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Research Article

Permanent Sovereignty vs. International Obligations: A Lesson Learned from the Dispute Settlement (DS)-592 between Indonesia and the European Union on International Trade

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ABSTRACT : This research analyses Indonesia's policies related to downstreaming and restrictions on raw nickel exports that have caused international debate, especially the European Union which complained against Indonesia to the World Trade Organization (WTO) in Dispute Settlement 592 (DS-592). The study explores Indonesia's position as a WTO member that is being questioned for its policy of banning nickel ore exports to the European Union, and examines the DS-592 ruling in relation to the permanent sovereignty debate. This article uses a normative juridical method with doctrinal, comparative, and case approaches. The results show that Indonesia has permanent sovereignty over its nickel ore guaranteed by UN Resolution 1803. Therefore, Indonesia must exercise this sovereignty with due regard to international obligations. Indonesia should learn from China's export regulations as it prioritises export restriction policies rather than export bans. By applying China's approach, Indonesia can prevent the problems that occurred in DS 592. However, a series of nickel downstream policies implemented by Indonesia have violated the provisions of the WTO Agreement. This article also explains that the vacuum of the Appellate Body does not negate the EU's authority to retaliate against Indonesia. This article concludes that Indonesia must implement a policy determining the percentage of downstream nickel ore, as well as nickel ore that will be exported. This conclusion has resulted in the theoretical idea that no sovereignty can be exercised in violation of the country's international obligations. Thus, each country must be able to establish policies that can balance national interests with international obligations.
KEYWORDS: Export Restrictions, International Obligations, Nickel Ore, Sovereignty, WTO.

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I. INTRODUCTION

Energy is an essential sector for development in all countries, including Indonesia. The existence of energy is not only helpful in increasing the country's foreign exchange but also has an important role in social life, national defense, and security.[1] Thus, it can be said that energy is an essential and strategic natural resource that controls the lives of many people. Under this notion, the state has the authority to control and use energy for the prosperity of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia ("Constitution of 1945").[2] Through this regulation, it can be understood that Indonesia has sovereignty over its natural resources or energy sovereignty.[3] As a country with energy sovereignty, Indonesia must plan, create, and implement national energy-related policies and its governance independently, without any pressure from external forces, in the interests of national development and community welfare.[4] This is also following the United Nations General Assembly (UNGA) Resolution Number 1803 (XVII), which, among other things, states 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."

Indonesia naturally has enormous potential in terms of energy resources, both in fossil energy sources and new renewable energy.[5] One energy source of abundance in Indonesia is nickel.[6] US Geological Survey data reveals that

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1 Dolf Gielen et al, "The role of renewable energy in the global energy transformation" (2019) 24 Energy Strategy Reviews 38–50 at 46.

2 Mumu Muhajir et al, "Harmonisasi Regulasi dan Perbaikan Tata Kelola Sumber Daya Alam di Indonesia" (2019) 5:2–2 Integritas : Jurnal Antikorupsi 1–13 at 2.

3 Indah Dwi Qurbani et al, "The Ideal Concept of Energy Control in Indonesia From the Economic Constitution Perspective" (2022) 9:3 Jurnal Pembaharuan Hukum 481–502 at 482.

4 Febri Handayani & Lysa Angrayni, "Hak Menguasai Negara Dalam Pengaturan Sumber Energi Baru dan Terbarukan" (2023) 5:1 Eksekusi 42–61 at 44.

5 Maida Safitri, Khairur Rizki & Zulkarnain Zulkarnain, "Kebijakan Keamanan Energi Indoneia dalam Pemenuhan Energi Listrik melalui Kerjasama ASEAN Power Grid" (2021) 3:2 Indonesian Journal of Global Discourse 15–30 at 16.

6 Nurhayati Syarifuddin, "Pengaruh Industri Pertambangan Nikel Terhadap Kondisi Lingkungan Maritim di Kabupaten Morowali" (2022) 1:2 Jurnal Riset & Teknologi Terapan Kemaritiman 19–23 at 20.

Indonesia is estimated to have nickel reserves of 55 million metric tons (mt).[7] This abundance of nickel resources prompted the Indonesian government to adopt a policy initially allowing nickel ore exports. However, in 2020, a policy of export ban on nickel ore was officially established through Minister of Energy and Mineral Resources Regulation Number 11 of 2019 regarding the Second Amendment to Ministerial Regulations Energy and Mineral Resources Number 25 of 2018 regarding Mineral and Coal Mining Business (Regulation of the Minister of Energy and Mineral Resources 11/2019).[8]

Furthermore, Article 3 of the Minister of Trade Regulation Number 96 of 2019 regarding Export Provisions for Processed and Refined Mining Products (Trade Minister Regulation 96/2019) states that mining products resulting from processing and/or refining and mining products in the form of material (or ore) with certain criteria is a ban for export. The export ban for nickel are policy aimed at developing downstream industry so that nickel resources can be processed domestically to produce semi-finished and finished nickel products.[9] Based on data from the Central Statistics Agency for 2022, Indonesia can export 777.4 thousand tons of nickel.[10] Besides that, based on the nickel export value in 2022, Indonesia can generate US$33 billion (IDR 514.3 trillion).[11]

However, the policy of banning nickel ore exports has been questioned by other members of the World Trade Organization (WTO), namely the European Union. On November 22, 2019, the European Union took Indonesia to the WTO Dispute Settlement Body (DSB) regarding the export ban for nickel ore policy, which occurred on January 1, 2020. This was contested in the DS 592: Indonesia

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[7] Melissa Pistilli, "Top 9 Nickel-producing Countries (Updated 2023)", (2023), online: *Investing News Network* <https://investingnews.com/daily/resource-investing/base-metals-investing/nickel-investing/top-nickel-producing-countries/>.

[8] Firman Silalahi & Kenny Jesica, "Nickel Smelter Moratorium: Efforts to Establish Laws to Ensure Legal Certainty of Investment" (2024) 2:2 Acta Law Journal 65–74 at 66.

[9] Rizal Budi Santoso et al, "Pilihan Rasional Indonesia dalam Kebijakan Larangan Ekspor Bijih Nikel" (2023) 8:1 Indonesian Perspective 154–179 at 155.

[10] Adi Ahdiat, "Ekspor Nikel Indonesia Meroket pada 2022, Rekor Tertinggi Sedekade", (2023), online: *Databoks* <https://databoks.katadata.co.id/datapublish/2023/07/06/ekspor-nikel-indonesia-meroket-pada-2022-rekor-tertinggi-sedekade>.

[11] CNBC Indonesia, "Jokowi Beraksi! Ekspor Nikel RI Melejit Hingga Rp519 Triliun", (2023), online: <https://www.cnbcindonesia.com/news/20230320104644-4-423111/jokowi-beraksi-ekspor-nikel-ri-melejit-hingga-rp519-triliun>.

– Measures Relating to Raw Materials.[12] The summary of the European Union's claims is explained herein. In the following dispute, the European Union, as the complainant WTO member, argued that the export restriction on nickel ore imposed by Indonesia violates the WTO rules. The European Union cited Articles X: 1 and XI: 1 General Agreement on Tariffs and Trade ("GATT"), obliging WTO members to publish its domestic regulations in a transparent manner and prohibiting the imposition of quantitative restrictions. [13] Furthermore, the European Union argued that such measures violate the Article 3 Agreement on Subsidies and Countervailing Measures (ASCM), which prohibits specific subsidies contingent on import substitution and export performance.[14]

Furthermore, there are five points of argument from the European Union's claim in the dispute over the ban on nickel ore exports recorded in DS 592 Panel Report. The points of argument consist of the ban on nickel exports, domestic processing needs for nickel, iron ore, chromium, and coal, domestic marketing obligations for nickel and coal products, licensing requirements for nickel export, and prohibited subsidy schemes.[15] On October 17, 2022, the DSB panel on the DS 592 dispute adopted a report stating that Indonesia must adjust the export ban policy, established with the provisions of the WTO Agreement. The examining panel report stated that Indonesia had lost this dispute.[16] In the final panel report DS 592, the panel revealed that the export policy and obligations for processing and refining nickel in Indonesia were proven to violate the provisions of the WTO Agreement and other duties. This provision does not allow the establishment of other restrictions in the form of quotas and prohibitions on importing or exporting in the context of sales.[17]

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[12] Kasistha Cantyani et al, "The Prisoner's Dilemma: Indonesia and the European Union in Export Commodity Disputes" (2023) 4:1 Jurnal Sentris 86–100 at 87.

[13] World Trade Organization, *DS592: Indonesia - Measures Relating to Raw Materials* (2022).

[14] *Ibid.*

[15] Cantyani et al, "The Prisoner's Dilemma", *supra* note 12 at 88.

[16] Edward ML Panjaitan & Putu George Matthew Simbolon, "Penyelesaian Sengketa pada World Trade Organization dan Solusi terhadap Kekalahan Indonesia pada DS 592 dalam Perspektif Kepentingan Indonesia" (2023) 9:2 Jurnal Hukum to-ra : Hukum Untuk Mengatur dan Melindungi Masyarakat 192–202 at 193.

[17] World Trade Organization, *supra* note 13.

The ban on nickel ore exports, as implemented by Indonesia, cannot be justified based on Articles XI.2 (a) and XX (g) GATT.[18] Provisions in Article XI.2 (a) GATT justify quantitative constraints based on a lack of inventory of the goods in question (critical shortage). Meanwhile, Article XX (g) GATT provisions are general exception provisions for implementing obligations in the WTO Agreement, including Article XI.1 GATT, based on preserving natural resources that can be exhausted. Apart from that, the panel also rejected Indonesia's defense regarding the limited amount of national nickel reserves and the implementation of responsible mining practices in environmental aspects.[19] It can be concluded through the DS 592 decision that Indonesia was asked to adjust the policy of prohibiting nickel ore exports. The impact of their defeat prompted the Indonesian government to propose an appeal into void in December 2022.[20]

Research related to the ban on nickel ore exports is exciting to study further. On the one hand, each WTO member must comply with and adapt its national laws to the WTO Agreement under Article XVI of the WTO Agreement. However, on the other hand, Indonesia, a sovereign energy country, has adopted a policy prohibiting nickel ore exports in the interests of national development and social welfare, which is guaranteed by the 1945 Constitution and permitted based on the enactment of UN Resolution Number 1803. Furthermore, UN General Assembly Resolution Number 1515 (XV) enacted on December 15, 1960, also stated that the UN General Assembly declared the sovereignty of every country in regulating and managing its natural resources. This sovereignty must, of course, be respected by other countries.

Research related to the policy banning nickel ore exports has been carried out several times. The three previous research include the following. The first example was conducted by Mikaila Jessy Azzahra and Yetty Komalasari Dewi in their article titled "Re-examining Indonesia's Nickel Export Tires: Does it Violate

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[18] *Ibid.*

[19] *Ibid.*

[20] Tommy Sorongan, "Sah! RI Ajukan Banding Kalah Gugatan Nikel di WTO", (2022), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20221214180355-4-396954/sah-ri-ajukan-banding-kalah-gugatan-nikel-di-wto>.

the Prohibition to Quantitative Restriction."[21] This research examined the measurement parameters that can be used in quantitative restrictions that violate WTO provisions and the ban on nickel ore exports in Indonesia. Results showed that restrictions on Indonesian nickel ore exports are quantitative, as imposed in Article XI:1 GATT. However, there is a possibility that the actions taken by Indonesia do not violate WTO provisions because of the justification parameters based on Article XX (g) GATT regarding general exceptions and Article XI: (2) (a) GATT regarding exceptions in imposing quantitative restrictions.[22] This research noted that the implementation of export restrictions impairs the right of market access of the trade partner (other WTO members), which is fundamentally against the free trade concept outlined in the WTO Agreement.

