

Governing Indonesia's Plan to Halt Bauxite Ore Exports: is Indonesia Ready to Fight Lawsuit at the WTO?

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ABSTRACT

Every nation has natural resources that must be regulated by state law and used for community benefit. Indonesia, a major exporter of bauxite ore to Europe, plans to ban exports. Indonesia must prepare for a second EU nickel ore export lawsuit after the first from the nickel export ban. The study aims to determine whether Indonesia is guilty of issuing a policy to stop exports of bauxite ore. This research is a normative legal research uses the rule of law, law principles, and legal doctrines to solve legal issues. Books, journals, and the internet provided data for the research. Articles from previous bilateral agreements are also used. This research examines Monism and Dualism. The results of the study show that Indonesia is not entirely at fault, considering that Indonesia is a country that adheres to a dualism system in international law enforcement. However, Indonesia still needs to renegotiate the percentage of bauxite ore exports with the European Union, considering that Indonesia is already bound by the IEU-CEPA agreement. If Indonesia continues its plan to stop the total export of bauxite ore, then Indonesia can still be considered to have committed acts of default.



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1. Introduction

Each nation's natural resources are utilized for a variety of purposes. Each nation possesses distinctive natural resources. In order to acquire a non-owned natural resource, each nation engages in international trade, also known as export-import activities or

international trade.¹ Exports play a vital role in fostering economic development. Exports can contribute to the state budget while also fostering an investment-friendly climate.²

In addition, exports play a crucial role in the development of the domestic product market by boosting competitiveness, which encourages a nation to increase output and implement new technologies in the manufacturing process. A nation must invest heavily in research and development (R&D) in order to supply the market with innovative products and achieve economies of scale through export growth. It is essential to serve the international market with innovative products and services utilizing advanced manufacturing techniques, knowledge, and skills. Indonesia is one of the countries with substantial exports. The European Union is one of Indonesia's principal export markets (EU). Indonesia is the fifth-largest exporter of goods to the European Union among ASEAN nations.³

As evidenced by the Comprehensive Economic Partnership Agreement between Indonesia and the European Union, Indonesia and the European Union enjoy an excellent level of economic cooperation (IEU-CEPA). As a means of enhancing economic diplomacy between Indonesia and the European Union, the IEU-CEPA aims to increase market access by reducing tariffs and non-tariff barriers, attracting investment, enhancing capacity-building cooperation, expanding internship and employment opportunities, and boosting competitiveness.⁴

The Indonesian government has announced its intention to halt exports of metal raw materials, including bauxite and nickel, to a number of countries, including those on the European continent. Clearly, as one of the metal ore importers, the EU does not accept the Indonesian government's policy and has filed a complaint with the World Trade Organization regarding this issue (WTO). Beginning on January 1, 2020, the Indonesian government has banned the export of nickel ore. The decision was contained in Minister of Energy and Mineral Resources Regulation No. 11 of 2019, which was signed on August 28, 2019 by former minister Ignasius Jonan.

Not long after the lawsuit filed by the EU against Indonesia at the WTO due to the termination of nickel ore exports, Indonesia must now be prepared to face the latest possible lawsuit with the plan to stop the export of bauxite ore. The Indonesian government

¹Kui Yi, et.al., 'Appeal of word of mouth: Influences of public opinions and sentiment on ports in corporate choice of import and export trade in the post-Covid-19-era', *Ocean & Coastal Management*, 225 (2022), 3 <https://doi.org/10.1016/j.ocecoaman.2022.106239>

²Wehelmina M. Ndoen, P. Y., 'The Effect of Exports on Economic Growth in Indonesia With the Exchange Rate of Rupiah as A Moderated Variables', *ATLANTIS PRESS Advances in Economics, Business and Management Research*, 158 (2020), 520 <https://doi.org/10.2991/aebmr.k.201212.073>

³Manurung, H., 'Improving Free Trade Agreement (FTA) Between Indonesia-European Union (EU) Through Comprehensive Economic Partnership Agreement (CEPA)', *Jurnal Asia Pacific Studies*, 2.1 (2018), 33 <https://doi.org/10.33541/japs.v2i1.667>

⁴Apresian, S.R., and Sylvia Yazid, 'Indonesia-European Union Comprehensive Partnership Agreement: Negotiating the Labour and the Environment', *Journal of Conflict and Integration*, 3.2 (2019), 47, <http://dx.doi.org/10.26691/jci.2019.12.3.2.40>

plans to stop the export of pure bauxite ore and plans to independently manage the pure ore into finished goods in an effort to increase investment in the downstream sector and exports of semi-finished or finished products of higher value.⁵ The Minister of Investment and Head of the Investment Coordinating Board, Bahlil Lahadalia, stated that, in an effort to realize the Indonesian government's plan, the policy to stop the export of bauxite ore would be implemented by the end of 2022. As a WTO member that has ratified the General Agreement on Tariffs and Trade (GATT), which came into force in 1995, Indonesia is believed to have violated several articles and violated the IEU-CEPA agreement. Therefore, Indonesia must be prepared for the possibility of a new lawsuit from the EU regarding the Indonesian government's policy to stop the export of bauxite ore.

