

CHAPTER I

INTRODUCTION

1.1 Background

The growth of consumerism has increased significantly due to the rapid and massive development of technology, information and communication. According to data published by the Central Bureau of Statistics, internet usage has increased in the 2021-2022 timeframe, namely in 2021 it was 62.10 percent, while in 2022 it was 66.48 percent.¹ The use of the internet is also related to people's smartphone ownership. The openness to the development of information and communication will also bring changes to people's lifestyles or consumptive behavior.

Changes in consumptive behavior in the digital era have resulted in various changes such as an increase in consumer purchasing power to the ease of accessing information on goods and services by business actors.² This is due to the transition of buying and selling which was originally face-to-face starting to change towards digital or online, so that it can make it easier for people to carry out buying and selling activities.

The high use of smartphones and the internet also gave rise to the term electronic commerce. E-commerce is a buying and selling activity that

¹ Central Bureau of Statistics, "Indonesia Telecommunication Statistics 2022", <https://www.bps.go.id/id/publication/2023/08/31/131385d0253c6aae7c7a59fa/statistik-telekomunikasi-indonesia-2022.html>, accessed on September 20, 2024.

² Tengku Enzi Balqiah and Hapsari Setyowardhani, *Consumer Behavior*, Twelfth Edition, Terbuka University, South Tangerang, 2017, pp. 9,49.

utilizes the use of the internet in carrying out distribution, sales, and marketing not only related to goods, but also in the service sector.³ According to data published by the Ministry of Trade of the Republic of Indonesia, the use of e-commerce has increased since the COVID 19 pandemic, this is evidenced in 2023 by 58.63 million e-commerce users which will continue to increase in the next 6 years, namely in 2029 it is estimated that it will reach 99.1 million users.⁴

The massive use of e-commerce is based on the ease of conducting transactions. Consumers can easily access or purchase goods without being limited by geographical location. This condition makes buying and selling transactions more efficient and practical. This phenomenon is the impact of globalization. Globalization has a significant impact on the development of e-commerce, which facilitates the interaction of consumers and businesses around the world.

According to Anthony Giddens in the book 'The Third Way, The Renewal of Social Democracy', globalization is defined as a process related to conditions in which people between regions do not know state boundaries which also affect the economic and political fields.⁵ The existence of globalization implies that there are interactions and interdependencies

³ Sandra Ayu and Ahmad Lahmi, 'The role of e-commerce on the Indonesian economy during the Covid-19 pandemic', *Journal of Business Management Studies*, Vol 9, No 2, 2020, pp. 116.

⁴ Ministry of Trade of the Republic of Indonesia, "Digital Trade (*E-Commerce*) Indonesia Period 2023", accessed on September 20, 2024.

⁵ Rhido Jusmadi, *The Concept of Competition Law*, Setara Press, Malang, 2014. pp. 17, quoted from Anthony Giddens, *The Third Way, The Renewal of Social Democracy*, Blackwell Publisher Ltd, Malden, MA, 1998. (translated by Ketut Arya Mahardika), Gramedia Pustaka Utama, Jakarta, 2002, pp. 38.

between countries that occur outside of government control. Globalization in the economic sector can be proven by the existence of business competition.

The nature of marketing will not be separated from business competition. Business actors sell products and/or services not only based on the profits that will be obtained, but also how to deal with the many competitors that exist.⁶ In general, business competition is a result of the free market. The free market or free trade brings the phenomenon of the influx of imported goods to developing countries.

The phenomenon of globalization and free markets also has an influence on the diversity or variety of goods produced and will also bring benefits to the community as a party who consumes and uses these goods, namely related to the fulfillment of goods and services with many choices in the market share.⁷

The industry sector that experienced the most significant increase was the fashion industry. According to CNBC Indonesia, the expansion of the fashion or clothing industry in Indonesia is able to contribute 116 trillion rupiah or around 18.01% and is the industrial sector that makes the largest contribution to the Creative Economy in 2019.⁸

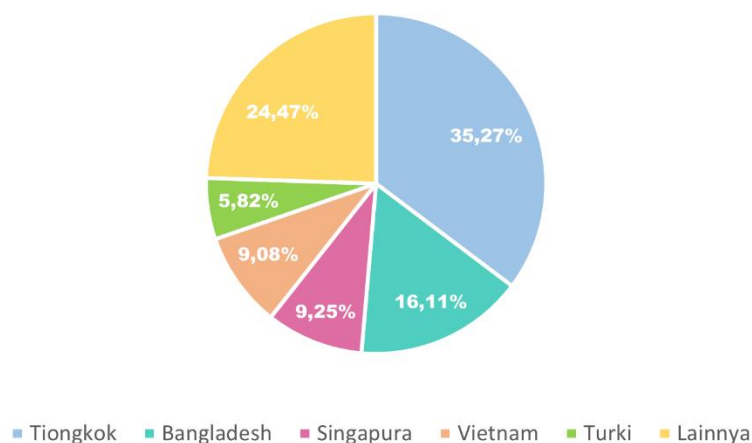
⁶ Alem Savier, Teddy Prima Anggriawan, and Aldira Mara Ditta Caesar Purwanto, 'The Phenomenon of Predatory Pricing in Business Competition in E Commerce (Case Study Between Lower Tariff Determination Between Indrive and Gojek Applications)', *Wahana Pendidikan Scientific Journal*, Vol. 9, No. 14, 2023, p. 64.

⁷ Teddy Prima Anggriawan *et al*, 'Utilization Of Information Technology As A Legal Education Media Consumer Protection', *UNTAG Law Review (ULREV)*, Vol 5, No 2, 2021, p 4.

⁸ Enrico *et al*, 'Purchasing Behavior of Fast Fashion Brands among Millennials in Indonesia', *journal of Management and Business Applications*, Vol. 7, No. 3, 2021, p. 779. 779.

