

# CHAPTER I

## PREFACE

### A. Research Background

The current international law regime we know has centred mainly upon the concept of state responsibility in combatting and mitigating state faults. State responsibility itself is an age-old principle of international law,<sup>1</sup> developed to protect the rights of aliens and arises when a state commits an international wrong against another state.<sup>2</sup> This rule has now elevated to the status of a general principle of international law, with wide acceptance in state practice, moreover, the Permanent Court of International Justice defined it not only as a principle of international law but also as a greater conception of law involving an obligation to make reparation for any breach of an engagement.<sup>3</sup>

In general literatures of international law, exists three factors employed to determine the liability of a State,<sup>4</sup> where the State must be under a legal duty not to commit the act, the State must there commit the act, and

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<sup>1</sup>Chirwa, Danwood Mzikenge, "The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights" [2004]1; (2004) 5(1) Melbourne Journal of International Law 1 <http://www5.austlii.edu.au/au/journals/MelbJIL/2004/1.html>, see also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392; Corfu Channel case, Judgment on Preliminary Objection : I.C. J. Reports 1948, p. 15.; United States Diplomatic and Consular Staff in Tehran, Judgment, I. C. J. Reports 1980, p. 3.

<sup>2</sup>Ian Brownlie, *Principles of Public International Law* (5<sup>th</sup> ed, 1998) 435–6.

<sup>3</sup>*ibid*

<sup>4</sup>Art. 2 of Draft Articles of Responsibility of States for Internationally Wrongful Acts (ARSIWA)

last the act must cause injury (loss or damage) to another entity. If these factors are satisfied, the State is bound to make reparation to the injured parties. Further development of this principle is codified by the establishment of the International Law Commission's Draft Articles of Responsibility of States for Internationally Wrongful Acts (commonly referred to as the “**ARSIWA**”). While this draft article is deemed as soft law, states have used it to identify in cases of state responsibility and many scholars have also widely supported by its goals.

In its revelation, it is inevitable that the State is the leading actor in international agreement breaches, *vis-a-vis* the power and authority of a country's government is widely vulnerable to abuse. It can be witnessed that international agreement breaches can be perpetrated by a country's government and other non-state parties such as companies or corporations. Non-state parties that are operated on other countries as the main subject of this minor thesis is regarded as a transnational corporation (“**TNC/s**”), defined as a company that is controlled by its home country yet has significant operations in many different countries, mostly the Global South;<sup>5</sup> it is an enterprise that is involved with the international production of goods or services, foreign investments, or income and asset management in more than one country,<sup>6</sup> which sets most factories in developing countries.

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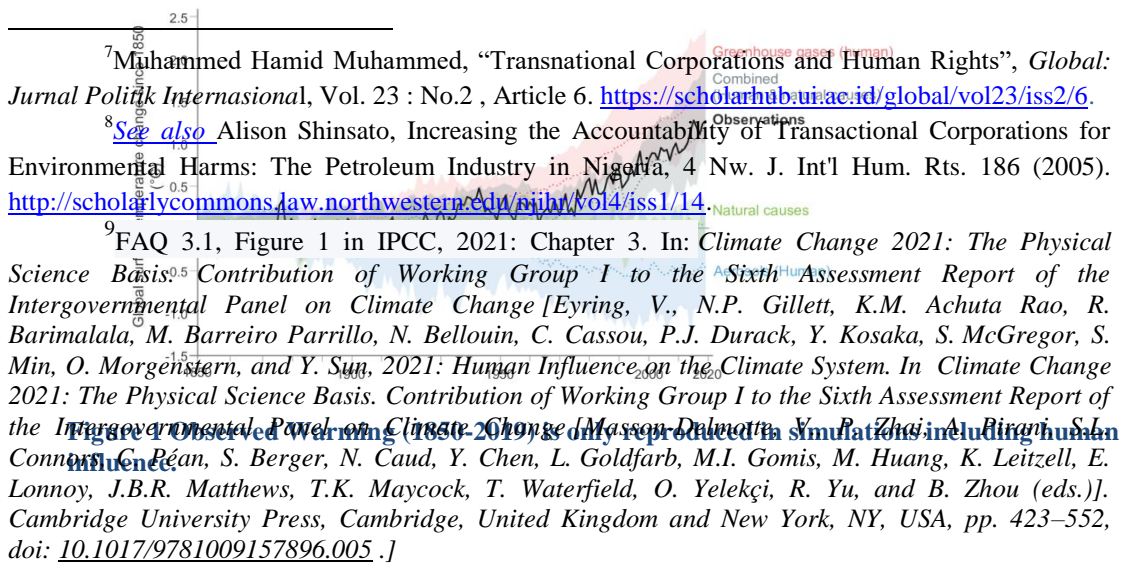
<sup>5</sup>“Transnational corporation”, Definition, Wikipedia, accessed March 15, 2022, [https://en.wikipedia.org/wiki/Transnational\\_corporation](https://en.wikipedia.org/wiki/Transnational_corporation).

