



## RESTRICTION OF INDONESIAN NICKEL ORE EXPORT BASED ON THE PERSPECTIVE OF QUANTITATIVE RESTRICTION PRINCIPLE IN GENERAL AGREEMENT ON TARIFFS AND TRADE

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### ABSTRACT

This research aims to find out whether the policy of restriction of Indonesia's nickel ore export is in accordance with the rules of international economic law. The quantitative restriction policy on Indonesia's nickel ore exports has drawn criticism from the European Union. The reason is that Indonesia's actions in carrying out quantitative restriction on export of nickel ore are considered to violate one of the principles in the General Agreement on Tariffs and Trade, namely the principle of prohibition on quantitative restriction. This principle is contained in Article XI: 1 of the GATT. This research used literature review, namely by collecting and analyzing literature that is closely related to the problem that is the focus of this research. The data was analyzed using analytical descriptive technique, so that it can analyze Indonesia's export restriction policy with juridical provisions in international trade law, especially in the General Agreement on Tariffs and Trade (GATT). The results of the research indicated that Indonesia's actions are in accordance with Article XI: 2(a), which regulates the exception to Article XI: 1, with certain conditions which constitute a dispensation to the principle of quantitative restriction. Indonesia's nickel ore export restriction is also implemented to protect the environment in order to prevent scarcity and to encourage the battery industry in Indonesia to boost the economy. Therefore, the Indonesia's policy can be justified by international law.

**Keywords:** GATT; Quantitative Restriction; nickel ore; nickel export

### INTRODUCTION

Export activity is an action taken by a country to sell goods abroad. Export can spur domestic economic growth, so it has an important role in increasing a country's income. Goods that become export commodities of a country are very diverse, such as electronic goods, automotive products, mineral and coal (nickel, coal), and services. One of the mining commodities that can be exported is nickel.

Nickel is not foreign to our lives. Nickel content can be found from spoons and forks, smartphone batteries and aircraft components as well as electronic devices. This metal has the nickname "the mother of industry", meaning it is the backbone that supports other industrial sectors, such as automotive industry. Therefore, the government issued regulations to manage nickel natural resources.

In managing its nickel resources, the Indonesian government through the Regulation of the Minister of Trade Number 1 Year 2017 concerning Provisions for Exports of Processed

and Refined Mining Products has officially imposed restrictions on exports of raw nickel ore. Where in the regulation, the holder of a Nickel Production Operation Mining Business Permit (IUP) can export with the following conditions:

- a. Has utilized nickel with a grade of < 1.7% (less than one point seven percent) for at least 30% (thirty percent) of the total input capacity of its nickel processing and refining facilities;
- b. Has or is currently building a refining facility, either alone or in collaboration with other parties;

This is reinforced by the issuance of the Regulation of the Minister of Energy and Mineral Resources (ESDM) Number 25 Year 2018 Article 19, which states: "Holders of Production Operation IUP, Production Operation IUPK, Production Operation IUP specifically for processing and/or refining, and Production Operation IUP specifically for transportation and sales can sell (the following goods) overseas:

1. Metallic minerals that have met the minimum refining limit; and/or
2. Non-metallic minerals or rocks that have met the minimum processing limit, by using the Tariff Post/HS (Harmonized System) in accordance with the provisions of the laws and regulations.”

The Regulation of the Minister of Trade Number 1 Year 2017 was then updated with the Regulation of the Minister of Trade Number 96 Year 2019 concerning Provisions for the Export of Processed and Refined Mining Products. This provision reaffirms the quantitative restriction for several mining materials which are mentioned in the list of appendixes of the ministerial regulation. As stated in Article 2 of the Regulation of the Minister of Trade Number 96 Year 2019, which reads “With this Ministerial Regulation, the Export of Processed and/or Refined Mining Products and Mining Products in the form of raw material or ore with certain criteria is restricted.”

In addition, there are also mining materials that are prohibited from being exported as stated in Article 3, “Processed and/or Refined Mining Products and Mining Products in the form of raw materials or ore with certain criteria that are prohibited from being exported as contained in Appendix IV which constitutes inseparable part of this Ministerial Regulation.”

