

**THE POLICY OF BANNING THE EXPORT OF RAW MATERIALS IN THE
MINING SECTOR BY THE INDONESIAN GOVERNMENT FROM THE
PERSPECTIVE OF INTERNATIONAL TRADE LAW**

**Hilton Tarnama Putra M¹, Ade Marpudin²
Belardo Prasetya Mega Jaya³**

Law Faculty, Untirta, E-mail: hiltontarnamapm@untirta.ac.id

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Abstract

The management and utilization of natural resources by a country are manifestations of exercising national sovereignty. The Doctrine of Sovereignty is designed to provide equality among nations under the law to develop their countries towards prosperity and well-being. The policy of restricting and prohibiting the export of raw materials in the mining sector, such as nickel, gold, and tin, by the Indonesian government, is recognized under international law, particularly international trade law. This policy will bring beneficial impacts to Indonesia's economy. By having the capability to process natural resources independently, Indonesia can enhance its economic self-reliance, reduce dependency on imports, and improve the country's position in the global competition in the mining sector, ultimately leading to increased national revenue and providing greater well-being for the entire Indonesian population.

I. Introduction

The natural resources owned by a country hold a highly strategic and crucial value in supporting its economic growth. However, these natural resources will not yield economic benefits and added value until their management is maximized. One of the natural resources that can bring significant economic benefits and added value through proper management is the mining sector's natural resources. Managing the mining sector involves transforming raw materials from the mining sector into semi-finished or finished products before being sold (exported), which can lead to numerous advantages through a multiplier effect. These advantages include economic benefits derived from higher value-added production, infrastructure development, and social gains from community development and job creation.

The management and utilization of natural resources by a country is a manifestation of the implementation of state sovereignty. This Doctrine of Sovereignty is present with the aim of providing equality for every nation under the law to develop their country towards prosperity and well-being.¹ Indonesia, as a country rich in natural resources, has not yet fully obtained the maximum economic benefit and added value from the management of its natural resources because a significant portion is still being exported in the form of raw materials. It was stated by the government through President Joko Widodo that so far, the countries importing raw materials from Indonesia have gained added value of up to 20 times, they receive taxes, and they also enjoy job opportunities.² Based on that, the Indonesian Government is currently in the process of formulating a plan to ban the export of raw materials from mining products, which include bauxite, copper, gold, and tin.³ This policy is a continuation of the ban on the export of raw nickel ore, which is stipulated in the Minister of Energy and Mineral Resources

¹ Saru Arifin, Implementasi Kadaulatan Permanen Atas Sumber Daya Alam Dalam Aturan Investasi Asing di Aljazair dan Indonesia, *Jurnal Hukum Ius Quia Lustum*, Vol. 25 September 2018, hlm. 473

² Jokowi: Larangan Ekspor Bahan Mentah Bauksit, Tembaga hingga Timah Dilanjut, Digugat terus Di WTO tak apa-apa, <https://nasional.kompas.com/read/2022/03/11/11584321/jokowi-larangan-ekspor-bahan-mentah-bauksit-tembaga-hingga-timah-dilanjut>. Di akses pada 1 November 2022.

³ Mahyudin, Menyoal kebijakan Larangan Ekspor Bahan Mentah, <https://money.kompas.com/read/2022/01/14/170405426/menyoal-kebijakan-larangan-ekspor-bahan-mentah>. Diakses pada 12 November 2022, Pukul 07.15 WIB.

Regulation (Permen ESDM) No. 11 of 2019 concerning the Second Amendment to Permen ESDM No. 25 of 2018 concerning the Implementation of Mineral and Coal Mining. Regarding the ban on the export of raw nickel ore, the specific regulation is mentioned in Article 62A, which states :

“The recommendation of the Director-General as referred to in Article 50 paragraph (2) for the sale of nickel with a grade of <1.7% (less than one point seven percent) to foreign countries, which is given to holders of Production Operation Mining Business License (IUP) before the enactment of this Ministerial Regulation, shall remain valid until the recommendation period expires or no later than December 31, 2019.”

Based on the provisions above, as of January 1, 2020, the Indonesian government has ordered holders of Mining Business Licenses (IUP) to stop exporting raw materials of nickel ore. The policy of banning the export of raw materials, especially in the mining sector, which will be continuously expanded, is a very appropriate policy taken by the administration of President Joko Widodo. The government justifies that the policy of banning the export of raw materials is aimed at creating downstream industries to obtain added value⁴ from the utilization of natural resources owned by the Indonesian nation. This is done to increase the state's revenue, which can be used for the prosperity and well-being of the people, in accordance with the constitutional mandate of Article 33 of the 1945 Constitution. Article 33 emphasizes the principle that the land, water, and natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people.

