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The European Union's Legal Challenge to Indonesia's Nickel Export Ban at the World Trade Organization

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Abstract

The European Union (EU) has filed a lawsuit at the World Trade Organization (WTO) over Indonesia's down streaming policy in the mining industry. Indonesia's policy aims to add value to natural resources through domestic processing. However, the EU argues that it violates WTO rules on non-discrimination and export restrictions. This lawsuit could threaten the development of Indonesia's mining industry by limiting the government's ability to manage its natural resources and implement policies that promote domestic processing. In light of these issues, the purpose of this study is to analyze the impact of the lawsuit on the Indonesian economy, particularly in terms of investment, employment, and environmental sustainability. The use of the internet as a data collection tool allows researchers to access a broad and in-depth range of information according to research needs. The data analysis method used aims to present research results in an organized and easily understandable form. Additionally, it is necessary to explore strategies that Indonesia can adopt to maintain its down streaming policy while fulfilling international commitments. In conclusion, the EU's lawsuit at the WTO highlights the challenges Indonesia faces in implementing its down streaming policy, while calling for a more balanced approach in managing complex international trade relations. Further research is needed to find solutions that can benefit both parties without compromising sustainable development goals.

Keywords

Development Goals, International Trade, Mining Industry, Sustainability

1. Introduction

Downstreaming refers to the refining of minerals to add value to mining products, particularly nickel, which is abundant in Southeast Sulawesi, North Maluku, and Central Sulawesi (Panrb, 2023). In the mining industry, downstreaming involves enhancing the value of minerals through processing and the development of derivative products, including product refinement. The primary objectives are to increase the mining sector's contribution to the national economy and reduce reliance on raw material exports. By promoting downstreaming, mining products are further processed domestically, leading to job creation, supporting industrial growth, and boosting state revenues. This initiative also aims to encourage sustainable development by optimizing the use of natural resources. Furthermore, downstreaming is expected to enhance the competitiveness of Indonesian mining products in the global market (Östensson, 2019; Krustiyati & Gea, 2023; Khaldun, 2024).

The development of the downstreaming process in the mining industry has undergone several stages, namely discovery and exploration, development, production, and post-production. During the discovery and exploration stage, activities focus on identifying and exploring potential mining locations. This involves conducting research and development on technologies to obtain precise and accurate information about the quantity and quality of the resources at the site. In the development stage, once the initial exploration is successfully completed, infrastructure and other facilities are constructed to support the mining operations. Following this, the production stage begins, where minerals are extracted and processed into products suitable for sale in the global market. Finally, the post-production stage concludes the process. Downstreaming has several positive impacts on the economy, including increasing added value, creating jobs, diversifying the economy, and boosting state revenue. Additionally, it reduces dependence on raw material exports, strengthens global competitiveness, and fosters infrastructure development (Marinina, 2022; Zhang et al., 2022).

Efforts to promote downstream activities in Indonesia's mining industry include developing technology for processing operations (Wau et al., 2024). Accurate and appropriate processing technology is essential to achieve satisfactory results (Ramadhan et al., 2024). Therefore, it is crucial to analyze processing technologies that hold greater potential for enhancing efficiency. Additionally, efforts should focus on developing derivative products. These can include high-value products such as electronic components, fertilizers, chemicals, and metals. By developing these derivative products, the added value of mining products can be increased, which will, in turn, enhance the mining sector's contribution to the national economy. Moreover, efforts should be made to build and strengthen related industries. The downstreaming of the mining industry can be achieved by fostering the development of integrated downstream industries connected to the mining sector (Marpi, 2021; Rumadan, 2024).

The European Union (EU) is a political and economic union comprising 27 countries, primarily located in Europe. The formation of the EU began after World War II with the primary goal of fostering peace in the European region. The establishment of the EU did not occur overnight but developed gradually through a series of treaties. In 1957, six founding countries established the European Economic Community (EEC), which eventually evolved into today's European Union with 27 member states (Brasier, 2021). In the 1950s, discussions about forming a military union in Europe failed, leading European countries to focus on building an economic market based on common rules and standards. The process of EU integration is marked by the signing of new treaties that consistently strengthen relations between member states. Each new treaty facilitates the

transfer of agreements from the national level to the European level, thereby reinforcing common goals in politics, economics, and society. The European Union aims to promote stability and prosperity while fostering unity in addressing global challenges. Over time, EU integration has expanded to include foreign policy, freedom of movement, and cooperation in various fields, enabling member states to support one another in achieving shared objectives.