According to a press release issued by the Ministry of Trade of the Republic of Indonesia, it explains the percentage of imports of clothing and clothing accessories in 2023 as follows:⁹

Figure 1 : 2023 Import Data of Clothing and Clothing Accessories



Source: Ministry of Trade of the Republic of Indonesia

Based on this data, it is clear that there is a dominance of China in the import of clothing and clothing accessories with a percentage of 35.27%, which is then followed by Bangladesh with a gap or distance far enough with a percentage of 16.11%, Singapore by 9.25%, Vietnam by 9.08%, Turkey by 5.28%, as well as Cambodia, India, Morocco, and several developing countries with a total percentage of 24.47%. So it can be concluded that China is the largest clothing importing country in Indonesia.

The data released by the Central Bureau of Statistics related to imports of non-knitted accessory clothing in the January - March 2024 range with a percentage of 30.28% dominated by China, Bangladesh by 11%,

⁹ Ministry of Trade of the Republic of Indonesia, *KPPI Starts Investigation of TPP Extension of Imported Products of Clothing and Clothing Accessories*, Press Release, Jakarta, November 7, 2024.

Vietnam by 8.91%, and HongKong by 8.57%.¹⁰ The import value increased in January 2024 by US\$14.74 million, February 2024 by US\$22.42 million, and March 2024 by US\$24.91 million.¹¹

The rise of the fashion industry and the phenomenon of imported apparel have given rise to the term rebranding practices of existing products in the community. In essence, the practice of rebranding is intended as a form of improving the image of the company. However, this will become a problem when there are companies that rebrand without permission.

Based on the perspective of consumer protection, illegal rebranding is a violation because when consumers buy products, they do not meet their expectations, especially in terms of quality of the products being traded. Thus, the existence of Law Number 8 Year 1999 on Consumer Protection (hereinafter referred to as the Consumer Protection Law) is expected to be able to accommodate the interests or rights of consumers when there is an illegal rebranding practice carried out by business actors.

This phenomenon of illegal rebranding happened to the Hamlin brand. Hamlin is a local fashion brand engaged in the garment sector. This is because the products sold by Hamlin are ready-made products. Hamlin is a company under PT Rimas Usaha Jaya which was founded

¹⁰ Ni Luh Anggela, "BPS: Clothing Imports Increase Ahead of Eid 2024, Mostly from China" <https://ekonomi.bisnis.com/read/20240619/12/1775169/bps-impor-pakaian-meningkat-jelang-lebaran-2024-terbanyak-dari-china>, accessed on February 24, 2025.

¹¹ *Ibid.*

in 2019. Hamlin itself not only sells clothes, but also accessories with the target market of the middle to upper class.

These accessories include hats, bags, laptop sleeves, shoes, and so on. Hamlin's product sales are conducted electronically through its official website and several e-commerce platforms.

The local brand with the Hamlin brand had become a topic of conversation in March 2024, the conversation led to the activities or product sales practices carried out by Hamlin. The case began when there was a TikTok account with the username @jiglyciouss who reviewed the products he bought, namely laptop sleeve products. In the review, a laptop sleeve from the Hamlin brand priced at with a price of Rp. 313 thousand turned out to be a product from the Rhodey brand whose original price was around Rp. 20 thousand.¹²

The Hamlin brand apparently not only attaches logos to domestic products, but also imported Chinese products purchased at low prices which are then packaged and attached to its logo or brand. The existence of the case, urged Rhodey to make clarifications and it turned out that the Rhodey brand itself had never made a business agreement or was never affiliated with the Hamlin brand. So in this case it can be said that Hamlin has committed trademark infringement by practicing rebranding without permission.

¹² Lady Agustin Fitriana, "Hamlin Controversy, Alleged Resale of Imported Products at High Prices", KhatulistiwaHits.com (online), March 25, 2024, in <https://khatulistiwaHits.com/2024/03/25/kontroversi-hamlin-dugaan-j/>, accessed on February 26, 2025.

When referring to business activities themselves, such activities may be categorized as business activities if Rhodey and Hamlin have entered into an agreement. The agreement must be contained a statement that the products sold by Hamlin and Rhodey were the same product and Hamlin would give a new logo or brand to his product. However, the fact is that this is not the case, the products sold by Hamlin are products with the Rhodey logo and only a new logo is attached.

The practice of rebranding carried out by Hamlin certainly brings contradictions to the essence of the trademark as well as the review of the consumer's right to obtain products with quality according to the information that has been provided by business actors. When referring to the function of the trademark itself, among others: as an identifying mark to distinguish products and / or services; guarantee of exclusive rights to a brand; as well as maintaining a brand from various violations.¹³

The case between Hamlin and consumers who feel aggrieved by the practice of illegal rebranding of the products sold has no resolution through the Consumer Dispute Resolution Agency (hereinafter referred to as BPSK) or through litigation such as filing a lawsuit. However, Hamlin only made a clarification from the Instagram page in the form

¹³ Teddy Prima Anggriawan, Aldira Mara D. C. P, and Shinfani Kartika Wardhani, *Introduction to Civil Law*, Scopindo Media Pustaka, Surabaya, 2023. pp. 199-200.

of an apology. Although in reality, with the practice of illegal rebranding carried out by the Hamlin brand, it causes losses due to the discrepancy of information and quality that has been provided by business actors.

Referring to Articles 4, 5, 6, and 7 of the Consumer Protection Law, the rights and obligations of the parties are clearly stated, which must consciously comply with these rules. So that if in these activities there are violations committed by business actors against consumers, then in this case it is necessary to further study the responsibilities that can be requested.

The guarantee of legal protection for consumers is essential and important for the continuation of business activities. In addition, in this business activity, it can certainly be seen that consumers have a weaker position than business actors. Thus, protection is needed that can accommodate these consumers as a form of effort in providing satisfaction, comfort, and safety in buying and selling. On the one hand, it is necessary to impose sanctions on business actors as a manifestation of the implementation of protection guarantees.

Based on this explanation, the researcher is interested in examining the legal protection for consumers against buying and selling activities against illegal rebranding goods comprehensively by analyzing the agreement reviewed through civil law in Indonesia. Thus, the researcher took the title "**LEGAL PROTECTION FOR CONSUMERS AGAINST**

ILLEGAL REBRANDING PRACTICES IN THE FASHION INDUSTRY IN INDONESIA".