The Ministerial Regulation follows up on the mandate of the superior regulation, namely Law Number 4 Year 2009 concerning Minerals and Coal. According to Law Number 4 Year 2009 concerning Minerals and Coal Mining, as a non-renewable natural resources, these resources are a national wealth controlled by the state for the greatest welfare of the people.

Law Number 4 Year 2009 has now been revised, becoming Law Number 3 Year 2020. The old law was revised on the grounds that it was no longer able to keep up with the development of the mineral and coal business and did not provide a legal umbrella related to mineral and coal. The revised Minerals and Coal Law still regulates downstream through domestic processing and refining activities, especially for license holders in the mineral sub-sector. Also, with the obligation to build refining facilities no later than 2023. In this revision, there is also a relaxation of exports of certain metallic mineral products that have not been refined in a certain amount for a maximum

period of three years since the revised Law comes into force.

In order to strengthen the legal basis and follow up on the objectives of Law Number 4 Year 2009, which was issued in the context of increasing the added value of metallic minerals through metal mineral processing and refining activities as referred to in Law Number 4/2009 concerning Mineral and Coal Mining, the Government continues to encourage the realization of development of domestic refining facilities. In addition, the government also aims to provide optimal benefits for the state and provide legal certainty and business certainty for holders of Production Operation IUP, Special Mining Business Permit (IUPK) for Production Operation, Contracts of Work, and Coal Mining Business Work Agreement.<sup>1</sup>

The background of the issuance of these ministerial regulations is to protect Indonesia’s nickel resources which are running low, while more and more nickel smelters are being built in Indonesia. According to the Ministry of Energy and Mineral Resources, Indonesia’s nickel reserves are estimated to last until 2029 only<sup>2</sup>. This is because Indonesia’s domestic nickel consumption is predicted to increase in line with the increasing demand for domestic smelters. Meanwhile in the future, the electric car industry will be more massive, and requires lithium battery fuel, which is a derivative product of nickel. Therefore, the government imposed restrictions on the export of nickel ore to store nickel reserves to avoid scarcity.

The Indonesian government’s action has drawn a negative response from several subjects of international economic law which are directly affected by the export ban, one of which is the European Union. The reason is, the European Union is in the process of replacing vehicles that use oil fuel with electric vehicles. And

<sup>1</sup> Kementerian Energi dan Sumber Daya Mineral, “Ini Enam Pokok Point Penting PP Nomor 1 Tahun 2017,” *Kementerian Energi Dan Sumber Daya Mineral*, last modified 2017, accessed May 20, 2021, <https://www.esdm.go.id/id/media-center/arsip-berita/ini-enam-pokok-point-penting-pp-nomor-1-tahun-2017>.

<sup>2</sup> CNN Indonesia, “ESDM Taksir Cadangan Nikel RI Hanya Tahan 10 Tahun Lagi,” *CNN Indonesia*, last modified 2019, accessed April 22, 2021, <https://www.cnnindonesia.com/ekonomi/20191002185300-85-436200/esdm-taksir-cadangan-nikel-ri-hanya-tahan-10-tahun-lagi>.

the European Union is also one of importers of Indonesia's nickel. The Indonesian government is accused of violating the main principles in the General Agreement on Tariffs and Trade (GATT), such as discriminating and protecting themselves for their own benefit. Indonesia's action is expected to damage the free trade order contained in the GATT, and has the potential to be followed by other countries.

In international trade law, especially the GATT, it is clearly regulated in Article XI:1 of the GATT 1994, that member countries may not impose restrictions other than duties, taxes, or other levies. Where in the article there is a principle that underlies the creation of the article, namely the principle of the Prohibition on Quantitative Restrictions. This principle prohibits a country from implementing a non-tariff policy. Based on this article, a protection can only be done with a tariff system. Indonesia has now become a part of the international community that participated in ratifying the WTO provisions. Therefore, Indonesia automatically complies with the trade rules contained in the agreement.<sup>3</sup>

Indonesia received a lawsuit from the European Union regarding the export restriction policy, because Indonesia's action is very detrimental to the European Union. Indonesia is considered inconsistent in implementing international economic law. The matter which is the subject of the European Union's lawsuit is Article XI: 1 GATT 1994, because by restricting the export of nickel ore, nickel ore must go through a refining process before being exported. Indonesia's policy to stop raw nickel exports came into force on January 1, 2020. The EU then sued it in November 2019. This policy is considered unfair because it limits EU producers' access to nickel ore.<sup>4</sup>