In running the European Union, there are principles that form the foundation of how it operates: the Principle of Attribution of Power and the Principle of Subsidiarity. The Principle of Attribution of Power explains that the European Union has legal competence only in the areas of power that Member States have chosen to transfer to the European level (Türk & Xanthoulis, 2019). The EU exercises this power and follows decision-making procedures based on the treaties that establish the framework for its operations, as approved by all its members. The Principle of Subsidiarity ensures that the European Union prioritizes addressing issues at the local level whenever possible. Actions at the EU level are only taken when a problem cannot be resolved more efficiently at the local level. Consequently, any action by the European Union is required to provide added value. Together, the Principle of Attribution of Power and the Principle of Subsidiarity aim to ensure efficiency and a clear distribution of authority (Swiatkiewicz, 2022; Da Silva, 2023).

The World Trade Organization (WTO) is the only international body that specifically regulates issues within the global trade system between countries. The multilateral trading system of the WTO is established through agreements resulting from negotiations that have been approved by its member countries (Kurniawardhani, 2021). The WTO facilitates the flow of trade between nations by reducing or eliminating various obstacles that negatively impact and disrupt the smooth exchange of goods and/or services. Additionally, the WTO has a close relationship with the General Agreement on Tariffs and Trade (GATT), as these two entities are closely interconnected in regulating the trade of goods. Trade organizations like the WTO are essential for managing international trade, resolving trade disputes, and improving the welfare of member countries (Nurzahiroh & Putri, 2023; Kristanti et al., 2023).

In the development of the WTO, several principles form the main basis for its operations. These principles include fair treatment for all member countries, known as the Most Favored Nation (MFN) principle. This principle is stated in Article 1 of GATT 1994, which asserts that the commitments and obligations agreed upon and signed must be applied equally and comprehensively to all member countries without discrimination. This is referred to as the Principle of Non-Discrimination. Another key principle is the Binding Tariffs, which ensures consistency in tariff levels. This principle, outlined in Article II of GATT 1994, requires each GATT or WTO member country to maintain a list of products with bound import duties or tariff levels (Legally Bound). The principle of National Treatment is also essential. As stated in Article III of GATT 1994, it prohibits member countries from discriminating between domestic and imported products. This means domestic laws, regulations, and taxes must not favor domestic products over imported ones. Additionally, the principle of Protection Only Through Tariffs is regulated in Article XI of GATT 1994. This article stipulates that the protection of domestic industries is permitted only through tariffs, which are essentially taxes imposed on goods moving from one political region to another. Lastly, the principle of Special and Differential (S&D) Treatment provides developing countries with certain flexibilities and privileges within the WTO framework.

In the context of the problems faced by Indonesia related to the lawsuit filed by the European Union, the main objective of this study is to analyze the economic

impacts caused, focusing on three crucial aspects: investment, employment, and environmental sustainability. This study aims to evaluate how the policies implemented, particularly those related to the cessation of nickel exports, affect investment flows in the downstream industrial sector and the creation of new jobs. Additionally, this study will explore the long-term impacts on environmental sustainability to ensure that the policies support economic growth without neglecting environmental responsibilities.

2. Methods

This research employs a qualitative approach using the Internet Searching method (Zakariah et al., 2020). For data collection, the researchers utilize internet technology to gather information from various sources and time periods. This process involves reviewing prior studies, such as theses, blogs, and journals relevant to the research topic. The data used in this study are categorized into two types: primary and secondary data. Primary data are obtained directly from the research object, while secondary data are sourced from references such as journals, theses, and blogs that serve as key resources for the study. The use of the internet as a data collection tool enables researchers to access extensive and detailed information aligned with the research needs. The data analysis method aims to present the research findings in a structured and comprehensible manner. Data are presented in the form of descriptions, narratives, or systematic flows, helping researchers interpret the meaning, patterns, and cause-and-effect relationships within the data. Additionally, the data analysis process includes verification to ensure the accuracy and validity of the findings. The final stage of data analysis involves drawing conclusions, designed to provide a comprehensive overview of the research findings and answer the research questions. This approach is expected to contribute significantly to the understanding of the topic discussed and serve as a valuable reference for future research.

