

Tackling Intellectual Property Rights Infringements in E-Commerce Through Digital Non-Formal Community-Based Education

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ABSTRACT

E-commerce is growing rapidly in Indonesia, but various intellectual property rights infringements still occur. The Indonesian E-Commerce Association (idEA) has mechanisms to report intellectual property infringements or enter into agreements with merchants regarding intellectual property infringements, but apparently, these are insufficient. Tackling intellectual property rights infringements in e-commerce can be done through intellectual property rights education in the form of digital non-formal community-based education. In Law Number 20 of 2003 concerning the National Education System and Government Regulation Number 17 of 2010 concerning Management and Implementation of Education, there is a regulation on distance education using information and communication technology. However, there are no regulations regarding the use of digital technology in implementing non-formal community-based education. Therefore, to have legal certainty, the use of digital technology in non-formal community-based education needs to be regulated clearly and firmly through government regulations that implement Law Number 20 of 2003.

Keywords: e-commerce; intellectual property rights infringements; digital technology, non-formal community-based education.

1. INTRODUCTION

E-Commerce (Electronic Commerce) is the electronic system of purchasing, selling, and marketing goods and services [1]. E-commerce deals with transactions where orders are made electronically, payments and deliveries can be made offline or online [2]. The Indonesian Society Against Counterfeiting (MIAP) survey shows that the economic loss due to counterfeiting products in 2005 reached Rp.4.41 trillion, while in 2014, it reached Rp.65.1 trillion [3]. These infringements show that many e-commerce business actors still do not comply with intellectual property rights regulations.

The illustration below depicts the nominal value of e-commerce transactions in Indonesia released by Bank Indonesia in January 2021. In 2017 the transaction value was 42.2 trillion rupiah, then from year to year, the transaction value increased, and in 2020, the value of e-commerce transactions in Indonesia reached 266.3 trillion rupiah [4]. Seeing this trend, and seeing the digital lifestyle of Indonesian people, also the conditions of the

Covid-19 pandemic that are still ongoing in Indonesia, the value of e-commerce transactions for 2021 and the following years will continue to increase.

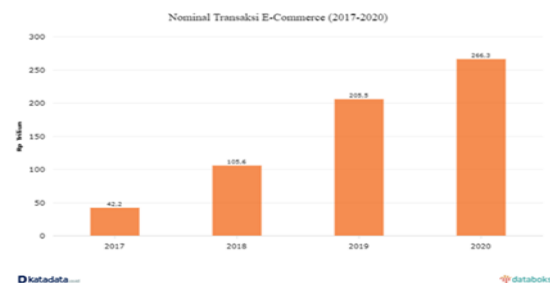


Figure 1 Nominal E-Commerce Transactions in Indonesia for the period 2017 to 2020.

Chairman of the Indonesian Society Against Counterfeiting (MIAP), Justisiari P. Kusumah, reminded the presence of counterfeit or illegal goods through electronic commerce (e-commerce) must be immediately anticipated to avoid economic losses [3, Dirgantara]. The Directorate General of Intellectual Property Rights

(DGIP) of the Ministry of Law-Human Rights through the Directorate of Investigation and Dispute Resolution has closed hundreds of problematic e-commerce portals that harm trademark owners to end-users or consumers [5]. In addition, the Indonesian E-Commerce Association (idEA) has promised to close rogue online shops that are hotbeds for the circulation of counterfeit products [6]. Currently, idEA has mechanisms to report intellectual property infringement or enter into an agreement with merchants regarding intellectual property infringements, but apparently, these are not sufficient.

Seeing the value of losses in e-commerce due to violations of intellectual property rights in the form of counterfeit branded goods, which in 2014 alone had reached 65.1 trillion rupiah, as well as the increasing value of e-commerce transactions which in 2020 reached 266.3 trillion rupiah, and also the firm stance of idEA, MIAP, and DGIP, it is very important to make efforts to overcome intellectual property rights infringements in e-commerce from an educational perspective through regulations related to the national education system which is regulated in Law Number 20 of 2003 concerning the National Education System and its implementing regulation in the form of Government Regulation Number 17 of 2010 concerning Management and Implementation of Education (Government Regulation Number 17 of 2010).

