

Originalist Interpretation: A Method of Discovery in Criminal Law (*Rechtsvinding in Het Strafrecht*)

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Abstract

Law enforcers are often faced with difficulties when faced with events that meet the formulation in criminal provisions but these are not following the nature (*dem wesen nach*) of the criminal provisions. To deal with these provisions, one of the legal discovery methods which can be used is to use the interpretation of originalism. The research method in this article is legal research with a statutory approach, conceptual approach, and case approach. Based on the research in this article, it was found that First, the characteristics of the interpretation of originalism as a method of discovery in criminal law is to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator. Second, the use of interpretation of originalism in criminal cases can be seen in the decision number 121/Pid.Sus/2019/PN Mll, which incidentally the judge used the interpretation of originalism related to the true meaning of competence and in the decision number 72/Pid.Sus/2020 /PN Psb, the judge used the interpretation of originalism to interpret the element "Hostile, abuse or blasphemy against a religion professed in Indonesia".

Keywords

criminal law; originalism interpretation; discovery in law



I. Introduction

The increasing global competition in the economic, technological, socio-political fields, as well as the increasingly complex problems that arise in society make the state required to increase its role in protecting its citizens (Koloay, 2016). One of the roles of the country that is trying to be carried out is by forming new laws or developing existing laws in the hope of solving new problems that arise and prevent new problems from occurring. Informing new laws or developing existing laws, Indonesia, which incidentally is a country with a Continental European system (*civil law system*), translates it by forming various types of new laws and regulations (Moonti, 2017). The existence of various new laws and regulations that were born caused new problems in Indonesia is the creation of hyper regulations in Indonesia (Chandranegara, 2019). Jimly Asshiddiqie, even stated that the condition of Indonesian country which is "legally obese" is a "hyper-regulated society" (Asshiddiqie, 2019).

One of the bad impacts of the occurrence of hyper regulations in Indonesia is there are many law enforcement officers (legal structure) have not been able to understand the true meaning and *ratio legis* from the laws and regulations made (Mustriadhi, 2020). This is logical, because the fact that there are so many laws and regulations have been born, it

makes law enforcers unable to study holistically the laws and regulations that were made. If these law enforcement officers are going to study an existing statutory regulation, it is not long before a new rule is born. This is very dangerous in law enforcement, because law enforcement officers are the core of creating effective law enforcement (Soekanto, 2014). The importance of law enforcement in law enforcement is parallel with Bernardus Maria Taverne's opinion which states: "*Geef me goede rechter, goede rechter commissarisen, goede officieren van justitien, goede politie ambtenaren, en ik zal met een slecht wetboeken van strafprocessrecht het goede beruke* (Give me good judges, prosecutors, police and lawyers, I will surely eradicate crime even without laws) (Suhardin, 2009)."

One of the law enforcement agencies affected by the lack of understanding of law enforcement regarding the true meaning and *ratio legis* of the laws and regulations were born is (*criminal law enforcement*). There is a lack of understanding of law enforcement regarding the real meaning and ratio legis of a statutory regulation (criminal legislation relating to criminal law in particular), making law enforcement officers (especially criminal law enforcers) ultimately only interpret the legislation following the law written (law in text), without understanding the context (law in text) of the legislation. Satjipto Rahardjo, stated that the condition of criminal law enforcement like it is law enforcement that succeeds in creating "legal justice" (legal justice), but fails to capture "(social justice) (Ismansyah, 2010).

Acts against the law and Abuse of authority in criminal acts of corruption are regulated in Article 2 and Article 3 of Law Number 31 of 1999 as amended to Law Number 20 of 2001 concerning Eradication of Corruption (UUPTPK). There is a fundamental difference between the two acts, even though the two acts are elements that determine whether or not an action can be declared a criminal act, furthermore the two acts are also important to determine whether someone can be blamed for corruption or not. (Purba, I and Syahrin, A. 2019)

As described above, related to law enforcers who only look at the text of existing laws and regulations, there are times when the police in carrying out their duties also do this. In the context of the police determining a criminal event, it turns out that sometimes the police only look at the formulation of an offense, without looking at the context of the article. Thus, if the incident fulfills the formulations in an offense, the police will determine the incident as a criminal event. Even though the event fulfills the formulation of an offense, the event "in essence (*dem wesen nach*)" is not an offense (Christianto, 2017).

Popmpe in N.J. 1938 Number 929, gives an example (Hamzah, 2012), for example, person A steals an object from person B, then person B buys the item from person A. In its development, person B finds out the item that he bought from person A is his own. If seen from Person B's action, it can be seen that person B's action fulfills the formulation of the offense of detention (*heling*) regulated in Article 480 paragraph (1) of the Criminal Code (KUHP) which reads (Lamintang & Samosir, 2019): "*met gevangenisstraf van ten hoogste vier Jaren of geldboete van ten hoogste zestifg gulden wordt gestraft: 1. Als schuldig aan heling, hij die eenig voorwerp waarvan hij weet of rederlijkwerwijs moet vermoeden dat het door misdrijf is verkregen, koopt, hurt, inruilt, in pand neemt, als geschenk aanneemt, of uit winstbejag verkoopt, verhuurt, verruult, in pand geeft, vervoert, be wart of verbergt;*" (In Indonesian it reads: " Punished with a maximum imprisonment of four years or a maximum fine of sixty rupiahs: 1) Due to wrongful conduct of detention, whoever regarding an object that he knows or should reasonably suspect, that the object has been obtained because of a crime, buying renting, exchanging, receiving as a pledge, receiving as a gift, or because you want to make a profit selling renting, exchanging, giving as a means of transporting, storing or hiding;").

If the case given by the Pompe is turned out to be forwarded to the examination process in court, then the last criminal law enforcement guard who incidentally is the only one who has the authority to impose a crime or not based on Article 183 of the Criminal Procedure Code is the judge. In terms of dealing with criminal cases such as the example of Pompe, then of course there will be a dilemma. On either contrary, the incident fulfills the formulation of the offense and does not have a basis for eliminating the crime (*in casu*: justification basis [*rechtvaardigingsgronden* and basis for forgiveness [*schulduitsluitingsgronden*]) (Mulyati, 2019), but on either contrary, if found guilty, then, it is not following the nature of the formulation of the offense and of course contrary to the sense of justice that lives in society (*justum animatum*) which incidentally must be explored and followed by judges based on Article 5 paragraph (1) of Law Number 48 in 2009 about Judicial Power (Helmi, 2020).

If the judge is faced with a case as given by the Pompe example, then one of the means that the judge can use in making a decision is to use the method of interpretation of originalism. In essence, this original interpretation is to interpret a statutory provision following *the original meaning or original intent* of the legislation (Lailam, 2014). Through this interpretation, judges can impose criminal decisions following the nature of an offense or the *ratio legis* of the existence of an offense, so that judges can fulfill the sense of justice that lives in society.

This original interpretation is a method of legal discovery (*rechtvinding*) which was initially widely used in *constitutional review* cases at the Constitutional Court to explain the text, context, purpose, and structure of the constitution following the wishes of the *founding fathers* of the constitution (Hapsoro & Ismail, 2020). However, in its development, the interpretation of originalism has begun to be widely used in several criminal cases, for example in cases with registration number 121/Pid.Sus/2019/PN Mll and number 72/Pid.Sus/2020/PN Psb. In cases with registration number 121/Pid.Sus/2019/PN Mll, the judge uses an interpretation of originalism related to skills and in cases with register number 72/Pid.Sus/2020/PN Psb, the judge uses an interpretation of originalism related to the offense of blasphemy of religion as regulated in Article 156a of the Criminal Code. Thus, it can be seen that there are many uses of the interpretation of originalism as a method of discovery in criminal law (*rechtsvinding in het strafrecht*) by judges in Indonesia. Based on the description of the background above, the formulation of the problem in this article is **First**, the characteristics of the interpretation of originalism as a method of discovery in criminal law, and **Second**, the use of interpretation of originalism by judges in deciding criminal cases. There are articles in scientific journals in the field of law are similar to this article, but there is a (novelty) which distinguishes them from these articles.

II. Research Methods

The research is legal (legal research). According to Jonaedi Effendi and Johnny Ibrahim, legal research is (Effendi & Ibrahim, 2020): "a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal phenomena by analyzing them, except that, then an in-depth examination of the legal facts is also held to then seek a solution to the problems that arise in the phenomenon concerned". In this article, legal phenomena will be described, related to the use of interpretation of originalism as a method of deep discovery by judges in deciding criminal cases

III.Result and Discussion

3.1 Characteristics of the interpretation of originalism as a method of discovery in criminal law

Not long after the issuance of the *code penal*, Napoleon Bonaparte commented, that: “*mon code est perdu* (woe to my law book)” (Ruviaro, 2019). The existence of comments from Napoleon Bonaparte, the penal code maker which can be said to be the "source" of the Indonesian Criminal Code (Purwoleksono, 2013), actually shows that although the legislator is trying to make a legislation perfect as possible, but there will certainly be imperfect provisions. The imperfection of a statutory regulation takes various forms, such as there are provisions that conflict with other provisions; either higher or equal, there are unclear provisions, and so on. It is actually logical, because legislation is a law made by humans (*Rechtsgesetze*) which incidentally is not like a perfect scripture and has no gaps. It is parallel with the opinion of Heinz Mohnhaupt which states that the characteristics of law made by humans are (Mohnhaupt, 2008): “*Its characteristics are that it is "not absolute", and is created by human beings...*”

On the basis that laws and regulations are the product of humans who have the potential to have loopholes and if these gaps are allowed to cause many problems in society, then one way to cover this gap is to use the legal discovery method. In terms of legal discovery, there are 2 (two) classification methods, are (Juanda, 2016):

a) Legal Interpretation Method

This method is used if the rules exist, but it is not clear that they can be applied to concrete events. In the process of interpreting the text of the legislation, still, adhere to the text's sound. Examples of legal interpretation methods are grammatical interpretation, systematic interpretation (logic), restrictive interpretation, and so on.

b) Legal Construction Method

This method is used if the regulations do not exist. Thus, it can be said that this method is used if no laws and regulations are governing the event. Examples of legal construction methods are the analogy method, the *argumentum a contrario* method, the legal refinement method (*rechtsverfining*), and so on.

The following is a table of examples of various methods of legal interpretation that are often used in legal discovery.

Table 1. Types of Legal Interpretation Methods

No.	Types of Legal Interpretation	Explanation	Example
1.	Subsumptive Interpretation	This interpretation method is a method of applying a statutory text to a case <i>in concerto</i> by not entering the stage of using more complicated reasoning and interpretation, but simply applying a syllogism (concluding the major premise and minor premise).	Major Premise: Whoever takes the life of another will be punished Minor premise: Mr. Andi killed Mr. Budi Conclusion: Because of Mr. Andi killed Mr. Budi, Mr. Andi will be punished
2.	Grammatical Interpretation	This interpretation method is to interpret the words or terms in the laws and	The word "embezzlement" in Article 372 of the Criminal Code can also be

		regulations according to the language rules (applicable law or grammar). Some call this interpretation an interpretative interpretation based on grammar or linguistics (<i>de grammatikale of taalkundige interpretatie</i>).	interpreted as "the act of eliminating".
3.	Systematic Interpretation (<i>Sistematische Interpretatie</i>)	This method interprets a statutory regulation by relating it to other legislation or the entirely legal system.	To understand "land buyers with good intentions", not only look at Law Number 5 in 1960, but it must also look at other provisions, such as Burgerlijk Wetboek, Government Regulation Number 24 in 1997. Land Registration, Circular Letter of the Supreme Court Number 7 in 1997. 2012, Supreme Court Circular Number 5 in 2014, and Supreme Court Circular Letter Number 4 in 2016.
4.	Historical Interpretation	This method interprets the meaning of statutory regulations according to the occurrence of statutory regulation. In this method, interpreting a statutory regulation by examining history, both legal history, and the history of the formation of statutory regulation (<i>wethistorie interpretative</i>).	An example of this interpretation is the judge using <i>Memorie van Toelichting</i> (MvT) which is an explanation from <i>Wetboek van Strafrecht</i> which incidentally became the basis of the Criminal Code in interpreting the elements in the Criminal Code.

Source: (Fauzan, 2014)

From the several interpretation methods, one of the interpretation methods which are starting to be used frequently today is the interpretation of originalism. The interpretation of originalism is widely used in the interpretation of the constitution. It can be seen from its definition, in the Merriam-Webster dictionary which states that the interpretation of originalism is (Merriam-Webster, 1982): "a legal philosophy that the words in documents and especially the U.S. Constitution should be interpreted as they were understood at the time they were written." From this definition, it is clear that the interpretation of originalism is to interpret the constitution following the original will of the constituents of the constitution.

There is a view that assumes that the interpretation of originalism is the same as the historical interpretation because the focus is both using a historical approach. Apart from the debate related to the "naming" of this interpretation, the authors argue that in essence,

this interpretation of originalism is **to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator**. The importance of understanding the will of the legislators, so it is not to deviate from the purpose of making a law, it is also following a classic legal adage, is (Davidson, 2017): “*Scire leges non hoc est, verba earum tenere, sed vim ac potestatem* .”

The interpretation of originalism is similar to the *wesenchau* teachings in the Netherlands. In the Netherlands, initially the teachings of *tatbestandmassigheid* were applied in applying an offense (Hamzah, 2012). This *tatbestandmassigheid* teaching essentially emphasizes that when there is an act that fulfills all the elements of the offense formulated, then the act automatically constitutes an offense (Fatkhurohman & Kurniawan, 2017). In its development, this teaching was replaced by the *wesenchau* teaching, is **even if an act is following the formulation of the offense in the criminal legislation, it does not automatically constitute an offense** (Akbar, 2020).