1.2 Problem Formulation

Researchers in conducting research need several problem formulations that are used to identify legal issues that will be answered comprehensively in a firm and directed discussion, so that the research objectives will be achieved. Therefore, the researcher formulates the problem formulation as follows:

1. How the practice of illegal rebranding carried out by business actors in the case of selling cheap imported fashion products be categorized as an unlawful act according to civil law in Indonesia?
2. How is protection for consumers against illegal rebranding practices carried out by business actors in the fashion industry in Indonesia?

1.3 Research Objectives

Researchers in carrying out research have goals to be achieved. The research objectives are as follows:

1. Objective.
 - a. To analyze and understand the legal consequences arising from the practice of rebranding in terms of the concept of unlawful acts reviewed through the Civil Code.
 - b. To analyze and understand the implementation of illegal rebranding practices in buying and selling activities in the fashion industry reviewed through the Consumer Protection Law.

2. Subjective Objective

- a. For the fulfillment of academic requirements with the aim of obtaining a Bachelor of Laws at the Faculty of Law UPN "Veteran" Jawa Timur.
- b. To contribute thoughts and develop knowledge on the topic of illegal rebranding from the perspective of Consumer Protection Law.
- c. With this research, it is hoped that researchers can see the relevance between the problems or realities in the field and the theory that has been obtained during lectures.

1.4 Research Benefits

Researchers in carrying out research are expected to provide benefits.

The benefits of research are as follows:

1. Academic Benefits

- a. Contributing valuable thoughts for the advancement of Civil Law, especially in the context of illegal rebranding practices in the fashion industry from a consumer protection perspective.
- b. It is expected to provide in-depth and comprehensive insights for readers who have an interest in the topic of illegal rebranding.
- c. It is hoped that it can be useful and can be a useful reference for making future research.

2. Practical Benefits

- a. As an answer to the formulation of the problem that has been researched.

- b. As a researcher's contribution to science, especially in the field of civil law.
- c. As a development of mindset and can measure the ability of researchers.

1.5 Authenticity of Research

The following are previous studies, so that researchers use these studies as a supporting tool in working on this thesis, as follows:

Table 1 : Comparison of Previous Research (Novelty)

No.	Previous Research	Equation	Difference
1.	"Law Enforcement Against Trademark Infringement Based on Indonesian Legislative Provisions" (Andika Richardo Kaparang, journal, 2024).	Examines the use of a mark without the permission of the original mark owner.	The difference in this research focuses on the Trademark and Geographical Indications Law by examining legal protection for business actors. While researchers examine through the perspective of consumer protection.
2.	"Legal Protection Against Unauthorized Use of Famous Trademarks According to the Perspective of Trademark and Geographical Indications Law" (Hounaid and Desak Putu Dewi Kasih, journal, 2023).	Examines the unauthorized use of marks for commercial purposes.	The difference in this research focuses on the unauthorized use of well-known trademarks studied through the Trademark and Geographical Indications Law by looking from the perspective of business actors, while researchers examine this research through the perspective of protection of the rights of harmed consumers.
3.	"Legal Effects of Rebranding Products of the Manufacturing Industry (Comparative Study of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, Singapore Trade Marks Act 1998 and Act on the Protection of Trade Marks and other Signs Germany 1994)." (Laila Halimatul Hikmah, thesis, 2022).	Examines rebranding practices carried out by changing the registered label with another label.	The difference in this research is the comparative approach used by comparing 3 countries and focusing on business actors as parties who commit trademark infringement. While the researcher examines this research using the Consumer Protection Law and the Civil Code.
4.	"Analysis of Islamic Business Ethics towards Fashion Product Rebranding at Cisco Apparel Ponorogo Store" (Nurma Rahmawati, thesis, 2019).	Examines unauthorized rebranding practices that result in price changes.	The difference in the research is that it examines the practice of rebranding through the perspective of Islamic business ethics, while in the research that the researchers conducted is using a consumer protection perspective and analyzing the sale and purchase agreement and practices through the concept of unlawful acts.

The similarity of the research raised is related to unauthorized trademark infringement used for commercial purposes including rebranding activities. Three of the four previous studies focused on trademark infringement by examining through the Trademark and Geographical Indications Law. While the research conducted by Nurma Rahmawati focuses more on analyzing the Islamic business ethics of the practice of rebranding fashion products and experiencing changes to product prices.

The element of novelty that becomes the researcher's discussion is focusing on whether the practice of illegal rebranding of imported products that are bought cheaply and then resold at luxury prices by the Hamlin brand without the knowledge of consumers can be categorized as unlawful acts according to civil law in Indonesia. In addition, another element of novelty is related to the analysis of the Consumer Protection Law by examining violations of consumer rights and prohibited acts committed by business actors. As well as the suitability of the application of the Consumer Protection Law to the case raised, namely the illegal rebranding practice carried out by the Hamlin brand.

1.6 Research Methods

1.6.1 Type and Nature of Research

Legal research is a process carried out to examine legal issues through legal principles, rules and doctrines in order to

produce certain values.¹⁴ The existence of legal research is intended to answer legal issues by providing comprehensive prescriptions.¹⁵ According to Soerjono Soekanto as cited by Irwansyah, legal research is defined as a scientific activity aimed at studying legal symptoms and is based on certain methods, systematics, and thoughts.¹⁶ Meanwhile, according to Abdulkadir Muhammad from the book '*Hukum dan Penelitian Hukum*', defines legal research as an activity used to reveal the existing legal system, facts, and concepts and then develop or modify them according to the needs of society.¹⁷

Referring to the assessment of the problem formulation that has been stated in the study, it can be seen that researchers use normative juridical. The normative legal research method is research that dogmatically refers to legal norms in the community.¹⁸ The results of normative legal research are used as a basis for compiling and building solid, logical, accurate, and rational legal arguments.¹⁹ Researchers will analyze legislation as a reference to answer the formulation of the problems raised.

