

“
Empowering World
Optimism and
Revitalization
through Scientific
Framework”



PROCEEDING

UNIKOM International Conference on Business,
Economics, Social Sciences & Humanities (ICOBEST) 2022

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Assalamualaikum waarahmatullah wabarakatuh

Good morning

To our distinguished guests, colleagues, and researchers. I am pleased and honored to welcome you to ICOBEST 2022. This year is the fifth edition of the International Conference on Business, Economics, Social Sciences, and Humanities (ICOBEST 2022).

I would like to take this opportunity to extend a warm welcome to the Rector of UNIKOM, Prof. Dr. Ir. H. Eddy Soeryanto Soegoto, MT, and all of the top management of UNIKOM, distinguished guests, our honorable keynote speakers, and all bright presenters and participants for joining ICOBEST 2022. I would also like to extend my appreciation to the organizing committee for their tremendous contributions to the conference's success.

We decided to choose "Empowering World Optimism and Revitalization via Scientific Framework" as the theme for this year's conference. We expect that this conference will provide you with the opportunity to share your findings with a worldwide research community and engage in discussions regarding issues related to research and/or practice in the fields of Business, Economics, Social Sciences, and Humanities. The conference agenda will feature a variety of presenting formats, including keynote speakers and oral presentations. In addition, the best papers will have the opportunity to be published in an international journal indexed by Scopus. Our warmest appreciation goes to all the participants who submitted their papers.

In closing, I encourage the delegates to actively participate in today's interesting discussions. We sincerely hope that this international conference can become a platform for researchers and academics to present their best research results and become a bridge for practitioners in the fields of Business, Economics, Social Sciences, and Humanities. I wish everyone a successful and fruitful conference.

Thank you,

Chief of the conference

Dr. Poni Sukaesih Kurniati, S.IP, M.Si.

PROCEEDING BOOK

**The 5th International Conference
on Business, Economics, Social Sciences, and Humanities 2022**

Empowering World Optimism and Revitalization

Through Scientific Framework

Bandung, 30th – 31st May 2022



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Empowering World Optimism and Revitalization

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TABLE OF CONTENTS

No	Title / Authors	Link
1	GenBust's behavior in the Use of Information Technology and the Utilization of Digital Markets as Consumers to make Purchasing Decisions Rahma Wahdiniwaty , Neng Susi SS	https://icobest.unikom.ac.id/submission/proceeding/download/243
2	Digital Business Opportunities in Education Services from The Use of Information Technology in the Endemy of Covid 19 Neng Susi SS, Tjang Kian Liong, Deden Sofyan Hamdani , Tuti Sulastri, Tengku Ine H	https://icobest.unikom.ac.id/submission/proceeding/download/244
3	The Effect of the Use of Electronic Commerce and User Work Effectiveness on Business Performance in Publishing Businesses in Bandung Regency Muhammad Iffan, Prisca Wulyati Suhendar	https://icobest.unikom.ac.id/submission/proceeding/download/245
4	Attention, Interest, Search, Action, and Share Method as a Sales Promotion Strategy for Indonesian Public Figure Food Products through Creative Advertising Dewi Isma Aryani, Riki Himawan Mulyadi, Hendra Setiawan	https://icobest.unikom.ac.id/submission/proceeding/download/246
5	Creating Competitive Advantage for MSMES through the Use of Information Technology Functions and Absorptive Capacity in MSMES Priangan Timur-West Java D Munandar, J Sarwono, A Nisa	https://icobest.unikom.ac.id/submission/proceeding/download/247
6	Internal Institutionalization of Golkar Party for the Study of Simultaneous 2020 Pilkada (Elections of Regional Heads) in Bandung District Dede Sri Kartini, Rahman Mulyawan, Rudiana	https://icobest.unikom.ac.id/submission/proceeding/download/248
7	Aspects of Political Campaign in Political Communication The Prosperous Justice Party (PKS) at the 2019 Legislative Election Tatik Rohmawati, Dody Alfares	https://icobest.unikom.ac.id/submission/proceeding/download/249
8	The Vision of Global Maritime Fulcrum within ASEAN Centrality to Maintain Regional Stability Dewi Triwahyuni, Windy Dermawan, Priskila Millena	https://icobest.unikom.ac.id/submission/proceeding/download/250
9	The Impact and Response of Maritime Southeast Asian Countries to Economic Dynamics during the Covid-19 Pandemic Andrias Darmayadi, Muhammad Arya Aditiya	https://icobest.unikom.ac.id/submission/proceeding/download/251
10	Indonesia's Tourism Economic Recovery Strategy through Meta-Green Bussiness Initiatives Post-Covid 19 Pandemic Ika Sri Hastuti, Melaty Anggraini	https://icobest.unikom.ac.id/submission/proceeding/download/252
11	The ASEAN Intergovernmental Commission's Response on Human Rights to the 2021 Myanmar Crisis Henike Primawanti, Windy Dermawan, Agung Muhammad Iqbal	https://icobest.unikom.ac.id/submission/proceeding/download/253

