EXPORT OF CRUDE NICKEL (GOVERNMENT OF INDONESIA VS EUROPEAN UNION AND WTO)

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ABSTRACT

Objective: The object of this study is the government's policy of prohibiting the export of raw nickel through Minister of Energy and Mineral Resources regulation number 11 of 2019, the European Union's lawsuit to the WTO, and the WTO's decision on the lawsuit which is analyzed from a normative perspective and uses the SWOT technique.

Methods: Qualititative with a normative approach, namely examining the export ban policy by the Indonesian government in the Minister of Energy and Mineral Resources regulation number 11 of 2019, European Union lawsuits, and WTO panel decisions. This study also measures the profit and loss of each party using the SWOT analysis technique.

Results: The results of this study indicate that the Indonesian government, the European Union, and the WTO remain in their respective stances and will continue to fight for their interests. The SWOT results show that this conflict is leaning towards things that can be detrimental to each party, especially the Indonesian government and the European Union.

Suggestions: This research can be used as reference material for the Indonesian government, the European Union, and the WTO to create mutually beneficial actions for each party.

Keywords: export, nickel, work load, Government of Indonesia, European Union.

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RESUMO

Objetivo: O objetivo deste estudo é a política do governo de proibir a exportação de níquel bruto através do Regulamento n.º 11 do Ministro da Energia e Recursos Minerais de 2019, o processo da União Europeia para a OMC e a decisão da OMC sobre o processo que é analisado de uma perspectiva normativa e utiliza a técnica SWOT.

Métodos: Qualitativo com uma abordagem normativa, nomeadamente examinando a política de proibição de exportação pelo governo indonésio no Regulamento número 11 do Ministro de Energia e Recursos Minerais de 2019, ações judiciais da União Europeia e decisões do painel da OMC. Este estudo também mede os lucros e prejuízos de cada partido usando a técnica de análise SWOT.

Resultados: Os resultados deste estudo indicam que o governo indonésio, a União Europeia e a OMC permanecem em suas respectivas posições e continuarão a lutar por seus interesses. Os resultados do SWOT mostram que este conflito está inclinado para coisas que podem ser prejudiciais para cada uma das partes, especialmente o governo indonésio e a União Europeia.

Sugestões: Esta pesquisa pode ser usada como material de referência para o governo indonésio, a União Europeia e a OMC para criar ações mutuamente benéficas para cada parte.

Palavras-chave: exportação, níquel, carga de trabalho, Governo da Indonésia, União Europeia.

1 INTRODUÇÃO

Nickel is a shiny silvery-white metal. It belongs to the category of transition metals, and is hard and malleable. It exists in combination with sulfur in millerite, with arsenic in niccolite quarries, and with arsenic and sulfur in (nickel glance). Due to its resistance to air and oxidization, it is used in cylinders, for coating iron, copper, etc., for chemical utensil applications, and in certain alloys such as German silver. It is magnetic, and often with cobalt, both of which occur in cast iron. His importance is in the form of blends, especially in mostly adi forms, and especially in iron waja. Nickel is one of the five ferromagnetic elements. However, United States nickel coins are non-magnetic as they are actually mostly (75%) copper. Canadian nickel nickel refined over various periods from 1922-81 was 99.9% nickel, and it was magnetically attractive (Wikipedia, 2023).

Indonesia is a country that has the largest nickel reserves in the world. Based on data from the Central Statistics Agency, Indonesia's Nickel reserves are continuously depleting and it is projected that they will only be produced in 39 years considering that Nickel is a non-renewable material (Annisatul, 2020). To overcome this problem, on January 1, 2020 the Government of the Republic of Indonesia banned Nickel exports.

The Indonesian government limits exports under the pretext of sustainable development. Sustainable Development is natural resource-based economic development that does not pay attention to aspects of environmental sustainability which will ultimately have a negative impact on the environment itself, because basically natural resources and the environment have a limited carrying capacity. In other words, economic development that does not pay attention to the capacity of natural resources and the environment will cause development problems in the future (Annisatul, 2020).