In previous studies, the substance of the results is trying to explain that a state does not have authority if it is bound by an agreement and puts forward the principle of *pacta sunt servanda*. Because in essence, these countries hierarchically prioritize international law in accordance with the concept of monism. Examples from these countries are the Netherlands, France and Italy.⁶

On the other hand, the Indonesian government has the Right to Control the State which is contained in Article 33 Paragraph (3) of the 1945 Constitution. Of course, this gives Indonesia the authority to manage all existing resources in Indonesia. Hence, there needs to be a legal review in dealing with this problem. The review is to answer the question of whether Indonesia has full authority over its resources considering that Indonesia is also a WTO member that has ratified the GATT and has also signed the IEU-CEPA agreement with Europe. Then, is the policy of stopping the export of bauxite ore by the Indonesian government in line with existing agreements and regulations.

2. Research Method

The research method used in the research is normative legal research which shows a process of the rule of law, law principles and legal doctrines to answer legal problems faced. The research was conducted by collecting and learning the data from literacy materials such as books, journals and the internet. The author also uses related articles from previous bilateral agreements. The legal basis used in this research is Indonesian National Law, namely Article 33 paragraph (3) of the 1945 Constitution and International Law, namely the General Agreement on Tariffs and Trade, IEU-CEPA and also the Agreement on Subsidy and Countervailing Measures. This study also examines the principles of Monism and Dualism.

⁵Widiatedja, 'Indonesia's Export Ban on Nickel Ore: Does it Violate the World Trade Organization (WTO) Rules?', *Journal of World Trade*, 55.4 (2021), 669, <https://doi.org/10.54648/trad2021028>.

⁶Lukasz Kulaga., 'Prohibition of massive and serious pollution of marine environment as a *jus cogens*. Identification, legal bases and consequences in view of the recent work of the International Law Commission' *Marine Policy* 144 (2022), 12. <https://doi.org/10.1016/j.marpol.2022.105217>

3. Result and Discussion

3.1. World Trade Organization and General Agreement on Tariffs and Trade

Following the Uruguay Round of Trade Talks in 1994, the World Trade Organization (WTO), which replaced the General Agreement on Tariffs and Trade (GATT), was primarily established with the goal of regulating and liberalizing international trade through the use of rules of trade between countries at a global or nearly global level. Negotiations between states provided the framework for the WTO, and as a result, negotiations serve as the basis for everything the WTO undertakes.⁷ The history of the founding of the World Trade Organization (WTO) is inseparable from the historical event, namely World War II (WW II).⁸ During World War II, allied countries, especially the United States and Britain, initiated the formation of an international economic organization to fill international economic policies. The first objective of this initiative is to issue the policy of The Reciprocal Trade Agreement,⁹ namely a law that requires reciprocal obligations for tariff reductions. The Reciprocal Trade Agreement act provides a policy for the President to negotiate tariff reductions.¹⁰ The second objective is to provide a legal framework to prevent conflicts, such as during the events of World War I and World War II. During World War II, all countries used a protectionist economic system, resulting in the obstruction of international economic relations. The stagnation of international economic relations has resulted in a global economic downturn and recession. Efforts to organize international economic relations towards the end of World War II were carried out by holding a conference in Bretton Woods, New Hampshire, United States of America, resulting in several institutions, namely the International Bank Reconstruction and Development (IBRD) and the International Monetary Fund (IMF). This is done through the establishment of the International Trade Organization (ITO).¹¹

In 1945, the United Nations (UN) was established, and one of the work programs carried out was to organize conferences in 1946 and 1947. These conferences were held with the aim of drafting a Charter of the International Trade Organization. This charter was successfully ratified in 1948 in Havana. So this charter is called the Havana Charter, which

⁷Cepaluni, G., and Ivan Filipe F., 'United we stand and divided we fall: Coalitions in the GATT/WTO negotiations', *SAGE Journals*, 43.4 (2020), 553, <https://doi.org/10.1177/0192512120940738>