A second example of this research was conducted by Bani Adam and Hannif Ahamat in their article titled "Indonesia's Mineral Export Prohibition and Legality of Export Duties Under the GATT Rules."[23] This examined Indonesia's justification for imposing export controls through GATT regulations. The research results showed that restrictions on nickel ore exports violate the provisions of Article XI.1 and Article XX GATT.[24] Due to this, that research provides a solution to implement higher export duties, which are also following the provisions of GATT.

The third example was conducted by Ari Dwiyono and colleagues in a project titled "Indonesian Economic Defense Strategy: International Nickel Trade Dispute."[25] This examined Indonesia's defense strategy in the economic sector regarding responses to international trade disputes on nickel commodities at the WTO. The results showed that due to the DS 592 decision, Indonesia could carry

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[21] Yetty Dewi & Mikaila Jessy Azzahra, "Re-examining Indonesia's Nickel Export Ban: Does it Violate the Prohibition to Quantitative Restriction?" (2022) 6:2 Padjadjaran Journal of International Law 180–200 at 180.

[22] Chien-Huei Wu, ed, "WTO Rules on Export Restrictions" in *Law and Politics on Export Restrictions: WTO and Beyond* Cambridge International Trade and Economic Law (Cambridge: Cambridge University Press, 2021) 20 at 20.

[23] Bani Adam & Haniff Ahamat, "Indonesia's Mineral Export Prohibition and Legality of Export Duties Under the GATT Rules" (2022) 6:2 Sriwijaya Law Review 239–253 at 239.

[24] *Ibid* at 239.

[25] Ari Dwiyono et al, "Strategi Pertahanan Ekonomi Indonesia: Sengketa Perdagangan Internasional Nikel" (2023) 12:3 Journal of Economics and Business UBS 1830–1838 at 1830.

out several strategies, such as attracting investors and carrying out more optimal nickel management. See the comment above.

Looking at several previous studies that have discussed the nickel ore ban policy to create research novelty, this article will analyze the debate regarding permanent state sovereignty over its natural resources, nickel downstream, and the results of the panel report on DS 592 issued by the WTO DSB. In principle, this research will balance state sovereignty and WTO policies that apply to its members through the WTO DSB. Based on these limitations, two problem questions are formulated: 1) How is the nickel downstream policy linked to state sovereignty, and 2) What is the policy debate between the WTO and Indonesia regarding nickel downstream? This research contains three main parts. In the first part, this research discusses the relationship between nickel downstream policy and state sovereignty. The second part explains export policies in China that use a quota scheme. The third and final part discusses the debate between downstream policy and Indonesia's obligations based on the provisions of the WTO Agreement.

II. METHODOLOGY

This research uses normative juridical research methods that are prescriptive or aim to provide solutions to problems described in the introduction based on secondary data as well as primary and secondary materials. The approaches used in this research are doctrinal, comparative, and case approaches to examine existing findings. Normative juridical research is used by analyzing existing law (doctrinal), which is then continued by considering existing legal issues and the legal politics behind them. The doctrinal approach is used to analyze regulations related to the nickel ore export ban, nickel downstream, and energy sovereignty in Indonesia by applying the contents and regulations of Indonesian legislation, as well as the provisions of the WTO Agreement that are relevant to the research problem. The case approach is used to see the claim concerning the nickel ore export ban policy carried out by the European Union in case DS 592 by explaining the findings of the panel and the Appellate Body in previous WTO disputes. Then, a comparative approach is taken to look at China's policy in the export quota policy.

III. NICKEL DOWNSTREAM POLICY: BETWEEN STATE SOVEREIGNTY AND STATE OBLIGATIONS

"*Cujus est solum, ejus est usque ad cuelum*" (Whoever owns a plot of land thus also owns everything above the surface of the land, up to the sky, and everything that is in the ground).[26] The existence of this ancient Latin postulate has manifested the existence of a right to control land, eventually becoming its ownership a sovereign right. This principle of ownership is often correlated with the concept of jurisdiction and boundaries of control in territory and space. However, this principle, in essence, also applies to control of the intrinsic aspects contained and located below the surface of the land.[27]

As the basis of the state constitution, which is a noble agreement of the nation (*modus vivendi*),[28] Article 33 paragraph (3) of the 1945 Constitution states, "The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Thus, the logical consequence of this article's formulation is that the entire jurisdiction of Indonesia's state-controlled territory (including the land, water, and wealth contained therein) must be used for the greatest prosperity of the people.[29] In a *contrario of argumentum,*[30] the existence of the article above can be interpreted to mean that it is the people's prosperity that is fundamental to the state's control over the land, water, and natural resources contained therein. From those explanations, it can be

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[26] Hafizh Siraji, "The Sovereignty of the Air Space and Its Protection in the Perspective of International Law: Contemporary Developments" (2022) 1:2 International Law Discourse in Southeast Asia 159–184 at 159.

[27] Duncan Ivison, "Property, Territory and Sovereignty: Justifying Political Boundaries" in Ian Hunter & David Saunders, eds, *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought* (London: Palgrave Macmillan UK, 2002) 219 at 9.

[28] *Modus Vivendi* adalah kepakatan luhur bangsa untuk hidup bersama dalam ikatan satu bangsa yang majemuk. Lihat Moh Rif'an et al, "Re-Eksistensi Peran Desa dalam Rantai Pasok Produksi Pengolahan Hutan Desa Melalui Bank Pohon: (Strategi Penegakan Hak Asasi Manusia Sektor Kehutanan)" (2020) 1:6 Jurnal Hukum Lex Generalis 39–65 at 40.

[29] Wahyu Nugroho, "Persoalan Hukum Penyelesaian Hak atas Tanah dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba" (2020) 27:3 Iustum 568–591 at 569.

[30] A contrario argumentum (a contrario) is a method of interpretation or explanation of the law that is carried out by basing on the opposite understanding of a concrete event at hand with a concrete event that has been regulated in the law. Achmad Hariyadi & Rusdianto Sesung, "Keabsahan Kepemilikan Tanah yang Diperoleh Berdasarkan Perjanjian Nominee Antar Sesama Warga Negara Indonesia" (2021) 9:1 Jurnal Selat 44–57 at 54.

concluded that Indonesia transfers its sovereignty to its people (*volkssouvereiniteit*), and such transfer of rights shall be perceived as the basis to state sovereignty (*staatssoevereiniteit*) itself.[31]

The Comprehensive Text on the Formation of the 1945 Constitution in Book II regarding the Joints/Fundamentals of the State explains the formulation of state sovereignty, which in Indonesia refers to the sovereignty of the people as the basis for various policies and practices in state administration.[32] Regarding Jack N. Nagel, the concept of power includes the scope and domain of power. The scope of sovereignty concerns activities included in the function of sovereignty, while sovereignty relates to subjects.[33] Meanwhile, the scope of the domain of sovereignty includes two important aspects, namely, (a) who holds the highest power in the state and (b) what is controlled by the holder of the highest power.[34] Therefore, state sovereignty in controlling natural resources, as contained within the scope of Indonesia's territory, must be managed and utilized for the greatest prosperity and welfare of the people.[35]

This is relevant, considering the richness and diversity of Indonesia's natural resources, with high selling value and international market power. One example is in the mining sector, especially minerals.[36] Based on data from the Mineral, Coal, and Geothermal Resources Balance Book of the Ministry of Energy and Energy Resources of the Republic of Indonesia (ESDM RI) in 2020, Indonesia has a relatively large production capacity and reserves, with mineral reserves of 2,509 metal mineral data and associated metal minerals. The details of which are as follows:

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[31] Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Pembahasan 1999-2000 (Buku II Sendi-Sendi/Fundamental Negara)* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010) at 58.

[32] Siti Yuniarti & Erni Herawati, "Analisis Hukum Kedaulatan Digital Indonesia" (2020) 15:2 Pandecta Research Law Journal 154–166 at 156.

[33] Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, *supra* note 31 at 59.

[34] *Ibid* at 60.

[35] Nunik Nurhayati et al, "Kedaulatan Negara Indonesia: Makna dan Implementasi Sebelum dan Sesudah Amandemen UUD 1945" (2022) 4:1 Amnesti Jurnal Hukum 44–61 at 48.

[36] Muhammad Agung & Emmanuel Arianto Waluyo Adi, "Peningkatan Investasi Dan Hilirisasi Nikel Di Indonesia" (2022) 6:2 JISIP (Jurnal Ilmu Sosial dan Pendidikan) 4009–4020 at 4010.

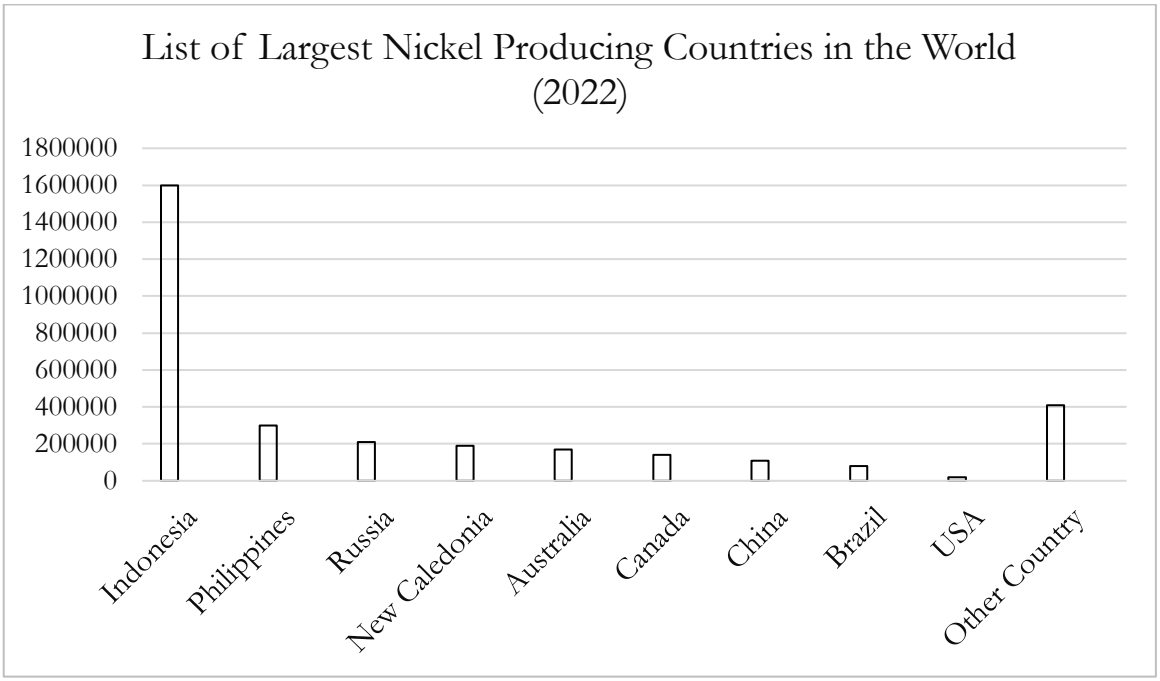
Picture 1. Recapitulation of Total Resources and Total Metal Mineral Reserves in 2020.