No	Title / Authors	Link
12	K-Pop Business: Prospects and Challenges for Entrepreneurs in Indonesia Sylvia Octa Putri	https://icobest.unikom.ac.id/su bmission/proceeding/download/254
13	Communication Strategy of the First Digital Internet Service Provider Company in Indonesia to Increase Brand Awareness Among Internet Service Users Tine Agustin Wulandari, Erik Wirawan	https://icobest.unikom.ac.id/su bmission/proceeding/download/255
14	Supplier Performance Analysis with using the Analytical Hierarchy Process (AHP) Method Olih Solihin, Yuni Mogot, Metha Madonna	https://icobest.unikom.ac.id/su bmission/proceeding/download/256
15	Work Coffee Indonesia Marketing Communication Strategy through a Zero Percent Plastic Campaign in Increase Brand Image Desayu Eka Surya, Ririn Astiani	https://icobest.unikom.ac.id/su bmission/proceeding/download/257
16	The Cultural Narrative as a Digital Promotion Strategy in Selling Batik Tulis Lasem and Its Effect on The Economy in Lasem Tessa Eka Darmayanti, Ariesa Pandanwangi, Belinda Sukapura Dewi, Dewi Isma Aryani, Ismet Zainal Effendi	https://icobest.unikom.ac.id/su bmission/proceeding/download/258
17	Business Motivation and Business Ability to the Success of Distro Entrepreneurs in Bandung Rizki Zulfikar, Reihan Faruq Junaedhy Bawazir	https://icobest.unikom.ac.id/su bmission/proceeding/download/259
18	Educational Marketing Management Strategy in Improving School Image Linda Setiawati, Siti Nuraeni	https://icobest.unikom.ac.id/su bmission/proceeding/download/260
19	Employee Productivity Model at Mineral, Coal, and Geothermal Resources Center A. Riyanto, M. L. Nurfachsyia, G. Sianturi	https://icobest.unikom.ac.id/su bmission/proceeding/download/261
20	Readiness of Work affected by Work Procrastination and Hedonic Lifestyle RD Santy, PA Pratama	https://icobest.unikom.ac.id/su bmission/proceeding/download/262
21	The Role of Bekraf and Development Micro and Small Industries (MSE) in Indonesia Sahabudin Sidiq and Awan Setya Dewanta	https://icobest.unikom.ac.id/su bmission/proceeding/download/263
22	The Use of E-Money to Implement Business Transactions of the Children of the Madrasah Aliyah Arafah Cililin Islamic Boarding School, West Bandung Regency Maisa Azizah Asmara, Rahma Wahdiniwaty, Hamidah, Tini Martini, Muhtarudin	https://icobest.unikom.ac.id/su bmission/proceeding/download/264
23	The Role of Strategic Flexibility in Increasing Innovation (Case Study of Promotion Strategies in Furniture Manufacturing Company) Diah Nur Kusumawardhani, Deden A. Wahab Sya'roni	https://icobest.unikom.ac.id/su bmission/proceeding/download/265

No	Title / Authors	Link
24	The Impact of Providing Material and Non-Material Incentives on Employee Work Motivation (Study on the Automotive Industry in West Bandung) I Budiarti, M Maryati, V Lavira	https://icobest.unikom.ac.id/submit/proceeding/download/266
25	Analysis of Digital Marketing and Customers Purchase Intention toward Purchasing Decision on Netflix Account During Covid 19 Pandemic in Bandung E Susilawati, Y Sutisnawati	https://icobest.unikom.ac.id/submit/proceeding/download/267
26	Firm Size And Profitability Affect to Dividend Policy on Mining Companies Listed in Indonesian Stock Exchange Period 2016-2020 Windi Novianti	https://icobest.unikom.ac.id/submit/proceeding/download/268
27	News Sentiment, News Intensity, and Price Movement of Indonesia's 45 Most Liquid Stock Index Nagib Muhamad, Husodo Ananto Zaafri	https://icobest.unikom.ac.id/submit/proceeding/download/269
28	The Influence of Smartphone Brand Awareness on Purchase Decisions Iphone Smartphone Consumers Siti Daniyah Atika, Dedi Sulistiyo	https://icobest.unikom.ac.id/submit/proceeding/download/270
29	Merchandise Brand Image Analysis in Shaping Consumptive Lifestyle A Community of Fans Dwinanda Pratya Annisa Murni, Rahma Wahdiniwati	https://icobest.unikom.ac.id/submit/proceeding/download/271
30	Coronavirus Disease (COVID) -19 Vaccinations and Indonesian Capital Market Ratna Juwita, Rosyana Fitri, Endang Purwaningrum	https://icobest.unikom.ac.id/submit/proceeding/download/272
31	The Effect of Tax Audit and Tax Collection on Corporate Income Tax Receipt (Case Study at the Bandung Bojonagara Pratama Tax Service Office 2016-2020 Period) Jayanthi Octavia , Citra Laksmi Kusuma	https://icobest.unikom.ac.id/submit/proceeding/download/273
32	Tax Audit Effectiveness: Detection of Tax Sheltering through Implication Book Tax Differences on Earnings Management Siti Kurnia Rahayu	https://icobest.unikom.ac.id/submit/proceeding/download/274
33	Legal Certainty and Justice of Job Creation Law Tax Cluster as Economic Driving Force Siti Kurnia Rahayu	https://icobest.unikom.ac.id/submit/proceeding/download/275

