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Tập 2

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Tập 2

NHÀ XUẤT BẢN ĐÀ NẴNG

SOME LEGAL ISSUES ON CONTROLLING ONLINE BUSINESS ACTIVITIES IN VIETNAM

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Abstract: *Currently, online business has become a new business trend with a lot of potential for development. Besides the advantages, an online business also exists the risk of negative impacts on society if the law does not effectively control this business model. In this article, the authors assess the current state of Vietnamese law on controlling online business activities. On that basis, the authors propose some recommendations to improve Vietnamese law on controlling online business activities.*

Keywords: *Business registration; consumer protection; online business activities; tax management.*

MỘT SỐ VẤN ĐỀ PHÁP LÝ VỀ KIỂM SOÁT HOẠT ĐỘNG KINH DOANH ONLINE TẠI VIỆT NAM

Tóm tắt: *Hiện nay, kinh doanh online trở thành một xu hướng kinh doanh mới với rất nhiều tiềm năng phát triển. Bên cạnh những mặt thuận lợi, kinh doanh online cũng tồn tại nguy cơ tác động tiêu cực đến xã hội nếu pháp luật không kiểm soát hiệu quả loại hình kinh doanh này. Trong bài viết này, nhóm tác giả đánh giá thực trạng pháp luật Việt Nam về kiểm soát hoạt động kinh doanh online. Trên cơ sở đó, nhóm tác giả đề xuất một số khuyến nghị nhằm hoàn thiện pháp luật Việt Nam về kiểm soát hoạt động kinh doanh online.*

Từ khóa: *Đăng ký kinh doanh; Bảo vệ người tiêu dùng; Kinh doanh trực tuyến; Quản lý thuế.*

1. Introduction

Under the impact of the industrial revolution 4.0 and the COVID-19 pandemic, online business has become a new business trend with great potential

for development. Online business is a form of trading that uses information technology platforms with the support of the internet to carry out online transactions of purchase, exchange or payment (Nguyen Thu Hong, 2020). With advantages such as unlimited space, cost savings, and high efficiency in reaching consumers, online business is considered a solution to promote the development of the national economy. According to data reported by the E-commerce and Digital Economy Agency of the Ministry of Industry and Trade (2022), there will be about 57-60 million consumers shopping online with an online shopping value of about 260-285 USD/person in 2022.

Besides the advantages, there are also risks of negative impacts on society if online business activities are not strictly controlled. Vietnamese law has regulations governing online business activities. However, at present, with the rapid and diverse development of online businesses, the current legal regulations have revealed limitations. Therefore, it is necessary to continue to research and perfect the legal framework of online business to ensure that it both creates conditions for the development of this business model and ensures the interests of other concerned parties.

2. Theoretical framework and research methods

2.1. Theoretical framework

- *Conflict theory*: Conflict theory was proposed by T. Hobbes and developed by famous sociologists such as Karl Marx, Georg Simmel, Lewis Corser and Ralf Dahrendorf (Hoang Ba Thinh, 2008). This theory shows that there are already conflicts in society, thus social groups constantly struggle with each other for control of resources (Nguyen Tuan Anh, 2021). To achieve their goals, groups in society may abuse economic, political, and social inequality or other unfair means of competition. This is the cause of inequality between groups in society. The authors use conflict theory to explain inequality in society and the need for intervention to ensure healthy competition between subjects in the economy.

- *Mixed economy theory*: In the history of economic theories, many researchers have tried to clarify the relationship between the State and the market. The laissez-faire economic theories, represented by Adam Smit with the “invisible hand” theory, argue that the State only needs to perform well a few basic functions such as protecting the country, maintaining security and order, and protecting property rights without interfering with the operation of the economy (Nguyen Hong Son, 2015). Disagreeing with the laissez-faire economic theories, some of the researchers, represented by Keynes, have proposed regulated economic theories (Nguyen Thi Kim Thoa, 2020). Keynes believed that the state could use economic policies to intervene and influence the economy (Dinh Van Thong, 2009). With the view of relying on both the “invisible hand” and “visible hand” for economic development, P. A. Samuelson proposed the mixed economy theory. According to Samuelson and Nordhaus (2009), the State has three economic functions in the market, which include: (1) promoting the efficient functioning of the market; (2) ensuring equality and fairness; and (3) promoting sustainable economic growth. Along with conflict theory, the authors use the mixed economic theory to explain the need for State intervention to control online business activities in Vietnam.