NO	COMMODITIES	TOP RESOURCES ** Ore in Million WMT Metal in Million Tons		Total Reserves Ore in Million WMT Metal in Million Tons	
		ORE	METAL	ORE	METAL
MAIN METAL MINERALS					
1.	Copper	15927,88	65,8386	3.096,94	24,2006
2.	Primary Gold	15.583,25	0,0085	3.676,92	0,0022
3.	Alluvial Gold	1.628,86	0,0004	65,73	0,0002
4.	Tin	104.85,77	2,76	7.491,88	2,7201
5.	Nickel	13.737,19	143,1261	4.561,69	49,2608
6.	Bauxite	5.477,26	1.799,05	2.963,28	946,972
7.	Manganese	143,58	64,8234	108,76	49,6935
8.	Primary Iron	7.329,15	1.691,69	1.695,79	3555,283
9.	Sand Iron	3,475,30	467,594	941,27	221,489
10.	Sediment Iron	5,83	3,6802	-	-
11.	Lead	3.990,70	92,6104	76,16	2,4893
12.	Antinomy	11,89	0,3756	3,96	0,0158
13.	Mercury	32,25	0,0001	-	-
14.	Chromite	0,76	0,328	0,07	0,0257
15.	Plaster Chromite	4,8	1,0533	3,55	0,138
16.	Platinum	114,75	0.00000787	-	-
METALLIC MINERALS					
17.	Silver	10.395,00	0,0701	3,197,40	0,0115
18.	Zinc	3.743,19	60,8377	57,88	2,2647
19.	Laterite Iron	5.279,60	1.040,54	1.291,16	246
20.	Cobalt	3.048,26	3,5682	640,12	0,3963
21.	Molybdenum	2.809,12	0,277	-	-
22.	Titan Literite	1.341,69	9,9726	205,86	1,2917
23.	Titan Plaser	43,93	4,3771	45,66	2,548
24.	Vanadium	230,8	1,5741	161,63	1,1019
25.	Monasite	6.925,94	0,1867	-	-
26.	Xenotyme	6,466,26	0,0207	-	-

Source: Attachment Pages 14 to the Decree of the Minister of Energy and Mineral Resources No. 77.K/MB.01/MEM.B/2022 on National Mineral and Coal Policy.

One of Indonesia's superior minerals—a current favorite in the international market share is the metallic mineral nickel. Indonesian nickel currently supplies around 37% of the world's nickel ore needs. Indonesia carries out export activities to various countries, which saw productivity of 1.6 million (Wet Metric Tons/WMT) in 2022. The details of this are as follows:[37]

Picture 2. List of the Largest Nickel Producing Countries in the World 2020.



Source: Databoks Katadata[38]

Nickel is a mineral that has prospects in various countries. As an important mining commodity, it can be used as raw material for making batteries (lithium) in the electric vehicle industry (EV).[39] Currently, various countries in the world are flocking to campaign for the use of clean energy through the conversion of Mineral Fuel (BBM) energy in motorized vehicles into electrical energy.[40]

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[37] Cindy Mutia Annur, "Deretan Negara Penghasil Nikel Terbesar di Dunia pada 2022, Indonesia Nomor Satu", (2023), online: *databoks* <https://databoks.katadata.co.id/datapublish/2023/03/02/deretan-negara-penghasil-nikel-terbesar-di-dunia-pada-2022-indonesia-nomor-satu>.

[38] *Ibid.*

[39] John H T Luong, Cang Tran & Di Ton-That, "A Paradox over Electric Vehicles, Mining of Lithium for Car Batteries" (2022) 15:21 Energies 1–25 at 2.

[40] David S Rapson & Erich Muehlegger, "The Economics of Electric Vehicles" (2023) 17:2 Review of Environmental Economics and Policy 1–29 at 14.

However, Indonesia currently only supplies raw materials from nickel minerals. Where the selling price between raw nickel ore and nickel commodities have been processed, both finished and semi-finished goods have different economic disparities.[41] According to the website of the Cabinet Secretariat of the Republic of Indonesia in 2022, the average price of nickel ore and its concentrate on the world market is only around US$21 on average. Meanwhile, the price of basic nickel-processed products reaches an average of US$24,000.[42] Therefore, the government is trying to stop the export of raw nickel material and convert it into semi-processed nickel through a nickel downstream policy.

This policy is outlined in Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Law 3/2020), in conjunction with the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 17 of 2020 concerning the Third Amendment to Regulation of the Minister of Energy, and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Businesses (Regulation of the Minister of Energy and Mineral Resources on Mineral and Coal Mining Business). These require the construction of refining/processing facilities and minimum limits on exports of the results of refining/processing mineral and coal mining materials.[43]

The existence of this policy cannot be considered a new policy because the policy of downstream mineral products, especially nickel, has existed in Indonesian regulations ranging from government regulations, presidential regulations, and regulations of the Minister of Energy and Mineral Resources since 2010. The regulation provides an obligation to carry out domestic processing/refining first

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[41] Mansur Juned, "Economic Diplomacy through the Development of Nickel Smelters and Battery Plants in Indonesia: Obi Island Case Study" (2023) 12:1 Andalas Journal of International Studies (AJIS) 69–79 at 75.

[42] Aliyyah Damar Fitriyani, "Hilirisasi Bahan Tambang: Sebuah Upaya Peningkatan Kesejahteraan Masyarakat" (2022), online: *Sekretariat Kabinet Republik Indonesia* <https://setkab.go.id/hilirisasi-bahan-tambang-sebuah-upaya-peningkatan-kesejahteraan-masyarakat/>.

[43] Sri Mastuti & Pangi Syarwi, "Kebijakan Pelarangan Ekspor Bijih Nikel Indonesia Dari Sudut Teori Keadilan John Rawls" (2023) 4:2 Communitarian : Jurnal Prodi Ilmu Politik 691–709 at 692.

by building a smelter or joining other companies in the country that already have smelters before carrying out export activities abroad.[44]

The existence of the above provisions is not without reason but is aimed at increasing the selling power of nickel ore (ore/raw material) abroad. However, at the start of 2021, the European Union protested to the Indonesian government due to the restriction imposed on the nickel ore originating from Indonesia. The export policy of nickel raw materials to international markets, including to the EU's market, violates the provisions concerning quantitative restriction under Article XI: 1 GATT, a provision covered by the main WTO Agreement, considering that Indonesia has 14 projects and three nickel smelter projects of which have been completed in 2021.[45]

The EU's claim that it led to Indonesia's defeat in the DS 592 reduces the existence of state sovereignty, which is focused on the fundamental right to self-determination.[46] This right is contained in the text of the Declaration on the Rights and Duties of States of 1949 (Declaration on Rights and Duties of States), wherein Article 1 states that "*Every State has the right to independence and therefore to exercise freely, without dictation by any other State, all its legal power, including the choice of its form of government*." This confirms the existence of state-sovereign independence and impartiality from various other state interventions.

This right was then strengthened through UN General Assembly Resolution 1803 (XVII) State Sovereignty Over Natural Resources. This provides legitimate permanent sovereignty over natural resources as a basic element of self-determination rights.[47] This resolution emphasizes that there is a right of a nation

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[44] Rizky Ikhsan Rahadian & Muhammad Ramdhan Ibadi, "Impact of Accelerating the Export of Nickel Prohibition on Non-Tax Revenue and National Economy" (2021) 3:1 Jurnal Anggaran dan Keuangan Negara Indonesia (AKURASI) 91–115 at 93.

[45] Kementerian Energi dan Sumber Daya Mineral, "Ini Progres Pembangunan 4 Smelter di Tahun 2021", (2021), online: *ESDM* <https://www.esdm.go.id/id/media-center/arsip-berita/ini-progres-pembangunan-4-smelter-di-tahun-2021>.

[46] Anisa Dewi Syafira et al, "Analisis Peluang, Tantangan, Dan Dampak Larangan Ekspor Nikel Terhadap Perdagangan Internasional Di Tengah Gugatan Uni Eropa Di WTO" (2023) 2:1 Jurnal Economina 90–100 at 91.

[47] AA Muhammad Insany Rachman & Evi Dwi Hastri, "Implikasi Prinsip Right Of External Self Determination Terhadap Kedaulatan Negara Induk Sebagai Subjek Hukum Internasional" (2021) 8:2 Jurnal Jendela Hukum 47–63 at 48-49.

to permanent sovereignty over natural wealth and resources, which must be implemented in the interests of national development and the welfare of the people in a country (socio-welfare state).[48]

The existence of national development interests and community welfare—the nadir of a country's sovereignty and management of natural resources—is very relevant when associated with the principles of utility (utilitarianism) in statutory regulations.[49] Utilitarianism aims to produce the greatest happiness and benefit for society; as stated by Jeremy Bentham, "the greatest happiness for the greatest number."[50] For this reason, the formation of legislative regulations must strive to achieve four goals: 1) to provide subsistence (to provide living expenses); 2) to provide abundance (to provide abundant food); 3) to provide security (to provide protection); and 4) to attain equality (to achieve equality).[51]

The provision of happiness through optimal management of natural resources strengthens the sovereignty of a country. This is what is called the application of the principle of the Right to Internal Self Determination, which seeks to be independent and determine the direction of its own national and international policies.[52] The right to self-determination for people and entities that are not yet independent was expressly recognized by the UN General Assembly in the Declaration on The Granting of Independence to Colonial Countries and Peoples on December 14, 1960. The second point of the Declaration on the Granting of Independence to Colonial Countries and Peoples clearly states that "All peoples have the right to self-determination; by virtue of that right, they

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[48] *State Sovereignty, Popular Sovereignty and Individual Sovereignty: from Constitutional Nationalism to Multilevel Constitutionalism in International Economic Law?*, Working Paper, by Ernst-Ulrich Petersmann, International Trade Law 7 Working Paper (Italia, 2006) at 3-4.

[49] Zainal B Septiansyah & Muhammad Ghalib, "Konsepsi Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia" (2018) 34:1 Ijtihad: Jurnal Hukum Islam dan Pranata Sosial 27–34 at 29-30.

[50] Endang Pratiwi, Theo Negoro & Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?" (2022) 19:2 Jurnal Konstitusi 268–293 at 273.

[51] Rizki Ridwansyah, "Konsep Teori Utilitarianisme dan Penerapannya dalam Hukum Praktis di Indonesia" (2023) 1:2 Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora 1–11 at 2-3.

[52] Rachman & Hastri, *supra* note 50 at 57.

freely determine their political status and freely pursue their economic, social and cultural development."[53]

However, state sovereignty is not an absolute in international law. Like human rights, which are limited by other human rights, state sovereignty can also be limited by the sovereignty of other states. This means that the definition of sovereignty as a supreme power contains two important limitations.[54] First, this power is limited to the territorial boundaries of the country concerned. Second, this power ends where the power of another state begins.

