

## **Analysis of the European Union's Lawsuit Against Indonesia Regarding the Ban on Nickel Ore Exports**

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### **Abstract**

Nickel is a metal that has the characteristics of a silvery-white color with the characteristics of strength, heat resistance, light weight and corrosion resistance with the chemical formula Ni. It has good electrical and thermal conductivity making it suitable for coating copper, iron and aluminum to prevent corrosion. Nickel was first discovered and developed by Cronstedt in 1751, in a mineral called Nicolite (Kupfernickel), which was found in the Sudbury region, Ontario, Canada, a nickel-producing area of 30% of the world's demand for nickel metal. One of the countries with the largest nickel reserves is Indonesia. According to several experts, it is estimated that Indonesia has nickel reserves of more than 1 billion tons of nickel. The largest distribution of nickel reserves is in the eastern part of Indonesia. The distribution of nickel in Indonesia and the distribution of nickel mining in Indonesia today, among others, are found on the islands of Sulawesi (Southeast and South Sulawesi), Maluku and Papua. Unfortunately, currently a lot of Indonesian nickel is exported in the form of raw material, so the selling price is very cheap. Thus, government support is very much needed to improve nickel processing, such as support for ease of licensing, clear and transparent rules and regulations. This support can be seen in the issuance of a decree by the Ministry of Energy and Mineral Resources Number: 549.Pers/04 SJI/2019 dated 2 September 2019 concerning "Nickel Ore Cannot be Exported Again as of January 2020".

**Keywords:** Lawsuit, European Union, Export, Nickel Ore



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### **INTRODUCTION**

Trade between countries is one of the sources of international agreements. In interstate trade or commonly referred to as international trade is divided into 3 forms namely bilateral agreements, regional agreements, and multilateral agreements. International trade is never separated from exports and imports. Because exports and imports are complementary in international trade. In line with this, the government continues to make efforts to encourage business actors to continue to improve themselves and make breakthroughs so that they can boost the added value of Indonesian mines and minerals to a position that can prosper the people and determine the world's mining and mineral trade. The government's good intentions in encouraging business actors to increase the added value of the said mines and minerals, as stated in Law no. 4 of 2009 concerning Mineral and Coal Mining (Minerba), where in the Law it has regulated the obligation to process and refine mines and minerals which are enforced no later than 5 (five) years since the said Law was promulgated on January 12, 2009 so that the processing and refining mining and minerals fell in January 2014. As a result of the promulgation of Law No. 4 of 2009, nationally there has been a massive increase in mineral ore exports in the last 3 years.

Thus, the government exercises control of nickel ore exports. For Indonesia, nickel is a very strategic mineral commodity in the world market along with tin and coal. By processing nickel ore in domestic smelters, Indonesia can get many benefits compared to shipping nickel

ore which is still in the form of 'ground'. For information, Indonesia is currently the second largest nickel exporter to the European Union countries' steel industry. That is why many metal industries in Europe are very dependent on raw materials from Indonesia. At the end of 2020, EU Trade Commissioner Cecilia Malmstrom, issued a statement saying that Indonesia's move to stop exports of nickel ore put the steel industry in Europe under great threat.

In response to the actions of the Indonesian government, the European Union filed a lawsuit against Indonesia to the WTO (World Trade Organization) regarding the existence of a regulation prohibiting the export of nickel ore.

## **RESULTS AND DISCUSSION**

Indonesia as one of the nickel producers in the world has the opportunity to develop a national nickel commodity. The opportunity in question is the development of the nickel downstream industry in Indonesia so that it can look to other countries to carry out import activities from Indonesia. The government imposed an export ban with the aim of encouraging downstream nickel through the nickel processing industry. Through the nickel ore export ban policy, the continuity of the supply of raw nickel in the long term for the needs of domestic smelters is maintained. The nickel export ban policy must be supported by the construction of domestic factories so that they have the opportunity to create new jobs. Vale Indonesia Chief Financial Officer Bernardus Irmanto said that the ban on nickel exports was principally aimed at attracting smelter investment, the end product industry should be in the country so that it can produce final products that can be exported and have added value.

