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# Analyzing the Lawsuit of the European Union Over Nickel Ore Export Regulation in Indonesia

**Atik Krustiyati**

*Faculty of Law, University of Surabaya, East Java, Indonesia*

*Email: [krustiyati@staff.ubaya.ac.id](mailto:krustiyati@staff.ubaya.ac.id)*

**Novela Christine**

*Faculty of Law, University of Muhammadiyah Malang, East Java, Indonesia*

*Email: [novelachristine@rocketmail.com](mailto:novelachristine@rocketmail.com)*

**Sholahuddin Al-Fatih**

*Faculty of Law, Universitas Sebelas Maret, Central Java, Indonesia*

*Email: [salfatih@umm.ac.id](mailto:salfatih@umm.ac.id)*

**Abdul Kadir Jaelani**

*Faculty of Law, Universitas Sebelas Maret, Central Java, Indonesia*

*Email: [jaelaniabdulkadir@staff.uns.ac.id](mailto:jaelaniabdulkadir@staff.uns.ac.id)*

## Abstract

### Key words:

GATT, Nickel Ore; Export; Indonesia, European Union

*Nickel ore constitutes among Indonesian export commodities which have been the cause of a massive increase in exports. Another reason for the increase in the Indonesian exports was the absence of regulation on export trade for mineral and ores. This research aimed to find how the principle of the quantitative restriction outlined in GATT 1994 over the restrictions of nickel export by Indonesia was implemented. This research adopted legal research design with conceptual and statutory approach. The findings reveal that Indonesia, against which the lawsuit was filed, had to come with adequate evidence as legitimating grounds either in terms of economic or non-economic aspects, and examples of these legitimating grounds were mentioned in Article XX (g) of GATT 1994 as in the case of China – Raw Materials, suggesting that referring to Article XX (g) of GATT 1994 must not overlook the objectives of the protection of exhaustible natural resources, including the preventive protection coming from the state. This case study would be a useful source of information for the academia and the legal practitioners.*

## Introduction

Indonesian economic development much depends on its international trade. Indonesia exports and imports goods in line with the needs of the society and trade partners. The state-run international trade, if run by businesspeople, are expected to not only comply with the national regulations but also with international rules. Among many other export items, Nickel ore is one of the export commodities in Indonesia. During 2008-2011, there was a massive increase in exports due to the absence of regulation on export trade for mineral commodities in the form of ore (raw material) for several mining commodities, one of which was nickel ore. This had increased the Nickel export up to 8 (eight) times (Shahbaz, Hye, Tiwari, & Leitão, 2013). In 2019, nickel ore exports rose to 30 million tons from 20 million in 2018. On the other hand, nickel ore production rose to 52.8 million tons in 2019 from 22.1 million tons in the previous year (Petlovanyi et al., 2019).

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states “The land and the waters, as well as the natural riches therein, are to be controlled by the state to be exploited to the greatest benefit of the people”. The Indonesian government issued Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (henceforth referred to as Mineral and Coal Mining Law), where Article 103 Paragraph (1) requires Mining Permit/specific Mining Permit holders to process and/or purify minerals that are domestically mined, as intended in Article 102.

Mining permit holders are responsible to raise the value added of minerals in the mining operation by taking into account the increase in economic values. What is outlined in Article 102 Paragraph (3) of Mineral and Coal

Mining Law further implies that increasing economic values can be performed by raising value-addition of the minerals mined domestically and to optimally contribute to the economic benefits of the state. This will help to strengthen mineral supply chain as a part of industrial development and provision in the domestic production by considering the comparative excellence of mineral resources and the sustainability of mining operation. This is in line with the point of consideration as outlined in Mineral and Coal Mining Law, which states that mineral and coal mining plays an essential role in adding values to the national economic growth and sustainable local development which are hampered by the authority of the central and local governments. This includes the issuance of permits, protection of affected parties, data and information on mining, supervision, sanctions, thereby leading to ineffective mineral and coal mining activities that result in less value-addition.

The Indonesian government has set the provision regarding the purification of metal mining commodities locally, one of which is nickel. This was one of the targets that had been set in Mineral and Coal Mining Law since 2009, implying that Indonesia plans to ramp up the production of nickel ore by setting up a smelter in the state. This is due to the increasing export of nickel ore commodities, where export-import activities are one of the activities that affect the country's economy. The purpose of the Mineral and Coal Mining Law is that Indonesia can experience added value from mining products, boost gross domestic product, and absorb labor ([Febrianto & Surizki, 2016](#)).

