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Implications of Nickel Ore Export Restrictions in International Trade Disputes

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Abstract

The problems related to restrictions on nickel ore exports started with Indonesia restricting nickel ore exports. Indonesia implemented restrictions because the presence of nickel in Indonesia was running low. The existence of this problem makes the European Union feel disadvantaged. Apart from that, Indonesia has issued restrictions on exports of nickel ore Regulation of the Minister of Energy and Mineral Resources Number 11 of 2019. This regulation is considered to have come into force on January 1 2020, from which date all nickel that wishes to be exported must go through the stages of refining and processing domestically, so that what is exported is not in the form of raw goods but not semi-finished goods or finished goods. In this article it is explained that nickel that cannot be exported is concentrate

<1.7%. By issuing this regulation, the European Union considers that Indonesia has violated Article nickel quota so it is considered to violate these regulations. With this problem, the European Union filed a lawsuit with the WTO. The lawsuit has been registered in DS-592. Starting from November 22 2019, the European Union and Indonesia carried out the consultation stage, but in the event that the consultation failed to take place, the next stage that was carried out was the panel stage. However, in this case Indonesia lost the lawsuit with the European Union. Seeing this, Indonesia immediately submitted an appeal to the WTO. Indonesia still wants to limit nickel ore so that it can improve the quality of nickel.

Keywords: International Trade, Restriction, Nickel

1. Introduction

International trade is a very important part of the world economy which in the current situation is experiencing significant development.¹ This trade is also a very important activity for every country, because the existence of this trade allows a country to improve its situation. its economy.² The scope of international trade can be said to be quite broad and trade can range from simple trading conditions to very complex trade. It can be explained that each country starts from domestic trade until that country over time can develop into the foreign trade market and international trade is said to be complex because trade must cross a country's territorial boundaries. Thus, if viewed from relations between countries, the position of international trade can be used as a very basic need to revive the world economy.³

Foreign trade can gain large profits and can also divert trade products that cannot be absorbed in the domestic market.⁴ For example, food products such as corn, wheat and soybeans can be sold to foreign markets because it can facilitate the availability of desired products and products that cannot yet be produced independently by one of the parties involved and can

¹ Sukarni, Hanif Nur Widhiyanti, Patricia Audrey, Hikmatul Ula, dan Yasniar Rachmawati Madjid, *Hukum Perdagangan Internasional* (Malang: UB Press, 2021) h. 3.

² Ni Kadek Srimasih Ristiyani, Dewa Gede Sudika Mangku, dan Ni Putu Rai Yuliantini, *Kedudukan Hukum Perdagangan Internasional Terhadap Perekonomian Indonesia*, *Jurnal Komunikasi Hukum*, Vol. 8, No. 2, 2022, h. 641.

³ Subianta Mandala, *Harmonisasi Hukum Perdagangan Internasional: Sejarah, Latar Belakang dan Model Pendekatannya*, *Jurnal Bina Mulia Hukum*, Vol. 1, No. 1, 2016, h. 53-54.

⁴ Muhammad Rafi Darajati, *Ketaatan Negara Terhadap Hukum Perdagangan Internasional*, *Jurnal Ilmu Hukum*, Vol. 5, No. 1, 2020, h. 23.

also overcome problems related to product scarcity.⁵ Currently, trade has taken over a dominant position in the global and regional economy. In terms of trade, this position is a very important element in implementing economic policy and can carry out the role of the state in relations between countries so that the results can improve the welfare of its people.

Indonesia is one of the countries that participates in international trade. Indonesia is also able to compete and trade with foreign countries, because Indonesia has very abundant natural resources. The natural resources owned by Indonesia can produce benefits to advance the economic welfare of the Indonesian people. Apart from the abundance of natural resources in Indonesia, it is also supported by an abundance of human resources. This means that the Indonesian state must have the ability to manage its wealth in order to produce benefits for national development in the future.⁶

In the world of international trade, it is very closely related to export activities. Export here is defined as one of the activities of a foreign country in terms of purchasing goods from domestic companies.⁷ This export activity is related to the ability of a country to produce the goods it has in order to be able to compete with foreign markets.⁸ Indonesia is one of the countries that is considered an export producer for a country that has an important role in advancing the economy. Indonesia's export activities can provide benefits in the form of optimizing the country's infrastructure and creating an attractive investment climate.

One of the exports made by Indonesia to foreign countries can be oil and gas or non-oil and gas. However, the export that has a very important influence on the economy in Indonesia is the non-oil and gas sector in the form of nickel. Indonesia is one of the largest nickel producing countries in the world with consumer markets including China, the United States and Japan.⁹ The presence of nickel in Indonesia is 4 million metric tons out of 80 million metric tons of world nickel reserves.¹⁰ This is what makes Indonesia the largest nickel producing country and Indonesia occupies the first position as the largest nickel producer in the world.