In Law Number 20 of 2003 and Government Regulation Number 17 of 2010, educational activities can be used as tools to overcome intellectual property rights violations in e-commerce. This education is called community-based education, which in Article 1, Number 16 of [7] and Article 1, Number 38 [8] is defined as education based on the uniqueness of religion, social, culture, aspirations, and community potential as a form of education from, by, and for the community [7] [8].

Community-based education in the form of intellectual property rights education for merchants in e-commerce can be held through a non-formal education path which is indeed organized for the community whose function is as an addition and/or complement to formal education, with the emphasis on mastery of knowledge, functional skills, attitude, and professional personality, which in this matter is regarding intellectual property rights law. However, to reach e-commerce merchants in various places simultaneously, non-formal education in the form of community-based education needs to be held using digital technology. Therefore, it is important to review the regulations on non-formal community-based education in Law Number 20 of 2003 and Government Regulation Number 17 of 2010 with the aim that non-formal community-based education, in the context of intellectual property rights education for e-commerce merchants, can be implemented by using digital technology.

The uniqueness of this paper compared to other papers is in terms of looking at the regulations of using digital technology in non-formal community-based education for e-commerce merchants related to intellectual property rights education, aiming at tackling intellectual property rights infringements by merchants in e-commerce.

2. RESEARCH METHOD

This research is conducted using a juridical method by analyzing secondary data consisting of Law No. 20 of 2003, Government Regulation No. 17 of 2010, various books, scientific journals, and articles. The secondary data concerning the problems in this research is the non-formal community-based education regulations in the Indonesian national education system associated with the use of digital technology. The data is then analyzed qualitatively to produce findings that are discussed in-depth and thoroughly. Then the discussions carried out led to logical conclusions so that the authors could provide suggestions from a regulatory point of view to provide legal certainty.

3. FINDINGS AND DISCUSSION

Community-based education is a mechanism that provides opportunities for everyone to enrich science and technology through lifelong learning. The emergence of a community-based education paradigm was triggered by the large current of modernization, which requires democratization in all dimensions of human life, including in education [9]. Education by the community means that the community is placed as the subject/ actor of education, not the object of education. In this context, the community is required to have an active role and participation in every educational program [9].

Toto Suharto said that community-based education is an education in which the community determines most educational decisions, starting from issues of input, process, and output of education to funding issues [10]. Therefore, education is called community-based if the responsibility for education from planning to assessment rests with the community. Here the term "community based" actually refers to the degree of community ownership [11]. Therefore, if the community has the authority in making educational decisions related to determining educational goals, curriculum, funding, and so on, then education is truly community-based [11].

Non-formal community-based education has been regulated in Law Number 20 of 2003 and Government Regulation Number 17 of 2010. In the explanation section of Law Number 20 of 2003, it is explained that the rapid development of technology has resulted in the need for reform of the Indonesian education system. Then regulations were made to implement education using

distance education technology—Article 1, number 15 [7] jo. Article 1, number 37 [8] defines distance education as education in which students are separated from educators where the implementation of learning uses various learning resources through communication technology, information, and other media [7] [8].

This discussion is carried out to find the link between the non-formal community-based education regulations and the distance education regulations. Therefore the discussion is divided into two parts. First is the regulation of non-formal community-based education, and the second is non-formal community-based education related to distance education regulations. The discussion is carried out using the principle of legal certainty proposed by Gustav Radbruch, who said that certainty refers to the guarantee that the law (which contains justice and norms that promote goodness) functions as a rule that is obeyed [12]. Therefore, the law is tasked with creating legal certainty because it aims to create order in society [13].

3.1. Regulations of Non-Formal Community-Based Education

In the definition of community-based education contained in Article 1, Number 16 [7] and Article 1, Number 38 [8], community-based education is said to be based on the uniqueness of religion, social, culture, aspirations, and community potential as a form of education from, by, and for the community. Therefore, the community can participate in implementing education through community-based education (Article 186 of [8]).