No	Title / Authors	Link
34	Analysis of Accounting Information System for Spare Parts Inventory in Internal Inventory Control at CV Yamaha Sentra Anugrah Motor In Bojongsoang Branch Supporting Eti Suprihatin, Hamidah, Tengku Ine Hendriana, Ahmad Nukman Ginanjar, Anum Dahlia,	https://icobest.unikom.ac.id/submit/proceeding/download/276
35	Equalization Annual Notification Report Value Added Tax Against the Income Statement of PT. X Through the Accounting Application Dasep Heriansyah, Junaedi Abdillah, Sabar, Eti Suprihatin	https://icobest.unikom.ac.id/submit/proceeding/download/277
36	Analyzing the Role of Risk Awareness in Enterprise Risk Management Inta Budi Setya nusa, Destya Ayu Puspita	https://icobest.unikom.ac.id/submit/proceeding/download/278
37	Policy Formulation of Criminal Actions Related to Binary Option through the Criminal Justice System in Indonesia Musa Darwin Pane	https://icobest.unikom.ac.id/submit/proceeding/download/279
38	The Role of the Badan Arbitrase Nasional Indonesia (Bani) in E-Commerce Dispute Resolution Through Online Arbitration Hetty Hassanah	https://icobest.unikom.ac.id/submit/proceeding/download/280
39	Appropriation of Assets Corruption in Human Rights Perspective Sahat Maruli Tua Situmeang	https://icobest.unikom.ac.id/submit/proceeding/download/281
40	Applied Cyber Law in Architecture Model for Medical Gases Cylinder Management Moh. Amin Soetomo., Heru Purnomo Ipung, Ivan	https://icobest.unikom.ac.id/submit/proceeding/download/282
41	Legal Protection for Child Victims of Human Trafficking Based on International Law Febilita Wulan Sari	https://icobest.unikom.ac.id/submit/proceeding/download/283
42	Playing The Online Games Becomes One of Affecting Factors to Generate The Second Language Acquisition (SLA) for Millennials Asih Prihandini	https://icobest.unikom.ac.id/submit/proceeding/download/284
43	Cross-Cultural Understanding in Emily in Paris Series Season 1 Mia Rahmawati Yuwita	https://icobest.unikom.ac.id/submit/proceeding/download/285
44	Netizen Illocutionary on Celebrity Flexing Juanda	https://icobest.unikom.ac.id/submit/proceeding/download/286
45	A Discourse Analysis of Interpersonal Metafunction in Vladimir Putin's Speech Regarding Russia's Invasion of Ukraine Muhammad Rayhan Bustam	https://icobest.unikom.ac.id/submit/proceeding/download/287