Data currently recorded by the Ministry of Energy and Mineral Resources, hereinafter referred to as the Indonesian Ministry of Energy and Mineral Resources, has nickel

reserves of 698 million tons.¹¹ This figure is predicted to only be able to meet national economic needs for refining facilities for the next 7-8 years, while nickel ore required for national needs has reached 20 million tons in 2020.¹² This problem has made the Indonesian government accelerate restrictions on nickel ore exports due to maintaining the stability of nickel raw material.¹³

Currently, nickel is one of the most sought-after commodities in European countries, one of which is the European Union.¹⁴ This will have an impact on increasing demand for nickel in Indonesia. This increase in demand for nickel means that the availability of nickel in Indonesia is decreasing and makes Indonesia take action by issuing a policy regarding the ban on nickel ore exports at the beginning of 2020. Currently this policy has been issued because the Indonesian government has considered the value of exports that would be more profitable if converted into more valuable commodities. Apart from that, the reason the Indonesian government issued this policy was because it considered that existing nickel reserves were running low.

Based on BPS data on September 18 2022, it is stated that the value of commodity exports has increased very significantly since the Indonesian government implemented a ban on nickel ore exports at the beginning of 2020.¹⁵ This can be clearly seen from the export value of nickel ore commodities in January-August 2022 amounting to USD 12.35 billion or an increase of 263 percent, whereas in 2019, when the policy had not yet been implemented, the value of nickel commodities was USD 3.40 billion.¹⁶

The Indonesian government, in dealing with the problem of nickel restrictions through the Ministry of Energy and Mineral Resources, has issued a Minister of Energy and Mineral Resources Regulation, hereinafter referred to as Minister of Energy and Mineral Resources Regulation Number 11 of 2019, in which case Indonesia decided to accelerate the prohibition on nickel ore exports from January 1 2020. Which is The ESDM Ministerial Regulation contains a prohibition on the export of nickel ore, which includes levels below 1.7%. This low-grade nickel ore will be processed using domestic industries so that it will have added value when exported. This, if implemented, will

¹¹ Kementerian ESDM RI, diakses dari <https://www.esdm.go.id/id/media-center/arsip-berita/bijih-nikel-tidak-boleh-diekspor-lagi-per-januari-2020>, diakses pada tanggal 2 April 2023, pukul 10.00 WIB

¹² *Ibid.*

¹³ Hasan Basri, *Penyelesaian Sengketa Dagang Internasional Dalam Kerangka WTO (World Trade Organization)*, Jurnal Hukum Academia, Vol. 7, 2019, h. 29.

¹⁴ Anisa Dewi Syafira dkk, *Analisis Peluang, Tantangan, Dan Dampak Larangan Ekspor Nikel Terhadap Perdagangan Internasional Di Tengah Gugatan Uni Eropa Di WTO*, Jurnal Economia, Vol. 2, No. 1, 2023, h. 91.

¹⁵ Ario Seno Nugroho, *Pembatasan Sebagai Solusi Pelarangan Ekspor Bahan Baku Nikel: Studi Kasus Ekspor Bahan Baku Nikel Indonesia*, Jurnal Perspektif Bea dan Cukai, Vol. 6, No. 1, 2022, h. 99.

¹⁶ Kementerian Perindustrian, diakses dari <https://www.kemenperin.go.id/article/23545/Masih-Berkontribut-Paling-Besar,-Ekspor-Industri-Manufaktur-Naik-24-Persen>, diakses pada tanggal 3 April 2023, Pukul 13.00 WIB.

⁵ Hikmahanto Juwana, *Hukum Internasional Dalam Perspektif Indonesia Sebagai Negara Berkembang* (Jakarta: Yarsif Watampane, 2010) h. 101.

⁶ Vicky Alvian Abdul Azis and Sharda Abrianti, *Analisis Terhadap Larangan Ekspor Bijih Nikel Kadar Rendah Berdasarkan Prinsip Restriksi Kuantitatif*, Hukum Pidana dan Pembangunan Hukum, Vol. 3, No. 2, 2021, h. 1.

⁷ Jimmy Benny, *Ekspor Dan Impor Pengaruhnya Terhadap Posisi Cadangan Devisa Di Indonesia*, Jurnal EMBA, Vol. 1, No. 4, 2013, h. 1408

⁸ Sukirno, *Makro Ekonomi Teori Pengantar* (Jakarta: Raja Grafindo Persada, 2008), h. 205.

⁹ Edy Suryanto, *Apakah Nikel Indonesia Memiliki Keunggulan Daya Saing di Pasar Internasional? Ecoplan*, Vol. 5, No. 2, 2022, h. 110.

¹⁰ Hanina Husin Hadad, Helitha Novianty, and Huala Adolf, *Larangan Ekspor Bijih Nikel Indonesia Diantara Stabilitas Perdagangan Internasional*, Jurnal Mimbar Hukum Universitas Gadjah Mada, Vol. 43, No. 2, 2022, h. 560.

provide foreign exchange profits for the country.¹⁷ The existence of this policy makes the European Union think that the issuance of this policy has harmed and prevented the European Union from being competent in the steel industry in the world, especially in the policy of nickel ore products which are the raw material for stainless steel.¹⁸

The policy of violating exports and the obligation to process Indonesian nickel ore products domestically was greeted with disputes between the Indonesian government and the European Union. This dispute prompted the European Union to file a lawsuit against the Indonesian state. In this case, the European Union asked the WTO to resolve its dispute with Indonesia. Based on the description outlined above, the author is interested in writing a scientific work in the form of a thesis with the title Implications of Nickel Ore Export Restrictions in International Trade Disputes.