The function of the community in education is to improve access, quality, competitiveness, relevance, governance, and accountability for the management and administration of education (Article 187 of [8]). Community participation in the implementation of education includes individuals, groups, families, professional organizations, entrepreneurs, and community organizations in the implementation and control of the quality of education services (Article 183, para 1 of [8]).

Based on the two paragraphs above and related to the topic, community-based education can be held based on the aspirations and potential of the community. In this case, the organizer is a professional organization of entrepreneurs, an association of the Indonesian e-commerce Association (idEA). The function of the implementation is to improve the access, quality, and competitiveness of merchants in Indonesian e-commerce.

The implementation of community-based education is carried out in order to develop and implement a curriculum and evaluation of education as well as management and funding under national education standards (Article 55, para (2) of [7]). The article shows

that several things are carried out by the community (organizers) of community-based education: curriculum, education evaluation, management, funding, and national education standards.

It is regulated that community-based education curriculum meets the national education standards (Article 190, para (1) of [8]). National education standards are the minimum criteria concerning the education system in all jurisdictions of the Republic of Indonesia (Article 1, Number 17 of [7] jo. Article 1, Number 25 of [8]), whose scope consists of content standards, processes, competency of graduates, education staff, facilities and infrastructure, management, financing, and educational assessment which must be improved on a planned and regular basis (Article 35 of [7]). Regarding the content standards, what is taught is intellectual property rights and the regulation of intellectual property rights in Indonesia related to e-commerce. The expected graduate competence is that all merchants in e-commerce have knowledge of intellectual property rights and can implement it.

Next, there are also evaluation activities carried out in the context of controlling the quality of education nationally as a form of accountability of education providers to interested parties. The evaluation is carried out on students, institutions, and non-formal pathway education programs, for all levels, units, and types of education (Article 57 of [7]). The government and local governments evaluate the management, units, pathways, levels, and types of education. Communities and/or professional organizations can also form independent institutions to conduct evaluations (Article 59 of [7]). Related to the evaluation, the author argues that evaluation has something to do with coordination. Providing non-formal community-based education by idEA is sufficient to coordinate with the Directorate General of Intellectual Property, Ministry of Law, and Human Rights as the government representative.

Regarding community-based education funding. Funds for the implementation of community-based education can come from the organizers, the community, the central government, regional governments and/or other sources that do not conflict with the applicable laws and regulations (Article 55, para 3 of [7]). Furthermore, community-based educational institutions can obtain technical assistance, subsidy funds, and other resources in a fair and equitable manner from the central government and/or local governments (Article 55, para 4 of [7]). Based on these provisions, according to the authors, community-based education funds organized by idEA should come from idEA itself, which is obtained from contributions from all members, so that it is efficient and easy to account for.

Furthermore, the community has the right to provide non-formal community-based education following the uniqueness of religion, social environment, and culture for the benefit of the community (Article 55, para (1) of [7] jo. Article 189, para (2) of [8]). Non-formal education is an educational path outside formal education that can be carried out in a structured and tiered manner (Article 1, number 12 of [7] jo. Article 1, Number 31 of [8]), which organized based on the principle of, by, and for the community (Article 102, para 3 of [8]).

Non-formal education is organized for community members who need educational services that function as substitutes, additions, and/or complements to formal education in order to support lifelong education (Article 26, para 1 of [7] jo. Article 102, para 1 (a) of [8]), and also serves to develop the potential of students with emphasis on the mastery of knowledge and functional skills as well as the development of professional attitudes and personality (Article 26, para 2 [7] jo. Article 102, para 1 (b) [8]).

Non-formal education includes life skills education that provides intellectual skills for independent business (Article 26, para 3 [7] jo. Article 100, para 3 (a) [8]). In addition, non-formal education units consist of education units at every level and type of education (Article 26, verse 4 jo. Article 1, Number 10 [7]).

Based on the paragraph above, non-formal community-based education for e-commerce merchants organized by idEA serves as an addition and/or complement to intellectual property rights education in the formal pathway in order to support lifelong education and also to develop the potential of e-commerce merchants with an emphasis on mastery of knowledge, development of professional attitudes and personality related to intellectual property rights.