The use of interpretation originalism in criminal law, several things can be done, to understand the original intent of a statutory regulation related to the criminal law. Several ways can be done to understand the original intent of a legislation related to criminal law, are:

a. Analyzing through academic texts

In Article 1 number 11 of Law Number 15 in 2019 about Amendments to Law Number 12 in 2011 about the Establishment of Legislations (Law Formation of Legislations), it is regulated that. "Academic Papers are manuscripts of research results or legal studies and other research results on a certain problem that can be scientifically justified regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regional Regulation as a solution to the problem. And the legal needs of society."

b. Analyzing from the minutes of the meeting for the formation of laws and regulation

In drawing up a statutory regulation, it is generally carried out in a meeting. In the meeting, some minutes describe the discussion of the meeting. By analyzing through the minutes of this meeting, it can be seen that the debate which in the end gave birth to a criminal provision. Regarding the minutes of this meeting, for example, it can be seen on the site <https://www.dpr.go.id/>. From the site, it can be seen the minutes of the meeting discussing the draft law.

c. Hearing from parties who are directly involved in the process of forming related criminal laws and regulations

In the formation of a legislation, of course, some parties are directly involved in the process of forming the relevant criminal legislation. These parties can explain the debate, origin, and reasons for making the relevant laws and regulations, so the *original intent* of the establishment of the relevant criminal rules can be understood. Regarding concretization, bringing in parties who are directly involved in the process of forming these related criminal laws and regulations, for example bringing in the formation of related criminal legislation in the trial as experts in the trial to explain the criminal laws and regulations.

d. The judge explores directly from the relevant criminal laws and regulations

If there is a criminal case that reaches the trial stage, the judge can explore the “*original intent*” directly from a related criminal legislation. Judges can directly interpret the intent/objectives of the legislators who make up the relevant criminal legislation. It is certainly not wrong, because based on Article 5 of Law 48/2009 judges are indeed required to explore, follow, and understand existing legal values.

3.2 The Use of Interpretation of Originalism by Judges in Deciding Criminal Cases

Cum adsunt testimonia rerum, quid opus est verbis (when the evidence and facts are there, then what is the use of words?) (Dirgantara et al., 2020). The classical legal adage actually has a deep meaning, that in an argument, the most important thing is the evidence that supports the argument. Regarding the description of the use of the interpretation of originalism in the criminal law above, to complete this article, it will also be described related to the use of interpretation of originalism by judges in deciding criminal cases as a form of implementation of the use of interpretation of originalism in this criminal law.

a. Decision number 121/Pid.Sus/2019/PN MII

1. Legal Facts

In this case, the defendant is named Kinas Alias Mantu Bin Sije. On Friday, May 17, 2019 at approximately 20.00 WIT, the Defendant and Witness Amiruddin met at Mr. Wandu's house, which is located behind the Masamba Hospital, Ksimbong Village, Masamba Sub-District North District Luwu after they broke their fast and at that time Amiruddin Alias Ami invited the Defendant to go to Bone-Bone at the house of Witness Amiruddin's sister. After the two had eaten, Defendant and Witness Amiruddin headed to Bone-Bone using a brown Yamaha fino brand motorcycle belonging to Witness Amiruddin, while Witness Amiruddin's motorcycle was carried while the Defendant was carried.

While still on the Trans Sulawesi axis road to be precise in the Baliase Village area at the chicken coop owned by Haji Ikki, the Defendant and Witness Amiruddin stopped and at that time Witness Amiruddin gave money to Defendant in the amount of Rp. 800,000 to buy methamphetamine from Pak Haji Ikki. At first, Defendant said he was afraid to buy the methamphetamine, but Witness Amiruddin said "it's okay if anything happens to me" then Witness Amiruddin said he gave this money to Haji Ikki because he just met Jeki Mantu. At that time, Defendant took the money and the Defendant said they were both thereafter that they both went to the side of the chicken coop and when the Defendant arrived in the chicken coop the Defendant saw Haji Ikki's chickens not long after that the Defendant saw Haji Ikki coming to the coop and then the Defendant asked Haji Ikki "Haji is there Ami wants to buy shabushabu then Haji Ikki answered adaji the money" and the Defendant said "Iyye adaji with me Rp. 800,000 (eight hundred thousand)" after that the Defendant immediately handed over the money to Haji Ikki. Furthermore, Haji Ikki handed over to Defendant 1 (one) sachet of methamphetamine after receiving the methamphetamine, the Defendant immediately gave it to lel. Amiruddin alias Ami. After that, the Defendant immediately said goodbye to Haji Ikki and the two headed to Bone-Bone and after arriving at the district. Bone-bone, precisely at the house of Witness Amiruddin's sister at around 21.00 WITA The Defendant immediately rested and fell asleep not long after that at around 01.30 WITA the Defendant heard someone calling the Defendant and knocking on the door of the house and at that time the Defendant woke up and opened the door of the house after that the police officers immediately took action. arrested and carried out an examination and officers found evidence of 1 (one) black Samsung brand cell phone which was in the house after that the Defendant was secured and taken to the car and that's where Defendant met Witness Amiruddin and then headed to the East Luwu Police Station for further proceedings. For this action, the defendant was charged with an alternative charge, is Article 114 Paragraph (1) of the Republic of Indonesia Law. Number 35 in 2009 about Narcotics or Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 in 2009 about Narcotics.

In course of the trial, the judge found legal facts, that although the defendant was able to answer the judge's questions, the defendant had a behavior (disorder) called the Inner Child, is the defendant's actions were not in accordance with his mental age. Furthermore, in the legal facts, it was found that it was this condition that was used by Witness Amiruddin to deceive the defendant so that the defendant bought Witness Amiruddin narcotics.

2. Judge's Decision

1. To declare that the Defendant Kinas Alias Mantu Bin Sije has not been legally and convincingly proven guilty of committing a criminal act as stated in the First Indictment or the Second Indictment of the Public Prosecutor;
2. Exonerated the Defendant from all of the Public Prosecutor's Indictments;
3. Restoring the rights of the accused in his ability, position, dignity, and worth as before;
4. Ordered the Defendant KINAS Alias Mantu Bin SIJE to be immediately released from detention;
5. Determine the evidence in the form of:
 - a. 3 (three) medium-sized sachets containing methamphetamine type narcotics weighing 5.14 (five-point fourteen) grams which are weighed with the sachets;
 - b. 1 (one) sheet of white yellow gold aluminum foil;
 - c. 1 (one) sheet of silver black aluminum foil;
 - d. 1 (one) white Samsung brand cellphone belonging to Amiruddin Alias Ami Bin Muh. Amin;
 - e. 1 (one) unit of a brown Yamaha Fino brand motorcycle without a plate belonging to Amiruddin Alias Ami Bin Muh. Amin; Returned to the Public Prosecutor to be used in the case of Amiruddin Alias Ami Bin Muh. Amin;
6. Charge the State with court fees in the amount of Rp. 5,000.00 (five thousand rupiahs);

3. Analysis

One of the judges' considerations, thus acquitting the defendant from the prosecution's demands, was because the judge considered that the defendant was incompetent. Related to this incompetence, based on the judge's interpretation of the original intent of the meaning of the skill. The judge does not only think that the defendant can answer correctly and it is immediately considered competent, but it must be analyzed holistically regarding the condition of the victim. It is as described by the judge in his consideration which states that:

- Considering, that because Defendant can answer correctly, the Panel of Judges has fulfilled the Elements of Everyone against Defendant. Furthermore, what is meant by the application of the law is not merely a problem of applying norms but more than it, the problem of applying constitutional norms, both regarding the original intent and the regulatory ideal (the author's thickening);
- Considering, that due to the description of the considerations above regarding the element of each person where there is the phrase "the Defendant can answer correctly", the Panel of Judges deems it necessary to further interpret it grammatically (original intent and regulatory ideal) (bold by the author), then the matter it can qualify as a skill. Furthermore, the skill itself means being able to do something, able or able;
- Considering, that then, on the other hand, original intent and ideal regulative existence of the phrase competence must be interpreted according to the material and material (bold by the author). For the same time, what is meant by competence in a material sense is skills that are a sich or skills in their physical properties, while material skills are the properties contained in the skills themselves;

From the judge's considerations in Decision number 121/Pid.Sus/2019/PN MII, it can be seen that the judge uses an interpretation of originalism related to the true meaning of proficiency, so that even though the defendant can answer questions from the judge and there is no certificate stating that he suffers from a mental disorder, but according to the judge the mental condition of the defendant cannot be said to be materially competent.

b. Decision number 72/Pid.Sus/2020/PN Psb

1. Legal Facts

In this case, the defendant's name is Ahmad Fadil (Fadil's nickname). From October 19, 2019, to October 24, 2019, the West Pasaman Islamic Student Association (HMI) held a series of Cadre Training I (LK I) Islamic Student Association (HMI) West Pasaman branch which took place at the Regional Government Mess in Air Bangis which was attended by 35 (thirty-five) participants with the theme of the Basic Values of Struggle activity. Whereas in one of the series of activities of LK I, the committee presented the defendant Fadil as the presenter (master) and witness Joni (separate prosecution) as the instructor accompanying the presenters using the committee providing a schedule slot for material reporting, while the content of the material was fully determined by the defendant Fadil and witness Joni, namely regarding by inculcating the basic values of the HMI struggle.

On Tuesday, October 22, 2019, at around 03.00 WIB, the defendant Fadil and witness Joni sat on the speaker's chair while the participants sat facing the speaker. Defendant Fadil and witness Joni asked witness Riski Habibi as the event equipment section to provide the holy book Al-Quran in which the Defendant would use the Qur'an as a tool in the emptying method in the material for inculcating the basic values of the HMI struggle and then witness Riski Habibi gave it to Defendant Fadil and witness Joni by witness Riski Habibi gave the training participants from the door and then the participants handed over from hand to hand until it was accepted by Defendant Fadil and then Defendant Fadil placed the Al-Quran on the speaker's table.

For Fadil's actions, Fadil was charged with Article 156a of the Criminal Code which reads: "A sentence of a maximum imprisonment of five years whoever deliberately publicly expresses feelings or commits the following actions: a. which are hostile, abuse or blasphemy against a religion professed in Indonesia.", because it is considered to be blasphemy against the Al-Quran which is the holy book of Islam which should be respected and glorified and treated very well.

2. Judge's Decision

1. Declare the Defendant ahmad fadil pgl. Fadil has been legally and convincingly proven guilty of committing a criminal act "intentionally committing an act that is blasphemy against a religion professed in Indonesia;
2. Sentencing the defendant as mentioned above, therefore, with imprisonment for 1 (one) year and 2 (two) months;
3. Determine that the period of detention that has been served by the Defendant is deducted entirely from the sentence imposed;
4. Determine that the Defendant remains in custody;
5. Determine evidence in the form of: - 1 (one) holy book of Al-Quran in red color printing by PT. Tanjung Mas Inti, Jalan Semarang Demak KM 19 Demak is in the possession of Riski Habibi; Returned to HMI Pasaman Barat Branch through Brother Asmar Habibi;
6. To charge the Defendant to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiahs).

3. Analysis

One of the judges' considerations, so that the Defendant was found guilty was because the defendant fulfilled one of the formulations in Article 156 letter a of the Criminal Code, is the element: "It is hostile, abuses or desecrates a religion professed in Indonesia." In interpreting this element, because there is no explanation regarding the meaning of "hostile, abuse or blasphemy against a religion professed in Indonesia", the judge uses the interpretation of originalism. It can be seen from the judge's considerations, are:

- Considering that with the considerations mentioned above, the Panel of Judges thinks that there is a need for a definitional limitation as an indicator of the certainty of this crime which cannot be separated from its contextual formation with the following description (boldition by the author):
- Considering that what is meant by abuse is an act that is not in place or conditions something that is not following its designation;
- Considering that what is meant by abuse is an act that is not in place or conditions something that is not following its designation;
- Considering that what is meant by blasphemy is Istihza in Arabic which means aukhriyah which means harassing or *al Huzu* which means hidden gurai or playing games, making fun of, mocking or ridiculing;

Thus, it can be seen in the judge's consideration, that the judge uses the interpretation of originalism to interpret the element of "hostile, abuse or blasphemy against a religion professed in Indonesia." to provide clear boundaries for these elements so that they are following the principle of *nullum crimen, nulla poena sine lege certa* (no crime without clear rules) (Hiariej, 2015).

IV. Conclusion

The characteristic of the interpretation of originalism as a method of discovery in criminal law is to interpret a statutory regulation according to the original intent of the legislator, so it does not deviate from the original will of the legislator. To understand the original intent of the legislator, several ways that can be done are by analyzing through academic texts, analyzing from the minutes of the meeting of the formation of laws and regulations, hearing from parties directly involved in the process of forming the relevant criminal legislation, and/or or the judge can dig directly from the criminal legislation related to the legislation.

In its implementation, judges have begun to use the interpretation of originalism as a method of discovery in criminal law, for example in decisions number 121/Pid.Sus/2019/PN Mll and number 72/Pid.Sus/2020/PN Psb. In decision number 121/Pid.Sus/2019/PN Mll, the judge used an interpretation of originalism related to the true meaning of proficiency, so that although the defendant could answer questions from the judge and there was no certificate stating that he suffered from a mental disorder, according to the judge of the mental condition of the defendant cannot be said to be materially competent. In the decision number 72/Pid.Sus/2020/PN Psb, the judge used the interpretation of originalism to interpret the element of "hostile, abuse or blasphemy against a religion professed in Indonesia".

