

Does the negotiation process on nickel export between Indonesia and the European Union provide benefits?

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Abstract. Nickel is one of the Indonesia's potential raw materials which export to the European Union (EU). Indonesia stopped exporting raw material of nickel to the EU on the grounds that Indonesia wanted to be linked downstream to provide value added from exported goods and create new jobs. Nickel which has many benefits makes the European Union act to make a lawsuit against Indonesia regarding the termination of raw nickel exports through the World Trade Organization (WTO). The purpose of this research was finding out the reasons for Indonesia to stop exporting raw nickel to the EU and finding out the reasons for the EU to sue Indonesia, finding out the negotiation process and the causes of Indonesia's defeat of the EU lawsuit at the WTO. This research was conducted in period March - May 2024 by using the literature review approach method through the study of information from secondary data to answer the purpose of research. The results showed that there was a split in the relationship that developed because of the European Union's decision to ban palm oil exports. Indonesia felt aggrieved by this, so it took the policy to ban nickel exports as a "retaliation". Negotiations said that the value of exports was increased by the requirement that nickel imports from Indonesia must be processed through smelters into semi-finished goods before being exported to the EU. The EU disagreed because such a regulation could impair the ability of existing industries to compete, as the supply of raw materials for nickel products would be reduced. The WTO granted the EU's lawsuit because Indonesia is still unable to implement nickel to be linked downstream, supported by the existence of Indonesian government regulations that contradict WTO regulations related to trade. The temporary result of the EU lawsuit trial against Indonesia is (win-lose). It is expected that the Indonesian government can strengthen smelters for sustainable development and can support nickel be linked downstream in the future. Indonesia must also strengthen negotiations in the form of cooperation to support the nickel export program in the form of semi-finished and finished goods.

1 Introduction

International trade is one of the economic activities that has experienced and is still experiencing tremendous development. International trade can be considered as a type of borderless transactional activity. International trade, commonly referred to as exports and imports, is an activity in which a country exchanges commodities and/or services with other countries [10]. International trade has many benefits, especially for developing countries like Indonesia [26]. This can be explained by the increasingly widespread flow of capital, labor, goods, and services between countries. Trade in services, licenses and franchises, intellectual property rights, and other international business activities can all generate economic activity. According to Schumpeter (2000) Economic growth is a spontaneous and continuous transformation, not a gradual transformation. National income and per capita income are strongly correlated with economic growth [25]. The welfare of the Indonesian people can be improved by utilizing natural resources effectively, one of which is by conducting international trade.

Livelihood of the Indonesian people can be improved by effectively utilizing natural resources, one of which is by conducting international trade. Indonesia is the largest nickel producer in the world. Data from the United States Geological Survey (USGS) report notes, as much as 50% of the world's nickel comes from Indonesia, in 2023 Indonesia is in first place as a producer of nickel metal with nickel production reaching 1.8 million metric tons per year. According to CNBC data, Indonesia is listed as the largest nickel producing country in the world. In 2021, Indonesia recorded an estimated 30% of nickel production in the world, which is equivalent to 1,000,000 metric tons with total reserves reaching 174 tons. This caused Indonesia to be ranked the first country to produce the largest nickel ore in the world, ranked second by the Philippines with 420,000 metric tons of nickel ore (16%), Russia 250,000 metric tons (10%), New Caledonia 220,000 metric tons (8%) and the remaining 36% combined from other countries or equivalent to 958,000 tons. Nickel exports in the world's main destination is the European Union, because the need for nickel in the European Union is very high, including industrial needs. Indonesia

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is one of the largest nickel exporters to the European Union, so its factory production supply chain is highly dependent on Indonesia.

In 2017, Indonesia still exported nickel in raw form and its value only reached 3.3 billion USD, said the Minister of Investment and BKPM Mr Bahlil Lahadalia. Then it increased in 2021 to reach 21 billion USD and in 2022 reached 30 billion USD [20]. According to BPS, the number of exports to the European Union has increased significantly from 2020-2021, inversely proportional to the price which is always volatile.

Indonesia exported raw nickel 4-6 years ago the selling value was only 1.1 billion USD. If Indonesia downstream in 2021, the export value will reach 20.9 billion USD and almost 19 times the previous price in 2022 when the price of nickel soars to 30 billion USD.