This policy has certainly garnered responses among the international community, especially from the European Union. Even with regards to the policy of restricting the export of nickel ore alone, Indonesia is currently being sued by the European Union. On December 22, 2019, the European Union delivered a notification regarding the lawsuit to

⁴ Pemerintah menyatakan bahwa setelah menyetop ekspor nikel mentah, nilai ekspor tumbuh berkali-kali lipat yang pada awalnya ada diangka 1,1 milyar dolar atau setara 21 triliun rupiah. Namun setelah Adaya kebijakan larangan ekspor nikel mentah pada tahun 2021, nilai ekspor Indonesia meningkat menjadi 20,8 milyar dolar atau setara 306 triliun rupiah. Menyetop Ekspor Bahan Mentah, <https://indonesia.go.id/kategori/editorial/5582/menyetop-ekspor-bahan-mentah?lang=1>, Diakses pada 12 November 2022. Pukul 08.00 WIB.

the Indonesian Ambassador in Geneva.⁵ On February 22, 2021, the European Union officially filed a dispute over the export of nickel ore with the World Trade Organization (WTO), known as dispute DS-592 - Measures Relating to Raw Materials. The dispute was filed based on Article 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 22(1) of the General Agreement on Tariffs and Trade 1994 (GATT), and Article 4(1) of the Agreement on Subsidies and Countervailing Measures (ASCM). The complaint is related to certain measures concerning raw materials needed for stainless steel production and cross-sectoral duty exemption schemes that are dependent on the use of domestic goods over imported goods.⁶

The European Union assessed that Indonesia's policy has violated the General Agreement on Trade and Tariffs (GATT) 1994, regulated by the World Trade Organization (WTO) Article XI:1. According to this article, member countries are prohibited from introducing or maintaining any form of export prohibition or restriction other than customs duties, taxes, or other charges. According to the European Union, these restrictive measures can hinder European countries from obtaining nickel raw materials, leading to nickel industries in the European Union halting their production due to a shortage of raw materials. This situation may result in mass layoffs (Pemutusan Hubungan Kerja - PHK) for their employees. This can be seen in the background section of the panel request submitted by the European Union to the WTO, which states: "The four major stainless steel flat producers in the EU recently announced plans for more than 1,000 permanent job cuts by the end of 2021."⁷ It is based on the background that in early 2021, there were four major stainless steel producers in the European Union who

⁵ Kodrat Setiawan, "Kronologi Larangan Ekspor Bijih Nikel RI yang Picu Gugatan Uni Eropa", <https://bisnis.tempo.co/read/1424155/kronologi-larangan-ekspor-bijih-nikel-ri-yang-picu-gugatan-uni-eropa/full&view=ok>, diakses pada 11 November 2021, pukul 18.44 WIB.

⁶ WTO, "Indonesia – Measures Relating to Raw Materials: Request for Establishment of a Panel by The European Union", https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm, diakses pada 22 April 2022, pukul 21.37 WIB.

⁷ European Commission, "EU Files WTO Panel Request Against Illegal Export Restrictions by Indonesia on Raw Materials for Stainless Steel", <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2235&title=EU-files-WTO-panel-request-against-illegal-export-restrictions-byIndonesia-on-raw-materials-for-stainless-steel>, diakses pada 11 November 2021, pukul 10.25 WIB.

announced their plans for permanent layoffs (Pemutusan Hubungan Kerja - PHK) affecting more than 1,000 employees by the end of 2021.

In the international trade legal system, there is indeed a prohibition on imposing restrictions on imports and exports, including quotas or licenses, known as the Elimination of Quantitative Restrictions. The provisions regarding quantitative restrictions are found in Article 11 of the General Agreement on Tariffs and Trade (GATT) concerning the General Elimination of Quantitative Restrictions, which states that:⁸

“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”

The above article explains that each contracting state is not allowed to impose import or export restrictions through quotas or licenses (import or export permits), but such restrictions can only be applied in the form of customs duties, taxes, or other charges, thus protection can only be implemented through a tariff system. Unlike the European Union, Indonesia's policy of banning the export of raw materials is aimed at maximizing the management and utilization of its natural resources, particularly in the mining sector. The ban on exporting raw materials aims to fulfill domestic needs and promote downstream industries to add value to national industrial and economic commodities. National interests are the primary reason for the government to take protective actions and monopolies over essential commodities required by countries around the world, enabling them to control the market and gain maximum benefits.

