



A Legal Review of Indonesia's Nickel Ore Export Ban Policy in the Context of Economic Value Addition and Industrial Growth

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ABSTRACT

Indonesia implemented a nickel ore export ban as part of its mineral downstreaming policy to increase domestic value added, strengthen industrial development, and secure long-term economic growth through local processing and refining activities. This policy is legally grounded in Law Number 4 of 2009 as amended by Law Number 3 of 2020 on Mineral and Coal Mining, as well as Ministerial Regulation of Trade Number 96 of 2019. This study aims to examines the impact of Indonesia's nickel ore export ban on value-added economic development and its compatibility with World Trade Organization (WTO) rules, particularly General Agreement on Tariffs and Trade (GATT) 1994 Article XI:1 and Article XX. The research employs a normative legal research method using qualitative analysis of legal instruments, WTO dispute rulings, and relevant literature. The findings show that the export ban has encouraged investment in smelters, increased downstream industrial capacity, and supported strategic sectors such as electric vehicle batteries. However, the WTO found the policy violated with GATT Article XI:1 and unjustified under Article XX exceptions. While Indonesia's policy successfully promotes domestic value addition, it also demonstrates the need to align national resource-based industrial policies with international trade obligations to ensure sustainable and legally compliant economic development.

A. INTRODUCTION

has ascended to become a paramount strategic commodity in the global mining sector, serving as a critical component in two major industries: the traditional production of stainless steel and the rapidly expanding frontier of clean energy technology, particularly in the manufacturing of electric vehicle (EV) batteries and sophisticated energy storage solutions. This indispensable

role in both foundational and future-oriented sectors has rendered nickel one of the most coveted mineral resources worldwide.¹ Within this context, Indonesia has established an unparalleled position of dominance. Data from the United States Geological Survey (USGS) reveals that in 2024, Indonesia's nickel production reached a monumental 2.2 million tons. This output constituted a remarkable 59.46% of the global total, which stood at 3.7 million tons, thereby cementing the archipelago's status as the undisputed leading global producer.² This follows a pattern of consistent and aggressive expansion; in 2023, Indonesia's production of 1.8 million metric tons already represented exactly 50% of the world's supply.³ Such extraordinary production figures not only highlight Indonesia's immense natural resource endowment but also underscore its critical function in stabilizing the international supply chain for a material essential to modern infrastructure and the global energy transition. Consequently, Indonesia's nickel industry carries significant economic weight and geopolitical influence, shaping market dynamics and international policy discussions surrounding resource security, industrial development, and sustainable technology.⁴

In addition to being the largest producer of nickel, Indonesia also ranks first in 2023 and 2024 as a key player in the global nickel market due to having the largest nickel reserves in the world, holding about 52% of the total global reserves.⁵ Indonesia's nickel reserves are distributed across several regions,

¹ Ahmad Nugraha Abrar, "Politik hukum pertambangan dalam pelaksanaan kewajiban pengolahan dan pemurnian mineral dan batubara di Indonesia," *"Dharmasiswa" Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 2. See too, Arthur Gideon, "4 Strategi Indonesia Menang Proses Kasus Nikel di WTO," *Liputan6.com*, April 9, 2024. Retrieved in September 24, 2025 from. <https://liputan6.com>.

² Feyza Adha Alsyanda, Wafda Vivid Izziyana, and Helen Intania Surayda, "Analisis Yuridis Gugatan Uni Eropa Kepada Wto Terkait Kebijakan Hilirisasi Nikel Indonesia Perspektif Hukum Perdagangan Internasional," *Semarang Law Review (SLR)* 5, no. 1 (2024): 15. See too, Arief Rahman Yusuf, "Nikel Indonesia, Mengapa Dunia Tidak Bisa Berpaling," *Kompasiana*, Maret 31, 2025. Retrieved in September 24, 2025 from. www.kompasiana.com.

³ Shiddiq, "Produksi Nikel RI Semester 1-2025 Over Supply, APNI soroti dampaknya terhadap HargaGlobal," *Nikel.com*, July 1, 2025, Retrieved in September 24, 2025 from. www.nikel.co.id.