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<https://www.merriam-webster.com/dictionary/originalism>
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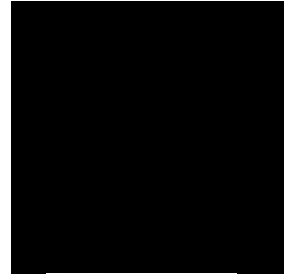
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Table of Contents

Articles

The Influence of Delegative Leadership Style, Motivation, Work Environment on Employee Performance in Self-Efficiency Mediation in SNVT Housing Provision of East Java Province <i>Rohmantika Wulandari, Djawoto Djawoto, Prijati Prijati</i>	PDF 3294-3311
Relationship between Job Satisfactions with Employee Commitment at PT. Barumon Agro Sentosa <i>Azhar Aziz</i>	PDF 3312-3325
The Effect of Archives Infrastructure and Competency of Archives Officers on the Effectiveness of Work in the Development of Marga and Construction Development of North Sumatra Province <i>Baskoro Ardi Wibowo, Rudi Salam Sinaga, Maksun Syahri Lubis</i>	PDF 3326-3342
Human Resources Transformation of PT Pelabuhan Indonesia III (Persero) During the Covid-19 Pandemic <i>Dani Setiawan, Anik Marfistasari</i>	PDF 3343-3348
The Urgency of Regulatory Enforcement of Production and Circulation Laws Alcoholic Drinks (Oplosan Liquor) <i>Rio Dedy Heryawan, Budiarsih Budiarsih, Yovita Arie Mangesti</i>	PDF 3349-3360
Legal Regulations against Children Committing the Crime of Murder <i>Wijanto Hadi Kasturi, Erny Herlin Setyorini, Otto Yudianto</i>	PDF 3361-3371
The Analysis of Pre-Service EFL Teachers' Teaching Implementation <i>Lamhot Naibaho</i>	PDF 3372-3381
Legal Assurance of Investor Dispute Settlement with Indigenous Law Communities in Legal Pluralism Perspective <i>Herman Susanto, Mutia Evi Kristhy, Kiki Kristanto</i>	PDF 3382-3391
Electronic Criminal Case Trial from the Perspective of Justice and Legal Certainty <i>Kiki Indrawan, Suryansyah Marhaini, Mutia Evi Kristhy, Kiki Kristanto</i>	PDF 3392-3401
Accentuation of Intrinsic and Extrinsic Motivation Value for Employee Performance Effectiveness <i>Ni Made Nadia Suta Pradhani</i>	PDF 3402-3410
The Analysis of Quality Public Services in Samsat Tebing Tinggi Office, North Sumatra Province <i>Syafruddin Ritonga, Isnaini Isnaini, Akhmad Ferdinand Siagian</i>	PDF 3411-3422
The Use of Article 378 of the Criminal Code against Violations of Article 43 Paragraph 2 of the Flats Law on Legal Certainty of Land Ownership Status <i>Dzulkarnain Alghafuru Syahputra, Bambang Sugiri, Milda Istiqomah</i>	PDF 3423-3433
Land Procurement by Land Bank as a Form of Agrarian Reform Based on Law Number 11 Year 2021 Concerning Work Creation <i>Wisnu Andriawan, Astari Cahyaningtyas Winantyo, Inigo Putera Bagus Juwono, Putri Mindya Rahmani</i>	PDF 3434-3439
Analysis of the Use of E-Commerce on Consumer Decisions in Buying Baby Food Products	PDF 3440-3450

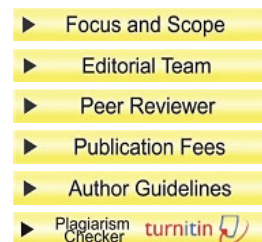


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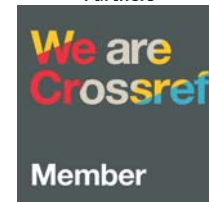
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<i>Hadita Hadita, Wirawan Widjarnarko, Jumawan Jumawan, Christophorus Indra Wahyu Putra</i>	3440-3452
The Role of Organizational Culture in Improving Public Services Study of the One-Stop Administration Office Salak Pakpak Bharat Regency <i>Ismail Fahmi Harahap, Syafruddin Ritonga, Rudi Salam Sinaga</i>	PDF 3453-3464
Teacher Strategies in Learning during the Covid-19 Pandemic at Madrasah Ibtidaiyah Negeri (MIN) 2 Central Aceh <i>Suwarno Suwarno, Muhammad Almi Hidayat, Siti Zumrotul Nikmah, Rahmah Nurfitriani, Ramadan Ramadan</i>	PDF 3465-3472
The Implementation of Langkat Regent Regulation Number 19 of 2019 Concerning Procedures for Procurement of Goods and Services in Village (Study in the Village of Stabat Baru) <i>Mahendra Mahendra, Isnaini Isnaini, Rudi Salam Sinaga</i>	PDF 3473-3484
The Role of Payment Tools Using Card to Stability of Sharia Banking Financial System <i>Sahrilaj Hidayat, Endrianur Rahman Zain</i>	PDF 3485-3491
The Influence of Operating Cash, Liquidity, Leverage and Profitability on Financial Distress on Mining Sector Companies Listed on Idx Period 2015-2019 <i>Adam Afiezan, Jessica Gunarsih, Ardiyan Salim, Cassandra Etania</i>	PDF 3492-3501
Effectiveness of School Operational Assistance Program Implementation at SD Inpres Dekai, Yahukimo <i>Evy Marlyn Saalino</i>	PDF 3502-3517
The Influence of Infrastructure Development on Economic Growth in the Province Papua Year 2006 - 2020 <i>Ince Weya, Nancy Nopeline, Darwin Damanik</i>	PDF 3518-3529
Analysis of Negative and Positive Impacts of Conflict between Employees at PT Tirtakencana Tatawarna Rantauprapat <i>Amelia Marisna, Elvina Elvina, Yudi Prayoga</i>	PDF 3530-3539
Papua Students Media Literacy in Facing Actions of Racism in Indonesia <i>Chontina Siahaan, Nahria Nahria, Manotar Tampubolon</i>	PDF 3540-3547
Literature Review ESG and Sustainability Finance <i>Dina Hastalona, Isfenti Sadalia</i>	PDF 3548-3557
Students of Indonesian-Language Politeness through Moral Education at Acehese Universities <i>Novi Diana, Istiqamah Istiqamah, Anisaturrahmi Anisaturrahmi</i>	PDF 3558-3565
The Concept of Rational Emotif Behavior Therapy Approach in Building Self-Esteem for Slow Learner Children <i>Rischa Pramudia Trisnani, M. Ramli, Carolina Ligya Radjah</i>	PDF 3566-3572
Cigarette Consumer and Poverty in Indonesia <i>Ruth Fenny Margareth, Tanti Novianti, Syamsul Hidayat Pasaribu</i>	PDF 3573-3582
Design of Dual Homing Backup Link on Routing Border Gateway Protocol With Method Hot-Swap Routing Protocol <i>Heri Bani Jumawan, Subhanjaya Angga Atmaja, Firmansyah Firmansyah, Suminar Suminar, Tuti Rohayati</i>	PDF 3583-3592
Civil Law and Juridical Aspects in the Distribution of Marriage Joint Property <i>Sisca Ferawati Burhanuddin</i>	PDF 3593-3601
The Influence of Competence, Independence, and Audit Risks on the Auditor's Ability to Detect Corruption with Integrity as a Moderating Variable <i>Husen Basri, Haryono Umar</i>	PDF 3602-3614
The Effect of Liquidity on the Performance of Foreign Banks in Indonesia <i>Muhammad Akbar</i>	PDF 3615-3626
Pragmatic Analysis of Deixis in SBY's Speech upon Accepting the World Statesman Award <i>Dwi Maryani Rispatiningsih</i>	PDF 3627-3635
Doxing Phenomenon in Indonesia: Amid Waiting for Privacy Settings <i>Sayid Muhammad Rifqi Noval</i>	PDF 3636-3644
Relationship between Speed, Visibility, Responsiveness, Learning Orientation, Supply Chain Agility, Environmental Dynamic, Competitive Agility and Covid-19 Pandemic (Case Study in UKM	PDF 3645-3657



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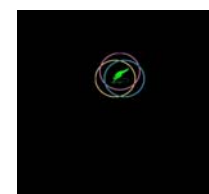
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The Effect of Population and Human Development Index on Economic Growth Pematangsiantar City

Darwin Damanik, Elidawaty Purba, Arnold Sultantio Hutabarat

PDF
3658-3668

Analysis of Financial Performance Assessment Based on Du Pont System with Time Series Approach (TSA) and Cross Sectional Approach (CSA) Method (Case Studies on Textile Companies Listed on the Indonesia Stock Exchange for the 2017 - 2019 Period)

Farida Khairani Lubis, Lusi Elviani Rangkuti, Jalilah Ilmiha

PDF
3669-3676

Curriculum of Management in Improving the Quality of Catholic School Education in Samarinda City, East Kalimantan, Indonesia

Warman Warman, Lorensius Lorensius, Rohana Rohana

PDF
3677-3688

Architecture Design of E-Information System Marketplace with Method Enterprise Architecture Planning

Subhanjaya Angga Atmaja, Iwan Eka Putra, Ikhsan Akbar Muslim, Hendri Purnandi

PDF
3689-3710

The Cultivation System in Banyuwangi's Coffee Plantations in 1818-1829

Fachri Zulfikar, Djono Djono, Susanto Susanto

PDF
3711-3718

Improve Customer Satisfaction through Product Innovation in Social Media

Prasetya Tri Mahendra

PDF
3719-3729

Financial Performance against Sukuk Ratings in the Islamic Finance Sector

Sufyati HS

PDF
3730-3741

The Effect of Financial Report Quality and Human Resource Competence on the Implementation of SAKIP (Government Agencies Performance Accountability System)

Indra Lestary Sukimon, Salju Salju, Suhardi M. Anwar

PDF
3742-3751

The Policy of Bureaucratic and Agrarian Reorganization in Madura until the End of the Nineteenth Century

Iswahyudi Iswahyudi

PDF
3752-3764

How is the Impact of the Corporate Governance Mechanism on IPO Underpricing? (Empirical Study on Companies conducting IPOs on the Indonesia Stock Exchange 2010-2019)

Kiki Satria Hutama Putra

PDF
3765-3779

The Effect of the Effectiveness of Sustenance Social Assistance and Accompaniment on the Prosperity of Pre Prosperous Society in Tanjung Pura District Langkat Regency

M. Hidayat, Erika Revida, Badaruddin Badaruddin

PDF
3780-3786

The Influence of HR Practices on Job Satisfaction in the Delivery of Decentralized Health Services (Case Study at Sawerigading General Hospital, Palopo City)

M. Risal, Muh. Yusuf Q, Tira Dewi Bustami

PDF
3787-3796

Analysis of Factors That Affect Community Participation on City without Slums Program (KOTAKU) in Percut Sei Tuan District Deli Serdang Regency

Nenny Rosalinda Siburian, Erika Revida, Suwardi Lubis

PDF
3797-3802

Mediaton Leader Member Exchange, Intrinsic Motivation and Psychological Empowerment the Influence Ethical Leadership on Employee Creativity and Work Innovation

Nurul Ismi, Sumitro Sarkum, Zuriani Ritonga

PDF
3803-3815

The Role of Protocol Section in Streamlining the Activities of Regional Heads (A Study at the Regional Secretariat of Padang Sidempuan City)

Putri Marissa, Rudi Salam Sinaga, Maksum Syahri Lubis

PDF
3816-3825

Prevention and Handling of Covid-19 in the Work Area of UPTD Puskesmas Tanah Baru through Collaborative Governance

Rusliandy Rusliandy, Mira Miranti Puspitasar

PDF
3826-3835

Storytelling Marketing, Content Marketing, and Social Media Marketing on the Purchasing Decision

Saida Zainurossalamia ZA, Irsan Tricahyadinata, Robiansyah Robiansyah, Dio Caesar Darma, Gusti Noorlitaria Achmad

PDF
3836-3842

Death Sentences for Criminal Acts of Narcotics in a Juridical Review

Taufiqurrahman Siregar, Sriono Sriono, Bernat Panjaitan

PDF
3843-3851

Analysis of the Effectiveness in Planning and Realization Regional Income and Expenditure

PDF



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Budget By the Government of Palangka Raya City Year 2019-2020 <i>Yahya Nusan, Benius Benius, Alexandra Hukom</i>	3852-3858
Strengthening Digital Citizenship through Citizenship Education Based on Science, Technology and Society in Era 4.0 <i>Bali Widodo, Suwarma Al Muchtar, Endang Danial AR</i>	PDF 3859-3868
The Development of Lake Toba Tourism Area Based on Tourism Village, in Meat Tourism Village, Toba Regency <i>Eko Soaloon Sianipar, Badaruddin Badaruddin, R. Hamdani Harahap</i>	PDF 3869-3881
"Mini Trial" Model on Case Resolution Student Morals <i>Yovita Arie Mangesti, Yana Indawati, Hervina Puspitosari</i>	PDF 3882-3889
The Mediating Role of Innovation Capability in the Relationship between Knowledge Sharing on SMEs' Performance <i>Agus Setyo Pranowo, Anugerah Dachi, Novrihan Leily Nasution, Ende Ende, Yayan Hendayana</i>	PDF 3890-3899
Students' Perceptions of the Movie Story of Joy Inspiring Entrepreneurs <i>Hendra Poltak, Tio Arriela Doloksaribu, Muhfizar Muhfizar, Endang Gunaisah, Mustasim Mustasim</i>	PDF 3900-3905
Effect of Leverage, Profitability and Audit Committee on Audit Delay with KAP Reputation as Moderating Variable <i>Agustina Dianova, Titik Mildawati, Kurnia Kurnia</i>	PDF 3906-3916
Marketing Section Performance Improvement Companies Post Covid-19 in Indonesia <i>Devi Andriani, Pristiyono Pristiyono, Fauziah Hanum</i>	PDF 3917-3925
The Influence of Entrepreneurial Competence, Motivation and Innovation on SMEs Performance <i>Fitri Masraya Siregar, Zulkifli Musannip Efendi Siregar, Pitriyani Pitriyani</i>	PDF 3926-3932
The Effectiveness of Police Patrols in Efforts to Reduce Criminality at Labuhanbatu Resort Police <i>Hendra Sony Rambe, Sriono Sriono, Kusno Kusno</i>	PDF 3933-3944
The Role of Bhabinkamtibmas in Efforts to Press the Spread of the Virus Covid-19 <i>Ibrahim Pohan, Sriono Sriono, Indra Kumalasari M</i>	PDF 3945-3953
The Role of the Marine and Fisheries Office of Labuhanbatu Regency Towards the Protection of the Terubuk Fish (Tenualosa ilisha) <i>Muhammad Ruffi Zendri Batubara, Sriono Sriono, Kusno Kusno</i>	PDF 3954-3961
Strengthening Bumdes through Customer Satisfaction and Loyalty as the Defense of the Bumdes Business in Indonesia Post-Covid-19 <i>Muhammad Amin Nasution, Zulkifli Musannip Efendi Siregar, Pristiyono Pristiyono</i>	PDF 3962-3970
The Philosophy of Water in Buddha's Culture <i>Haudi Haudi, Tejo Ismoyo, Ong Cin Siu</i>	PDF 3971-3980
Level of Satisfaction of Online Learning in Mediation Lecturer Competence on Learning Motivation <i>Mahzura Harahap, Pristiyono Pristiyono, Junita Lubis, Muhammad Ikhlas, Agus Anjar</i>	PDF 3981-3990
Collaborative Governance Study of Collaborative Governance in Community-Based Housing Development in Kendal, Central Java <i>Martin Rambe, Eko Prasajo</i>	PDF 3991-4004
The Influence of Financial Literacy, Financial Inclusion and Consumptive Behavior on Student Interests in Management Department, Faculty of Economics and Business, Labuhanbatu University in Using Financial Institution Products and Services <i>Mulkan Ritonga, Furi Windari, Tiurlina Hasmawati Sihite, Muhammad Ali Al Ihsan, Marlina Siregar</i>	PDF 4005-4013
The Effect of "Sharing Content through Ignorant Actions" in Digital Media, Youtube on the Formation of Middle Society Attitudes Case Study: Youtube Baim Paula <i>Taffani Rahma Yuandara, Irwansyah Irwansyah</i>	PDF 4014-4025
The Influence of Work Environment, Promotion, and Job Satisfaction on Employee Performance <i>Tasman Tasman, Zulkifli Musannip Efendi Siregar, Meisa Fitri Nasution</i>	PDF 4026-4031
The Concept of Enlightenment According to the Buddhist Wheel of Life <i>Lamirin Lamirin, Junaidi Junaidi, Haudi Haudi</i>	PDF 4032-4042