The study of quantitative restriction on Indonesia's nickel ore export has been carried

out in several research, but an analysis of the legal position of Indonesia which is specifically reviewed in carrying out quantitative restrictions has only been carried out in this research. Research on Indonesia's actions related to Indonesia's nickel ore export is in the following studies. Research conducted by Pasaribu entitled "*Tinjauan Yuridis Sengketa Ekspor Bijih Nikel Indonesia Terhadap Uni Eropa Ditinjau Dari Perspektif Hukum Perdagangan Internasional* (Juridical Review of Indonesia's Nickel Ore Export Dispute Against the European Union from the Perspective of International Trade Law)". His research at Sriwijaya University aims to find out international trade arrangements, especially regarding quantitative restrictions and to find out the regulation of restriction of nickel export in the international scope.<sup>5</sup> This research emphasizes more on the regulations of international trade and the dispute resolution measures.

The research conducted by Rahadian and Ibadi<sup>6</sup> entitled "*Dampak Percepatan Larangan Ekspor Nikel Terhadap Penerimaan PNPB dan Perekonomian Nasional* (The Impact of Accelerating Nickel Export Ban on Non-Tax State Revenue Receipt and the National Economy)" aims to see the impact of the implementation of the nickel export ban policy on Non-tax State Revenue receipt from nickel mining production fees/royalties and the economy in general which is shown in the indicators of output, income, profit, and taxes.

From several previous researchers' explanation, it can be seen that the focus of research on quantitative restrictions on nickel ore in Indonesia in this research is different from previous research where this research emphasizes Indonesia's standing point in determining whether quantitative restriction violates the GATT or not, and it is an original topic and needs to be discussed in this scientific journal.

Therefore, based on the descriptions that have been stated by the researchers above,

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<sup>3</sup> Halimatul Maryani and Adawiyah Nasution, "Aspek Hukum Kebijakan Pemerintah Melindungi Industri Dalam Negeri Pasca Kesepakatan Perdagangan Regional Afta-China," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 137-149.

<sup>4</sup> Muhammad Choirul Anwar, "Uni Eropa Gugat Pembatasan Ekspor Nikel, Begini Penjelasan RI," *CNBC Indonesia*, last modified 2020, accessed April 20, 2021, <https://www.cnbcindonesia.com/market/20200108101304-17-128461/uni-eropa-gugat-pembatasan-ekspor-nikel-begini-penjelasan-ri>.

<sup>5</sup> Nicholas Parsintaan Pasaribu, A Syahmin, and Akhmad Idris, "Tinjauan Yuridis Sengketa Ekspor Bijih Nikel Indonesia Terhadap Uni Eropa Ditinjau Dari Perspektif Hukum Perdagangan Internasional." (Universitas Sriwijaya, 2020).

<sup>6</sup> R. I. Rahadian and M. R. Ibadi, "Dampak Percepatan Larangan Ekspor Nikel Terhadap Penerimaan Pnpb Dan Perekonomian Nasional," *Jurnal AKURASI*, 3, no. 1 (2021): 91-115.

the statements of the problem raised by the researchers are whether the act of restriction of the export of nickel ore by Indonesia is in accordance with the principle of prohibition on quantitative restriction in the General Agreement on Tariffs and Trade (GATT) and whether Indonesia's nickel ore restriction policy can disrupt the free trade ecosystem.

## RESEARCH METHOD

This research used normative legal research method by examining library materials or secondary data and conducting searches on regulations and other literature related to the problems studied.

In this research, the primary legal materials are the provisions in the General Agreement on Tariffs and Trade (GATT); the 1945 Constitution; Law No. 3 Year 2020 concerning Amendment to Law Number 4 Year 2009 concerning Mineral and Coal Mining; The Regulation of the Minister of Trade Number 1 Year 2017 which was then updated with the Regulation of the Minister of Trade Number 96 Year 2019 concerning Provisions for the Export of Processed and Refined Mining Products. The secondary legal materials were obtained from library research from legal journals, reference books and internet sources.

