

# IMPACT ON THE IMPLEMENTATION OF INDONESIAN GOVERNMENT POLICY ON THE BAN ON NICKEL ORE EXPORTS TO THE EUROPEAN UNION AFTER THE DEFEAT IN THE DISPUTE *WORLD TRADE ORGANIZATION* (WTO)

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## Abstract

Indonesia is known as a country with enormous potential for nickel reserves. Total nickel resources in Indonesia are estimated at 17.7 billion tons of ore and 177.8 million tons of metal. Regarding the ban on nickel exports with levels below 1.7 percent imposed by the Indonesian government starting January 2020, the European Union responded with restrictive measures on nickel imports by Indonesia. This decision was triggered by concerns that a ban on nickel ore exports from Indonesia could disrupt the supply of important raw materials for processing industries in the European Union. Finally, as a result of trade tensions between Indonesia and the European Union regarding the ban on nickel exports. The European Union decided to file a lawsuit with the World Trade Organization (WTO). Indonesia's defeat in the trial decision by the DSB-WTO Panel gave rise to implications for Indonesia. The type of research used in writing this research was normative legal research. Indonesia's defeat in the trial decision by the DSB-WTO Panel gave rise to implications for Indonesia. One of them concerns the legal implications that Indonesia has a burden of state responsibility in the sense of liability which means responsibility in law and can be realized in the form of civil liability, then the obligation to pay compensation for disputes, even though Indonesia has submitted an appeal, this responsibility will continue to exist and remain until the appeal decision is issued.

**Keywords** : International Trade, Nickel Ore, WTO, European Union, Indonesia

## INTRODUCTION

Trading is connected activities with transaction Good goods and also services that take place within limit region a country and can widen until pass boundaries national . Trade aiming For move right ownership on product or service service certain with Meaning For accept reply service or change make a loss in accordance agreement . Since January 1 , 1994, Indonesia be one of member *World Trade Organization (WTO)* . As part from commitment the Indonesia follow and obey

the terms and conditions stated in agreement general rates and comply the terms and conditions stated in agreement general and trade that is *The General Agreement on Tariffs and Trade (GATT)*. Improvement This inaugurated with to validate Constitution Number 7 of 1994 concerning Agreement Formation Organization World Trade is becoming umbrella law for involvement Indonesia in framework global trade .<sup>1</sup>

Nickel metallic own appearance white silvery and shiny . The most common

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<sup>1</sup>Ferdinand Jason, Rina S Shahrullah, Elza Syarief: Supremacy Journal, "*Implications of the World Trade Organization Decision on the European Union's Ban on Indonesian Nickel Exports*" Volume 14 Number 1 Year (2024) pages 1-2.

element fifth on earth and distributed in a way wide in the earth's crust and core. Iron and nickel both of them along become element in meteorites. In water and soil, nickel can found in a way natural. This is nutrition important for plants too. While crust earth contains 80 parts per million nickel, earth's core especially made from alloy nickel-iron. Position backup nickel, Indonesia holds position top For backup world nickel, exploration ore, and concentrate nickel. Based on research, it is predicted that in the same year, 2020, Indonesia will produces 30% of the world's nickel, or 800,000 tonnes, with backup of 174 tons. In Europe role nickel as two twelve economy most important with production or use nickel sufficient big undergo evaluation social economy. Industry nickel and chain its value estimated has adding a total of €43 billion to these countries. Besides that's €130 billion in the output generated by nickel and business allies (year reference 2017) contributed approximately 750,000 jobs which are direct or No directly dependent on nickel.