<sup>6</sup>*ibid*

Ever since its development, international law had placed the responsibility to respect, fulfil, protect human rights and fundamental freedoms primarily over states, which particularly in this research, focuses regarding environmental rights under fundamental freedoms. However, current developments in the field reveal that non-state actors are also set under a responsibility. The rationale behind this development is their inevitable influence on the protection, promotion and violations of human rights during their activities.<sup>7</sup> Landmarked cases like the Trail Smelter Case (*United States v. Canada*) and the Exxon Valdez Oil Spill (*U.S. v. Exxon Corporation, et al*), further entails the destructive effects TNCs perform on the environment while performing their operations.<sup>8</sup>

From the very beginning of environmental and climate change research, it is established that human activity have directly caused climate change, visualised in the figure<sup>9</sup> below:

FAQ 3.1: How do we know humans are causing climate change?  
Observed warming (1850-2019) is only reproduced in simulations including human influence.



Human rights and environmental protection are interdependent.<sup>10</sup> This interdependency is mentioned in the first principle of the 1992 Rio Declaration wherein, human beings are at the centre of concerns for sustainable development, they are entitled to a healthy and productive life in harmony with nature. *Shelton* argues that there are *four* principal and complementary approaches emerged to characterize the relationship between this interdependency. *First*, international environmental laws incorporate and utilize those human rights guarantees deemed necessary or important to ensuring effective environmental protection. *Second*, human rights law recasts or interprets internationally guaranteed human rights to include an environmental dimension when environmental degradation prevents full enjoyment of the guaranteed rights. *Third*, international environmental law and international human rights law elaborate a new substantive right to a safe and healthy environment. *Last*, international environmental law articulates ethical and legal duties of individuals that include environmental protection and human rights. In the present day, most advances in developing environmental rights have occurred first and most exclusive at the regional level.

TNC management regarding human rights and the environment has historically been self-regulated. Currently, there has been no hard law and little soft law regulating a corporation's accountability in environmental

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<sup>10</sup>1998, The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, art. 1

matters, which contradicts a TNCs powerful position in national and international trade. *Mensch* argues that there are at least two reasons why TNCs should have direct responsibility under international law. *First*, TNC has a powerful influence on the economic activities of a country (especially in developing countries), sometimes even having market monopoly power and the authority to regulate the working conditions for its workers. *Second*, in many developing countries, TNCs manage business activities related to public services such as transportation, electricity, and telecommunications; is indirectly like giving part of the State's authority to TNCs.