Basic Multiplication Knowledge Acquiring Based on Mathematical of Fingering System <i>Junaedi Junaedi, Abdul Wahab, Irvana Arofah, Arya Setya Nugroho, Erwin Putera Permana</i>	PDF 4043-4051
Multiethnic Settlement Segregation (A Case Study: Kampung 3-4 Ulu Laut in Palembang City) <i>Endy Agustian, Rini Rachmawati, R Rijanta, Agus Joko Pitoyo</i>	PDF 4052-4060
The Use of the Learning Start with Question Model in Writing Information Conclusions on Indonesian Language Education Study Program FKIP UMSU <i>Oktavia Lestari P</i>	PDF 4061-4068
Action of Small Entrepreneurs to Deal with the Risk of Pandemic Covid-19 <i>Nurul Hidayah Harahap, Pristiyono Pristiyono, Mulya Rafika, Fauziah Hanum Rambe</i>	PDF 4069-4075
The Influence of Transformasional Leadership Style, Organizational Justice, Employee Engagament and Employee Reaction on Employee Performance <i>Priska Sitorus, Sumitro Sarkum, Meisa Fitri Nasution</i>	PDF 4076-4084
Bankruptcy Analysis as a Basis for Discontinuous Termination of Notaries <i>Amira Ulfah</i>	PDF 4085-4089
Measuring Image through House Design Approach and Resident Satisfaction of Puri Al-Fatih Residential Covid-19 Pandemic Time <i>Suri Nurmawan Sipahutar, Pristiyono Pristiyono, Eva Fitria, Mulkan Ritonga</i>	PDF 4090-4096
Judicial Review on Menchanical Rights of Musical Work (Case Study on of the Supreme Court Decree of the Republic of Indonesia No.018K/N/HaKi/2007, Concerning Royalty Payment by KCI in Against to WAMI) <i>Marissa Grace Haque, Vip Paramarta, Santi Rimadias, Kosasih Kosasih, Denok Sunarsi</i>	PDF 4097-4109
The Influence of Awareness of Taruna Coral Youth on the Mitigation of Longsor Land Disaster in the North Tapanuli Regency <i>Reinhard Simamora, Zulkifli Nasution, Agus Purwoko</i>	PDF 4110-4115
Complaint Handling Management at St. Rafael Cancar General Hospital <i>Debi Christian Lubis, Nuryakin Nuryakin, Mahendro Prasetyo Kusumo</i>	PDF 4116-4126
Philosophical Overview of the Relationship between Budget Users and the State General Treasurer in the Management of Financial State (Indonesia Experience) <i>Achmat Subekan, Azwar Iskandar</i>	PDF 4127-4137
Policies Relating to Criminal Economic Law to Overcome the Covid-19 Pandemic and Analysis of Their Impact on Indonesia's Statement out of the Crisis after China <i>Farkhan Junaedi, John Franky Yanafia Ariandi</i>	PDF 4138-4143
Corruption and Its Eradicate Strategies <i>Hendrarto Hendrarto, Endang Larasati, Triyuniningsih Triyuniningsih, Sri Suwitri</i>	PDF 4144-4153
Types of Directive Speech Acts in the Translation of Surah An-nisa' <i>Pengabdi Daulay, Eddy Setia, Tasnim Lubis</i>	PDF 4154-4162
Crisis Management in Managing Hotels in Labuan Bajo During The Covid-19 Pandemic <i>Reynaldo Angga Siagian, Gregorius A. Berybe, Thyophoida W.S. Panjaitan</i>	PDF 4163-4172
Factors Affecting Purchase Decision in Indonesian E-Commerce Industry <i>Arini Kusumawardhani, Ervina Esmeralda, Jonathan Pria Utama, Adilla Anggraeni</i>	PDF 4173-4186
ISIS Ex-WNI or Indonesian Ex-ISIS? An Overview in the Perspective of National Law and International Law <i>Eka Widi Astuti, Xavier Nugraha</i>	PDF 4187-4197
Leadership Style Analysis to Improve the Quality of Human Resources at Yayasan Pembangunan Masyarakat Sejahtera (YPMS) (Case Study at As-Salam Elementary School YPMS Kedaung) <i>Ading Sunarto, Agrasadya Agrasadya, Muger Apriansyah</i>	PDF 4198-4207
Leadership Recruitment at the Department of Population and Civil Registration of North Sumatra Province <i>Ira Juliani, Nina Salmaniah Siregar, Rudi Salam Sinaga</i>	PDF 4208-4216
Analysis of the Effectiveness of Employee Performance in Improving Public Services at the Bagan Sinembah Sub-District Office, Rokan Hilir Regency, Riau Province <i>Fenny Clara Saskia Manalu, Maksum Syahri Lubis, Rudi Salam Sinaga</i>	PDF 4217-4230
Development of Entrepreneurial Orientation through Specific Critical Incident (CCI)	PDF

<p>Development of Entrepreneurial Orientation through Specific Critical Incident (SCI) Entrepreneurial Learning on Business Performance (Case Study of Culinary Small and Medium Enterprises (SMEs) in South Kalimantan Province)</p> <p><i>Fitriyadi Fitriyadi, Endang Larasati, Indi Djastuti, Hari Susanta Nugraha, Bulan Prabawani, Yuwanto Yuwanto</i></p>	PDF 4231-4240
<p>Analysis Market Orientation and Knowledge Management to Improve Innovation and Business Performance</p> <p><i>Siti Meylananda, Sumitro Sarkum, Abd. Halim</i></p>	PDF 4241-4255
<p>Political and Economic Justifications for Conditional Trade Barriers: Anti-Dumping Duty, Safeguard Measure and National Security Exception</p> <p><i>Abdul Razak Nasution</i></p>	PDF 4256-4262
<p>The Convergence of Economic Growth between District/Cities in Papua Province</p> <p><i>Theresia Oktavia, Teguh Hadi Priyono, Duwi Yunitasari</i></p>	PDF 4263-4269
<p>Putu Made Restaurant Micro-Influencers Strategy</p> <p><i>Ananda Fitria</i></p>	PDF 4270-4279
<p>The Effect of Saliva Zinc Levels with Nutrition Status of Elementary School Children in Air Beliti Puskesmas Year 2021</p> <p><i>Putri Citra Qurrothu Aini, Rostika Flora, M. Zulkarnain, Ocktariana Ocktariana, Risnawati Tanjung</i></p>	PDF 4280-4285
<p>A Legal Responsibility of a Notary for Actions Performed by Parties in the Making an Authentic Ded</p> <p><i>T. Riza Zarzani, Onny Medaline, Dartimnov Dartimnov</i></p>	PDF 4286-4294
<p>Child's Income Obligation after Divorce According to Shafi'i Sect</p> <p><i>Sakban Lubis</i></p>	PDF 4295-4301
<p>Juridic Analysis of Waste Management Supervision System in Labuhanbatu District</p> <p><i>Meso Wanolo, Bernat Panjaitan, Sriono Sriono</i></p>	PDF 4302-4308
<p>Village Economic Development Model Based on Village-Owned Enterprises (BUMDes): A New Insight from North Sumatera-Indonesia</p> <p><i>Ade Isyana Hairunnisa, Erlina Erlina, Sirojuzilam Sirojuzilam, Rujiman Rujiman</i></p>	PDF 4309-4316
<p>Analysis of Treatment Profile, Direct Medical Costs, and Quality of Life in Hemodialysis Patients in Hospital X in Banten</p> <p><i>Lucky Dita Agustiansyah, Prie Sarnianto, Yusi Anggraini</i></p>	PDF 4317-4330
<p>Enhance Effect of Performance, Motivation and Leadership in the Work Environment</p> <p><i>Muhammad Isa Indrawan</i></p>	PDF 4331-4339
<p>Interactive Multimedia Development Based on Adobe Flash Cs6 on the Hazards of Free Association</p> <p><i>Al Azharsyah, Budi Valianto, Novita Novita, Indra Kasih</i></p>	PDF 4340-4347
<p>Innovation of Government Research and Development Institution Based on Knowledge Management and Information Technology (Case Study on the Government Policy-Making Research and Development Institution)</p> <p><i>Umi Rusilowati, Hadi Supratikta, Raden Roro Ayu Metarini</i></p>	PDF 4348-4362
<p>Analysis of Slum Management Plan in East Area Covering Medan Area and Medan Denai District</p> <p><i>Ruth Oldrina Margareth Tobing, Achmad Delianur Nasution, Ami Marisa Lubis</i></p>	PDF 4363-4371
<p>Development of Problem-Based Learning Devices for Training Science Process Skills (SPS) Junior High School Students</p> <p><i>Ika Agrista, Endang Susantini, Widowati Budijastuti</i></p>	PDF 4372-4379
<p>The Role of Influencer Marketing to Improve Organizational Performance and its Impact on Purchasing Decisions</p> <p><i>Cucu Hodijah, Amalia Juliana Monika Intan, Rika Solihah, Santi Maria</i></p>	PDF 4380-4390
<p>The Relation between the Characteristics of Parents and the Incidence of Stunting in Elementary School Children in the Working Area of the Air Beliti Health Center</p> <p><i>Dita Anggriani Lubis, Mohammad Zulkarnain, Rostika Flora, Risnawati Tanjung</i></p>	PDF 4391-4397
<p>An Effect Realization on Temporality, Aspectuality, and Capital in English Indonesian Language</p> <p><i>Yossy Fadly</i></p>	PDF 4398-4407
<p>The Relationship of Stunting Events with Intelligence Level in Elementary School Children at</p>	PDF

Air Beliti Health Center <i>Desi Kurniati, Nur Alam Fajar, Novrikasari Novrikasari</i>	4408-4414
Strategy Analysis of the Marketing Mix in the New Normal Era on Orange Picking Tourism in Mojokerto <i>Tiara Niken Pramesti, Nur Hidayati, M. Ridwan Basalamah</i>	PDF 4415-4428
Analysis of the Effect of Archive Arrangement, Infrastructure and Competency of Archive Officers on Work Effectiveness at the Office of Highways and Construction Development of North Sumatra Province <i>Suyanto Suyanto, Rudi Salam Sinaga, Maksum Syahri Lubis</i>	PDF 4429-4444
Implementation of Green Government by the Regional Government of East Kalimantan Province as a Form of Ecological Principles (Case Study of the Impact of the Implementation of Coal Mining Policy in Samarinda City) <i>Melati Dama, Sry Reski Mulka, Nur Hasanah, Jauchar Barlian</i>	PDF 4445-4457
The Correlation between Self-Concept and Optimism among Psychology Faculty of College Students Who Compiled on Thesis at University of Medan Area <i>Nini Sri Wahyuni, Istiana Istiana, Jannah Safira Asri</i>	PDF 4458-4464
The Development of Digital Teaching Materials: An Effort to Create Mathematics Learning Effectively at Universitas Muhammadiyah Sumatera Utara in the New Normal Era <i>Ismail Saleh Nasution, Ismail Hanif Batubara</i>	PDF 4465-4474
The Prosecution by the Pidie State Prosecutor Against the Criminal Action of Corruption Gampong Income and Shopping Budget <i>Suhaibah Suhaibah, Armiwal Armiwal, Afdhalul Gunawar</i>	PDF 4475-4482
The Effect of Promotion, Price and Brand Image on the Decision to Choose a Computer Course Institution at Fiara Computer LKP in Selat Besar Village <i>Seni Arti, Zulkifli Musannip Efendi Siregar, Junita Lubis</i>	PDF 4483-4491
Analysis of the Role of Bappeda in Regional Development Planning (Case Study of Maternal Mortality in Batu Bara Regency in 2016) <i>Firman Pane, Siti Mardiana, Rudi Salam Sinaga</i>	PDF 4492-4503
Political Leadership Policy and Education in PSIAFIL Perspective at Pasim National University <i>Endri Hendrayana, Sugeng Djatmiko, Ishak Abdulhak, Achmad Mudrikah</i>	PDF 4504-4517
Effectiveness of Gelatin Tannate among Children with Acute Diarrhea: A Systematic Review and Meta-Analysis <i>Farahdina Farahdina, Claudia Herda, Siti Habibah Zein, Vatine Adila</i>	PDF 4518-4528
Construction of the Meaning of Radicalism and Efforts to Prevent the Spread of Radicalism (Study at Al-Azhar Senior High School Medan) <i>Ricky Shahriza Ramadhan Dalimunthe, Badaruddin Badaruddin, Nurman Achmad</i>	PDF 4529-4538
The Effect of Achievement Motivation, Competence and Self-Efficacy in Entrepreneurship on the Visionary Capabilities of Entrepreneurs, in South Kalimantan-Indonesia <i>Suyanto Suyanto, Endang Larasati, Indi Djastuti, Widiartanto Widiartanto, Yuwanto Yuwanto</i>	PDF 4539-4552
Research Phenomenon during the Covid-19 Pandemic: Challenges and Opportunities for Online Media Learning <i>Harry Satrya Wanto, Suharnanik Suharnanik, Soepriyono Soepriyono</i>	PDF 4553-4563
The Effect of Total Third Party Fund and Number of Offices on Sharia Commercial Bank Financing <i>Supiah Ningsih, Rudy Irwansyah</i>	PDF 4564-4577
The Influence of Social Responsibility and Leverage on Company Value with Profitability as Mediator <i>Yunita Kurniawat, Suwardi B. Hermanto, Bambang Suryono</i>	PDF 4578-4590
The Relationship between Psychological Capital and Accessible Resources to Support the Organization Power's Sustainability in School Administrators at the Islamic Formal School Education Institute (Islamic Elementary School and Islamic Junior High School) <i>Mesiono Mesiono, Muamar Al Qadri, Ahmad Fuadi, Zaifatur Ridha</i>	PDF 4591-4599
The Effect of Total Deposits and Loan Arrears on the Income of CU Maju Bersama Cooperatives in Siantar District (Before and During Covid-19) <i>Fitri Sitinjak, Pinondang Nainggolan, Darwin Damanik, Elidawaty Purba</i>	PDF 4600-4617
The Effect of Capital Adequacy Ratio, non Performing Financing, and Financing to Deposit Ratio on Returns for Deposit Results of Sharia Commercial Banks	PDF 4618-4634