Over time Indonesia stopped exporting raw goods in the form of nickel to the European Union on the grounds that Indonesia wanted to downstream to provide added value through tax sector revenues and create jobs. The nickel downstream program was carried out by Indonesia through Permen of ESDM number 11 of 2019 "the rules of the nickel ore ban are enforced". This will also be done by Indonesia with other natural resources such as bauxite, copper, tin, oil palm fruit and others [7]. Indonesia will export nickel in the form of semi-finished or finished products [5].

Down-stream program is the main reason for the European Union, causing a lawsuit against Indonesia regarding the suspension of nickel exports through the World Trade Organization (WTO). European Union is very disadvantaged by this, because it will have an impact on the textile industry whose main raw material is nickel. If this continues to happen to the European Union, it will affect the welfare of employees. The World Trade Organization (WTO) accepted the EU's lawsuit against Indonesia [38]. If Indonesia loses the EU lawsuit at the World Trade Organization (WTO), it will have a negative impact on economic development. Indonesia will compensate for the losses incurred by the European Union and receive sanctions, not only that long-term losses regarding investment potential and Indonesia will return to exporting nickel ore to the European Union. The objectives of this research are (1) to find out the reasons for Indonesia to stop exporting raw nickel to the European Union (EU) (2) to find out the causes of Indonesia's defeat of the European Union lawsuit at the World Trade Organization and (3) to find out the negotiation process between Indonesia and the European Union through the World Trade Organization regarding nickel exports. By the results of this study could serve as a basis for readers to help review the court case between Indonesia and the European Union.

2 Research method

2.1 International Trade Policies

International trade, first recognized in Europe, developed in Asia and Africa. Member states of international trade make laws that are binding on

individuals, companies, and events in the member state's territory [38]. These members also form international trade organizations such as GATT, WTO, ITO, UNCTAD, and ICC. One of the multilateral cooperation that Indonesia joined is the World Trade Organization [37].

World Trade Organization (WTO) was established in 1995, operating as an international trade organization with five main categories: rules on non-discrimination, market access, unfair trade, trade liberalization, and harmonization of national legal instruments, excluding issues related to tariffs [35]. As one of the founding members of the World Trade Organization (WTO), the Government of Indonesia has signed the Agreement Establishing World Trade Organization through Law 7 of 1994, which aims to assist producers, exporters, and importers in trade activities [36].

Emerging countries feel that the World Trade Organization gives developed countries too much freedom to regulate trade, while developing countries demand greater protection for resource management and domestic industrial development [37]. Developing countries feel that the World Trade Organization gives developed countries too much freedom to regulate trade, while developing countries demand greater protection for natural resource management and domestic industry, with agreements that grant full sovereignty [40].

2.2 International business negotiation

Literally, bargaining or negotiation is the same thing. The act of negotiating can be understood as two parties communicating with each other in an effort to reach an agreement. Negotiation has two key meanings: (1) the process of bargaining based on a give-and-take scheme to reach an agreement between one party and the other party to the negotiation; and (2) a middle way of resolving a dispute through negotiation between the negotiating parties [15].

International business personnel around the world face new obstacles because of the interaction between two parties with diverse cultural perspectives during international business negotiations [38]. More difficult than dealing with partners from the same culture, it is more testing to negotiate with parties from different cultures. International negotiations generally involve different perspectives of the agreement [8]. Some from other countries will tend to want a one-time negotiation to reach an agreement on what is to be gained and what is beneficial. It can be concluded that it cannot be underestimated in terms of cultural differences that can affect the negotiation process that takes place [30].

2.3 Nickel export

Nickel is a non-renewable natural resource. Indonesia and other developing countries rely heavily on copper and nickel for the development of domestic infrastructure in their countries. Nickel plays an important role in industrial production such as stainless steel and stainless [12]. According to Wood Mackenzie,

world nickel demand will exceed 4 million tons by 2040. It is estimated that in 2040, stainless steel demand will be 1.9 MT, compared to 1.65 MT in 2019 [6].

Making Indonesia export to various countries, which allows increased production that stimulates economic growth and can be anticipated to stabilize or contribute significantly to economic growth [13].

A domestic trade surplus can improve economic performance, which is influenced by the value of exports being greater than the value of imports [29]. The mining industry is considered resilient enough to withstand economic shocks and can be relied upon to help the country's economic recovery in the event of disasters related to the world economy [20].

