan Hak Atas Iptek, Budaya Dan Seni.” *Jurnal Media Hukum* 17, no. 1 (2015). <https://doi.org/https://doi.org/10.18196/jmh.v17i1.374>.
- Kadir, M. Yakub Aiyub, Miftah Arifin, Fradhana Putra Disantara, Mac Thi Hoai Thuong, and Briggs Samuel Mawunyo Nutako. “The Reform of Consumer Protection Law: Comparison of Indonesia, Vietnam, and Ghana.” *Jurnal Suara Hukum* 6, no. 2 (2024): 255–78.
- Keiper, Hugo, Christoph Bode, and Richard J. Utz. *Nominalism and Literary Discourse*. BRILL, 1997. <https://doi.org/10.1163/9789004455009>.
- Koeswinamo. “Dekonstruksi Dan Representasi Kebudayaan Untuk Memahami Model Komunikasi Kaum Marginal.” *Jurnal Masyarakat Telematika Dan Informatika* 3, no. 1 (2012).
- Kurniawan, I Gede Agus, Fradhana Putra Disantara, Mac Thi Hoai Thuong, and Briggs Samuel Mawunyo Nutakor. “The Business Law in Contemporary Times: A Comparison of Indonesia, Vietnam, and Ghana.” *Substantive Justice International Journal of Law* 7, no. 2 (December 2024): 114–41.

<https://doi.org/10.56087/substantivejustice.v7i2.297>.

- Kurniawan, I Gede Agus, Putu Aras Samsithawrati, Ni Ketut Supasti Dharmawan, Fradhana Putra Disantara, and Ruetaitip Chansrakao. "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>.
- Kurniawan, I Gede Agus, Putu Aras Samsithawrati, Fradhana Putra Disantara, Mac Thi Hoai Thuong, and Briggs Samuel Mawunyo Nutakor. "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/https://doi.org/10.30996/jhbbc.v8i1.12382>.
- Mgbeoji, Ikechi. "Bio-Cultural Knowledge and the Challenges of Intellectual Property Rights Regimes for African Development." *Dalhousie Law Journal* 35, no. 2 (2012): 397–423. <https://digitalcommons.schulichlaw.dal.ca/dlj/vol35/iss2/8/>.
- Nizwana, Yulia, and Rahdiansyah Rahdiansyah. "Perlindungan Hak Kekayaan Intelektual (HaKI) Ditinjau Dari Epistimologi." *UIR Law Review* 3, no. 2 (March 2020): 34. [https://doi.org/10.25299/uirlrev.2019.vol3\(02\).4006](https://doi.org/10.25299/uirlrev.2019.vol3(02).4006).
- Pamolango, Stefan H., Merry Elisabeth Kalalo, and Feiby S Mewengkang. "Invensi Yang Dapat Diberi Paten Dan Invensi Yang Tidak Dapat Diberi Paten Berdasarkan Undang-Undang Nomor 13 Tahun 2016 Tentang Paten." *Lex Privatum* 12, no. 1 (2023).
- Raharja, Ivan Fauzani, and Retno Kusniati. "Analisis Model Pengaturan Hukum Hak Kekayaan Intelektual Pengetahuan Tradisional Masyarakat Adat." *Jurnal Ilmu Hukum Jambi* 3, no. 1 (2012).
- Rahmadaniar, Anggi. *Implementasi Perusahaan Multinasional Dalam Menunaikan Kewajiban Pajak Perspektif Undang-Undang Nomor 36 Tahun 2008 Tentang Pajak Penghasilan*. Jakarta: UIN Syarif Hidayatullah, 2018.
- Rizkia, Nanda Dwi, and Hardi Fardiansyah. *Hak Kekayaan Intelektual Suatu Pengantar*. Bandung: Widina Bhakti Persada Bandung, 2022.
- Rongiyati, Sulasi. "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional." *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 2011, 213–38.
- Roy, Alpana. "Intellectual Property Rights: A Western Tale." *Asia Pacific Law Review* 16, no. 2 (December 2008): 219–39. <https://doi.org/10.1080/10192557.2008.11788187>.
- Shoikhedbrod, Igor. *Revisiting Marx's Critique of Liberalism*. Marx, Engels, and Marxisms. Cham: Springer International Publishing, 2019. <https://doi.org/10.1007/978-3-030-30195-8>.
- Siregar, Mangihut. "Kritik Terhadap Teori Dekonstruksi Derrida." *Journal of Urban Sociology* 2, no. 1 (May 2019): 65. <https://doi.org/10.30742/jus.v2i1.611>.
- Sohail, Aftab, Nurhafilah Musa, and Mohamad Rizal Abd Rahman. "Justice,

- Governance, and Legal Stability: Functional Parallels and Philosophical Divergences in the Rule of Law across Islamic and Western Legal Traditions.” *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 297–321.
- Sulistiyowati, Endang. “Dekonstruksi Kemanusiaan Masyarakat Cempaka Dalam Novel Galuh Hati Karya Randu Alamsyah.” *Lentera: Jurnal Pendidikan* 14, no. 2 (November 2019): 42–52. <https://doi.org/10.33654/jpl.v14i2.845>.
- Taherkhani, Mostafa, and S. Mohamed Ghari. S. Fatemi. “Jacques Derrida and Deconstruction of Law.” *Law Research Quarterly* 25, no. 100 (2023). <https://doi.org/10.29252/JLR.2021.222358.1934>.
- Wenwei, Guan. *The Poverty of Intellectual Property Philosophy*. Honkong: Hong Kong LJ 38, 2008.



© 2025 by the authors. Publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/3.0/>).

[This page has intentionally left blank]