

Supporting Merdeka Belajar Curriculum: An Analysis of Open Educational Resources Policy and Academic Libraries' Contribution

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Notes

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ABSTRACT

In 2023, the Indonesian government launched the *Merdeka Belajar* (Freedom of Learning) curriculum to enhance the quality of education in the country. College libraries, as integral components of Indonesia's educational system, were called upon to support this initiative, particularly through the use of Open Educational Resources (OER). However, the development and implementation of OER encountered several challenges, including legal barriers. This study aimed to analyze the legal framework surrounding OER, with a particular focus on the Indonesian context. A mixed-methods approach was employed, involving the analysis of legal documents, policies, and relevant literature. The legal documents examined primarily included regulations pertaining to higher education, copyright laws, and licenses. The study found that the lack of specific regulation regarding OER in Indonesia created challenges in defining the applicable legal framework. Although OER practices align with copyright law, the absence of explicit regulation on open licenses places the legal basis on license agreements between creators or copyright holders and OER users. If the license agreement is valid, it becomes enforceable under the *pacta sunt servanda* principle. However, the study highlighted the need for comprehensive regulations to provide legal security and clarity for creators, copyright holders, and users of OER. It was recommended that the government issue more explicit legal regulations to support the creation, distribution, and use of OER, thereby providing a solid legal foundation for stakeholders, including lecturers, universities, and libraries.

Keywords: Academic libraries roles; open educational resources; open-access, copyright

1. INTRODUCTION

The idea and movement of Open Educational Resources (OER) have been known since around 2002, with the introduction of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the Forum on the Impact of Open Courseware for Higher Education in Developing Countries 2002 in Paris (Iswanto, 2021). Since then, various initiatives have emerged to develop and implement OER, including those within the scope of higher education libraries. Some university libraries in Indonesia that have participated in developing Open Educational Resources in higher education include the Syah Kuala University Library (<https://uilis.usk.ac.id/oer/>), and Airlangga University Library (<http://oer.unair.ac.id/>).

The concept of Open Educational Resources (OER) has long been recognized and continues to be implemented, yet its development faces significant challenges, particularly in Indonesia. These challenges include the complexity of producing educational materials, which demands not only mastery of the subject matter but also strong skills in effectively delivering the content. Additionally, technical barriers, such as the need for a robust digital platform capable of hosting OER materials and ensuring accessibility for learners, further hinder progress. Legal issues related to OER also remain a critical obstacle to the movement's full realization.

The *Merdeka Belajar* (Freedom to Learn) curriculum launched by the Minister of Education and Culture of the Republic of Indonesia, Nadim Makarim in 2023, can be a momentum to revive and reinvigorate the OER movement because the OER concept is very harmonious and will greatly support the implementation of the *Merdeka Belajar* curriculum launched by the government.

This paper will first focus on studying the legal aspects of OER, which is one of the obstacles faced in the development of OER, especially in Indonesia. After discussing the legal aspects of OER, the next section discusses the potential of open educational resources and university libraries in supporting the implementation of the *Merdeka Belajar* curriculum. In conducting this research, the author used a mixed-methods approach involving document, policy, and literature analysis.

Norris and colleagues' research recognizes the interplay between copyright law and OER. As a result, they argue that recognition of the contributions of the original creator of a work should be maintained, even if the work undergoes some changes as a result of OER (Norris et al., 2023). While OER and copyright law can co-exist, Nick Scharf explored the tension between copyright law and Creative Commons (CC). Nick found that CC, which symbolizes the value of sharing, is a counterpoint to copyright law, which tends to be subject to lobbying interests and profits for copyright-related industries (Scharf, 2017). From the literature review that has been conducted, this research identifies a gap related to the legal aspects of OER. The lack of strict rules regarding OER has impacted the lack of OER development in Indonesia. Even if it is to be developed, the rules need to be clarified so that the law can be used as a development tool (law as social engineering) for open educational resources in Indonesia.