For this reason, this limitation is often forgotten by people who think that there is nothing higher than state sovereignty. In looking at this, it is not necessary to understand that state sovereignty is always at stake with international community relations and rules that have been ratified. Each state has its sovereignty, and state sovereignty cannot be interpreted in absolute terms.[55]

UNGA Resolution Number 1803 (XVII) State Sovereignty Over Natural Resources explained that the sovereignty over natural resource development (and also the export/import business required) must be regulated in the condition that nations and countries do not arbitrarily grant permits, restrictions, or prohibitions on business activities. It is important to note that this principle was originally adopted to exercise the right of self-determination or to be free from foreign colonization. [56] This principle was then adopted in various international instruments, which constitute the state's rights over its natural resources, complemented with an obligation to provide compensation to foreign investors.[57] Even though it remains subject to debate, the Permanent Sovereignty Over Natural Resources has been recognized as general practice recognized as a law or customary international law.[58] However, it remains uncertain whether this principle can be perceived as a general principle of law as mentioned in Article

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[53] *Ibid.*

[54] Sefriani, *Hukum Internasional Suatu Pengantar* (Jakarta: Rajawali Pers, 2019) at 16-17.

[55] Boer Mauna, *Hukum Internasional: Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global* (Bandung: Alumni Bandung, 2018) at 24.

[56] Ricardo Pereira & Orla Gough, "Permanent sovereignty over natural resources in the 21st century: natural resource governance and the right to self-determination of indigenous peoples under international law" (2013) 14:2 Melbourne Journal of International Law 451–495 at 452.

[57] *Ibid.*

[58] *Ibid.*

38 Paragraph (1) Statute of the International Court of Justice. Further explanation concerning the development and implementation of this principle is explained in the third discussion.

As a condition for the realization of international order, the necessity to submit a sovereign state can no longer be avoided. Neither can the necessity to subordinate the understanding of sovereignty to international law, which regulates international relations. If a country participates in an international agreement, then the generally applicable principle is that the country must implement the agreement in good faith as ratified.[59] The agreements stated in the agreement are a state commitment and give rise to international accountability—i.e., the member countries of an international agreement.

All countries that participate in international agreements are bound by the clauses in them, but this does not mean that their country's sovereignty is lost. Every agreement that limits the jurisdiction and authority of a country is for the sake of achieving common goals with other subjects of international law.[60] Therefore, a compromise point is needed between Indonesia's downstream nickel policy and the WTO's ban on raw nickel export restrictions.

IV. THE CHINA EXPORT CONTROL LAW: THE IMPLEMENTATION OF EXPORT RESTRICTIONS AS AN EXPORT BAN ALTERNATIVE

This section explains how Indonesia may balance its national interests in compliance with the WTO by learning from China's export law. The legal norm referred to in this article is the Order of the President of the Republic of China Decree Number 58, also known as the Export Control Law of the People's Republic of China (China Export Control Law).[61] Article 1 of China Export Control Law states that the following norm is adopted to secure the national

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[59] Jean Elvardi, Firman Hasan & Arya Putra Rizal Pratama, "The use of Language In International Agreements According to The 1969 Vienna Convention And Its Implementation In Indonesian National Law" (2022) 37:3 Yuridika 515–538 at 531.

[60] Dhesy A Kase, "Wilayah Perbatasan Negara dalam Perspektif Hukum Internasional" (2020) 2:1 Jurnal Proyuris 168–184 at 169-170.

[61] Dominic Köstner & Marcus Nonn, "The 2020 Chinese export control law: a new compliance nightmare on the foreign trade law horizon?" (2023) 8:3 China-EU Law Journal 81–95 at 83.

security and interests of China. This norm's adoption is also stated to conduct its international obligation and enhance the export control of China. Based on Article 2 of China Export Control Law, this legal norm provides justification for the Chinese government to apply the export prohibition and export restriction based on national security and national interest.

The China Export Control Law consists of five chapters. In providing a better understanding, this chapter of the export control law therein is explained below. The first chapter of the law constitutes the following stipulations: 1.) The purpose of the regulation, 2.) The scope of application, 3.) The compulsory holistic approach applied by the Chinese government, 4.) The obligations of coordination within the government's departments, 5.) The obligations to enhance international cooperation, and 6.) The involvement of non-government stakeholders in this regulation implementation.[62] The first chapter of this law obliged the Chinese government, in this case the Ministry of Finance and Commercial, to safeguard national security and interest, perform non-proliferation and other international obligations, and further enhance and regulate export control.[63] It can be understood that this stipulation is in line with Articles XX and XXI GATT, which stipulates general exceptions and national security exceptions applicable to WTO members. Since the chapter of this China Export Control Law also takes into account international obligations, a balance of national interests and international obligations is thereby struck.

The second chapter of this law constitutes the administration of dual-use items or goods used for both military and non-military activities and military products administration.[64] This chapter consists of stipulations concerning licensing requirements and the requirements that shall be crosschecked by the authorities prior to the issuance of the export license.[65] This chapter is a set of due process stipulations or administrative requirements subject to be complied with by the Chinese exporters.

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[62] *Ibid* at 86-87.

[63] Europe Union and China, *Joint EU - China Handbook on Export Control of Dual-Use Items* (Germany: Federal Office of Economics and Export Control BAFA, 2014) at 6.

[64] Köstner & Nonn, *supra* note 61 at 87.

[65] *Ibid.*

The third chapter outlines a set of regulations concerning how the export conducted by China's enterprises is monitored by its government. The chapter herein mainly regulates the surveillance of Chinese exporters, and such inspection shall be conducted through supervision and inspection.[66] Since the main orientation of this regulation is national security, this chapter is stipulated to ensure exporters' discipline to achieve such a purpose.

The fourth constitutes a set of criminal sanctions and administrative sanctions imposed on law violators. In line with the third chapter, the fourth chapter constitutes the administrative fines and other sanctions to be imposed on the exporters violating this law.[67] Such sanctions are necessary to be implemented to ensure the exporters exercise their rights in line with the purpose of this regulation.

Finally, the fifth chapter of the China Export Control Law regulates additional provisions concerning export through the imposition of bonded zones, further stipulations concerning nuclear weapons, and the imposition of countermeasures to perceived threats to China's national security and interests.[68] As explained above, the fifth and last chapter regulates miscellaneous provisions related to bonded zones and national security. Since this regulation also constitutes a dual-use item or an item usable both for military and civilian purposes,[69] it can be understood that this stipulation provides a greater degree of such certainties to achieve national security and China's political interest.

China Export Control Law is a legal norm prioritizing an export restriction compared to an export prohibition.[70] Article 8 of this regulation delegates authority to the Chinese government to conduct a *prima facie* assessment of the exporters' destined country. Article 9 (China of the China Export Control Law) authorizes the Chinese government to impose a two-year quantitative restriction

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66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 *Ibid.*

70 Frank Pan Li Ivy Tan, Tina, "China: Long-awaited draft implementing rules released pursuant to the new Export Control Law", (2022), online: *Sanctions & Export Controls Update* <https://sanctionsnews.bakermckenzie.com/china-long-awaited-draft-implementing-rules-released-pursuant-to-the-new-export-control-law/>.

to exercise national security or interest and to conduct its international obligation. In interpreting stipulations set forth under China Export Control Law Articles 9 and 10 (according to the systematic interpretation method), it can be construed that an export prohibition may only be imposed by the Chinese government in the event of a national security threat.

Article 12 China Export Control Law *inter alia* ordered the Chinese government to adopt a temporary import license. To the goods not covered by the following export licensing arrangement therein, the exporter is thereby obliged to report them to the authority due to the existence of the potential risks herein: 1) Threatening the national security or the national interests; 2) The following goods are produced as a weapon potentially caused mass destruction; and 3.) Used for terrorism. According to Chapter II Section 1 of China Export Control Law, the Chinese government is obliged to implement a risk-based approach in determining which goods are allowed to be exported and which are prohibited. This approach is conducted by taking into account the national security and interests *vis-à-vis* China's international obligation.[71]

The *de jure* herein is principally in line with China's international obligation, set forth under Articles XX and XXI GATT. Article XX GATT generally constitutes how the deviations of Annex 1A: WTO Agreement or the Agreement on Trade in Goods can be justified under a certain basis. Those justifications *inter alia* consist of the protection of public morals under Article XX(a), the protection of human, animal, and plant health and life under Article XX(b), and the conservation of exhaustible natural resources under Article XX (g) GATT. Meanwhile, Article XXI GATT allows WTO members to waive their obligations on a national security basis. Despite the fact that the restrictions of an export constituted under the China Export Control Law are a legal norm requiring further implementation, this legal product reflects a clear stipulation, and it may harmonise national sovereignty with an international obligation at the very least.[72]

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[71] Mark Wu, "China's Export Restrictions and the Limits of WTO Law" (2017) 16:4 World Trade Review 673–691 at 675.

[72] Trisha Rajput, "Restricting International Trade through Export Control Laws: National Security in Perspective" in *Regulation of Risk* (Brill Nijhoff, 2022) at 616-617.

The second discussion herein emphasizes the fact that Indonesia shall have measures related to export restrictions attached with a certain grace period. This premise is delivered to emphasize that Indonesia shall apply the balancing test as implemented under the China Export Control Law. From Indonesia's current *status quo*, it can be understood that their export policy and arrangement are constituted under the Ministry of Trade ("*Kementerian Perdagangan Republik Indonesia*" in Bahasa Indonesia) with the specific assignments constituted under Articles 38 paragraph (4) and 50 of Law Number 7 of 2014 concerning Trade Law (Law of 7/2014). This ministry is *inter alia* assigned to formulate and implement measures related to trade (import and export policies) and to ensure Indonesia's market access is open to other WTO members.[73] Furthermore, the Ministry of Trade is also assigned to provide technical guidance and supervise Indonesia's trade policies.[74] The trade policy referred to in the previous sentence as measures related to domestic industries enhancement and development, trade sanction, import policy, and national export development.[75]

The articles explained above can be explained further with the international responsibility doctrine by Roberto Ago. Ago explained that an international responsibility for a wrongful act by a state arises if such a state breaches its primary obligation under the international treaty or other rules of international law.[76] From the stipulations outlined in the Law of 7/2014 explained above, it can be understood that the Ministry of Trade is the government organ attributed by Indonesia to exercise the country's rights and obligations under the WTO Agreement. Therefore, the Ministry of Trade is responsible for conducting the primary obligation under the WTO Agreement *in concreto* to bring every Indonesian domestic regulation related to trade in conformity with the agreement therein. The Ministry of Trade is hereby also responsible for conducting the secondary obligation to defend Indonesia's measure before the WTO and filing

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[73] Putu George Matthew Simbolon & Angel Damayanti, "Indonesian Trade Policy in Adjusting the 2020 WTO's Trade Policy Review" (2023) 12:1 Jurnal Hubungan Internasional 76–87 at 80.

[74] Ahmad Mufti & Muhaimin Limatahu, "Optimization of Maluku's Directorate General of Customs and Excise Supervision Function in the Archipelagic Regions for Excited Goods Circulation" (2022) 6:1 Cepalo 1–12 at 7.