Optimization of Data Security System Control with CRC (Cyclic Redundancy Check) Algorithm <i>Dedi Purwanto</i>	PDF 4635-4642
An Effect of Planning, Organizing, Staffing, Leading and Controlling of Operational Leadership <i>Ikhah Malikhah</i>	PDF 4643-4652
Opportunities of Traditional Law Communities to Resolve Criminal Cases in Indonesia (Response to the Long Crisis of Legality Issues in the Principles of Criminal Law) <i>Irma Fatmawati</i>	PDF 4653-4662
Architectural Interaction between Space and Behavior (Case Study: Santika Dyandra Hotel Medan's Lobby) <i>Faurantia Forlana Sigit</i>	PDF 4663-4677
Criminal Acts of Corruption Procurement of Goods and Services of Local Governments through Electronic Procurement Services (LPSE) <i>Yasmirah Yasmirah, Firman Halawa, Sukur Tandiono, T. Riza Zarzani</i>	PDF 4678-4684
Enhance of Legal Protection the Health Outsourcing Workers in Health Law Number 36 of 2009 <i>Yohny Anwar, T. Riza Zarzani, Firman Halawa, T. M. Fauzi</i>	PDF 4685-4696
How is the Income Disparity in the Context of North Sumatera Province: A Conceptual Framework <i>Sinar Indra Kesuma, Sirojuzilam Sirojuzilam, Erlina Erlina, Suwardi Lubis</i>	PDF 4697-4710
The Effect of Quality of Work Life and Work Environment on Employee Performance at PT Wijaya Karya Rekayasa Konstruksi East Jakarta <i>Rima Handayani, Eni Puji Astuti, Rahmi Hermawati</i>	PDF 4711-4723
Legis Ratio Norms Article 64 of Law No. 1 Year 2004 Concerning State Treasure <i>Alman P. Pakpahan, Sudarsono Sudarsono, Setiawan Noerdajasakti, Iwan Permadi</i>	PDF 4724-4735
The Analysis of Factors Related to the Company Performance with Capital Structure as an Intervening Variable in the Transportation Industry in Indonesia <i>Maswani Maswani, Dimas Angga Negoro, Tantri Yanuar Rahmat Syah</i>	PDF 4736-4752
The Influence of Social Responsibility and Leverage on Company Value with Profitability as Mediator <i>Yunita Kurniawati, Suwardi B. Hermanto, Bambang Suryono</i>	PDF 4753-4765
Contribution of ICT Literacy and Teachers Work Ethic on the Quality of Distance Education in State Junior High Schools of Sukoharjo Sub-District <i>Darus Rohman, Utama Utama, Darsinah Darsinah</i>	PDF 4766-4779
Policy Discretion for Post-Disaster Rehabilitation and Reconstruction of Gunung Sinabung Eruption in Karo Regency in the Settlement Relocation Program <i>Daryus Medi Sinulingga, Badaruddin Badaruddin, Robert Siregar</i>	PDF 4780-4791
The Contribution of Napoleon Bonaparte to Egyptology <i>Jock Matthew Agai, M. Yoserizal Saragih</i>	PDF 4792-4803
The Role of Brand Ambassador, Event Marketing and Digital Marketing on Purchase Decisions User Shopee <i>William Kok, Yeni Ariesa, Kelvin Kelvin, Vincent Pratama, Steven Kosasih, Veda Fernand Alianza</i>	PDF 4804-4814
Effectiveness of Online Education in Achieving Indonesia's National Education Targets in Elementary School <i>Lely Medyawati</i>	PDF 4815-4821
The Effect of Circuit Core Stability Training Towards The Strength of Abdominal Muscles and Balance <i>Luh Putu Tuti Ariani</i>	PDF 4822-4829
The Value of Spirituality in Keluarga Persilatan Ki Ageng Pandan Alas <i>Muhammad Hanif</i>	PDF 4830-4840
Analysis of Consumer Satisfaction Using Delivery Service "Titipan Kilat" (TIKI) <i>T. Nurhaida, Lilinesia Lilinesia, Amrin Mulia Utama</i>	PDF 4841-4846
Improvement of Teaching Materials of Microeconomic Theory (Case Study of Economic Education Study Program in State University of Medan)	PDF 4847-4855

Education Study Program in State University of Medan) <i>Putri Sari MJ Silaban, Joko Suharianto, Aurora Elise Putriku, Sabda Dian Nurani Siahaan</i>	PDF 4856-4861
The Effect of the Internal Control System, the Competency of Village Employees and Organizational Commitments on Village Physical Development in Galang District Deli Serdang Regency <i>Vini Dwi Putranti, Badaruddin Badaruddin, Sirojuzilam Sirojuzilam</i>	PDF 4862-4872
Implementation of Smart Tourism in Kedang Ipil Village <i>Kezia Arum Sary, Silviana Purwanti, Rina Juwita</i>	PDF 4873-4886
The Effect of Murabahah Financing and Profit Sharing on the Profitability of Return on Assets (ROA) Through Non Performing Financing (NPF) In Sharia Commercial Banks <i>Marliyah Marliyah, Kamilah K, Rahmadina Rahmadina</i>	PDF 4887-4899
Student Centered Learning In Surah Thaha 17-18 And It's Implication In Islamic Boarding School Education <i>Khusnul Auliyah, Suwarno Suwarno, Uswatun Chasanah, Ramsah Ali</i>	PDF 4900-4911
Government Policy on Accessibility of Persons with Disabilities in Finding Jobs in Pematangsiantar City <i>Alyunzira Wardani, Zulkifli Zulkifli, Indra Fauzan</i>	PDF 4912-4924
The Role of Traditional Markets in Improving the Community's Economy amid the Covid 19 Pandemic, Palangka Raya <i>Rinto Alexandro, Tonich Uda, Selvi Selvi</i>	PDF 4925-4935
Analysis of the Procurement of Civil Servants in Deli Serdang Regency (Study at the Regency Regional Personnel Agency Deli Serdang) <i>Wahyu Ramadhan, Rudi Salam Sinaga, Adam Adam</i>	PDF 4936-4942
Aspects of Legal Protection in the Agreement of Selling and Purchase of Heritage Land <i>Adi Sanjaya, Sriono Sriono, Elviana Sagala</i>	PDF 4943-4953
Analysis of the Effect of Land and Building Tax Results on Regional Original Income and Economic Growth in the West Area, Central Kalimantan Province <i>Alexandra Hukom, Dedi K. Mihing, Sunaryo Neneng, Johni Sonder</i>	PDF 4954-4966
Indonesian Exchange Traded Fund Performance <i>Radityo Fajar Arianto, Hendrawan Supratikno, Gracia Shinta S. Ugut, Edison Hulu</i>	PDF 4967-4982
Effect of Current Ratio, Return on Equity, Debt to Equity Ratio, and Earnings per Share on Stock Returns of Mining Companies Listed on the Indonesia Stock Exchange <i>Chintya Nurmayasari, Haryono Umar, Agustina Indriani</i>	PDF 4983-4997
The Effect of ROA, ROE, CR, DER and EVA on Stock Return of Non-Banking Companies Listed on the Lq-45 Index and Sri-Kehati Index on the Indonesia Stock Exchange 2015-2019 <i>Herry Santoso, Gracia Shinta S. Ugut</i>	PDF 4998-5009
The Financial Perspective Study on Tax Avoidance <i>Hisar Pangaribuan, Jouse Fernando HB, Sukrisno Agoes, Jenny Sihombing, Denok Sunarsi</i>	PDF 5010-5018
Analysis of the Effect of Institutional Ownership Profitability, Sales Growth and Leverage on Tax Avoidance in Construction Subsector Companies <i>Ramadan Harahap</i>	PDF 5019-5033
Empirical Review on Factors that Determine an Internal Audit Effectiveness <i>Saikou Conteh</i>	PDF 5034-5042
Inflammatory Activity Test of N-Hexant Extract of Kandis Acid (Garcinia Xanthochymus) Against Male White Mice (Rattus norvegicus) <i>Hanafis Sastra Winata, Ihsanul Hafiz, Yulis Kartika, Delima Sihombing</i>	PDF 5043-5052
Comparison of Compressive Strength and Wood Powder Absorption and Coffee Grade Aggregate With Uniform Grade <i>Fahrizal Zulkarnain, Irma Dewi, Feri Iman Hasibuan</i>	PDF 5053-5059
Application of the Sea Approach (Starter Experiment Approach) in Practicum Activities to Improve Academic Skills Students' in Biology Lessons At SMA Negeri 1 Banyuwangi <i>Triana Kartika Santi, Candra Hermawan, Yulia Ayu Widyana</i>	PDF 5060-5065
The Role of Competitive Advantage and Customer Relationship Management in Increasing Interest in Staying Back at Non-Star Hotels in Covid 19 Era <i>Wentri Merdiani, Umi Narimawati, Dewi Indriani Jusuf</i>	

Analysis of Small Micro Business Sector on the Welfare of Small Micro Enterprises in North Sumatra	PDF 5066-5079
<i>Diwayana Putri Nasution, Syaad Afjuddin, Irsad Irsad, Rahmanta Rahmanta</i>	
Application of Communication in Madratsah	PDF 5080-5091
<i>Wajnah Wajnah, Abidah Abidah</i>	
The Role of Mediator in Industrial Relationship Dispute Settlement Process during Covid-19 Pandemic at Labor Offices Department North Sumatra Province	PDF 5092-5104
<i>Humaizi Humaizi, Munir Tanjung, Lia Lestari</i>	
Response of City's Garbage Compost on the Production of Several Varieties of Shallots	PDF 5105-5110
<i>Devi Andriani Luta</i>	
Criminal Policy for Legal Protection of Children Victims of Criminal Action of Sexual Violence in the Household	PDF 5111-5119
<i>Syaiful Asmi Hasibuan</i>	
Enhance Successful Identification of E-Government Management in Realizing Good Government Governance in the Government of the City Of Binjai	PDF 5120-5133
<i>Anggi Pratama Nst, Saimara Sebayang, Dito Aditia Darma Nst</i>	
European Muslim, Radicalism, Terrorism, and Democracy: A Reflection	PDF 5134-5141
<i>Alfian Alfian, Herdi Sahrasad, Dedy Tabrani, Al Chaidar</i>	
Design and Build a Sun Tracking System Using a Fuzzy Logic Controller to Optimize the Output Power of the Solar Cell Module	PDF 5142-5154
<i>Hamdani Hamdani, Solly Aryza, Zuraidah Tharo, Siti Anisah</i>	
Multi-Ethnic and Multi-Religious Involvement of Indonesian-Chinese Muslims Society in Habituating the Indonesian Nation Character	PDF 5155-5165
<i>Religia Fatihasari Berliana, Rusnaini Rusnaini, Triyanto Triyanto</i>	
The Effect of Rational Motivations, Emotional Motivations, Promotions, and Brand Images on the Purchase Decision of Yamaha Motorcycles at Alfa Scorpii Rantauprapat	PDF 5166-5179
<i>Ade Indah Sari Harahap, Ade Parlaungan Nasution, Elida Florentina Sinaga Simanjorang</i>	
The Correlation Between Extensive Reading, Critical Reading, and Self-Esteem in Students' Reading Abilities	PDF 5180-5186
<i>Syariffudin Zuhri, Khoirul Anwar, Nirwanto Maruf</i>	
Propranolol Oral Treatment for Infantile Hemangioma : A Systematic Review	PDF 5187-5195
<i>Aulia Nissa Rizky Hariyono, Ratih Pramuningtyas, Zhela Fatin Fatiha, Ayu Mayangsari, Tia Mella Citra</i>	
The Government Effort in Improving Healthcare Access in Rural Communities Based On Law	PDF 5196-5201
<i>Rio Dwi Pradana Putra, Zainul Ibat, Achmad Romdhan Syah, Aceng Wiantono</i>	
Visitor Relationship Marketing: A Case Study in Samosir Tourism Area	PDF 5202-5208
<i>Yossie Rossanty, Muhammad Dharma Tuah Putra Nasution, Irawan Irawan</i>	
Government Policy in Managing Covid 19 in Perspective of Human Rights and Social Justice	PDF 5209-5216
<i>Alfiah Sabrina, Aljizadlanur Rahma, Alfin Ersya Ardiansyah</i>	
The Effectiveness of Topical Tea Tree Oil (Terpinen-4-Ol) in Human Demodicosis: A Literature Review	PDF 5217-5223
<i>Ayu Mayangsari, Ratih Pramuningtyas, Aulia Nissa Rizky Hariyono, Zhela Fatin Fatiha, Tia Mella Citra</i>	
Contribution of Independent Learning and Learning Motivation to Learning Outcomes of Islamic Religious Education Students of State Senior High School 1 Sei Rampah	PDF 5224-5233
<i>Candra Wijaya, Rusydi Ananda, Agung Baskoro</i>	
The Effectiveness of E-Learning Madrasah in English Teaching and Learning	PDF 5234-5244
<i>Aris Purwanto, Slamet Asari, Nirwanto Maruf</i>	
Economic Valuation and Cultivation of Persimmons in Takengon City Central Aceh District	PDF 5245-5252
<i>Ayu Erfiana Asmy, Rahmadhani Fitri</i>	
Opportunities and Challenges for Limitation of Plastic Waste in Balikpapan City	PDF 5253-5267
<i>Thalita Rifda Khaerani, Melsy Vanesa Sarai</i>	
Relationship of Knowledge and Attitude to the Role of Health Personnel in Management of Stunting Events in School Children, Tuah Negeri District, Musi Rawas Regency	PDF 5268-5274
<i>Niswara Niswara, Dico Januar Situmorang, Nur Alam Faiz</i>	

