

Research Article

Ban on Raw Nickel Exports to Prevent State Losses and Environmental Sustainability in Indonesia

Willibrordus Riawan Tjandra* 

Faculty of Law, Atma Jaya University, Yogyakarta, Indonesia

Abstract

The ban on raw nickel exports for Indonesia has several benefits, including increased economic benefits, environmental protection, reduced ecological costs, lower emissions, and industrial growth in the downstream sector. Violations of the ban on exporting raw nickel, when compared to the economic benefits obtained, result in state and financial losses. Indonesia must have the courage to take decisive action against violators of the ban on raw nickel exports to prevent state and economic losses. At the same time, it must also have the courage to face the European Union's challenge to the ban on raw nickel exports at the WTO. The policy that benefits Indonesia's national interests faces challenges from within and outside the country. Although viewed from the perspective of protecting non-renewable energy materials, banning the export of raw nickel is highly beneficial. This study aims to justify the prohibition of raw nickel exports and address state losses resulting from violations of the ban on nickel grain exports.

Keywords

Raw Nickel Exports, Protection of Natural Resources, Environmental Sustainability, Economic Policy, Export Bans, State Losses, Economic Losses

1. Introduction

The Government of the Republic of Indonesia has implemented a policy regarding nickel exports that have not been processed and refined domestically, as stipulated in Articles 102, 103, and 170 of Law No. 4 of 2009 concerning Mineral and Coal Mining, as amended by Law No. 3 of 2020. Nickel minerals must be processed and purified to certain levels specified in the Regulation of the Minister of Economy and Mineral Resources (EMR) and then allowed to be sold or exported abroad. However, various Regulations of the Minister of Energy and Mineral Resources enable the export of ores/mineral concentrates, including nickel ore, within a

specific period. Ghorbani et al.'s research demonstrates that the national realignment of mineral policy can have a significant geopolitical impact through resource nationalisation, strengthening trade and strategic alliances, and influencing sustainable energy systems [4].

Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining once regulates "for Contract of Work (KK) Holders, Production Operation Mining Business Permits, or Special Mining Business Permits (IUPK) for Metal Mineral Production Operations who: a. have carried out Processing and Refining activities; b. in the

*Corresponding author: willyriawan@yahoo.com (Willibrordus Riawan Tjandra)

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process of building a Processing and/or Refining facility; and/or c. has collaborated in Processing and/or, Refining with the holders of Production Operation IUPs, other Production Operation IUPK, or Special Production Operation IUP for Processing and Refining or other parties who carry out Processing and/or Refining activities" are given a time limit on the sale of certain metal mineral products that have not been refined in a certain amount abroad within a maximum period of 3 (three) years from the date of entry into force of the Law (no later than June 10, 2023). Therefore, actions taken in the form of exporting nickel minerals that have not been processed and refined domestically are categorised as unlawful acts that cause losses to the state. The value of the loss is seen from the value of the sales proceeds, which is much lower when the sale is made before nickel is processed and refined domestically.

On January 1, 2020, the Regulation of the Minister of Economy and Mineral Resources (EMR) Number 11 of 2019 concerning Mineral and Coal Mining Businesses was issued, prohibiting the export of nickel ore. Exporting nickel raw materials or raw nickel is very low in value and tends to be detrimental to the national economy [5]. Indonesia has the largest nickel reserves in the world; however, according to research by the Indonesian Central Statistics Agency, Indonesia's nickel reserves continue to decline. According to its characteristics as a non-renewable material, it is predicted to be produced for 39 years. With this argument, the policy of banning the export of raw nickel was issued. However, the ban drew protests from the European Union, which sued the WTO [10].

Viewed from an environmental perspective, controlling the material flow cycle of using metals and minerals impacts economic growth, which must be balanced with the effective use of green technology [7]. Warburton stated that nickel is seen as a critical transition mineral, which brings Indonesia closer to its nationalist ambitions to encourage the growth of a higher-value downstream mining industry in line with global demand for nickel. The Indonesian Government's policy to ban the export of raw nickel and force investors, especially China, to invest in the downstream processing industry has resulted in an acceleration of economic benefits for Indonesia that exceeds the average national economic capacity [12].