No	Title / Authors	Link
46	How Tokopedia ADS Exploits Call for Action Behavior on Indonesia Marketplace Customers Retno Purwani Sari, Nenden Rikma Dewi	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/288">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/288
47	Making Sense of Apocalyptic Pandemic Nungki Heriyati	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/289">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/289
48	Contrastive Analysis of Adjective 'Asai' in Japanese and 'Dangkal' in Indonesian Nadin Ghaisani, Dedi Sutedi, Nuria Haristiani	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/290">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/290
49	An Evaluation of Kiso Moji GOI Course Learning Soni Mulyawan Setiana	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/291">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/291
50	The Contrastive Analysis of "Hiroi" and "Luas" Adjective in Japanese and Indonesian Wenni Dessari, Dedi Sutedi, Nuria Haristiani	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/292">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/292
51	The Contrastive Analysis of "Katai" in Japanese and "Keras" in Indonesian Language Alifah Dini Putri, Dedi Sutedi, Nuria Haristiani	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/293">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/293
52	Contrastive conjunction in Japanese and Indonesian Hafizah El Khair	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/294">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/294
53	Yugen Aesthetic Element in Japanese Animation Fenny Febrianty, Firda Fauzyah	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/295">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/295
54	Culinary Books as Information Media Gorontalo Specialty Food Sagela Sauce Ahmad Nurzaeni Fauzi, Wantoro, Dewi Rara Rizky Purnamasari	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/296">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/296
55	Reconstruction of Sex Education in Dua Garis Biru Film Irwan Tarmawan, R Arby Fauzan	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/297">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/297
56	Digital Media Design as Information for Art and Cultural Community Irma Rochmawati, Yulis Syam Fajrilah	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/298">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/298
57	Analysis of Visual Elements on Healthy Cendol 18 Product Packaging Design to Consumers Arini Mustika Ajie, D. A. Wahab Sya'roni	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/299">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/299
58	Packaging Design as a Media for Developing the Potential of Small and Medium Micro Enterprises (MSMEs) in the Culinary Sector typical of the Region in the Creative Industry Rizky Andriana Dewi, Rahma Wahdiniwati	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/300">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/300

No	Title / Authors	Link
59	Illustrated Books as Information Media for Pranata Mangsa (Old Javanese Astrology) Wantoro, Febby Permata Dewi	https://icobest.unikom.ac.id/su_bmission/proceeding/download/301
60	The Use of Materials in Environmental Sustainability Criteria in Seating Facilities Design Uses The Concept of Metaphor with a Narrative Approach Cherry Dharmawan	https://icobest.unikom.ac.id/su_bmission/proceeding/download/302
61	Homedecor Product Marketing Strategy in Milandbay Restaurant Gallery Dina Fatimah	https://icobest.unikom.ac.id/su_bmission/proceeding/download/303
62	Visual Analysis of Pelo Dalang Animation Satria Indra Praja Persada	https://icobest.unikom.ac.id/su_bmission/proceeding/download/304
63	Visual Representation of Hell From Balinese Hindu Beliefs in the Video Game "Escape From Naraka" Deni Albar	https://icobest.unikom.ac.id/su_bmission/proceeding/download/305
64	Making a Logo as Destination Branding: Case Study Kebon Jayanti Ceramic Centre Ivan Kurniawan, Rahadika Satya Novanto	https://icobest.unikom.ac.id/su_bmission/proceeding/download/306
65	Character Design of Eren Yeager in Animated Attack on Titan Series from Season 1-4 Dzulfiqar Fickri Rosyid	https://icobest.unikom.ac.id/su_bmission/proceeding/download/307
66	The Meaning of Indonesia's-Foreign-Policy-Themed Political Cartoon Artwork during Demokrasi Terpimpin Era Taufan Hidayatullah	https://icobest.unikom.ac.id/su_bmission/proceeding/download/308
67	Governance of the Nutu Tradition in Kasepuhan Ciptagelar: Reflection on Sustainable Women's Economic Empowerment Tiara Isfiaty, Kankan Kasmana	https://icobest.unikom.ac.id/su_bmission/proceeding/download/309
68	Promotional Elements in the "Me and Kajongan Tourism Village" Video Vlog Rizki Nurdiana	https://icobest.unikom.ac.id/su_bmission/proceeding/download/310
69	Exploration of Interior Materials Based on Plastic Waste Dheana Dwi Angia Putri Wibowo, Yully Ambarsih Ekawardhani	https://icobest.unikom.ac.id/su_bmission/proceeding/download/311
70	Design of Wayang Show With 360° Video (Virtual Reality) as a Media to Introduce Teenage About Wayang Cepak Tegal Lutfi Firmansyah, Taufan Hidayatullah	https://icobest.unikom.ac.id/su_bmission/proceeding/download/312