Currently, there has been a surge of global demand for accessible and cheap garments, that has fluctuated the amount of TNCs in the fashion sector. This demand further entails the **fast fashion industry** by hiring subcontractors overseas to conduct the company's work in the production process. Standard processes like this mostly occur in the Global South, where production is of minimal cost, though at its core, the apparel industry has always been a quintessentially labour-intensive sector, within which competitive success for firms is typically driven by cost-minimization strategies predicated on locating supplies of low-wage labour and work intensification to achieve productivity goals.<sup>11</sup> As a result, the fashion industry has one of the largest chains of production and consumption. By its estimates, approximately **one in six** people work in some part of the global fashion

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<sup>11</sup>Taplin, I. M, Global Commodity Chains and Fast Fashion: How the apparel industry continues to re-invent itself. *Competition & Change* (2014), Vol. 18, No. 3, Page 246-264.

industry, making it the most labour dependent industry.<sup>12</sup> Nevertheless, the drastic annual sales of products in the fashion industry probes that TNCs in the fast fashion sector, particularly, play a vital role in globalisation.

Unlike other forms of expression, the fashion industry contributes largely to a nation and its economic practices. In 2022 only, the fashion industry has reached to \$2.5 trillion of annual sales worldwide, the U.S. with annual sales of more than \$369 billion, Asia at \$312 billion, Central and Western Europe summing up to \$169 billion.<sup>13</sup> It is larger than the annual sales of books, movies, and music combined.<sup>14</sup>

Fashion, is the most fundamental form of communication and bears significance to the person wearing it,<sup>15</sup> it is subject to class, wealth, status, evident on the long history of the importance of fashion. The rapid growth of consumerism and demand for the availability of varieties of fashion garments in an instant resulted in the mass production that surged in the 1960s. This period kickstarted the revelation of fast fashion, defined as the practice of rapidly translating high fashion design trends into low-priced garments and accessories by mass-market retailers at low costs. Several elements that are key to the fast fashion process are namely, the price of the garments and

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<sup>12</sup>Ross, M. (Producer), & Morgan, A. (Director). (2015). True Cost [Motion Picture]. United States: Untold Creative.

<sup>13</sup>“Fashion”- Asia: Statista Market Forecast. Statista, Accessed March 20<sup>th</sup> 2022. <https://www.statista.com/outlook/dmo/ecommerce/fashion/asia>.

<sup>14</sup>Hemphill, C. Scott, and Jeannie Suk, “The Law, Culture, and Economics of Fashion.” *Stanford Law Review* Vol. 61, No. 5 (2009): 1147–99. <http://www.jstor.org/stable/40379706>.

<sup>15</sup>Harvey Leibenstein and Bandwagon, “Snob and Veblen effects in the Theory of Consumers’ Demand” Vol. 64 Q.J. ECON. 183 (1950).

accessories, the method and timeline of manufacturing, further, the trend-based nature and disposability of the clothes themselves.<sup>16</sup> As a response to the growth in demand, TNCs in the fashion sector continuously try to enlarge production methods so the gap in the demand can be filled instantly. This is evident in how the fast fashion industry employs hundreds of millions of people worldwide.<sup>17</sup> This rising global demand for fast and cheap clothing coupled with the proliferation of outsourcing supply chains has created significant global impacts on labor, human rights, and the environment.

An example of how such implications affect the fashion industry production is the collapse of the Rana Plaza building in Dhaka, Bangladesh, which killed at least 1,132 people and injured more than 2,500 due to corporate incompetence in providing suitable working conditions for the laborers. Ever since The Rana Plaza incident, international awareness regarding corporate responsibility in human rights has increased, as from it the Bangladesh Labour Act of 2006 was amended with revisions on occupational health and safety and provisions to provide workers with more voice, through freedom of association and collective bargaining rights. The Rana Plaza incident further proves that most sub-contractor factories do not meet building and construction legislation standards; ergo, deaths from fire incidents and building collapses are frequent.

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<sup>16</sup>“Fast Fashion,” The Fashion Law, accessed March 20, 2022, <https://www.thefashionlaw.com/as-the-sec-considers-climate-disclosure-rules-it-faces-legal-threats/>

<sup>17</sup>Elizabeth L. Cline, *The Conscious Closet: The Revolutionary Guide to Looking Good While Doing Good* (S.l.: Plume, 2019).