The concept of sustainable development has actually been the concern of experts for a long time. However, the term sustainability itself only appeared a few decades ago, although attention to sustainability had begun since Malthus in 1798 who was concerned about the availability of land in England due to the rapid population explosion. A century and a half later, this attention to sustainability has thickened after Meadow and friends published a publication entitled The Limit to Growth in 1972 in their conclusion, that economic growth will be severely limited by the availability of natural resources. With the limited availability of natural resources, the flow of goods and services produced from natural resources will not always be carried out continuously (on a sustainable basis) (Suparmoko, 2020).

During the 20th century, there were 2 (two) revolutions related to the role of the environment in economic and social development. The first revolution (1) was between the 1960's -1970's when the paradigm emerged that there was a conflict between the concepts of growth and the conservation of natural resources and the environment where any development that was intended to improve people's welfare was always accompanied by exploitation of natural resources and environmental damage (Meadows, Donella and Meadows, Nancy, 1972). Meadows and Meadows who are members of the
Roma Group wrote a book on "Limits to Growth". In the book it was stated that if there was no reduction in the level of consumption in society at that time, then within 100 years the world would collapse, because natural resources would run out and the environment would experience high pollution and very severe damage (Rahadian & Ibadi, 2021).

The concept of sustainable development which is defined as development for the present and which does not require compromises for future generations emerged at a meeting of nations in Norway chaired by Prime Minister of Norway Gro Harlem Brundtland in 1987. It was at that time that it was as if the 2nd (two) revolution in the field of national development was taking place which stated that economic development does not solely damage the environment, but instead economic development and environmental development can synergize with each other (Siahaan et al., 2021).

Based on this, this study aims to analyze the Indonesian Government's export restriction policy through the Minister of Energy and Mineral Resources Regulation Number 19 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Exploitation and the reasons for rejecting IMF restrictions using legal theories and sustainable development. This research is a qualitative research using the SWOT analysis method.

2 RESEARCH METHODS

This research is a qualitative research with a normative approach (Sugiyono, 2019) in which this study analyzes the policy of the government of the Republic of Indonesia in prohibiting the export of nickel Regulation of the Minister of Energy and Mineral Resources Number 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning the Exploitation of Mineral and Coal Mining, WTO decisions, and Eropa Union arguments regarding government policies.

The research materials used are secondary research materials including Minister of Energy and Mineral Resources Regulation Number 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Business, WTO decisions, and Eropa Union arguments regarding government policies. MINERBA Law, WTO decisions,
scientific journals, books, websites that can be trusted, and others that are related to this research (Jonathan Sarwono, 2016). The analysis technique used uses grammatical and systematic analysis techniques, namely analyzing words for words in statutory regulations and harmonizing them with other statutory regulations. As an additional analysis, the analysis technique in this study uses the SWOT analysis technique (Strengts, Weakness, Opportunities, and Threats regarding the arguments of the Government of Indonesia and the Eropa Union in banning Nickel exports abroad (Lexy J. Moleong, 2018).

3 RESULT
3.1 INDONESIAN GOVERNMENT PERSPECTIVE

The ban on the export of nickel material by the government is based on Minister of Energy and Mineral Resources Regulation Number 11 of 2019 concerning the Second Amendment to Minister of Energy and Mineral Resources Regulation Number 25 of 2018 concerning Mineral and Coal Mining Business. Article 62 A states that the ministerial regulation states that the Nickel content, which is at 1.7%, cannot be exported abroad (Peraturan Menteri Energi Dan Sumber Daya Mineral Nomor 11 Tahun 2019 Tentang Perubahan Kedua Atas Peraturan Menteri Energi Dan Sumber Daya Mineral Nomor 25 Tahun 2018 Tentang Pengusahaan Pertambangan Mineral Dan Batubara, 2019). The reasons for the government of the Republic of Indonesia to ban exports are closely related to sustainable development, namely considering the effectiveness of processing, the dwindling national Nickel reserves, the selling value of Nickle, and infrastructure readiness.