The type of approach used by the researchers in this research is Analytical and Conceptual Approach, which can be a basis for building legal arguments when resolving legal issues encountered. For the technique of collecting legal materials, it was done through library research with the tool used is document study. Furthermore, the legal materials were analyzed and compiled systematically using deductive logic.

## DISCUSSION AND ANALYSIS

### A. Restriction on the Export of Nickel Ore: Perspective of the Principle of Prohibition on Quantitative Restriction

The Indonesian government in stipulating the policy of export quota restriction has a clear basis of consideration and constitutional basis. In the 1945 Constitution Article 33 Paragraph 3, it is stated that: "...Earth, water and natural resources contained therein are used for the greatest prosperity of the people..." and it is the main joint which is the constitutional basis for the

state's economy and control by the state of natural resources.<sup>7</sup>

In the article it is clearly stated that there is an obligation for state apparatus to promote public welfare and provide basic needs for the community. For this reason, the state is given the authority to regulate and manage natural resources that exist throughout the territory of Indonesia in order to advance the prosperity of the community.<sup>8</sup>

To follow up on the noble goals of the 1945 Constitution Article 33 Paragraph 3, in accordance with the hierarchy of legislation, Law Number 3 Year 2020 was issued. Law No. 3 Year 2020 is then followed by a more technical regulation regulated in the Regulation of the Minister of Trade No. 1 Year 2017. This arrangement is clearly written in the Regulation of the Minister of Trade No. 1 Year 2017 Article 3 Paragraph 1, which reads:

*"Mining products in the form of raw material or ore and mining products that do not comply with the minimum processing and/or refining limits are mining products that are prohibited from exporting, except for mining products listed in appendix III as referred to in Article 2 Paragraph (2)."*

The Ministry of Energy and Mineral Resources (ESDM) also provides a legal umbrella related to the policy of nickel ore export restriction. This is stated in the Regulation of the Minister of Energy and Mineral Resources Number 25 Year 2018 concerning Mineral and Coal Mining Business in Article 19 which reads:

*"The holders of Production Operation IUP, Production Operation IUPK, Production Operation IUP specifically for processing and/or refining, and Production Operation IUP specifically for transportation and sales, can sell (the following goods) overseas:*

- a. Metallic minerals that have met the minimum refining limit; and/or
- b. Non-metallic minerals or rocks that have met the minimum processing limit, by using the Tariff Post/HS (Harmonized System) in accordance with the provisions of the laws and regulations."

<sup>7</sup> S E Wibowo, "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara," *Jurnal Legislasi Indonesia* 12, no. 4 (2015): 1-57.

<sup>8</sup> Ibid.

Based on the export quota restriction regulation by Indonesia, the European Union filed a lawsuit on November 27, 2019 and asked to hold consultations regarding the Indonesian policy. The European Union considered that the Indonesian government was not transparent in stipulating the export restriction policy and has failed to publish its policies.

The General Agreement on Tariffs and Trade (GATT) has imposed certain restrictions on export. Article XI of the GATT, which regulates quantitative restrictions on trade, imposes general prohibitions on the use of export bans, quotas, licenses, and other forms of quantitative restrictions. However, the GATT establishes a limited set of circumstances when this prohibition does not apply. In addition, it protects the rights of members of the World Trade Organization (WTO) to enforce exports.<sup>9</sup>

There is debate about the interpretive approach that can be adopted with respect to exception provisions. Article XX of the GATT must be read in accordance with the aim and purpose of the Agreement; and the relationship between Article XX and other affirmative commitment provisions may be interpreted in this general scheme of interpretation on a case-by-case basis only.<sup>10</sup>

However, in realizing a healthy free trade, this principle cannot be fully applied. There are certain conditions in a country that prevent the country from implementing the regulation. In stipulating quantitative restriction policy, a country should not be arbitrary. In the GATT, there are legal provisions that explain the conditions for a country in stipulating quantitative restriction policy.

