

WTO Dispute Settlement Body Ruling on Export Ban of Indonesian Raw Nickel Ore: Private International Law Review

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Abstract

The decision of the WTO Dispute Settlement Organs regarding the ban on the export of crude nickel by Indonesia has significant implications for international trade law. This ban was opposed by the European Union because it could hamper the development of their electric-powered automotive industry which requires nickel ore as a raw material for electric vehicle batteries. Provisions in the General Agreement on Tariffs and Trade (GATT) allow export restrictions in certain situations, such as for the protection of health, safety, sanitation, or the preservation of natural resources. However, import and export bans and other non-tariff measures are not permitted. The WTO provides exceptions to quantitative restrictions that meet certain criteria. In this dispute, Indonesia was declared to have violated GATT provisions by the WTO panel. The impact of this decision is important for Indonesia, because nickel is a non-renewable natural resource and is very much needed in the country's development. Indonesia's defeat in this dispute could have a significant impact on the supply of nickel ore and its domestic use. Developed countries with high consumption already use most of the world's natural resources, while developing countries use only about 10%. WTO decisions can also affect international trade policies and relations between countries. Indonesia's defeat could reduce state revenues, discourage investment, and affect relations with the European Union. In addition, this policy may also affect the electric power automotive industry and the development of electric vehicles in the European Union. Therefore, this decision has broad and important implications in the context of international trade and bilateral relations.

Keywords: Prohibition of raw nickel exports; European Union; International law; WTO; Indonesian Policy



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INTRODUCTION

The export of raw nickel is one aspect of international trade which is governed by various rules and regulations. Nickel is a commodity that is urgently needed by several countries as a raw material for manufacture, but on the one hand, Indonesia is a country that has considerable resources for raw nickel. So that the state needs independence to manage the raw nickel itself. Therefore, Indonesia does not need to rely on other countries in managing raw nickel. So the president banned the export of raw nickel because according to him it was more profitable to sell nickel that had been processed than nickel that was still in a raw state. However, because European countries disagreed regarding the decision made by the Indonesian government, therefore through the WTO, the European Union filed a lawsuit against Indonesia in 2019. The panel of the WTO Disputes Settlement Body (DSB) was formed on 29 April 2021 and in October 2022 The Government of the Republic of Indonesia reports that Indonesia has lost a lawsuit filed by the European Union at the Dispute Settlement Body. The defeat was the aftermath of efforts to maintain sovereignty over the ownership of natural resources in the form of nickel.

As noted, the results of the WTO DS 592 dispute panel decision came out on October 17, 2022. Its contents: Decide that the export policy and the obligation to process and refine nickel

minerals in Indonesia are proven to violate WTO provisions Article XI.1 GATT 1994 and cannot be justified by Article XI .2 (a) and XX (d) GATT 1994. The final panel report also contains a panel rejecting the defense submitted by the Government of Indonesia regarding the limited number of National Nickel Reserves and to implement Good Mining Practice (Environmental Aspects) as the basis for the defense. As a result, based on the decision issued by the WTO, Indonesia must remove the policy regarding the ban on raw nickel exports. So this will affect the nickel natural resources. Because Indonesia is a very large producer in exporting raw nickel. Therefore it will greatly affect its resources. Because compared to exporting raw nickel, it is more profitable and saves natural resources if it has been processed first. However, according to the WTO, Indonesia is not yet ready in terms of facilities to process raw nickel.

WTO itself is an organization that directs, coordinates and supports the course of international trade. The WTO is the product of connections made through agreements and negotiations in nearly every country on earth, and helps define global demands. The World Trade Organization currently has 164 members. 117 of them are still distinct developing regions or countries. Each party related to this matter has the right to voice their ideas in the forum. Based on this information, the WTO decision-making process operates under a consensus norm in which each member country has the choice to accept or reject an agreement. Indonesia itself began to join as a member of the World Trade Organization through the process of ratification of Law no. 7 of 1984 concerning Ratification of the Agreement on Establishing the World Trade Organization/WTO (Agreement on the Establishment of the World Trade Organization). Indonesia itself is required to carry out the harmonization of national laws and regulations as an internal consequence in accordance with the results of the WTO agreement which has internal and external effects. The external consequence is that Indonesia is obliged to comply with all agreements made in the WTO forum.

Problem Formulation: What are the rules and regulations governing the export of crude nickel in international trade law? What are the implications of the WTO Dispute Settlement Body's decision on the dispute over the banning of crude nickel exports by Indonesia against international private law? How does the WTO Dispute Settlement Body's decision affect the dispute over the ban on exports of crude nickel by Indonesia on international trade policies and relations between countries?