3. Results

Indonesia has implemented a downstream policy to increase the added value of its mineral resources, such as nickel, through domestic processing. This policy aims to reduce dependence on raw material exports, create jobs, increase state revenues, and support sustainable development. By processing nickel into high-value products, such as ferronickel and stainless steel, Indonesia seeks to enhance its global competitiveness and strengthen its national economic structure. However, this policy has sparked protests from the European Union, which filed a lawsuit with the World Trade Organization (WTO) in 2021. The European Union argues that this policy violates the principles of non-discrimination and export restrictions stipulated in the WTO agreement. This lawsuit arose because the cessation of raw nickel ore exports to the European Union since 2020 has disrupted the supply chain for its steel and electric vehicle industries, which are heavily dependent on Indonesian nickel. Despite facing the lawsuit, the Indonesian government has emphasized that the policy aligns with the constitution, particularly Article 33 of the 1945 Constitution, which mandates the management of natural resources for the prosperity of the people. This policy is also supported by Law No. 3 of 2020 on Minerals and Coal, which underscores the importance of downstreaming as a strategy to maximize the economic benefits of mineral resources. Moreover, downstreaming is expected to foster the development of domestic industries integrated with the mining sector. The government also recognizes the need for investment support, robust legal frameworks to protect downstream industries, political stability, and collaboration with local business actors and MSMEs to ensure the sustainability of this policy.

The positive impact of the downstreaming policy can be seen in the increase in the added value of export products, the creation of jobs, and the transformation of the natural resource-based economy towards industrialization. However, the European Union lawsuit poses new challenges, particularly the risk of trade barriers in other strategic sectors and the potential for disruption to bilateral relations. Nevertheless, Indonesia is striving to defend its right to manage natural resources independently for the welfare of its people. Indonesia's nickel downstreaming policy is a strategic step that has a significant impact on the national economy. Despite facing international pressure, this policy demonstrates great potential in strengthening global competitiveness and supporting long-term economic transformation. However, a wise and collaborative approach is still needed to address complex international legal and trade challenges.

Indonesian President Joko Widodo has implemented a policy to stop nickel ore exports to the EU, starting from 2020 and continuing to the present. This decision was made after considering that the export value would be more profitable if the nickel ore were converted into a more valuable commodity. Following the establishment of the ban on nickel ore exports, the European Union strongly protested by filing a lawsuit against Indonesia with the World Trade Organization (WTO) in early 2021. As regulated in Article 33 of the 1945 Constitution, natural resources must be used for the greatest possible welfare of the people (ESDM, 2019). In this case, the government is not considered guilty of issuing this policy, as its aim is to ensure that mining products in Indonesia can be processed or turned into commodities with higher value. With the cessation of nickel ore exports, the development of nickel ore processing industries will proceed immediately so that they can become high-value commodities (Hardiawan & Sutrisno, 2024). For example, ferronickel, which has an added value 14 times that of nickel ore, or stainless-steel billets, which have an added value 19 times greater.

The impact of this dependence on exporting nickel ore has reduced state revenues from export practices that have been ongoing for more than 40 years, leading other countries to dub Indonesia as "The Exporter of Raw Materials Specialist" (Ika, 2017). This is described as if Indonesia only sells land resources to foreign countries, with revenues that are considered small compared to those from selling ready-to-use products that can be consumed by the community. In 2018, revenue from nickel ore mining was estimated at 560,000 metric tons (M/T), which represented an increase of 62.32% from the previous year. According to data from the Ministry of Energy and Mineral Resources (Energi dan Sumber Daya Mineral/ESDM), plans were made to increase nickel ore exports in 2019 to 15.07 million tons, with nickel ore reserves estimated to meet demand for 7 to 8 years, as well as the allocation of nickel reserves for the electric car industry (Ika, 2017). Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining mandates the cessation of raw material exports. Downstreaming in the mineral and coal sector is key to maximizing the value of mining products. The government has also stopped exporting raw materials for bauxite. This export activity has resulted in greater added value, which can be enjoyed by the people. This downstream policy can strengthen the structure of the national economy (Luo et al., 2022).