⁸Khan, A., 'E-commerce Regulations in an Emerging Era: The Role of the WTO in Resolving the Complexities of Electronic Trade', *CMU Journal of Social Sciences and Humanities*, 8.2 (2021), 6, <https://doi.org/10.12982/CMUJASR.2021.008>

⁹Irwin, D. A., 'From Smoot-Hawley to Reciprocal Trade Agreements: Changing the Course of U.S. Trade Policy in the 1930s', *University of Chicago Press*, (1998), 329, <https://doi.org/10.3386/w5895>

¹⁰Michael A. Bailey, J. G., 'The Institutional Roots of American Trade Policy: Politics, Coalitions, and International Trade', *The Johns Hopkins University Press*, (1998), 194 https://doi.org/10.1163/2468-1733_shafr_sim280020646

¹¹P. Barlow, D. Stuckler, 'Globalization and health policy space: Introducing the WTOhealth dataset of trade challenges to national health regulations at World Trade Organization, 1995–2016', *Social Science & Medicine*, 275 (2021), 9 <https://doi.org/10.1016/j.socscimed.2021.113807>

requires ratification from the state as the main actor in the world economy.¹² While the Havana Charter has not yet come into force, in order to fill the vacuum of international trade law, countries negotiate international trade rules, which are then accommodated by the General Agreement on Tariffs and Trade (GATT) 1947 as the Umbrella of Law¹³. At these meetings, the formation of the GATT was negotiated. Initially, the 1947 GATT was a multilateral agreement that required the reciprocal reduction of tariffs under the auspices of the ITO.¹⁴ The rationale for the formation of the 1947 GATT was an agreement that contained the results of negotiations between countries on tariffs and on protection clauses to regulate tariff commitments. Additional agreements made by GATT fall under the ITO charter. However, the ITO was dissolved, then GATT was declared as an international "organization," which was enforced by the "Protocol of Provisional Application" and implemented GATT as a binding international agreement. The 1947 GATT was actually not organizationally valid because it did not have an article of association that contained an organizational structure, and there were no provisions governing formal law as an organization.

The first years of GATT were marked by various negotiation forums, followed by treaty changes in the 1950s. Starting in the mid-1960s, a series of rounds of multilateral trade negotiations called Multilateral Trade Negotiations (MTNs) was carried out, which gradually expanded the scope of GATT to a larger non-tariff policy¹⁵. Seven rounds of MTN have been conducted within the framework of the GATT, namely the Geneva Round (1947), Annecy Round (1949), Torquay Round (1951), Geneva Round (1956), Dillon Round (1960-1961), Kennedy Round (1964-1967), and the Tokyo Round (1973-1979). The first five rounds of the MTN discussed the specific topic of tariffs.¹⁶ Since the Kennedy Round, the topic of negotiations apart from tariffs has also discussed non-tariff trade restrictions and trade issues related to agricultural products. The non-tariff discussions conducted in the Kennedy Round are still a discussion on the scope of the GATT. The Tokyo Round, apart from tariffs and non-tariffs, also discussed policies outside of the GATT, such as product standards and government procurement.

Three factors, trade interest, power, and capacity have received the most attention in studies of WTO dispute adjudication in an effort to explain variation in the pattern of

¹²Toye, R., 'Developing Multilateralism: The Havana Charter and the Fight for the International Trade Organization, 1947-1948', *The International History Review*, 25.2 (2003), 299, https://doi.org/10.1163/2468-1733_shafr_sim140130014

¹³Hoda, A., 'Tariff Negotiations and Renegotiations under the GATT and the WTO', *Cambridge University Press*, 2 (2018), 174, <https://doi.org/10.1017/9781108157803>

¹⁴Jones, A.M., 'From hierarchies to networks: The organizational evolution of the international drug trade', *International Journal of Law, Crime and Justice*, 63 (2020), 100436, <https://doi.org/10.1016/j.ijlcrj.2020.100436>

¹⁵Bagwell, K., 'Multilateral Trade Bargaining: A First Look at the GATT Bargaining Records', *Dartmouth College*, (2019), 4 <https://doi.org/10.3386/w21488>

¹⁶Seidel, K., 'The Challenges of Enlargement and GATT Trade Negotiations: Explaining the Resilience of the European Community's Common Agricultural Policy in the 1970s', *The International History Review*, 42.2 (2019), 363, <https://doi.org/10.1080/07075332.2019.1567570>

dispute initiation. All emphasise how important economic factors are in determining the outcome of cases.¹⁷ The reoccurrence of the economic recession that hit the world in the early 1980s resulted in renewed pressure on world trade and economic systems. Countries are forced to carry out "covert" trade barriers against imported goods which is a symptom of a protectionist system. From this situation, at a meeting of the Ministers of Trade in 1982, the idea arose to hold a new round of negotiations. After sufficient preparation by the GATT Secretariat in Geneva and the delegation of member countries, in September 1986, a ministerial meeting was held in Punta del Este, Uruguay, which resulted in an agreement to launch a new round of negotiations, namely the Uruguay round. In this round, a new agreement was made to establish the WTO which is accompanied by its annexes.