This is in accordance with Article XIX of the GATT, known as the Safeguards Clause. This principle serves as an exception to the prohibition of Quantitative Restrictions, stating that the principle of restrictive quantitative measures can be exempted if GATT agreements cause problems such as import surges or competition with domestic industries, which is often experienced by developing countries. For Indonesia, exporting raw materials from the mining sector is clearly disadvantageous as the value obtained is significantly lower compared to exporting the processed minerals. In addition to the

⁸ Pasal 11 General Agreement on Tariff and Trade 1947.

difference in value, managing raw materials and processing them domestically can boost economic growth through increased investments and significant job opportunities.

The WTO, as the world trade organization mandated to address international trade issues, sometimes faces challenges in dealing with pressures from developed countries. It seems like the WTO acts as a "shield" for the trade interests of Western (developed) countries. Therefore, examining policies such as the ban on exporting raw materials implemented by several countries, especially Indonesia, in the context of national interests to enhance the country's economy and improve the well-being of its people, becomes crucial and significant in creating a fair international trade system. This is essential because international trade is fundamental to the lives of people worldwide.

Based on the above background, it is interesting to further examine the issue of the policy of banning the export of raw materials, particularly in Indonesia, in safeguarding national interests. Therefore, this research is titled "The Policy of Banning the Export of Raw Materials in the Mining Sector by the Indonesian Government from the Perspective of International Trade Law." The issues to be discussed in this research are: "What is the Indonesian government's policy in implementing the ban on the export of raw materials in the mining sector from the perspective of international trade law, and what is the impact of this policy on Indonesia's economy?."

2. Methods

This research used normative research methods. The main characteristics of normative legal research in conducting legal studies lie in the data source, namely secondary data sources. It consisted of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are various international provisions or regulations, and statutory regulations. Secondary legal materials are literature in the form of books and articles, journals, papers, and related data, while tertiary legal materials are accessing the internet related to research.

After the data has been obtained, then do the analysis. In this study, the method of analyzing data was descriptive qualitative, namely presenting data in the form of a descriptive narrative (explaining/describing) by providing a complete picture.

3. Result and Discussion

3.1. Sovereignty of the State Over the Management and Utilization of Natural Resources

Sovereignty is the fundamental characteristic that every country must possess. Sovereignty is the absolute power over a specific territory, which forms the basis for the establishment of a nation.⁹ As one of the fundamental concepts in international law, the notion of sovereignty also refers to the understanding of independence and vice versa. A country is considered independent if it is sovereign, and a sovereign state is a country that is not under the control of another state (independent).¹⁰ In international law, a state as an independent and sovereign entity means that the state is not subject to any other higher authority.¹¹

The Doctrine of Sovereignty is introduced with the purpose of providing equality for every country under the law, enabling them to build their nation towards prosperity and well-being.¹² This doctrine was born alongside the emergence of the principle of self-determination. As discussed by William M-Adam and Martin Mulligan, it states that through United Nations resolutions on decolonization, particularly in the regions of South

⁹ Jenik Radon, Sovereignty : A Political Emotion, Not A Concept. *Stanford Journal of International Law. Commemorative Issue: Balance of Power: Redefining Sovereignty in Contemporary International Law Commemorative Introduction*, Stanford: University of Stanford, 2004, hlm.1995.

¹⁰ Jens Bartelson , The Concept of Sovereignty Revisited, *European Journal of International Law*, Vol. 17. No.2. Oxford: Oxford University Press, 2006, hlm. 463.

¹¹ Sigit Riyanto, Kedaulatan Negara Dalam Kerangka Hukum Internasional, *Jurnal Yustisia*, Vol.1 Nomor 3 September- Desember 2012, hlm. 7

¹² Saru Arifin, *Op.Cit.*, hlm. 473

Asia and Africa, countries were able to determine their own destiny concerning the management of natural resources¹³ and their culture.¹⁴

The international legal recognition of sovereignty over the management of natural resources was first carried out by the United Nations through the adoption of Resolution 1803 (XVII) on December 14, 1962, known as Permanent Sovereignty over Natural Resources (PSNR).¹⁵ The main objective of the PSNR Declaration is to grant sovereignty to newly independent countries over the natural resources they possess for the purpose of their national development.¹⁶ This resolution was further strengthened by the birth of the United Nations Resolution known as the Charter of Economic Rights and Duties of States in 1974, which originated from the concept of the need for a reciprocal relationship between developed and developing countries in the management of natural resources within the framework of sustainable development. According to the 1974 resolution, these former colonial countries have at least three ways to utilize their natural resources. Firstly, they can utilize them independently; secondly, they can open themselves to foreign investment; and lastly, they can nationalize the natural resources that are controlled by foreigners and transfer ownership of these resources to the indigenous population.¹⁷ Both

¹³ Sumber daya alam menurut WTO adalah stok material yang tersedia di lingkungan alam, baik yang langka maupun yang dapat digunakan untuk ekonomi dalam kegiatan produksi maupun konsumsi karena itu barang-barang hasil produksi pabrik seperti otomotif dan komputer tidak masuk kualifikasi sumber daya alam. Singkatnya, sumber daya alam adalah semua yang terdapat di dalam bumi dan tidak bersifat artifisial. WTO, *Natural Resources: Definitions, Trade Patterns and Globalization*, World Trade Report, 210, hlm. 46.