### **1. Export Restriction is Carried Out to Prevent Shortage of the Restricted Goods.**

The basis for the requirements is stated in Article XI: 2(a) in the phrase: "... prevent or relieve critical shortages of foodstuffs or other

*products ...*" The words "shortages" and "critical" may refer to a condition where there is a shortage that results in massive difficulties and tensions over something very vital to people's lives. The meaning of this phrase is emphasized in the Jurisprudence "*Appellate Body Report, China – Raw Materials*, para 324", which states: "*Turning next to consider the meaning of the term 'critical shortage', we note that the noun 'shortage' is defined as '[d]efficiency in quantity; an amount lacking' and is qualified by the adjective 'critical', which, in turn, is defined as '[o]f, pertaining to, or constituting a crisis; of decisive importance, crucial; involving risk or suspension'. The term 'crisis' describes '[a] turning point, a vitally important or decisive stage; a time of trouble, danger or suspense in politics, commerce, etc.'* Taken together, '*critical shortage*' thus refers to those deficiencies in quantity that are crucial, that amount to a situation of decisive importance, or that reach a vitally important or decisive stage, or a turning point".<sup>11</sup>

This requirement is also supported by Article XX Paragraphs (b) and (g), which read: "... necessary to protect human, animal or plant life or health;... and Article XX (g) relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

Even though there are several exceptions to the GATT obligations, the provisions in Article XX are general deductions aimed at balancing the trade liberalization agenda with the legitimate protection of certain societal values which may not be economic in nature.<sup>12</sup>

### **2. The Export Restriction Policy Must Be Temporary**

The non-tariff barrier policy applied by countries cannot be enforced forever. In Article XI: 2(a) it is stated that: "... *Export prohibitions or restrictions temporarily applied ...*"

<sup>9</sup> M Wu, "Export Restrictions," in *Handbook of Deep Trade Agreements*, ed. Aaditya Mattoo, Nadia Rocha, and Michele Ruta (Washington: o International Bank for Reconstruction and Development / The World Bank, 2020), 87–110.

<sup>10</sup> Gabriele Gagliani, "Interpreting and Applying Article Xx(F) of the Gatt 1994: 'National Treasures' in International Trade Law," *Santander Art and Culture Law Review* 5, no. 2 (2019).

<sup>11</sup> Gabrielle Marceau and Julia Kuelzow, "Jurisprudence on The Scope and Meaning of The Obligation Under GATT Article XI (Quantitative Restriction) and Justification," last modified 2018, [wto.org/english/tratop\\_e/markacc\\_e/o3\\_gabrielle\\_marceau\\_and\\_julia\\_kuelzow.pdf](http://wto.org/english/tratop_e/markacc_e/o3_gabrielle_marceau_and_julia_kuelzow.pdf).

<sup>12</sup> Bader Bakhit AlModarra, "Defining the Contours of the Public Morals Exception under Article XX of the GATT 1994," *Estey Journal of International Law and Trade Policy* 18, no. 2 (2017).

The phrase “temporary” in Article XI means not permanent. The period of time applied in implementing export quota restrictions is a maximum of 3 years.<sup>13</sup> The words “*Temporary*” and “*Critical Shortage*” are closely related in Article XI. Member countries in implementing export restrictions have flexibility by adjusting to the “critical shortage” situation experienced by a country. If the shortage of goods has been resolved, the export restrictions can be lifted. However, there are certain circumstances; if the natural resource shortage in a country lasts for a long time and it takes years to restore the situation, then the legal product of Article XI 2(a) does not apply. In that situation, the article used is Article XX (g).

### 3. The Export Restriction Policy is Not Discriminatory

In the GATT, non-discriminatory actions are highly guaranteed. This is stated in the “Most Favoured Nation” Principle in Article I of the GATT, which reads:

*“With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,\* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”.*

Each countries’ policy in the field of trade must apply to all member countries. If a country can choose to determine which countries are subject to export restrictions, there will be unfair competition among countries that do not benefit.

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<sup>13</sup> Mitsuo Matsushita et al., “Export Control Of Natural Resources: Wto Panel Ruling On The Chinese Export Restrictions Of Natural Resources,” *Trade, Law and Development* (2011).