In other cases, the environmental impacts of the fashion industry particularly, are detrimental, as each step of the supply chain creates a slew of concerns. This includes the production and processing of raw materials, the manufacturing of the raw materials into garments in factories, and the packaging and distribution of the garments. However, the environmental impact does not end with the supply chain. Cheaply made garments release chemicals and microplastics when washed, which eventually make their way into the ocean and other water sources. While clothes are manufactured at an alarming rate, people discard their clothing more readily, accumulating clothing in landfills where natural fibres take hundreds of years to decompose, and synthetic fibres may never biodegrade. These issues are further agitated by consumers, whose demand for cheap and quick clothing vastly outweighs any concerns regarding the fashion industry's global externalities. Some experts claim that the fashion industry is among the most polluting industries in the world.

According to Business Insider, fashion production comprises 10% of total global carbon emissions, an amount as much as the European Union. It dries up water sources and pollutes rivers and streams. Washing clothes releases 500,000 tons of microfibres into the ocean yearly, an equivalent of 50 billion plastic bottles. The Quantis International 2018 report also found that the three main drivers of the industry's global pollution impacts are dyeing and finishing (36%), yarn preparation (28%) and fibre production (15%). The report also established that fibre production has the largest impact on



freshwater withdrawal (water diverted or withdrawn from a surface water or groundwater source) and ecosystem quality due to cotton cultivation, while the dyeing and finishing, yarn preparation and fibre production stages have the highest impacts on resource depletion, due to the energy-intensive processes based on fossil fuel energy.<sup>18</sup>

With the following consequences of fast fashion to the environment, it can be concluded that the liability of TNCs thickens following the rise of production methods that directly harm the environment's condition. This revelation establishes a gap in regulations, where as of now, binding international regulations regarding TNCs in the fast fashion industry liability for environmental harm does not exist. The potent evidence and the lack of regulation also do not support the principles in international environmental law, like *the polluter pays principle*, which is a commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal.<sup>19</sup>

The lack of recognition in international environmental agreements of the role of TNCs in exacerbating social and ecological problems is moderately discussed through several organs of the United Nations. Under the auspices of

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<sup>18</sup>Maiti and Rashmila. "Fast Fashion: Its Detrimental Effect on the Environment." Earth.Org, Accessed June 10, 2022. <https://earth.org/fast-fashions-detrimental-effect-on-the-environment/>

<sup>19</sup>Tyron Bache, "What Is the Polluter Pays Principle?," Grantham Research Institute on climate change and the environment, Accessed June 2, 2020, <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-polluter-pays-principle/>.

the United Nations Environmental Programme (hereinafter addressed as **UNEP**), United Nations Framework Convention on Climate Change (hereinafter addressed as **UNFCCC**) and its annual framework meeting, the Conference of the Parties (hereinafter addressed as **COP**), non-binding laws from the meeting are progressed within the development of what is needed.

Though currently, many regulations in international environmental law are non-binding, the framework conventions presented under the UNEP and UNFCCC as regulatory tools are essential in understanding the highly dynamic nature of environmental study. The Researcher proposes, based on several articles, that soft laws in its main advantage, promotes international cooperation in fields which are, at present, naturally and socially too complex for normal decision-making processes.<sup>20</sup> In this case, the framework treaty is a “normal” and relatively general treaty of international law that permits parties a great deal of leeway at the implementation level. A framework agreement is a legally binding treaty of international law. By its principal legal nature, it does not differ from other conventions. The rules on the law of treaties, like concerning the interpretation, modification, and termination of treaties, are fully applicable to framework conventions and protocols or implementation agreements.<sup>21</sup>

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<sup>20</sup>Isabelle Daugareilh , “Governance, International Law & Corporate Social Responsibility”, International Institute for Labour Studies, International Labour Organization, *Research Series 116*.

<sup>21</sup>Matz-Lück and Nele, “Framework Conventions as Regulatory Tools,” *Goettingen Journal of International Law 1*, 2009, Vol. 3, 439-458, doi:10.3249/1868-1581-1-3-matz-lueck.