With the cessation of nickel ore export activities, the government needs to find investors who are interested in creating an industry, ensuring the consistent availability of raw materials for mining processing, establishing legal regulations that protect the downstreaming of the Natural Resources industry, accommodating downstream industrial commodities both domestically and abroad, maintaining political stability, managing taxation, and requiring investors to collaborate with regional business actors/MSMEs in carrying out industrial downstreaming and technology transfer, as well as protecting investors from policy changes. The

presence of investors can help accelerate economic growth (Husnah & Ichwan, 2023; Jasman & Hwihanus, 2023). Article XI:1 of GATT 1994 explains that no prohibition or restriction, other than duties, taxes, or other charges, whether imposed by quotas, import or export licenses, or other measures, may be imposed or maintained by any contracting party against the import of any product from the territory of another contracting party or against the export or sale for export of any product destined for the territory of another contracting party (WTO, 2024). This clarifies that in GATT/WTOA disputes, Article XI:1 of GATT 1994 is often involved, as countries frequently use non-tariff measures in their policies. These measures are considered more effective in protecting domestic producers; however, they remain less visible, open, or transparent, which can undermine competition.

In seeking downstreaming, the steps that can be taken by the government, especially in carrying out a mandate in the state constitution in Paragraph 4 and in relation to the formulation of Article 33, Paragraph (3) of the 1945 Constitution in the draft "state control," are as follows: The State of Indonesia, as the main subject in international trade, has delegated the authority to enact regulations (*reglendaad*), supervision (*toexichthoudensdaad*), management (*beheersdaad*), policies (*beleid*), administration (*bestuursdaad*), and management actions (*bestuursdaad*) to maximize the Nickel Resources owned by the State of Indonesia for the advancement of the welfare of the people (Magnar et al., 2010). The European Union has launched a lawsuit against the State of Indonesia at the WTO regarding the prohibition of nickel ore export activities. The EU does not consider that mining has a serious impact on the damage to natural resources. European countries and Indonesia are based on the fact that the European Union is highly dependent on the export activities of nickel ore from Indonesia. Nickel raw materials are widely used in the automotive industry, technology, and development because nickel is a major world commodity expected to become a strategic resource for the future of the automotive industry based on electrical energy (Putra & Geovanie, 2024).

Indonesia's ban on nickel raw material exports has sparked protests from the European Union because it limits their steel industry's access to nickel ore. This policy prompted the European Union to sue Indonesia at the WTO. However, the Indonesian President emphasized that this policy is the country's right to manage its natural resources. The positive impact is seen in strengthening downstream industries, although the decline in nickel mining productivity is only from 0.42% to 0.11%. The implications for the national economy are quite strategic. This ban encourages the development of the domestic nickel processing industry, creates added value, increases exports of finished products, and opens up more jobs. This policy supports the transformation of a natural resource-based economy towards industrialization, which strengthens global competitiveness (Lahadalia et al., 2024). However, the European Union's lawsuit has the potential to affect bilateral trade relations and increase the risk of other export barriers in strategic sectors.

4. Conclusion

President Joko Widodo has halted nickel ore exports to the European Union since 2020 as a strategic step to encourage the downstreaming of domestic industries. This policy aims to increase the added value of nickel by processing it into more valuable products, such as ferronickel or stainless-steel billets, rather than exporting raw ore. The step was taken to reduce Indonesia's dependence on raw material exports, which provide only low income, and to focus more on the production of semi-finished or finished goods that can offer broader benefits to the people. However, this policy has sparked both support and opposition, particularly from the European Union, which sued Indonesia at the World Trade Organization (WTO) in 2021. The European Union argues that Indonesia's policy is detrimental

to its industry, which is heavily dependent on nickel supplies, especially for the development of the electric car industry. On the other hand, Indonesia defends this policy based on Article 33 of the 1945 Constitution, which emphasizes that the management of natural resources must be utilized for the prosperity of the people. Indonesia also references Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 regarding Mineral and Coal Mining, which supports downstreaming in the mineral and coal sector. This policy aligns with the government's commitment to encouraging domestic industrial growth and reducing dependence on raw material exports. However, to ensure its success, this policy requires support from other sectors such as investment, the availability of raw materials, political stability, and legal protection for downstream industries. The government also needs to involve local business actors and MSMEs in the downstream ecosystem to ensure that this policy provides long-term benefits. In international disputes, Indonesia refers to the principles of international trade in GATT/WTO and asserts the country's right to manage natural resources for the welfare of the people. Although it triggers international tensions, this policy has the potential to positively impact the Indonesian economy, create jobs, and increase export value in the long term.

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