The Uruguay Round of GATT negotiations which took place from 1986 to 1995, had the functions for creating world free trade that will benefit developing countries and expand export markets through the elimination of trade barriers, both tariff and non-tariff barriers, enhance the role of GATT and improve the multilateral trading system based on the GATT principles, improve the adjustment of the GATT system and strengthen GATT relations with relevant international organizations, and developing national and international economic cooperation, among others, through improving the international financial system and investing in developing countries.¹⁸

After the Uruguay Round ended by encouraging the formation of the WTO, in 1994, the round was continued in Marrakech, Morocco, resulting in the formation of the WTO Agreement and its annexes. The establishment of the WTO is the successor institution to the 1947 GATT. Annex 1 contains "multilateral agreements consisting of the results of the Uruguay negotiations, all of which are "coercive". That is, these regulations establish obligations that bind all WTO members.¹⁹ The WTO replaced the GATT 1947 role as an international trade institution, negotiation forum and dispute resolution forum.²⁰ In principle, under the WTO agreement, GATT is still maintained as a regulation in the field of trade in goods. The provisions of the GATT are still valid under the WTO agreement, including provisions that provide special treatment or privileges to developing countries that are WTO members. One of the main principles of GATT is the principle of non-discrimination. This principle is reflected in Article 1 and Article 3 of the GATT. Article 1 states that favorable treatment is given by one GATT member to one GATT member to another GATT member so that treatment must be enjoyed by all GATT members. This principle is known as the Most Favored Nation (MFN). Meanwhile, article 3 stipulates that

¹⁷Christina L. Davis and Sarah Blodgett Bermeo, 'Who Files? Developing Country Participation in GATT/WTO Adjudication', *The University of Chicago Press Journals*, 71.3 (2009), 1035, <https://doi.org/10.1017/80022381609090869>

¹⁸Minju Kim, 'Looking Beyond the Doha Negotiations: A Possible Reform of the WTO Agricultural Subsidies Rules', *Asian Journal of WTO & International Health Law and Policy*, 12.1 (2017), 177. <https://ssrn.com/abstract=2948229>

¹⁹Ralph Ossa, 'A "New Trade" Theory of GATT/WTO Negotiations', *Journal of Political Economy*, 119.1 (2011), 135, <https://doi.org/10.1086/659371>

²⁰Richard Baldwin, 'The World Trade Organization and the Future of Multilateralism', *Journal of Economic Perspective*, 30.1 (2016), 110, <https://doi.org/10.1257/jep.30.1.95>

each GATT member country must treat local products and imported products equally in the domestic market of WTO member countries. This principle is also often referred to as the National Treatment Obligation.

3.2. *The Indonesia–European Union Comprehensive Economic Partnership Agreement (IEU–CEPA)*

Cooperation between Indonesia and the European Union has been going on for a long time. This cooperation is, of course, influenced by the relationship between the European Union and ASEAN.²¹ As one of the founders of ASEAN and a country that has a great influence on the regional development of Southeast Asia, Indonesia certainly has many discourses of cooperation with various parties²², especially the European Union, as one of the ideal regions to date. Indonesia's involvement in the cooperation between the European Union and ASEAN, which has been going on for more than 30 years, can be seen in its participation in the signing of the ASEAN-EU cooperation agreement in 1980, which covers the fields of trade, economic cooperation and development as a basis for institutional dialogue.²³

The EU and Indonesia have established relations in various fields, which have developed significantly in recent years. At the heart of this relationship is of great commercial importance. With Indonesia, commercial relations reach a total value of €17 billion in annual trade and €4 billion in investment from EU companies, with the EU being the second most important destination for Indonesia's exports (except oil and gas).²⁴ The two sides also forged a deep political friendship – which was confirmed in November 2009 with the signing of the EU-Indonesia Partnership and Cooperation Agreement (PCA) which strengthened the relationship that Europe and Indonesia have lived for centuries and the values and principles shared by the European Union and Indonesia.²⁵

It begins with a policy response to the dynamics of the business world and international economic diplomacy. This is followed by strengthening economic relations between the European Union and Indonesia, which is a logical continuation of the steady stream of deep political, institutional and economic reforms that have been ongoing since the late 1990s.