As it has been established above that the fashion industry is a major contributor of climate change, with the fashion industry accounting for nearly up to 10% of global carbon emissions, apprehending the aviation and shipping industry combined. The multi-billion dollar fast fashion industry has only recently concerned the international community, as fast fashion itself is a new concept.

Regarding this issue, the UNFCCC has established several international agreements regarding TNCs responsibilities in mitigating the impact of fast fashion on the environment. While the effect of the fashion industry has been well communicated in the international community, it was only first mentioned officially at the 2018 COP24 in Katowice, Poland, to identify the ways to create a holistic commitment to climate action.

This meeting created the Fashion Industry Charter for Climate Action (hereinafter referred as **Charter**), further renewed in the 2021 COP26 in Glasgow, United Kingdom. The Charter goes beyond previous industry-wide commitments and recognises the detrimental impacts the fashion, clothing and textile industry has on the environment and must take an active role in contributing to achieving the goals in the Paris Agreement. It also acknowledges that current business models and solutions are not sufficient to meet the climate targets in order to avoid a climate catastrophe. The industry

as a whole needs to adopt a deeper, more systemic change and scale up low-carbon solutions to realise this vision.<sup>22</sup>

Work under the Charter is guided by its mission to drive the fashion industry to net-zero Greenhouse Gas emissions no later than 2050, in line with keeping global warming below 1.5 degrees. Under UN Climate Change, the Signatories and Supporting Organizations of the Charter will work collaboratively to deliver on the commitments enshrined in the document. This will be done through Working Groups, which will bring relevant stakeholders, experts, and initiatives in the fashion and broader textile sector.<sup>23</sup>

With the established nature of TNCs written above, it is concluded that the cycle of production proposed by TNCs in the fashion industry impacts all its actors globally. TNC's impact in this case further proves that the production method in the Global South, Indonesia included, needs further protection and actualization from the government and corporations involved. At the level of Indonesian national law, mitigation of environmental implications by companies is subject to the provisions of Law on Limited Liability Companies (**Law No. 40/2007**). This national regulation stipulates that a corporation must execute "activities that do not conflict with the

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<sup>22</sup>Olivia Lai, "What Is the United Nations Fashion Industry Charter for Climate Action?," Earth.Org, Accessed March 27, 2022, <https://earth.org/what-is-the-united-nations-fashion-industry-charter-for-climate-action/>

<sup>23</sup>UNFCCC, "About the Fashion Industry Charter for Climate Action." Unfccc.int. United Nations, 2021. <https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/about-the-fashion-industry-charter-for-climate-action>.

provisions of laws and regulations, general regulations, and decency." Further precisely, laws regarding the management of the environment revised in Law on Job Creation from (Law No. 11/2020) from Law on Environmental Protection and Management (Law No. 32/2009) specify many articles regarding corporate and individual management on environmental management.

An example of a transnational corporation that has signed the Charter is Hennes & Mauritz (abbreviated “**H&M**”). It is a Swedish fast-fashion corporation established in 1947 with over 5,000 stores worldwide. In Indonesia, the brand is maintained by PT. HINDO, founded in 2010, which now has expanded through several big cities across the nation, and is currently based in Jakarta.

Unlike other brands in the industry, H&M has shown significantly more effort than its main competitors in being perceived as a sustainable and transparent company. Their strategy of becoming a company known for offering sustainable fashion instead of fast fashion includes a ‘Conscious Collection,’ made from organic cotton and recycled materials, offered in their biggest brand - H&M, and their Reuse, Reduce and Recycle. Other initiatives include publishing extensive annual sustainability reports and using influential or established figures as their sustainability program ambassador.<sup>24</sup>

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<sup>24</sup>Vedeikytė, Ieva & Lechmanová, Kamila, “Sustainable fast fashion - case study of H&M,” doi:10.13140/RG.2.2.13072.89600.