According to the Indonesian Central Bureau of Statistics, Indonesia's Nickel reserves are only 39 years old and are projected to continue to run low (Statistik, 2022). Actually, the nickel export ban has been regulated in Article 102 of Law Number 4 of 2009 concerning Mineral and Coal Mining. It states that "IUP and IUPK holders are required to increase the added value of mineral and/or coal resources in the implementation of mining, processing and refining, as well as the utilization of minerals and coal". One of its concrete manifestations is that IUP holders are required to build a smelter in the country as stated in article 170 102 of Law Number 4 of 2009 concerning Mineral and Coal Mining. However, at that time, the smelter was not ready to be built until November-December 2019, the government assessed that the smelter and other
infrastructure were ready. On this basis, a regulation was issued prohibiting the export of raw nickel abroad. In addition to processing effectiveness, this raw nickel export hindrance is also closely related to sustainable development (Undang-Undang Nomor 24 Tahun 2009 Tentang Mineral Dan Batubara, 2009).

Sustainable development is a human effort to improve the quality of life by continuing to try not to go beyond the ecosystems that support life. Today the issue of sustainable development has become an important issue that needs to be socialized in the community. Therefore the author feels interested in exploring this concept as outlined in the introductory paper on the Philosophy of Science in the odd semester of 2004 (Jaya, 2004).

Sustainable development (Redecon, 1990) aims to improve people's welfare, to meet human needs and aspirations. Sustainable development is essentially aimed at seeking equitable development between generations in the present and in the future. According to KLH (1990) development (which is basically more economic-oriented) can be measured for its sustainability based on three criteria, namely: (1) There is no wasteful use of natural resources or depletion of natural resources; (2) No pollution and other environmental impacts; (3) Activities must be able to increase useable resources or replaceable resources.

From the economic side (Fauzi, 2004) there are at least three main reasons why economic development must be sustainable. The first concerns moral reasons. The current generation enjoys goods and services produced from natural resources and the environment so it is morally necessary to pay attention to the availability of these natural resources for future generations. This moral obligation includes not extracting natural resources that could damage the environment, which could deprive future generations of the opportunity to enjoy the same services. Second, regarding ecological reasons, biodiversity, for example, has a very high ecological value, therefore economic activity should not be directed solely at exploiting natural resources and the environment which can ultimately threaten ecological functions. The third factor, which is the reason for the need to pay attention to the sustainability aspect, is economic reasons. The reason from the economic side is still debatable because it is not known whether economic activity so far has or has not met the criteria for sustainability, as we know, that the economic dimension of sustainability itself is quite complex, so often the sustainability aspect from the economic side is only limited to measuring intergenerational welfare
In the concept of sustainable development, policy collisions that may occur between the need to explore natural resources to combat poverty and the need to prevent environmental degradation should be avoided and as far as possible be balanced. Sustainable development also requires the fulfillment of basic needs for society and the existence of broad opportunities for citizens to pursue their aspirations for a better life without sacrificing future generations (Sutamihardja, 2004).

It is recognized that the concept of sustainability is a simple yet complex concept, so that the notion of sustainability is very multidimensional and has multiple interpretations. According to (Fauzi, 2004) the concept of sustainability contains at least two dimensions: First is the time dimension because sustainability is nothing but about what will happen in the future. The second is the dimension of interaction between the economic system and the system of natural resources and the environment. (Sutamihardja, 2004) looks at the aspect of sustainability from a different perspective. He sees that sustainability has both static and dynamic meanings. Sustainability from a static perspective is defined as the utilization of renewable natural resources with a constant technological rate, while from a dynamic perspective, sustainability is defined as the utilization of non-renewable natural resources at a constantly changing technological level.

In line with sustainable development, the downstream concept was initiated by the government to process industry, in this case raw Nickel material, into a material that is more valuable and more valuable when exported abroad. Apart from that, in terms of the time dimension, the government also assesses that Indonesia has adequate infrastructure to carry out this nickel downstream program which ultimately aims to prosper the Indonesian people.