No	Title / Authors	Link
71	Visual Representation of Indonesian Culture in Character Design HololiveID Virtual Youtuber Geugeu Rimbawati, Yeffry Handoko Putra	https://icobest.unikom.ac.id/submit/proceeding/download/313
72	Greenery Concepts in Cafe and Restaurant Interiors Ryanty Derwentiana Nazhar	https://icobest.unikom.ac.id/submit/proceeding/download/314
73	Design of Sundanese Script through Android based Interactive Game Applications Arif Try Cahyadi, Ivan Kurniawan, Resha Widyanda	https://icobest.unikom.ac.id/submit/proceeding/download/315
74	Adaptation Short Story into Short Film Wicaksono Wisnu Legowo, Yully Ambarsih Ekawardhani	https://icobest.unikom.ac.id/submit/proceeding/download/316
75	Visual Research of Rossi Cigarette Packaging by Bahasa Rupa Primadi Tabrani Methode Adityo Baskoro Hardoyo	https://icobest.unikom.ac.id/submit/proceeding/download/317
76	Economic Aspects of Pandan Fiber Furniture from the Area of Sustainable Design Philosophy Febry Maharlika	https://icobest.unikom.ac.id/submit/proceeding/download/318
77	Representation of Seniority Role in Naufal Faridurrazak's Animated Video "Animasinopal" Merlina Fatimah Nasruddin	https://icobest.unikom.ac.id/submit/proceeding/download/319
78	Application of Juxtaposition Panel of Indonesian Comic Y A Ekawardhani, D Subandi	https://icobest.unikom.ac.id/submit/proceeding/download/320
79	Photography as a Media for Promotion of Area Tourism in Brebes District Kamal Mushthafa Putra, Kankan Kasmana	https://icobest.unikom.ac.id/submit/proceeding/download/321
80	The Role of Interior Design Towards User Comfort in a Residence Mohammad Sya'bani, M Syahril Iskandar	https://icobest.unikom.ac.id/submit/proceeding/download/322
81	The Effect of E-Learning through the Learning Management System (LMS) on students' learning motivation in the covid-19 pandemic era at the faculty of social and political sciences Universitas Komputer Indonesia Manap Solihat, Radisya Eka Putri Hendarsyah	https://icobest.unikom.ac.id/submit/proceeding/download/323
82	"Reading" Lasem Heritage Buildings as Marketing Strategy for the Cultural Tourism Sustainability: A Phenomenological Perspective Tessa Eka Darmayanti, Tatan Tawami	https://icobest.unikom.ac.id/submit/proceeding/download/324

No	Title / Authors	Link
83	Case of Dividend Payout Ratio (DPR) : Evidence on Manufacturing Companies in the Consumer Goods Industry Sector Listed on the Indonesia Stock Exchange Surtikanti Surtikanti , Jayanti Octavia, Ismawati Martina	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/325">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/325
84	Quality of Financial Statements with The Application of Accounting Information Systems and Human Resources Competence Sri Dewi Anggadini, Ari Bramasto, Muhamad Iqbal Adrian	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/326">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/326
85	Impact of Financial Technology on Profit of Islamic Banks in Bandung Wati Aris Astuti	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/327">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/327
86	Determination Analysis of Implementation of Good Governance Understanding and Audit Independence in Auditor Performance in Public Accounting Offices Wati Aris Astuti, Imelda Sandra Agiva	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/328">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/328
87	The Impact of the Implementation of Student Tuition Payment Information Systems on the Quality of Financial Reports: A Case Study at Universitas Komputer Indonesia Adeh Ratna Komala, Mari Maryati	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/329">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/329
88	Impact of Digitalization on Zakat Receipt Adeh Ratna Komala	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/330">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/330
89	Vegetable Sales and Marketing Modeling Through Innovation of Online Vegetable Stalls and Carts Based on Website and Mobile Applications Surtikanti, Raeny Dwisanty, Agus Mulyana	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/331">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/331
90	Case Auditor Change in Indonesia Surtikanti.Surtikanti, Dean Subhan Saleh, Ali Jamaluddin	<a href="https://icobest.unikom.ac.id/su
bmission/proceeding/downlo
ad/332">https://icobest.unikom.ac.id/su bmission/proceeding/downlo ad/332
91	Profitability and Financial Factors on The Indonesia Stock Exchange (IDX) Sri Dewi Anggadini, Hanifah Nur Yasmin, Arry Irawan	<a href="https://icobest.unikom.ac.id/su
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92	The Effect of Capital Expenditure and Operational Expenditure on Investment Decision Ony Widilestariningtyas	<a href="https://icobest.unikom.ac.id/su
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No	Title / Authors	Link
93	Capital Structure, Profitability, Hedging Policy, Firm Size, and Firm Value: Mediation and Moderation Analysis Erik Syawal Alghifari, Ikin Solikin, Nugraha, Ika Waspada, Lilis Puspitawati	https://icobest.unikom.ac.id/submit/proceeding/download/335
94	Managerial Models and their Contribution to the Successful Use of Financial Applications Lilis Puspitawati	https://icobest.unikom.ac.id/submit/proceeding/download/336
95	Social Media Management by the Sorong Regency Government in Maintaining its Image I Prayoga, G E Liline	https://icobest.unikom.ac.id/submit/proceeding/download/337
96	The Effect of Due Professional Care and Audit Evidence on The Appropriateness of Giving an Audit Opinion A Febriansyah and R R Oktaviana	https://icobest.unikom.ac.id/submit/proceeding/download/338
97	Use of Social Media in Small and Medium Enterprises among Adolescents Adi Rachmanto	https://icobest.unikom.ac.id/submit/proceeding/download/339
98	Human Resources Competency in The Successful Of Financial Digitization and Its Impact on The Financial Statement Performance in society 5.0 L Puspitawati and M Virginia	https://icobest.unikom.ac.id/submit/proceeding/download/340
99	Prevention of Fraud with Good Corporate Governance and Internal Control Ely Suhayati , Ari Bramasto, Dedi Sarifudin, Nafisah Rahmania	https://icobest.unikom.ac.id/submit/proceeding/download/341
100	The Success of Information System in Small and Medium Enterprises Sri Dewi Anggadani, Deden A Wahab, Dedi Sulisty Soegoto, Rio Yunanto	https://icobest.unikom.ac.id/submit/proceeding/download/342
101	Business Strategy Model on the Optimism of MSME (Small Enterprises) Performance in the West Java Region Indonesia Supriyati, Sri Mulyani, Harry Suharman, Taufiq Supriadi	https://icobest.unikom.ac.id/submit/proceeding/download/343
102	The Effect of Capital Expenditure and Operational Expenditure on Investment Decision Ony Widilestariningtyas	https://icobest.unikom.ac.id/submit/proceeding/download/344
103	Implementation of the Corporate Social Responsibility (CSR) Program PT. Indonesia Power Kamojang Coffee Cultivation Activities in Maintaining Corporate Image and Community Based Economic in Pandemic Time Melly Maulin Purwaningwulan, Muhamad Fahad Alfarisi	https://icobest.unikom.ac.id/submit/proceeding/download/345