2. Research Methods

Research Type

The type of research used in writing this thesis is normative juridical research (legal research). This type of research focuses more on examining the application of norms or rules in positive law which are then linked to the problems that will be discussed in writing this thesis.¹⁹ The type of normative juridical research that the author uses is an approach that is in accordance with statutory regulations by examining all laws and regulations relating to the legal issues to be discussed.

Research Approach

There are several research approaches in legal research so that information can be produced using this approach that can answer the issues being used as research. According to Peter Marzuki, normative legal research is divided into 5 approaches, namely the statutory approach, the case approach, the historical approach, the comparative approach and the conceptual approach. In writing this thesis, the author used a statutory approach and a conceptual approach.

1. The statutory approach is carried out by examining all laws relating to the issues used as research.
2. The conceptual approach is carried out by studying the doctrines and views of legal science which continue to develop to this day. In terms of seeking answers to the legal issues being faced, writers must understand the concept of unjust enrichment which comes from the views of scholars published in legal textbooks, legal dictionaries, legal journals, etc.²⁰ That with this, researchers find ideas that give rise to meanings and definitions, legal concepts and legal principles that are relevant to the legal issues being faced. Concepts

¹⁷Iga Dhea Hanif, *Gugatan Uni Eropa Ke World Trade Organization (WTO) Terhadap Indonesia Terkait Dengan Kebijakan Larangan Ekspor Bijih Nikel Indonesia Tahun 2019*, Jurnal Online Mahasiswa Bidang Ilmu Sosial dan Ilmu Politik, Vol. 8, No. 2, 2021, h. 2.

¹⁸Sri Mastuti and Pangi Syarwi, *Kebijakan Pelarangan Ekspor Bijih Nikel Indonesia Dari Sudut Teori Keadilan John Rawls*, Jurnal Communitarian, Vol. 4, No. 2, 2023, h. 691-692.

¹⁹Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2016), h. 50.

²⁰Dyah Ochtorina and A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2014), h. 116.

regarding restrictions on nickel ore in international trade disputes in the provisions of Articles XI.1, 3(b), international.

3. Sources of Legal Materials

Legal material is one of the most important materials for researchers because this legal material will be used as a source for writing a scientific paper, so that it can be used as a guide in finding the main answers to be achieved in order to solve the legal issue at hand. Sources of legal materials used by the author, namely:

Primary Legal Materials

Primary legal materials are legal materials that are authoritative. The meaning of authoritative is having authority. These primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Primary legal materials used by the author include:

1. *Agreement on the Implementation of Article XI (General Elimination of Quantitative Restrictions) and Article XX (General Exceptions) of The General Agreement on Tariffs and Trade 1994.*
2. Minister of Energy and Mineral Resources Regulation Number 11 of 2019 concerning Second Amendment to Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Businesses.
3. Minister of Trade Regulation Number 96 of 2019 concerning Export Provisions for Mining Products Processed and Refined.
4. Minister of Energy and Mineral Resources Regulation Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities.

Secondary Legal Materials

Secondary legal materials contain all legal publications that are not official documents, including textbooks, legal dictionaries, legal journals, and comments on court decisions.

Non-Legal Materials

Non-legal materials are one of the legal materials that support primary legal materials and secondary legal materials. Where this legal material can provide guidance and explanation. This non-legal material can be in the form of books, journals, research reports.

Methods for Collecting Legal Materials

A data collection technique that can be used to obtain primary, secondary and non-legal sources of legal material is to carry out library research. This literature study is carried out to find concepts, doctrines, theories, or discoveries related to the main problem to be discussed. This literature can be in the form of legislation, books, journals and other sources which can be found by accessing websites or reading directly through the library.

Analysis of Legal Materials

Analysis of legal materials is one of the methods used to determine answers to problematic issues obtained from legal

facts. This process is carried out in several stages, including:²¹

1. Identifying legal facts and eliminating irrelevant matters to determine a legal issue to be resolved;
2. Collection of legal materials and non-legal materials that are deemed to have relevance to the problem being faced;
3. Review the legal issues raised based on the materials that have been collected;
4. Draw conclusions in the form of arguments to answer the legal issues being discussed;
5. Provide a prescription based on the arguments that have been made in the conclusion.

In writing this research, the analysis of legal materials used was a deductive method. Solving problems through deductive analysis applies a law in abstracto to solve legal problems in concrete.²² Analysis using this deductive method begins with a general discussion to a specific discussion or a more in-depth discussion that will be discussed and has the aim of finding conclusions.

4. Discussion

4.1 Indonesian Legal Basis for Restricting Nickel Ore Exports

4.1.1 National Legal Basis

Export activities are one of the activities carried out by a country to sell the products/goods it owns for sale abroad. Apart from that, the existence of export activities can stimulate the stabilization of a country's economic situation so that it can help increase state income. Indonesia itself often carries out export activities and one of the exports that has the greatest profit for Indonesia is nickel exports.

The presence of nickel in Indonesia is very abundant. However, the presence of nickel as a natural resource is included in the rare category, which can make several countries import it to producing countries.²³ Meanwhile, producing countries must ensure that nickel does not run out and maintain its scarcity, remembering that nickel is categorized as a non-renewable natural resource. The limited availability of nickel means that several countries have to trade between countries.