As largest CPO producer and exporter in this world The Indonesian government feels discriminated against by the European Union, which considers that results export oil palm oil Indonesia is contributor significant to degradation environment. Finally as reply from policy said, on January 1 In 2020, the Indonesian government officially forbid export ore nickel, due to the volume of nickel exported Already too big, on moment This backup nickel that can mined in Indonesia around 72 million tons with estimated 7-8 years

forward and for increase mark plus againstnickelthrough downstream, then The Indonesian government has been criticized by the European Union and sued at the WTO.<sup>2</sup>

Indonesia is known as a country with potential backup nickel which is very big. Total sources Power nickel in Indonesia is estimated reaching 17.7 billion tons of ore and 177.8 million tons of metal, with backup accessible nickel amounting to 5.2 billion tons of ore and 57 million tons of metal. The figures This show that potential Indonesian nickel is one of the the most in the world, even though Not yet fully potential the explored and utilized. From the side production, Indonesia has generate 1.8 million metric Tonnickel or equivalent with 50% of total production global nickel. Contribution big This put Indonesia in a position at the forefront in industry world nickel. This is give influence big on the market international and affirm the role important Indonesia in fulfil global need for nickel.<sup>3</sup>

With improvement nickel production in Indonesia, especially in 2021 resulted in export surge nickel. Export volume Indonesian nickel increases up to 6 times or 520% compared to year previously. This is Of course just contribute in help Indonesia improve growth economy.<sup>4</sup>

Export nickel be one of contributor the biggest state revenue. Indonesia benefits with existence abundant nickel, will but in processing nickel need power adequate expertise, technology and infrastructure.<sup>5</sup>

Policy downstream nickel aiming For optimize potential Indonesian nickel

<sup>2</sup>Muhammad Renal Anugrah Saputraet, & al: Wahana Pendidikan Scientific Journal, “*International Dispute between Indonesia and the European Union Regarding the Ban on Nickel Ore Exports*” September, (2023) pp. 1-2.

<sup>3</sup>Anam, K. (2024, June 2024). “*Contributing half of the world's production is the potential for downstream nickel production in Indonesia*”. cnbcindonesia.com. [https://www.cnbci.com/news/20240620161406-4-](https://www.cnbci.com/news/20240620161406-4-547888/sumbang-setengah-produksi-dunia-ini-potensi-hilirisasi-nikel-ri)

547888/sumbang-setengah-produksi-dunia-ini-potensi-hilirisasi-nikel-ri.

<sup>4</sup>Kusnandar, VB (2022). “Volume and value of Indonesian nickel exports” January-July period (2021-2022). katadata.co.id. <https://databoks.kata data. co. id / index . php / data publis hembed / 142992 / volume-ekspor-nikel-indonesia-melonjak-6-kali-lipat-sepanjang-januari-juli-2022>.

<sup>5</sup>Niken Paramita Purwanto “*Government Policy in Maximizing Nickel Potential in Indonesia*” Vol.XVI, No.20/II/Pusaka/October/2024 page 2.

through development smelter industry and EV. Approach This No only focus on improvement mark plus product nickel , but also on development sector industry support growth economy national . Efforts utilization need get attention from AKD Commission in charge of energy in the Indonesian House of Representatives, from side supervision need achieve the smelter construction target of 53%, up to 2024 .

Related prohibition export nickel with levels below 1.7 percent imposed by the Indonesian government starting January 2020, European Union respond with action restrictions to import nickel by Indonesia. This decision triggered by concern that prohibition export ore nickel from Indonesia can bother supply material important standard for industry processing in the European Union . there is finally , as a result from tension trading between Indonesia and the European Union related prohibition export nickel . European Union decide For submit lawsuit to Organization World Trade Organization (WTO). Indonesia's defeat in decision hearing by the DSB-WTO Panel, led to the emergence implications towards Indonesia.<sup>6</sup>

## RESEARCH METHOD

Type research used in research This is study law normative Where study This do processing material law main with method to examine theories , concepts , principles law as well as regulation related legislation with study This .<sup>7</sup> Objective than the method study This is For review and identify impact What only that which is caused Good in a way sector economy international Indonesia, as well as sector industry downstream mine in country of origin applicable provisions to implementation policy government Indonesia about prohibition export nickel to uni Europe post defeat in World Trade Organization (WTO) dispute .