2. RESULTS AND DISCUSSION

Legal Aspects of OER Production, Distribution, and Utilization in Higher Education

The only law that explicitly regulates OER can be found in Article 79, paragraph (4) of [Law Number 12/2012 on Higher Education, 2012](#). The article states that "The government develops open educational resources that can be utilized by the entire academic community." Unfortunately, there is no clear definition of OER in the regulation, and the explanation section

says only “quite clear.” Only 10 years later, [The Minister of Education, Culture, Research, and Technology Regulation Number 53/2023 on Quality Assurance of Higher Education, 2023](#) (hereinafter Permendikbudristek No. 53/2023) replicate term OER. However, what OER is, still not clearly stated.

Article 50 paragraphs (2), (3), and (4) of Permendikbudristek No. 53/2023 only state that open educational resources can be accessed by the academic community in accordance with their fields of expertise, and can be used jointly by several universities. In addition, its use can be linked to the curriculum. Apart from these rules, no other rules clearly regulate the OER. This means that an understanding of OER (especially the objects in OER and restrictions on use) must refer to existing practices, especially what comes abroad.

Referring to Wiley and Hilton that says “Open educational resources (OER) are free, open-licensed educational resources that users can retain, reuse, revise, remix, and redistribute for personalized needs” ([Wiley & Hilton, 2018](#)), the question of what are learning resources and how free and open the use of licenses is an important discussion in this research.

According to UNESCO, Open Educational Resources (OER) are learning, teaching, and research materials in any format and medium that reside in the public domain or are under copyright that has been released under an open license that permits no-cost access, reuse, purpose, adaptation, and redistribution by others ([Danver, 2016](#)). From this understanding, the object of OER is material used for learning, teaching, and research in any form and medium, as long as it is released in the public domain as an open license. The material in question is copyrighted work produced by the creator, held exclusively by the creator, copyright holder, or a third person (depending on whether there is a transfer of rights or not).

Because OER materials are copyrighted, they are subject to the applicable copyright law. In Indonesia, [Law Number 28 of 2014 on Copyright, 2014](#) (Copyright Law) is currently applied. According to Article 1, paragraph (1), copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing the restrictions in accordance with the provisions of laws and regulations. Article 16 (1) states that copyright is an intangible movable object. It is said to be a movable object because the nature of copyright can be transferred ownership of the legal subject of the creator to another party (as the copyright holder) and by law declared. It is also said to be intangible because it cannot be seen or touched by the naked eye. Even if the eye can see, the content of the object in question is not in the form of an object. Simply put, when a creator produces a sculpture, the creator automatically obtains two objects: the tangible statue and copyright on the intangible statue.

In order to understand OER objects as intangible moving objects, in this study, an example of OER objects is taken from OER at Indiana University of Pennsylvania (<https://libraryguides.lib.iup.edu/oer/examples>). Examples of OER include opencourseware, learning modules, open textbooks, streaming videos, open access journals, online tutorials, and digital learning objects. Some of these objects can be grouped into the following table.

Table 1. OER Objects

No	OER Object	Format	Medium	Form of Copyright
1	Opencourseware	Video: AVI, MP4, MOV	Electronic	Computer programme
2	Learning Moduls, Online Tutorials	Teks: Word, PPT	Video: Electronics,	Books,

	dan Digital Learning Objects		Teks: Electronic and physical (if printed)	Computer programme, speeches
	<ul style="list-style-type: none"> - Texts - Files - Web link - Discussion topics - Assignement - tests and quizzes - assessments 	Video: AVI, MP4, MOV		
3	Open Textbooks	Pdf	Electronic and physical (if printed)	Book
4	Streaming Videos	Video: AVI, MP4, MOV	Elektronic	Lecture, Speech, Song, Music, Drama, Dance, etc.
5	Open Access Journals	PDF	Lecture, Speech, Song, Music, Drama, Dance, etc.	Journal paper

From the table above, it can be concluded that OER can be in the form of writing (text), audio, and video (including those published on YouTube) (Agustine et al., 2023). All the OER objects are subject to Copyright Law. Other example can be found in OER of Syiah Kuala University. The user can use all sources there because it only provides any opened-licenses resources. As an example, all users can download a book "Domestic Courts and the Interpretation of International Law" by Odile Ammann there because those book an open access title distributed under the terms of the CC-BY-NC 4.0 License, which permits any non-commercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited (Ammann, 2020). By complying with the license, OER of Syiah Kuala University does not violate any copyright law.

