

Examining Indonesia's Behaviour Patterns in the EU's Request for a Ban on Indonesia's Nickel Exports at the World Trade Organisation (WTO)

Asmana¹, Maharani Cania², Muthiah Rahmi³, Zaky Al-Hasbi⁴

¹²³⁴Universitas Andalas, Indonesia

Aisy.malik86@gmail.com

Abstract

Indonesia is one of the largest nickel ore producers in the world. However, as a nickel ore exporter, Indonesia has not seen any benefits from this activity. The nickel ore export ban policy issued by Indonesia was then sued by the European Union through the WTO which ended in Indonesia's defeat. Nevertheless, Indonesia continues to ban nickel ore exports because it considers the WTO decision not final. After all, an appeal has not been made. This research was conducted with a descriptive qualitative method using secondary data in the form of data that had been found and released first by previous researchers. This research aims to see how Indonesia's attitude towards the WTO ruling.

Keywords; *Indonesia; Uni Eropa; WTO; Nickel*

1. INTRODUCTION

Indonesia is among the leading global producers of unprocessed nickel ore, boasting substantial nickel deposits and highly competitive grading. Nickel is of primary significance in the industrial sector, particularly in the production of electric vehicle batteries, stainless steel alloys, and several other commodities. Nevertheless, the European Union countries expressed strong resistance to the nickel export prohibition and nickel resource management strategy implemented by Indonesia in early 2020. This pertains to the Indonesian government's resolve to restrict the exportation of unprocessed nickel ore and subject it to domestic processing prior to exporting, to enhance the value of the nickel.

Effective from January 1, 2020, Indonesia initiated the nickel export restriction policy by imposing a prohibition on the export of raw nickel ore. The objective of this policy is to promote the growth of the nickel smelter and refining sector in the country. It is anticipated that this policy will enhance the overall value of the national economy, as well as boost state revenues, generate employment opportunities, and decrease the export of raw materials caused by the lack of local processing facilities. Nevertheless, this ruling resulted in conflicts that extended to the World Trade Organisation (WTO) with the complaints raised by several significant nickel importing nations, notably the European Union (EU), through the Dispute Settlement Procedures (DSP) mechanism.

The European Union contended in its legal action that Indonesia's ban on exporting raw nickel ore contravened the regulations outlined in the World Trade Organisation (WTO) agreement, particularly the General Agreement on Tariffs and Trade (GATT) 1994 article XI paragraph (1). This article explicitly prohibits any WTO member country from imposing limitations other than tariffs, taxes, and other duties, apart from quotas and licensing of imports or sales in the context of exports. The European Union claims that the prohibition is an unjustifiable limitation on exports and

disadvantages the nickel processing sector in Europe, which relies on Indonesia for the provision of raw nickel ore.

Nevertheless, Indonesia contended that this policy is completely valid and compliant with WTO regulations that permit member states to implement essential actions to safeguard non-renewable natural resources. Furthermore, Indonesia has underscored that this prohibition on exports is a component of a sustainable development plan that seeks to enhance the value of natural resources and promote the growth of more sophisticated and environmentally friendly domestic companies. Furthermore, Indonesia explicitly pointed out that nickel was not subject to the limitations, so justifying its actions as legitimate and rational (Indonesia.go.id).

The ongoing challenge not only affects the trade dynamics between Indonesia and the European Union, but also carries broader consequences for the world economy and Indonesia's geopolitical landscape. The prohibition imposed by Indonesia on nickel ore exports is raising concerns within the global nickel sector, as it introduces the possibility of a scarcity of essential raw material resources. Furthermore, this strategy has the potential to draw Foreign Direct Investment (FDI) into the nickel processing industry in Indonesia, particularly from major multinational corporations.

The ongoing conflict between Indonesia and the European Union at the World Trade Organisation (WTO) exemplifies the intricate tensions between industrialised and developing nations regarding their respective entitlements to govern one other's natural resources. Developing nations, like Indonesia, frequently contend that they are entitled to implement the essential measures to guarantee that the utilization of their natural resources yields optimal advantages for their own economy and public welfare. Conversely, industrialized nations frequently support free trade policies that prioritize unrestricted access to natural resources imported from underdeveloped countries.