### 4. The Export Restricted Goods Are Essential Goods

In Article XI 2 (a), it is stated that the goods that are the object of the implementation of export restrictions must be goods that are essential for the exporting country, as stated: “... *relieve critical shortages of foodstuffs or other products essential to the exporting contracting party ...*”

Essential goods are basic goods and have a broad impact on society in various fields, such as nickel, which is *the mother of industry*, because nickel can then be processed into various products that support the needs of people’s lives. Essential products can also be interpreted as goods that become “inputs” to make other important products in the next stage of production.<sup>14</sup>

Based on Article XX (g), essential products can also be in the form of natural resources: “*relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;*” Therefore, the stipulation of export restrictions to conserve natural resources is highly permitted in the GATT regulation.

The Indonesian government took the opportunity to take advantage of the exceptions which also have a legal basis in the GATT, to launch the export restriction policy. In accordance with the criteria regarding in what cases a country can implement an export restriction policy, Indonesia’s condition is in accordance with the requirements to take advantage of the opportunity of exceptions regarding export restrictions regulated in the GATT. In the conditions described by the researchers above, one of the conditions for a country in carrying out export restrictions is if a country experiences a shortage of goods and to prevent a shortage of the goods. One of the main reasons why Indonesia issued a nickel export restriction policy is the limited resilience of reserves. The reserves of Indonesia’s national nickel commodity of 698 million tons can only guarantee supply of nickel ore for refining facilities for 7.3 years (if no new reserves are found).<sup>15</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Agung Pribadi, “Bijih Nikel Tidak Boleh Diekspor Lagi per Januari 2020,” *Kementerian Energi Dan Sumber Daya Mineral*, last modified 2020, accessed May 5, 2021, <https://www.esdm.go.id/id/media-center/arsip-berita/bijih-nikel-tidak-boleh-diekspor->

Meanwhile, estimated reserves of 2.8 billion tons still require an increase in modifying factors such as ease of access, licensing (environmental permits), and economics (price) to increase technical reserves to become proven. Thus, it can meet the needs of refining facilities for around 42.67 years.<sup>16</sup>

The Indonesian government in the Regulation of the Minister of Energy and Mineral Resources Number 25 Year 2018 Article 44 (a) stipulates:

*“The holders of Metallic Mineral Work Contract can sell processed products overseas in a certain amount no later than January 11, 2022 after changing the form of their mining business into a Production Operation IUPK and paying export duties in accordance with the provisions of the laws and regulations and meeting the minimum processing requirements stated in Appendix I which constitutes inseparable part of this Ministerial Regulation;”*

This means that Indonesia has fulfilled its commitment to take advantage of the relaxation of export restrictions while still complying with the GATT provisions. Indonesia will strictly enforce export restrictions for a period of 2 years (until January 11, 2022). Article XI of the GATT requests that countries wishing to impose export restrictions must have a period of time (temporary) and Indonesia has fulfilled this commitment.

The implementation of export restrictions should not be done in a discriminatory manner, it must apply to all WTO member countries. Therefore, Indonesia has met these criteria. Indonesia’s nickel export restrictions apply to all countries without exception. In Indonesia’s national law that regulates nickel export restrictions, there is not a single legal product that states an exception in applying export restrictions to certain countries.

In Article XI 2(a) of the GATT, it is stated that the restricted goods must be essential goods. Nickel as “The Mother of Industry” is certainly essential goods. Nickel can be used as the main raw material for the manufacture of lithium batteries which in the future will be very essential

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<sup>16</sup> Ibid.

for the fuel of electric car transportation, which is the big vision of the Indonesian government to have energy sovereignty in the future, which then began to be implemented with the entry of investors to establish factories of lithium battery which is the fuel for electric cars.

Therefore, Indonesia’s export restrictions on nickel ore have a strong legal basis for implementation, because Indonesia’s condition is in accordance with the elements in implementing export restrictions.