¹⁴ William M-Adam and Martin Mulligan, 2003. *Decolonizing Nature: Strategies for Conservation in a Post-colonial Era*, Earthscan Publications Ltd, London, hlm. 5.

¹⁵ Lahirnya resolusi ini berawal dari perdebatan mengenai HAM di Chile pada 1952. Selanjutnya, ide tersebut bergulir pada setiap sidang-sidang PBB dan akhirnya dideklarasikan pada 1962. Dari 87 anggota PBB secara bulat menyetujui resolusi tersebut, hanya Perancis dan Afrika Selatan yang melakukan dissenting, dan negara-negara Komunis kecuali Kuba yang terang-terangan menentang, serta Ghana dan Burma menyatakan keduanya mengambil sikap abstain. Lihat Stephen M. Schwebel, 1963. The Story of the U.N's. Declaration on Permanent Sovereignty Over Natural Resources, dalam <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/abaj49&div=113&id=&page=>>>, diakses tanggal 5 Maret 2023.

¹⁶ Saru Arifin, Op. Cit. hlm. 475

¹⁷ Pasal 2 Charter of Economic Rights and Duties of States pada 1974 "2. Each State has the right: (a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment; (b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should,

resolutions then became the main legal basis for former colonial countries to organize and manage the natural resources within their territories as essential assets to improve the welfare of their people.

One form of the manifestation of a country's sovereignty in the management of natural resources is that each country has the authority to utilize its natural resources to the fullest extent. One way to do this is by implementing measures to restrict or prohibit the export or import of natural resources into the country. As expressed by Boosen, this is within a country's authority as an exercise of its sovereignty. It states that each country has the power to determine what originates from its territory to be exported to other countries or imported from other countries.¹⁸

“...a state can absolutely determine whether anything from outside the state. The state would also have the power to determine the conditions on which the goods may be imported into the state or exported to another country. ... Every state would have the power to regulate arbitrarily the conditions of trade.”¹⁹

The understanding of national sovereignty over the management of natural resources, particularly in international trade, is often contested, especially by developed countries. Developed countries view that the concept of national sovereignty over national resources (permanent sovereignty over natural resources) could hinder global trade growth. However, this understanding is not entirely accurate. Investment and natural resources, as the main drivers of international trade, should provide benefits to all international communities. The needs of developing countries to enhance the well-being of their people through increased income can only be achieved if these countries are capable of maximizing the utilization and management of their natural resources domestically.

In its implementation, the utilization and management of natural resources cannot be done immediately by the resource-rich countries, which are mostly developing

with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph; (c) To nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States [...]

¹⁸ Hercules Boosen, *International Trade Law on Goods and Services*, Interlegal, Pretoria 1999, hal. 2.

¹⁹ Ibid.

countries like Indonesia. Enhancing the economic value of natural resources requires high investments and technology. This is where a mutually beneficial relationship between resource-rich countries and countries with capital and technology is needed, leading to beneficial and advantageous international trade relations. This aligns with the concept of sovereignty as conveyed by James J Sheehan, defining sovereignty in the international community as relational sovereignty. This concept of sovereignty is open and prioritizes the ability to establish external relationships rather than the right to withstand external influences.²⁰ If this concept of sovereignty can be implemented by WTO member countries, then issues related to the utilization and management of natural resources by a country can be addressed through building interactions and mutually beneficial cooperation, especially in the field of international trade.

3.2. Export Prohibition or Restrictions in the Perspective of International Trade Law

The global economy continues to undergo development and modernization, resulting in increasing interdependence between countries. This interconnectedness can be observed through economic transactions, such as trade of goods or services. Economic growth typically accompanies the evolving needs of a country. To fulfill these demands, economic relationships between nations are established, known as international trade.

International trade is the trade conducted between countries or governments of one country with another country, based on an agreement between both parties involved in the international trade relationship.²¹ Therefore, according to Booyesen, international trade law is a specific branch of international law that applies to the trade of goods, services, and the protection of intellectual property rights (IPR).²² The main purpose of

²⁰ James J Sheehan, The Problem of Sovereignty, *The American History Review* Vol. III No 1 February 2006. Oxford: Oxford University Press, hlm.42-43.