Innovations in Islamic Banking on Conventional Banks (Study on Banking Industry Players) <i>Irsyad Kamal, Yudi Azis</i>	PDF 5275-5287
Entrepreneurial Orientation on Food and Beverage SMEs' Performance : The Role of Competitive Advantage and Innovation <i>Haufi Sukmamedian</i>	PDF 5288-5297
The Relationship between Iron Intake and Anemia in Elementary School Children in the Working Area of the Air Beliti Public Health Center, Musi Rawas Regency <i>Meliyanti Meliyanti, Rostika Flora, Najmah Najmah</i>	PDF 5298-5304
Remedial Programs' Effectiveness on Indonesian Language Learning at SMAN 1 Bandar Baru, Pidie Jaya Regency <i>Hayatun Rahmi, Jafaruddin Jafaruddin, Muhammad Iqbal</i>	PDF 5305-5316
The Effect of Health Banks on Share Returns in Banking Companies Listed on the IDX for the 2019 Period With Political Events (Indonesia Presidential Elections) as Dummy Variables <i>Roby Hadimurzani, Ardi Paminto, Irwansyah Irwansyah</i>	PDF 5317-5330
Virtual Exhibition Room in the Pandemic Era <i>Arsita Pinandita, Nofrizaldi Nofrizaldi, Uzda Nabila Shabiriani</i>	PDF 5331-5338
The Role of Immigration and Employment Law as a Media for Licensing and Supervision of Foreign Workers in the Republic of Indonesia <i>Livia Naila Elsarinda, Olyvia Sindiauwaty, Ferdi Anzas Pratama</i>	PDF 5339-5346
Study of Efficiency of Islamic Commercial Banks in Indonesia through the Role of Capital and Liquidity: Two-Stage Data Envelopment Analysis <i>Fitri Irianti, Erie Febrian, Yudi Ahmad Faisal</i>	PDF 5347-5361
The Development of the Mulok Curriculum of the Manggarai Traditional Rite as a Preservation of Manggarai Culture at the Elementary Levels <i>Yuliana Kurniawati</i>	PDF 5362-5377
The Effect of Regular and Unregular Exercise against Network Damage <i>Jafaruddin Jafaruddin, Indah Lestari, Sumarjo Sumarjo</i>	PDF 5378-5382
Family Development Session Pendidikan Education and Training in Efforts to Increase Mentoring Capacity for the Social Assistance of the Hope Family Program in Bandung Regency <i>Rosma Sandratika, Santoso Tri Raharjo, Risna Resnawaty</i>	PDF 5383-5389
Examining Gender Mandates as Representation of Women in Political Speech <i>Diani Syahputri, Yusni Khairul Amri, Ratna Sari Dewi</i>	PDF 5390-5398
Polarization of Global Leadership: An Analysis of the Three Factions of Leadership Power in Modern Leadership Theory <i>Syafrizal Syafrizal</i>	PDF 5399-5411
Enforcement of the Death Penalty for Corruptors Who Perform Corruption Crimes During a Pandemic (Case Study: The Enrapture of Two Ministers Related to Corruption Cases During the Covid19 Pandemic) <i>Ciprian Caesar, Edward Wira Hamonangan Naibaho</i>	PDF 5412-5417
Effects of Social Media Marketing and Brand Love-Jealousy on Willingness to Pay Premium <i>Farrastia Rana Ramadianti, Sarah Afifah Risani Hidayatullah, Shania Karla</i>	PDF 5418-5430
Valuation of Ecobricks as an Artificial Resource in Hardscape Materials <i>Rahmadhani Fitri, Hendra Fahrudin Siregar, Ayu Erfiana Asmy</i>	PDF 5431-5436
Community Participation Reviewed From Perceptions on Government Health Protocol Policy in Covid-19 Prevention <i>Sitti Chaeriah Ahsan, Slamet Riadi, Donal Adrian</i>	PDF 5437-5444
Linguistic Landscape on Coffee Shop Signboards in Medan <i>Soraya Tsamara Zahra, Eddy Setia, Thyrhaya Zein</i>	PDF 5445-5457
Implementation of Medan Mayor Regulation Number 27 of 2020 Concerning the Implementation of New Habits Adaptation to Covid 19 Pandemic Conditions in Medan (Study in Tanjung Mulia Hilir Village, Medan Deli District) <i>Hendra Syahputra, Maksun Syahri Lubis, Rudi Salam Sinaga</i>	PDF 5458-5470
Sustainable Tourism Development Based on Local Wisdom in Rural Area, Study in Lalos	PDF 5471-5476

Village, Iloitoli, Indonesia <i>Mohammad Sawir, Hary Yuswadi, Anastasia Murdyastuti, Pairan Pairan</i>	PDF 5477-5485
Effect of Performance-Based Budgeting and Financial Reporting Systems on the Performance Accountability of Bekasi Regency Government Agencies <i>Laura Wahdatul, Iskandar Muda, Keulana Erwin</i>	PDF 5486-5491
The Relationship between Iron Deficiency and Nutritional Status of Elementary School Children in the Tuah Negeri District <i>Riska Umami, Rostika Flora, Rico Januar Sitorus, Mohammad Zulkarnain</i>	PDF 5492-5497
Relationship of Environmental Sanitation with Stunting Events in School Children in the Work Area Air Beliti Kab Musi Rawas <i>Yusria Ningsih, Nur Alam Fajar, Novrikasari Novrikasari</i>	PDF 5498-5505
The Correlation of Self-Leadership and Autonomy Among Students of Theological College in North Sumatera <i>Johanes Waldes Hasugian, May Rauli Simamora, Nasib Tua Lumban Gaol</i>	PDF 5506-5515
The Effect of Interactive Performance Measurement System and Participatory Budgeting on Job Challenge and Their Impact on Managerial Performance <i>Fadly Aditya, Muhammad Dahlan, Dede Abdul Hasyir</i>	PDF 5516-5524
The Influence of Transportation Support Capacity on The Development of Medan Johor District <i>Anitha Florida Ginting, Sirojuzilam Sirojuzilam, Agus Puwoko</i>	PDF 5525-5536
The Implementation of Policy on Granting Funds Based on Regulation of the Minister of Trade of the Republic of Indonesia No. 123 of 2018 concerning Guidelines for Granting Funds and Management Procedures Sourced from the Regional Budget at the Bureau of People's Welfare, Regional Secretariat of North Sumatra Province <i>Rinda Unawi, Rudi Salam Sinaga, Budi Hartono</i>	PDF 5537-5547
Analyzed New Design Data Driven Modelling of Piezoelectric Power Generating System <i>Solly Aryza, Zulkarnain Lubis, M. Isa Indrawan, Syahril Efendi, Poltak Sihombing</i>	PDF 5548-5557
Lafaz Rahmah in the Quran <i>Nuraini Nuraini, Dhira Majid</i>	PDF 5558-5565
The Impact of the Information and Electronic Transaction Law (UU ITE) on Legal and Social Changes in Society <i>Nurkholim Nurkholim</i>	PDF 5566-5578
Culture, Gender and Spatial Arrangement in Traditional Houses <i>Dara Wisdianti</i>	PDF 5579-5590
Implementation of Policy for Establishing License Policy at Department of Investment and One-Door Integrated Licensing Services (DPM & PPTSP) in Binjai <i>Amru Zuhri Harahap, Isnaini Isnaini, Maksum Syahri Lubis, Rudi Salam Sinaga</i>	PDF 5591-5601
Crowdfunding Coordinated Money Waqf Savings as Alternative to Sharia Cooperative Financing <i>Muh. Abdulloh Hafith, Abu Azam Al Hadi, Ah. Ali Arifin</i>	PDF 5602-5609
The Effect of Information Asymmetry, Business Diversification on the Cost of Equity Capital with Managerial Ownership as a Moderating Variable <i>Nurul Intan Okci Pratiwi, Tettet Fitrianti, Sony Devano</i>	PDF 5610-5622
Effect of Cash Ratio, Total Asset Turn over and Debt to Equity Ratio on Net Profit Margin in Porselain, Ceramic and Glass listed on the Indonesia Stock Exchange for the 2015-2019 Period <i>Muhammad Yamin Siregar, Silvia Octrianti Nasution</i>	PDF 5623-5631
Critical Discourse in Online News of Nadim Makarim's Statement in Covid-19 Case (Model Teun A. Van Dijk) <i>M. Nazar, Merlyn Rutumalessy, Nurhasanah Purba</i>	PDF 5632-5643
Originalist Interpretation: A Method of Discovery in Criminal Law (Rechtsvinding in Het Strafrecht) <i>Peter Jeremiah Setiawan, Mahendra Harun Ar Rasyid, Alfian Rasyidi, Wisnu Andriawan</i>	PDF 5644-5652
Analysis of Factors Affecting Stock Returns with Economic Value Added as Intervening Variables in Property and Real Estate Companies Listed on the Indonesia Stock Exchange <i>Richard Richard, Iskandar Muda, Sirojuzilam Sirojuzilam</i>	PDF
Enhance Business Settings and Transactions in the Digital Age	PDF

Business Process Settings and Transitions in the Big Data Era <i>Henry Aspan, Fitria Ramadhani Siregar, Indawati Lestari</i>	PDF 5653-5660
Batik in the Perspective of Recognition Search: Its Achievements and Preservation <i>Iswahyudi Iswahyudi</i>	PDF 5661-5670
Analysis of the Adaptability of Nurses during the Covid-19 Pandemic <i>Ainul Mufarichah, Pardiman Pardiman, Siti Asiyah</i>	PDF 5671-5680
Malay Dance Concept and Its Basic Elements <i>Dilinar Adlin, Aqsa Mulya, Ruth Hertami, Inggit Prastiawan</i>	PDF 5681-5689
The Exchange Rates and Stock Return: The Case of Tourism Sub Sector in Indonesia <i>Andre Hernowo, Yudha Sakti Pratama</i>	PDF 5690-5696
The Effect of Micro, Small and Medium Enterprises on Economic Growth <i>Sri Juminawati, Abd. Hamid, Euis Amalia, M. Arief Mufraini, Ade Sopyan Mulazid</i>	PDF 5697-5704
The Impact of Marketing Mix on the Number of Visits to Pediatric Dentists in Banjarmasin during the Covid 19 Pandemic <i>Ika Kusuma Wardani, Erika Norfitriah, Amalda Ayu Utami Hasibuan, Nadia Febrila Putri, Renie Kumala Dewi</i>	PDF 5705-5712
The Effects of Trust and Service Quality on Customer Loyalty of Islamic Banks Moderated By Religiosity (A Study of Islamic Bank Customers in Jakarta) <i>Irma Rasita Gloria Barus, Hery Winoto Tj, Soegeng Wahyoedi</i>	PDF 5713-5725
Fundamental Analysis of Share Prices in Coal Mining Subsector Companies <i>Sri Rahayu</i>	PDF 5726-5734
Reinterpretation of the Legend of Lake Toba into the Batak Opera Janji Putri Ikan <i>Octaviana Tobing, Russel Akbar Fauzi, Try Wahyu Purnomo</i>	PDF 5735-5746
Addition of Rodent Tuber Leaf Flour (Typhonium Flagelliforme) In Growth Period Peking Duck <i>Andhika Putra, Tengku Gilang Pradana, Alfath Rusdi, Media Agus Kurniawan, Purwosiswoyo Purwosiswoyo</i>	PDF 5747-5754
The Analysis of Factors Related to the Company Performance with Capital Structure as an Intervening Variable in the Transportation Industry in Indonesia <i>Wiflihani Wiflihani, Elya Siska Anggraini, Raden Burhan Surya Nata Diningrat, Frisdo Ekardo</i>	PDF 5755-5761
The Efficiency of Employee Performance in Enhancing the Service of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of Biak Numfor Regency on Providing Land Certificates <i>Krismiyati Krismiyati</i>	PDF 5762-5772
Identifying ESP Course Materials for Students of Magister Management: A Needs Analysis <i>Nirwanto Maruf, Eva Desembrianita, Dahlia Husain Husain</i>	PDF 5773-5788
Efficiency of the Regional Revenue Agency's Services (Case Study at the Supiori Regency Taxpayer Supiority Service Number) <i>Sri Handayani</i>	PDF 5789-5797
'We Only Smile': A Study of Perceived Discrimination among Asian Female Muslim Tourists <i>Hana Ulinnuha</i>	PDF 5798-5810
A Feasibility Study of Silkworm (Tubifex Sp.) Cultivation Business Using Multilevel Containers with Semi Closed Recirculating System (SCRS) for Community Welfare <i>Erfan Effendi, Tengku Said Muhammad Farid</i>	PDF 5811-5825
Digitalization Marketing of Local Farmer Product in Gaining Brand Awareness and its Impact to Intention to Buy <i>Hamdan Hamdan</i>	PDF 5826-5832
The Application of English Songs in Teaching Conditional Sentences through Google Classroom <i>Fitriyatul Ulyah, Khoirul Anwar, Nirwanto Maruf</i>	PDF 5833-5838
Enhancement the Competitiveness of Serang MSME's Through Legality Analysis of The Role of Public Policy <i>Hamdan Hamdan, Deviyantoro Deviyantoro</i>	PDF 5839-5845
Si Gale-Gale Folklore in the Toba Batak Society: A Study of Continuity and Change <i>Martozet Martozet, Nurwani Nurwani, Merdy Roy Sunarya Togatorop</i>	PDF 5846-5852

