

Restrictions on Nickel Exports: National Policy vs. International Law

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Abstract

International trade is a form of economic activity that forms into business activities that will experience continuous growth and development. International trade was first made from mainland Europe, which then spread to mainland Asia and Africa. Indonesia's nickel metal delivery boycott approach has provoked the European Union to take steps to request Indonesia to the WTO. European Union protests and claims against Indonesia were raised because the European Union had been highly subordinated to the shipment of Indonesian nickel minerals. This examination was conducted using a quantitative descriptive strategy with a written and expressive audit approach. In the debate between Indonesia and the European Union, because it is already in the WTO's grip, the regulation is based on WTO rules. The problem with the nickel trade restrictions imposed by Indonesia in cases of EU complaints to the World Exchange Organization (WTO) is that it is not justifiable to limit EU makers, especially for a nickel.

INTRODUCTION

International trade is a form of economic activity that forms into business activities that will experience continuous growth and development. International trade is a form of unlimited transaction due to the development of circulation such as goods, services, capital, and human resources implemented by various countries in need (Wibowo, 2018). Through the relationship between exports and imports, investment, licensing, franchising and trade in services will form economic activities between countries will form international trade (Lubis, 2021). International trade requires an important subject, namely the state. Each country has sovereignty in forming a trade organization, and the state can also act as a merchant. International trade is carried out between countries or even between countries or can be

said to be unlimited transaction activities realized through export and import activities (Wibowo, 2018; Lubis, 2021).

International trade was first undertaken by European countries and spread to various parts of Asia and Africa. International trade occurring in different countries will create laws that bind all legal subjects. The organization governing international trade activities is referred to as the World Trade Organization (WTO) which will make agreements between countries that have been negotiated and agreed together (Putra, 2016). The WTO was established on 1 January 1995 on the basis of the Treaty of Marrakesh Agreement Establishing the World Trade Organization governing the World Trade Organization. The WTO's basic legal guidelines can be divided into five categories, particularly those on non-discrimination, market entry guidelines, unfair trade guidelines, those on

the relationship between liberalization of exchange and differences in value and social interest and guidelines for aligning criminal gadgets across the country in certain areas. With this method the WTO's characteristics as a world-wide exchange institution are wider than GATT's simplest regulating customs issues. A settlement in the issue is an agreement between member international locations that requires authorities to be able to adjust it while enforcing exchange guidelines at their respective international locations. Although it has been signed through authority, its main motive is to assist manufacturers, exporters and importers of products as well as bids in buying and selling activities. The Government of Indonesia is one of the countries that established the World Trade Four Organization (WTO) and has ratified the WTO establishment agreement through Law No. 1. 7 of 1994.

Prior to the WTO, international trade also had a 1947 General Agreement on Tariffs and Trade (GATT) and a 1994 GATT agreement stating that developing countries had an opportunity to increase their role in world trade and this has also been recognized by developed countries (Anggraeni, 2017). The Delegated Regulation Supplemental Directive of The EU Renewable Energy Directive II (RED II) states that there will be a plan to halt the use of palm oil as biofuel in the European Union in 2030 and the reduction of palm oil will begin in 2024 (Rahayu & Sugianto, 2020). On 17 January 2018, there was a dispute between the European Union and Indonesia, which prompted the European Parliament to end the use of palm oil as a major raw material for biodiesel, with the aim of increasing the energy efficiency of palm oil by 35% in deciding to ban trade. In 2030 petroleum as a raw material for biodiesel has been in effect since 2018 and 2021 (Rahayu & Sugianto, 2020). On 23 April 2009, the European Union introduced a more comprehensive directive on the production and promotion of energy from renewable sources in the European Union, the Directive on Renewable Energy (RED). Eleven implementations of its RED by the European

Union was one of the first steps for the EU to reduce global carbon emissions as a form of commitment to the Kyoto Protocol. Europe must obtain at least 10% of the green fuel it produces from renewable sources. This is also done by the European Union to ensure sustainable and environmentally friendly transportation equipment. In addition to the goal of protecting the environment and reducing global emissions, the EU's move to introduce RED is also intended to protect biofuel products from countries such as the EU, which have been the main producers of biofuel. It is seen as a new form of barrier created by the European Union.