- *Theory of consumer protection*: The theory of consumer protection is developed from the principle of protecting basic human rights, namely the right to be protected in terms of health and life (Howells, Ramsay & Wilhelmsson, 2017). In 1962, during a speech to the United States House of Representatives, President J. Kennedy strongly proposed the theory

of consumer protection. Accordingly, he believed that consumers have four basic rights: the right to be safe, the right to be informed, the right to choose goods and the right to be heard (UNCTAD, 2017). Because everyone is a consumer, thus countries, especially developed countries, are interested in building a legal framework to control the quality of goods and services. The authors use the theory of consumer protection to explain the need to protect consumers' interests through the control of online business activities in Vietnam.

2.2. Research methods

In this article, the authors used the following research methods:

- **Theoretical research method:** This method is used to clarify relevant theories, as a basis for explaining problems arising in practice and proposing solutions.

- **Statute law analysis method:** This method is used to analyze and clarify the provisions of current laws. On that basis, the study also proposes some solutions to improve the provisions of Vietnamese law.

3. The current situation of controlling online business activities in Vietnam

3.1. Current status of business registration for online business entities

Business registration is a legal activity in which a business's founder shall apply for business registration at the business registration authority to establish a business entity and determine the legal position of the business entity in the market (Nguyen Thi Thu Thuy, 2016). Article 7 of Commercial Law 2005 stipulates the obligation of traders to register a business, specifically: "*Traders are obliged to register their business according to the provisions of law*". Therefore, whether it is a traditional business or an online business, business registration is a necessary procedure.

However, at present, the business registration of online business subjects still has some shortcomings, as follows:

Firstly, many online business entities do not register their businesses. In Vietnam, online business activities are carried out mainly by 3 groups, including individuals, household businesses and enterprises/co-operatives. In the case of household businesses and enterprises/co-operatives conducting online business activities, business registration is obligatory. However, individuals may register a business (as traders) or not (as non-trades). According to Article 3 Clause 1 of Decree No. 39/2007/NĐ-CP, individuals, who independently and regularly conduct business activities without having to make business registration, including peddlers, vendors, vendors and other individuals. In general, the characteristics of these individuals' business activities are small and unstable. The number of individuals, who independently and regularly conduct business activities without having to make business registration, is increasing. Many business entities intentionally do not register and operate as individuals, who independently and regularly conduct business activities without having to make business registration, to avoid the State's management, even though they are not the subjects under Decree No. 39/2007/NĐ-CP. This situation causes difficulties for the State's management and has negative impacts on relevant entities.

Secondly, specialized regulations on business registration for online business entities have not been mentioned in Vietnamese law. Online business activities through E-Commerce Exchange have been regulated by legal documents such as Decree No. 52/2013/ND-CP amended and supplemented by Decree No. 08/2018/ND-CP and Decree No. 85/2021/ND-

CP on e-commerce; Circular No. 47/2014/TT-BCT amending and supplementing by Circular 21/2018/TT-BCT and Circular No. 01/2021/TT-BCT by on management of e-commerce websites.

Decree 47/2014/TT-BCT regulating the management of e-commerce websites only recognizes the right to register for an e-commerce trading floor for traders and organizations, not individuals. Therefore, for the website to be maintained, the founder needs to register the form of an enterprise or business household before proceeding with the registration of a website providing e-commerce services. Dossier to register an e-commerce service provision website under the guidance in Article 14 of this Circular.

Besides, according to the provisions of Article 39 of Decree 52/2013/ND-CP, sellers on e-commerce trading floors have certain responsibilities:

- Provide fully and accurately the information specified in Article 29 of this Decree to traders and organizations providing e-commerce trading floor services when registering to use the service.

- Provide full information about goods and services as prescribed in Articles 30 to 34 of this Decree when selling goods or providing services on the e-commerce trading floor.

- Ensure the accuracy and truthfulness of information about goods and services provided on the e-commerce trading floor.

- Follow the provisions in Section 2, Chapter II of this Decree when applying the online ordering function on the e-commerce trading floor.

- Provide information about their business situation at the request of competent state agencies to serve statistical activities of e-commerce.

- Comply with regulations of law on payment, advertising, promotion, protection of intellectual property rights, protection of consumer rights and other relevant laws when selling goods or providing services on the e-commerce trading floor.