¹⁴ Irwansyah, *Legal Research Choice of Methods & Practice of Article Writing*, Fourth Printing, Mirra Buana Yogyakarta, 2021, pp. 65, quoted from Peter Mahmud Marzuki, Jakarta, 2013, p. 60.

¹⁵ Peter Mahmud Marzuki, *Legal Research*, Fifteenth Edition, Prenadamedia Group, Jakarta, 2021. pp. 83.

¹⁶ Irwansyah, *Op.Cit.*, p. 65.

¹⁷ Muhaimin, *Legal Research Methods*, Mataram-NTB, 2020, p. 19, quoted from Abdulkadir Muhammad, Bandung, 2004, p. 37

¹⁸ Eka N.A.M Sihombing and Cynthia Hadita, *Legal Research*, Setara Press, Malang, 2022. pp. 43.

¹⁹ Irwansyah, *Op.Cit.*, p. 65.

This research examines whether the practice of illegal rebranding can fulfill the elements of unlawful acts against the sale and purchase activities of products sold to consumers based on the Civil Code. However, in the sale, the practice of illegal rebranding is applied without the knowledge of consumers as buyers of goods which are then also examined through aspects of business ethics. In addition, researchers also examine the impact of illegal rebranding practices on consumer rights in buying and selling activities by examining through the Consumer Protection Law.

The nature of the research used by researchers is descriptive research. According to Irwansyah, explaining descriptive research as research by comprehensively describing natural phenomena or man-made phenomena so that researchers can identify related to these phenomena.²⁰ In this descriptive research, researchers are expected to achieve several goals, namely describing the phenomenon that is the object of research, explaining the phenomenon in detail, and validating research findings.²¹ The researcher will describe or describe comprehensively the case that the researcher raises, namely the practice of illegal rebranding carried out by the local brand Hamlin brand of local products and

²⁰ *Ibid.*, p. 38.

²¹ *Ibid.*, p. 39.

imported products that are resold at luxury prices, so that it can harm consumers as the party who purchases the product.

Thus, the use of normative legal research with the nature of descriptive research is intended to provide a more comprehensive understanding of the legal framework, especially consumer protection and how it applies to the activities of business actors who sell imported products using illegal rebranding practices.

1.6.2 Approach

The approach used by researchers to solve legal issues as a basis for preparing legal arguments is the statutory approach and conceptual approach. According to Peter Mahmud Marzuki in the book '*Metode Penelitian Hukum*', the regulatory approach is implemented by examining legal issues which are then reviewed with existing regulations in Indonesia.²² The researcher analyzed the buying and selling activities, namely the Hamlin brand with consumers who were studied through the Civil Code, and analyzed the filing of a lawsuit that could be carried out for consumers as the injured party. In addition, researchers also analyze legal protection for consumers who buy products through rebranding practices by examining through the Consumer Protection Law.

Researchers also use a conceptual approach, a conceptual approach is an approach by examining the background juridical

²² Muhaemin, *Op.Cit*, pp. 25-27, quoted from Peter Mahmud Marzuki, Jakarta, 2005, pp. 93.

concepts, but also looking at the values contained in the norms contained in the regulations and linked to the concepts used in the research.²³ Researchers examined the concept of rebranding in business which was then studied with business activities carried out by the Hamlin brand which was then analyzed through the concept of business ethics and the concept of unlawful acts in buying and selling activities that use illegal rebranding practices.

1.6.3 Legal Materials

The legal research used is normative legal research. In its definition, normative legal research uses secondary data or library materials, so it can also be called library legal research.

This data collection is important for the research process which will later be used as an analysis tools to solve or answer the problem formulation raised. This research will use several data sources which are grouped into 3 as follows:

1.6.3.1 Primary Legal Materials

Primary legal material is the main data and is authoritative, meaning that it is the result of regulations made by authorized institutions or regulators.²⁴ Primary legal materials used by researchers include:

1. Civil Code (KUHPer);

²³ Irwansyah, *Op.Cit.*, p. 147.

²⁴ Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Legal Research Methodology*, Oase Pustaka, 2020, p. 67, quoted from Peter Mahmud Marzuki, Jakarta, 2005, p. 139.

2. Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition;
3. Law Number 8 Year 1999 on Consumer Protection;
4. Law Number 20 Year 2016 on Trademarks and Geographical Indications;
5. Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector; and
6. Regulation of the Minister of Trade Number 25 of 2021 concerning the Determination of Goods that are Required to Use or Equip Indonesian Language Labels.

1.6.3.2 Secondary Legal Materials

Secondary legal materials are legal materials to complement primary legal materials. The secondary legal materials used include:

1. Book;
2. Scientific article;
3. Previous thesis; and
4. Expert opinion.

1.6.3.3 Tertiary Legal Materials

Tertiary legal materials or non-legal materials are legal materials from non-legal literature, but still have a correlation with the legal issues raised. The tertiary legal materials used by researchers include:

1. Legal dictionary;
2. KBBI; and
3. Internet media news in the form of a case of illegal rebranding practices carried out by the Hamlin brand selling fashion products to consumers as a legal issue raised.

1.6.4 Legal Material Collection Procedure

Literature study or library research is a procedure used in collecting legal materials. The researcher will conduct a clear, structured, and comprehensive analysis of the problem formulation that has been proposed by the researcher. Researchers examine buying and selling activities by analyzing the conceptual elements of unlawful acts by looking at the facts. researchers will also conduct a study of violations of consumer rights for purchasing these products through the Consumer Protection Law.

1.6.5 Analysis of Legal Materials

The analysis method implemented is using qualitative methods. In its definition, the qualitative method is a research

analysis related to legal materials, where this qualitative analysis can be used to reveal the truth of a law and provide an understanding of the truth of the legal rules used for research.²⁵ This qualitative research method can create analytical descriptive data, which can provide an overview or exposure to social phenomena used as research objects.²⁶

Researchers analyzed the principles of agreements in the Civil Code by looking at the concept and elements of unlawful acts by examining the buying and selling activities of the Hamlin brand with consumers. In addition, researchers also see from the perspective of consumer protection by looking at the rights and obligations of the parties, then will analyze with regard to the losses received by consumers for purchasing the rebranded product.