In addition to the issue of the object of OER, the licensing of OER will certainly be related to several legal issues such as Intellectual Property, Copyright and Access Rights. Indonesia, like other countries, as a sovereign country, certainly has its own considerations regarding OER regulation, although it is recognized that best practices from other countries can be used as guidelines.

Before discussing open licenses, it is important to know what a license is. Several laws, such as the Copyright Law, Trademark Law, Patent Law, and Industrial Design Law, which are in the Intellectual Property Law regime, recognize the term license. For example, based on Article 1, paragraph (20) of the Copyright Law, a license is written permission granted by the Copyright Holder or the Owner of Related Rights to other parties to exercise economic rights over their Creation or Related Rights products under certain conditions. Referring to this definition, a license is written permission (cannot be oral) given to another party with conditions set by the licensor and licensee. Although licenses are often related to economic rights and royalties, libraries or archival institutions that have no commercial purpose can make 1 (one) copy of the Creation or part of the Creation without permission from the Creator or Copyright Holder (Article 47 of the Copyright Law).

If traced further, there is no term open license in the Copyright Law, Trademark Law, Patent Law, or Industrial Design Law. It is only in Permendikbudristek No. 53/2023 that the term open license is introduced. In Article 53, paragraph (3), and Article 59, universities maximize the use or adoption of open licenses and/or other mechanisms that are accessible to the public in disseminating research and community service results, especially those funded by the government. However, there is still no definition for the term open license in this rule.

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There are at least 5 (five) important principles of open licenses: 1) retain (can be downloaded), 2) reuse, 3) revise (can be changed), 4) remix (can be modified or mixed with other sources), and 5) redistribute (Fitriayu, 2020). Several popular search engines recognize open licenses, namely the Global Learning Objects Brokered Exchange (GLOBE) Alliance, Folksemantic, Open Courseware Consortium, and Creative Commons (CC). However, CC is currently considered the most popular. Therefore, a legal study will be conducted on the concept of open licenses in CC to provide an in-depth understanding of this research.

CC provides a legal mechanism for rights owners who share their work. There are at least 6 types of legal tools that can be used, namely: BY, BY-NC, BY-NC-ND, BY-NC-SA, BY-ND, and BY-SA. The explanation is as follows:

1) BY

For this type, users are allowed to:

- **Sharing** — copy and redistribute this material in any form or format; for any purpose, including commercial purposes.
- **Adaptation** — modify, alter, and create derivatives of this material for any purpose, including commercial purposes.

Note:

This license is arguably the foundation of all CC licenses and is the most "liberating" license. However, its use must still provide credit to the creator (licensor). Here, it seems that Norris and colleagues' proposal is in line with the terms of this license, in that the contribution of the origin author can still be recognized. In addition, it was necessary to state the changes after any change. This is necessary so that it can be determined which is the work of the original author and which is the work of the modifier.

2) BY-NC

For this type, users are allowed to:

- **Sharing** — copy and redistribute this material in any form or format;
- **Adaptation** — modify, alter, and create derivatives of this material.

Note:

NC stands for Non-Commercial. Therefore, BY-NC does not allow any commercial interests from using the rights granted by the licensor.

3) BY-NC-ND

For this type, users are only allowed to **Sharing** — copy and redistribute this material in any form or format.

Note:

ND stands for non-Derivatives. Thus, it is not permitted for users to modify, alter and create derivatives of the licensor's work for any reason.

4) BY-NC-SA

For this type, users are allowed to:

- **Sharing** — copy and redistribute this material in any form or format;
- **Adaptation** — modify, alter, and create derivatives of this material.