In 2019, nickel production in Indonesia was recorded at 52.76 million tons, which is an increase compared to 2018, which produced 22.14 million tons, and also in 2019 the value of exports made by Indonesia reached 30.19 million tons.²⁴ This increase in production will result in Indonesia experiencing increased demand for nickel ore exports to other countries, especially the European Union. However, if nickel mining is carried out frequently, it will have an impact on the availability of nickel reserves in Indonesia becoming increasingly depleted. The current availability of nickel is predicted to run out within 7.3 years starting from 2022 if mining is carried out continuously.²⁵ The impact that will occur if nickel mining is carried out continuously will cause problems for Indonesia.

The legal basis used by Indonesia regarding the ban on nickel ore exports first began when Indonesia issued

Regulation of the Minister of Energy and Mineral Resources Number 11 of 2019. Second Amendment to Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Businesses. This regulation came into effect on January 1 2020. So, it can be said that starting from that date all nickel that will be exported abroad must go through the stages of refining and processing domestically so that the nickel that will be exported is not in raw form but in the form of semi-finished goods or finished goods.²⁶

In the Minister of Energy and Mineral Resources Regulation Number 11 of 2019, it also explains that nickel concentrate cannot be exported. In article 62A, the concentrate that cannot be exported abroad is <1.7%. This applies to all countries that want to export nickel to Indonesia, not just the European Union. However, for nickel concentrate >1.7% it is permissible to export nickel ore. In addition, exports are very dependent on the development of refining facilities (smelters). This has led to problems between Indonesia and the European Union regarding the ban on nickel ore exports. The reason why Indonesia is banning nickel ore exports is because the availability of nickel in Indonesia is dwindling, on the other hand, the existing nickel is still needed and produced for Indonesia's needs in terms of improving the economy, so Indonesia needs to ban nickel ore exports.

The second legal basis, namely Minister of Trade Regulation Number 96 of 2019 concerning Export Provisions for Processed and Refined Mining Products. This regulation came into effect on January 2 2020. This regulation contains confirmation of the ban on nickel ore exports and revocation of export approvals in accordance with Minister of Trade Regulation Number 1 of 2017 because the regulation is deemed to be no longer in accordance with developments and the legal needs of society.

The third legal basis, namely Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities. This regulation has been in effect since March 6 2020. This regulation states that IUP holders are prohibited from selling nickel raw materials abroad before processing and/or refining is carried out domestically. So, it is clear that when Indonesia exports nickel ore to be sent abroad, it must first go through a refining stage domestically.

The explanation above is the legal basis issued by Indonesia to ban nickel ore exports. However, the issuance of this regulation created a conflict with the European Union. Here the European Union considers that the Indonesian state is unfair and has a negative impact on the steel industry in the European Union. On the other hand, Indonesia is also considered to have violated Article export framework. The article clearly states that quota restrictions are not permitted. In this stage, Indonesia lost to the European Union.

On the other hand, Indonesia also violated Article X:1 GATT 1994 which discusses transparency. Indonesia is considered not transparent because Indonesia was late in publishing changes related to the regulations prohibiting nickel ore exports. If something like this happens it will cause conflict because there is no transparency.

²¹ Peter Mahmud Marzuki, Op Cit, h. 65.

²² Rianto Adi, *Metodologi Penelitian Sosial Dan Hukum*, (Jakarta Yayasan Pustaka Obor Indonesia, 2021) h. 104.

²³ Edy Suryanto, Op Cit, h. 111.

²⁴ Anisa Dewi Syafira, Op Cit, h. 93.

²⁵ Anisa Dewi Syafira, Op Cit, h. 94.

²⁶ Rizal Budi Santoso, dkk, *Pilihan Rasional Indonesia Dalam Kebijakan Larangan Ekspor Bijih Nikel*, Jurnal Indonesian Perspective, Vol. 8, No. 1, 2023, h. 155.

The issuance of this regulation resulted in a prohibition on exporting mineral raw materials in the form of nickel abroad. In making this policy, the Indonesian state has taken into account the availability of further supplies of raw materials for smelters. The impact of the issuance of policies related to the ban on nickel exports in the form of raw materials has created problems between Indonesia and the European Union. This made the European Union sue Indonesia at the World Trade Organization (WTO).²⁷In this case, the European Union is very dependent on Indonesia's nickel, because the European Union is one of the leading stainless steel producers in the world and is also the leader of the electric car industry in the world.²⁸However, seeing that the European Union is suing Indonesia, the Indonesian side still maintains its stance regarding the ban on nickel ore exports.

4.1.2 Ratified Legal Basis

The background to Indonesia's ban on nickel ore exports is because it wants to maintain Indonesia's nickel supply so that it does not run out quickly. Apart from that, in terms of maintaining the availability of existing nickel and to add value to nickel, Indonesia has decided to carry out downstreaming and industrialization of nickel ore.

GATT 1994 is one of the legal bases for complaints used by the European Union against Indonesia. In Article XX GATT (1994) there is a loophole that can be used by Indonesia regarding the policy of prohibiting nickel ore exports, especially in letter (g), which reads: "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction on domestic production or consumption"²⁹ which means focusing on protecting natural resources that could run out if the policy is implemented, such as limiting local production or consumption.