[75] See at Article 38 paragraph (4) *jo.* Article 50 Law Number 7 of 2014 regarding Trade.

[76] Gonzalo Sánchez de Tagle, "The objective international responsibility of states in the Inter-American human rights system" (2015) 7:2 Mexican Law Review 115–133 at 118.

a claim to this international organization due to nullification and impairment by another WTO member.

The export arrangement of goods from Indonesia is regulated under the Ministry of Trade Regulation Number 12 in 2022 concerning the Third Amendment of The Ministry of Trade Regulation Number 19 of 2021 concerning the Export Policy and Arrangement (MoTR of 19/2021). This stipulation constitutes export licensing, whereby the Ministry of Trade determines goods that can be exported. It also provides a positive list of goods based on its Harmonized Code, as issued by the World Customs Organization, Goods Descriptions, Requirements, and Explanations on the following products and commodities. This export licensing regime correlates to Indonesia's capital investment license by referring to the Government Regulation in Lieu of Law Number 2 of 2022 (GR in Lieu of Law of 2/2022). This reference is made *in concreto* under business investment and licensing, integrated under the Online Single Submission (OSS) System with its *Risk-Based Approach*.[77]

One purpose of the GR in Lieu of Law of 2/2022 Regulation is to synchronize the regulatory measures related to cooperation, SMESs, increasing the investment ecosystem, and national industry and to expedite national strategic projects. There are several regulations commanded and adjusted according to the Job Creation Regulation, some of which are measures related to business licensing.[78] Furthermore, one regulation that supports businesses' ease in having a nexus with the business license regime is Government Regulation Number 5 of 2021 concerning the Implementation of Risk Based Business Licensing **(**GR of 5/2021).[79] Meanwhile, PP No. 5/2021 is an Electronically Integrated Business Licensing System or Online Single Submission System (OSS System) in this

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[77] Sri Wahyuni Amalia, Zulkifli Aspan & Juajir Sumardi, "The Influence Of Positive Fictitious Principles In The Issuance Of Business Licences Through The Online Single Submission Risk Based Approach System (OSS-RBA)" (2023) 20:1 Jurnal Hukum 288–305 at 290.

[78] Ida Ayu Kade Febriyana Dharmayanti & Putu Gede Arya Sumerta Yasa, "Penerapan Sistem Perizinan Berusaha Online Single Submission Risk-based Approach (OSS-RBA) Di Bidang Industri Pasca UU Cipta Kerja" (2022) 8:1 Jurnal Komunikasi Hukum (JKH) 509–526 at 511.

[79] Liatosa Yundrina, "Implementasi Kebijakan Online Single Submission Risk Based Approach (Oss Rba) di Kecamatan Kalidoni Kota Palembang" (2023) 5:3 Journal on Education 9855–9868 at 9857.

regulation, this electronic system is formed to implement the business licensing regime effectively with a risk-based approach.[80]

GR of 5 /2021 obliges all business operators to fulfill general requirements to establish and operate activities through Indonesia's vast business sectors.[81] These requirements are: 1.) The basic requirement for business licensing to involve the adjustment of special utilization, environmental license, building concessions, and functional feasibility certificate; and/or 2.) The specific sectoral requirement under the risk-based business license regime. [82] The business licensing arrangement under GR of 5/2021 is constituted by the government of Indonesia based on the outcome of the risk analysis under the following classifications:[83]

1. Low Risk (also known as "*Rendah*" abbreviated as "R");
2. Middle Low Risk (also known as "*Menengah-Rendah*" abbreviated as "MR");
3. Middle High Risk (also known as "*Menengah-Tinggi*" abbreviated as "MT"); and
4. High Risk (also known as "*Tinggi*" abbreviated as "T").

The above classifications are based on the risk analysis method, which analyses each business sector open under the Indonesia investment regime through 1) the scale of that business sector and 2) the level of the following business risk. The conceptualization of the Risk-Based Approach (RBA) has a similarity with the export licensing regime of China under its China Export Control Law. Here, the government of China implements the risk-based approach to approve the exportation of its commodities and products. This is done by invoking its operator activities' scope and limits in line with its national interest and national

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[80] Upita Anggunsuri & Zahara Zahara, "Transition of Online Single Submission (OSS1.1 To Risk-based Approach) to Increase Investment in West Sumatera" (2023) 8:2 JCH (Jurnal Cendekia Hukum) 253–263 at 253.

[81] Raras Nadifah Cahyaningtyas, "The Effect of RBA OSS-Based Company Licensing on Domestic Investment" (2022) 5:3 Budapest International Research and Critics Institute-Journal (BIRCI-Journal) 23231–23242 at 23235.

[82] Hafizha Rika Nasution, "Pengesahan Badan Hukum Perseroan Terbatas Dalam Peraturan Pemerintah Tentang Perizinan Berusaha Berbasis Risiko (Online Single Submission Risk Based Approach) Ditinjau Dari Sifat Badan Hukum (Rechtpersoonlijkheid)" (2022) 8:1 Jurnal Hukum dan Bisnis (Selisik) 119–148 at 123-124.

[83] Susi Kusmiati, Anita Afriana & Pupung Faisa, "Implications and Legal Consequences of Implementing A Risk Based Online Single Submission System For Limited Liability Company Business Licensing" (2023) 5:1 Jurnal Poros Hukum Padjadjaran 1–19 at 2.

security protection.[84] It is unfortunate that Indonesia does not apply its RBA concept to its export policy and arrangement regulations and its measures related to its export regime.[85] This article hereby expresses that the RBA shall also be consistently applied to Indonesia's export arrangement regulations or measures related to export, as China does within its public law. The Chinese practice explained in this discussion may be considered a model law—or an outcome of a comparative study—which can be implemented to regulate Indonesia's measures that ban its nickel ore so that Indonesia may utilise its people's welfare and prosperity by implementing its international obligation.[86]

Based on the comparative studies explained in this discussion, this article may express that the Ministry of Trade is Indonesia's assigned minister to invoke and exercise its trade policy, especially its export policy. By referring to GR in Lieu of Law of 2/2022 and GR of 5/2021, Indonesia qualifies as a state that implements the risk-based approach, as China does within its public law regime. Understanding that imposing an export restriction with a time limit (as is constituted under the China Export Control Law) actualizes the risk-based approach, Indonesia may implement a similar regulatory measure in constituting its nickel ore export. The adoption of this aspired law, or *ius constituendum,* shall also be conducted as Indonesia's commitment to justify its measures contrary to the WTO Agreement—under the justifications outlined in Article XX and Article XXI GATT.

Indonesia shall also conduct an allocation of its nickel ore production. Such allocation should be conducted by classifying the amount of nickel ore that shall be processed through its smelters in achieving its national development. Furthermore, it shall also determine the number of nickel ore that shall be exported to avoid a total export ban fully prohibited under Article XI: 1 GATT. This allocation can be actualized by determining the percentage of domestically processed, as well as exported, nickel ore. Through this allocation, Indonesia may balance its sovereignty on its national resources along with its primary obligation

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[84] Köstner & Nonn, *supra* note 61 at 88.

[85] Olga Hrynkiv, "Export Controls and Securitization of Economic Policy: Comparative Analysis of the Practice of the United States, the European Union, China, and Russia" (2022) 56:4 Journal of World Trade 14–15.

[86] Rajput, *supra* note 72 at 618.

as a member of the WTO. This idea is delivered based on the lesson learned in DS 592, explained in the third discussion of this article.

V. THE DOMESTIC PROCESSING OBLIGATION AND INDONESIA'S OBLIGATION UNDER THE AGREEMENT ESTABLISHING THE WTO

The obligation to build a smelter, as explained by Indonesia Mining Laws, is recognized under international law as a principal legal right. The legal right to manage natural resources is herein recognized under the United Nations Resolution 1803 regarding the Permanent Sovereignty Over Natural Resources. This United Nations Resolution has been consistently implemented by developing countries to justify their sovereignty and fully manage their natural resources. However, Yannick Radi explained that this resolution may not qualify as international customary law. This was caused by the politics of the United States and the European states, who perceived this general practice as lacking the *opinio juris* element.[87] It is important to note that the development of this principle has created a nexus with the WTO law practice. Before that, the article herein explains the origin of such principle according to international law doctrines.

The Principles of Permanent Sovereignty Over Natural Resources was introduced by the United Nations General Assembly Resolution 535 (VI) in January 1952. This principle was first known as a concept that opposed colonization and upheld self-determination as a political and legal calling.[88] In 1962, the concept therein was adopted under the General Assembly Resolution 1803 (XVII), and it was supported by the majority of states consisting of developed and developing countries.[89] Pursuant to explanations in the paragraph above, France fully rejected these principles despite their conservative nature, leading to a certain degree of acceptance by developed countries.[90] Since then,

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87 Yannick Radi, *International Investment Law Textbook* (Louvain: UC Louvain & EdX, 2021) at 10-13.

88 Fritz Visser, "The principle of permanent sovereignty over natural resources and the nationalization of foreign interests" (1988) 21:1 The Comparative and International Law Journal of Southern Africa 76–91 at 78.

89 *Ibid*.

90 *Ibid*; Syafira et al, *supra* note 46 at 92.

this principle has been mainly applicable to the treatment of foreign investments due to its interest in national development and the wealth of people.[91]

Since then, this principle has been transposed throughout various international law instruments. The Permanent Sovereignty Over Natural Resources was adopted under the UN General Assembly Resolution 2158 in November 1966.[92] This resolution was adopted to ensure the maximum development of natural resources in developing countries. Such a principle is identical to the transfer of technology and economic advancement.[93] This principle is also adopted under the Charter of Economic Rights and Duties of States (CERDS).[94] In recognizing the development of international economic relations on a just and equitable basis, Article 2 of the CERDS recognizes the Permanent Sovereignty Over Natural Resources.[95] Last but not least, this principle is also recognized under Article 25 of the International Covenant on Economic, Social, and Cultural Rights.

After the establishment of the WTO Agreement, the Permanent Sovereignty Over Natural Resources was contested throughout case law concerning natural resources export restriction.[96] In the *China – Raw Materials* Case and the *China – Rare Earths*, China, as the respondent member, argued that export restriction in conserving exhaustible natural resources under Article XX(g) GATT is related to natural resources management. China further argued that the wording under Article XX(g) GATT refers to the sovereign rights over natural resources and interests over social and economic development.[97] These disputes were triggered by claims of the United States, the European Union, Mexico, and Japan due to

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[91] Visser, *supra* note 88; Radi, *supra* note 87 at 14.

[92] Yolanda T Chekera & Vincent O Nmehielle, "The International Law Principle of Permanent Sovereignty over Natural Resources as an Instrument for Development: The Case of Zimbabwean Diamonds" (2013) 6 African Journal of Legal Studies 69–101 at 75.

[93] *Ibid.*

[94] Cut Asmaul Husna TR, "Adopsi Prinsip Permanent Sovereignty Over Natural Resources (PSNR) Migas" (2016) 46:4 Jurnal Hukum & Pembangunan 454–488 at 459.

[95] Chekera & Nmehielle, *supra* note 92 at 76.