Given that the practice of illegal rebranding is closely related to the trademark of a product, it is also necessary to understand the Trademark and Geographical Indications Law. In addition to the trademark, what affects the practice of illegal rebranding is related to the monopolistic practices carried out by the Hamlin brand on the sale of fashion goods.

Brand Hamlin sells rebranded goods of local products as well as imported products by reselling the goods at fantastic prices,

²⁵ Muhaimin, *Op.Cit.*, p. 129.

²⁶ *Ibid.*, pp. 128-129.

so it can be said that this activity is a violation of the law which also affects the intention or good faith and business ethics of business actors in trading their products. In addition, more analysis is needed on the suitability of the application of the Consumer Protection Law to the illegal rebranding practices carried out by the Hamlin brand.

1.6.6 Research Systematics

The research that the researcher raised is entitled "**LEGAL PROTECTION FOR CONSUMERS AGAINST ILLEGAL REBRANDING PRACTICES IN THE FASHION INDUSTRY IN INDONESIA**". Researchers provide a clear and comprehensive picture in this thesis research by presenting a systematic framework which is divided into several chapters that will be used in thesis research, so that this framework provides a detailed understanding of the topics or issues discussed as follows:

The first chapter contains an introduction consisting of background, problem formulation, research objectives, research benefits, research methods, and literature review. This introductory chapter contains the reasons for taking the topic of illegal rebranding practices carried out by business actors by looking at aspects of consumer protection. In this chapter, it is hoped that readers can understand the problems that researchers raise, where in fact the losses obtained by this phenomenon are not only related

to the original trademark owner, but also consumers who do not know that the products purchased are rebranded goods.

The second chapter is divided into two sub-chapters. The first sub-chapter analyzes the case of illegal rebranding practices carried out by Hamlin with the principles in business ethics as well as the good faith principle in the Civil Code and the Consumer Protection Law. The second sub-chapter deals with the analysis of the elements of unlawful acts by Hamlin against consumers that can be requested in accordance with Article 1365 of the Civil Code and is associated with the Consumer Protection Law in the practice of illegal rebranding.

The third chapter is divided into two sub-chapters. The first sub-chapter analyzes consumer legal protection in the practice of illegal rebranding by Hamlin and then analyzes it using violations of consumer rights according to the Consumer Protection Law which is also analyzed with the theory of legal certainty by Utrecht as supporting material for analysis. The second sub chapter analyzes with regard to consumer legal remedies against illegal rebranding practices in the Hamlin case.

The fourth chapter consists of two sub-chapters. The first sub-chapter contains conclusions from the research conducted by researchers and contains brief answers to the formulation of the problems asked. Furthermore, the second sub-chapter contains

suggestions on the legal issues discussed by the researcher, especially in terms of legal certainty over illegal rebranding practices to minimize unfair business competition.

1.7 Literature Review

1.7.1 Overview of Legal Protection

Indonesia is a state of law as stated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia. This is emphasized by the Indonesian State in running its state administration based on law, not on power alone. Thus it can be concluded that the actions of the community and the state must be subject to applicable rules or regulations. The existence of the rule of law is important to ensure the creation of justice and certainty of a law which is also closely related to guaranteeing the protection of the rights of every citizen without discrimination.

According to KBBI, protection comes from the word protect. Protection is a place used for shelter or protection.²⁷ Meanwhile, law is a binding rule used to regulate the life of society at large.²⁸ Thus, in a sense, legal protection is an action to protect the rights of individuals or communities through legislation. This protection guarantee can be implemented by law enforcement officials, so that people can feel these rights.

²⁷ KBBI, "Protection", <https://kbbi.web.id/lindung>, accessed on October 10, 2024.

²⁸ KBBI, "Law", <https://kbbi.web.id/hukum>, accessed on October 10, 2024.

The essence of legal protection is divided into two types:²⁹

a. Preventive legal protection

Preventive legal protection is an effort made by the government to prevent various violations, so in this case preventive protection can be implemented by making laws.

b. Repressive legal protection

Repressive legal protection is an effort made by the government to enforce and implement regulations that apply in a country, with the aim of ensuring that every individual lives his life in accordance with applicable rules. Repressive legal protection is usually implemented after a violation occurs. Usually this repressive protection can take the form of sanctions, such as criminal sanctions, civil sanctions, and administrative sanctions.

1.7.2 Overview of Consumer Protection

1.7.2.1 Definition of Consumer Protection

In essence, when referring to the proportionality between business actors and consumers, there is an imbalance of position, namely consumers have a weaker position. So here consumers are powerless to face the stronger position of business actors. Protection for

²⁹ Alvian Dwiangga Wijaya and Teddy Prima Anggriawan, 'Legal Protection of Personal Data in the Use of Smartphone Applications', *Journal Inicio Legis*, Vol. 3, No. 1, 2022, p. 66.

consumers is important, considering that consumers are the ones who directly use the goods and/or services that have been distributed by business actors. So the government needs to provide protection for the sustainability of business activities made by business actors.

According to the Cambridge Dictionary, consumer protection is defined as:

"the protection of buyers of goods and services against low quality or dangerous products and advertisements that deceive people."³⁰

Meanwhile, according to the Consumer Protection Law, it is defined as an effort aimed at guaranteeing consumer rights as a form of implementing legal certainty. According to AZ Nasution as cited by Yanci Libra Fista, consumer protection law is defined as all the rules and principles that contain regulations regarding consumer protection relating to products and services between the parties.³¹

Consumer protection is a very important aspect in transactions between business actors and consumers.

This protection is actually seen from the obligations and

³⁰ Cambridge Dictionary, "Consumer Protection", <https://dictionary.cambridge.org/dictionary/english/consumer-protection>, accessed on October 10, 2024.