Concerning the perspective of the policy regarding nickel in the review of the Administrative Law, the problem that will be answered is, first, what is the justification for the policy prohibiting the export of raw nickel in Indonesia? Second, how should state losses due to policy violations be handled, and how is it managed?

2. Research Methods

This discussion uses normative juridical research methods and uses a legislative approach. The study of political Law also supports analysis in answering legal problems in this discussion. Regulations and principles in the mineral and coal

law field serve as the starting point for discussions related to nickel export policy.

3. Discussion and Results

3.1. The Justification Given for the Policy of Prohibiting the Export of Raw Nickel in Indonesia

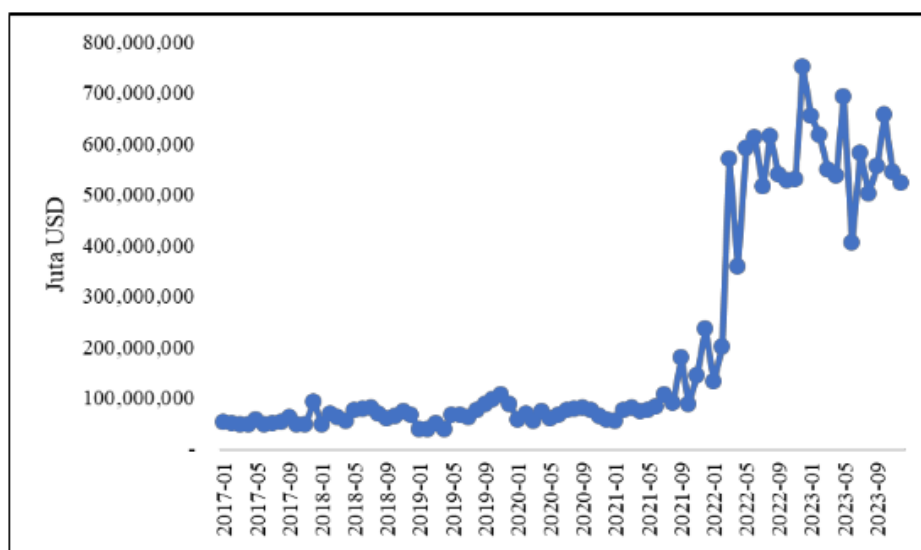
Several benefits can be obtained through restrictions on raw nickel exports. By not exporting nickel in raw form, Indonesia can encourage various stakeholders who intend to export nickel to process it first before exporting. Nickel that is processed first can be obtained by Indonesia to receive greater income from the nickel downstream policy. Restricting raw nickel exports also encourages investment in the downstream sector, which has a positive impact on the national economy. High-value products, such as ferro-nics or stainless steel, can have a positive social impact by increasing employment and driving economic growth. Effectively restricting nickel exports will provide the government with policy space to encourage the development of upstream industries in the country, which can also strengthen the supply chain while increasing economic independence to a certain extent. A necessary justification for the need to enhance the policy of prohibiting the export of raw nickel is that in the energy sector, there is currently a transition towards the use of green energy technology that depends on the role of metals such as aluminium, chromium, cobalt, copper, lithium, manganese, nickel, silicon, and tin. The policy to ban the export of raw nickel also plays a crucial role in mitigating environmental and energy issues, in addition to its impact on geopolitical aspects.

If viewed from a sustainability perspective, restrictions on raw nickel exports can also realise sustainable nickel management. The smelter and the national nickel processing industry that was built because of it can impact the creation of new jobs, which in turn can also improve the welfare of the people. In addition, restricting the export of crude nickel can also effectively control the use of natural nickel resources, promoting the sustainability of preserving natural resource functions. Regarding national interests, Indonesia can also gain a stronger bargaining position in the international trade scheme. Thus, restricting raw nickel exports has 2 two double benefits. First, from the upstream industry side, the policy can encourage the development of the upstream industry. Second, judging from products and natural resources, restricting the export of raw nickel also impacts the increasing product-added value and the protection of natural resources from an environmental sustainability perspective.