Nickel ore is the commodity essential in trade, where this ore is required in the production of nickel mate, alloy, metal, metal oxide, and many more. The nickel ore process will help raise the market value of purified nickel production compared to the production of untreated nickel. The value of ferronickel rises tenfold, and stainless steel resulting from ferronickel purification contributes a 19-time increase in nickel value ([Widiatedja, 2021](#)). The government also provides an illustration of value added in nickel processing, where the price of grade II crude nickel (containing only 2 percent of the volume of mining soil) reaches 2 USD per kilogram or 2000 USD per tonne. After going through the smelting process into ferronickel (FeNi) the value jumped more than 8 (eight) times to 17,000 USD per tonne on the LME (London Mineral Exchange) ([Lipp & An, 2005](#)).

The realization of the added value of ferronickel has seen its realization, where the production of processed ferronickel exceeds the target, which is 1,462,255 tons in 2020 since the ban on nickel ore exports ([Natali et al., 2019](#)). As nickel mined is 35.5 million tons and domestically processed is 33.3 million tons in 2020, thus providing a ratio of 40% to the domestic value added process ([Menteri, 2020](#)). This sets the grounds for why the government is increasing the value-added of mineral resources through nickel production in the state instead of through exports of nickel ore to grow the local economy of Indonesia. Independent management of natural resources in Indonesia is underway, and this intention is intended for the

independent economy in the national development in Indonesia, where the exports of downstream production of nickel ore have significantly risen along with the growing investment in related industries, especially iron and steel exports soaring from US\$ 1.1 billion in 2014 to US\$ 5.8 billion in 2018(Sunderlin, 1999).

(Haryadi & Yuniarto, 2016) observe that the nickel price in 2007 was US\$ 208.45 per ton. If it was processed into nickel metal, it will be sold at a price of US \$ 17,229.00 per ton (there is an increase in the value-added of 82.65 times). In 2013, the nickel price was US\$ 26.01 per ton. If it was processed into nickel metal, it will be sold at a price of US \$22,890.29 per ton (there is an increase in the value-added of 880.38 times).”(Haryadi & Yuniarto, 2016)

### **Theoretical Framework**

Indonesia is one of the biggest nickel exporters for the steel industry to the European Union. Several developed countries such as Europe, Japan, South Korea, and China export nickel ores from Indonesia and then process them into ferronickel and stainless steel(Ika, 2017). However, the importing countries for nickel ore in European Union objected to the policy enforced by Indonesia, followed by a lawsuit filed to Dispute Settlement Body of World Trade Organization. The dispute settlement had begun with a consultation that took place two days from 30-31 January 2020, followed by panel establishment in early 2021 and the establishment was completed on 22 February 2021. The timetable was decided on 29 March 2021. The lawsuit was to be filed from April to December 2021 against Indonesia over the policy regarding nickel ore export restriction, purification requirement and domestic management, the fulfillment of domestic need, export permit requirement, and proscribed subsidizing scheme.

Departing from the above grounds, the European Union refers their lawsuit to Article XI: 1 GATT 1994 concerning quantitative restriction that requires nickel ore, iron ore, chromium, coal, and coal products to be specifically processed before export and require some nickels and coals to be sold domestically before they are exported. The EU stainless steel industry turnover reaches around €20 billion and secures €420 million a year in investments. In total, 30,000 direct jobs and combined more than 200,000 direct, indirect and induced jobs depend on the stainless steel industry in Europe(Kassim & Tholoniati, 2021). On the other hand, the regulation on nickel ore exports is intended so that Indonesia can improve its economy through the export trade of ferronickel and stainless steel as downstream products of nickel ore. The development of the industrial chain will have a positive impact, namely:

1. The creation of added value (company, government and community income) from copper products along the industrial supply chain;
2. Creation of domestic job opportunities and community income opportunities;

3. Creation of added value and job opportunities in other industrial activities related to the copper industry;
4. Addressing reducing unemployment; and
5. Can reduce the number of poor people.