- Fully fulfil tax obligations as prescribed by law.

Thus, the authorities have the legal basis to manage these business subjects. However, online business on social networking platforms, such as Facebook, Zalo, and Instagram, is not required to register, so it is difficult to manage these business subjects. Specifically, it is difficult for competent authorities to manage the quality of products/services and protect the interests of related parties (Ly Vuong Khanh & Vu Dinh Nam, 2021).

3.2. Current status of tax management issues for online business activities

Tax administration is the process by which the state affects the subjects and taxpayers, by certain methods and tools, to achieve the purpose quickly and effectively through the organization and implementation of laws on tax. Tax administration includes policy making, the promulgation of legal documents regulating taxes and tax laws, the organization of the tax system and the impact on taxpayers' obligations.

From a legal perspective, the content of tax administration is specified in Article 4 of the Law on Tax Administration 2019. Accordingly, the content of tax administration includes the following activities: i) Tax registration, tax declaration, tax payment, and tax assessment; ii) Tax refund, tax exemption, tax reduction, no tax collection; iii) Debt tax; write off tax arrears, late payment interest, fines; exempting late payment interest and fines; no late payment interest; tax payment extension; instalment payment of tax arrears; iv) Manage

taxpayer information; v) Manage invoices and documents; vi) Tax inspection, tax inspection and implementation of measures to prevent, combat and stop tax-related violations; vii) Coercive enforcement of administrative decisions on tax administration; viii) Sanctions of administrative violations on tax administration; ix) Settlement of tax complaints and denunciations; x) International cooperation on taxation; xi) Propaganda and support for taxpayers. In addition, the criminal law of Vietnam also stipulates tax crimes such as tax evasion and crimes related to the act of appropriating state budget money through tax refund and transfer pricing. In addition, the issue of tax administration is also regulated in many other legal documents such as Decree No. 139/2016/ND-CP, Decree No. 125/2020/ND-CP, Circular No. 92/2015/TT-BTC, Circular No. 176/2016/TT-BTC, ...

Currently, tax management issues for online business activities still have many shortcomings, specifically:

Firstly, subjects conducting online business activities do not voluntarily register for the tax declaration. Most business entities have not voluntarily registered their businesses online, this is the reason why these entities do not declare income tax online. Although Decree No. 125/2020/ND-CP stipulates sanctions for administrative violations of tax and invoices, these sanctions are still not deterrent enough. Therefore, it is necessary to form a reasonable legal framework on administrative sanctions for non-tax declaration acts, promoting the role of state agencies, improving the initiative rights of the executive agencies, and enhancing taxpayers' awareness.

Secondly, in the context of the development of science and technology, the legal system of tax and tax management for online business activities reveals many limitations. The system of regulations on tax and tax management in our country is still patchy and incomprehensible. Besides, in practice, these regulations are also not flexible in application and implementation. Currently, there are no specific legal documents governing online business activities. This is the reason for business tax evasion and loss of revenue for the state budget.

Thirdly, there are still many shortcomings in tax law enforcement. In detail, the cross-sector collaboration in state management, such as the General Department of Taxation and the Directorate of Market Surveillance, is not close. Recently, the General Department of Taxation developed the project "Tax management for e-commerce activities in Vietnam" and submitted it to the Ministry of Finance. Based on the above scheme, the Ministry of Finance has developed a Master Plan for implementation from now until the end of 2023. Accordingly, the issue of coordination agreement has also been raised but there is still no specific mechanism. Besides, the organization of the tax collection apparatus is cumbersome, with many intermediate levels; some functions and tasks still have interference and overlap which are difficult to delineate. As a result, the capacity and effectiveness of state management in the tax field have not been improved. In addition, tax officials' qualifications and experience in tax administration for online business activities are still limited.

3.3. Current status of consumer protection in online business

Consumer protection in online business is one of the issues attracting the attention of the whole society. Currently, regulations on consumer protection in online business are scattered in different legal documents. These include relevant legal documents such as: Law on Protection of Consumer Rights 2010, Decree No. 99/2011/ND-CP detailing and guiding the implementation of the Law on Protection of Consumer Rights, Decree No. 52/2013/

ND-CP and Decree No. 85/2021/ND-CP on e-commerce. These documents have created the basic legal framework to protect the interests of consumers, especially consumers in online businesses in Vietnam.