²¹ Serlika Aprita dan Rio Adhitiya, *Hukum Perdagangan Internasional*, Rajawali Pers, Depok, 2020, hlm.1

²² Interlegal's Definitions (<http://home.yebro.co.za/~interlegal/definitions.htm>). Bandingkan dengan pendapat Reuvid, bahwa istilah 'Perdagangan internasional' mencakup bidang dan teknik dagang yang sangat luas ('international trade covers a bewildering number of activities and procedures' (Jonathan Reuvid, (ed.), hlm. xv).

international trade law is to eliminate barriers for the creation of a broad international market. Opening up the international market can support changes in the business patterns of multinational companies by making investments in other countries to meet international market demands and get closer to consumers in those markets.²³

The international community then established an organization to regulate international trade known as the World Trade Organization (WTO), which came into effect on January 1, 1995, as a result of the Uruguay Round (1986-1994).²⁴ The WTO's responsibilities include overseeing various rules on cross-border trade, including policies on free trade agreements, resolving trade disputes between its members, and serving as a forum for discussions.²⁵

Among the many issues in international trade, the policy of export prohibition or restriction by a country is one of the most crucial and sensitive problems. This is because such policies create sharp disagreements among WTO member countries. Countries opposing these policies, which are generally developed countries, argue that export prohibitions or restrictions constitute barriers in international trade. In the long run, export restrictions can have negative effects on the sustainability of international trade as they may cause commodity prices in the global market to increase due to disruptions in the production chain. In fact, on a large scale, it can lead to retaliatory actions in trade and, of course, contradict WTO regulations.

²³ Resa Raytiaputri, "Perkecualian terhadap Prinsip larangan Pembatasan Impor terkait Penanaman Modal di Indonesia", *Jurnal Cakrawala Hukum*, Volume 7, Nomor 1, 2016, hlm. 105, DOI: <https://doi.org/10.26905/idjch.v7i1.1785>, diakses pada 1 Nopember 2022, pukul 12.46 WIB.

²⁴ Uruguay Round atau Putaran Uruguay merupakan putaran perundingan multilateral anggota General Agreement Tariff and Trade (GATT) yang dimulai dari putaran Jenewa sebagai putaran pertama yang dilaksanakan sejak 1947. Masalah utama yang dibahas dalam perundingan-perundingan ini adalah yang berkaitan dengan pengurangan dan penghapusan tingkat tarif dan hambatan non tarif dalam perdagangan internasional. setelah berunding cukup alot dan hampir terancam gagal akhirnya pada 15 Desember 1993 perundingan ini berhasil menyepakati upaya yang berkaitan untuk menghapuskan proteksionisme, perluasan perdagangan internasional, memperkuat posisi GATT dalam menyelesaikan masalah perdagangan internasional serta memperkuat Kerjasama internasional dalam rangka mendukung perkembangan ekonomi global. Forum ini sejak awal telah menjadi fokus perhatian masyarakat internasional, mengingat membahas materi yang sangat penting dalam menentukan arah perkembangan ekonomi dunia secara keseluruhan yang kemudian puncaknya adalah disetujuinya organisasi perdagangan dunia atau dikenal dengan WTO. Lihat Edy Suandi Hamid, Putaran Uruguay, Integrasi Ekonomi Regional dan Implikasinya. *Jurnal UNISIA* No. 26 Tahun XV Triwulan II Tahun 1995, hlm. 20-22

²⁵ Arriza Briella Kurniawardhanita, Sejarah Organisasi Ekonomi Internasional : World Trade Organization (WTO), *Jurnal Widya Winayata: Jurnal Pendidikan Sejarah* Volume 9 Nomor 1, April 2021. hlm.50

On the other hand, countries with the view that export prohibition or restriction is generally comprised of developing countries, argue that implementing such policies is to protect national interests²⁶ and enhance the added value of a commodity or product originating from their country, thereby increasing the country's income, which in turn can improve the welfare of the people.

Export prohibition or restriction is a policy implemented by an exporting country to prohibit or limit the export of certain commodities through regulations set by the government of that country. Export restrictions can take various forms, such as export bans, export taxes, export permits, or export quotas. This policy is usually carried out by a country with the aim of increasing state revenue, promoting downstream industry development (industrialization), and maintaining domestic supply to stabilize market prices. In addition to economic goals, non-economic objectives, such as environmental protection and conservation of natural resources, also serve as the basis for implementing export restrictions

The action of export prohibition or restriction in international trade law is one form of protectionism, along with restrictions on foreign investment. According to Dunkley, protectionism is a policy created by a government to provide protection to domestic producers against foreign competition.²⁷ Protectionism itself, as described by Dominick Salvatore, can be divided into two types: old protectionism and new protectionism. Old protectionism involves the use of trade barriers that focus on tariffs and import quotas. On the other hand, new protectionism relies on non-tariff trade barriers and emerged during the post-World War II era when trade liberalization began.²⁸