2.4 European Union (EU)

The European Union (EU) is an intergovernmental supranational organization made up of countries in Europe. A strong economy, a prosperous population, respect for language and culture, and the use of the euro as a common currency among all member states are among the goals of the European Union [9].

Since 1993, countries from the European Union have developed cooperation with Indonesia in cross-sectoral policies. Some of them deal with climate, environment, health, law and migration. Political and security cooperation includes the organization of political dialogues and special dialogues on human rights. Combating extremism and terrorism [27].

Economic cooperation includes export-import and investment with European Union member companies [4]. Cooperation in the field of development by providing development assistance to European Union members, while socio-cultural cooperation includes people to people approaches through educational offers, concrete cooperation in the field of environment and climate change.

2.5 World Trade Organization (WTO)

World Trade Organization (WTO) is a global body that, through the agreement of its member countries, establishes rules governing international trade. Discussions known as the "Uruguay Round" of previous negotiations under the "General Agreement on Tariffs and Trade" (1986-1994) gave rise to the World Trade Organization in 1995. According to the World Trade Organization, its goal is to increase global trade by lowering or eliminating tariffs and other trade barriers [32].

During the 27 years of the World Trade Organization's existence, many cases have been received reaching 614 dispute cases and resolved cases of more than 350 dispute cases with the Dispute Settlement system and making the World Trade Organization one of the international organizations that has an active dispute settlement system. Some of the cases that have been examined by the World Trade Organization include: Indonesia with Measures Relating to Raw Materials / DS592, Indonesia with Measures Concerning the

Importation of Bovine Meat / DS506, Indonesia with Safeguard on Certain Iron or Steel Products / DS490 and many more cases that have been studied by the World Trade Organization [14].

The benefits for countries joining the World Trade Organization include promoting fair and orderly free trade, removing barriers that prevent developed countries from selling their goods and services to developing countries, settling ongoing trade disputes, and promoting the flow of trade between countries by lowering and removing various barriers that can hinder the flow of free trade [20]. The World Trade Organization also has shortcomings including the emergence of very intense trade competition and tends to be detrimental to some countries, the involvement of foreign companies to the extent of controlling the trade sector and the products of developed and developing countries become a place to compete [33].

3 Method

The research is focussed on Indonesian Nickel Exports, this is supported by Indonesia is one of the world's largest nickel producers engaged in mining. Accessible information regarding the cessation of nickel exports to the European Union (EU). This paper uses a qualitative approach and normative and descriptive research techniques, by referring to laws, regulations, and GATT articles to examine the regulation of mineral and coal mining in Malaysia, especially amendments to regulations and agreements.

Data type based on the source used in this study is secondary data, which is a research data source obtained by researchers indirectly by looking at the object under study through intermediary media obtained and recorded by other parties, namely reports from the Ministry of Agriculture, BPS (Central Statistics Agency), CNBC Indonesia, previous research journals, and other sources that support and can be trusted.

Literary literature review was used to collect data. Data was collected through analysis of trade statistics, review of legal documents and collecting from reliable sources such as trade reports, World Trade Organization documents, policy statements and related articles. This is in line with the theory put forward by [3], [7], and [1]) which states that library research is research that uses various types of library materials, such as books, historical records, magazines, documents, and so on, to collect information and data [3]. Organizing time for procedures, preparing the necessary equipment, reading information sources, and making notes for research materials are the four stages in literature study [1].

4 Results And discussion

In 2017, Indonesia still exported nickel in raw form and its value only reached 3.3 billion USD, said the Minister of Investment and BKPM. Then it increased in 2021 to reach 21 billion USD and in 2022 reached 30 billion USD [20]. According to BPS, the number of exports to the European Union has increased significantly from

2020-2021, inversely proportional to the price which is always volatile.

Demand for nickel is getting higher every year as well as the domestic production of nickel is also getting higher. This makes Indonesia realize and think to make nickel export policy no longer in the form of raw materials but semi-finished materials and finished goods. Indonesia uses its domestic nickel reserves, estimated at only 700 million tons, as the main justification for down-stream. The government's plan to encourage the acceleration of the electric car program includes the acceleration of the export ban [37]. Indonesia's zero emission program aims for a green transformation by 2050, driving nickel export demand. By 2040, the program targets 6.2 million tons per year. Indonesia focuses on nickel down-stream, which requires domestic companies to export.