³¹ Yanci Libra Fista, et al, 'Consumer Legal Protection in E-commerce Transactions Viewed from the Perspective of the Consumer Protection Law', *Binamulia Hukum*, Vol 12, No 1, 2023, pp. 183.

rights that must be fulfilled by each party to avoid arbitrariness, especially business actors. On the one hand, when referring to the concept of *laizes faire* between consumers and business actors have the same position. However, in reality, consumers are very vulnerable to being harmed, which has an impact on the many events of neglect of consumer rights. With this fact, it is expected that there is a law that can accommodate the rights of consumers.

According to Hans. W. Mickklitz in *Warta Konsumen* explains that consumer protection can be carried out with two policies, namely complementary and compensatory policies that are carried out before the conflict.³² This complementary policy refers to the obligation of business actors in providing clear and correct information.³³ Meanwhile, the compensatory policy is related to the protection of consumers' economic interests, in the sense that when consumers purchase goods, the goods must go through testing so that there are no defects before the product is traded.³⁴

³² Farid Wadji and Diana Susanti , *Consumer Protection Law*, Setara Press, Malang, 2023, pp. 10.

³³ *Ibid.*

³⁴ *Ibid.*

Protection of consumer rights can be carried out before the transaction as a form of preventive effort, namely by means of the formation of regulations by the government, which in this case is referred to as legislation and voluntary self-regulation by means of the formation of rules by business actors carried out on their own accord with the aim of being a form of prudential principles in carrying out business activities.³⁵

Thus the formation of rules between the government and business actors is a very efficient thing in protecting consumers before the transaction is intended as a form of legal certainty. There are also ways to protect consumer rights after a conflict, namely through litigation and non-litigation, namely through the District Court and BPSK.³⁶

1.7.2.2 Principles of Consumer Protection

According to KBBI, principles are the basis used as a guide for thinking.³⁷ In essence, the application of principles in the aspect of consumer protection is very crucial and plays a central role in providing a solid and systematic foundation to regulate the relationship

³⁵ *Ibid.*, p. 9.

³⁶ *Ibid.*, p. 10.

³⁷ KBBI, "Principle", <https://kbbi.web.id/asas>, accessed on October 10, 2024.

between the parties involved, namely both business actors and consumers. The existence of the principles of consumer protection law is actually the background for the formation of laws and regulations, so that the existence of principles in each regulation is a basic principle in the formulation of legal norms.

Referring to the Consumer Protection Law itself, Article 2 explains that consumer protection is based on five main principles. The principles are as follows: ³⁸

a. Benefit principle

This principle relates to the efforts that must be made to protect the parties to the transaction, both consumers and business actors. Thus, it is expected that consumer protection will have benefits for the implementation of business activities, including in the event of a dispute between the parties concerned.

b. The principle of justice

This principle relates to providing opportunities to business actors and consumers regarding rights and obligations. In addition, according to the fact that consumers are the weak party in this buying and

³⁸ Farid Wadji and Diana Susanti, *Loc.Cit.*

selling activity so that fair treatment is very crucial to be maximized.

c. Principle of balance

This principle explains that the interests of the parties are an important aspect with a focus on three interested parties, namely consumers, business actors, and the government as a regulator. With the proportionality of interests between the parties, it is hoped that no party will feel that the interests of one party are greater than those of the other parties, thus it can be said that the implementation of the rights and obligations of the parties must be carried out in a balanced manner.

d. The principle of consumer safety and security

This principle relates to the guarantee that must be given by the legislation to the use of goods or services for consumers who use or consume these goods. With the existence of the principle, it can be a guarantor that when consumers use or consume these goods, it will not guarantee the safety of consumers' lives or related to property in the sense that it will not harm these consumers.

e. The principle of legal certainty

This principle relates to the expectation that consumers and business actors obey the rules contained in the Consumer Protection Law, especially regarding rights and obligations, so that with the parties obeying the law, it is also closely related to the guarantee of justice by the state by guaranteeing concrete and clear legal certainty and avoiding vagueness over a law.

The five principles contained in the Consumer Protection Law can be grouped based on the essence which can be further divided into three main principles, namely:³⁹ First, the principle of expediency which actually includes the principles of security and safety. Second, the principle of justice which includes the principle of balance. And third, the principle of legal certainty. The grouping of principles into 3 (three) has actually been initiated by Gustav Radbruch who also explained that there are three basic values used as legal objectives, Radbruch himself made this principle based

³⁹ Ahmadi Miru and Sutarman Yodo, *Consumer Protection Law*, Revised Edition, Cet. 10, PT Raja Grafindo Persada, Jakarta, 2017, p. 26.

on the priority of the law being implemented. The first priority is justice, expediency, and finally legal certainty.

1.7.2.3 Objectives of Consumer Protection

In general, the purpose of legal protection for consumers is stated in Article 1 point 1 of the Consumer Protection Law which states as an effort to guarantee legal certainty.

Legal protection for consumers is not only related to private matters but also public matters.⁴⁰ The article can be concluded that the sentence guaranteeing legal certainty refers to the efforts of the government or regulator to provide guarantees to consumers who directly consume or use goods and / or services from all forms of violations committed by business actors, especially actions related to arbitrary actions against consumers.⁴¹

The purpose of consumer protection itself has been stated in Article 3 of the Consumer Protection Law, among others, is to increase awareness and dignity of consumers in order to protect themselves, increase consumer empowerment. besides that, it also

⁴⁰ Farid Wadji and Diana Susanti, *Op.Cit.* p. 27.

⁴¹ *Ibid.*

aims to make business actors have awareness in improving the quality of goods and / or services.

1.7.3 Overview of Rights and Obligations of Parties

1.7.3.1 Rights and Obligations of Consumers

According to the definition, a consumer is a person who uses goods and/or services used for the benefit of themselves, others, families where the goods or services are not intended for things that are commercial or traded.⁴² In general, consumer rights are related to physical and non-physical rights, of which there are four recognized rights, among others:⁴³

- a. The right of consumers to obtain security for the products and/or services that have been purchased;
- b. The right of consumers to obtain information related to goods and/or services;
- c. The right of consumers to choose goods and/or services that are traded;
- d. The consumer's right to be heard, so that when there is a dispute, business actors and the government must hear information from consumers.