Sibolga Coastal Dance as Sumut Local Content in Learning Art Culture <i>Sitti Rahmah, Yusnizar Yusnizar, Raden Raden</i>	PDF 5853-5875
Evaluation Analysis of OCR and GFR Relay Protection Coordination on Feeder YB-02 PT PLN ULP Natal with ETAP Simulation <i>Zuraidah Tharo, Siti Anisah, Fariz Aditya Putra, Melly Andriana</i>	PDF 5876-5893
Transformation of Indang Arts: from Dakwah to Prestige and Commodification <i>Nurwani Nurwani, Martozet Martozet</i>	PDF 5894-5901
Teacher's Perspective on the Implementation of the Law on Teachers and Lecturers in Realizing Excellent Teacher Resources in Medan City <i>Ida Martinelli, Nalil Khairiah</i>	PDF 5902-5913
Implementation of Gender Responsive Policies in Higher Education: A Study at Three Universities in North Sumatra <i>Yurisna Tanjung, Mujahiddin Mujahiddin, Ida Martinelli</i>	PDF 5914-5926
Harmonization of Waqf Money (Cash Waqf) at the University of Bung Hatta <i>Desmal Fajri, Sanidjar Pebrihariati R, Yofiza Media</i>	PDF 5927-5935
Development of Islamic Religious Education Learning Oriented to Values Education <i>Mulia Rahman</i>	PDF 5936-5944
Improving Hijrah Methods in Finding Happiness Life <i>Salma Rozana, Munisa Munisa, Rita Nofianti, Rika Widya</i>	PDF 5945-5950
Managerial Model Analysis of School Principles in Improving Student Character in Junior High School Panca Budi Medan <i>Rita Nofianti, Rika Widya, Salma Rozana, Munisa Munisa</i>	PDF 5951-5958
Application of Pancasila Values in Against the Radicalism of Indonesia <i>Yuniar Megalia, Dimas Rangga Ahimsa</i>	PDF 5959-5967
Analysis of the Key Concepts of Entrepreneurial Success and Its Applications <i>Rika Widya, Salma Rozana, Munisa Munisa, Rita Nofianti</i>	PDF 5968-5975
An Effect of Relationship Marketing On Customer Trust and Impact on Customer Retention Bank Sumut Branch Lubuk Pakam <i>Rifky Budi Setiawan</i>	PDF 5976-5986
Enhanced Psychology and Activities of Pancabudi Students with the Role of Teachers in the Time of Covid 19 <i>Munisa Munisa, Rita Nofianti, Rika Widya, Salma Rozana</i>	PDF 5987-5994
Enhances Community Economic Welfare with Village Fund Allocation and Village Policies <i>Fitra Arlina Nst</i>	PDF 5995-6003
Conserto Opus 3 No 6 by Antonio Vivaldi: An Overview of Forms of Ritornello and Music Construction <i>Ance Juliet Panggabean, Franky Fransisko Hutahaeon, Bintang Hadi Putra Saragih</i>	PDF 6004-6020
Students' Politeness Strategies to Lecturers in Sending Messages through WhatsApp <i>Veronika Unun Pratiwi, Atikah Anindyarini</i>	PDF 6021-6032
The Dependency of Supply Chain Management and Product Quality on Product Innovation <i>Mochamad Yudha Febrianta, Muhammad Indra, Sri Widianesty</i>	PDF 6033-6044
The ensemble of Keteng-Keteng Telu Ngawan <i>Adina S Sembiring, Uyuni Widiastuti, Purbatua Manurung, Hendy Obed Sembiring, Ewin Johan Sembiring</i>	PDF 6045-6067
The Role of Housing and Settlement Areas Department of Gayo Lues Regency in the Implementation of a Healthy Housing Environment for the Community of Kutapanjang District <i>Emmil Mohd Arief Matondang, Isnaini Isnaini, Adam Adam, Rudi Salam Sinaga</i>	PDF 6068-6081
Can the Customer Satisfaction Mediate the Relationship between Service Innovation on Revisit Intention?: A Study on Hotel Industry <i>Ananta Budhi Danurdara</i>	PDF 6082-6090
Strategy of Tourist Events Museum De Javasche Bank Surabaya <i>Citra Anggraini Tresyanto, Deograsias Joseph</i>	PDF 6091-6099

The Concept of Marketplace Marketing Strategy as Application of Marketing 4.0 <i>Dwi Yuda Syaputra</i>	PDF 6100-6110
The Effect of Sustainability on Market/BV: A Study on Public Companies in Indonesia in 2013-2019 <i>Gracia Shinta S. Ugut, Zabrina Raissa</i>	PDF 6111-6118
Policy on Implementation of Bank Indonesia Circular Letter No. 14/7/Dpbs of 2012 concerning Regulation of Qardh Backed by Gold at Bank Syariah Mandiri KFO Imam Bonjol Medan (Pre Merger of PT Bank Syariah Indonesia) <i>Mutiara Minsih, Yusniar Lubis, Rudi Salam Sinaga</i>	PDF 6119-6128
Path Analysis of Customer Reviews, Brand Image, to Consumer Trust and Loyalty in the Online Marketplace in Binjai <i>Sugianto Sugianto, Marliyah Marliyah, Junita Muharani Nasution</i>	PDF 6129-6142
What Expert Say about Routine Exercises and Living Expectation in Pandemic Times (Analysis of Health Literature) <i>Gunawan Widjaja, Hotmaria Hertawaty Sijabat</i>	PDF 6143-6150
Strategy Analysis UKM of Government Policy in Implementing Restrictions of Community Activities (PPKM) to Handle the Covid-19 Pandemic <i>Zaenuddin Imam</i>	PDF 6151-6160
Penal Mediation in Settlement of Disputes of Hurt Dayak Ngaju Traditional Law <i>Dody Heryanto, I Nyoman Nurbaya, Prija Djatmika, Hanif Nur Widhiyanti</i>	PDF 6161-6168
Forms of Mothers' Political Communication Participation in Improving Women's Political Roles in the 2019 Presidential Election in Medan City <i>Evi Sakdiah, Hasrat Efendi Samsir, Zainun Zainun, Anang Anas Azhar</i>	PDF 6169-6180
Effect of Electronic Word Of Mouth, Product Quality, and Price on Purchase Intention <i>Tasya Amanda, Hery Winoto Tj, Aini Kusniawati, Surachman Surjaatmadja</i>	PDF 6181-6190
All's Well That Ends Well: A Review of Indonesian State Owned Enterprise's Organizational Culture <i>Antoni Ludji Arifin, Resista Vikaliana, Wahyuddin Latunreng</i>	PDF 6191-6197
Convergence of Three Binomial Models into Black Scholes Model in Establishing Option Prices in Hongkong, India, and Indonesia <i>Ikin Solihin, Sugiarto Sugiarto, Gracia Shinta S. Ugut, Edison Hulu</i>	PDF 6198-6210
Resistance of Traditional Traderson Market Relocation Policy in Aksara Market, Medan, Indonesia <i>Marsolina Nasution, Asima Yanti Siahaan, Nurman Achmad, Rizabuana Ismail, Henry Sitorus</i>	PDF 6211-6218
The Development of Android-Based Learning Media for Basic Accounting Subjects for Class X AKL at Al Ikhlas Vocational High School, Pangkalan Susu, Langkat Regency <i>Trysanti Kisria Darsih, Elfi Lailan Syamita Lubis</i>	PDF 6219-6230
The Promotion Strategies in Improving the Small Industry Markets for Fish Processing <i>Fajar Pasaribu, Widia Astuty</i>	PDF 6231-6241
Agile Governance in the Perspective of Public Services Through the Public Complaints Channel Handling People with Social Welfare Problems (PMKS) in South Jakarta <i>Eka Rofiyanti, Bastian Dewantoro, Dwi Agustina, Novianita Rulandari, Khairur Razikin</i>	PDF 6242-6250
The Impact of Business Environment and Organizational Culture on The Implementation of Management Accounting Information System in Some Hotels <i>Widia Astuty, Fajar Pasaribu</i>	PDF 6251-6262
Involving Local Wisdom in Kampai Island to Create Digital Storytelling <i>Donny Adiatmana Ginting, Muhammad Hassan</i>	PDF 6263-6270
The Development of Election Smart House Program as a Means of Political Education at KPUD Deli Serdang <i>Isnina Isnina, Dedi Amrizal</i>	PDF 6271-6278
The Influence of Career Development and Servant Leadership towards Job Satisfaction and Employee Performance on PDAM Tirta Kencana Samarinda <i>Aulia Rahman, Muhammad Saleh Mire, Irsan Tri Cahyadinata</i>	PDF 6279-6294
Analysis of the Implementation of the Joint Analysis between the Directorate General of	PDF

<p>Customs and Excise with the Directorate General Of Taxes In Increasing State Revenue In The Prime Customs And Excise Office Type A Tanjung Priok</p> <p><i>Dian Wahyudi, Novianita Rulandari, Ratih Kumala, Pebriana Arimbhi, Eka Rofiyanti</i></p>	6295-6308
<p>Business Strategies and Utilization of Tax Incentive Policies During the Covid-19 Pandemic and Implementation of Restrictions for Community Activities (PPKM)</p> <p><i>Rd. Kusyeni, Ratih Kumala, Rd. Dancu Lokita Pramesti Dewi, Nadiah Abidin, Ryan Nugraha</i></p>	PDF 6309-6316
<p>The Effective Financing Model of Koperasi Sharia in the Covid 19 Pandemic Era</p> <p><i>Taufan Maulamin, Erni Prasetyani, Martina Safitri</i></p>	PDF 6317-6325
<p>Reproductive Characteristics of Local Pig Herds in Landono Subdistrict of South Konawe Regency</p> <p><i>Achmad Selamat Aku, Kadek Purnama Anti, La Ode Nafiu, Harapan Hafid</i></p>	PDF 6326-6334
<p>The Performance of Snack MSMEs in the Covid-19 Pandemic (A Review from the Income Side)</p> <p><i>Helmi Azahari, Endah Fantini, Samsudin Samsudin, Noviandari Sari Utami, Ade Suryana</i></p>	PDF 6335-6340
<p>Data Traffic Performance Analysis of SD-WAN Network Technology Using Tableau Software</p> <p><i>Riza Buddy Septyanto, Diana Iksari</i></p>	PDF 6341-6356
<p>The Importance of Creativity and Innovation in Maintaining Business in the Pandemic Situation: A Case Study of Micro Small and Medium Enterprises (MSME) Managed by Millennial Groups in Jakarta</p> <p><i>Baby Poernomo, Anita Maulina, Anisa Arizona Bandi, Jana Sandra, Muhammad Sholeh</i></p>	PDF 6357-6367
<p>Analysis of Children Health Indicators on the Achievement of Index of Community Health Development in Tanjung Jabung Timur Regency</p> <p><i>Dwi Noerjoedianto, Andi Subandi, Andy Amir</i></p>	PDF 6368-6375
<p>Relationship of Family Support to the Referral Program for Patients with Chronic Diseases in BPJS Health Participants in Rawasari Health Center</p> <p><i>Andi Subandi, Dwi Noerjoedianto, Andy Amir</i></p>	PDF 6376-6384
<p>Analysis of Readiness to Use Target Costing Method in Production Cost Efficiency Efforts at Risha Bakery</p> <p><i>Yuliyanti Palulun, Dwi Iga Luhsasi, Destri Sambara Sitorus</i></p>	PDF 6385-6395
<p>Judicial Analysis of the Use of Cigarette Taxes for Funding the National Health Insurance Program (Case Study of the Supreme Court Decision Number 25 P / Hum / 2018)</p> <p><i>Gunawan Nachrawi, Fitriana Dinarwati</i></p>	PDF 6396-6406
<p>Financial Management Literacy for Students of Economic Education FKIP UKSW</p> <p><i>Jean Belynda Lalihatu, Dwi Iga Luhsasi, Carolina Lita Permatasari</i></p>	PDF 6407-6417
<p>The National Police's Efforts to Eradicate Thuggery Offences (A Law Study)</p> <p><i>M. Qahar Awaka, Wiend Sakti Myharto</i></p>	PDF 6418-6426
<p>Planning of Communication Strategy for Islamic Religious Counselors in Carrying Out Their Main Tasks and Functions in North Labuhanbatu Regency</p> <p><i>Uli Susanti Sri Awan, Zainun Zainun, Mailin Mailin</i></p>	PDF 6427-6434
<p>Communication Strategy of BAZNAS Da'i in Preaching Among Muslim Minorities in Karo Regency</p> <p><i>Ayu Wahyuni Hasibuan, Sahdin Hasibuan, Hasrat Efendi Samsosir</i></p>	PDF 6435-6444
<p>Gayo Islamic Education Architects and Contributions to Gayo Islamic Education Treasures in the Era of 1900-1986</p> <p><i>Zulkarnain Zulkarnain, Ihsan Harun, Emy Yusdiana</i></p>	PDF 6445-6456
<p>Strategy Analysis of Increasing Tax Revenue for Two Wheel Motor Vehicles in Medan City</p> <p><i>Rahmad Ziady, Erlina Erlina, Sirojuzilam Sirojuzilam</i></p>	PDF 6457-6464
<p>International Accreditation Preparation Model in Accredited Prodi A at Universitas Muhammadiyah Sumatera Utara</p> <p><i>Dedi Amrizal, Isnina Isnina</i></p>	PDF 6465-6471
<p>Identification of Environmental Law Enforcement Strategies for the Millennial Generation (Publication Review Study)</p> <p><i>Sardjana Orba Manullang</i></p>	PDF 6472-6481
<p>Changes in Attitudes of the Young Generation in Persuasive Communication "Berani Hijrah" Community</p> <p><i>Suci Wulan Dari, Zainun Zainun, Hasrat Efendi Samsosir</i></p>	PDF 6482-6492

Use of the Bipartite System in Industrial Relations <i>Rika Jamin Marbun</i>	PDF 6493-6504
The Effectiveness of Public Communications of Medan Petisah Government in Preventing of COVID-19 Virus in Medan <i>Fadlansyah AS, Abdurrahman Abdurrahman, Mailin Mailin</i>	PDF 6505-6516
CSR (Corporate Social Responsibility) Communication Pattern of Pertamina in Muslim Communities, Rantau District, Aceh Tamiang Regency <i>Riswanto Riswanto, Ahmad Tamrin Sikumbang, Erwan Efendi</i>	PDF 6517-6528
The Implementation of Land Rights Certification Linked to Implementation of Law Number 28 Year 2009 concerning Regional Taxes and Levies in Medan <i>Abdurrahman Harits Ketaren</i>	PDF 6529-6539
Identification of Tourism Product Marketing Strategy Plans to Foreign Markets Efforts to Increase Income in the Era of Regional Autonomy <i>Sri Aprianti Tarigan, Juliana Juliana, Tina Linda, Bestadrian Prawiro Theng, Edward Harnjo</i>	PDF 6540-6549
Oil Palm Plantation Expansion: An Overview of Social and Ecological Impacts in Indonesia <i>Dadi Dadi</i>	PDF 6550-6562
Information System Data Processing Population Article 03 Village Residents Cibeber <i>Herlambang Putra Perdana, Nurti Rangga Wibawa Putra, Rina Kurniawati, Muthmainnah Muthmainnah</i>	PDF 6563-6574
Reconstruction of Historical Literature of Bugis-Makassar (Stemma Model Philological Studies) <i>Kasma F Amin, Muliadi Muliadi</i>	PDF 6575-6584
Effect of Capital Structure, Firm Size and Leverage on Firm Value with Profitability as an Intervening Variable in Manufacturing Companies Listed on the Indonesia Stock Exchange <i>Lasminar Sihombing, Widia Astuty, Irfan Irfan</i>	PDF 6585-6591
The City's Representative Meaning in Samosir's branding "Beautiful Country Pieces of Heaven" in the Heartbeat of Toba Film from the Ministry of Tourism <i>Riko Andika Rahmat Pohan, Samerdanta Sinulingga</i>	PDF 6592-6598
Feasibility Study of Developing Rumah Galuh village in Local Tourism Development <i>Solahuddin Nasution, Ronald Leonardo Siregar</i>	PDF 6599-6606
Local Wisdom: Tourism Object Owner's Strategy during the Covid-19 Pandemic in Karo Land <i>Lukita Ningsih, Azizul Kholis</i>	PDF 6607-6618
The Meaning and Historical Value of Gorga in Batak Toba's Traditional House <i>Peninna Simanjuntak, Martha Pardede</i>	PDF 6619-6629
Legal Construction for the Establishment of Sharia Economic Special Courts in Religious Courts in Indonesia <i>Saut Maruli Tua Manik</i>	PDF 6630-6639
The Impact of Corruption on the Development of the Quality of Human Life in Southeast Asia <i>Sigit Wahyudi, Rakhmat Alfian</i>	PDF 6640-6647
The Impact of Research and Development Spending on Firm Value Moderated by Product Diversification <i>Khoiriyah Trianti, Noni Mia Rahmawati, Yulis Nurul Aini</i>	PDF 6648-6659
View Islamic Law against Mothers Who Interfere with Children's Households in Sena Village, Batangkuis <i>Maswandi Maswandi, Jamillah Jamillah</i>	PDF 6660-6666
Insecticidal Effectiveness Test of Mahogany Fruit Peel (Swietenia Mahagoni (L.)) Extract on Mosquito Aedes Aegypti for Increasing Economy <i>Erisa Mutiara Rahma Delvina, Selvi Marcellia, Tutik Tutik</i>	PDF 6667-6676
The Rationality of the Max Weber Bureaucracy Model in the Modrenization of the Public Services Bureaucracy of the Industrial Era 4.0 (Case Study of Medan City E-KTP Services) <i>Agung Saputra, Ananda Mahardika, Jehan Ridho Izharsyah</i>	PDF 6677-6687
Mixing and Switching the Codes in Kindergarten Teachers-Students Interaction: A Case Study at Northern Green School <i>Ciri Melva, Arsen Nahum Pasaribu</i>	PDF 6688-6697