²⁶ Konsep Kepentingan nasional nasional yang bersumber dari teori realisme sebagai suatu teori yang menjelaskan hubungan Internasional dari sudut pandang kekuasaan negara, sifat kompetitif dan konflikual dalam politik internasional, serta bagaimana kepentingan nasional sebuah negara menjadi dasar formulasi utama dari pembuatan kebijakan politik luar negeri. konsep ini begitu penting, mengingat setiap aktivitas dan kebijakan pemerintah akan selalu disesuaikan kepada kepentingan nasionalnya masing-masing. Kepentingan nasional adalah aspirasi negara-negara yang diaplikasikan melalui pembuatan program dan kebijakan, baik dalam ranah domestik maupun internasional. lihat Kathleen Mintarja, Richard Theo Parulian, Stella Claresta Alexander, Dampak Kebijakan Komoditas Pangan Di Masa Pandemic Covid-19 Terhadap Dinamika Perekonomian Global, Jurnal Sentris Volume 1 Nomor 12020, hlm. 141.

²⁷ Graham Dunkley, *Free Trade : Myth, Reality, and Alternatives*, Palgrave Macmillan, New York, 2004, hlm. 3.

²⁸ Dominick Salvatore, *Protectionism and World Welfare: Introduction*, Cambridge University Press, Cambridge, 2003, hlm. 2.

Philip I Levy in his work entitled 'Imaginative Obstruction: Modern Protectionism in the Global Economy' states that it is important to identify intent as the key factor in defining the protectionist policies implemented by a country. Levy classifies protectionism based on the transparency of policies and the type of policy instruments used. He formulates three categories in defining protectionism as follows:²⁹

Firstly, intentional protectionism. This is a form of protectionism that is very explicit, with policy formulations that explicitly favor domestic industries over foreign imports. The policy instruments used are commonly known to be import tariffs, export subsidies, and quotas. This model of protectionism has experienced a drastic decline as the era of global trade liberalization gained momentum. However, this type of protectionism is still commonly practiced by developing countries for manufacturing commodities, and nearly all countries engage in it for agricultural products.

The second classification of protectionism according to Philip I Levy is incidental protectionism. This protectionism does not explicitly discriminate against foreign products in favor of domestic producers. Instead, it is implemented through regulations that have strong legitimacy as requirements for foreign products entering the domestic market. This type of protectionism operates indirectly by imposing non-trade clauses on imported products, such as health and safety standards for an imported product.

The third type is instrumental protectionism. This form of protectionism is non-transparent/closed. Trade policies are applied with the purpose of serving as a tool to influence policy changes in other countries. Typically, this is used as a preliminary threat before implementation. If successful in persuading the other country to change its policies, the protectionist measures may not be enforced. However, if the targeted country does not change its policies, the trade protection measures will be implemented as a consequence of the threat. This model of protectionism usually exerts influence on the political relationships between the involved countries.

Basically, restrictions or prohibitions on exports, according to Article XI:1 of the General Agreement on Tariffs and Trade (GATT), are prohibited by member states. This subsequently became one of the principles of international trade law known as

²⁹ Philip I Levy, *Imaginative Obstruction: Modern Protectionism in the Global Economy*, *Georgetown Journal of International Affairs*, 2009, Summer/Fall: 7-14.

Quantitative Restrictive Principles or the Principle of Prohibition of Quantitative Restrictions, which states that each member country must not apply import or export restrictions through quotas or licenses as outlined in Article XI of the GATT.³⁰

Quantitative restrictions, or quantitative restraints, are a form of import or export limitation, which can take the form of quotas or licenses. In the literature titled 'The Law and Policy of the World Trade Organization' by P. Van den Bossche and W. Zdouc, it is stated that there are several types of quantitative restrictions, including:³¹

1. Prohibitions: Import or export bans on a specific product, which can be either absolute or conditional.
2. Quotas: Policies that limit the quantity of goods that can be imported or exported.
3. Licensing requirements: Administrative procedures used as conditions in the import process.
4. Other quantitative restrictions: Such as mixing regulations involving various types of quantitative restrictions mentioned above.

According to Sulaiman, quantitative restrictions are a form of direct administrative barriers imposed by the government on foreign trade. This can lead to increased prices of goods and limited stock availability, which can be detrimental to consumers. Additionally, for companies that rely on imported materials in their production processes, this can lead to higher production costs.³² Although GATT regulates Quantitative Restrictions, it also includes a principle that contrasts with it, known as the safeguard policy or The Safeguards Clause, which is addressed in Article XIX of the GATT. This exception principle is applied when GATT agreements cause problems such as losses due to a surge in imports or when domestic industries face tough competition, which is often experienced by developing countries.