Policy Formulation of Criminal Actions Related To Binary Option Through The Criminal Justice System In Indonesia

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Abstract. the quality of technology and increasing globalization. Currently, there is a lot of investment using the Binary Option Trading model, where this practice has not been accommodated by the laws and regulations in Indonesia and has resulted in victims who suffer losses. This study aims to identify and understand the formulation policies of Binary Option Trading in Indonesia and the enforcement of Binary Option Trading laws in Indonesia. This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach. Based on the results of the study showed that both organizers, Binary Options influencers and affiliates can be subject to multiple articles as regulated in the Criminal Code, the ITE Law, the Consumer Protection Law, and the Money Laundering Law. However, in the application of legal witnesses, it is important to note that criminal sanctions are the ultimum remedium, therefore it is important to apply other sanctions such as refunding losses, so that the goal of a fair sentence can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future. Therefore, it is important to apply other sanctions such as refunding losses, so that the goal of a just punishment can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future. Therefore, it is important to apply other sanctions such as refunding losses, so that the goal of a just punishment can be realized. In terms of law enforcement through prevention efforts, it should be prioritized, namely law enforcers must be active by carrying out integrated efforts, considering that it is an ordinary offense, so as to prevent the emergence of victims in the future.

Keywords: Formulation Policy, Binary Options, Indonesia.

1. Introduction

Along with the times, it is inevitable that technology continues to develop, namely improving the quality of technology and increasing globalization. The speed and accuracy of the community and the government are very encouraging and needed to be able to keep pace with the rapid development of technological advances in the present and in the future. Information and communication technology is considered to be able to bring an advantage and change for the country. That information and communication technology has succeeded in initiating changes in the order of people's lives in the

economic and social sectors, which incidentally used to be business transactions and socialization carried out in traditional or conventional ways, then became business transactions and socialization using electronic media[1]. However, the development of technology is not free from problems that cause casualties.

Currently, investment is booming using the Binary Option Trading model. Binary Option Trading or binary options trading is the activity of determining the movement of the value of an asset within a certain period of time that has been selected through the binary system. By determining the prediction of fluctuations in the price of the underlying asset in a certain period of time, one can gain a predetermined amount of profit or lose the value that has been placed. On the internet based Binary Options platform it asks investors to deposit a certain amount of money to make a deposit. From the deposit, investors can make a "call" or "put" to make a deposit in the form of a contract against one of the options of the commodity provided by the platform. If the result of the preposition placed by the investor is correct within the specified timeframe, the investor is entitled to receive the promised return. However, if the results of the preposition are not fulfilled within the specified time period, it is said to be Out of The Money and the customer loses the entire deposited amount [2].

Binary Options Trading in Indonesia it has not been specifically regulated, although there have been many people who have followed Binary Option Trading and have become "victims". Therefore, it is important for the Government to make clear and firm regulations and responsive countermeasures to this phenomenon, so that usefulness as a legal goal can be realized. Law enforcers should immediately take responsive actions that are realized in the form of prevention efforts so that the number of victims does not increase by coordinating with related parties such as CoFTRA, Diskominfo and so on. This is considering that Binary Options are considered to be similar to online gambling compared to trading assets such as stocks. Thus, law enforcement is not only limited to applying the law, but also need to take precautions against the occurrence of a crime. Based on the above background, the purpose of this research is to know and understand the policy of Binary Option Trading formulation in Indonesia and the enforcement of Binary Option Trading law in Indonesia.