<p>Development Strategy for Management Systems Strengthening Academic Accreditation Based on Strengthening Academic Accreditation at Islamic Religious Universities</p> <p><i>Zainuddin Zainuddin, Yusuf Hadijaya, Muamar Al Qadri, Ismail Ismail, Ishak Ishak, Endah Retno Suci</i></p>	<p>PDF 6698-6705</p>
<p>Sedulur Papat Limo Pancer as a Concept of Javanese Emotional Intelligence</p> <p><i>Devietha Kurnia Sari, Darmawan Muttaqin</i></p>	<p>PDF 6706-6712</p>
<p>The Effect of Performance Allowance, Organizational Culture, and Work Discipline on Employee Performance at The Satuan Polisi Pamong Praja/Public Order Agency (SATPOL PP) of Yapen Serui Islands Regency- PAPUA</p> <p><i>Siyani Siyani, Bonifasia Elita Bharanti, Agnes Puspitasari Sudarmo</i></p>	<p>PDF 6713-6726</p>
<p>Meta-Analysis of Self-Efficacy and Anxiety Correlation</p> <p><i>Zefanya Relita Trisnaningati</i></p>	<p>PDF 6727-6732</p>
<p>The Effect of City Waste Giving With Various Concentrations on Growth and Results Red Lettuce Plants</p> <p><i>Devi Andriani Luta, Armaniar Armaniar</i></p>	<p>PDF 6733-6740</p>
<p>A New Design Prototype of Safety System on Traffic Light using Hydraulic Limiters Zebra Cross Automatic</p> <p><i>Rahmad Rizki, Suwarno Suwarno</i></p>	<p>PDF 6741-6749</p>
<p>Situating Poor People in Education Privatization Programs</p> <p><i>Sofni Indah Arifa Lubis</i></p>	<p>PDF 6750-6755</p>
<p>A Literature Review on the Relationship between Iron and Zinc Levels in Diabetes Mellitus and the Effects of Their Supplementation</p> <p><i>Sefti Atletika Asiani, Gaga Irawan Nugraha, Sunarjati Sudigdoadi</i></p>	<p>PDF 6756-6764</p>
<p>Analysis of Water Loss in the District of Meter Area (DMA) Bumi Kepongongan Indah Regency, Cirebon for Civilization</p> <p><i>Adam Safitri, Slamet Imam Wahyudi, Soedarsono Soedarsono, Mahmud Yunus, Nono Carsono, Lia Amaliah</i></p>	<p>PDF 6765-6777</p>
<p>MYOB Accounting Information System Analysis at PT. Lembang Abadi Indah</p> <p><i>Irma Suryani, Dedeh Kurniawati</i></p>	<p>PDF 6778-6791</p>
<p>Analysis of Sharia MSME Financial Knowledge in Kuningan, West Java</p> <p><i>Endang Sondari, Larisa Yohanna, Imam Suseno</i></p>	<p>PDF 6792-6800</p>
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<p>Understanding the Lessons of Failure Public Policy over the Pandemic Issues in Global Context</p> <p><i>Zuchri Abdussamad, Ani Heryani, Vani Wirawan, Ade Iskandar, Nur Arif Nugraha</i></p>	<p>PDF 6867-6876</p>
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<p>Discrimination against Citizens' Rights When the Entry of Foreign National Citizens Threatened By Emergency Public Activity Restrictions (PPKM)</p> <p><i>Gunawan Nachrawi, Marjan Miharja, Rachmat Dwi Putranto, Jean Magtel Pah, Mayang Maharani Yahya Bayan</i></p>	<p>PDF 6901-6912</p>
<p>State Responsibility for the Citizens in Indoensia's Covid-19 Pandemic</p> <p><i>Rachmat Dwi Putranto, Gunawan Nachrawi, Marjan Miharja, Mayang Maharani Yahya Bayan, Jean Magtel Pah</i></p>	<p>PDF 6913-6923</p>
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<p>Implementation Aesthetic of Architecture Deli Melayu Design of a Tiny Hotel in Medan City</p> <p><i>Melly Andriana, Ramayana Ramayana, Zuraidah Tharo</i></p>	<p>PDF 6929-6936</p>
<p>Cost Analysis from the Patient's Perspective and Economic Difficulties in Hemodialysis Patients at Fatmawati RSUP Jakarta</p> <p><i>Mawaddati Rahmi, Yusi Anggriani</i></p>	<p>PDF 6937-6945</p>
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<p>A Participation Model for Teaching English at Politeknik Negeri Media Kreatif</p> <p><i>Hawa Asma Ul Husna, Ni Made Widiastuti, Iswandi Idris, Ramadani Ramadani</i></p>	<p>PDF 7084-7091</p>

Linguistic Competency Analysis of Consecutive Interpreting Results for 6th Semester Students of FKIP UMSU <i>Bambang Panca Syahputra, Yusni Khairul Amri, Rakhmat Wahyudin Sagala</i>	PDF 7092-7098
Poverty Alleviation of Micro-small Enterprises Recipients of Zakat through Financing of Zakat Organizer Institution in Makassar <i>Muhammad Saleh Mire</i>	PDF 7099-7110
The Existence of Elopement in Perspective Value Education (Study of Penomenology in the Context of Marriage of the Bima Society) <i>Suharyanto H. Soro</i>	PDF 7111-7121
The Veil Practice of Ustazah Dayah Jeumala Amal in Terms of the Theory of Social and Legal Change <i>Muhammad Haikal, Saiful Bahri, Muntazir Fahri</i>	PDF 7122-7127
Marriage Registration in Islamic Law <i>Sitizalikha Sitizalikha, Abdullah Abdullah, Nurazizah Nurazizah</i>	PDF 7128-7135
Fiqh Response to Disease Pandemic (Analysis of the Application of the Rukhshah Concept in the Procedures for the Implementation of Some Worship during the Covid-19 Pandemic) <i>Helmi Imran, Syamsul Bahri, Fauzul Iqbal</i>	PDF 7136-7148
Ijtihadi Models in Fiqh Studies <i>Sufriadi Sufriadi, Ibnu Mukti, Mahmudi Mahmudi, Nurazizah Nurazizah</i>	PDF 7149-7160
Implementation of Islamic Sharia in Aceh (Study on the Dynamics of Legalization and Permits for the Implementation of Islamic Sharia in Aceh Province) <i>Mustafa Kamal, Muntasir Muntasir, Marzuki Marzuki</i>	PDF 7161-7169
Analysis of Fiqh Syafi 'Iyyah on Interaction with Whatsapp after the Engagement (Case Study at Mudi Princess Samalanga) <i>Maisarah Maisarah, Afrizal Afrizal, Rahmiyati Rahmiyati</i>	PDF 7170-7180
The Role of Parent Communication in Accompanying Children during the Covid-19 Pandemic (Analysis Study of Family in Gampong Matang Bayu, Baktiya Barat District, Aceh Utara Regency) <i>Khairun Asyura, Fauzan Fauzan, Nurasmi Nurasmi</i>	PDF 7181-7191
Legality of Forced Marriage Performers of Khalwat According to the View of Syafi'iyah Fiqh <i>Karimuddin Karimuddin, Maimun Maimun, Maulisa Musana</i>	PDF 7192-7202
I'adah Friday Prayer with Zuhur Prayer in Syafi'iyah Fiqh Perspective (Case Study at Al-Amin Mosque Meurah Village, Samalanga District, Bireuen Regency) <i>Syamsul Bahri, Safrizal Safrizal, Rahmiyati Rahmiyati</i>	PDF 7203-7213
Enhance Web-Based Job Search Recommendation System of Hybrid-Based Recommendation <i>Darmeli Nasution, Zulham Sitorus</i>	PDF 7214-7221
The Influence of Transformational Leadership and Workload towards Work Motivation and Their Impact on Employee Performance at Bank BRI Tenggara Branch <i>Syukur Taqwa, Syarifah Hidayah, Dirga Lestari</i>	PDF 7222-7236
Identification of Home Base Business Management as a Full-Time Job in Indonesia <i>Faqih Nabhan, Yuli Purbaningsih, Ahmad Ridwan, Ita Nurcholifah, Prasetyono Hendriarto</i>	PDF 7237-7242
Valuation of Intrinsic Value of Construction Sector Stock Using Residual Income Model (RIM) and Dividend Discount Model (DDM) <i>Dwi Yulianto, Sri Mulyantini, Dianwicakasih Arieftiara</i>	PDF 7243-7257
Analysis of Tax Aggressiveness on the Consumer Non-Cyclicals, Property and Real Estate Sector Companies in the Indonesia Stock Exchange, 2018-2019 <i>Firda Nurfaizati Ma'mudah, Achmad Fauzi, Mardi Mardi, Dwi Kismayanti Respati</i>	PDF 7258-7268
Case Study of Twitter Trending Topic: Analysis of Using Random 4 Digits to Raise the Hashtags on Twitter <i>Nadhlar Ridho Wahyu Pradana</i>	PDF 7269-7281
The Effect of Promotion Strategy through Social Media on Purchase Decisions Mediated By Word Of Mouth Marketing <i>Dwi Bhakti Iriantini, Soemaryono Soemaryono, Wiwik Herawati</i>	PDF 7282-7292
Relationship of Work Motivation with the Work Commitment of Cooperative Employees Kencono Wungu Mojokerto	PDF 7293-7300

Christ as an Example in Poverning Ministry According to John 10. 11-15 towards Church Growth during the Covid 19 Pandemic <i>Enny Irawati</i>	PDF 7301-7310
Sustainable Development Innovation: "Increasing SME Competence in Resources Aspects" <i>Rodhiah Rodhiah, Nur Hidayah, Toto Mujio Mukmin</i>	PDF 7311-7322
A Legal Review of the Criminal Acts of Children Performed by Children <i>M. Hary Angga Pratama</i>	PDF 7323-7331
Reconstruction Criminal Sanctions against Criminal Acts of Corruption based on Justice Value <i>Ismaidar Ismaidar</i>	PDF 7332-7343
Analysis Atmosphere Management of Price Reduction and Product Quality on Consumer Buying Interest in the Covid-19 Pandemic <i>Feby Milanie</i>	PDF 7344-7352
Community Interpretation Study of Parks and Destries in Medan City <i>Novalinda Novalinda</i>	PDF 7353-7363
Determination of Hotel Room Rental Rates during Low Season with the Break-Even Point Analysis Method at Aston Hotels International <i>Rachmad Chartady, Salihi Salihi, Andres Putranta Sitepu, Bambang Sambodo</i>	PDF 7364-7373
Study Feasibility Analysis of Biodiesel Energy Processing Used Cooking Oil <i>Suwarno Suwarno, Rohana Rohana, Ihsanurriqie Indra Siregar</i>	PDF 7374-7386
Do Digital Literacy and Digital Entrepreneurship among University Students Contribute to Digital Economy? <i>Riza Primahendra, John Tampil Purba, Gracia Shinta S Ugut, Sidik Budiono</i>	PDF 7387-7394
The Concept of Islamic Musyawarah <i>Dedi Masri</i>	PDF 7395-7403
Implementation of the Preparation and Presentation of Financial Statements Based on SAK EMKM <i>Risawatie Risawatie, Nurul Azizah</i>	PDF 7404-7413
Legal Review in Handling FBI Fugitives who Fled to Indonesia: Russ Medlin Case Study <i>Alief Heidar Sardjono, Fikri Rahmat Fadila, Kevin Figo Saragih</i>	PDF 7414-7421
The Legal Strength of Home Ownership Credit Agreements During Covid 19 <i>Sumarno Sumarno</i>	PDF 7422-7430
Management, Supervision and Participation of Historic Coastal Communities a Development of Mangrove Education Park Tourism in Perupuk Village, Fifty Hilir District, Regency Coal <i>Dian Septian Sari</i>	PDF 7431-7440
Peer Conformity, Drug Abuse Intentions, and Gender Against Drug Abuse Behavior in Adolescents in Tebo Ilir District, Jambi <i>Ridha Sirly, Elli Nur Hayati, Triantoro Safaria</i>	PDF 7441-7449
Mapping Community Land in North Sumatra through the Implementation of Agrarian Reform <i>Onny Medaline, Fitri Rafianti, Rahmad Sembiring</i>	PDF 7450-7459
Improvement of Midle Voltage Network Protection System at Kualanamu International Airport <i>Suwarno Suwarno, Rohana Rohana, Darwin Darwin</i>	PDF 7460-7468
Smart Tracking Design In Finding Solar Power Plants <i>Suwarno Suwarno, Rohana Rohana, Darma Yulianti Purba</i>	PDF 7469-7478
Enhance Effectiveness Knowledge and Attitudes of Pregnant Women in Royal Prima Medan Hospital Based on Comparison Providing Verbal Information and Information through Presentation Media Video <i>Masyitah Masyitah, Ermi Girsang, Sri Lestari Ramadhani, Ali Napiah Nasution</i>	PDF 7478a-7478k



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