Note:

SA stands for Share-Alike. There is a similarity between the rights granted by the licensor to the user between the BY-NC-SA and BY-NC license types, but the difference is that if the user modifies, alters, or creates a derivative of the licensor's work, the user must distribute the user's contribution under the same license as the original work.

5) BY-ND

For this type, users are only allowed to **Sharing** — copy and redistribute this material in any form or format; for any purpose, including commercial purposes.

Note:

Unlike BY-NC-ND, the BY-ND license type allows sharing rights for users for any reason including commercial interests. Consequently, users can gain economic benefits from the sharing without having to pay royalties to the licensor.

6) BY-SA

For this type, users are allowed to:

- **Sharing** — copy and redistribute this material in any form or format; for any purpose, including commercial purposes.
- **Adaptation** — modify, alter, and create derivatives of this material for any purpose, including commercial purposes.

Note:

Unlike the BY license, under the BY-SA license if the user modifies, alters, or creates a derivative of the licensor's work, the user must distribute the user's contribution under the same license as the original work.

When examining the clauses in each type of license in the CC (legal code), there is a standard agreement. It is said to be a standard agreement because there are a series of standard clauses used by creators and rights holders to disseminate their original creations to users. The standardized agreement is "take it or leave it", where if the user does not agree, there is no obligation and therefore the user is not allowed to use the materials in the OER. On the other hand, when the creator or rights holder agrees to upload learning materials to the public domain and requires one or more clauses in certain types of licenses in CC and users also state their agreement with the terms of each type of license, an agreement automatically

occurs because the conditions for the validity of the agreement according to Article 1320 of the Civil Code have been fulfilled, namely agreement (in the digital world, it is usually marked by checking the terms and conditions), capable (in the digital world, there is usually an age limit for using electronic media), a specific object (OER object as the object of the agreement), and a halal cause (that this agreement is made without violating applicable laws and regulations). The strength of the agreement made legally by the parties applies as a law to the creator/copyright holder and user (Yunanto, 2019).

The Role of Open Educational Resources in Supporting Merdeka Belajar Curriculum

Merdeka Belajar (Freedom to Learn) curriculum was compiled and launched with the spirit to improve the quality of education in Indonesia, expanding access and provision of education for all levels of society, and also to prepare Indonesia's young generation to be able to adapt and face challenges in an ever-evolving world (Vhalery et al., 2022). The presence of Open Educational Resources (OER) will significantly contribute to realizing the objectives of the *Merdeka Belajar* curriculum, which was recently introduced by the Indonesian government.

The implementation and development of OER has many benefits for the implementation of the *Merdeka Belajar* curriculum. First, the use of OER in higher education will greatly help students and parents to reduce the cost of purchasing textbooks (Harliansyah, 2020). Open Educational Resources (OER) will expand access to learning opportunities for students from diverse economic backgrounds and regions across Indonesia, including those in remote areas. Traditionally, the cost of essential educational materials, such as textbooks, has posed a significant barrier for students, particularly those from underprivileged families. Furthermore, Indonesia's vast geography, comprising thousands of islands, presents logistical challenges for the distribution of printed textbooks. By contrast, digital educational resources accessible via the Internet offer a promising solution to address both the financial burden of textbooks and the difficulties associated with their distribution.

Secondly, the nationwide development and promotion of Open Educational Resources (OER) through government policies can significantly alleviate the financial burden of education for both the government and learners. Since OER are freely accessible and available to anyone, they offer a cost-effective alternative to traditional educational materials. By adopting OER, the expenses related to the production and distribution of educational resources can be considerably reduced. The government has already demonstrated this by coordinating the creation and dissemination of educational materials on a national scale in the form of open resources.

Thirdly, several studies have been conducted, including by Colvard & Watson (2018) involving more than 21,822 students, and also research by Fischer et al., (2015) on the impact of using teaching materials derived from OER found that there was an increase in the learning achievement of students who used OER materials, as well as reducing the failure rate of students in their studies or in completing the courses taken. This is partly because easy access to OER learning materials makes students more interested in the subject matter presented.