Providing value to the raw nickel products that Indonesia will produce, down-stream is essential to increase employment and reduce the current account deficit. According to data from the Central Statistics Agency (BPS), there were 2.67 million unemployed people in Indonesia as of August 2020. In Indonesia, there are 9.77 million unemployed members of the labour force. The latter figure represents 14.28% of the 203.97 million working-age population, and the imbalance in the labour balance persists to this day. A range of 1.0% to 2.0% of GDP (Gross Domestic Product) is what is projected by Bank Indonesia. According to [17] said that Indonesia is also another reason for stopping nickel exports to the European Union wanting revenge because of a law issued by the European Union that discriminates against Indonesian palm products. The European Union asked Indonesia to stop using palm oil by 2030 [21].

Indonesia's nickel reserves are expected to be depleted within 7.3 years from 2022 due to continued mining. To know this issue, Indonesia has established regulations banning nickel exports, in accordance with Minister of Energy and Mineral Resources Regulation 11/2019 and Regulation 25/2018. Regulations banning nickel exports in Indonesia were made to maintain nickel reserves as well as encourage the down-streaming of nickel commodities, thereby providing added value to exports.

Government of Indonesia considered a few additional factors, when making its assessment of the nickel export ban policy: Increased domestic demand for nickel due to advances in smelter technology in Indonesia. By 2024, Indonesia will have 53 smelters, up from a total of 21 smelters at present. It is expected that there will be fluctuations in domestic nickel demand as raw material for smelter processing. When processed into finished or semi-finished goods, nickel's high quality and low selling price allow Indonesia to make significant profits from nickel exports in raw form [17]. For another reason, to secure domestic nickel ore supplies to meet the needs of smelters in Indonesia, the government stopped nickel exports.

Policies related to the nickel export ban are believed to encourage the growth of the domestic downstream sector for nickel-related products. Expanded electric

battery industry is highly dependent on nickel, therefore the Government of Indonesia has set a goal to increase investment in this sector [18]. Based on the factors mentioned above, the Government of Indonesia developed a nickel export ban policy focused on the growth of the domestic industry [38]. Indonesia seeks to benefit from this sector by relying on the growth of the downstream nickel industry to increase the value of processed nickel products, provide employment, and lower carbon emissions. For every opportunity there is a challenge, Indonesia faces environmental challenges due to nickel production, including increased greenhouse gas emissions, deteriorating air and water quality, damage to biodiversity, and the need for more than 1,700 liters of water to produce one kilogram of limonite-type nickel laterite.

European Union sued Indonesia at the World Trade Organization with lawsuit number DS592 related to the nickel export ban, giving several reasons including the disconnection of nickel raw materials for companies in Europe, especially in the steel industry. There is excess steel capacity and the margins received are very small. Since Indonesia is the main exporter of nickel beans to the European Union, the ban on the export of raw nickel beans has caused the price of raw materials to soar [23].

Each disputing country must comply with World Trade Organization rules and follow the established process for dispute settlement in international trade and respect the decisions that have been made. From the conflict between the European Union and Indonesia, the World Trade Organization considers that Indonesia makes inconsistent restrictions in its provisions, lack of implementation responses after the resulting decision [40]. Downstream industry concept in Indonesia is considered immature, which is the basis for World Trade Organization the to win a lawsuit from the European Union. The Indonesian government is also considered unable to explain the policies taken to support industrialization in Indonesia. European Union's first lawsuit against Indonesia at the World Trade Organization ended in defeat, but Indonesia remained eager and optimistic to win so Indonesia appealed to the World Trade Organization [36]. Indonesia has the right to decide its policies regarding the export of its natural resources. Supported by the determination to advance Indonesia from a developing country to a developed country [40].

The negotiation style that occurred in the negotiation process between the European Union and Indonesia was assertiveness. This is supported because the European Union said no when Indonesia stopped exporting to this country because it still really needed nickel commodities, as well as Indonesia which no longer exports nickel in raw form and must go through a processing process before being exported. Another style is competing, it appears that the European Union is concerned with its domestic needs at the expense of Indonesia becoming a resource for European Union countries [40]. In other words, Indonesia must be able to transform its abundant natural resources from raw materials into semi-finished and finished goods, and

Indonesia can achieve a change from a developing country to a developed country.