RESEARCH METHODS

The research method used in this writing is normative legal method. Normative legal research is carried out by way of literature study on primary legal materials, such as laws and regulations and secondary legal materials, such as textbooks and legal journals related to themes written by the author.

RESEARCH RESULTS AND DISCUSSION

Implications of the WTO Dispute Settlement Body's decision on the dispute over the banning of crude nickel exports by Indonesia against international law.

1. Regulations and rules governing the issue of raw nickel exports in international trade law

The ban on raw nickel exports by the Indonesian government has received opposition from countries that are members of one intergovernmental and supranational organization, namely the European Union. This conflict occurred because this prohibition could hinder the development of their industry, where they are currently developing the electric power automotive industry and need nickel ore as a raw material for making electric vehicle batteries.

The GATT provisions allow for export restrictions in certain urgent situations, such as protection of health, security, sanitation or preservation of natural resources, and others. GATT provisions governing quantitative restrictions or prohibitions on quota restrictions, are listed

in Article XI Paragraph (1) of the General Agreement on Tariffs and Trade (GATT) 1994, which reads: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

The rules above emphasize that the restrictions or restrictions that are permitted to be applied are in the form of import duties, taxes or other levies. Meanwhile, each WTO member country is not permitted to impose a policy of restriction or prohibition regarding quotas, import or export licenses and other similar and non-tariff measures (such as quantitative restrictions or non-tariff barriers). Apart from that, there are also examples of other actions referred to in this article, such as import and export prohibitions, minimum price systems for imports or exports, state-trading operations and import and export restrictions.

However, each WTO member is permitted to carry out a quantitative restriction if it can meet the exclusion criteria as the justification stated in Article XX of the General Agreement on Trade (GATT) 1994 which reads: This limitation will not deviate from the principle of non-discrimination and does not apply to increasing exports or protecting industry domestic; and j) the agreement sets out the steps to be taken to ensure the availability of goods and services essential for the acquisition or distribution of products in general or limited local supply. Such measures, which are inconsistent with the other provisions of this Agreement, shall be terminated as soon as the conditions giving rise to them no longer exist.

In addition to Article XX in Article XI Paragraph (2) of the General Agreement on Trade (GATT) there are also provisions governing the justification reasons which read: Provisions in paragraph 1 of this Article do not apply to following: (a) Export bans or restrictions that are temporarily imposed to prevent or alleviate critical foodstuffs or other products that are important to the exporting country; (b) Prohibitions or restrictions on imports and exports necessary for the application of standards or regulations for the classification, rating or marketing of commodities in international trade;

In paragraph (2) a there are 3 elements that can be used as exceptions in carrying out export restrictions such as "export bans or restrictions imposed temporarily to prevent or mitigate" these words explain that each member country can take remedial action before a shortage crisis occurs, which then becomes the second element, namely the "crisis of foodstuffs or other products" which can allow a country to impose temporary export restrictions in order to meet the relatively large increase in domestic prices for food ingredients due to price increases in other countries, whether affecting food ingredients or other products. Then the third element is "important for the exporting country" this indicates the assessment of the importance of a product taken into account by the exporting country.

In Paragraph (2) b there is an indication that explains the export restrictions required in the application of standards or regulations for the classification, assessment or marketing of commodities in international trade is permissible, as long as they do not exceed what is required and do not have an impact that is too restrictive on trade.

2. Implications arising from the rejection of Indonesia's lawsuit

Nickel is a natural resource that is very important for the development of a country. However, it is unfortunate that nickel is also a non-renewable natural resource. So it really needs restrictions on exporting it, because on the other hand nickel ore producing countries also need these resources, just like Indonesia. Indonesia is one of the largest nickel ore producers, and is one of the world's largest nickel ore exporters. According to the data, in 2022

Indonesia will produce 1.6 million metric tons, followed by the Philippines which will only produce 330 thousand tons.

For total exports, it is at 777,411.8 tons per year in 2022. So that it can be said that the amount of nickel ore exports carried out by Indonesia is almost half of Indonesia's production, and the total is quite large because every year the number of exports will increase as the number of exports increases. foreign countries' need for nickel ore, moreover what is exported is nickel ore which is still in raw form. Therefore, with Indonesia losing to a lawsuit filed by the European Union, this can have a very significant impact. Because Indonesia must continue to export nickel ore which is very large and it will increase every year, due to the rise of electric powered vehicles. So that this can affect Indonesia's supply of nickel ore, and also affect Indonesia because the volume for utilization that is carried out separately by Indonesia will also decrease over time.