World Trade Organization (hereinafter referred to as the WTO) was formed to promote free trade, so that the scope of exceptions to the principles of free trade is limited in such a way. If viewed according to the appellate body in the method of implementing Article XX letter g GATT 1994, a country can apply Article XX letter g GATT 1994, if the country wants to protect a natural resource that it has which is almost extinct and in implementing this article a country does not permitted to carry out acts of discrimination or act arbitrarily against international trade.³⁰

Referring to Article XX letter g GATT 1994, goods or products of a country whose form cannot be renewed have an exception in carrying out trade transactions. Nickel here is a raw material whose form cannot be renewed. What Indonesia has done in terms of banning nickel ore exports can be put forward as a reason to improve the welfare of the lives of the Indonesian people and in addition to this it is

intended to conserve natural nickel mineral resources. If nickel cannot be managed properly, what will happen will endanger the environment in Indonesia. Until finally, Indonesia issued a policy banning nickel ore exports because it felt that nickel availability was running low and demand for nickel ore was increasing.

The Indonesian state has the authority to support and implement policies that have been established to safeguard and protect the environment and natural resources, in this case what is meant is the policy of prohibiting the export of nickel ore. There are 3 values that can be used by Indonesia as justification, which are contained in Article XX GATT, these actions must be related to the conservation of depleted natural resources as the objective used, the following requirements must be implemented:³¹

1. Actions taken by Indonesia must be in accordance with the policy objectives created, which include preserving non-renewable natural resources.
2. The measures taken must be implemented effectively along with restrictions on domestic production or consumption.
3. The policies that have been issued by the Indonesian Government must be linked to the conservation of natural resources.

Looking at the 3 requirements mentioned above, Indonesia must be able to demonstrate and comply with the 3 standards contained in Article XX GATT 1994 in a transparent manner and with available support.

Indonesia in issuing a policy prohibiting nickel ore exports regarding the processing and utilization of nickel mineral resources is in line with its interpretation of the country's sovereignty over its natural resources. This understanding is contained in the principles of international law, namely the Principle of Permanent Sovereignty Over Natural Resources (hereinafter referred to as the PSNR Principle). This principle discusses a country's sovereign ownership of its natural resources and uses them for the welfare of its people which is realized in the form of national development.³²

A country that has sovereignty over its natural resources is not permitted by a country to intervene in terms of management and utilization. Therefore, a country has the freedom to impose restrictions or prohibitions on its natural resources. If linked to this principle, then what Indonesia has done regarding the policy of banning nickel ore exports to the European Union trade market is a form of Indonesian sovereignty on the basis of its natural resources.

The Indonesian state has the right to manage and regulate the nickel it owns to carry out national economic development so that the welfare of its people can be realized. In other words, based on this principle, a country has sovereignty and independence to do the best with the natural resources it has. This includes a country being able to issue policies in the form of:³³

²⁷ Erikson Sihotang and I Nyoman Suandika, *Kebijakan Larangan Ekspor Bijih Nikel Yang Berakibat Gugatan Uni Eropa Di World Trade Organization*, Jurnal Raad Kertha, Vol. 6, No. 1, 2023, h. 62.

²⁸ *Ibid*, h. 65.

²⁹ Article XX (g) GATT 1994

³⁰ WTO, diakses dari https://www-wto-org.translate.google/translate/goog/english/tratop_e/envir_e/envt_rules_exceptions_e.htm?_x_tr_sl=en&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=tc, diakses pada tanggal 29 November 2023, pada pukul 16.30 WIB.

³¹ Muhammad Renal Anugrah Saputra, dkk, *Sengketa Internasional Indonesia VS Uni Eropa Tentang Larangan Ekspor Bijih Nikel*, Jurnal Ilmiah Wahana Pendidikan, Vol. 9, No. 17, 2023, h. 512.

³² Natalia Yeti Puspita, Elizabeth Nadeak, and Aloysius Deno Hervino, *Justifikasi Penerapan Prinsip Permanent Sovereignty Over Natural Resources Dalam Perdagangan Internasional*, Jurnal Komunikasi Yustisia Universitas Pendidikan Ganesha, Vol. 5, No. 3, 2022, h. 509.

³³ *Ibid*, h. 520.

1. Require mining products to be processed and purified first to increase added value;
2. Determine that the place for purification and processing is carried out within the country;
3. Determine the amount of production, quality criteria, sales mechanisms, including whether the mining products are used for export or only used for domestic purposes.

Nickel is a natural resource that has very important value in terms of improving and controlling the livelihoods of many people. The shift from fossil-based energy to electrical energy will make nickel products the products most needed by several countries.

Excessive exploration and if more nickel ore is exported abroad this will result in the availability of nickel ore reserves becoming increasingly depleted, considering that nickel is a non-renewable natural resource. Conditions like this will not provide benefits to the lives of people in Indonesia, which will ultimately disrupt Indonesia's national stability.

In the declaration on the establishment of a new international economic order (hereinafter referred to as the NIEO Declaration), which is a declaration adopted by the United Nations General Assembly (hereinafter referred to as the UN General Assembly). This declaration discusses the commitment made by countries to form and realize a just economic order for a country.³⁴ The NIEO Declaration contains one of the principles which states that, "full permanent sovereignty of every state over its natural resources and all economic activities (permanent sovereignty of every country over its natural resources and all economic activities)"³⁵. In this case, a country can be able to protect its natural resources and have full control over their exploitation by using methods appropriate to the situation, including state rights.