The EU will always be at the forefront of creating renewable green energy. Although it is undeniable that the European Union is the second largest oil and gas consumer in the world after the United States. Indonesia opposes the EU's decision to suspend palm oil import and export activities in the European Union (Suwarno, 2019; Alfianisa, 2021). On 1 January 2020, the Indonesian Government through the Ministry of Energy and Natural Resources (ESDM) imposed a ban on nickel ore exports based on ESDM Candy Number 11 of 2019 on Natural Resources. Following the EU's decision to ban the use of palm oil, Indonesia took another step on 1 January 2021 when the Indonesian government imposed a ban on nickel exports through the Ministry of Energy and Natural Resources (ESDM) which would step out. This decision Ore is taken to maintain nickel reserves by considering the continuity of the supply of existing raw materials (Rahayu & Sugianto, 2020; Hasanah, 2021).

The ban on export of Indonesian nickel ore prompted the European Union to take steps to include Indonesia in its WTO. The European Union's objection and lawsuit against Indonesia were filed on the grounds that the EU has so far relied heavily on the export of Indonesian nickel ore (Fajar et al, 2021). According to Rahayu & Sugianto's (2020) research, the EU's decision to implement the policy of banning the import of RED II palm oil to Indonesia is aimed at protecting the market from imported products,

and the EU's oilseed. Plans to use oil to expand the biodiesel business. A study by Khairunisa & Novianti (2017) stated that Indonesia's sustainable palm oil policy can increase the value of palm oil exports, therefore more companies will seek its ISPO certification in the future which will increase. Based on problems caused by policies issued by the European Union and Indonesia as well as several previous studies, this study was prepared to examine the role of international law and the relationship between policies issued with applicable international law and the impact and challenges posed by policy. Impose restrictions on nickel exports for Indonesia.

METHODOLOGY

A. Theoretical Background and Literature Review

There are several journal articles that reference this study. The first journal was a journal entitled "International Relations between Indonesia and the European Union" on nickel export policies as an economic challenge. The journal focuses on discussing the impact and challenges Indonesia will face due to the nickel export restriction policy on the country's economy. The results of the study stated that Indonesia's relationship with the EU was very close due to the issue of restricting nickel exports and the lawsuit against Indonesia from the WTO from the EU. The second journal entitled the juridical study of international trade agreements regarding the WTO's restrictions and restrictions on exports (Study of agreements between Indonesia and the European Union), the journal's research found that with international trade between countries, especially trade between Indonesia and the European Union, there has been a significant increase in the number of countries. Both countries have long-term relationships and to resolve issues, as members of the WTO, Indonesia and the EU are expected to resolve their disputes with WTO rules. In addition to the above two journals, this study also uses several other journals to support research data, namely a study entitled Policy Implications and discrimination against the ban on imports of palm oil and nickel ore to the Indonesian economy. The data in this study were obtained not only from previous studies but also using primary legal materials, the results of WTO hearings and the policies of the two countries that resulted in disputes in bilateral relations between the two countries.

B. Data gathering Method

This study was conducted using a clear quantitative method with a library study approach and an expressive approach, which is to conduct an in-depth study of national legislation and universal law issues between Indonesia and the European Union. The information used in this meditation is the result of past thinking related to the question to be asked, and some data that can be obtained through news or online is optionally obtained.

ANALYSIS

1. Indonesia's Relationship with the European Union with the Restriction of Nickel Exports.

International family members are cooperation between countries. There are three types of cooperative relationships in world law: bilateral cooperative relations, local cooperative relations and multilateral cooperative relations. Relations between Indonesia and the European Union belong to the bilateral cooperation class of family members. The past history of the status quo of bilateral family members between Indonesia and the European Union is the relationship between the European Union and ASEAN. The willingness to cooperate is usually decided by using unusual pursuit of a places to the best charter function of one celebration for differently. In this regard, Indonesia, as a financially stable country, is the motive for increasing cooperation with the EU if the EU sees the possibility of recognizing the national efforts of cooperation with Indonesia.