⁴ Novi Ratna Cahyani, "Kebijakan Pemberhentian Ekspor Biji Nikel Indonesia Tahun 2020: Tinjauan Neomerkantilisme," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 6, no. 2 (2023): 426. See too, Admin Bappeda, "Pembangunan Ekonomi dalam Konsep Pembangunan Berkelanjutan," *bappeda.bulelengkab*, 30 Mei 2017, Retrieved in September 24, 2025 from. www.bappeda.bulelengkab.go.id; Kamaruddin Azis, "Bersahabat Lingkungan : Inspirasi Pembangunan Indoensia\," *Pelitakita*, July 24, 2025, Retrieved in September 24, 2025 from. www.pelakita.id.

⁵ Agus Cahyono Adi, "Pemilik Cadangan Nikel dan Bauksit terbesar di dunia, ini yang dilakukan Indonesia," *Kementrian ESDM*, November 3, 2024. Retrieved in September 24, 2025 from. www.esdm.go.id. See too, Muhammad Razid Alvian, "Daftar Negara Penghasil Nikel Terbesar di dunia Indonesia peringkat Brapa," *OkeZone*, June 15, 2025, Retrieved in September 24, 2025 from. www.okezone.com; Shiddiq, "Indonesia memimpin Produksi Nikel Dunia, namun tantangan Cadangan dan Kebutuhan Mengintai," *Nikel.com*, Januari 10, 2025, Retrieved in September 24, 2025 from. www.nikel.co.id.

with Southeast Sulawesi holding the largest reserves, reaching 1.688 million tons, followed by Central Sulawesi (805 million tons), West Papua (80 million tons), North Maluku (1.868 million tons), and South Sulawesi (602 million tons).

Rizal Kasli, Chairman of the Mining Professional Association, estimates that Indonesia's nickel reserves are expected to last only 9–13 years, leading to a growing dependency on nickel ore imports in the commodity's downstream industry. Kasli explained that nickel smelters, especially those based on pyrometallurgy or Rotary Kiln Electric Furnace (RKEF), require high-grade nickel with a content of over 1.5% or saprolite. On the other hand, reserves of such nickel grades are depleting rapidly in the country.⁶ "Our reserves, when calculated, experts state that they will last only 9 to 13 years. This is not a long time, and we have already reached the point where, if we don't act, the reserves will be gone," he said, emphasizing the need for exploration efforts in greenfield and frontier areas to bolster domestic reserves.

Kasli further added that the rapid growth of RKEF smelter investments has led to an increased demand for saprolite nickel for stainless steel production. Mining experts have previously recommended a moratorium on the construction of new RKEF smelters, as the domestic supply of high-grade nickel continues to deplete. However, implementing such a moratorium is challenging due to regions reliant on the mining industry for economic development. The most urgent solution is accelerating exploration efforts, particularly in untouched areas of eastern Indonesia, such as Sulawesi, Halmahera, Maluku, and Papua, where significant geological potential remains.

The Indonesian Nickel Miners Association (*Asosiasi Penambang Nikel Indonesia/APNI*) reports that exploration efforts are often hindered by licensing issues, including Forest Area Borrow-Use Permits (*Izin Pinjam Pakai Kawasan Hutan/IPPKH*) and Work Plans and Budget Plans (*Rencana Kerja dan Anggaran Biaya/RKAB*).⁷ Meidy Katrin, APNI's Secretary-General, stated that much of the unexplored nickel wealth in Papua, Sulawesi, and North Maluku is obstructed by IPPKH issues from the Ministry of Forestry.⁸ The government

⁶ Novi Ratna Cahyani, "Kebijakan Pemberhentian Eksport Biji Nikel Indonesia Tahun 2020: Tinjauan Neomerkantilisme," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 6, no. 2 (2023): 427. See too, Agus Cahyono Adi, "Pemilik Cadangan Nikel dan Bauksit terbesar di dunia, ini yang dilakukan Indonesia," *Kementrian ESDM*, November 3, 2024. Retrieved in September 24, 2025 from. www.esdm.go.id.