[96] Sangwani Ng'ambi, "Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans" (2015) 12:2 Loyola University Chicago International Law Review 153–172 at 153.

[97] Elisa Baroncini, "The China – Rare Earths WTO Dispute: A Precious Chance to Revise the China-Raw Materials Conclusions on the Applicability of GATT Article XX to China's WTO Accession Protocol" (2012) 4:2 Cuadernos de Derecho Transnacional 49–69 at 66.

the export restrictions and tariffs imposed on raw materials and rare earths originating from China.[98] Although China's defence herein could have been successful, such restriction and tariffs violated paragraph 11.3 of the China Protocol of Accession, causing itself to bring this measure in conformity with the WTO Agreement.[99]

This principle has also been discussed in the Indonesia Nickel case, as discussed in this article. The panel of this case recalled the *China - Raw Materials* case by stating that the Permanent Sovereignty Over Natural Resources is a general principle of customary international law that shall be used as an object in interpreting GATT. The panel of the *Indonesia – Raw Material* case, therefore, did not challenge the applicability of such a principle by taking into account the principle of harmonious interpretations.[100] However, such an argument was not plausible for Indonesia to defend itself before the European Union. This is due to its failure to demonstrate its export restriction law is in line with Article XI: 2 GATT.[101]

From the set of explanations herein, one may understand that the Principle of Permanent Sovereignty Over Natural Resources is not only applicable in the implementation of foreign investment policy but is also applicable in the practice of international trade. However, this principle shall be applicable in line with the provisions of the WTO Agreement.[102] The Permanent Sovereignty Over Natural Resources can be taken into account by the DSB based on the provisions under Article 3.2 Dispute Settlement Understanding (DSU), which allows the panel or the Appellate Body to conduct an interpretation according to customary international law.[103] The customary international therein includes Article 31 Paragraph 3c., the Vienna Convention on the Law of Treaties 1969 (VCLT 1969), which constitutes the interpretation according to rules of international law

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[98] *Ibid.*

[99] *Ibid.*

[100] Atik Krustiyati & Gita Gea, "The Paradox of Downstream Mining Industry Development in Indonesia: Analysis and Challenges" (2023) 7:2 Sriwijaya Law Review 335–349 at 336.

[101] World Trade Organization, *supra* note 13 at 592.

[102] Alejandro Gonzalez Arreaza, *The WTO, Natural Resources, Trade, and Sustainable Development: Commentaries on Recent Trends in International Economic Law* (Rochester, NY, 2016) at 13.

[103] World Trade Organization, "Understanding on Rules and Procedures Governing the Settlement of Disputes", online: <https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm>.

applicable to the interpreting parties.[104] This discourse emphasises that Indonesia may conduct an export restriction as long as it is complemented with a time period stipulated under Article XI: 2 GATT.

One shall understand that the Permanent Sovereignty Over Natural Resources stresses itself on the rights of a nation or the people instead of a state. Schirijver, as a etatist, stated that this principle is identical to the authority of states to legislate their natural resources and to free themselves from the grip of multinational companies.[105] Meanwhile, Duruigbo stated that this principle shall not beinterpreted as the rights of the state, since such a point of view would impair the people's right over the resources.[106] As a middle path between these points of view, the language under the General Assembly Resolution 1803 expresses that the right therein is entitled to both the state and its people since people act through states in the international arena.[107] This is without prejudice to the fact that the state is not the only international law subject.[108]

The wording under Resolution 1803 indeed has its relevancy in the case of Indonesia. This is because the Permanent Sovereignty Over Natural Resources Principle also exists under Indonesia's domestic law. This principle exists under Article 33 Paragraph (3) of the 1945 Constitution and is a national legal norm that reflects Indonesia's permanent sovereignty over these national resources.[109] On the other hand, WTO is an international organization that obliges its members to bring their measures into conformity with the WTO Agreement and its covered agreement.[110] This obligation has caused conflicts of interest between WTO members, ending up in dispute settlements or litigation under the DSU. Regardless of such conflict of interest, this article emphasises that the WTO is not an international organization prohibiting domestic processing obligations.

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[104] Oliver Dörr, "Article 31" in Oliver Dörr & Kirsten Schmalenbach, eds, *Vienna Convention on the Law of Treaties: A Commentary* (Berlin, Heidelberg: Springer, 2018) 557 at 31.

[105] Chekera & Nmehielle, *supra* note 92 at 77.

[106] *Ibid.*

[107] *Ibid.*

[108] *Ibid.*

[109] Adam & Ahamat, *supra* note 23 at 240.

[110] Aldo Rico Geraldi & Luh Putu Purnama Ning Widhi, "Personalitas Hukum World Trade Organization Bagi Negara Berkembang Terkait Sistem Perdagangan Antar Negara" (2018) 4:1 Jurnal Komunikasi Hukum (JKH) 1–17 at 3.

Even though it does not prohibit the domestic processing obligation, this article emphasized that WTO prohibits an effect in the form of quantitative restriction caused by this measure. Such prohibition is constituted under Article XI paragraph 1 GATT concerning the tariff binding principle and prohibition on quantitative restriction principle. The tariff binding principle is a legal principle allowing WTO members to impose tariff barriers as the replacement of market access restrictive measures. [111] Meanwhile, the prohibition on quantitative restriction principle is a legal principle prohibiting WTO members from imposing an import or export quota.[112]

The explanation concerning the domestic processing requirement under Indonesian regulations can be found in the report of the panel in *Indonesia – Measures Related to Raw Material* registered under DS 592. The panel examining this dispute perceives that the set of regulations invoked by the Ministry of Trade and the Ministry of Energy and Mineral Resources does not directly impose quantitative restrictions. This set of regulations effectively bans the export of Indonesian nickel ore to the European Union market and has caused an inability for Indonesian nickel exporters to export goods covered under HS 26040000 to the Union market. Such a measure is indeed contrary to the rules of market access under WTO law.

Bossche dan Zdouc states that one basic rule to be obliged by WTO members is the rules on market access.[113] In the matter of trade in goods, this regulation can be found under Article XI GATT, which obliges WTO members to provide market access to other members. This discussion, therefore, answers the problem of how Indonesia may exercise its sovereignty and comply with its international obligations under the WTO market access rule. Prior to expressing this solution, the following perceives that Indonesia's domestic processing obligation for nickel ore has also violated the rules on *fair trade*.[114] This rule can be found in the

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[111] Mostafa Beshkar, Eric W Bond & Youngwoo Rho, "Tariff binding and overhang: Theory and evidence" (2015) 97:1 Journal of International Economics 1–13 at 2.

[112] Simbolon & Damayanti, *supra* note 73 at 81.

[113] Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* (Cambridge: Cambridge University Press, 2022) at 10.

[114] Godfrey O Agbaragam & A Anele Augustine, "World Trade Organization (WTO) And Fair Trade Practices Among Member States: Issues and Challenges" (2021) 9:2 European Journal of Research in Social Sciences 45–55 at 50.

stipulation in Article VI GATT concerning the basis to impose anti-dumping duty and countervailing duty on subsidies. One stipulation under Annex 1A WTO Agreement concerning fair trade is the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Article 3 of the SCM Agreement prohibits the imposition of subsidies to specific enterprises, industries, or regions having the purpose of an export contingency.

Understanding that Indonesia has transferred some of its sovereignty to the WTO, Indonesia shall take into account its obligations under the WTO Agreement[115] in determining its nickel ores domestic processing measures. By taking into account the China cases in this discussion, it can be understood that in the practice of the WTO law, the Principle of Permanent Sovereignty Over Natural Resources may only be exercised if such measure is in line with the obligations under the WTO Agreement. This perception is in line with Henkin's opinion that the social contract doctrine has its relevance under international law.[116] Such relevance can be seen via the notion that every party contracted in an international treaty has submitted some of their rights covered under that treaty to the institution established under that legal instrument. That partial submission is meant to gain the benefit provided by the following treaty.

If Indonesia does not bring the measures referred to in this article in conformity with the WTO Agreement, Indonesia may lose some of its benefits acquired from the economic partnership with the European Union. It should be additionally emphasized that besides the United States and China, the European Union is one of Indonesia's strategic partners.[117] The fragile relationship between the European Union and Indonesia has indeed caused Indonesian business operators to lose their other benefits in other sectors. This article also stated that the

[115] Putu George Matthew Simbolon & Erik Mangajaya Simatupang, "Is Indonesia Ready to be the Party of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership?" (2024) 4:1 Jurnal Kajian Pembaruan Hukum 1–44 at 3.

[116] Anita L Allen, "Social Contract Theory in American Case Law" (1999) 51:1 Florida Law Review 1–40 at 5.

[117] Cantika Adinda Putri, "Pemerintah Was-was Lihat Ekonomi AS, China & Eropa, Ada Apa?", (2023), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20230711100903-4-453132/pemerintah-was-was-lihat-ekonomi-as-china-eropa-ada-apa>.

Appellate Body vacuum and Indonesia's legal action to appeal into void.[118] shall never be considered as an insurance of Indonesia's security in continuing this total prohibition before the WTO rules.

In implementing the Permanent Sovereignty Over Natural Resources Principle, this article would like to reemphasize that both the people and the government of Indonesia have rights over their natural resources, in this case, nickel ore. However, since Indonesia is one of the members of the multilateral trade system known as the WTO, such a principle shall be exercised in line with Article XI: 2 GATT as an obligation having a nexus with natural resources management. Therefore, the applicability of this principle has its limits in the context of international trade law. As the prescription of such issue, this article suggests Indonesia modify its export restriction law by allocating the nickel ore subject to domestic productions, which are to be exported in a limited quantity, complemented with a grace period.

This article furthermore explained that the Appellate Body is currently a vacuum. Referring to Article 17 DSU, the WTO members thereby may not exercise their right to appeal, as it is constituted under this litigation procedure, due to the paralysis suffered by this crown jewel, Article 22 jo. Article 17 DSU *inter alia* explained that the imposition of retaliation or a countermeasure to other WTO members can be imposed should the members violate the WTO rules according to the panel or the Appellate Body recommendation, which does not bring its measures into conformity with the WTO Agreement. This enforcement action can only be operated if the Appellate Body may run itself effectively. Therefore, the European Union may not exercise its rights to retaliate against Indonesia's measure, according to the rules set forth under the DSU.

Despite being unable to retaliate according to the WTO law, it is important to emphasize that the countermeasure explained is regulated under the *lex specialis* by referring to public international regimes under Article 55 Articles on the Responsibility of States on Internationally Wrongful Act (ARSIWA). This draft article was formulated by the International Law Commission to gather the

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[118] Verda Nano Setiawan, "Banding RI Soal Nikel Baru Kejadian di Akhir Era Jokowi", (2023), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20230216123317-4-414304/banding-ri-soal-nikel-baru-kejadian-di-akhir-era-jokowi>.

customary international law related to state responsibilities—due to the violation of its primary obligation under an international treaty or customary international law. Article 49 ARSIWA allows the conduct of countermeasures in a proportionate manner by a state due to another state's violation of its primary obligation, causing injury to it. Such countermeasures shall be implemented proportionately. Therefore, the vacuum of the Appellate Body does not close the opportunity for the European Union to counter Indonesia's nickel ore measure by blocking its access to its market.