Cooperation between Indonesia and the European Union has been ongoing, especially since 1949, which has found cooperation in alternative, economic, educational, social, etc. However, as time went on, bilateral cooperation between Indonesia and the European Union is usually no longer good. This is the inter-Korean relationship between Indonesia and the European Union. The alternative conflict began on 17 January 2018, while the European Union decided to ban the use of palm oil as a major component of biodiesel by 2021. The ban on palm oil

imports with the help of the European Union created an unfavorable situation between Indonesia and the European Union. Indonesia felt deprived by using EU rules and therefore Indonesia's Ministry of Energy and Natural Resources imposed a ban on nickel ore exports on January 1, 2020. The European Union argues that Indonesia's permission to ban nickel exports is a permit that will cause world-changing conflicts because it hinders the method of buying and selling between the two countries. However, it should be mentioned that the export ban is not intended as a barrier to change, but as an attempt to maximize nickel assets for the country's prosperity through the home processing chain and meet the needs of smelter raw materials in Indonesia. Considering that mineral assets along with nickel are non-renewable and non-renewable resources, it is time that Indonesia made maximum use of its natural wealth and independence for the welfare of the people with the help of downstream mining minerals.

Based on these provisions above, the authority reorganizes the Mineral Downstream Plan into Mineral and Coal Law No. 1. 4 the year 2009, where sections 103 and one hundred seventy regulate that downstream nation or purification of minerals must be completed no later than 5 years after the law was published. It means that the downstream nation of mining had to be done in 2014, but the authorities gave up because the metallurgical industry in Indonesia was no longer ready, so the control was postponed until 2022 and then extended until early 2020 because the government did this to a fairly developed and developed Indonesian metallurgical company. In addition, they are also willing to supply their own mines. However, it should be mentioned that the downstream achievement of mining is not independent of the rules and technical guidelines in its implementation, especially considering the handover of raw materials, land, labor,

energy, infrastructure, technology, operations and renovation activities, structural authorization, and financing activities. Downstream mining coverage is one of the financial tools to increase mineral costs, improve the overall performance of the national industry, increase authority revenue, sell monetary explosions, and create jobs. The ban on export of Indonesian nickel ore prompted the European Union to do so to document WTO complaints. Based on the steps taken using the EU, the global change in family members between Indonesia and the EU no longer seems to be in prime condition. The WTO, as a world change organization, has a vital position in trying to clear up disputes regarding regulations and export bans between Indonesia and the European Union.

2. International Trade Dispute Resolution Regarding the Restriction of Nickel Exports Between Indonesia and the European Union.

Based on international regulations, dispute agreements in international regulations are divided into several areas, mainly through struggle and peace. In the dispute between Indonesia and the European Union, because the issue has been covered by the WTO, the answer is based entirely on WTO rules. The EU's condemnation of Indonesia in the WTO is attributed to the regulation and prohibition of Indonesian nickel exports. The regulations and prohibitions submitted through Indonesia are not without reason, but to maintain Indonesia's nickel reserves, this plan to ban nickel is not new. Mineral and Coal Mining Act No. 1 4/2009 appealed to mining permit holders and concession holders to process and complete their mining products nationwide. Exactly on November 22, 2019 the EU sued Indonesia at the WTO. In resolving disputes in the WTO, there are several processes to go through:

1. Consultation is mandatory between the parties concerned to reach an agreement agreed by the parties. The result of the first process was a consultation that Indonesia could not agree to the EU's request and was ready to engage further with the EU to resolve the existing dispute. Thus, the consultation effort failed, so it will proceed to the formation of the panel by DSB.

2. The panel.

A panel is an ad hoc body formed to weigh and decide a particular dispute and is dissolved upon completion of its duties.

3. WTO (Appellate Body).

Members of the appeal consist of experts in the field of international trade law, who are not realized with certain governments. Operational procedures for appeals shall be formulated in the Appellate Body by consulting with the chairman of the DSB and the Director-General of the WTO and communicating with the members. The process and all documents are confidential. The authority of the Appellate Body is to enforce/strengthen, amend, or reverse the findings and legal conclusions made by the panel.

4. Implementation and application of approved recommendations and provisions by DSB.

DSB has 20 (twenty) days from the date of the ebook of the Board's documents to assess its approval. Member States who oppose the College document shall confirm their motives in writing at least ten days earlier than the DSB meeting at which the examination of approval of the document is on the agenda. Member states concerned in the dispute have the right to participate absolutely in the DSB's considerations on the ratification of panel documents.