This is a dilemma where on one hand the European Union showed concerns about the ban on nickel exports to stop the impact of its activities of the stainless-steel industry, and on the other hand, Indonesia, as a country produced natural resources in the form of nickel ore. It was trying to improve its economy by developing downstream industries from nickel ore through EU regulations. Therefore, it was necessary to conduct further discussion regarding the lawsuit made by the European Union against the restriction on nickel ore exports by Indonesia in terms of the principle of quantitative restrictions.

Therefore, further discussion about the lawsuit filed against Indonesia by the European Union over the restrictions of nickel ore exports needs to be considered. According those background, this current research aimed to find how the principle of the quantitative restriction outlined in GATT 1994 over the restrictions of nickel export by Indonesia was implemented. This research would prove very useful for academics and practitioners, especially with regard to mining law, more specifically regarding nickel ore and Indonesia's export opportunities in the future.

## **Literature Review**

The principles of the multilateral trading system are:

### *1. Trade without discrimination*

- a. Most-favored-nation (MFN): treating other people equally. Under the WTO agreements, countries cannot normally discriminate between their trading partners nor can grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.
- b. National Treatment: Treating foreigners and locals equally. This means that imported and locally produced goods should be treated equally — at least after the foreign goods have entered the market.

### *2. Freer trade: gradually, through negotiation*

Lowering trade barriers is one of the most obvious means of encouraging trade. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

### *3. Predictability: through binding and transparency*

The multilateral trading system is an attempt by governments to make the business environment stable and predictable. The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries' trade rules as clear and public ("transparent") as possible.

#### 4. *Promoting fair competition*

The WTO is sometimes described as a "free trade" institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

#### 5. *Encouraging development and economic reform*

The WTO system contributes to development. Developing countries need flexibility in the time they take to implement the system's agreements. The agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries (Hopewell, 2015).

There is a known principle called principle of sovereignty over natural resources. The General Assembly adopted resolution 1803 (XVII) on the "Permanent Sovereignty over Natural Resources" on 14 December 1962 by 87 votes in favour to 2 against, with 12 abstentions (Boluk & Rasoolimanesh, 2022).

Article I: 1 of General Assembly resolution 1803 (XVII) declares that: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned." Shaped by the postwar reinvention of international law, the right to self-determination emerged as a collective territorial right which allocated to collectives with territorial-political identity two fundamental powers – the right of political jurisdiction and the collective ownership of natural resources within a territory (Gümplová, 2018). Citizens then entrust their respective governments to manage these resources, endowing them with jurisdictional authority (Kouris, 2020). However, in international trade, it is also necessary to pay attention to the provisions of the 1994 GATT.

The provisions of Article XI: 1 of the 1994 GATT stipulate that: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses 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." Quantitative barriers can take the

form of quotas but can also take the form of import or export bans in general (Bertola & Faini, 1990). Due to the protection of a domestic market, a domestic firm can raise its output in the domestic market, then as the output increases, the marginal costs decrease and the domestic firm is able to expand its world-market share and increase its profit from its international market operations (Fischer, 1992).

Economists would, however, argue that, whether in the form of taxes or quotas, export limitations are detrimental to exporting and importing countries (Marceau, 2010). According to them, “provisions under the GATT 1994 may allow a member to introduce or maintain a quantitative restriction include, inter alia: Article XI:2, Article XII (restrictions to safeguard the balance of payments), Article XVII (import or export restrictions made effective through State-trading operations), Article XVIII (governmental assistance for economic development through protective or other measures), Article XIX (safeguard actions), Article XX (general exceptions), and Article XXI (security exceptions).” (Barlow & Stuckler, 2021).

Article XX (g) of the GATT 1994 provides for exceptions to the provisions of trade restrictions in the 1994 GATT, namely: “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”

Article XX (g) of the GATT 1994 can be applied if it fulfills 3 prerequisites in its action, namely (i) The policy objective to be achieved by the action must be to preserve the conservation of exhaustible natural resources; (ii) Such actions must be related to the objectives of the policy; and (iii) Such measures must be effectively enforced 'together with' a ban on domestic production or consumption.” (Adam, Walker, Bezerra, & Clayton, 2020):

## Method

This research adopted a conceptual and statutory approach in the form of a legal study (Mitranja, Tampubolon, & Panjaitan). Any statutory research is a study that examines norms, relating to overlap, emptiness and lack of existing norms. The norms that reviewed in this study are related to the nickel, especially on coal and mineral mining. The measuring instrument was the benchmarking regulations of WTO, GATT, while the legislation used in this study was the Law on coal and mineral mining. Through prescriptive analysis, the authors tried to find new arguments relating to the lawsuit filed by the European Union over the regulation concerning nickel ore export in Indonesia (Widiatedja, 2021).