However, at present, the issue of protecting consumers' interests in online business still has some shortcomings, specifically:

Firstly, the quality of goods of online business has not been strictly managed. When buying goods online, consumers often establish transactions based on illustrations and/or descriptions on the supplier's website, E-Commerce Exchange, or social networks. The delivery is done through the delivery service provider, so it is often difficult to check the quality of the goods. Besides, in case the seller is not willing, it is difficult to exchange or return poor-quality goods.

Secondly, some business entities do not provide information or provide inaccurate information about online business goods, confusing consumers. Current law generally regulates the responsibility of business entities to provide information in Decree No. 52/2013/ND-CP and the Law on Protection of Consumer Rights 2010. Regulations on verifying information before posting are not clearly defined, especially for online business activities on social networks. This is the cause of the increase in the number of violations of the responsibility to provide information. In addition, the control of the provision of goods information is difficult because most business entities do not register their businesses. Besides, the handling of violations is not timely and not deterrent enough.

Thirdly, the confidentiality of the consumer is not guaranteed. Article 6 Clause 2 of the Law on Protection of Consumer Rights 2010 stipulates the responsibility to ensure the safety and confidentiality of information of consumers participating in transactions of goods and services. In addition, the use of information of individuals and organizations without their consent, depending on the extent, may be subject to administrative or criminal prosecution. However, acts of infringing on consumers' information are difficult to detect because the functional forces are lacking in number, weak in expertise and not equipped with appropriate means.

Fourthly, the mechanism of dispute settlement and handling of violations of the law on consumer protection in online business has not been completed. The current Civil Procedure Code generally stipulates the competence and order of evidence collection to settle civil cases. Although electronic evidence is also the basis for resolving civil cases, its collection and use are, in fact, more complicated than conventional evidence (Nguyen Thanh Minh Chanh, 2021). In many cases, courts have not accepted electronic evidence, for example, Judgment No. 735/2019/DS-PT dated August 21, 2019, of the People's Court of Ho Chi Minh City, Judgment No. 20/2019/KDTM-PT August 12, 2019, of the People's Court of Binh Duong province. Therefore, resolving disputes in online business is still difficult.

Fifthly, sanctions applied to violations of the law on consumer rights protection in online business are not deterrent enough. Decree No. 98/2020/ND-CP has regulations on sanctions applied to violations in business. However, the amount of fine specified in this Decree is still low compared to the dangerous level caused by violations. Thus, many online business entities are willing to accept fines for violations.

4. Some recommendations to improve the law on controlling online business activities in Vietnam

4.1. Completing the law on business registration

Business registration is a necessary legal procedure for business entities in general and online business entities in particular. Through this procedure, the State recognizes the legitimacy and ensures the business activities of business entities. In addition, competent state agencies rely on this legal basis to inspect and manage the activities of online business entities. Consequently, it is necessary to issue separate regulations governing the registration of online business entities.

Registration procedures of online business entities do not need to be as complicated as business registration. The registration is mainly to create a database that competent state agencies can use in the management process. Thus, it is possible to design a website or software so that business entities, which conduct online business, can register or update information.

4.2. Completing the law on tax administration

Currently, online business and tax management for online business activities are scatteredly regulated by many different legal documents such as the Law on Tax Administration, the Law on Electronic Transactions, the Law on Information Technology and other legal documents. These regulations are still general and inconsistent. Recognizing the inevitability of preventing tax loss from business activities for the development of our country, the authors would like to propose some solutions to improve regulations on tax administration for online business activities as follows:

Firstly, it is necessary to issue a document to consolidate regulations related to online business activities and online business income tax. The implementation of tax and tax administration legislation is essentially the settlement of the relationship between taxpayers and the State. The State always tends to maximize material resources from taxes, but taxpayers tend to pay as little tax as possible. Thus, the problem of tax evasion has many seeds to happen. To solve this problem, it is necessary to have the guidance of specialized tax documents for income arising from online business activities and the management of tax lines from this activity based on the constitution to create political responsibility for the subjects in the above relationship.

Secondly, it is necessary to issue a document detailing the management of online business income tax based on a combination of the Law on Cybersecurity and the Law on Tax Administration. This solution aims to both create a database of online business income taxpayers while ensuring publicity, and transparency, respecting the interests of taxpayers, and building trust from taxpayers. In addition, the coordination between the above legal provisions creates a basis for tax authorities to regularly manage online income taxpayers through the network data system to promptly detect, prevent and handle tax evasion.