The dispute resolution procedure at the World Trade Organisation (WTO) has multiple phases, which include bilateral consultations, the formation of a dispute settlement panel, and the potential for appellate review against the panel's ruling. The resolution of this conflict will have far-reaching implications, impacting not just Indonesia and the EU, but also shaping future global trade policy and natural resource management.

Should the WTO panel determine that Indonesia's export ban policy contravenes international trade regulations subsequent to an appeal, Indonesia will be compelled to modify its policy in order to prevent reprisals from other WTO members. Conversely, if the WTO ruling upholds Indonesia's stance, it could create an opportunity for other emerging nations to adopt comparable measures to enhance the management of their natural resources.

The nickel export dispute between Indonesia and the World Trade Organisation (WTO) exemplifies the intricate dynamics of global trade in the present day. The decision of Indonesia to prohibit the export of raw nickel ore, with the intention of promoting domestic industrial growth and enhancing economic value, has elicited varied responses from the global community. Consequently, this has resulted in complications that have prompted the resolution of the issue at the World Trade Organisation (WTO).

This study is crucial for comprehending the intricacies of this conflict and for offering valuable perspectives on Indonesia's conduct throughout the dispute, as well as other potential insights that could bolster Indonesia's economic and sustainable development objectives in the future. Hence, Indonesia can guarantee that the use of

nickel resources yields maximum advantages for the domestic economy and society at large, without generating any international issues.

2. RESEARCH METHOD

In this research, the author uses a descriptive qualitative approach. Through this approach, it is hoped that it can describe what the author wants to convey about the dispute over the European Union's demands for the nickel ore export ban policy issued by Indonesia. The data obtained and displayed in this research is secondary data, namely data that has been collected and published by other parties. Through the use of secondary data, the author can utilize relevant and valid data for the sake of smoothness and efficiency during the research process. This research also uses a literature study, namely by collecting sources of information from various literature that is relevant to the topic. This literature comes from journals, media and websites so that it can describe and explain the outline of the problems that the author raises.

3. RESULT AND DISCUSSION

Indonesia is a major exporter of nickel ore commodities in international trade (Haryadi and Yuniarto, 2017). Indonesia is also the largest producer of nickel ore with production reaching one-third of world output in 2021 (Heijlen and Duhayon, 2024). However, despite being a major exporter, the export activities that have been carried out so far have not been able to provide sufficient benefits and benefits for improving the Indonesian economy. The lack of usefulness of nickel export activities carried out by Indonesia is due to Indonesia's export activities due to the export of nickel ore in raw form, which has a relatively low price in the market. Trade values that tend to be unstable also cause economic losses for Indonesia (Haryadi and Yuniarto, 2017).

Table 1: Comparison of Indonesian nickel export & import prices (in US\$)

Year	Export Price	Import Price
2007	208,45	17.229
2008	211,6	8.698,3
2009	183,8	10.802,9
2010	131,9	15.170,3
2011	76	19.263,8
2012	64	15.722

Source: Haryanto & Yuniarto (2017)

Indonesia's nickel export restriction is a strategic policy implemented by the government to enhance added value and improve resource conservation. Legislation governing this policy is Law Number 4 of 2009 on Mineral and Coal Mining and Government Regulation Number 1 of 2014 on the Implementation of Mineral and Coal Mining Activities. In early 2020, the Indonesian government implemented a policy to prohibit the export of nickel ore in order to enhance commodity value and promote resource conservation. The objective of this policy is to enhance the domestic processing and refining of nickel ore and decrease reliance on imports.

The implementation of the nickel export policy has effectively benefited both the mining sector and the Indonesian economy. By 2022, Indonesia has allocated roughly US\$14 billion towards enhancing its nickel ore processing capacity, resulting in higher

added value and more efficient resource conservation. Indeed, since the implementation of this strategy, Indonesia's nickel output has shown a consistent upward trajectory and currently holds the leading position as a nickel producing nation. In 2022, Indonesia's nickel output surged by 369% compared to the previous year. The total value of nickel exports reached 5968.9 million US dollars, surpassing the preceding year's exports of 1,271.7 million US dollars (BPS).