Quantitative restrictions in international trade law are not an absolute matter, but this provision has exceptions, particularly when a WTO member country is facing an

³⁰ Ibid.

³¹ P. Van den Bossche and W. Zdouc, *The Law and Policy of the World Trade Organization*, 4th ed., Cambridge University Press, 2017, hlm.481.

³² Andi Amran Sulaiman, et al., *Perdagangan Internasional Komoditas Pangan Strategis*, IAARD PRESS, Jakarta, 2018, hlm. 140.

economic emergency. This exception is known as Emergency Protection, which is a safeguarding measure for domestic industries when they experience a situation where a sudden surge in imports or the presence of threats could lead to severe or serious damages. Although such efforts contradict the provisions of Article 2 and Article XI of GATT 1994, they can still be justified using the basis provided in Article XIX of GATT 1994, which states that trade safeguard measures can be taken if three conditions are met: First, there is a sudden and unpredictable surge in imports. Second, there is serious injury, meaning when the domestic industry suffers widespread and significant harm. Third, there is a causal link between the surge in imports and the serious injury or threat that occurs.

3.3. The Policy of Prohibiting Raw Material Exports in the Mining Sector by the Indonesian Government in International Trade Law

Along with the occurrence of the global economic recession post the Covid-19 pandemic, many countries are trying to take measures to protect their economies and shield themselves or at least survive from the impact of the global economic recession. One of these countries is Indonesia, which has implemented a policy of prohibiting the export of raw materials, particularly in the mining sector. This policy is aimed at promoting downstream processing to gain added value from the utilization of natural resources within the country owned by the Indonesian nation, thereby providing economic benefits for Indonesia, such as increased national revenue that can be used for the prosperity and welfare of the people. In the long run, it will create a multiplier effect and enhance the competitiveness of domestic industries.

When analyzed using the concept of sovereignty, the Indonesian government's policy of prohibiting the export of raw materials, especially in the mining sector like nickel, is one form of implementing national sovereignty. There are two underlying factors for exercising sovereignty in this raw material export ban. First, the Indonesian government, as the representation of Indonesia as a sovereign nation, will always base its actions on legal and political principles, guided by the constitution. Regarding the management and utilization of natural resources, it must adhere to Article 33 of the 1945 Constitution, which explicitly states that all natural resources in Indonesia's territory

must be used to the maximum benefit of the Indonesian people. The second factor is an effort to create fair and equitable international trade, where mutual benefits are achieved among WTO member countries. However, this concept of equitable trade becomes increasingly challenging to achieve as developed countries and capital owners tend to pursue their own advancement and wealth without considering the prosperity and well-being of other nations.

The Indonesian government's action in issuing a policy of prohibiting the export of raw materials in the mining sector is an effort to protect national interests. According to Plano and Olton, national interests refer to the vital interests of a nation that must be pursued for the survival of the nation and the state.³³ One of³⁴ the indicators that can be used to analyze Indonesia's national interests related to the policy of banning the export of raw materials in the mining sector is Economic Well-Being. One of the forms of the state's responsibility to its citizens is to create national economic prosperity, and thus, the government will take all necessary measures to protect the sustainability of the economic sector.

The argument of developed countries stating that the Indonesian government's action in issuing a ban on the export of raw materials in the mining sector is a violation of the Principle of Elimination of Quantitative Restrictions as stipulated in Article 11 of the GATT, which refers to the General Elimination of Quantitative Restrictions. It explains that each contracting state is not allowed to impose import or export restrictions through quotas or licenses, but only through customs duties, taxes, or other charges, making protection measures possible only through a tariff system.³⁵ However, this principle cannot be applied absolutely because it has exceptions known as Emergency Protection, which allows safeguard measures to be taken when there is a surge in imports or a threat that may cause serious or significant harm. This safeguard measure is known as The Safeguards Clause, as mentioned in Article XIX of the GATT.

³³ Lihat Jack C. Plano dan Ray Olton, *The International Relations Dictionary*, Third Edition, California: AB-Clio, 1980, hlm. 27

³⁴ Menurut Plano dan Olton ada 5 indikator utama yang dilakukan negara dalam memperjuangkan kepentingan nasional yaitu Self Preservation, Independence, Military Security, Territory Integrity dan Economic Well Being 4 indikator utama, kepentingan nasional. Ibid

³⁵ Lihat Pasal 11 GATT

There are several reasons why the Indonesian government is implementing The Safeguards Clause in accordance with the provisions of Article XIX of the GATT. First, the export of raw materials in the mining sector is clearly disadvantageous for Indonesia because the value obtained is significantly lower compared to exporting the processed materials. Second, aside from the difference in value, processing raw materials into finished products domestically can boost economic growth through increased investment and the creation of significant job opportunities. This is in line with Peter Van De Bossche's view that the objective of implementing trade safeguard measures is to provide room for domestic industries to adjust to new market conditions.³⁶