4.3. Completing the law on consumer protection in online business

Article 4 Clause 1 of the Law on Protection of Consumer Rights 2010 affirms that: “*Protecting the interests of consumers is the common responsibility of the State and the whole society*”. However, at present, the issue of protecting consumers’ interests in online business still has many shortcomings, the authors propose some solutions as follows:

Firstly, it is necessary to merge regulatory documents on online businesses and protect consumers’ interests in online businesses. Currently, no document uniformly stipulates issues related to the protection of online consumer rights. Thus, it is necessary to base on generally applicable regulations on consumer protection to solve issues related to online consumer protection while protecting the interests of consumers in online business is more complicated.

Secondly, it is necessary to issue specific regulations on the responsibilities of online business entities in providing information on goods and the responsibility for protecting consumer information. In addition, there should be a mechanism to monitor this activity from the authorities. Besides, sanctions applied to violations should be increased to ensure deterrence.

Thirdly, it is necessary to raise legal awareness of consumer protection in online businesses. Currently, online business activities are developing extremely strongly, but not all consumers are aware of protecting their rights. Consumers themselves must be aware of the importance of the law on consumer protection to limit damage and protect their interests in online business relationships. In addition, the State also needs to have policies to effectively propagate and disseminate the law on consumer protection.

Fourthly, it is necessary to specify the functions, duties and powers of state agencies in protecting the interests of consumers in online business. The protection of consumers in online business must be carried out regularly based on a pre-check mechanism to minimize possible violations. Besides, it is necessary to supplement human resources and equipment so that state agencies can well perform their consumer protection functions. In addition, the Supreme People’s Court should issue documents guiding the collection and evaluation of electronic evidence as a basis for resolving disputes between consumers and online business entities.

5. Conclusion

In the context of the rapid development of e-commerce, the law plays an important role in promoting economic development and protecting the legitimate rights of subjects in society. Based on the current situation of relevant Vietnamese laws, perfecting the law on controlling online business activities is essential to avoid negative impacts on society. Specifically, in the coming time, it is necessary to focus on researching and perfecting the law on business registration, tax management and consumer protection in online business.

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MỤC LỤC

Trang

CHỦ ĐỀ 3: CÁC CHIẾN LƯỢC VÀ GIẢI PHÁP NHẪM PHÁT TRIỂN HỆ THỐNG THƯƠNG MẠI VÀ PHÂN PHỐI	3
TOPIC 3: STRATEGIES AND SOLUTIONS FOR DEVELOPING COMMERCE AND DISTRIBUTION	3
❖ PERFORMANCE EFFICIENCY ASSESSMENT OF VIETNAMESE PORTS: AN APPLICATION OF MALMQUIST DEA MODEL	5
❖ LEARNING AND UPGRADING IN THE GLOBAL VALUE CHAIN OF APPAREL INDUSTRY: THE CASE OF VIETNAM	22
❖ SOCIAL MEDIA MARKETING OF VIETNAMESE E-COMMERCE BUSINESS: SITUATION AND SOLUTIONS	42
❖ THỨC ĐẨY THƯƠNG MẠI CÁC SẢN PHẨM TỪ DƯỢC LIỆU: NGHIÊN CỨU TRƯỜNG HỢP HTX THẢO DƯỢC CỘNG ĐỒNG A & Y NGỌC YÊU, TUMORONG	55
❖ MARKETING STRATEGY FOR ORNAMENTAL PLANT PRODUCTS USING KOKEDAMA ARTS WITH RICE STRAW AS MOSS SUBSTITUTION: CASE STUDY OF KONARA BUSINESS, INDONESIA	72
❖ PHÁT TRIỂN BỀN VỮNG NGÀNH CÀ PHÊ VIỆT NAM NHẪM TĂNG CƯỜNG VỊ THẾ TRONG CHUỖI CUNG ỨNG CÀ PHÊ TOÀN CẦU	79
❖ REBRANDING STRATEGY FOR ORNAMENTAL PLANT: A STUDY FROM KONARA BUSINESS, INDONESIA	95
❖ TECHNOLOGY APPLICATION IN WAREHOUSE MANAGEMENT OF LOGISTICS ENTERPRISES	107
CHỦ ĐỀ 4: TỰ DO HÓA THƯƠNG MẠI: THỰC TRẠNG VÀ TRIỂN VỌNG	125
TOPIC 4: TRADE LIBERALIZATION: THE REALITY AND PROSPECT	125
❖ FREE TRADE AGREEMENT IMPACT ON VIETNAM'S ECONOMY BEFORE AND AFTER THE COVID-19 PANDEMIC	126
❖ A GRAVITY MODEL FOR TRADE BETWEEN VIETNAM AND THE UNITED STATES	135
❖ FDI TOÀN CẦU TRONG BỐI CẢNH CẠNH TRANH THƯƠNG MẠI MỸ - TQ: THỰC TRẠNG VÀ TRIỂN VỌNG CHO VIỆT NAM	143
❖ ROOM FOR TRADE DEVELOPMENT BETWEEN VIETNAM AND KOREA: AN APPROACH FROM TRADE INDICATORS	157
❖ CHANGES IN TRADE POLICIES THROUGH FOUR UNITED STATES PRESIDENTIAL ADMINISTRATIONS: IMPACTS AND IMPLICATIONS FOR VIETNAM	176
❖ TÁC ĐỘNG CỦA CÁC HIỆP ĐỊNH THƯƠNG MẠI TỰ DO THỂ HỆ MỚI ĐẾN SỰ TĂNG TRƯỞNG KINH TẾ CỦA VIỆT NAM TRƯỚC VÀ SAU ĐẠI DỊCH COVID 19	201
❖ TRADE BETWEEN VIETNAM AND THE UNITED STATES: ACHIEVEMENTS AND LIMITATIONS	211