One of the impacts of the nickel downstream policy, based on data from the Reinformer Institute, is that the added value of exports after nickel downstreaming reached US\$35.6 billion, equivalent to Rp510 trillion in 2022. That value exceeded 6.6 times the amount obtained in 2013, generating

only US\$5.4 billion [3]. Data from the Central Sulawesi Statistics Agency for the third quarter of 2023, when compared to the same quarter in 2022 (year-over-year), shows a 13.06% growth in economic conditions, including a 27.99% increase in the processing industry and a 13.32% growth in the mining and quarrying sector [3]. Still, according to Elga's records, one of the corporations located in North Morowali, Central Sulawesi, is PT Gunbuster Nickel Industry (GNI). The company manages nickel ore into Nickel Pig Iron (NPI). The company manages nickel products and exports them to foreign markets. It can also strengthen the development of micro, small, and medium enterprises (MSMEs) through corporate social responsibility programs around the industry

[3]. Indonesia was even recorded as the world's largest nickel producer in 2022. The data was obtained by comparing the total production of around 1.6 million metric tons (48.48% of global nickel production during the previous year) with the total world nickel production in 2022, which reached around 3.3 million metric tons (an increase of 20.88% compared to 2021 [3]. A report by the United States Geological Survey (USGS) predicts that Indonesia will be the world's largest nickel producer in 2022, with total production estimated to reach 1.6 million metric tons, accounting for 48.48% of global nickel production in 2021. Total global nickel production in 2022 is estimated to reach 3.3 million metric tons, representing a 20.88% increase from 2021 [6].



Source: United Nations Community Trade (UN Comtrade) in F. Rahman et al. [9].

Figure 1. The Value of Indonesia's Nickel Exports to the World (USD) in 2017 - 2023.

Figure 1 shows an increase in nickel exports from the beginning of 2022, with the most considerable export value recorded in March 2022, reaching 184.23 percent more than before. The increase was evident, as the initial value of USD 200.431 million in February 2022 rose to \$569.689 million in March 2023. After implementing the downstream policy, the value of nickel exports fluctuated and declined sharply in June 2023 [9].

3.2. Handling State Losses That Occur Due to Policy Violations Must Be Handled

Raw nickel exports carried out in violation of regulations can cause economic losses and state losses. Losses to the country's economy can occur due to unlawful acts by raw nickel exporters, which can lead to a significant decline in the country's economic condition and performance if the specified standards and targets are not met. On the other hand, violating crude nickel export restrictions can also result in

state losses. State losses are a condition of a shortage of money, securities, and goods that are real and definite in number due to unlawful acts. State losses can manifest as a significant decrease in investment, a slowdown in national economic growth, and an increase in poverty rates and income disparities. Nikel merupakan logam yang bersifat vital dalam transisi rendah karbon sebagai bagian dari rantai produksi mulai dari awal hingga akhir. The characteristics of the trade structure are directly influenced by the export policies of the countries involved in the nickel industry chain. From China's perspective, changes in nickel supply from Indonesia, following the ban on raw nickel exports, have altered the pattern of trade relations between Indonesia and China, which is increasingly focused on nickel downstream, affecting other countries as well [11].

Indonesia's ban on raw nickel exports and, at the same time, forcing importers, especially China, to invest in downstream processing facilities has an impact on the fantastic development of the nickel industry, which at the same time increases

export income and economic growth along Indonesia's nickel belt which grows up to 3 (three) times the national average. The development of the downstream sector and the impact of increased economic growth resulting from it are a testament to the Indonesian government's success in transforming the downstream industry into a value-added extractive sector [12]. Indonesia also has excellent opportunities to develop the electric vehicle battery manufacturing industry (EVB) to support the growing number of electric vehicle users and the changing emission environment. The opportunity to make electric vehicle batteries is due to Indonesia having the world's largest nickel reserves, which are essential materials for making electric vehicle batteries [8].