Concerning the establishment of a non-formal community-based education unit, if it is established without permission from the government or regional government, then there are criminal sanctions of a maximum imprisonment of ten years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) (Article 71 [7]). Therefore, in establishing a non-formal community-based education unit, it is required to obtain an establishment permit from the central government or the local or regional government. However, according to the author, the opinion is that in the case of non-formal community-based education, in the form of intellectual property rights education organized by the entrepreneur's professional organization, namely idEA, the permit is sufficient to be granted by DGIP as a government representative. Hopefully, this can be regulated in the future.

Supervision of the management and implementation of non-formal education falls to the local district/city government (Article 200, para 5 [8]). Supervision of the management and implementation of education includes administrative and technical supervision of education which is carried out according to the provisions of the legislation (Article 200, para 5 [8]). Regarding these provisions, the authors believe that the supervision of intellectual property rights education organized by idEA is sufficient to be carried out by DGIP as a government representative.

In order to make the discussion easier to understand, the author makes points of non-formal community-based education schemes in the context of community-based intellectual property rights education for e-commerce merchants that can be organized by idEA, as can be seen below:

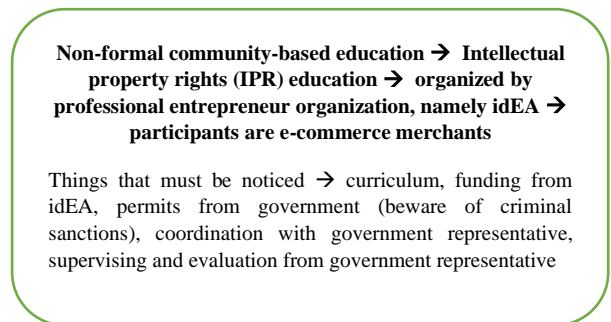


Figure 2 Schemes of non-formal community-based IPR education organized by idEA for e-commerce merchants

Although the regulation of community-based non-formal education in Law No. 20 of 2003 and Government Regulation No. 17 of 2010 is sufficient, it is confusing to read because many aspects must be fulfilled and the location of articles that seem scattered even though they are interrelated with each other. However, the norms contained in these articles are sufficient to provide clarity and legal certainty for implementing non-formal community-based education.

3.2. Community-Based Education Related to The Regulations of Distance Education

The development of Information and Communication Technology (ICT) aims to improve the community's welfare [14]. Technology-based education is an educational system where the teaching and learning process utilizes information and communication technology facilities. In this system, the interaction between teachers and students does not have to face each other (meet) physically as in conventional learning systems, but they meet in the information technology (internet) space by utilizing a medium called a computer [14].

In the Indonesian national education system, there is distance education, where students are separated from educators, and their learning uses various learning resources through communication technology, information, and other media. Distance education is held at the path, level, and type of education (Article 31, para 1 [7] jo. Article 119, para 1 [8]), which functions to provide educational services to groups of people who are unable to attend face-to-face or regular education (Article 31, para 2 [7]) and aims to increase the expansion and distribution of access to education, as well as to improve the quality and relevance of education (Article 118, para 1 [8]). Based on this, distance education can be carried out in the non-formal education pathway, including community-based education.

Distance education has the characteristics of being open, independent learning, complete learning, using educational information and communication technology, and/or using other educational technologies (Article 118, para 2 [8]). Each of these characteristics has its description, which is set out below. What is meant by "open characteristics" is an organized education system with flexibility in choice and time to complete the program. Learners can learn on the job or take different, integrated, and continuous educational programs through face-to-face or distance learning. What is meant by "independent learning" is the learning process carried out by students individually or in groups by utilizing various learning resources and receiving assistance or tutoring or tutorials as needed. What is meant by "complete learning" is the process of learning to achieve mastery of competence (mastery level) under the demands of the curriculum. Students can reach the required competency mastery level at different speeds. The learning process takes place gradually and continuously. For example, a new student can take the next learning activity if he/she has mastered the required competencies in previous learning activities (Explanation of Article 118, para 2 [8]).