This article perceives that Indonesia shall invoke its measure, which allocates its nickel ore, under the mechanism explained herein. To balance national interest, along with obligations under the WTO Agreement, Indonesia shall determine 1) the percentage of nickel ore that shall be domestically produced by the downstream industries and 2) the percentage of the following commodities exported without being processed *prima facie*. Through this allocation, Indonesia will not fully prohibit the European Union from accessing their nickel ore due to their right under the WTO Agreement. This idea is also in line with Indonesia's sovereignty in managing its natural resources, as emanated under the 1945 Constitution and its Mining Law.

The idea herein is in line with compliance theory, expressed by Chayes and Chayes.[119] These scholars stated that state compliance with international law *in concreto* the international treaty is conducted (by states) to avoid unnecessary expenses due to dispute settlements.[120] Despite the absence of the cost-benefit element in this framework, the theory perceives that the cost and energy efficiency of states is the reason why states tend to comply with the obligations set forth under international treaties.[121] By implementing this theory, Indonesia may develop a legal norm that balances its sovereignty or rights as a state and its primary international obligation under the WTO rules.

If the production allocation is then contested by other WTO members, Indonesia may justify its measure via Article XX (g) GATT. The Appellate Body in the *US*

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[119] Abram Chayes & Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (United States: Harvard University Press, 2009) at 29.

[120] *Ibid* at 30.

[121] *Ibid.*

Gasoline case stated that the implementation of Article XX GATT allows obligations under the WTO Agreement to be waived if the two-tier test is herein fulfilled. The first test can be fulfilled once one specific requirement of Article XX GATT is fulfilled—in this case, the critical shortage of natural resources as mentioned in the letter (g). The second test obliged WTO members to apply the following exception to express that such a measure is the only means to conserve the natural resource therein. By referring to this case, Indonesia may justify its nickel ore production allocation by stating that it has opened its nickel ore export and the necessity to fulfill its domestic needs at the same time.

By explaining Indonesia's consequences as a WTO member and the outcome of the second discussion's comparative study, this article provides the following recommendation. Indonesia shall adopt a measure related to trade and natural resources management, which strikes a balance on its rights and obligations as a WTO member. Such a balance can be struck by implementing the aforementioned allocation and the grace period of such a restriction. This imagined law can, therefore, maintain Indonesia's partnership with the European Union to achieve a reciprocal and mutually advantageous trade. The mitigation explained in this article shall be conducted as the paralysis occurring within the multilateral trade system does not ensure that a WTO member is unable to retaliate against one who violates WTO rules.

V. CONCLUSION

Based on the explanation above, a common thread can be drawn between the existence of natural wealth capacity in Indonesia, especially in the nickel mining mineral sector. This motivates Indonesia to increase the useful and selling value of nickel ore through nickel downstream policies and raw export restrictions. This is the prerogative of the sovereign Indonesian state to determine its destiny and the right to self-determination to provide more economic benefit for its people's prosperity and well-being. However, state sovereignty cannot be applied absolutely in one country without accounting for the sovereignty of other countries. Therefore, international law (in this case, the provisions of GATT) has become a compromise point that bridges interests between countries, one of which is related to the prohibition of quantitative limitations in nickel ore exports.

For this reason, the Indonesian state can reflect on Chinese policy (China Export Control Law), which has the same goal of providing protection and increasing the selling value of raw goods. It can do so by providing a quantitative nickel export ban policy, but with a limit of only two years in the context of security protection against threats to state interests.

Therefore, with the obligation of all WTO member countries (including Indonesia, which is bound by the ratification of GATT rules), it is mandatory to comply with and respect the sanctity of rules that have become a consensus between countries to ensure that the trade chain between countries can run proportionally. This article's recommended solution and novelty idea regarding the ban in Indonesia on quantitative nickel exports is, therefore, to develop a policy that limits parameters in the form of the percentage of nickel ore that can be sold raw and must be processed through domestic smelters. Referring to China's policy, which limits the duration of the quantitative export ban, Indonesia can also create a quantitative export ban. This would have to be within a certain percentage limit considered to be ideal, in an aim to increase the value of the people's benefits and welfare as a national interest. This policy can later become a way out by exercising the sovereignty of the Indonesian state with other countries within the international law framework, which can later be adopted in other strategic upstream industrial policies to avoid violating international obligations.

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COMPETING INTEREST

The authors declare no competing interests.

REFERENCES

Boer Mauna, *Hukum Internasional: Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global* (Bandung: Alumni Bandung, 2018).

Chayes, Abram & Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (United States: Harvard University Press, 2009).

Europe Union and China, *Joint EU - China Handbook on Export Control of Dual-Use Items* (Germany: Federal Office of Economics and Export Control BAFA, 2014).

Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* (Cambridge: Cambridge University Press, 2022).

Sefriani, *Hukum Internasional Suatu Pengantar* (Jakarta: Rajawali Pers, 2019).

Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Pembahasan 1999-2000 (Buku II Sendi-Sendi/Fundamental Negara)* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010).

Yannick Radi, *International Investment Law Textbook* (Louvain: UC Louvain & EdX, 2021).

Adam, Bani & Haniff Ahamat, "Indonesia's Mineral Export Prohibition and Legality of Export Duties Under the GATT Rules" (2022) 6:2 Sriwijaya Law Review 239–253.

Agung, Muhammad & Emmanuel Ariananto Waluyo Adi, "Peningkatan Investasi Dan Hilirisasi Nikel Di Indonesia" (2022) 6:2 JISIP (Jurnal Ilmu Sosial dan Pendidikan) 4009–4020.

Allen, Anita L, "Social Contract Theory in American Case Law" (1999) 51:1 Florida Law Review 1–40.

Amalia, Sri Wahyuni, Zulkifli Aspan & Juajir Sumardi, "The Influence Of Positive Fictitious Principles In The Issuance Of Business Licences Through The Online Single Submission Risk Based Approach System (OSS-RBA)" (2023) 20:1 Jurnal Hukum 288–305.

Anggunsuri, Upita & Zahara Zahara, "Transition of Online Single Submission (OSS1.1 To Risk-based Approach) to Increase Investment in West Sumatera" (2023) 8:2 JCH (Jurnal Cendekia Hukum) 253–263.

Baroncini, Elisa, "The China – Rare Earths WTO Dispute: A Precious Chance to Revise the China-Raw Materials Conclusions on the Applicability of GATT Article XX to China's WTO Accession Protocol" (2012) 4:2 Cuadernos de Derecho Transnacional 49–69.

Beshkar, Mostafa, Eric W Bond & Youngwoo Rho, "Tariff binding and overhang: Theory and evidence" (2015) 97:1 Journal of International Economics 1–13.

Cahyaningtyas, Raras Nadifah, "The Effect of RBA OSS-Based Company Licensing on Domestic Investment" (2022) 5:3 Budapest International Research and Critics Institute-Journal (BIRCI-Journal) 23231–23242.

Cantyani, Kasistha et al, "The Prisoner's Dilemma: Indonesia and the European Union in Export Commodity Disputes" (2023) 4:1 Jurnal Sentris 86–100.

Chekera, Yolanda T & Vincent O Nmehielle, "The International Law Principle of Permanent Sovereignty over Natural Resources as an Instrument for Development: The Case of Zimbabwean Diamonds" (2013) 6 African Journal of Legal Studies 69–101.

Dewi, Yetty & Mikaila Jessy Azzahra, "Re-examining Indonesia's Nickel Export Ban: Does it Violate the Prohibition to Quantitative Restriction?" (2022) 6:2 Padjadjaran Journal of International Law 180–200.

Dharmayanti, Ida Ayu Kade Febriyana & Putu Gede Arya Sumerta Yasa, "Penerapan Sistem Perizinan Berusaha Online Single Submission Risk-based Approach (OSS-RBA) Di Bidang Industri Pasca UU Cipta Kerja" (2022) 8:1 Jurnal Komunikasi Hukum (JKH) 509–526.

Dörr, Oliver, "Article 31" in Oliver Dörr & Kirsten Schmalenbach, eds, *Vienna Convention on the Law of Treaties: A Commentary* (Berlin, Heidelberg: Springer, 2018) 557.

Dwiyono, Ari et al, "Strategi Pertahanan Ekonomi Indonesia: Sengketa Perdagangan Internasional Nikel" (2023) 12:3 Journal of Economics and Business UBS 1830–1838.

Elvardi, Jean, Firman Hasan & Arya Putra Rizal Pratama, "The use of Language In International Agreements According to The 1969 Vienna Convention

And Its Implementation In Indonesian National Law" (2022) 37:3 Yuridika 515–538.

Geraldi, Aldo Rico & Luh Putu Purnama Ning Widhi, "Personalitas Hukum World Trade Organization Bagi Negara Berkembang Terkait Sistem Perdagangan Antar Negara" (2018) 4:1 Jurnal Komunikasi Hukum (JKH) 1–17.

Gielen, Dolf et al, "The role of renewable energy in the global energy transformation" (2019) 24 Energy Strategy Reviews 38–50.

Godfrey O Agbaragam & A Anele Augustine, "World Trade Organization (WTO) And Fair Trade Practices Among Member States: Issues and Challenges" (2021) 9:2 European Journal of Research in Social Sciences 45–55.

Handayani, Febri & Lysa Angrayni, "Hak Menguasai Negara Dalam Pengaturan Sumber Energi Baru dan Terbarukan" (2023) 5:1 Eksekusi 42–61.

Hariyadi, Achmad & Rusdianto Sesung, "Keabsahan Kepemilikan Tanah yang Diperoleh Berdasarkan Perjanjian Nominee Antar Sesama Warga Negara Indonesia" (2021) 9:1 Jurnal Selat 44–57.

Hrynkiv, Olga, "Export Controls and Securitization of Economic Policy: Comparative Analysis of the Practice of the United States, the European Union, China, and Russia" (2022) 56:4 Journal of World Trade 14–15.

Husna TR, Cut Asmaul, "Adopsi Prinsip Permanent Sovereignty Over Natural Resources (PSNR) Migas" (2016) 46:4 Jurnal Hukum & Pembangunan 454–488.

Ivison, Duncan, "Property, Territory and Sovereignty: Justifying Political Boundaries" in Ian Hunter & David Saunders, eds, *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought* (London: Palgrave Macmillan UK, 2002) 219.

Juned, Mansur, "Economic Diplomacy through the Development of Nickel Smelters and Battery Plants in Indonesia: Obi Island Case Study" (2023) 12:1 Andalas Journal of International Studies (AJIS) 69–79.

Kase, Dhesy A, "Wilayah Perbatasan Negara dalam Perspektif Hukum Internasional" (2020) 2:1 Jurnal Proyuris 168–184.

Köstner, Dominic & Marcus Nonn, "The 2020 Chinese export control law: a new compliance nightmare on the foreign trade law horizon?" (2023) 8:3 China-EU Law Journal 81–95.

Krustiyati, Atik & Gita Gea, "The Paradox of Downstream Mining Industry Development in Indonesia: Analysis and Challenges" (2023) 7:2 Sriwijaya Law Review 335–349.