2. Method

This research method is descriptive with the type of normative juridical research, using a statutory approach and a conceptual approach. This research specification uses descriptive analytical method, namely research that describes, finds legal facts thoroughly and systematically examines secondary data. This research was conducted by taking an inventory of the laws and regulations that support the role, function and authority of CoFTRA, as well as optimizing the role of the government. The success variable for law enforcement is preventing the occurrence of criminal acts due to binary options.

3. Results and Discussion

3.1. Binary Option Trading Formulation Policy in Indonesia

Criminal law policy essentially contains state legal politics in regulating and limiting power, both the authority of the public in general to act and behave as well as the power or authority of the ruler or law enforcement apparatus in carrying out their duties, ensuring that the community obeys and complies with the established legal rules. . Criminal law policy is a series of processes consisting of three stages, namely: a. stages of legislative/formulative policy; b. stages of judicial/applicative policies, and c. executive/administrative policy stage [3].

Until now, there is no legal umbrella that covers Binary Options. Where the Financial Services Authority (OJK) as the supervisor of the financial services industry and the Supervisory Agency for the financial services industry and the Commodity Futures Trading Supervisory Agency (Bappepti) as the commodity trading supervisor do not recognize Binary Options.

The high public interest in investing in new financial instruments raises the urgency of public literacy so that the public is able to understand the risks that will arise, this is as referred to in OJK Regulation Number 1/POJK.7/2013 concerning Consumer Protection which applies several principles,

namely transparency, fair treatment, reliability, confidentiality and security of consumer data and handling complaints and resolving consumer disputes simply, quickly and at affordable costs.

Whereas a Binary Option is a futures contract, which is a standard form of contract to buy or sell a commodity with a later settlement as specified in the contract traded on the futures exchange. However, Binary Option does not have a futures brokerage business license from the Commodity Futures Trading Supervisory Agency (CoFTRA), so it is threatened with a criminal sanction of at least 5 years and a maximum of 10 years and a fine of Rp. 10 billion and a maximum of Rp. 20 billion.

In Article 9 paragraph (1) letter k of Law Number 8 of 1999 concerning Consumer Protection it is stated that business actors are prohibited from offering, promoting, advertising goods and/or services incorrectly, and/or as if offering something containing uncertain promise.

Furthermore, Article 57 paragraph (2) letter d of Law Number 10 of 2011 concerning Futures Trading states that each party is prohibited from directly, or indirectly influencing other parties to conduct futures contract transactions, Sharia derivative contracts, and/or derivative contracts. others by persuading or giving the hope of extraordinary benefits.

Article 303 paragraph (1) stipulates that a maximum imprisonment of ten years or a maximum fine of twenty five million rupiahs shall be imposed, whoever without obtaining a permit: 1. Deliberately offering or providing an opportunity for gambling games and making it a quest or intentionally participating in a company for it; 2. Deliberately offering or giving an opportunity to the general public to play gambling or intentionally participating in a company for that, regardless of whether to take advantage of the opportunity there are certain conditions or the fulfillment of certain procedures.

Article 27 paragraph (2) jo. Article 45 paragraph (2) stipulates that any person who knowingly and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing gambling content shall be punished with imprisonment for a maximum of 6 (six) years and/or or a maximum fine of Rp. 1,000,000,000, - (one billion rupiah).

In this regard, it is important to pay attention to the concept of punishment so that justice can be realized. Sentencing is an effort to awaken the convict to regret his actions, and return him to be a good citizen, obey the law, uphold moral, social and religious values, so as to achieve a safe, orderly and peaceful community life [4]. Therefore, in the application of criminal sanctions, the following provisions must be observed:

- a. Purpose of punishment
- b. Criminal guidelines
- c. Guidelines for the application of imprisonment with a single formulation and alternative formulations
- d. Criminal burden
- e. Other provisions regarding sentencing.

Furthermore, Muladi said that criminal law is the *primum remedium* if: [5]

- a. The casualties were huge;
- b. Defendant is a recidivist;
- c. Losses cannot be recovered.

In controlling crime so that it is within the "tolerance limits" of the community, but does not mean giving tolerance for a crime to occur, a social control is needed by applying social work criminal sanctions and compensation as an alternative to punishment. Social control is a system to prevent the occurrence of social deviations in society, where in the process, it is necessary to involve various elements or parties, both from government elements and from elements of society through supervisory efforts with the aim of being in accordance with the values that live in society. Public [6]. Criminal law as the *ultimum remedium* must be enforced, but before the enforcement of criminal law, the way of guidance and supervision needs to be done. In other words that The *ultimum remedium* principle places criminal law enforcement as the last legal option [7].