3.2 EUROPA UNION AND WTO PERSPECTIVE

Contrary to the perspective of the Indonesian government, the European Union considers the policy to ban raw nickel exports to be premature, contrary to the principles of justice and detrimental to its stainless steel industry. As a result of this, the European Union filed a lawsuit against the WTO on the legal basis of complaints under Article XI:1 of the 1994 GATT, Article 3.1 of the GASC, and Article X:1 of the 1994 GATT (WTO, 2022a). On January 30, 2020, the European Union, America and Indonesia...
communicated in Geneva (WTO, 2021). However, the discussion did not provide a significant solution and each party remained in its position. The European Union considers that the export ban policy in Indonesia does not meet the requirements for exceptions in international trade because it is not implemented temporarily to overcome the Nickel crisis in its territory. On this basis the WTO won the lawsuit from the European Union and considered that Indonesia was not in a Nickel crisis as referred to in X1: GATT 1994. Based on this, the WTO asked Indonesia to carry out the principles contained in the 1994 GATT. X1:2 Exports can only be prohibited and restricted to exporting countries that are experiencing a crisis (WTO, 2022). According to the IMF and WTO, limiting or even banning the export of raw nickel under the pretext of downstreaming and product development is unjustifiable.

### 3.3 SWOT ANALYSIS

Apart from analyzing from the perspective of the Indonesian government, the IMF, and the WTO. This study also aims to analyze using the SWOT method regarding Strengths, Weaknesses, Opportunities, and Threats to Government policies which continue to prohibit raw exports of Nickel for quality development and WTO decisions and IMF arguments that feel disadvantaged as follows:

<table>
<thead>
<tr>
<th>Strength</th>
<th>Weakness</th>
<th>Opportunity</th>
<th>Threat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product quality increases</td>
<td>Potentially subject to sanctions</td>
<td>Higher selling costs</td>
<td>Bankrupt</td>
</tr>
<tr>
<td>State sovereignty</td>
<td>Losing an international cooperation partner</td>
<td>Employment increased</td>
<td>Break contracts on other types of material</td>
</tr>
<tr>
<td>Indonesia is a respected country</td>
<td>Tax revenues slumped</td>
<td>Infrastructure increases</td>
<td>Fine</td>
</tr>
<tr>
<td>Indonesia is not underestimated</td>
<td>The local nickel business went bankrupt</td>
<td>Public trust increased</td>
<td>Cancellation of international agendas in Indonesia</td>
</tr>
</tbody>
</table>

Source: Data processed by researchers, 2023

<table>
<thead>
<tr>
<th>Strength</th>
<th>Weakness</th>
<th>Opportunity</th>
<th>Threat</th>
</tr>
</thead>
<tbody>
<tr>
<td>WTO’s Authority Increases</td>
<td>Lost the world's largest nickel exporting country</td>
<td>Potential to win big lawsuits and appeals</td>
<td>Bankrupt</td>
</tr>
<tr>
<td>Compliance with regulations is getting higher</td>
<td>Buy at a higher price</td>
<td>Income increases</td>
<td>Big loss</td>
</tr>
<tr>
<td>The European Union is increasingly respected in international trade</td>
<td>Spending is getting depleted</td>
<td>There will be no problems in the future</td>
<td>Other materials were abandoned</td>
</tr>
</tbody>
</table>

Source: Data processed by researchers, 2023
4 CONCLUSION

Based on the explanation above, it can be concluded that the Indonesian government's argument for banning the export of raw nickel through Minister of Energy and Mineral Resources Regulation Number 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Concession is based on improving product quality so that it can be exported with a higher selling price. However, according to the WTO and the European Union this action violated articles X:1 X:1 and 2 of the 1994 GATT which explained that restrictions and bans on exports can only be made for export countries that are experiencing a crisis. According to the WTO, Indonesia is far from this situation. Each side is on its feet and will not budge. For this incident, from the SWOT analysis it tends to lead to losses from each party such as loss of business partners, sanctions received, potential bankruptcy, reduced income, and so on which can be detrimental to both parties. Researchers hope that this problem can be resolved so as to generate benefits for both parties.
REFERENCES