Implementation of DSB guidelines can be monitored with the help of DSB usage up to the entire procedure. DSB pointer imposition techniques are overall while member states that have violated WTO rules align their measures or guidelines with WTO rules. International locations of members who wish to apply the DPO guidance must post a written development document to the DPO at least ten days before each DPO meeting. On 17 October 2022 DSB issued a decision on a dispute involving Indonesia and the European Union, in its decision DSB "decided that the export ban policy would be implemented. The country's obligation to process and purify minerals (nickels) proved to be in violation of WTO provisions". With this decision, Indonesia lost in this dispute, but the Government will not back down and will fight for it even if it has to appeal. After going through a lengthy dispute settlement process between the European Union and Indonesia regarding the policies issued by the Government of Indonesia, restrictions on the export of nickel ore, the WTO-led trial found that Indonesia was decided to be in violation of WTO trade regulations, which meant that Indonesia had lost in the first half of the year. The trial against the European Union. There are 4 rules that are considered to violate WTO provisions:

1. Regulation Number 4 of 2009 concerning Mineral and Coal Expansion
2. Ministerial Regulation ESDM No 11 of 2019 on Mineral and Coal Mining Business.
3. Minister of Energy and Mining Regulation No 96 of 2018 on the Basic Provisions for Exporting Mining Products from Processing and Purification.

4. Minister of Energy and Mineral Resources Regulation No 7 of 2020 on Regional Granting, Licensing, and Reporting on Mineral and Coal Mining Business Activities.

The defeat of Indonesia in the WTO trial was delivered directly by Arifin Tasrif as the Minister of Energy and Mineral Resources (ESDM) of Indonesia when the working meeting of Commission VII of the House of Representatives of Indonesia was held on Monday, November 21, 2022. Indonesian President Joko Widodo stated that the government will not give up and will appeal the results of the WTO trial, in addition, the Government also continues to push downstream nation to increase added value. Despite losing the WTO results, the President of Indonesia has prepared two countermeasures for his defeat, the first step is to appeal. The president also banned the export of raw nickel ore, and raw minerals to other countries. The next step Indonesia will take in its defeat in the WTO trial is that the government will likely raise the export tax on nickel ore as one way to continue the downstream nation of one of the metallic minerals.

3. The principle of national policy

Since the implementation of the Minerba Law until January 11, 2014, the mining company has not been fully prepared, and the smelters have not been built yet. With this situation, the government needs to revise a number of regulations derived from the Minerba Law. The European Union assessed that Indonesia's move to ban nickel export activities would have the potential to cause an international exchange rate hike because it could hinder the exchange process between the two countries. However, it should be mentioned that the export ban is not always intended as a barrier to foreign exchange, but as an attempt to utilize nickel assets for the country's prosperity through the home processing chain and meet the raw material needs of Indonesian smelting plants. Considering that mineral assets, including nickel, are non-renewable and non-renewable

resources, it is time that Indonesia made use of its natural wealth independently and for the benefit of the community through mineral mining downstream.

Based on these provisions, the Government authorizes the Mining Downstream Plan in Law Number 4 of 2009 concerning Minerals and Coal, whereby Articles 103 and 170 regulate that the processing or refining of ore, in the same way must be completed within 5 years from the date of the invitation. Do it. It's done. The mining downstreamization should have taken place in 2014 but the authorities made concessions because the smelting company in Indonesia was not ready, so talks were postponed until 2022 and then raised to early 2020 as the authorities felt that the Indonesian foundry was sufficient and progressed. They are also ready to supply their mines. Nevertheless, it should be mentioned that the downstream achievement of mining is not independent of the technical suggestions and guidelines in its implementation, especially in terms of the provision of raw materials, land, labor, energy, infrastructure, technology, O&M activities, licensing structures, and financing activities. Downstream mining coverage is one of the economic tools for increasing mineral prices, improving the overall performance of the household industry, increasing authority income, increasing monetary sales, and creating jobs.