## RESEARCH RESULTS AND DISCUSSION

### A. The Impact Caused To Implementation Policy Indonesian Government Against Prohibition Export Ore Nickel To the European Union In Sector Economy International Indonesia and Sector Downstream Ore Mining Nickel Domestic Indonesia - EU Dispute

started from Indonesian policy that prohibits export ore nickel to the European Union in 2020. European Union consider policy This as discrimination against the European Union and filed a lawsuit to the Settlement Agency Dispute Settlement *Body* of the World Trade Organization (WTO). Indonesia prohibits export ore nickel For guard intake nickel domestically and increase growth economy international . European Union submit lawsuit through the WTO in November 2021 after several times do consultation with Indonesia, where Indonesia continues hold on tight For do policy prohibition export ore nickel This with reason economy and resources Power strong nature . More specifically the reason Indonesia stopped export ore nickel to the European Union Because nickel from Indonesia to material standard main in production car electricity . Indonesia is Supplier main ore nickel to the European Union since in 2000, Indonesia as Enterer the biggest second see that ore nickelyang exported processed become car electricity and battery Where can We Look Alone moment

<sup>6</sup>Ferdinand Jason et. & al. Supremacy Journal “ *Implications of the World Trade Organization Decision on the Ban on Indonesian Nickel Exports by the European Union* ” Volume 14 Number 1 Year (2024) page 6

<sup>7</sup>Zainuddin Ali, *Legal Research Methods* , Mataram: Mataram University Press, 2009, p. 45

This production car electricity very intense done . So that make ore nickel always needed and conditions in Indonesia itself ore nickel Already the more thinning and will run out in term the predicted time . Based on Regulation Minister of Energy and Mineral Resources Number 16 of 2019 reasons termination delivery ore nickel to the European Union in a way detailed is as following :

1. Ore stock Indonesia's nickel is increasing A little ,
2. Production battery in Indonesia continues reduce ,
3. Referring to the principles of the General Agreement on Tariffs and Trade (GATT) , which is principle prohibition restriction or restrictions quantitative .<sup>8</sup>

With strong reason This Indonesia is trying do submission to the WTO to approve the policies taken , but in matter this is the European Union feel loss because they will experience decline production .<sup>9</sup>

On 14 January 2021, the European Union in a way official do lawsuit to Indonesia to the WTO, with reason that ore nickel is 55% for material industrial raw materials steel . In lawsuit filed by the European Union quibble that Indonesia has done violation article 11 paragraph 1 *General Agreement on Tariffs and Trade* (GATT) 1994. In article 11 paragraph 1 GATT 1994 states that member states WTO banned For do restrictions related rates , taxes , and other duties and other restrictions include quota and licensing import or sale in frame export. Indonesia moment This currently face lawsuit by the European Union related prohibition policy export . European Union believe that action This No in accordance with Indonesia's obligations based on the agreement stated ,

especially based on 3.1 (b) and XI:1 GAAT 1994. Indonesia 's increasing nickel exports caused by the presence of request nickelyang increase from other countries especially the European Union very result in mining nickel and nickel done . Mining nickel that continues done can result in availability backup Indonesia's nickel reserves are dwindling . Reserves Indonesian nickel will estimated finished in the term 7.3 years time counted from 2022 if done mining Keep going in. overcome problem stock backup estimated nickel will exhausted term time fast , Indonesia sets regulation about prohibition export nickel. Regulation about prohibition export nickel poured out in Regulation of the Minister of Energy and Source Mineral Resources Number 11 of 2019 Amendment Second on Regulation of the Minister of Energy and Source Mineral Resources Law Number 25 of 2018 Concerning Enterprise Mineral and Coal Mining .

Impact lawsuit from the European Union This Alone towards Indonesia besides the trial is underway if Indonesia is proven wrong, that is with government must to revise rule about prohibition export ore nickel said . If Thus , it is possible big will happen export ore nickel return to the European Union . In addition that, the impact in term short is the magnitude losses incurred by the government for pay change losses and sanctions , while in term long will associated with potential investment in Indonesia.

However Thus , there are method For reduce a number of risk the namely with increase domestic investors specifically for Owned Enterprises State ( BUMN) in absorption ore nickel use downstreaming . With Thus , the reserve ore nickelyang available For export will thinning Because has done downstream moreover first in the country. This is done For guard availability

<sup>8</sup>Minister of Energy and Mineral Resources (2019) “ *Regulation of the Minister of Energy and Mineral Resources Number 16 of 2019 Regulation of the Minister of Energy and Mineral Resources No. 16 of 2019*” , (Regulation-Minister), p. 6.