If this problem of banning nickel ore exports is related to existing problems, the position of Indonesia which has full sovereignty is related to the natural resources it has. This sovereignty can take the form of protecting and managing its nickel mineral resources without interference from other countries to improve the economic situation for all Indonesian citizens.

Charter of Economic Rights and Duties of State (hereinafter referred to as CERDS) essentially also discusses a country that has sovereignty regarding the ownership of all its natural resource wealth and economic activities.³⁶ So every country has full sovereignty over its natural resources, just as Indonesia has full sovereignty over nickel natural resources.

Finally, there are the Sustainable Development Goals (hereinafter referred to as SDGs) or what is meant by sustainable development. The SDGs are also the 2030

³⁴ Sutiarnoto, Affila, and Afnila, *Perlindungan Hak Ekonomi Dan Hak Sumber Daya Alam Negara-Negara Berkembang Dalam Era Globalisasi Perdagangan: Berdasarkan GATT/WTO*, Proceeding Seminar, 2019.

³⁵ United Nations General Assembly Declaration on the Establishment of a New International Economic Order Resolution 3201 (s-vii)

³⁶ *The United Nations Charter of Economic Rights and Duties of States: Recommendation and Report of the United Nations Second Committee to the General Assembly*, 9 December 1974.

agenda which includes an agreement on sustainable development and is based on human rights and equality. In the SDGs themselves there are 17 goals to be achieved, but what is in accordance with the discussion regarding the ban on nickel ore exports lies in goal number 8 regarding encouraging sustainable, inclusive and sustainable economic growth, full and productive employment and decent work for all.³⁷

Sustainable development here is defined as a concept of complete and integrative development between economic, social, political, cultural and environmental development which has the aim of improving the standards and quality of life of all citizens.³⁸ Therefore, in terms of processing nickel ore, Indonesia must be able to regulate its use so that it does not disturb the environment and can also benefit future generations. If nickel processing and refining can be done domestically, it will open up job opportunities and thus reduce the poverty rate in Indonesia.

4.2 Implications of Nickel Ore Export Restrictions

4.2.1 Restrictions on Trade in Nickel Ore in the Context of the WTO Agreement

Trade occurs because two or more countries enter into an agreement, which in the agreement is based on the same goal (a single motive). On the other hand, the existence of a trade agreement will provide benefits to the country's economy. The benefits can be seen through projected increases in exports, additional gross domestic products, and increasing and advancing the country's growth. However, in an agreement there are often differences and even conflicting opinions, which can ultimately lead to conflict. One example of the conflict that occurred was the conflict between Indonesia and the European Union regarding the policy of banning nickel ore exports.

Indonesia's entry into the WTO will have several effects, some of which include increasing economic growth rates and reducing poverty rates. Apart from that, Indonesia will also indirectly participate in disputes with other countries. Similarly, the conflict currently occurring in Indonesia regarding nickel ore exports, Indonesia's exports of nickel ore are 0.4% of total exports. When the policy banning nickel ore exports was issued, the value of Indonesia's exports decreased by 65 million US dollars every month or the equivalent of 0.78 billion US dollars every year.³⁹ The impact that occurs if this policy is implemented will last in the short term and in the long term for Indonesia in terms of downstream exports of nickel ore with increased added value which will have a positive impact on ongoing trade transactions in Indonesia.

The policy issued by Indonesia regarding restrictions on nickel ore exports has had an impact on several countries that participate in nickel exports with Indonesia. One of the countries that processes nickel raw materials which will be

³⁷ United Nations, diakses dari: <https://sdgs.un.org/2030agenda>, diakses pada tanggal 23 Oktober 2023, pada pukul 22.22 WIB.

³⁸ Natalia Yeti Puspita, Elizabeth Nadeak, and Aloysius Deno Hervino, Op Cit, h. 521.

³⁹ Kompas.com, diakses dari: <https://money.kompas.com/read/2019/12/15/123615726/indonesia-raja-nikel-dunia-puluhan-tahun-only-ekspor-bijih-mentah?page=all>, diakses pada tanggal 7 Oktober 2023, Pukul 19.35 WIB.

processed into finished materials, one of which is the European Union. The problems that occur between the two countries will trigger a trade war which will affect the economic systems of the two countries.⁴⁰

The European Union believes that banning nickel ore exports is seen as an obstacle to the trade process between Indonesia and the European Union. In fact, Indonesia in issuing this policy was not to inhibit trade, but rather to gain benefits from the natural resources that Indonesia has to improve the nation's life through domestic processing efforts and to optimize the availability of raw materials for domestic smelters.

Downstreaming aims to encourage the development of domestic industrial growth. This is in line with the statement that a country has the right to control and utilize exhaustible natural resources for national interests.⁴¹ In principle, the government can grant nickel ore processing permits to be processed through industry, as long as the industry is located in Indonesia. In the context of international trade, licensing here is defined as a country's approval for another country to carry out an activity or action carried out domestically.⁴² If the permit does not receive approval, then the permit to carry out an activity or action cannot be carried out.

The European Union can relocate industry to Indonesia so that it can run its business as long as it has permission from the Indonesian state. This nickel ore export policy is a policy made by the government in the form of legitimacy to maintain the sustainability and sovereignty of natural resources and to protect the nickel mining industry from global market penetration. In addition, this policy is expected to be able to develop local sector growth.