⁴² Article 1 Point 2 of Law Number 8 Year 1999 on Consumer Protection

⁴³ Susilowati S. Dajaan, Deviana Yuanitasari, and Agus Suwandono, *Consumer Protection Law*, Cakra Publishers, Bandung, 2020, p. 34

Consumer rights are explicitly stated in Article 4 of the Consumer Protection Law. Consumer rights in brief include: right to convenience, right to choose, right to information, right to be heard, right to advocacy, right to be served.

The implementation of consumer rights must be balanced by the implementation of obligations that must be carried out by consumers as a form of consumer responsibility as stipulated in Article 5 of the Consumer Protection Law, among others: the obligation to read information, act in good faith, pay for goods and/or services, and resolve disputes properly.

1.7.3.2 Rights and Obligations of Business Actors

Business actors are persons or legal or non-legal business entities domiciled in Indonesia that carry out business activities alone or together by using agreements.⁴⁴ The rights are regulated in Article 6 of the Consumer Protection Law, namely: the right to receive payment, the right to defend themselves, the right to repair their good name, the right to legal protection.

⁴⁴ Article 1 Point 3 of Law Number 8 Year 1999 on Consumer Protection

The balancing rights of business actors are in the form of obligations that must be obeyed by business actors as stipulated in Article 7 of the Consumer Protection Law, namely that business actors are obliged to act in good faith, provide correct information, not discriminate, guarantee the quality of goods, provide compensation and compensation.

1.7.4 Overview of Rebranding

Conceptually, according to the American Marketing Association (AMA) explains that a brand or in Indonesian known as a brand is a symbol, term, name, sign, or design to identify goods or services so that there are differences from one seller to another, so that there are differences between business actors.⁴⁵ Thus it is concluded that the brand is used to distinguish a similar item (capable of distinguishing), but when a product does not have a distinguishing power it cannot be said to be a brand.⁴⁶ So the use of a brand in a product is an important aspect as the identity of goods or services made by businesses in order to influence consumer decisions to use goods and services.

⁴⁵ Hoang Quang, "The effects of rebranding on customer's perspective - Evaluation of rebranding efforts of *ship Startup Festival", Thesis, Bachelor Program South-Eastern Finland, Finland, 2022, pp. 10.

⁴⁶ Ranti Fauza Mayana and Tisni Santika, *Trademark Law Actual Development of Trademark Protection in the Context of Creative Economy in the Era of Digital Disruption*, PT Refika Aditama, Bandung, 2021. pp. 39.

The term rebranding comes from two words namely "re" and "branding" which means "re" which is back and "branding" refers to brand creation.⁴⁷ Rebranding is an effort made by business actors to change some or all brand elements with the aim of improving the brand image with the aim of making a profit.⁴⁸ Thus it can be concluded that rebranding is used by companies or businesses to improve or provide new concepts to a brand or brand of products or services to attract consumers with the aim that the product or service is well received by the public.

The concept of rebranding is divided into two types, among others:⁴⁹ First, evolutionary rebranding is rebranding that is carried out to make gradual changes without making drastic changes, so that the changes used are minor. Second, revolutionary rebranding is a major change in the sense that changes are made drastically, usually evidenced by a change in the name of the product.

The existence of this rebranding will have an impact on brand perception, brand loyalty, and brand equity related to consumers as active participants in receiving the product or service.

The perception, loyalty, and value generated from this brand

⁴⁷ Laila Halimatul Hikmah, "Legal Effects of *Rebranding* Products of the Manufacturing Industry (Comparative Study of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, *Singapore Trade Marks Act 1998* and *Act on the Protection of Trade Marks Act 1998* and *Act on the Protection of Trade Marks and other Signs Germany 1994*)", *Thesis*, Undergraduate Program, Brawijaya University, Malang, 2021, p. 46. 46.

⁴⁸ *Ibid.*

⁴⁹ Marco Ariano, 'The Effect of *Rebranding* and *Repositioning* on Microsoft Lumia Smartphone *Brand Equity*', *Calyptra: Scientific Journal of Surabaya University Students*, Vol 6, No 2, 2017, pp. 1453.

become crucial aspects in determining the marketing strategy needed so that the brand can be well received by the public.

1.7.5 Overview of the Fashion Industry

The development of the fashion industry in Indonesia is the most influential industry in the country's economy, which has several characteristics in its operations, including fluctuating demand, varied products, complex and long supply, and short cycles.⁵⁰ According to Collins Dictionary, the fashion industry is defined as "the industry that deals with the world of fashion".⁵¹ When referring to the definition of fashion, fashion is inseparable from a person's style of clothing. Usually, this style of clothing refers to a period of time or a trend that exists in society. So the fashion industry is an industry that is closely related to clothing manufacturing from the initial stages of clothing design, manufacture, distribution, to sales or commercialization.⁵²

The increase in the fashion industry is influenced by the high consumerism of society. The cause of consumptive culture is none other than the phenomenon of globalization, so there is no distance or gap for people to buy products, especially clothes. In addition,

⁵⁰ Chanifathin Nidia and Ratna Suhartini, 'The Impact of Fast Fashion and the Role of Designers in Creating Sustainable Fashion', *The Journal of Universitas Negeri Surabaya*, Vol 9, No 2, 2020, pp. 157, accessed on November 4, 2024.

⁵¹ Collins Dictionary, "Fashion Industry", <https://www.collinsdictionary.com/dictionary/english/fashion-industry>, accessed on November 4, 2024.

⁵² Yudi Kornelis, 'The Phenomenon of Fast Fashion Industry: A Legal Study of Indonesia's Intellectual Property Perspective', *Yustisia Communication*, Vol 5, No 1, 2022, pp. 263, accessed on November 4, 2024.

digitalization is also a major aspect that can encourage people to behave consumptively. It can be seen that there are consumer conveniences to access a wider market which is a result of advances in technology, information and communication. In essence, the fashion industry is highly influenced by trends. In addition, market trends change very quickly, which also affects the significant growth of the fashion industry.