3.4. The Impact of the Policy of Prohibiting the Export of Raw Materials in the Mining Sector on Indonesia's Economy

Trade war is a form of economic conflict between two or more countries involving the imposition of trade tariffs or other trade barriers. Usually, this conflict arises when one country imposes or increases tariffs or trade barriers in response to similar measures taken by another country.³⁷ The ongoing policy confrontation between Indonesia and the European Union has the potential to trigger the possibility of a trade war, which could have an impact on the economic systems of the countries involved in the conflict. The European Union argues that Indonesia's ban on the export of raw materials in the mining sector, such as nickel, could lead to international trade conflicts as it hinders trade between the two countries. However, it is important to note that the export ban is not meant to impede trade, but rather a step taken to optimize nickel resources for the nation's prosperity through domestic processing and meeting the raw material needs of smelters in Indonesia.

Considering that mineral resources, including nickel, are non-renewable and finite assets, Indonesia is encouraged to take a proactive approach by independently managing its natural wealth for the welfare of its society through the downstreaming process of mining minerals. To achieve this goal, the government has set forth a mineral downstreaming plan in Law Number 4 of 2009 concerning Minerals and Coal.

³⁶ Bossche, Peter Van Den Bossche, dkk., *Pengantar Hukum WTO (Word Trade Organisation)*, Cetakan pertama Yayasan Obor Indonesia, Jakarta, 2010. Hlm.69.

³⁷ Nita Angraeni, *Perang Dagang Dalam Hukum Perdagangan Internasional*, *Jurnal UIN Banten Al-Ahkam*, Vol. 15 No.1, 2019, hlm.3.

According to the provisions, mineral downstreaming or purification must be carried out no later than five years after the regulation's enforcement, which should have taken place in 2014. However, due to the unpreparedness of the smelter industry in Indonesia to execute the mineral downstreaming process at that time, the government provided flexibility and postponed the plan until 2022.

Later, based on the assessment that the smelter industry in Indonesia has matured and experienced rapid development, as well as the ability to produce minerals independently, the government accelerated the implementation of mineral downstreaming since the beginning of 2020. This was done to ensure that mineral resources can be optimally utilized for the nation's interests and the sustainable welfare of its society. However, it is crucial to understand that the success of implementing mining downstreaming heavily depends on the policies and technical regulations applied during the implementation process. This includes considerations regarding the provision of raw materials, land, labor, energy, infrastructure, technology, operational activities, maintenance, licensing systems, and investment financing.³⁸

Mineral downstreaming policy is one fiscal instrument aimed at increasing the value-added of minerals, enhancing domestic industry performance, boosting state revenue, stimulating economic growth, and creating job opportunities. Indonesia cannot solely rely on tax revenues as the source of national income. As a country, Indonesia must be able to be self-reliant and rely on its natural resources without depending on assistance from foreign parties. Currently, Indonesia has demonstrated its ability to process raw mineral materials into finished products, as evident from the number of operational smelters in 2020. By optimizing mineral processing, nickel downstreaming can be achieved, adding value to Indonesia's economy. This is because finished products resulting from mining processing have much higher economic value compared to the raw materials exported. Thus, from an economic standpoint, Indonesia will gain significant benefits and gradually compete in the global market in the mining sector. With independent capabilities in processing natural resources, Indonesia can enhance its

³⁸ Izzati dan Suhartono, Kebijakan Percepatan Larangan Ekspor Ore Nikel dan Upaya Hilirisasi Nikel, *Kajian Singkat Terhadap Isu Aktual dan Strategis* Vol. XI. No. 23/I/Puslit/Desember/2019, hlm. 21

economic independence, reduce dependence on imports, and strengthen its position in the global competition in the mining field.

4. Kesimpulan

Based on the analysis conducted, it can be concluded that the policy of restricting and prohibiting the export of raw materials in the mining sector, such as nickel, carried out by the Indonesian government, is a policy recognized by international law, especially international trade law. This action is a form of implementing national sovereignty acknowledged by international law and based on the Principle of Safeguard Policy or The Safeguards Clause as mentioned in Article XIX of the GATT.

This policy will also bring beneficial impacts to Indonesia's economy. With the independent capability in processing natural resources, Indonesia can enhance its economic independence, reduce dependence on imports, and strengthen the country's position in the global competition in the mining sector. All of these factors will ultimately lead to an increase in national income, thus providing greater prosperity for all Indonesian citizens.

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