Previous research (El Qudsi, Kusumawardhana, & Kyrychenko, 2020) have discussed policy implications and discrimination prohibition of export and import of palm oil and nickel oil to show how they affected the Indonesian economy. Furthermore, another study argued that trade was a service sector that contributed to economic activity (Azis & Abrianti, 2021). Making a trade policy in the national or international scope was vital for the Indonesian state in attaching importance to future national development. In 2019, Indonesia was recorded as a nickel exporting country which controlled 37.2% of world trade. However, before 2020, Indonesia apparently still had exports in the form of ore. Therefore, through the provisions of Article 62A of the 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 Mineral and Coal Mining Concessions, the government imposed a ban on the export of nickel with levels <1,7% starting January 1, 2020.

This acceleration caused the European Union to propose consultations through the Dispute Settlement Understanding (DSU) which discusses the articles allegedly violated by Indonesia, one of which was Article XI:I of the 1994 General Agreement on Tariffs and Trade concerning the prohibition of quantitative restrictions. . Based on the results of the analysis, there are General Exceptions regulated in Article XX points (g) and (i) GATT with several conditions that the policy is a form of protection of non-renewable natural resources and maintains the quantity of domestic essential products. The ban on the export of nickel grades < 1.7% was not a quantitative limitation but a qualitative one (Azis & Abrianti, 2021).

## **Results & Discussion**

International trade abides by the principles set by World Trade Organization (WTO) established under the agreement of countries. Since the establishment of this organization, international regulations regarding international trade have been issued. Indonesia is one of the member states of WTO, where each member state must comply with the guidelines in the regulations ratified. The organization holds the fundamental principles of the systems of international trade including anti-discrimination, free trade, transparency, fair trade, and incentive for developing countries. These principles serve as the fundamentals of the systems, which are further outlined in the General Agreement on Tariffs and Trade (henceforth referred to as GATT 1994).

The GATT 1994 is a legal instrument in international trade as outlined in Annex IA WTO agreement. It states, “resource-rich countries like Indonesia and the Philippines are expected to continue their campaigns to increase taxes and revenue from natural resources and further boost environmental measures in mining, especially in direct-shipping ore (DSO) projects.” (Fiscor, 2020). In line with Article 5 Paragraph (1) of Mineral and



Coal Mining Law regarding national interests, the Central Government consulted with the House of Representatives of the Republic of Indonesia to set national policies to prioritize minerals and/coal for the interest of the state. The general provisions of Government Regulation Number 96 of 2021 concerning Mining Activities as the implementing regulation of Mineral and Coal Mining Law elaborate on several objectives of the provisions namely: (i) prioritizing mineral and coal supply for the domestic interest of the state to assure the availability of mineral and coal as raw materials and/or as energy resources for the needs of the state; (ii) increasing incomes of the locals, regional areas, and the state and creating employment for people's welfare; (iii) increasing value-added through management and purification of mineral and coal domestically.

On 22 November 2019, European Union consulted the dispute settlement body over allegation of violations of quantitative restriction set by the Indonesian government regarding nickel export due to the following reasons: "by prohibiting exports of nickel ore, by requiring that nickel ore, iron ore and chromium as well as coal and coal products undergo specific processing activities prior to being exported, by requiring that certain amounts of nickel and coal be sold domestically prior to being exported, and by imposing certain export licensing requirements on nickel ore, metal waste and scraps and coal and coke." (Hoekman & Mavroidis, 2021).

The EU's lawsuit now covers two issues only, namely nickel export ban and domestic processing requirements (Campbell et al., 2021). The ban on nickel ore export was outlined in Article 62A of Regulation of Minister of Energy and Mineral Resources Number 11 of 2019 concerning the Second Amendment to Regulation of Minister of Energy and Mineral Resources Number 25 of 2018, stating: firstly, "the recommendation of the Directorate General as intended in Article 50 Paragraph (2) regarding the trade of exported nickel with nickel content <1.7% is given to mining permit holders regarding production operation before the effectuation of this Minister Regulation was considered effective to the time the recommendation ended or no later than 31 December 2019; and secondly, it is "given to mining permit holders regarding the production operation after the promulgation of this Minister Regulation could be given no later than 31 December 2019."