1.7.6 Overview of Unlawful Acts

An unlawful act is defined as an act that causes harm to another person and then the person is obliged to compensate for all losses caused, which is stated in Article 1365 of the Civil Code. In its own terminology, this unlawful act is translated from Dutch, namely *onrechmatige daad*. According to Rosa Agustina, *onrechmatige daad* is translated as an unlawful act, with the assumption that the term 'against' is considered broader than the term 'violate', where the word 'violate' only includes intentional acts.⁵³ Whereas 'violating' includes all actions that are intentional as well as those based on negligence.⁵⁴

According to Wirjo Projodikoro, the term *onrechmatide daad* is differentiated into unlawful acts.⁵⁵ According to him, the elements of this unlawful act are not only based on positive actions

⁵³ Rosa Agustina *et al*, *Law of Obligations*, Pustaka Larasan, Bali, 2012. pp. 3.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

but also negative actions.⁵⁶ Positive action here is when the subject does something that violates the law, while negative action is when the subject does not do something in accordance with his obligations so that it results in harm to others.⁵⁷

In line with the terminology according to Subekti who translates *onrechmatide daad* as an unlawful act because the act is caused by his fault which then causes a loss, so that the party who brings the loss must provide compensation.⁵⁸ Thus, it can be said that the appropriate term for PMH is unlawful acts, not illegal acts. This is because the word 'against' is more focused on disapproval of the enactment of a regulation.

When referring to Article 1365 of the Civil Code, there are elements that can be said to be an unlawful act, among others:

1. The existence of an act;
2. Such actions are against the law;
3. There is fault for the act;
4. The existence of loss; and
5. There is a causal link between the act and the harm.

⁵⁶ Gisni Halipah *et al*, 'Juridical Review of the Concept of Wrongful Acts in the Context of Civil Law', *Junral Serambi Hukum*, Vol 16, No 1, 2023, p 140.

⁵⁷ *Ibid*.

⁵⁸ Subekti, *Law of Treaties*, PT Intermasa, Jakarta, 2005. pp. 2.

1.7.7 Overview of Business Ethics

1.7.7.1 Definition of Business Ethics

The rapid and massive development of globalization has a strong influence on business activities, one of which is the existence of increasingly fierce business competition. The concept of business ethics is not just a regulation or code of conduct for business actors. Rather, it is a guide or foundation for business actors to do or run their business activities. Business ethics becomes a crucial thing in business activities, considering its influence on parties outside business actors, namely consumers.

According to KBBI, ethics is the science related to good or bad actions that are also related to moral rights and obligations.⁵⁹ Meanwhile, business is a commercial business activity in the world of trade.⁶⁰ Thus, it can be concluded that business ethics are moral principles related to rules or values related to good or bad business activities.

The concept of business ethics also holds an important intersection in the perspective of consumer

⁵⁹ KBBI, "ethics", <https://kbbi.web.id/etika>, accessed on February 22, 2025.

⁶⁰ KBBI, "business", <https://kbbi.web.id/bisnis>, accessed on February 22, 2025.

protection, especially consumers are often in a weak position with the imbalance of position. Consumers usually do not know the goods and/or services they are buying. So with this, business practices that meet existing ethics are needed, so as to minimize the losses incurred by consumers materially and immaterially. In addition, the main capital of online-based business activities is based on trust between parties because it is done without face-to-face meetings.

1.7.7.2 Principles of Business Ethics

Business activities in the digital era basically depend on trust between the parties. However, on the other hand, trust alone is not enough to ensure the sustainability of a business goes well. Therefore, ethics in doing business is the main point and it is also crucial to create a healthy business environment or condition by applying the principles of business ethics. The principles of business ethics include: ⁶¹

1. Principle of autonomy

This principle relates to the ability of business actors to act on the basis of their own awareness or

⁶¹ Hany Bengu, Selus P. Kellin, and Ryan P. Hadjon, 'APPLICATION OF BUSINESS ETHICS IN MSME ACTIVITIES IN THE DIGITAL ERA', *TIMOR CERDAS - Journal of Information Technology, Computer Management and Intelligent Systems Engineering*, Vol 2, No 1, 2024, pp 2-3.

self. Business actors will be responsible to themselves, consumers, the government, and the community because they are aware of the decisions or actions taken through consideration of existing moral norms, values, and regulations.

This principle focuses on the fact that business actors are fully aware in all forms of decision-making, whether the decision is considered good or even if the decision may be contrary to existing regulations. So that business actors are charged with responsibility, if the decision causes harm.

2. The principle of honesty

This principle focuses on the importance of transparency, integrity, and truth in every action or decision taken by business actors. This is because honesty is a crucial aspect related to the relationship between business actors and employees and consumers.

The existence of the principle of honesty in business ethics is based on the existence of business competition in the business world where in practice there can be fraud because the essence of the purpose

of business or business activities is to seek large profits. So that many business actors do not apply honesty when conducting their business.

3. Principle of doing good and not doing evil

This principle requires business actors to carry out business activities in good faith, namely by respecting the rights and interests of others, carrying out their obligations in accordance with the agreement, and avoiding all actions or decision-making that can harm others.

4. Principle of fairness

This principle has a correlation with the rights and obligations of the parties. Fairness is an important aspect in order to realize the objectives of the business. Business actors are obliged to provide goods and/or services in accordance with what has been promised, both in terms of quality and price. Meanwhile, consumers have the right to get what they have paid for.

Consumers and business actors are required to respect these rights and obligations between parties. The existence of this principle of justice is expected that business relationships can run well.

5. Principle of self-respect

This principle refers to the understanding that business actors must be aware of the position of consumers who are vulnerable to being harmed from these business activities. Thus, it is expected that business actors can respect consumers as parties who use these goods and/or services. Thus, the principle of self-respect is one of the moral obligations for business actors.