Developed countries with high and wasteful consumption patterns have used more natural resources than developing countries. Based on the capitalist economic system and supported by technological advances, the population of developed countries, which account for 1/3 of the total world population, consumes around 87 to 90% of the world's resources. Developing countries with many times more population consume only about 10% of the world's resources.

The influence of the WTO Dispute Settlement Body's decision on the dispute over the ban on exports of crude nickel by Indonesia on international trade policies and relations between countries

On October 17, 2022, the final WTO panel report stated that Indonesia was proven to have violated WTO provisions Article XI.1 GATT 1994 in a dispute registered in dispute settlement (DS) 592. This rule prohibits member countries from imposing trade restrictions other than tariffs, taxes and other duties. However, Indonesia is still trying by filing an appeal and will not back down from this trial as stated by the President of the Republic of Indonesia at the Mandiri Investment Fair event in Jakarta some time ago he said "So I told the Minister not to look left and right. Being sued at the WTO, continues, keep losing, because this is what will jump a developing country into a developed country, let alone our country. Don't think our country will become a developed country if we are afraid of releasing the raw materials that exist in our country,"

However, with Indonesia's defeat in the lawsuit filed by the European Union against Indonesia, it greatly affected Indonesia's state income. According to data released by Kompas, the profit that Indonesia gets when exporting raw nickel ore is only in the range of Rp. 15 trillion, but when downstreaming and exporting nickel in a finished state, Indonesia's income increased significantly which, according to Indonesian income data, increased to RP. 360 Trillion. So if Indonesia's policy regarding the banning of raw nickel ore exports is canceled, then Indonesia will experience a very significant decrease in revenue. Not only that, the impact of the export ban can also affect investment, with the cancellation of this policy, investors who want to invest with Indonesia will switch to other countries. On the other hand, this can also affect the relationship between Indonesia and the European Union. Because it is very clear that with the enactment of this policy the one who feels disadvantaged is the European Union, as it is well known that Europe is one of the parts that produce the largest vehicles, especially in producing electric vehicles. So that this policy can loosen relations between the two countries. Therefore, there are a lot of influences that can occur with Indonesia's defeat in the WTO, and this has a very big impact on Indonesia, both in terms of state income and relations between the two countries.

CONCLUSION

The decision of the WTO Dispute Settlement Body regarding the dispute over the ban on exports of crude nickel by Indonesia shows that this action violates international trade provisions regulated in the GATT. The export ban is contrary to the principles of non-discrimination and non-tariff restrictions described in the trade agreement. The implication of this decision is that there will be a significant impact on the Indonesian economy, particularly in relation to state revenues and investment. In addition, this decision may also affect the relationship between Indonesia and the European Union, particularly in the context of trade and the electric power automotive industry. Therefore the steps that need to be looked at are as follows: Reconsidering the crude nickel export ban policy: Indonesia needs to conduct an in-depth evaluation of the crude nickel export ban policy. The negative effects arising from WTO decisions need to be taken into account, including the reduction in state revenues and the impact on investment. The government needs to find policy alternatives that can fulfill domestic interests while maintaining adherence to international trade rules. Encouraging the downstream nickel industry: To reduce dependence on raw nickel exports, Indonesia can encourage the downstream nickel industry. By processing nickel into finished products such as electric vehicle batteries, Indonesia can increase added value and state revenue. This step can also strengthen the competitiveness of the domestic industry and reduce dependence on raw commodity prices. Strengthening cooperation with the European Union: Despite the disputes at the WTO, it is important to maintain good relations with the European Union. Indonesia can establish dialogue and negotiations to reach mutually beneficial agreements, including cooperation in the electric power automotive industry. Improved communication and economic cooperation can help rebuild trust between the two parties. Economic diversification: To reduce vulnerability to changes in international trade policies, Indonesia needs to promote economic diversification. Developing sectors other than nickel, such as tourism, manufacturing, technology and agriculture, can reduce dependence on one commodity and increase the country's economic resilience. Strengthening international regulations and law: Indonesia needs to strengthen the legal and regulatory framework for international trade to ensure that policies are taken in accordance with applicable international rules. This involves strengthening capacity in terms of litigation and handling international trade disputes so that they can face the challenges of the future.

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