Moreover, Article 103 Paragraph (1) of Mineral and Coal Mining also determines that the permit holders or specific mining permit holders at the stage of mineral production operation as intended in Article 102 are required to process and/or purify domestically mined mineral. Article XI: 1 GATT 1994 governs the following principles of quantitative restriction as follows: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses 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 implies that the quantitative restriction represents a broad definition, including the restrictions that apply to import tariff, tax, or other fees. The quantitative restriction can be in the form of either quota or import and export bans in general (Bronckers & Maskus, 2014; Gumplová, 2018). With this provision, European Union filed a lawsuit to the Dispute Settlement Body of WTO over the regulations set by the Indonesian Government concerning bans on exported nickel with nickel content below 1.7%.

Although this quantitative restriction is governed by the provisions of GATT 1994, there are several exceptions towards this restriction principle: “Provisions under the GATT 1994 that may allow a Member to introduce or maintain a quantitative restriction include, inter alia: Article XI:2, Article XII (restrictions to safeguard the balance of payments), Article XVII (import or export restrictions made effective through State-trading operations), Article XVIII (governmental assistance for economic development through protective or other measures), Article XIX (safeguard actions), Article XX (general exceptions), and Article XXI (security exceptions).” A general exception is set forth in Article XX (g) GATT 1994 regulating non-renewable natural resources: “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”

What is outlined in Article XX (g) GATT 1994 can be implemented unless it fails the following three requirements (Ozborn, 2008): (i) The objectives of the policy to be achieved should constitute conserving exhaustible natural resources; (ii) This act should be related to the objectives of the policy; and (iii) This act should be effectively performed ‘along with’ bans on domestic production and consumption.”

Regarding this consideration, it is essential to prove that the ban on exported nickel with nickel content not lower than 1.7% is related to the objectives to maintain the conservation of the commodity of nickel in this case. Although WTO panels have made a case-by-case decision, Indonesia can view the case of China -Raw Materials, where, in controlling Article XX (g) GATT 1994, “China had to demonstrate that its restrictions were aimed specifically at conserving exhaustible natural resources, while meeting the ‘balancing requirement’ that they must be combined with domestic production and consumption preservation measures (Hoekman & Mavroidis, 2021; Sunderlin, 1999).

Nickel is one of the non-renewable metals, and the Minister of Trade, Muhammad Lutfi (Pratama & Firmansyah, 2021) asserts that the Indonesian Government will continue to defend the coal and mineral policies to support the transformation of Indonesia into an economically developed country by still prioritizing good governance, competitiveness, the environment, and sustainability. “Significantly, the recent revival of industrial policy in emerging economies has focused on supporting the upgrade of strategic manufacturing sectors that make intensive use of critical minerals and metals. Depending on the stage of development of each economy, the focus has either been on downstream sectors that directly process mineral raw materials (e.g. the metals industry) or on manufacturing sectors further down the value chain, which use critical minerals and metals in their semi-refined/processed forms in final products.” (Espa & Sacerdoti, 2015a, 2015b).

Following the issuance of the Regulation concerning bans on nickel export in 2018, the export of nickel ore as the downstream production has risen significantly in line with the related investment of industry, especially iron-based and steel product exports, surging from US\$ 1.1 billion back in 2014 to US\$ 5.8 billion in 2018 (Van den Bossche, Natakusumah, & Koesnaldi, 2010). Although non-tax revenue received by the government decreased following the nickel export ban, it was covered by the smelter production where 11 smelters were optimally operating in 2018. That is, the Government received 2 trillion rupiahs of non-tax revenue, higher than that before export bans were enforced, accounting for Rp 240 – 372 billion. This implies that the goals of economic development set by the Indonesian Government have gradually been achieved through the regulation.