Kusmiati, Susi, Anita Afriana & Pupung Faisa, "Implications and Legal Consequences of Implementing A Risk Based Online Single Submission System For Limited Liability Company Business Licensing" (2023) 5:1 Jurnal Poros Hukum Padjadjaran 1–19.

Luong, John H T, Cang Tran & Di Ton-That, "A Paradox over Electric Vehicles, Mining of Lithium for Car Batteries" (2022) 15:21 Energies 1–25.

Mastuti, Sri & Pangi Syarwi, "Kebijakan Pelarangan Ekspor Bijih Nikel Indonesia Dari Sudut Teori Keadilan John Rawls" (2023) 4:2 Communitarian : Jurnal Prodi Ilmu Politik 691–709.

Mufti, Ahmad & Muhaimin Limatahu, "Optimization of Maluku's Directorate General of Customs and Excise Supervision Function in the Archipelagic Regions for Excited Goods Circulation" (2022) 6:1 Cepalo 1–12.

Muhajir, Mumu et al, "Harmonisasi Regulasi dan Perbaikan Tata Kelola Sumber Daya Alam di Indonesia" (2019) 5:2–2 Integritas : Jurnal Antikorupsi 1–13.

Nasution, Hafizha Rika, "Pengesahan Badan Hukum Perseroan Terbatas Dalam Peraturan Pemerintah Tentang Perizinan Berusaha Berbasis Risiko (Online Single Submission Risk Based Approach) Ditinjau Dari Sifat Badan Hukum (Rechtpersoonlijkheid)" (2022) 8:1 Jurnal Hukum dan Bisnis (Selisik) 119–148.

Ng'ambi, Sangwani, "Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans" (2015) 12:2 Loyola University Chicago International Law Review 153–172.

Nugroho, Wahyu, "Persoalan Hukum Penyelesaian Hak atas Tanah dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba" (2020) 27:3 Iustum 568–591.

Nurhayati, Nunik et al, "Kedaulatan Negara Indonesia: Makna dan Implementasi Sebelum dan Sesudah Amandemen UUD 1945" (2022) 4:1 Amnesti Jurnal Hukum 44–61.

Panjaitan, Edward ML & Putu George Matthew Simbolon, "Penyelesaian Sengketa pada World Trade Organization dan Solusi terhadap Kekalahan Indonesia pada DS 592 dalam Perspektif Kepentingan Indonesia" (2023) 9:2 Jurnal Hukum to-ra : Hukum Untuk Mengatur dan Melindungi Masyarakat 192–202.

Pereira, Ricardo & Orla Gough, "Permanent sovereignty over natural resources in the 21st century: natural resource governance and the right to self-determination of indigenous peoples under international law" (2013) 14:2 Melbourne Journal of International Law 451–495.

Pratiwi, Endang, Theo Negoro & Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?" (2022) 19:2 Jurnal Konstitusi 268–293.

Qurbani, Indah Dwi et al, "The Ideal Concept of Energy Control in Indonesia From the Economic Constitution Perspective" (2022) 9:3 Jurnal Pembaharuan Hukum 481–502.

Rachman, AA Muhammad Insany & Evi Dwi Hastri, "Implikasi Prinsip Right Of External Self Determination Terhadap Kedaulatan Negara Induk Sebagai Subjek Hukum Internasional" (2021) 8:2 Jurnal Jendela Hukum 47–63.

Rahadian, Rizky Ikhsan & Muhammad Ramdhan Ibadi, "Impact of Accelerating the Export of Nickel Prohibition on Non-Tax Revenue and National Economy" (2021) 3:1 Jurnal Anggaran dan Keuangan Negara Indonesia (AKURASI) 91–115.

Rajput, Trisha, "Restricting International Trade through Export Control Laws: National Security in Perspective" in *Regulation of Risk* (Brill Nijhoff, 2022) 603.

Rapson, David S & Erich Muehlegger, "The Economics of Electric Vehicles" (2023) 17:2 Review of Environmental Economics and Policy 1–29.

Ridwansyah, Rizki, "Konsep Teori Utilitarianisme dan Penerapannya dalam Hukum Praktis di Indonesia" (2023) 1:2 Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora 1–11.

Rif'an, Moh et al, "Re-Eksistensi Peran Desa dalam Rantai Pasok Produksi Pengolahan Hutan Desa Melalui Bank Pohon: (Strategi Penegakan Hak Asasi Manusia Sektor Kehutanan)" (2020) 1:6 Jurnal Hukum Lex Generalis 39–65.

Safitri, Maida, Khairur Rizki & Zulkarnain Zulkarnain, "Kebijakan Keamanan Energi Indoneia dalam Pemenuhan Energi Listrik melalui Kerjasama ASEAN Power Grid" (2021) 3:2 Indonesian Journal of Global Discourse 15–30.

Sánchez de Tagle, Gonzalo, "The objective international responsibility of states in the Inter-American human rights system" (2015) 7:2 Mexican Law Review 115–133.

Santoso, Rizal Budi et al, "Pilihan Rasional Indonesia dalam Kebijakan Larangan Ekspor Bijih Nikel" (2023) 8:1 Indonesian Perspective 154–179.

Septiansyah, Zainal B & Muhammad Ghalib, "Konsepsi Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia" (2018) 34:1 Ijtihad: Jurnal Hukum Islam dan Pranata Sosial 27–34.

Silalahi, Firman & Kenny Jesica, "Nickel Smelter Moratorium: Efforts to Establish Laws to Ensure Legal Certainty of Investment" (2024) 2:2 Acta Law Journal 65–74.

Simbolon, Putu George Matthew & Angel Damayanti, "Indonesian Trade Policy in Adjusting the 2020 WTO's Trade Policy Review" (2023) 12:1 Jurnal Hubungan Internasional 76–87.

Simbolon, Putu George Matthew & Erik Mangajaya Simatupang, "Is Indonesia Ready to be the Party of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership?" (2024) 4:1 Jurnal Kajian Pembaruan Hukum 1–44.

Siraji, Hafizh, "The Sovereignty of the Air Space and Its Protection in the Perspective of International Law: Contemporary Developments" (2022) 1:2 International Law Discourse in Southeast Asia 159–184.

Syafira, Anisa Dewi et al, "Analisis Peluang, Tantangan, Dan Dampak Larangan Ekspor Nikel Terhadap Perdagangan Internasional Di Tengah Gugatan Uni Eropa Di WTO" (2023) 2:1 Jurnal Economina 90–100.

Syarifuddin, Nurhayati, "Pengaruh Industri Pertambangan Nikel Terhadap Kondisi Lingkungan Maritim di Kabupaten Morowali" (2022) 1:2 Jurnal Riset & Teknologi Terapan Kemaritiman 19–23.

Visser, Fritz, "The principle of permanent sovereignty over natural resources and the nationalisation of foreign interests" (1988) 21:1 The Comparative and International Law Journal of Southern Africa 76–91.

Wu, Chien-Huei, ed, "WTO Rules on Export Restrictions" in *Law and Politics on Export Restrictions: WTO and Beyond* Cambridge International Trade and Economic Law (Cambridge: Cambridge University Press, 2021) 20.

Wu, Mark, "China's Export Restrictions and the Limits of WTO Law" (2017) 16:4 World Trade Review 673–691.

Yundrina, Liatosa, "Implementasi Kebijakan Online Single Submission Risk Based Approach (Oss Rba) di Kecamatan Kalidoni Kota Palembang" (2023) 5:3 Journal on Education 9855–9868.

Yuniarti, Siti & Erni Herawati, "Analisis Hukum Kedaulatan Digital Indonesia" (2020) 15:2 Pandecta Research Law Journal 154–166.

Adi Ahdiat, "Ekspor Nikel Indonesia Meroket pada 2022, Rekor Tertinggi Sedekade", (2023), online: *Databoks* <https://databoks.katadata.co.id/datapublish/2023/07/06/ekspor-nikel-indonesia-meroket-pada-2022-rekor-tertinggi-sedekade>.

Aliyyah Damar Fitriyani, "Hilirisasi Bahan Tambang: Sebuah Upaya Peningkatan Kesejahteraan Masyarakat", (2022), online: *Sekretariat Kabinet Republik Indonesia* <https://setkab.go.id/hilirisasi-bahan-tambang-sebuah-upaya-peningkatan-kesejahteraan-masyarakat/>.

Cantika Adinda Putri, "Pemerintah Was-was Lihat Ekonomi AS, China & Eropa, Ada Apa?", (2023), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20230711100903-4-453132/pemerintah-was-was-lihat-ekonomi-as-china-eropa-ada-apa>.

Cindy Mutia Annur, "Deretan Negara Penghasil Nikel Terbesar di Dunia pada 2022, Indonesia Nomor Satu", (2023), online: *databoks* <https://databoks.katadata.co.id/datapublish/2023/03/02/deretan-negara-penghasil-nikel-terbesar-di-dunia-pada-2022-indonesia-nomor-satu>.

CNBC Indonesia, "Jokowi Beraksi! Ekspor Nikel RI Melejit Hingga Rp519 Triliun", (2023), online: <https://www.cnbcindonesia.com/news/20230320104644-4-423111/jokowi-beraksi-ekspor-nikel-ri-melejit-hingga-rp519-triliun>.

Gonzalez Arreaza, Alejandro, *The WTO, Natural Resources, Trade, and Sustainable Development: Commentaries on Recent Trends in International Economic Law* (Rochester, NY, 2016).

Kementerian Energi dan Sumber Daya Mineral, "Ini Progres Pembangunan 4 Smelter di Tahun 2021", (2021), online: *ESDM* <https://www.esdm.go.id/id/media-center/arsip-berita/ini-progres-pembangunan-4-smelter-di-tahun-2021>.

Li, Frank Pan, Ivy Tan, Tina, "China: Long-awaited draft implementing rules released pursuant to the new Export Control Law", (2022), online: *Sanctions & Export Controls Update* <https://sanctionsnews.bakermckenzie.com/china-long-awaited-draft-implementing-rules-released-pursuant-to-the-new-export-control-law/>.

Melissa Pistilli, "Top 9 Nickel-producing Countries (Updated 2023)", (2023), online: *Investing News Network* <https://investingnews.com/daily/resource-investing/base-metals-investing/nickel-investing/top-nickel-producing-countries/>.

Petersmann, Ernst-Ulrich, *State Sovereignty, Popular Sovereignty and Individual Sovereignty: from Constitutional Nationalism to Multilevel Constitutionalism in*

International Economic Law?, Working Paper, by Ernst-Ulrich Petersmann, International Trade Law 7 Working Paper (Italia, 2006).

Setiawan, Verda Nano, "Banding RI Soal Nikel Baru Kejadian di Akhir Era Jokowi", (2023), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20230216123317-4-414304/banding-ri-soal-nikel-baru-kejadian-di-akhir-era-jokowi>.

Sorongan, Tommy, "Sah! RI Ajukan Banding Kalah Gugatan Nikel di WTO", (2022), online: *CNBC Indonesia* <https://www.cnbcindonesia.com/news/20221214180355-4-396954/sah-ri-ajukan-banding-kalah-gugatan-nikel-di-wto>.

World Trade Organization, *DS592: Indonesia - Measures Relating to Raw Materials* (2022).

———, "Understanding on Rules and Procedures Governing the Settlement of Disputes", online: <https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm>.