❖ SOLUTIONS TO OVERCOME THE TECHNICAL BARRIERS TO VIETNAM'S EXPORTING SEAFOOD PRODUCTS TO THE JAPANESE MARKET	238
❖ THE RELATIONSHIP BETWEEN EXPORT, IMPORT AND ECONOMIC GROWTH OF HAI PHONG CITY: VIEW FROM QUANTITATIVE ANALYSIS	248
❖ XUẤT KHẨU NÔNG SẢN HỮU CƠ CỦA VIỆT NAM SANG THỊ TRƯỜNG EU SAU ĐẠI DỊCH COVID-19: THỰC TRẠNG VÀ GIẢI PHÁP	259
❖ VẤN ĐỀ PHÁT TRIỂN BỀN VỮNG TRONG LAO ĐỘNG SAU HAI NĂM THỰC THI EVFTA	273
❖ THỰC TRẠNG THỊ TRƯỜNG NHẬP KHẨU XĂNG DẦU Ở VIỆT NAM VÀ KHUYẾN NGHỊ	283
CHỦ ĐỀ 5: THỂ CHẾ, CHÍNH SÁCH, LUẬT PHÁP VỀ THƯƠNG MẠI VÀ PHÂN PHỐI	295
TOPIC 5: INSTITUTION, POLICIES AND LAWS FOR COMMERCE AND DISTRIBUTION	295
❖ PROTECTING ENTERPRISES' COMPETITIVE ADVANTAGE WITH NON-COMPETE AGREEMENTS - A LEGAL PERSPECTIVE	296
❖ GIẢI PHÁP HỖ TRỢ DOANH NGHIỆP THƯƠNG MẠI HÓA SÁNG CHẾ TRONG BỐI CẢNH CHUYỂN ĐỔI SỐ Ở MIỀN TRUNG VÀ TÂY NGUYÊN, VIỆT NAM	306
❖ SOME LEGAL ISSUES ON CONTROLLING ONLINE BUSINESS ACTIVITIES IN VIETNAM	317
❖ TẠM NGỪNG THỰC HIỆN HỢP ĐỒNG THEO LUẬT THƯƠNG MẠI 2005 VÀ LUẬT QUỐC TẾ	326
❖ QUY ĐỊNH VỀ BẢN TIN ĐIỆN TỬ THƯƠNG MẠI KHÔNG MONG ĐỢI THEO HIỆP ĐỊNH RCEP VÀ KIẾN NGHỊ HOÀN THIỆN PHÁP LUẬT VIỆT NAM	340
❖ HOÀN THIỆN PHÁP LUẬT VỀ SIÊU THỊ DƯỚI GÓC ĐỘ CƠ SỞ KINH DOANH HOẠT ĐỘNG PHÂN PHỐI	354
❖ THỰC TRẠNG KHUNG PHÁP LÝ VỀ HỖ TRỢ DOANH NGHIỆP ĐÀO TẠO, BỒI DƯỠNG VÀ NÂNG CAO TRÌNH ĐỘ KỸ NĂNG NGHỀ NGHIỆP ĐỂ DUY TRÌ VIỆC LÀM CHO NGƯỜI LAO ĐỘNG TRONG BỐI CẢNH ĐẠI DỊCH COVID 19 VÀ KIẾN NGHỊ GIẢI PHÁP HOÀN THIỆN	364
❖ GIẢI QUYẾT TRANH CHẤP KINH DOANH THƯƠNG MẠI TẠI TOÀ ÁN HIỆN NAY	374
❖ BẢO VỆ QUYỀN SỞ HỮU TRÍ TUỆ CỦA CHỦ THỂ QUYỀN VÀ CHỦ SỞ HỮU SẢN GIAO DỊCH THƯƠNG MẠI ĐIỆN TỬ	384
❖ TÁC ĐỘNG CỦA THƯƠNG MẠI ĐIỆN TỬ LÊN CHÍNH SÁCH THUẾ CỦA VIỆT NAM	397
❖ HOÀN THIỆN QUY ĐỊNH PHÁP LUẬT VỀ DỊCH VỤ LOGISTICS TRONG THƯƠNG MẠI ĐIỆN TỬ	409
CHỦ ĐỀ 6: CHỦ ĐỀ LIÊN QUAN KHÁC	417
TOPIC 6: OTHER RELATED TOPICS	417
❖ ẢNH HƯỞNG CỦA MÔI TRƯỜNG KINH DOANH ĐẾN SỰ THAM GIA CỦA CÁC DNVVN VÀO NGÀNH CÔNG NGHIỆP CHẾ BIẾN CHẾ TẠO TẠI VIỆT NAM VÀ MỘT SỐ HÀM Ý CHO DN TRONG GIAI ĐOẠN HẬU COVID-19	418
❖ THE CURRENT STATUS OF POLICY MANAGEMENT FOR TECHNOLOGY DRIVERS IN VIETNAM	434