In addition to the Analysis of the Impact of the Export of Mineral and Mining Raw Materials Policy issued by the Ministry of Commerce, there are two factors that form the basis of the Indonesian government's policy in the mining sector, namely Internal Factors and External Factors. Internal factors include downstream mining, increased national development, increased investment, and job openings. Meanwhile, external factors affecting this policy are countries that use mineral raw materials in Indonesia and companies that generally object to the mineralogy policy because it is considered difficult and increases the company's production costs. On 12 December 2022, the Indonesian government

officially appealed the WTO's decision to ban exports and find downstream domestic nickel ore in violation of international trade regulations. With the vacancy of the current seat of the WTO Appellate Body, the appeal process will inevitably slow down. The Appellate Body, the high court of the WTO arbitration system, has not been effective in resolving disputes between states since 2019 due to empty judges' seats and the United States' blocking of appointing new judges.

Indonesia's appeal process will inevitably slow down because the WTO Appellate Body judge is currently empty. The Appellate Body, the high court of the WTO arbitration system, has not been effective in resolving disputes between states since 2019 due to empty judges' seats and the United States' blocking of appointing new judges. Indonesia's statement to the WTO DPO emphasized that Indonesia's raw material policy is in line with the WTO Agreement. During the panel process, Indonesia presented factual and strong evidence of acute nickel ore shortages and their contribution to the national economy. This, along with the need for proper management of natural resources, became a controversial policy background. Without considering the facts and evidence presented, the Panel misunderstood many WTO Agreement provisions. In response, the European Union opposed all Indonesian allegations regarding the misinterpretation of the law committed by the panel. Although disappointed by Indonesia's decision to appeal to the WTO Appellate Body, the EU acknowledged that the appeal was Indonesia's right. The European Union has also used this opportunity to criticize the WTO Appellate Body's non-functioning function since 2019. As is known, the United States does not support a two-tier dispute resolution system so that it continues to hold the election of WTO Appellate Body Members.

4. According to International Law

The EU considers that the various steps taken are not in line with Indonesia's commitment under the understanding guaranteed by Tradition, especially: a. Article

XI:1 GATT 1994, since the rejection of the shipment of nickel minerals, press and chromium minerals, coal and coal goods to undergo certain preparations some time ago trade, requiring that some nickel and coal to be shipped out must be sold locally and by giving a certain amount of time. While Indonesia imposes certain trade permit requirements for nickel metals, waste and old iron, as well as coal and coke, Indonesia imposes measures that restrict trade in significant raw materials for the manufacture of rust-resistant steel; b. Article 3.1(b) ASCM provides an extra duty-free period that depends on the use of locally manufactured equipment, hardware, hardware or equipment; if the extra back can be a grant in the sense of ASCM Article 1.1 and makes such provision require the use of residential merchandise.

In its lawsuit, the EU argued that Indonesia had violated the WTO member's commitment to provide broad access to international trade, including raw nickel products in violation of Article XI:1 of GATT 1994. To WTO Indonesia, it defended because the policies carried out by Indonesia were appropriate and were still based on WTO provisions in 1995. However, Indonesia's defense failed and suffered a defeat at the WTO dispute panel hearing. Overcoming this, the Indonesian Government remains firm in its opinion to restrict the export of raw nickel abroad, considering that Indonesia has an authoritative policy and rights to the commodities Indonesia will export. The Indonesian leader said that the ban and restrictions will continue as they have been made in the previous policy despite losing the lawsuit at the WTO regarding the suspension of nickel ore exports. The middle way that Indonesia can do to respond to the EU's condemnation is to follow the WTO's appeal path while continuing to carry out policies that have been published by the government. Therefore, Indonesia's public policy with foreign policy regarding restrictions, and the ban on the export of raw nickel ore is appropriate. Considering that Indonesia also has the sovereignty to determine and make policies that can benefit

Indonesia for the welfare of the Indonesian people. The issue of claims made by the EU to the WTO against restrictions on exports of nickel and other raw materials carried by Indonesia is only a matter of unfairness because it is considered detrimental to the European steel industry.

CONCLUSION

The problem is the limitation of nickel shipments by Indonesia in the face of EU claims at the World Exchange Organization (WTO) for unjustifiable restrictions on EU makers, especially for a nickel. Indonesia accepts that the regulation of the nickel export ban can be a transformative goal because it is related to price creation and asset preservation, which is related to Indonesia's long-term economic improvement vision. Both sides have the same strong reason to emphasize the national interface and basic rules of state power.

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