The rationale that supports the negotiation style used by the European Union by using its strength to get the results it wants through the World Trade Organizations, exploiting the weaknesses of the other party, weakening the other party to surrender and can allow the European Union to use threats, manipulation and strategic tactics to gain victory [12]. Where in its implementation, the World Trade Organizations considers that Indonesia's downstream program has not met the standards and is considered that downstream in Indonesia is not feasible to implement. While Indonesia thinks that through its downstream program, Nickel can be exported in semi-finished form through smelters which will increase the selling value which also has an impact on employment in Indonesia [38].

Indonesia and the European Union are not concerned with each other's interests or pleasure, the negotiation approach is distributive and focused on building short-term relationships at the expense of each other. Indonesia does not care about the interests and satisfaction of the European Union regarding nickel exports being stopped will have a very bad impact on the European Union economy, for the sake of the interests of the Indonesian state which is carrying out the down-stream of natural resources such as nickel to satisfy the interests of the Indonesian people who will get higher employment due to down-stream [38]. Indonesia in the implementation of downstream sacrifices the European Union which will experience a massive economic decline. The EU also does not care about Indonesia which is conducting down-stream, the European Union is suing Indonesia through the World Trade Organizations to get satisfaction unilaterally. On the other hand, the European Union should support Indonesia so that it can downstream and become a developed country [38]. However, the European Union is sacrificing Indonesia to continue exporting raw nickel so that the economy in the remains good and jobs remain available. If the European Union fails in its lawsuit, then many of the companies that process raw nickel will be closed and many workers will be laid off, and the need and energy crisis in Europe will increase [40]. From the negotiations that took place, it can be concluded that the behaviour of the two countries includes aggressive behaviour where the two countries do not want to give up and always urge how long the two countries must wait for the final decision of the negotiation process to take place.

The disadvantage that Indonesia will experience, if it loses on appeal is that Indonesia cannot refine domestically, meaning that the smelters that Indonesia has built are not used, so that Indonesian jobs are not opened. If reviewed, Indonesia's intention is not to ban exports, but Indonesia wants to increase the value (edit value) of nickel exports. Other losses experienced by Indonesia include smelter investment in Indonesia will stop, Indonesia must compensate the E.U. for being considered detrimental because exports are stopped and the electric battery industry whose infrastructure has been prepared will stop. If this all happens, then

Indonesia's losses will double and European Union will be even more eager to seize Indonesia's natural resources by taking refuge behind the WTO whose members are mostly from European Union states.

5 Conclusion and suggestion

European Union's complaint against the policy of stopping nickel exports to the European Union because it can prevent companies such as stainless companies from competing more competitively and this will affect the economy of the European Union country. European Union asked Indonesia to stop using palm oil by 2030. The settlement of the lawsuit is through a political-diplomatic process, namely negotiations and consultations through the World Trade Organization (World Trade Organization). Results of the first lawsuit hearing between the E.U. and Indonesia resulted in a win-lose (Win for the European Union and Lose for Indonesia). This is supported by the World Trade Organization because Indonesia is still not optimal in carrying out downstream programs, the Government of Indonesia is also considered unable to explain the policies taken to support industrialization in Indonesia. But Indonesia's enthusiasm to oppose the European Union did not stop at the win-lose result, Indonesia appealed to the World Trade Organization. International organizations, particularly the World Trade Organization, should prioritize promoting fairness and equality in trade practices. The World Trade Organization should aim to resolve disputes effectively and ensure that all parties adhere to agreed-upon trade rules. Strengthening the capacity of international bodies to address trade disputes can help in preventing future conflicts and fostering a more balanced global trading system.

International bodies should prioritize promoting equality, especially in the field of trade. World Trade Organization (WTO), which is established now, can fulfill the international community's goal of resolving cases that may lead to disputes in the future.

Suggestions for the Indonesian government should be to invest in and improve smelter infrastructure to encourage the sustainable development of the nickel industry. This will support downstream processing of nickel, add value to raw materials and potentially reduce trade disputes. The Indonesian government could also develop and support policies that encourage the production of semi-finished and finished nickel products. This strategy could help comply with international trade regulations and improve Indonesia's competitive position in the global market.

Indonesian lawyers can strengthen their negotiating capabilities in the World Trade Organization by fosterage international cooperation and building a strong framework for trade agreements. This will assist in better representing Indonesia's interests and addressing trade challenges more effectively. Indonesian lawyers can also provide clear explanations and documentation on policies related to industrialization and downstream processing. Increasing

transparency can help address concerns raised by international bodies and ensure compliance with global trade norms.

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