- ❖ PHÁP LUẬT VỀ SỬ DỤNG LAO ĐỘNG NƯỚC NGOÀI LÀM VIỆC TẠI VIỆT NAM - THỰC TRẠNG VÀ GIẢI PHÁP HOÀN THIỆN 444
- ❖ ỨNG DỤNG CÔNG NGHỆ THÔNG TIN TRONG THU HÚT KHÁCH DU LỊCH TẠI BÌNH ĐỊNH 453
- ❖ TOURISM DESTINATION COMPETITIVENESS OF LAOS: EXPLORATORY STUDY FROM STAKEHOLDERS PERSPECTIVE. 461
- ❖ ENTRY, EXIT AND PRODUCTIVITY GROWTH IN THE VIETNAMESE MANUFACTURING SECTOR 473
- ❖ START-UP BUSINESS ONLINE WOMEN: THE FLEXIBILITY TO ADAPT TO CONSUMERS' ONLINE BUYING HABITS AFTER THE COVID-19 PANDEMIC 486
- ❖ GIẢI PHÁP THÚC ĐẨY LIÊN KẾT VÙNG TẠI KHU VỰC TRUNG DU MIỀN NÚI BẮC BỘ 495
- ❖ COMPETITIVENESS OF GARMENT AND TEXTILE INDUSTRY BETWEEN VIETNAM AND CHINA: A DOUBLE DIAMOND MODEL APPROACH 507
- ❖ FACTORS INFLUENCING THE INNOVATIVE START-UP INTENTIONS OF AGRICULTURAL STUDENTS AT NONG LAM UNIVERSITY 531
- ❖ BENCHMARKING UNIVERSITY TRAINING PROGRAMS TO MAKE SOME RECOMMENDATIONS IN HUMAN RESOURCE TRAINING IN WAREHOUSE AND DISTRIBUTION IN SUPPLY CHAIN MANAGEMENT IN VIETNAM 544
- ❖ NGHIÊN CỨU CÁC YẾU TỐ ẢNH HƯỞNG ĐẾN Ý ĐỊNH KHỞI NGHIỆP CỦA SINH VIÊN TRƯỜNG ĐẠI HỌC QUY NHƠN 556

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