<sup>9</sup>Niswatul Illaina Rohmah et, & al. “ *Indonesia-European Union Dispute Regarding Nickel Export Ban Policy to the European Union in 2020*” Madiun 6 July (2024) page 3.

ore nickel which is increasing limited and spur perpetrator business in Europe For do cooperation downstream to Indonesia through state-owned enterprises. In addition that , the thing that can done is with increase customs out of ore nickel in a way significant . With increasing customs out , then price received by buyers in the export market will still expensive.<sup>10</sup>

The policy that has been run by the Joko Widodo government since 2020 done in frame give mark added ( *added value* ) to nickel in global trade . Addition mark sell nickel done with existence downstreaming , namely sale nickel No in goods raw , but in form goods So or goods half So .

" Try We Don't export in form material raw material. Already hundreds year We export that , stop . Look for investors, invest to get in to there so that mark he added " There is ," said Jokowi.<sup>11</sup>

The existence of the final decision of the WTO panel issued on 17 October 2022, that declare Indonesia lost lawsuit by the WTO. However , the existence of decision the the Indonesian government considers that decision the Not yet remains and the Indonesian government has appealed to the WTO. The Indonesian government is also still will still continue policy prohibition export nickel through Constitution Number 4 of 2009 concerning Mineral and Coal Mining and the Regulation of the Minister of Trade Number 96 of 2019 concerning Provision Export Product Mining Processing Results and Purification . Ministry of Energy and Resources Regulations Mineral Resources of the Republic Indonesia Number 7 Years 2020 on Procedures for Granting Areas, Licensing and Reporting On Mineral and

Coal Mining Business Activities . Regulation of the Ministry of Energy andSource Republic of Indonesia Mineral Resources Regulation Number 11 of 2019 concerning change second above Regulation of the Ministry of Energy and Natural Resources Republic of Indonesia Mineral Resources Regulation Number 25 of 2018 concerning Enterprise Mineral and Coal Mining .

Indonesia's defeat in decision hearing by the DSB-WTO Panel, led to the emergence implications towards Indonesia. One of which is about implications lawthat Indonesia has burden not quite enough state responsibility in meaning *liability* that has meaning not quite enough answer in law and can realized in form not quite enough civil liability , then obligation payment change make a loss from dispute , even though Indonesia has appealed , but not quite enough answer This will Keep going exist and attached until until Where appeal decision issued .<sup>12</sup>

furthermore is panel hearings , appeal reviews , as well implementation recommendations and provisions approved by the *Dispute Settlement Body* (DSB). One of the steps that can be taken done The Indonesian government before to appeal is do approach to the European Union with use Principle Faith Good ( *GoodFaith* ). Principle This require and oblige existence faith Good from the parties in settlement the dispute . In principle This reflected in two stage.First , the principle faith Good required to prevent the emergence of dispute.Second , the settlement dispute through known ways in international ( trade ) law , namely negotiation , mediation , conciliation , arbitration , court or ways

<sup>10</sup>Anisa Dewi Syafira et, & al . *Economina Journal* , " *Analysis of Opportunities, Challenges, and Impacts of Nickel Export Ban on International Trade Amidst EU Lawsuit at WTO* " Volume 2, Number 1, January (2023) page 7.

<sup>11</sup>Indonesia Stops Nickel Exports, Here Are the Impacts, Kompasiana.com (2018, December, 18). Retrieved on November 2, 2024 from article: news <https://www.kompasiana.com/zefanyastephan>

iebramantya3944/639df16d4addee202826b212/indonesia-stop-ekspor-nikel-berikut-dampaknya?page=all#section

<sup>12</sup>Feyza Adha Alsyaanda et. & al. " *Legal Analysis of the European Union Lawsuit to the WTO Regarding Indonesia's Nickel Downstream Policy from an International Trade Perspective* " Semarang Law Review SLR/Vol. 5, No. 1 (2024) pp. 7-8.

choice of the parties others. Government requested For do negotiation and negotiation efforts with the European Union to make it happen settlement dispute outside court .