Indonesia's hopes in terms of *raw materials* Nickel means that several stages of processing and refining of nickel have been carried out optimally, so the processing and refining in Indonesia will provide added value through product exports for the country's economy. The economic implications of accelerating the ban on nickel ore exports are considered to increase capacity and protect the potential reserves of existing nickel raw materials during the downstream period. So the downstream policy will have a direct impact on the price, demand and supply of nickel minerals in the world.⁴³

One of the countries affected by the price, demand and supply of Indonesian nickel raw minerals is the European Union. The European Union is one of the countries that is part of Indonesia's nickel consumers. Indonesia will sell semi-finished nickel in accordance with the policy issued.

The existence of smelters in Indonesia has boosted domestic demand for nickel. What is meant by smelter is a form of facility used in processing mining products, the benefits of which are used to increase the value of metal in nickel to a level that can meet standards to be used as finished raw materials or final products.⁴⁴

The construction of smelters in Indonesia itself is increasing every year, in 2019 there were 11 nickel smelters, in 2020 there were 13 nickel smelters, in 2021 there were 16 nickel smelters, in 2022 it is targeted to build 17 smelters, and in 2024 it is estimated that as many as 17 smelters will be built. 30 nickel smelters.⁴⁵ The more nickel smelters built, the more value it will provide for nickel so that it can provide profits.

The Indonesian smelter is stated to be sufficient and developed enough to be able to carry out its own mining production. However, what you need to know now is that downstreaming can be said to be successfully implemented if a policy and regulations in its implementation can be carried out by considering the availability of raw materials, labor, energy, land, infrastructure, licensing systems and investment financing activities.⁴⁶ The benefits of the mineral downstream policy can encourage the country's economic growth and create jobs so that it can reduce poverty.

Indonesia cannot possibly only depend on tax revenues as state income. Indonesia must be able to stand alone and be able to control and protect its wealth independently without any assistance from foreign parties. In fact, until now Indonesia has been considered capable of producing its own raw mineral materials from semi-finished materials to finished materials.

In the legal dimension regarding the policy of banning nickel ore exports, Indonesia received a direct lawsuit from the European Union. The lawsuit contains reasons why the policy issued was unfair because it limited access for nickel ore export producers. The lawsuit is registered in DS 592 in the Indonesian case regarding Measures Relating to Raw Materials (Indonesia-Measures Relating to Raw Materials). Although in the end Indonesia lost the lawsuit against the European Union. However, Indonesia did not remain silent, Indonesia immediately filed an appeal.

The juridical implications in this case are the basis for a lawsuit that has been filed by the European Union with a dispute resolution body called the DSB regarding Indonesia placing restrictions on nickel ore exports which are considered unfair to the European Union. The basis for the lawsuit begins with Indonesia issuing Minister of Energy and Mineral Resources Regulation Number 11 of 2019 which contains the Indonesian government's restrictions on exports of nickel ore with <1.7% concentrate. For the European Union, the issuance of this regulation was deemed to violate article XI:1 GATT 1994. So, this was ultimately questioned.

The basis for the lawsuit has been explained above will have a consequence. According to the author, the result of this lawsuit, if seen from the European Union side, is that there is a scarcity of nickel in the European Union territory, which will make the European Union unable to produce nickel in its territory, so this will be detrimental to the European Union. And for Indonesia it will provide benefits, in which case it will produce enormous added value so that it can provide benefits for the Indonesian people.

The economic implications can be in the form of providing added value to domestic commodities. If a commodity has

⁴⁰ Sekar Wiji Rahayu and Fajar Sugianto, *Implikasi Kebijakan Dan Diskriminasi Pelarangan Ekspor Dan Impor Minyak Kelapa Sawit Dan Bijih Nikel Terhadap Perekonomian Indonesia*, Jurnal Ilmu Hukum, Vol. 16, No. 2, 2020, h. 232.

⁴¹ Rizal Budi Santoso, dkk, Op Cit, h. 163.

⁴² Tatiek Sri Djatmiati, *Hukum Administrasi: Sebuah Bunga Rampai* (Yogyakarta: LaksBang Justitia, 2020) h. 104.

⁴³ Elisa Sugito, Op Cit, p. 79.

⁴⁴ Rizal Budi Santoso, dkk, Op Cit, h. 165.

⁴⁵ Kementerian ESDM, diakses dari: https://onemap.esdm.go.id/news/updating_spatial_smelter_on_esdm_one_map, diakses pada tanggal 8 Oktober 2023, Pukul 07.35 WIB.

⁴⁶ Sekar Wiji Rahayu and Fajar Sugianto, Op Cit, h. 234.

high added value, the impact will have an impact on the domestic industrial structure. This will further increase employment opportunities. In terms of downstream nickel, the government will need workers, so in this case the government will increase employment opportunities. The existence of these employment opportunities will result in a stable economic situation in the community.

4.2.2 Justice in Nickel Ore Export Restrictions

All things What Indonesia has done is very reasonable behavior as a country that wants to improve the economic situation of its country. Matters like this are also in line with the orders of the laws and constitution of the Unitary State of the Republic of Indonesia. If you pay attention, the policies that have been issued from a country's foreign policy perspective are considered as an effort to implement national interests. Where national interest here is defined as the basic goal and determining factor that focuses decision makers from a country in formulating and compiling its foreign policy.⁴⁷ The national interests of a country specifically are the elements which form the needs of the country, such as defense, security, military and economic prosperity.