⁷ Kementerian Energi dan Sumber Daya Mineral, "Booklet Tambang Nikel 2020," *Kementrian ESDM*, 2020, Retrieved in September 24, 2025 from. <https://www.esdm.go.id/id/booklet/booklet-tambang-nikel-2020>.

⁸ Grace Hutabarat, "Sengketa Eksport Nikel Indonesia dengan Uni Eropa di World Trade Organization," *Jurnal Ilmu Hubungan Internasional LINO* 3, no. 2 (2023): 118. See too, Dewi Narulita Sekar Arum, Iswi Hariyani, and Yusuf Adiwibowo, "Implications of Nickel Ore Export

needs to improve coordination between ministries to create a more business-friendly licensing climate, as many mining companies with Mining Business Permits (*Izin Usaha Pertambangan/IUP*) from the Ministry of Energy and Mineral Resources (*Kementerian Energi dan Sumber Daya Mineral/ESDM*) are unable to explore due to regulatory constraints in the Ministry of Forestry.⁹

As countries like the Philippines prepare to ban mineral ore exports, Indonesia must take steps to simplify the licensing process.¹⁰ Despite having abundant domestic reserves, Indonesia still imports substantial amounts of nickel ore from the Philippines, a fact confirmed by the Central Statistics Agency (*Badan Pusat Statistik/BPS*), which reported a significant increase in imports from the Philippines in February 2025. The International Energy Agency (IEA) projects that by 2030, Indonesia will dominate global nickel production, accounting for 62% of worldwide output. In response to escalating international demand primarily driven by electric vehicle batteries and green technology the Indonesian government is prioritizing the long-term sustainability of its nickel sector.¹¹ This strategic focus encompasses ensuring environmentally and socially responsible mining and smelting operations to secure the industry's future and maximize its economic potential.

Indonesia's downstream policy, central to President Prabowo Subianto's vision for value-added industrialization, is at a critical juncture.¹² To sustain its massive smelter expansion and cement its role in the global electric vehicle battery supply chain, Indonesia plans to import approximately 30 million tons of nickel ore from countries like the Solomon Islands and New Caledonia starting in mid-2025.¹³ This move towards import dependency, however,

9 Ahmad Nugraha Abrar, "Politik hukum pertambangan dalam pelaksanaan kewajiban pengolahan dan pemurnian mineral dan batubara di Indonesia," "Dharmasiswa" *Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 3.

10 Dwi Najah Tsirwiyati, "Kebijakan Larangan Ekspor Nikel Indonesia," *Jurnal Hukum Respublica* 22, no. 2 (2023): 1267. See too, Ferdinand Jason, Rina S. Shahrullah, and Elza Syarief, "Implikasi Putusan World Trade Organization terhadap Larangan Ekspor Nikel Indonesia oleh Uni Eropa," *Jurnal Supremasi* (2024): 137.

11 Feyza Adha Alsyanda, Wafda Vivid Izziyana, and Helen Intania Surayda, "Analisis Yuridis Gugatan Uni Eropa Kepada Wto Terkait Kebijakan Hilirisasi Nikel Indonesia Perspektif Hukum Perdagangan Internasional," *Semarang Law Review (SLR)* 5, no. 1 (2024): 17. See too, Karlos Domingo Hutagalung, Kezia Kurnia, and Madani Agung Geganeswara, "Sengketa Perdagangan Dan Hukum Lingkungan: Dampak Kebijakan Energi Hijau Terhadap Negara Berkembang (Studi Kasus Gugatan UNI Eropa Di WTO Akibat Larangan Ekspor Biji Nikel Oleh Indonesia)," *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan/ E-ISSN: 3089-7084* 1, no. 3 (2025): 177.