Distance education is held in various forms, modes, and coverage supported by learning facilities and services and a guaranteed assessment system quality of graduates following national education standards (Article 31, para 3 [7]). The national education standards are implemented using a. learning mode (the conceptual and operational frameworks used to organize learning) in which students and their educators are separated, b. emphasizes the principles of independent, structured, and guided learning using various learning resources, c. making learning media a more dominant source of learning than educators, d. replaces face-to-face learning with information and communication technology-based learning interactions, although it still allows for limited face-to-face learning (Article 119, para 2 [8]).

The provision of distance education is compulsory under the national education standards in Indonesia; lest a criminal sanction may be imposed, namely imprisonment for a maximum of ten years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) (Article 67, para 4 [7]). Thus, distance education providers are obliged to follow the form, mode, and scope, which are supported by learning facilities and services and an assessment system following national education standards.

Furthermore, forms of distance education include written (correspondence), radio, audio/video, TV, and/or computer network-based educational programs. The mode of delivery of distance education includes single-mode or simultaneously with face to face (dual-mode). The scope of distance education can be in the form of subject/course-based programs and/or field-based education programs (Explanation of Article 31, para 3 [7]). Based on these provisions, the authors then relate it to non-formal community-based intellectual property rights education for e-commerce merchants and found the suitable form of distance education is a network-based computer program. Then the suitable implementation mode is in the form of a single-mode because, in the learning process, there is no need to face to face directly. Therefore, its scope is a field-based education program regarding intellectual property rights.

Administrators of distance education units are required to develop management systems and learning systems based on information and communication technology (Article 122, para 1 [8]). The information and communication technology-based management system include at least a. program planning and budget, b. financial administration, c. academic administration, d. student administration, and e. personnel administration (Article 122, para 2 [8]).

Article 122, para 3 and 4 [8] regulates the basis for information and communication technology at the basic, secondary, and higher education levels. Then Article 123 and Article 124 [8] regulate quality assurance at the basic, secondary, and higher education levels. Finally, article 125 [8] regulates the intermediary medium for the provision of distance education on an informal pathway, namely through television and radio, films and videos, internet sites, printed media, cellular phones, and other forms under the provisions of the legislation.

From the various articles above, it can be seen that distance education can indeed be held in the form of non-formal community-based education. However, in the section that regulates distance education, there are no norms for regulating distance education through non-formal pathways, so there is no legal basis for the use of digital technology in distance education to implement non-formal community-based education.

Based on these conditions, the author visualizes it as follows:

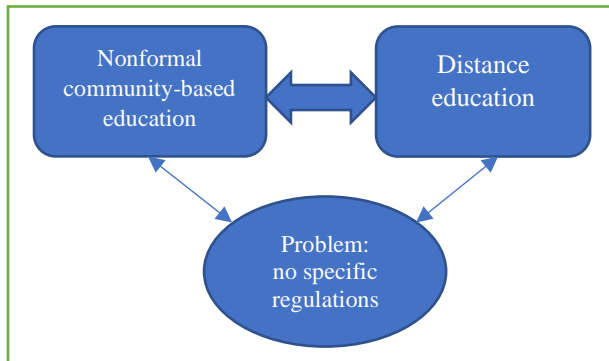


Figure 3 Relations Between Non-Formal Community-Based Education and Distance Education and its Problems.

4. CONCLUSION

Based on the findings and discussions above, the authors conclude that although Law Number 20 of 2003 and Government Regulation Number 17 of 2010 has regulated the use of technology in distance education related to non-formal community-based education, the implementing regulations do not specifically regulate the use of digital technology in distance education and the medium that can be used.

Therefore, for idEA to provide intellectual property rights education for e-commerce merchants, in the sense of non-formal community-based education, it is necessary to regulate the use of digital technology in non-formal distance education. The regulation can be in the form of a government regulation that implements Law Number 20 of 2003. This needs to be done to provide a legal basis and clarity for all stakeholders, especially idEA, e-commerce traders, and DGIP, in the use of digital technology for non-formal community-based education, thereby achieving legal certainty.

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