In the following decades, as newly independent developing countries struggled to achieve economic self-determination, the concept of sovereignty over natural resources served as a core principle to set the foundations for a new international economic order (NIEO). Based on this principle, ‘all states’ had the right to ‘permanently’ exercise sovereign rights over natural resources in the interests of national economic development and the well-being of their population.” (Espa & Sacerdoti, 2015b). Although the government’s PNPB revenue has decreased due to the ban on nickel exports, it has also been replaced by an increase in smelter production where if the 11 existing smelters in 2018 operate optimally, then the Government has a potential PNPB of IDR 2 trillion, greater than before the export ban, which is around IDR 240-372 billion. After the ban on nickel ore exports since 2020, there has also been a high increase in added value compared to when exporting nickel ore 7 (seven) years ago, where Indonesia pocketed USD 1 billion or Rp. 14 trillion, while in 2020, Indonesia earned USD 20.8 billion or IDR 300 trillion when exporting nickel processed products (Kassim & Tholoniati, 2021; Mitrania et al.). This illustrates that the goals of economic development development proclaimed by the Indonesian government have slowly been achieved through the existence of these regulations.

The judicial review of Mineral and Coal Mining Law under Constitutional Court Decision Number 10/PUU-XII/2014 implies that Constitutional Court highlights the improvement of the value-added of minerals and metals. This regulation mainly aims to hamper trade but optimally exploit national mineral richness for the benefit of the people's welfare, which is constitutional to Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The enhancement of the domestic production chain will contribute positive influences to the economy by creating output, value-added, and job opportunities locally, providing raw materials for domestic metal-based downstream production, and utilizing the technology in the mineral process. "Efforts to tighten the discipline have met with continued resistance from developing countries, which regard the flexibility to restrict exports as essential for maintaining sovereignty over natural resources and for developing domestic downstream industries." (Qin, 2012).

As mentioned in the Article I (1) of General Assembly resolution 1803 (XVII) declares that "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned." In addition, "pursuant to this generally accepted principle of international law, nations have permanent sovereignty over their natural resources, including the right to dispose freely of such resources for domestic economic development. This right has also been recognized as a basic human right of all peoples under the International Covenant on Civil and Political Rights (articles 1.2 and 47) and the International Covenant on Economic, Social and Cultural Rights (articles 1.2 and 25)"(Qin, 2012).

Shaped by the postwar reinvention of international law, the right to self-determination emerged as a collective territorial right which allocated to collectives with territorial-political identity two fundamental powers – the right of political jurisdiction and the collective ownership of natural resources within a territory(GÜMplovÁ, 2020). Citizens then entrust their respective governments to manage these resources, endowing them with jurisdictional authority(Kouris, 2020). Economists would, however, argue that, whether in the form of taxes or quotas, export limitations are detrimental to exporting and importing countries(Marceau, 2010). This because of "the protection of a domestic market, wherein a domestic firm can raise its output, and when the output increases, the marginal costs decrease and the domestic firm is able to expand its world-market share and increase its profit from its international market operations". The regulation issued in connection with the ban on nickel exports aims to help domestic entrepreneurs who produce downstream nickel ore products, so that Indonesian entrepreneurs also have the opportunity to compete with other countries.

Moreover, regarding the fundamental principles of international trade that ease developing countries, special and differential treatment (S&D treatment) is divided into 6 (six) categories:

1. Provisions intended to improve the opportunities of trade in developing countries;
2. Provisions intended for the members of WTO that should safeguard the interests of developing countries;
3. The flexibility of the commitment shown as deeds and the use of policy instrument;
4. Transitional span;
5. Technical support; and
6. Provisions regarding the least-developed country members.”

The General Agreement on Tariffs and Trade (GATT) 1994 contains a total of 25 special and differential provisions, which are contained in Articles XVIII, XXXVI, XXXVII, and XXXVIII of the GATT 1994 (Kessie, 2000). A quantitative restriction in Article XVIII of the GATT 1994 governs that the quantitative restriction could be implemented by a developing country to minimize the possibility of shrinking foreign exchange reserves due to increasing imports that result from the increase in domestic production (Bhala, 2002). The Article also states, "Export restrictions have also in some cases been defended as 'safeguard' measures aimed at protecting domestic industries from the impact of export surges. Finally, commodity-dependent developing countries (CDDCs) have mainly advocated the right to use such instruments to relieve commodity dependence and vulnerability to price volatility." (Espa & Sacerdoti, 2015a)

## **Conclusion**

To conclude, the regulation issued regarding nickel exports was intended for the Indonesian economy. The lawsuit filed by European Union was based on the principle of a quantitative principle, containing several exceptions as outlined in the GATT 1994. The lessons learnt are that Indonesia should come with legitimating grounds as in the case of China; secondly, raw materials cannot prove any deeds legitimated by the panels of WTO regarding the exceptions of the principle of a quantitative restriction. Thus, the Indonesian Government had to prove that the nickel export policy did not contravene the quantitative restriction principle.