On January 1, 2020 the government officially banned nickel ore export activities. In this case the aim is to increase the added value of nickel through downstreaming. Moreover, the trend of using electric vehicles is increasing in the world, where nickel is an important raw material for producing batteries. But unexpectedly the actions of the Indonesian government in banning nickel ore exports were met with opposition from European Union countries. Even the European Union immediately filed a lawsuit against Indonesia at the WTO (World Trade Organization). In its lawsuit, the European Union argued that Indonesia had violated a number of articles in the 1994 General Agreement on Trade and Tariff (GATT) regarding the nickel ore export ban policy. One of the articles deemed violated by Indonesia is Article XI:1 General Agreement on Tariffs and Trades (GATT) 1994, which regulates the general elimination of quantitative restrictions. GATT 1994 is one of the legal space (annex) that regulates multilateral agreements on goods that must be obeyed by all WTO member countries. In Article XI:1 GATT 1994, WTO member countries are prohibited from imposing restrictions other than tariffs, taxes and other duties, and not other restrictions including quotas and permits for imports or sales in the framework of export. The prohibition of restrictions as stipulated in Article XI:1 GATT 1994 is regulated very generally.

Many observers think that the European Union is afraid if Indonesia stops exporting nickel ore. how could it not be, Indonesia is one of the countries that produces the most nickel in the world. With the second largest number of exporters to the steel industry worldwide, especially European Union countries. It is very natural for the European Union to respond to this action and think that Indonesia has violated a number of articles in the 1994 General Agreement on Trade and Tariff (GATT). iron and steel especially stainless steel.

With the lawsuit filed by the European Union against Indonesia, of course Indonesia will be ready to respond to all of its demands. The Indonesian government has also explored and learned more about the demands by the European Union. Indonesia as a country that upholds the law will certainly follow the rules for resolving disputes at the WTO in accordance with the agreed rules, as well as fighting for trade rights in Indonesia. Even though in this case Indonesia

has the advantage because the burden of proof is more on the European Union, Indonesia as a defendant is obliged to provide sufficient evidence and arguments to refute the accusations of inconsistent nickel ore export restriction policy against Indonesia's commitment as a member of the WTO.

On October 17, 2022, the results of the final panel report from the WTO have come out. Which resulted in the Indonesian policy having violated Article XI.1 of the 1994 GATT and could not be justified by Article XI.2 (a) XX (d) of the 1994 GATT. The final decision of the WTO panel referred to in the dispute DS 192 WTO decided that the policy of banning exports and obligations and processing of mineral refining in the country have been proven to violate WTO provisions, so it can be said that Indonesia has lost the lawsuit against the nickel ore export ban case. However, it is considered that Indonesia still has the opportunity to appeal regarding the ban on nickel exports to the WTO. Which is where the government is of the view that the final panel report decision from the WTO, does not yet have an appropriate legal decision so there is still an opportunity to appeal.

The Coordinating Minister for Maritime Affairs and Investment Luhut Binsar Pandjaitan said the Indonesian government would respond to the defeat of the nickel export ban lawsuit at the World Trade Organization (WTO) with resistance. This resistance by filing an appeal. Regarding this, Luhut said, Indonesia was in the process of filing an appeal. However, the process will take quite a long time until 2028. President Jokowi emphasized that there should be no export of nickel ore to other countries. This is because since the decision to stop exports of nickel raw materials, Indonesia has pocketed revenues of up to IDR 300 trillion from only IDR 20 trillion previously. President Jokowi also stated that Indonesia would not be weak in submitting another appeal against the policy to stop nickel ore exports. Because Indonesia has ambitions to become a developed country and create lots of jobs. He also explained that there are many nickel processing industries in Europe. Therefore, when Indonesia banned nickel exports, European countries were affected. Starting from the closing of many factories to rising unemployment rates.

## **CONCLUSION**

Article 103 paragraph (1) jo. Article 170 of the Minerba Law in terms of an obligation for Production Operation Mining Permit Holders, Production Operation Mining Permits and Contracts of Work to downstream nickel. In the case of the European Union's allegation of Indonesia allegedly violating the principle of prohibition of quantitative restrictions in the provisions of Article XI: I of the GATT which stipulates that each contracting party that is a member of the WTO and is subject to the GATT is not permitted to adopt a policy of limiting quotas on the export or import of a product, that policy the ban on the export of nickel ore with grade <1.7% is a policy that does not conflict with the principle of quantitative restrictions, especially in terms of quota restrictions in Article XI:I GATT, but this is a qualitative limitation because the government requires an increase in the quality/grade of nickel itself i.e. >1.7% not the amount/quantity of nickel products required for export.

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