The European Union is Indonesia's 4th largest trading partner with main export products including agricultural and fishery products, furniture, machine components, textiles and

²¹ Gia Bao, H.H., et.al., 'ASEAN's trade balance with the whole EU-28 at industry level: The role of vehicle currency', *The Journal of Economic Asymmetries*, 24 (2021), 235, <https://doi.org/10.1016/j.jeca.2021.e00230>

²² Yordan Gunawan, 'Transboundary Haze Pollution in the Perspective of International Law of State Responsibility', *Jurnal Media Hukum*, 21.2 (2014), 177, <https://doi.org/10.18196/jmh.v21i2.1185>

²³ Rum, I.A., et.al., 'Impact assessment of the EU import ban on Indonesian palm oil: Using environmental extended multi-scale MRIO', *Science of The Total Environment*, 853 (2022), 158695, <https://doi.org/10.1016/j.scitotenv.2022.158695>

²⁴ Zainab Assegaff, 'Indonesia: Not a Priority in the European Union Bilateral FTA Negotiations with ASEAN', *ATLANTIS PRESS Proceedings of the Asia-Pacific Research in Social Sciences and Humanities Universitas Indonesia Conference*, 558 (2021), 253, <https://dx.doi.org/10.2991/assehr.k.210531.031>

²⁵ Prasada, I.Y., et.al., 'Impact of the FLEGT license on Indonesian plywood competitiveness in the European Union', *Forest Policy and Economics*, 144 (2022), 102848, <https://doi.org/10.1016/j.forpol.2022.102848>

footwear, as well as plastic and rubber products. Meanwhile, for the European Union, Indonesia is the 5th largest trading partner from Southeast Asia but is ranked 30th in the list of EU trading partners globally. The EU's main exports to Indonesia are focused on machinery, transportation equipment, and chemical products, in addition to services. In their study, Robert D. Anderson and Sue Arrowsmith noted that the growing significance of public infrastructure investment and other procurement activities as a component of global economic activity in the wake of the economic crisis and as a result of persistent growth with rising demand for infrastructure in both developed and developing countries has increased the importance of government procurement.²⁶

A follow-up to the EU's new trade policy since 2006, which seeks “deep” and ambitious economic partnerships with countries or groups of significant potential. Then there are more offensive strategies that are much deeper and more comprehensive.²⁷ Thus, Indonesia and the EU signed the Partnership and Cooperation Agreement (PCA) in November 2009, where the parties agreed to hold a comprehensive dialogue and enhance further cooperation in all sectors of mutual interest.

Marked by the President of the Republic of Indonesia, Susilo Bambang Yudhoyono, and the President of the European Commission, José Manuel Barroso, who held a meeting and discussed ways to strengthen bilateral relations between Indonesia and the European Union (EU), both parties agreed to form a Vision Group. In 2011, the Vision Group concluded that the partnership between Indonesia and the EU should be strengthened to achieve the goals of economic growth, job creation, and poverty reduction, taking into account different levels of development and flexibility. This was followed by discussions on the preparation of the Scoping Paper Indonesia – European Union (IEU) Comprehensive Economic Partnership Agreement (CEPA)²⁸ in 2012 to serve as a guiding principle for the coverage of issues in the IEU CEPA negotiations. In 2016, the IEU-CEPA Scoping Paper was declared concluded, and the round of negotiations was ready to officially begin (waiting for internal EU processes and the start of negotiations). On July 18, 2016, Indonesia and the European Union conducted a Joint Announcement on the IEU CEPA negotiations. This was followed by the IEU CEPA Kick-Off Meeting on 20-21 September

²⁶ Robert D. Anderson, ‘The WTO Regime on Government Procurement: Challenge and Reform’, *Cambridge University Press*, (2011), 4, <https://doi.org/10.1017/CBO9780511977015>

²⁷ Syukri, Huala Adolf and Prita Amalia, ‘The Problem of Access of Government Procurement Markets in The Indonesia-European Union CEPA Regarding the Obligation to Use Domestic Products in Indonesia’, *Journal of Law, Policy and Globalization*, 118 (2022), 85, <https://doi.org/10.7176/jlpg/118-11>