According to Deputy Minister of Trade Jerry Sambuaga at the Economic Festival Indonesia Digital Finance Senayan , Jakarta, May 8 , 2023. Indonesia can to argue in his plea to win the appeal against the European Union in Organization Trading World *Trade Organization* ( WTO ) as next ; first Of course We as a country has rights For exercise what we do want ( export ) , this equality , besides Indonesia has the right For determine form the goods to be exported , is it That goods raw or Already processed . In matter nickel , Indonesia determines For No export goods raw again and make sure goods like what we will Send good that already processed and not yet processed . In matter This priority We send goods that have been processed . This is naturally in accordance with vision and mission President of the Republic of Indonesia Joko Widodo said that Indonesia's choice for No Again send goods raw Because want to There is mark plus for the country. Added value That Good from side income , investment , field work and impact economy others so that in accordance For creating Advanced Indonesia 2045.

Naturally argument on need strategies that are needed so that Indonesia can do defense on Decision WTO Panel Meeting as following :

- 1) Indonesian government through power the law Already prepare argumentation to test the panel's decision is considered wrong in interpret WTO provisions . The reason is , Indonesia believes policy downstream No violate Indonesia's commitment to the WTO and Indonesia remains consistent with provisions regulated by the WTO. Arguments the naturally with data displaying accurate data accompanied by base

supporting law argument For won the appeal. In case termination unilaterally by Indonesia against export ore nickel to the European Union , it is important for the Indonesian government to ensure that action they comply WTO rules . Government must evaluate whether restrictions export fulfil criteria temporary and based on reasons valid , such as protection source Power important or settlement problem economy certain .

- 2) Indonesia must prepare Power Experienced and competent law in do trial International , especially cases lawsuit on trade international, prepare adequate financial , do election in a way tight and have knowledge profound law about dispute trading international . In do election Legal Power , Indonesia can take example of a club origin football English namely *Manchester City* who won lawsuit in face demands *Financial Fair Play* because considered there is fraud in receive large sponsorship funds *Arbitration Board Hearing International Sports (Court Arbitration of Sport)* , *Manchester City* pointed out Lawyer reliable namely Lord David Pannick , Pannick known own competent reputation in law international that is in look after problem law in england with to thwart British Prime Minister Theresa May's efforts regarding *Brexit* in 2016 .
- 3) As material base defense on appeal hearing then Government Keep going committed For continue policy downstream industry sector mining with stop export material raw or *raw material* products mining in a way gradually . After nickel , the government will also quick stop export material raw For

bauxite . With stop export material raw nickel according to data from the Central Bureau of Statistics can produce mark add a lot big and can felt by the Indonesian people . The opening industry new management ore nickel will provide field very good job wide for dozens thousand even millions power work can recruited . Benefits others , income for the country in the form of tax. So The Indonesian government can prove that stoppage export ore nickel can give positive impact that is produce foreign exchange for state revenue welfare Indonesian people .<sup>13</sup>

## **B. Applicable Terms and Conditions To Implementation Policy Indonesian government About Prohibition Export Nickel To the European Union Post Defeat In World Trade Organization (WTO) disputes .**

On December 8, 2022, Indonesia filed an appeal to *Appellate Body WTO* (WTO).<sup>14</sup>

For give reasons and arguments that implementation policy This done For overcome scarcity backup material raw nickel and for increase industry good mining .<sup>15</sup>

Besides that , activity export will still done , but No in condition raw or must processed moreover formerly .