Fourthly, the implementation of OER is also very supportive of improving the quality of learning materials, where educators can collaborate with each other to create better teaching materials and enable learners to be more effective in mastering learning materials. In addition, OER authors and developers can exchange experiences on how they can create creative and

innovative learning materials, which can further encourage the creation of other quality learning materials (Colvard & Watson, 2018).

Fifthly, the development of OER allows for more flexible adjustments and curriculum development. OER is generally in a digital form that allows it to be easily edited or revised if errors are found or for necessary additions to be made to further improve the quality of the learning material. OER with high flexibility will be very useful for the development of learning materials. In this way, the learning materials delivered to students can be kept up to date. Moreover, OER authors and developers have the opportunity to share experiences and best practices, fostering creativity and innovation in the creation of educational content. This collaborative exchange further contributes to the development of high-quality learning materials (Harliansyah, 2020; Iswanto, 2021).

The Role of Libraries in Developing Open Educational Resources to Support the Merdeka Belajar Curriculum

Given the benefits of Open Educational Resources (OER) and the legal challenges they entail, academic libraries can play a crucial role in supporting the development of OER through several initiatives:

Firstly, libraries can serve as repositories of legal resources related to OER by providing access to copyright laws, open license guidelines, and other relevant legal documents. These resources enable lecturers, researchers, and students to gain a deeper understanding of the legal dimensions of OER. Additionally, libraries can facilitate academic stakeholders in comprehending various types of open licenses, empowering them to effectively select and utilize appropriate resources.

Secondly, libraries can organize training sessions on legal aspects of OER for lecturers and students in higher education. By collaborating with legal experts, libraries can develop comprehensive guidelines that align with applicable legal frameworks for the use and creation of OER. This ensures that the academic community is equipped to produce and implement OER responsibly, avoiding potential violations of legal regulations.

Thirdly, the library can build an OER collection by applying the principles of curation, so that the OER collection is truly a quality and legitimate collection. In building the OER collection, the library can first collect OER learning materials from lecturers at the university. With the collection of OER materials from lecturers, it will also have a good impact on the image of the university, where then in addition to internal campus students, students from outside the campus, or even the wider community can access and utilise OER works from lecturers (Harliansyah, 2020).

Fourthly, the library can collaborate with the teaching staff and other lecturers to promote the use of open educational resources (OER) in the classroom. There will be an increase in the use of open educational resources (OER) as a result of professors incorporating OER into their classes and also encouraging students enrolled in those lecturers' classes to utilise OER. An increase in the use of open educational resources (OER) will give lecturers with a stronger incentive to also create OER (Reed & Jahre, 2019).

Fifthly, in addition to encouraging wider use within the university to utilise OER more, the Library can also provide assistance/services for lecturers who want to create their own OER materials, but encounter obstacles. Sometimes there are lecturers who have problems with

technical skills such as video shooting, or knowledge of the legal aspects of OER. The library can provide personalised services for these lecturers.

3. CONCLUSION

This research concludes that the absence of specific regulations regarding OER in Indonesia complicates the determination of an appropriate legal framework. While OER practices often intersect with copyright law, the lack of explicit recognition of open licenses leaves the legal foundation reliant on license agreements between creators or copyright holders and users. Such agreements, governed by the *pacta sunt servanda* principle, are enforceable as binding contracts. However, the establishment of clear and comprehensive government regulations is crucial to ensuring legal certainty and providing security for creators, copyright holders, and OER users.

To foster OER development in Indonesia, the government should introduce explicit legal frameworks to support the production, storage, and distribution of OER. These regulations would provide a robust foundation for stakeholders, including educators, universities, and libraries, to actively engage in OER initiatives. Despite current legal challenges, academic libraries can play a pivotal role in advancing OER by promoting its development, dissemination, and utilization. Libraries can also support the implementation of the *Merdeka Belajar* curriculum by educating stakeholders on the legal dimensions of OER. By enhancing awareness and understanding among lecturers and related parties, libraries can enable the production and use of OER materials in compliance with existing laws and regulations.

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