²⁸ Astiwi Inayah, Hani Damayanti Aprilia and Yunia, ‘Commercial Diplomacy to Increase Exports of Lampung Cocoa Commodities in the European Union Market’, *ATLANTIS PRESS Proceedings of the Universitas Lampung International Conference on Social Sciences*, 628 (2021), 69 <https://dx.doi.org/10.2991/assehr.k.220102.009>

2016 in Brussels, Belgium, in preparation for the initial round of IEU CEPA negotiations planned for the end of January 2017.²⁹

Currently, the EU has FTA cooperation with 37 trading partners, including Vietnam and Singapore, where Malaysia and Thailand are in the same condition as Indonesia, as well as the United States, India, Canada, Morocco and Ukraine, which are still in the negotiation stage.³⁰ Until now, the European Union is still the main target of Indonesia's economic and trade cooperation besides the US, Japan, and countries in the Middle East region. Faced with "counterparts" with advantages in various fields, of course, Indonesia must be able to respond quickly to the demands and challenges.³¹ The most important task for Indonesia if it is to succeed in obtaining the desired "large portion" of cooperation with the European Union is to carry out continuous improvement and differentiation (show uniqueness), which can make parties in the European Union more and more hesitant to cooperate with Indonesia.

The series of 11th rounds of IEU-CEPA negotiations took place in November 2021. There are 14 issues that are discussed in the negotiations, namely trade in goods, trade in services, investment, competition, provisions on the origin of goods, technical barriers to trade, sanitation and phytosanitary, trade security instruments, trade and sustainable development, small and medium enterprises, and economic cooperation and capacity building, government procurement, dispute resolution as well as transparency and good regulatory practice.

3.3. Indonesia's Policy to Stop Bauxite Ore Export

Indonesia plans to stop exporting bauxite ore by the end of 2022 and manage the bauxite ore into finished goods that have a higher selling value. Before stopping bauxite exports, the President of Indonesia, Jokowi, also stopped nickel exports with the same goal to push Indonesia into a producer of nickel-based goods.³² This certainly makes the European Union unhappy, considering that Indonesia is one of the largest sources of metal ore imports. Therefore, Indonesia is considered to have violated the agreement between Indonesia and the European Union, as stated in the IEU-CEPA.

For this controversial policy, Indonesia is believed to have violated at least three GATT articles, including Article XI.1 of the GATT concerning the prohibition of export and

²⁹ Austin, K.G., et.al., 'Shifting patterns of oil palm driven deforestation in Indonesia and implications for zero-deforestation commitments', *Land Use Policy*, 69 (2017), 46, <https://doi.org/10.1016/j.landusepol.2017.08.036>

³⁰ Yanase, A., Masafumi Tsubuku, 'Trade costs and free trade agreements: Implication for tariff complementarity and welfare', *International Review of Economics & Finance*, 78 (2022), 26, <https://doi.org/10.1016/j.iref.2021.10.012>

³¹ Rakhimah, A.N. and Yuan Xu, 'Economic viability of full-chain CCUS EOR in Indonesia', *Resources, Conservation and Recycling*, 179 (2022), 106069, <https://doi.org/10.1016/j.resconrec.2021.106069>

³² Andante Hadi Pandiyaswargo, Alan Dwi Wibowo, Meilinda Fitriani Nur M., and et.al., 'The Emerging Electric Vehicle and Battery Industry in Indonesia: Actions around the Nickel Ore Export Ban and a SWOT Analysis', *Batteries: Future Papers* 4.80 (2021), 3 <https://doi.org/10.3390/batteries7040080>

import restrictions, which states, "No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any contracting party on the importation of any product or on the exportation of any product." 3.1(b) of the Agreement on Subsidies and Countervailing Measures states: "subsidies contingent, either solely or as one of a number of other conditions, on the preference for domestic over imported goods."

In addition, Article X.I GATT on violations of regulatory transparency obligations: "Laws, regulations, judicial decisions, and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes, or other charges, or to requirements, restrictions, or prohibitions on imports or exports, or on the transfer of payments therefor, or affecting their salability, or affecting their salability, shall be published Existing agreements affecting international trade policy between the government or a government agency of one contracting party and the government or a government agency of another contracting party must also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information that would impede law enforcement, be otherwise contrary to the public interest, or prejudice the legitimate commercial interests of specific public or private enterprises."