## **B. The Effect of Restriction on Nickel Ore Export by Indonesia on the Balance of Free Trade as Regulated in the General Agreement on Tariffs and Trade (GATT)**

International trade activities are regulated by a set of international regulations where the main provisions are contained in the General Agreement on Tariffs and Trade (GATT) which was signed by countries in 1947. The GATT agreement was based on the consideration that relations among countries in the field of trade and the economy must be carried out with the aim of increasing living standards, ensuring employment and increasing income and meeting needs, fully utilizing world resources, and expanding production and exchange of goods.<sup>17</sup>

The application of WTO principles is aimed at producing conditions that are reciprocal and mutually beneficial so that all countries can benefit. Through the WTO, a trade model was launched in which trade activities among countries are expected to run smoothly. In principle, the World Trade Organization (WTO) is a means to encourage an orderly and fair free trade.<sup>18</sup>

In observing the objectives of the WTO and GATT, it can be seen that the desire of countries in carrying out international trade must accommodate common interests with the principles of mutual benefit, non-discrimination and no harm to one another. Also, to keep the national interest, especially on fundamental

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<sup>17</sup> Yudha Aji Pangestu, Bernard Sipahutar, and Budi Ardianto, “Harmonisasi Prinsip Perdagangan Internasional Pada GATT dalam Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan,” *Utı Possidetis: Journal of International Law* 2, no. 1 (2021): 81–105, <https://online-journal.unja.ac.id/Utıpossidetis/article/view/10352/10760>.

<sup>18</sup> Ibid.

issues, protected. The aspects of environment and sustainable development in the management and trade of natural resources must be protected for the sake of preservation and inheritance for future generations.

Indonesia's action in carrying out quantitative restrictions on nickel ore exports is clearly an important thing for Indonesia considering the dwindling nickel ore mining reserves, so that this condition needs to be exempted from the general provisions of the GATT regarding quantitative restrictions.

The Indonesian government in the case of the nickel ore export restriction took environmental issues as one of the reasons. This has been proven by the relevant institutions that Indonesian nickel will indeed experience a shortage if export restrictions are not enforced. It is certain that the government's action will not disturb the free trade order which is the main objective of the WTO.

This is because the export restriction imposed by Indonesia is in accordance with the main principle of GATT in realizing free trade, namely the principle of Most Favoured Nation, which means that all commitments made or signed within the framework of the WTO must be treated equally for all WTO members without conditions.<sup>19</sup> Based on the MFN Principle, members cannot simply discriminate against their trading partners. In its policy, the Indonesian government does not determine which countries will be affected by its policy, but all WTO member countries will also be affected by Indonesia's export restrictions on nickel ore quotas.

## CONCLUSION

The Indonesian government's policy is a non-tariff barrier, or violates the principle of prohibition on quantitative restrictions. However, there are exceptions so that member countries can impose quantitative restrictions on exports. The conditions for the country in carrying out quantitative restrictions on exports are:

1. The policy must be temporary or has a time limit.
2. The restricted products must be essential products that are beneficial to the country.

3. The application of the policy of quantitative restriction on export must be carried out to prevent a shortage of a natural resource product.
4. Quantitative restriction on export must be applied comprehensively or non-discriminatory.

In this case, the Indonesian state in implementing quantitative restriction on the export of raw nickel ore has complied with existing international law by using exceptions in applying this quantitative restriction from points one, two, three and four above.

Indonesia's policy of quantitative restriction on export does not interfere with free trade, because the policy is carried out without discrimination and in line with the principle of sustainable development by the WTO.

## SUGGESTION

The researchers hope that the government will maintain its commitment in implementing quantitative restriction on export of nickel ore in accordance with the principles and provisions of the international law that have been mutually agreed upon. In addition, the government shall increase the dissemination to the public in transparent manner regarding data and information about the depletion of nickel ore resources in Indonesia which can strengthen Indonesia's argument that quantitative restriction on ore export must be carried out by the Indonesian government. Therefore, we hope that the World Trade Organization can view Indonesia's policy on the quantitative restriction on nickel ore export objectively, because this policy is highly needed for the welfare of the Indonesian people and the sustainability of natural resources in the future.

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<sup>19</sup> Sutiarnoto, *Hukum Penyelesaian Sengketa Perdagangan Internasional* (Medan: USU Press, 2016).



