

## PROHIBITION OF EXPORTING NICKEL ORE TO THE EUROPEAN UNION IN INTERNATIONAL TRADE LAW PERSPECTIVE

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### Abstract

Indonesia accelerated the prohibition on nickel ore exports which previously was enforced in 2022 and accelerated to 2020. The European Union feels that it has been greatly disadvantaged from the Indonesian government's policies so the European Union sued to the WTO with complaint number Ds592. This study aims to analyze and explain Indonesia's dispute with the European Union regarding the prohibition on nickel ore exports to the European Union in 2020. This article aims to determine the challenges and efforts of the Indonesian government in dealing with nickel ore disputes with the European Union. The results of the research here show that Indonesia will not be afraid to face the dispute between Indonesia and Europe Union and Indonesia has prepared quite strong files in terms of these suits.

**Keywords:** Export Prohibition, Nickel Ore, European Union.

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### INTRODUCTION

The state is the most important legal subject in international trade law, it is well known that a state is a complex legal subject. Initially, the state was the only legal subject that had a sovereignty. Based on sovereignty, states have the authority to apply everything that enters or leaves their country or region (Adolf, 2009). The modern state gets a very large control in its economic sector, which also includes aspects of the private economy such as "conducting a trade both exported and imported, making investments both internally and externally, shipping, and the production of agricultural or agricultural products and banking aspect. Each country should enter into an agreement which among them also regulates economic and monetary issues that affect these interests together (Strike, 2004).

International trade is a part of the economic aspects and business activities which have recently developed very rapidly (Sood, 2011). It was explained that the trade was a fundamental freedom. "In freedom, a person who has a right of freedom in trade". A freedom that should not necessarily look at differences in ethnicity, race or religion, politics, and the legal system." Today's international trade is the strength of a prosperous, strong and welfare state sector.

"In 1980, Indonesia had implemented a development project that provided many benefits. In the success of foreign trade, it can improve the existing national economy. In improving its economy, Indonesia really needs support from other countries in terms of trade because it is able to improve the economic sector in Indonesia. In this situation, development

has progressed to the point where it can ratify the rule of law known as "international trade law." Because the relationship between the two countries is a result of the mutual need between these countries, it can be realized that the importance of regulating international trade.

In carrying out a trading activity, it creates a very large potential so that it can lead to misunderstandings, so that it can lead to a dispute. Generally, trade disputes against a country can occur any time because a country has implemented policies that can harm other countries and or conflict with committees or organizations in the WTO. In anticipating this, the WTO provides a forum for resolving disputes that arise which are contained in the Dispute Settlement Understanding (DSU) rules (Hatta, 2006).

The WTO has a Ministerial Conference and a General Council, which, among other things, function as the DSB. In addition, the WTO has a number of additional boards, such as the Council on Trade in Goods and the Council on Trade and Services, which, in accordance with WTO agreements, oversee their own fields. As a member of the World Trade Organization (WTO), Indonesia must comply with the provisions of the General Agreement on Tariffs and Commerce (GATT) negotiations in international trade. Indonesia must comply with the international trade provisions agreed in the General Agreement on Tariffs and Trade (GATT) negotiations by ratifying Law Number 7 of 1994 concerning Ratification of the Agreement for the Establishment of the World Trade Organization. As a new member of the World Trade Organization (WTO), Indonesia must ratify Law Number 7 of 1994 concerning Ratification of the Agreement for the Establishment of the World Trade Organization to fulfill the international trade clauses reached in the GATT negotiations on the WTO's freedom of choice. Nickel (ore) is a mineral rock in the manufacture of metallic nickel. Nickel is a chemical element that has the symbol NI and atomic number 28.

In Indonesia, there have been many improvements in the nickel manufacturing process, also known as smelter. A nickel smelter has been erected, and another 25 are under construction. The government has assessed the financial benefits of processing all nickel ore of varying quality in the country with 36 nickel smelters. The main reason for issuing a policy is due to the limited resources available.

The prohibition on nickel ore exports is not a new issue. Law Number 4 of 2009 regulates Mining Business Permits (*IUP*) and Special Mining Business Permits (*IUPK*), which regulate the processing and refining of minerals and coal from their mining products domestically. Domestic implementation must be completed within five years since the enactment of the law.

However, with the issuance of Government Regulation Number 1 of 2014 concerning the Implementation of Mineral and Coal Mining Activities, the government extended it for three years. The regulation states that contract holders must comply with Article 170 of the *Minerba* Law. According to regulations, they can supply a certain amount of raw materials and form processing products for about three years.

In Government Regulation Number 1 of 2014 it is explained that it is obligatory to carry out processing in the country, before exporting in the form of metal, this regulation results in quite a lot of losses in the nickel ore entrepreneur because some of these entrepreneurs have not been able to anticipate it. Until now, many entrepreneurs have stopped operating and eliminated mining activities due to the high cost of processing and refining the ore.