In light of the previous European Union lawsuit in the event of the cessation of nickel ore exports, Indonesia, as one of the largest ore export destinations, must be prepared to face a "second attack" from the European Union. However, there are a few noteworthy aspects of this case to consider. In addition, Indonesia is constitutionally innocent and only implements its legislation. This is because Indonesia's constitution grants it the Right to Control the State.³³ According to J.G Starke, a state has an obligation and executive power to take care of its internal affairs and should not be interfered with by other countries. This issue is also mentioned in Article 33, Paragraph (3) of the 1945 Constitution that states that the Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

The earth, water, and natural resources contained in the earth are the major points of people's prosperity, so they must be managed by the state and used for the greatest prosperity of the people, according to Article 33 paragraph (3) of the 1945 Constitution. The legislation regarding the Indonesian government's obligation to regulate its own natural resources can be linked to *Ius Constitutum* principle, which means the law that applies in a country in a meaningful time.³⁴ In contrast, *Ius Consituendum* refers to the law aspired to by society, which has never been in law or otherwise. Based on article 33 paragraph 3 above, and also considering the applicable *Ius Constitutum* principle, constitutionally,

³³ Sabungan Sibarani, 'State Control over Natural Resources Oil and Gas in Indonesia', *Brawijaya Law Journal*, 5.2 (2018), 221, <https://doi.org/10.21776/ub.blj.2018.005.02.06>.

³⁴ Endang Sutrisno, 'Tracing the Performance of Law in Indonesia (A Perspective of Thomas Kuhn's "Normal Science")', *Journal of Law, Policy and Globalization*, 37 (2015), 129 <https://doi.org/10.7176/jlpg/118-11>.

Indonesia is innocent and definitely has the right to implement a policy to stop the export of bauxite. But that doesn't mean Indonesia has the right not to fully comply with what has been legislated in International Law.

3.4. *Legal Policy of Bauxite Management toward to Welfare State*

To comprehend which law must come first, we must comprehend that the principle of dualism is the first in the enforcement of international law. The dualism principle is founded on the assumption that the binding force of international law derives from the state's will. International law and domestic law are distinct legal systems and instruments.³⁵

There are two well-known theories for interpreting the application of international law, namely monism and dualism. International law and national law are two parts of the same fundamental legal system, according to monism. According to the doctrine of dualism, international and national laws are distinct legal systems. International law has a fundamentally distinct nature from national law.³⁶ Due of the huge number of domestic legal systems it encompasses, the theory of dualism is sometimes referred to as the pluralistic theory, however the name "dualism" is more accurate and less confusing. Different perspectives on these two theories have distinct implications for comprehending the link between international law and domestic law. The notion of voluntarism regards state law and international law as two distinct, parallel, and distinct legal tools. This differs from the perspective of the objectivist theory, which views national law and international law as two distinct legal instruments within a single legal instrument. The dualism principle is founded on the assumption that the binding force of international law derives from the state's will. Thus, international law and domestic law are distinct legal systems or instruments. There are several reasons put forward by the flow of dualism to explain this:³⁷ Sources of law, this perspective presupposes that national law and international law are distinct. National law is based on the will of the state, but international law is based on the will of the international legal community as a whole; The subject of international law. The subject of national law is a person, either in civil law or public law, while in international law is the state; The legal structure and the institution needed to implement the law. In reality, there is a court and an executive organ which is only found in national law. The same is not found in international law. In reality, basically, the validity and enforceability of national law are not influenced by the fact that national law is contrary to international law.³⁸

³⁵ Aparna Chandra, 'India and International Law: Formal Dualism, Functional Monism', *Indian Journal of International Law*, 57 (2017), 4 <https://doi.org/10.1007/s40901-017-0069-0>

³⁶ Kattan, V., 'The persistence of partition: Boundary-making, imperialism, and international law', *Political Geography*, 94 (2022), 102557, <https://doi.org/10.1016/j.polgeo.2021.102557>

³⁷ Lando Kirchmair, 'Who Has the Final Say? The Relationship Between International, EU and National Law', *European Journal of Legal Studies*, (2018), 54 <https://ssrn.com/abstract=3277548>

³⁸ Fitri Nur, Aini Prasetyo, and Abdul Kadir Jaelani, 'The Changing of Environmental Approval Administrative Law Perspective', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 191–208 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

Thus, national law remains effective even though it is contrary to international law. As for the consequences of this view of Dualism, among others: The rules of one legal instrument cannot be sourced or based on another legal instrument (no hierarchical problem), there can be no conflict between the two legal instruments and Provisions of international law require transformation into national law. Another consequence is that there is no possibility of conflict between the two legal instruments, which may be renvoi. Therefore, implementing international law in national law requires transformation into national law.³⁹ Another consequence is that there is no possibility of conflict between the two legal instruments, which may be renvoi. Therefore, implementing international law in national law requires transformation into national law.⁴⁰