## BIBLIOGRAPHY

- AlModarra, Bader Bakhit. "Defining the Contours of the Public Morals Exception under Article XX of the GATT 1994." *Estey Journal of International Law and Trade Policy* 18, no. 2 (2017).
- CNN Indonesia. "ESDM Taksir Cadangan Nikel RI Hanya Tahan 10 Tahun Lagi." *CNN Indonesia*. Last modified 2019. Accessed April 22, 2021. <https://www.cnnindonesia.com/ekonomi/20191002185300-85-436200/esdm-taksir-cadangan-nikel-ri-hanya-tahan-10-tahun-lagi>.
- Gagliani, Gabriele. "Interpreting and Applying Article Xx(F) of the Gatt 1994: 'National Treasures' in International Trade Law." *Santander Art and Culture Law Review* 5, no. 2 (2019).
- Kementerian Energi dan Sumber Daya Mineral. "Ini Enam Pokok Point Penting PP Nomor 1 Tahun 2017." *Kementerian Energi Dan Sumber Daya Mineral*. Last modified 2017. Accessed May 20, 2021. <https://www.esdm.go.id/id/media-center/arsip-berita/ini-enam-pokok-point-penting-pp-nomor-1-tahun-2017>.
- Marceau, Gabrielle, and Julia Kuelzow. "Jurisprudence on The Scope and Meaning of The Obligation Under GATT Article XI (Quantitative Restriction) and Justification." Last modified 2018. [wto.org/english/tratop\\_e/markacc\\_e/03\\_gabrielle\\_marceau\\_and\\_julia\\_kuelzow.pdf](http://wto.org/english/tratop_e/markacc_e/03_gabrielle_marceau_and_julia_kuelzow.pdf).
- Maryani, Halimatul, and Adawiyah Nasution. "Aspek Hukum Kebijakan Pemerintah Melindungi Industri Dalam Negeri Pasca Kesepakatan Perdagangan Regional Afta-China." *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 137–149.
- Matsushita, Mitsuo, Diane Desierto, Patrick Wieland, Glamis Gold, Petros C Mavroidis, Claus D Zimmermann, and Melissa Blue Sky. "Export Control Of Natural Resources: Wto Panel Ruling On The Chinese Export Restrictions Of Natural Resources." *Trade, Law and Development* (2011).
- Muhammad Choirul Anwar. "Uni Eropa Gugat Pembatasan Ekspor Nikel, Begini Penjelasan RI." *CNBC Indonesia*. Last modified 2020. Accessed April 20, 2021. <https://www.cnbcindonesia.com/market/20200108101304-17-128461/uni-eropa-gugat-pembatasan-ekspor-nikel-begini-penjelasan-ri>.
- Pangestu, Yudha Aji, Bernard Sipahutar, and Budi Ardianto. "Harmonisasi Prinsip Perdagangan Internasional Pada GATTdalam Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan." *Uti Possidetis: Journal of International Law* 2, no. 1 (2021): 81–105. <https://online-journal.unja.ac.id/Utipossidetis/article/view/10352/10760>.
- Pasaribu, Nicholas Parsintaan, A Syahmin, and Akhmad Idris. "Tinjauan Yuridis Sengketa Ekspor Biji Nikel Indonesia Terhadap Uni Eropa Ditinjau Dari Perspektif Hukum Perdagangan Internasional." Universitas Sriwijaya, 2020.
- Pribadi, Agung. "Biji Nikel Tidak Boleh Diekspor Lagi per Januari 2020." *Kementerian Energi Dan Sumber Daya Mineral*. Last modified 2020. Accessed May 5, 2021. <https://www.esdm.go.id/id/media-center/arsip-berita/biji-nikel-tidak-boleh-diekspor-lagi-per-januari-2020#:~:text=Biji%20Nikel%20Tidak%20Boleh%20Diekspor%20Lagi%20per%20Januari%202020,tidak%20lagi%20diperbolehkan%20un>.
- Rahadian, R. I., and M. R. Ibadi. "Dampak Percepatan Larangan Ekspor Nikel Terhadap Penerimaan Pnbp Dan Perekonomian Nasional." *Jurnal AKURASI*, 3, no. 1 (2021): 91–115.
- Sutiarnoto. *Hukum Penyelesaian Sengketa Perdagangan Internasional*. Medan: USU Press, 2016.
- Wibowo, S E. "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara." *Jurnal Legislasi Indonesia* 12, no. 4 (2015): 1–57.
- Wu, M. "Export Restrictions." In *Handbook of Deep Trade Agreements*, edited by Aaditya Mattoo, Nadia Rocha, and Michele Ruta, 87–110. Washington: 0 International Bank for Reconstruction and Development / The World Bank, 2020.

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