The government then amended Government Regulation Number 1 of 2017 concerning the Implementation of Mineral and Coal Mining Business Activities, which requires mining entrepreneurs to build a smelter or refinery within five years after changing their permit. As a result, the export prohibition will begin in 2022. Indonesia, on the other

hand, continues to prohibit the export of nickel ore, the export-related prohibition fell on January 1<sup>st</sup> 2020, then the related permit was revoked. This is in accordance with the Regulation of the Minister of Energy and Mineral Resources (*ESDM*) 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. The Indonesian government's efforts are only focused on securing Indonesia's nickel ore reserves and those in their possession. Indonesia plans to use its reserves for domestic purposes. In addition, Indonesia encourages the development of electric vehicles that use batteries because nickel is the most important battery component. The nickel ore in Sulawesi is loaded inside (bestekin, 2021).

On 22 November 2019, Indonesia received a Dispute Settlement Complaint Number (DS) 592. The European Union stated that Indonesia's action to prohibit nickel ore exports violated Article XI.1 of the General Agreement Tariffs and Trade (GATT), because it can disrupt and complicate the supply of nickel material to countries in the European region. In section 3.1(b) of the Countervailing Measures Subsidy Agreement, the applicable subsidies are inconsistent, as is the failure to specify what is stated in article X.1 of the GATT 1994. Therefore, the discussion in this article is focused on the formulation of the problem, namely, What are the challenges and efforts of the Indonesian government in dealing with the nickel ore conflict with the European Union?

## **MATERIALS AND METHODS**

This article uses a normative research method, the author also elaborates by using a comparative legal approach to legislation. The research in this article examines the challenges and efforts of the Indonesian government in dealing with the nickel ore conflict with the European Union.

## **RESULTS AND DISCUSSION**

1. The efforts of the Indonesian government in dealing with nickel ore disputes with the European Union, namely:

a. Steps taken by the Indonesian government

In preparing for this meeting, the Ministry of Trade and the Ministry of Foreign Affairs and other sectors in Indonesian mining were held on Tuesday, July 7<sup>th</sup> 2020 at the Office of the Ministry of Trade, DKI Jakarta. "The Indonesian government expects good results from the results of the consultation in order to improve commercial relations and provide convenience for business actors of the two countries." Indonesia is also in the process of producing Value-added products are no longer exported, and raw materials are no longer exported. The Indonesian government claims that tensions between the EU and Indonesia have not increased and the Indonesian government insists that there is no increase in tensions between Indonesia and Europe" (Izzati dan Suhartono, 2019).

In the case of the prohibition on the export of nickel ore, it is also intended to store and supply domestic needs so that they can be processed domestically and can increase valuable products so that they can become added value for products in Indonesia (Ministry of Trade, 2021). The government has also explained that Indonesia will not be afraid of this claim, because Indonesia will also sue the European Union in the case of domestic palm oil, the Indonesian government is still trying to prepare strong enough files to sue it, and also the Government of Indonesia will fight back by preparing the best lawyers in Indonesia, namely lawyers from Brussels, Belgium (Medcom, 2021).

b. Dispute Resolution Mechanisms adopted by Indonesia and the European Union

The steps that have been taken by the European Union are that they have filed a lawsuit against Indonesia over restrictions on the export of Nickel ore. The Deputy Minister of Trade

of Indonesia said that the government's effort to maximize the potential of state revenue is to process and purify mining materials, obtain information about the elements in the mining goods that have been produced.

Consequently, this is beneficial for the European Union. At the same time, the government claims that the consultations in a positive signal that the EU lawsuit can be settled without a WTO panel hearing (Puspita, 2017), and that the consultation process with Indonesia provides a strong argument to the European Union that the Republic of Indonesia (RI) has violate WTO commitments (Kompas, 2021).

According to the author's perspective, the dispute between Indonesia and the European Union related to the prohibition on exports of nickel ore to the European Union is the right step, because the prohibition is based on storing domestic needs, this is contained in a Ministerial 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 Concessions. In terms of policies made by the Indonesian government, the European Union feels disadvantaged regarding the prohibition on the export of nickel ore, so the European Union sues Indonesia to the WTO, but the Indonesian government does not remain silent in facing the lawsuit given by the WTO against Indonesia. Indonesia is also not aggressive in dealing with disputes because Indonesia has also prepared files and data that can be considered in the lawsuit filed by the European Union.

## **CONCLUSION**

The steps taken by the Indonesian government in dealing with the dispute over the prohibition on nickel ore exports to the European Union, namely the steps taken are that Indonesia will not be afraid even though the European Union has sued it and Indonesia has also prepared files and data that can consider the lawsuit filed by the European Union submitted by the European Union so that Indonesia can win the dispute by the Indonesian government, so far the mechanism that has been passed by the two countries is to take a consultation route.

The suggestions are first Indonesia should be able to resolve the dispute peacefully and still comply with applicable laws, and Indonesia should be able to hire lawyers from Indonesia, not foreign lawyers from Belgium. Second, Indonesia and the European Union should open a space for dialogue and accommodate the aspirations of every right by providing steps taken by each country to be able to solve the problems that are being faced.

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