Result of the appeal , the WTO panel did not agree to defense carried out by Indonesia because No in line with WTO rules and potential hinder trade . Although policy the made exception with implementation Article XI.2 GATT 1994, both the EU and the WTO panel consider prohibition export the still No fulfil terms and criteria in Article XI.2 GATT 1994. Regarding policy the No justified without exception whatever so that Indonesia experiences defeat from the EU at the WTO. From the appeal , Indonesia remains enforce the policies he has set so that create the EU then launch consultation *Enforcement Regulation* or *Regulation Enforcement*. Consultation This carried out by internal EU parties or all over EU *stakeholders* started from EU countries governments and manufacturers from sectors industries that use material raw nickel For see losses and impacts from a policies taken by other countries outside the EU.<sup>16</sup>

In regulation This , the EU plans will enforce imposition customs enter or restrictions quantitative on exports and also import as action reply to Indonesian policies .<sup>17</sup> Some the benefits obtained by the Indonesian Government regarding

<sup>13</sup>Ridwan Hardiawan et. & al. Journal Evidence Of, Law “ *Juridical Study of the Defeat of the Government of the Republic of Indonesia Against the European Union Lawsuit Against the Cessation of Nickel Ore Exports at the WTO Hearing* ” Vol. 2 No. 2 May – August 2023 pp. 8-11.

<sup>14</sup>European Commission, 2022. “ *WTO Panel Rules Against Indonesia's Export Limitations on Raw Materials* ”. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7314#:~:text=WTO%20panel%20rules%20against%20Indonesia's%20export%20limitations%20on%20raw%20materials&text=The%20EU%20welcomes%20the%20World,report%20was%20made%20public%20today.](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7314#:~:text=WTO%20panel%20rules%20against%20Indonesia's%20export%20limitations%20on%20raw%20materials&text=The%20EU%20welcomes%20the%20World,report%20was%20made%20public%20today.)

<sup>15</sup>Ministry of Foreign Affairs of the Republic of Indonesia, 2022. “ *Indonesia Officially Files Appeal of Trade Dispute on Raw Material Policy to WTO Appellate Body* ”. Available at

<https://www.kemlu.go.id/jenewa-un/en/news/22492/indonesia-resmi-ajukan-banding-kasus-dagang-kebijakan-bahanmentah-kepada-badan-banding-wto> (accessed on 30 October 2023).

<sup>16</sup>European Commission, 2023. “ *Information Gathering on the Indonesian Export Tires and Domestic Processing Requirements on Nickel Ore* ”. [https://policy.trade.ec.europa.eu/consultations/information-gathering-indonesian-export-ban-and-domestic-processing-requirement-nickel-ore\\_en](https://policy.trade.ec.europa.eu/consultations/information-gathering-indonesian-export-ban-and-domestic-processing-requirement-nickel-ore_en)

<sup>17</sup>European Parliament, 2021. “ *Review of EU Enforcement Regulation for Trade Disputes* ”. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2020\)652021](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)652021) (accessed 1 November 2023)

policy prohibit export ore nickel to the European Union Government Keep going committed For continue policy downstream industry sector mining with stop export material raw or raw materials for products mining in a way gradually . After nickel , the government will also quick stop export material raw For bauxite . With stop export material raw nickel produce mark add a lot big and can felt by the people . Opening industry new management ore nickel will provide field very good job wide for dozens thousand even millions power work that can recruited .

Profit others , income for the country in the form of tax . It is expected with existence downstream industry , all product derivative nickel like steel , pots , spoons and others can produced . The existence of transfer technology and growth business small medium around it , has an impact on welfare people increase .<sup>18</sup>

## CONCLUSION

Trading international is trade that is carried out between countries or government of a country with another country undergoing a connection appropriate trade agreement between second split the party that does trade international said . WTO is organization trading international with Meaning For make trading between countries increasingly open and transparent . Indonesia is one of one country that is part of organization *World Trade Organization* (WTO) since January 1 , 1994. Indonesia is known as country with potential backup nickel which is very big . Total sources Power nickel in Indonesia estimated reaching 17.7 billion tons of ore and 177.8 million tons of metal .

Policy prohibition export ore nickel and other minerals applied the Indonesian government caused implications controversy and the existence of lawsuit from the European Union to the WTO.

Settlement Panel WTO dispute finds that policy This violate provision Article XI.1 of GATT 1994 and the principles trade international. Purpose implementation regulation prohibition export ore nickel by the Indonesian government is For implementing downstreaming nickel domestically and optimize value added ( *added value*) to trading global nickel Indonesia through development smelter and EV industry .

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<sup>18</sup>Donny Ardian et, & al. *Socia Logica Journal*, “ *Indonesian Government Policy to Stop*

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