European Union had filed a lawsuit against Indonesia over the regulation concerning nickel export bans to dispute settlement body of WTO. Indonesia came out with adequate evidence as legitimating grounds either in terms of economic or non-economic aspects, and examples of these legitimating grounds were mentioned in Article XX (g) of GATT 1994 as in the case of China – Raw Materials, suggesting that referring to Article XX (g) of GATT 1994 must not overlook the objectives of the protection of

exhaustible natural resources, including the preventive protection coming from the state.

However, practically speaking, Indonesia as a member of the WTO must comply with the principle of free trade, where the regulation regarding the prohibition on the export of nickel ore cannot be carried out continuously until later. The existence of the principle of quantitative restrictions does not justify acts issued by the Indonesian state. Although there is a principle of sovereignty over natural resources, Indonesia as a WTO member country also needs to pay attention that the multilateral trading system is an attempt by governments to make the business environment stable and predictable

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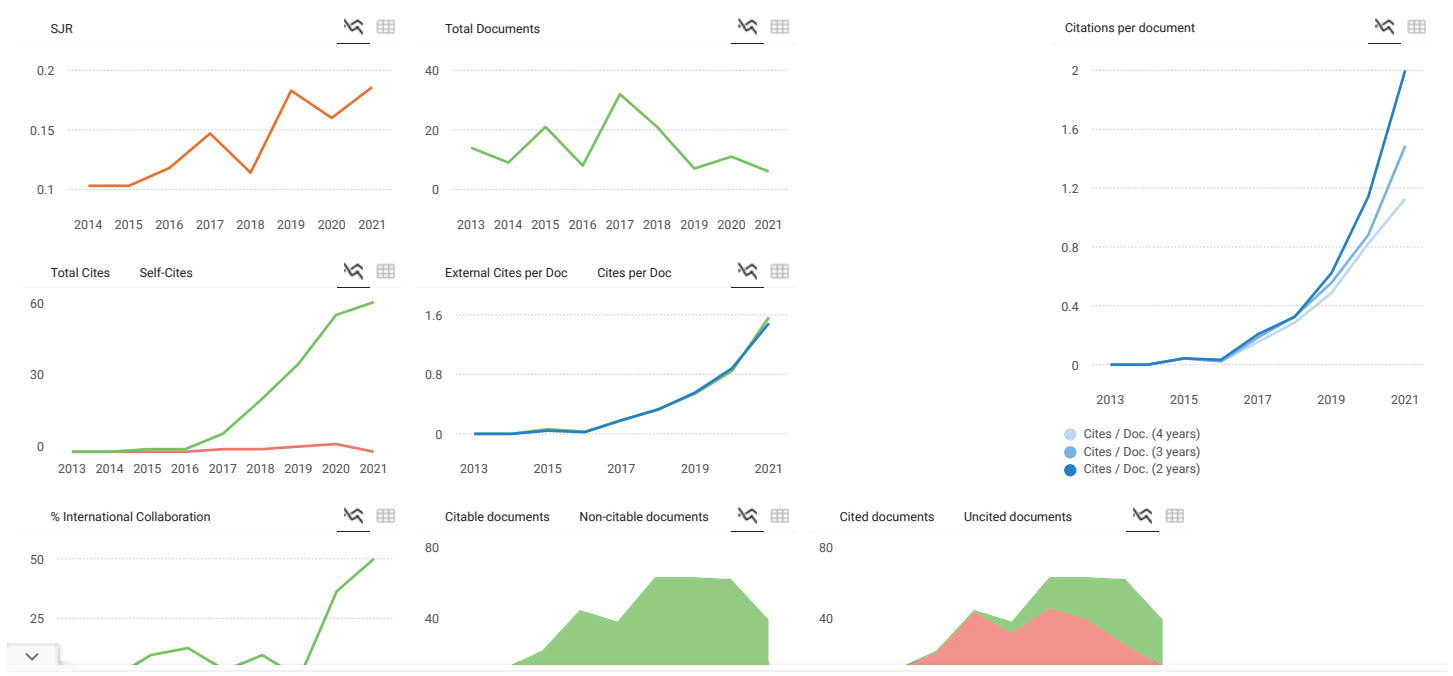
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