The premise of monism is that a single unit of all rules governs human life. Thus, national law and international law are two components of a broader whole, which regulates human life. Consequently, the two legal documents have a hierarchical connection. Regarding the hierarchy in the philosophy of monism, there are two divergent viewpoints as to whether national law or international law is more significant. International Law is derived from national law, according to the primate monism of National Law. A law that arises from state practice is an example. Because international law derives from or derives from national law, national law has a greater status than international law; hence, national law takes precedence in the event of a conflict. Some believe that national law is more significant than international law. This theory of monism is also referred to as monism with the primacy of national law. Other perspectives hold that international law is superior to domestic law. This understanding is known as the monism with international law preeminence understanding. This is possible according to the monism theory.⁴¹

International law is an extension or continuation of national law, or it can be said that international law is merely the application of national law to international affairs. This understanding recognizes that the unity of national law and international law stems primarily from the national origin of international law. The reasons given are as The absence of an organization above the states that regulate the life of states; The basis of international law that can regulate relations between countries lies in the state's authority to enter into international agreements originating from the authority granted by the constitutions of each country. This concept, which combines monism and the primacy of international law, holds that national law derives from international law. According to this

³⁹ Citra Tiurmasari and Retta Siagian, 'The Political Structure of Indonesia ' s Regulation to Protection Customary Forest', *Journal of Human Rights, Culture and Legal System Vol.*, 3.1 (2023), 95–133 <https://doi.org/https://doi.org/10.53955/jhcls.v3i1.72>

⁴⁰ Budiman and Abdul Kadir, 'The Policy of Sustainable Waste Management Towards Sustainable Development Goals', *Journal of Human Rights, Culture and Legal System*, 3.1 (2023), 70–94 <https://doi.org/https://doi.org/10.53955/jhcls.v3i1.73>

⁴¹ Paul Atagamen, 'Environmental Hazard : The Legal Issues Concerning Environmental Justice in Nigeria', *Journal of Human Rights, Culture and Legal System*, 3.1 (2023), 17–32 <https://doi.org/https://doi.org/10.53955/jhcls.v3i1.60>

view, national law is subordinate to international law, which is essentially a binding force based on the delegation of authority from international law.⁴²

Countries utilize these two ideas to determine the applicability of international law within their borders. In applying international law to its domestic legislation, Indonesia itself adheres to the dualism doctrine. The formation and ratification of international agreements between the Government of Indonesia and other governments, international organizations, and other subjects of international law is a crucial legal act since it binds the state to other subjects of international law.⁴³ Consequently, the creation and ratification of an international agreement are governed by the law. According to Anzilotti, the distinction between international law and national law can be derived from two fundamental ideas. National law is founded on the premise that state norms must be obeyed, whereas international law is based on the principle of *pacta sunt servanda*, which holds that agreements between states must be respected.⁴⁴

4. Conclusion

The decision made by Indonesia to halt the export of bauxite ore and to independently process the ore into finished goods is, in essence, a constitutional act that does not violate any of the country's laws. In essence, the culture of international legal hierarchy in Indonesia has supported Indonesia's efforts to restrict bauxite ore exports and independently process the ore. When it comes to the administration of international law, Indonesia maintains a dualist approach. Therefore, the constitutional rights and obligations of the Indonesian government are restricted to those that are outlined in Article 33 paragraph 3 of the 1945 Constitution regarding the Right to Control the State. On the other hand, the European Union has the legal right to file a lawsuit against Indonesia at the World Trade Organization (WTO) because it is believed that Indonesia has violated several articles of the GATT and the Agreement on Subsidies and Countervailing Measures, in addition to having defaulted on the IEU-CEPA agreement. Indonesia must still comply with the principles of international treaty law, specifically the *pacta sunt servanda* principle. This gives the EU the right to file the lawsuit. As a result, the Indonesian government needs to reconsider its plan to put a stop to the export of bauxite to Europe and renegotiate with the European Union on the policy regarding the export of bauxite.

⁴² Madelaine Chiam, 'Monism and Dualism in International Law', *Oxford University Press*, 2018, 34 <https://doi.org/10.1093/obo/9780199796953-0168>

⁴³ Fatma Ulfatun Najicha and others, 'The Conceptualization of Environmental Administration Law in Environmental Pollution Control', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 87–99 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>

⁴⁴ Hirofumi Oguri, 'Pacta Sunt Servanda As the Intersubjective but Universal Principle: Oppenheim's Common Consent Within the Family of Nations', *European Society of International Law (ESIL)*, (2018), 4, <https://doi.org/10.2139/ssrn.3363982>

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