Referring to the definition of national interest explained above, it is normal for the European Union to file a lawsuit with the WTO. The European Union believes that Indonesia, by issuing this policy, is considered unfair to itself, because it will have a negative impact on the steel industry in the European Union and will limit access to nickel ore and other mineral ores such as iron ore and chromium.

The policies made by the Indonesian government and the objections raised by the European Union are essentially discussing the rights they have, the rights held by each country must be assessed as having a sense of justice for both countries. Indonesia wants to protect and optimize its natural and human resources and use all the natural resources it has for the benefit of its country, so this is only natural to do. Meanwhile, the European Union maintains its right to ensure and obtain protection that its national interests are not disturbed, if this happens it will hamper the implementation of defense and security as a result of the policy of banning nickel ore exports issued by Indonesia.

The policies issued by Indonesia which are responded to by the European Union must be returned to the meaning of fairness. In this case, we use John Rawl's theory of justice: A Theory of Justice.⁴⁸ In A Theory of Justice, John Rawl admits that the theory he uses is in line with the social contract tradition. John Rawl believes that justice is the main virtue of social institutions and that justice takes the form of 4 things, namely balance, equality and non-discrimination, granting rights to people who are entitled to them, and delegating forms based on level and merit.⁴⁹

John Rawl specifically explains ideas related to the principles of justice using the concepts he created; original position and the veil of ignorance. In terms of original position, John Rawl places the existence of equal and equal situations and conditions for people and that no party has a higher position than one another, for example social status,

position and ability. So, in circumstances like this, people will make agreements with other people in a balanced way. Looking at the conditions explained above, what John Rawl meant in his original position was based on the characteristics of rationality, freedom and equality in order to organize the basic structure of society.⁵⁰

The concept of the veil of ignorance (veil of ignorance), here John Rawl explains that every individual will be faced with the closure of all existing facts and circumstances relating to themselves, including their social position, so that it will blind the concept or knowledge about justice that is currently developing.⁵¹ Apart from that, John Rawl also explained that there are two principles of justice in the initial position, the first is that everyone has equal rights to the broadest basic freedoms in accordance with the same freedoms possessed by other people and the second is that there is social and economic inequality, which are arranged in such a way as to obtain great benefits for disadvantaged communities and positions and positions that must be opened to everyone in conditions of fair equality of opportunity.⁵²

The justice stated by John Rawl in relation to the conflict that occurred between Indonesia and the European Union in the dispute regarding the ban on nickel ore exports, started with the European Union wanting to export nickel ore without going through the refining stage, where the European Union wanted the raw materials to be sent. However, in this case Indonesia wants to export in the form of semi-finished goods or finished goods. So, this caused conflict between Indonesia and the European Union.

Justice as defined by John Rawl here means prosperity for all without distinction with each other.⁵³ The Minister of Energy and Mineral Resources Regulation Number 11 of 2019 explains that it is prohibited to export nickel ore with a concentrate <1.7%. Seeing this, the European Union can export nickel ore but with a concentrate of >1.7%. According to the author, here the position of the European Union reduces the profits it can get, but it is also seen that these profits must also be shared with Indonesia and what is certain is that in this case Indonesia as a place that has nickel also wants to gain profits from these exports. If it is related to justice from John Rawl, the European Union can build a smelter in Indonesia if the European Union wants to get nickel raw materials and carry out production in Indonesia. And for Indonesia itself, it can continue downstream and refining domestically so that it can increase the added value of nickel and the benefits can be felt by the Indonesian people themselves.

5. Conclusion

1. The legal basis issued by Indonesia regarding the ban on nickel ore exports is regulated in the Minister of Energy and Mineral Resources Regulation Number 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Businesses. The ratified legal basis used by Indonesia is in Article XX letter g GATT 1994 which focuses on the protection of natural resources in

⁴⁷ Sri Mastuti and Pangi Syarwi, Op Cit, h. 694.

⁴⁸ *Ibid*, h. 696.

⁴⁹ Muhammad Taufik, *Filsafat John Rawls Tentang Teori Keadilan*, Jurnal Studi Islam Mukaddimah, Vol. 19, No. 1, 2013, h. 43.

⁵⁰ Sri Mastuti and Pangi Syarwi, Op Cit, h. 697.

⁵¹ *Ibid*

⁵² Muhammad Taufik, Op Cit, h. 56.

⁵³ Muhammad Taufik, Op Cit, h. 43.

a country. Apart from that, there is also The Principle of Permanent Sovereignty Over Natural Resources, the Declaration on the Establishment of a New International Economic Order (NIEO declaration), and the Charter of Economic Rights and Duties of States (CERDS), all three of which discuss the sovereignty of a country towards its natural resources, and finally there are the Sustainable Development Goals (SDGs) which discuss the sustainable development of a country.

2. The implications related to the ban on Indonesian nickel ore exports will have a major impact on other countries that participate in Indonesian nickel exports and will trigger an international trade war. These implications include influencing the price, demand and supply of nickel in the world as well as maintaining and protecting the availability of nickel reserves in Indonesia so that it is able to provide high added value for domestic commodities. Apart from that, Indonesia only wants to utilize the natural resources it has to improve the welfare of its people and reduce the incidence of unemployment.

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