The decision of the Constitutional Court of the Republic of Indonesia in its decision No. 48/PUU-XI/2013 states that there are 8 (eight) categories of state losses to describe the formulation of state losses in Law No. 31 of 1999 concerning the Eradication of Corruption as amended through Law No. 20 of 2001, including the loss of a state/regional right that should be owned/accepted according to the applicable rules and the rights of the state/region received are less than what should be obtained. Associated with the actions of exporters or other parties who export or even give permits to export raw nickel by violating the regulations that regulate the prohibition on exporting raw nickel, these actions can be categorised as causing state losses. In these contexts, losses to the country's economy can occur due to unlawful acts by raw nickel exporters, which can lead to a significant decline in the country's economic condition and performance if the specified standards and targets are not met.

The policy of prohibiting the export of raw nickel in Indonesia, from a legal and regulatory perspective, is quite stringent, as it begins with laws that permit the application of administrative and criminal sanctions and extends to operational arrangements at the Ministerial Regulation level. Ministerial regulations in the theory of Administrative Law are often classified as autonomous administrative and legal norms that allow the use of specific sectoral standards and targets to support the careful implementation of policies prohibiting the export of raw nickel, which tends to harm the state and the environment. The arrangements in the constitution have a perspective as a "green constitution," namely a constitution that pays attention to the values of preserving environmental functions and protecting natural resources, as well as the values of a social constitution that protects the use of natural resources for the interests of the people, are also a strong constitutional basis for the policy. The choice of the relationship between administrative Law and International Law that uses the dualism model, namely international Law, which cannot be directly binding on the people without ratification, is also sure to strengthen national policies.

State losses due to permitting actions (from authorised government officials) or because of the act of exporting raw nickel (from the corporate side) in principle have the targets/profits from nickel exports that have been obtained in

advance following the provisions, so such state economic losses or state losses have often entered the realm of corruption crimes that exceed the forms of administrative losses. The settlement that needs to be completed requires a comprehensive agreement with complex documentation. The role of law enforcement officers, supported by internal and external oversight mechanisms, in state financial audits is crucial in promoting compliance with applicable regulations. The approach to resolving state losses to violations of crude nickel exports must be carried out through a soft legal approach (through coaching, supervision, and administrative sanctions oriented to the recovery of state/state economic losses) and a hard legal approach (enforcement of administrative, criminal sanctions, and criminal sanctions for corruption for massive violations). The combination of law enforcement policies that incorporate both administrative and criminal sanctions for corruption can enhance public compliance by banning raw nickel exports, thereby maintaining national economic growth within expected targets.

The effective use of sanctions depends mainly on the specific case at hand. Light sanctions tend to be less complied with by violators because the fees charged are considered too lenient. Rulebreakers are rational actors who feel the benefits and costs of non-compliance. Governments should use light sanctions extensively to ensure compliance for the vast majority of law-abiding citizens, while reserving more severe sanctions instruments as a deterrent to widespread non-compliance with regulations [2]. However, it is essential to consider the characteristics of both criminal and administrative sanctions, as well as the possibility of their sequential or concurrent application. The choice of the proper sanction impacts the effectiveness of sanctions in strengthening the goal of compliance with the rules [1].

4. Conclusion

The discussion presented above yields the following findings. First, the policy of banning raw nickel exports is considered to increase national economic growth and profits for the country. Some data indicate that nickel downstream policies can significantly increase national production, and corporations can also help strengthen Micro, Small, and Medium Enterprises (MSMEs) through corporate social responsibility programs. Second, non-compliance with the ban on raw nickel exports results in state and economic losses. The country's losses occurred because a state or regional right was lost or not accepted according to the applicable rules, and the rights of the state or region received were less than what they should have been. In addition to the state losses, the action to export raw nickel also resulted in economic losses for the country. Law enforcement against violations of the crude nickel export ban must employ a combination of soft Law and hard legal approaches to address massive abuses of the crude nickel export ban.

Abbreviations

EVB	Electric Vehicle Battery
MEMR	Minister of Economy and Mineral Resources
MSMEs	Micro, Small, and Medium Enterprises
NPI	Nickel Pig Iron
PT	Perseroan Terbatas (Limited Company)
USGS	United States Geological Survey
WTO	World Trade Organization

Author Contributions

Willibrordus Riawan Tjandra is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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