Law enforcement is an effort to realize the ideas and legal concepts that are expected by the people to become a reality. Law enforcement is a process that involves many things. In essence, law enforcement embodies values or principles that contain justice and truth, law enforcement is not only

the task of conventionally known law enforcers, but is the duty of everyone. However, in relation to public law, the government is responsible. In law enforcement there are three elements that must receive the same attention, namely justice, benefit or use (*doelmatigheid*), and legal certainty [8].

The rational enforcement of criminal law consists of three stages, namely as follows: (1) The formulation stage, is the stage of enforcing criminal law in abstracto by the legislature. In this stage the legislators carry out activities to choose values that are in accordance with current and future conditions and situations, then formulate them in the form of criminal legislation to achieve the best results of criminal legislation, in the sense of fulfilling terms of justice and usability. This stage can also be called the legislative policy stage. (2) Application stage, the stage of implementing criminal law (the stage of applying criminal law) by law enforcement officers starting from the police, prosecutors to courts. At this stage, law enforcement officers enforce and apply criminal laws and regulations that have been made by the legislature. In carrying out this task, law enforcement officers must uphold the values of justice and usability. This stage can also be called the judicial policy stage. (3) Execution stage, namely the stage of concrete enforcement (implementation) of criminal law by criminal implementing officers. In this stage, the criminal implementing apparatus is tasked with enforcing the criminal regulations that have been made by the legislators through the application of the criminal law that has been determined by the court. Implementing officers in carrying out their duties are guided by criminal laws and regulations that have been made by legislators and the values of justice and usability.

Therefore, in the prosecution of criminal acts resulting from the administration of *binary options*, it is important to do a regulation related to commodity futures. In addition, it is important to determine who can be held accountable, whether it is a person or a legal entity. Thus the realization of a just punishment.

2. *Binary Option Trading Law Enforcement in Indonesia*

Law enforcement is the process of making efforts to enforce or actually function legal norms as guidelines for behavior in traffic or legal relations in social and state life. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce law by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who enforces normative rules or does something or doesn't do something based on the norms of the applicable law, means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, Law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and ensure that a rule of law runs as it should. In ensuring the enforcement of the law, if necessary, law enforcement officials are allowed to use force [9].

In the relationship between social welfare and social defense, aspects outside the criminal law (penal) must be considered, namely the non-penal approach. Non-penal efforts can be carried out with a techno-prevention approach, namely by building and raising the sensitivity of citizens and law enforcement officers, an educational or moral approach, a global approach (international cooperation) and a bureaucratic approach [10].

CoFTRA has the authority to make technical guidelines regarding the PBK mechanism, grant permits in the PBK sector, conduct inspections of parties who have permits in the PBK sector, conduct investigations on any party suspected of violating the provisions of the PBK Law. Futures trading needs to be regulated because futures trading is a complex business activity, managing public funds (margin), protecting the community from harmful PBK practices, and to provide legal certainty that is able to provide business certainty for the parties involved. In addition to CoFTRA, the Police as part of the criminal justice system have the right to enforce the law against the occurrence of a crime. The existence of alleged gambling practices against Binary Options compared to investment is a signal for law enforcement to immediately take further preventive action, by coordinating with related parties such as Diskominfo, CoFTRA and also socialization, education through mass media. For example, when a victim's report is received regarding the loss he has suffered, from then on there should have been no more similar advertisements containing Binary Options, because if there were still things it would be strange. Prevention efforts apart from taking action are important, given that CoFTRA is not yet optimal

in implementing and supervising the parties in futures trading and the public's lack of understanding of the futures trading mechanism and its various modus operandi.

4. Conclusion

There is currently a lot of reporting because the implementation of Binary Options is very detrimental to the community, this is exacerbated by the lack of public understanding regarding Binary Options. In an effort to protect the victim's newspaper from Binary Option, threats to the perpetrators have been spread in various laws and regulations such as the Criminal Code, the ITE Law, and so on. In this regard, the importance of building infrastructure and regulations related to commodity futures trading that is more massive through various socializations and education as an effort to prevent the occurrence of criminal acts is part of law enforcement. Restitution for losses and social sanctions are seen as appropriate punishments for perpetrators considering that the imposition of imprisonment is deemed not to provide justice for the victim. Synergy and integration of law enforcers in dealing with criminal acts due to the implementation of Binary Options which is seen as gambling activities must be carried out in an active way. This means that law enforcers prioritize prevention efforts as well as prosecution.

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