Ban on Nickel Exports between Indonesia and the European Union WTO Dispute Arbitration

This nickel export policy of Indonesia has resulted in a disagreement with the European Union. The European Union contends that Indonesia's limitations on nickel exports have resulted in significant financial setbacks for the European stainless steel sector, which relies on nickel as its primary raw material, representing roughly 55% of its production. The economic interests of the European Union, which rely on nickel procurement from Indonesia for stainless steel manufacturing, are seen to be adversely affected by this strategy (Haddad, Novianty and Adolf, 2022). This approach was deemed by the EU to be incompatible with the principle of fairness and in violation of Article XI:1 of the GATT 1994. Subsequently, the European Union initiated legal proceedings against Indonesia at the World Trade Organisation (WTO), resulting in a contentious and intense dispute between the two parties. On February 22, 2021, the European Union officially initiated the creation of a dispute panel under the Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) to address this matter. The purpose of this request is to ensure a comprehensive assessment and determination by the World Trade Organisation (WTO) on the nickel export ban policy implemented by the Indonesian government.

A World Trade Organisation (WTO) dispute panel is formed to assess and analyse Indonesia's policy of prohibiting nickel exports. The procedure entailed collecting evidence, presenting arguments from both parties, and scrutinizing the WTO regulations that the Indonesian government potentially breached. Indonesia said that the strategy was in compliance with the 2009 Mining Law and essential for bolstering domestic industrial growth and generating employment opportunities. An analysis by the WTO dispute panel determined that Indonesia's approach was incompatible with WTO regulations. Following that, it rendered a verdict in support of the European Union's legal action. The WTO panel's ultimate ruling declared that Indonesia's policy of limiting nickel exports contravened the stipulations of Article XI of GATT 1994. Consequently, Indonesia was unsuccessful in the dispute and was obligated to provide compensation to the EU. The World Trade Organisation (WTO) judged that the policy failed to fulfil the requirements of the exception specified in Article XX of the General Agreement on Tariffs and Trade (GATT) 1994 (Hutabarat, 2023).

Indonesia's Position on the Final World Trade Organisation Decision

Although the ultimate result has been determined, Indonesia persists in implementing its prohibition on the export of raw nickel in order to enhance the value-added and preserve resources. According to the Indonesian perspective, the implementation of the nickel export ban policy can continue until the final verdict is reached in the upcoming appeal (CNN, 2023). The implementation of this strategy is anticipated to facilitate Indonesia in expanding its production capacity and enhancing the value-added output of nickel beans.

From the perspective of analyzing the state's conduct towards the dispute settlement process, Indonesia's decision to persist with the nickel ore export ban policy can be described as a disregarding behavior (Zangl et al., 2012). This phenomenon can

be elucidated by examining Indonesia's persistent implementation of the policy, notwithstanding the World Trade Organization's determination that the policy does not align with WTO policy article XI: I GATT 1994. Indonesia argues that the WTO decision is not conclusive as it has not undergone the appeal procedure initiated by Indonesia. Hence, the policy can be implemented as there is no definitive ruling at the appellate level.

4. CONCLUSION

Indonesia ranks among the leading global suppliers of nickel ore. Nevertheless, these export operations provide indeterminate effects on the Indonesian economy. In response to this challenge, the Indonesian government has enacted a regulation to prohibit the export of nickel ore, mandating that the ore undergoes processing before being exported. In the expectation that this will enhance the worth of exports, so fostering and augmenting Indonesia's economic expansion.

The European Union retaliated to the policy by initiating a legal action against Indonesia at the World Trade Organisation (WTO). The ultimate ruling emerged as a triumph for the European Union, prompting an appeal to Indonesia to promptly retract the regulation. Nevertheless, Indonesia, which lodged an appeal against the WTO decision, contended that the finding was not conclusive and that Indonesia may continue enforce the policy until the ultimate decision on the appeal was reached.

The stance of Indonesia towards the ruling reached by the WTO is characterized by a flagrant disdain. Despite the World Trade Organization's verdict on the resolution of the lawsuit between Indonesia and the European Union over the policy, Indonesia persists in prohibiting nickel ore exports.

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