Based on the background above, the Researcher is interested in investigating the regulations of UN Climate Change and how it is implemented in TNC in fashion industries to mitigate the impact and reveal how national regulations can be effectively linked to the UN Climate Change Fashion Charter for Climate Action. Thus, the Researcher commits to research the topic above under the title:

**"RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS IN FASHION INDUSTRIES IN MITIGATING THE IMPACT OF "FAST FASHION" ON THE ENVIRONMENT BASED ON THE UNITED NATIONS FASHION INDUSTRY CHARTER FOR CLIMATE ACTION (Case Study of the Environmental Policies of the H&M Group 2021)"**

#### **B. Research Question**

1. What are the responsibilities of transnational corporations in the fashion industry under the United Nations Fashion Charter for Climate Action?
2. What are the Environmental Harm Mitigations of Transnational Corporations in the Fashion Industry based on the United Nations Fashion Charter for Climate Action, specifically in the context of H&M Group?

#### **C. Research Objective**

1. Associate the responsibilities of transnational corporations in the fashion industry under the United Nations Fashion Charter for Climate Action.

2. Recognize the Environmental Harm Mitigations of Transnational Corporations in the Fashion Industry based on the United Nations Fashion Charter for Climate Action, specifically in the context of H&M Group.

#### **D. Research Purpose**

1. Theoretical benefits: result of this research aims to benefit in terms of knowledge intake, not only through developments of analysis and theory, but also for the purpose of further research in the future, distinctly regarding the concepts of transnational corporation responsibilities, its link to climate change, additionally how transnational corporations can ideally ratify further international environmental agreements.
2. Practical benefits:
  - a. For the Researcher, to increase outlook concerning the concepts of transnational corporation responsibilities, its link to climate change, and how transnational corporations can ratify further international environmental agreements.
  - b. For Universitas Andalas, to further add to its library collection and become reading material for students of the Faculty of Law, especially the International Law Special Program;
  - c. For the Government of Indonesia, as input and consideration in drafting further regulations regarding the environmental responsibility of transnational corporations, specifically in the fashion sector.



## E. Research Method

### 1. Research Typology

The nature of this research is descriptive, which is a study that has the aim of providing an analytical picture of the problems that the author raises based on the data obtained. The Researcher describes the extent to which the regulation of fast fashion in Indonesian law and international law and its practical implementation in the field by H&M Group.

### 2. Research Approach

This research uses a normative-empirical research method, which focuses on the implementation and provisions of normative law in fulfilling social and environmental responsibility obligations by corporations and in the field practice, and direct empirical research to the subjects.<sup>25</sup>

### 3. Research Source

This study uses primary data. Primary data are data obtained from research respondents, official documents, books related to the object of research, research results in the form of reports, theses, dissertations, and statutory regulations. Primary data for this study were obtained from:

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<sup>25</sup>C. Bell, 'A Note on Participant Observation' (1969) 3 *Sociology* 417. See also, C. M. Campbell and P. Wiles, 'The Study of Law in Society in Britain' (1976) 10 *Law and Society Review* 547-78.

See also, N. L. Channels, *Social Science Methods in the Legal Process* (Totowa, NJ: Rowman & Littlefield, 1985).



a. Primary legal sources, namely binding legal materials consisting of statutory regulations related to the object of research. Primary legal materials related to the material of this proposal consist of:

- 1) U.N. Climate Change
- 2) ILO Tripartite
- 3) OECD Guidelines for TNCs
- 4) GHG Protocols
- 5) Science Based Targets Initiative
- 6) International Panel on Climate Change

b. Secondary legal sources, namely legal material obtained through books, legal scientific writings related to the object of research. This legal material comes from works that contain the opinions of legal scholars, the results of research by legal experts, scientific resources, scientific books, and so on that can provide an explanation of primary legal materials.<sup>26</sup>

c. Tertiary legal sources, namely materials obtained from instructions or explanations regarding primary legal materials or secondary legal materials derived from dictionaries, encyclopaedias, magazines, newspapers, and further.

#### 4. Data Collection Method

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<sup>26</sup>M. Adams and J. Bornhoff (eds), *Practice and Theory in Comparative Law* (Cambridge: Cambridge University Press, 2014). See also, G. Frankenburg, 'How to Do Projects with Comparative Law – Notes of An Expedition to the Common Core' (2006) 6 *Global Jurist Advances* 1. See also, J. Hage, 'Comparative Law as Method and the Method of Comparative Law', Maastricht European Private Law Institute Working Paper No. 2014/11 (23 May 2014) (<http://ssrn.com/abstract=2441090> or <http://dx.doi.org/10.2139/ssrn.2441090>).

This research uses data collection that consists of document study, which is a data collection tool that is carried out by reading or reviewing and studying library books related to research material to obtain data needed in research originating from laws and regulations, books, national journals, international conventions, international conventions, international treaties, as well as writings and other legal documents sourced from the Internet.

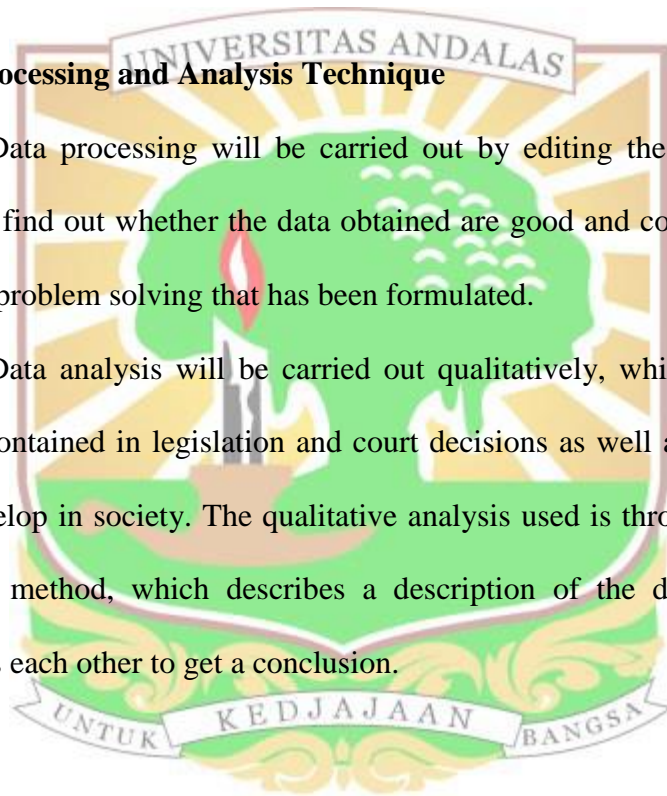
#### **F. Data Processing and Analysis Technique**

Data processing will be carried out by editing the data obtained in order to find out whether the data obtained are good and complete enough to support problem solving that has been formulated.

Data analysis will be carried out qualitatively, which refers to legal norms contained in legislation and court decisions as well as norms that live and develop in society. The qualitative analysis used is through a descriptive analysis method, which describes a description of the data obtained and connects each other to get a conclusion.

#### **G. Outline**

Outline is a brief overview of research, in this case is the writing of a final project. The Outline aims to aid readers easily understand the contents of this proposal. The results of this paper consist of 4 (four) chapters with the following details:



1. CHAPTER I: INTRODUCTION: this chapter describes the background of the problem, problem formulation, research objectives, research benefits, research methods, and writing systematics;
2. CHAPTER II: LITERATURE REVIEW: this chapter describes theoretically the literature review on the responsibilities of transnational fashion corporations in mitigating the impact of fast fashion in Indonesia and the practice of its implementation so far by H&M Group;
3. CHAPTER III: RESEARCH RESULTS AND DISCUSSION: this chapter discusses the results of the author's research regarding the normative framework of laws and regulations regarding mitigating the impact of fast fashion in Indonesian law and international law, the practical implementation mitigation of fast fashion impact by H&M Group, and what can be improved and developed from the regulation after reviewing the existing regulations and case studies on their implementation.
4. CHAPTER IV: CONCLUSION: This chapter provides conclusions from the research results that have been described in the previous chapter, accompanied by suggestions.