12 Riady Ibnu Khaldun, "Dampak kebijakan hilirisasi nikel terhadap peningkatan ekspor komoditas besi dan baja indonesia," *Relasi: Jurnal Ekonomi* 20, no. 1 (2024): 156. See too, Shiddiq, "Hilirisasi Nikel Menjadi Baterai Dongkrak Nilai Tambah 67 Kali," *Nikel.com*, 11 Jul 2025, Retrieved in September 24, 2025 from. www.nikel.co.id.

13 Grace Hutabarat, "Sengketa Ekspor Nikel Indonesia dengan Uni Eropa di World Trade Organization," *Jurnal Ilmu Hubungan Internasional LINO* 3, no. 2 (2023): 119.

exposes a fundamental and urgent vulnerability: the rapid depletion of domestic high-grade (saprolite) nickel reserves, which experts warn may only last 9 to 13 years.¹⁴ This looming scarcity directly threatens the raw material supply for the very RKEF smelters that form the backbone of the downstream ambition.

This internal constraint is compounded by significant external and regulatory pressures. The United States has raised concerns that Indonesia's ore export restrictions disrupt global supply chains, creating geopolitical friction. Meanwhile, at home, crucial exploration in frontier regions like Papua and Halmahera is stalled by licensing conflicts, particularly between the Ministry of Energy and Mineral Resources and the Ministry of Forestry over Forest Area Borrow-Use Permits (IPPKH). These intertwined crises imminent resource depletion, growing import reliance, regulatory bottlenecks, and international trade tensions create an urgent research imperative.¹⁵ If unaddressed, they could derail Indonesia's strategic goals of job creation, economic growth, and leadership in the global green energy transition.

The Indonesian government's nickel policy is a critical factor in the country's drive to establish itself as a key player in the global nickel market. As exploration efforts intensify and downstream industries are developed, Indonesia is positioning itself as an energy transition leader, ensuring long-term economic growth while contributing to the global shift toward clean energy.

Based on the urgency of a strategy to preserve the national nickel downstream industry from the threat of raw material shortages and international trade pressures, this study is designed to answer the following three main research questions:

1. What is the impact of the nickel export ban on increasing added value and the lack of a downstream industry in Indonesia?
2. To what extent are the provisions of Ministerial Regulation Number 96 of 2019 concerning the Export of Processed and Refined Mining Products aligned with World Trade Organization (WTO) regulations?
3. What is the legal reasoning underlying the WTO's conclusion that the nickel export ban being challenged against Indonesia violates?

B. RESEARCH METHODS

This study employs normative legal research in this study, which involves analyzing literature and documents through various secondary data sources, including laws and regulations, court decisions, legal theories, and

¹⁴ Muhammad Agung, and Emmanuel Ariananto Waluyo Adi, "Peningkatan Investasi Dan Hilirisasi Nikel Di Indonesia," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, no. 2 (2022): 348.

¹⁵ Merdita Manik, "Pengaruh perdagangan internasional terhadap pertumbuhan ekonomi Indonesia," *E-Mabis: Jurnal Ekonomi Manajemen dan Bisnis* 23, no. 2 (2022): 15.

scholarly opinions relevant to the research topic. Normative legal research is a process to find legal rules, principles, or doctrines to address legal issues, according to Peter Mahmud Marzuki.¹⁶ In his book titled *Metode Penelitian Hukum Normatif* (Methods of Normative Legal Research), Marzuki discusses that normative legal research focuses on examining documents with various secondary data, according to I Wayan Puja Astawa. Secondary data may include various sources that support legal and academic research, such as legislation, court decisions, legal theories, and scholarly opinions. In addition, secondary data can also be obtained from books, mass media, as well as newspapers and magazines, which provide contextual, analytical, and up-to-date information relevant to the research topic.

Normative legal research focuses on legal norms, applicable rules, and principles found in laws and regulations. It differs from empirical legal research, which focuses on how the law is applied in society and the impacts of its implementation. Normative legal research focuses more on analyzing the text of laws and regulations, court decisions, legal doctrines, and other sources of law. In normative legal research, legal materials are systematically categorized into three primary sources based on their authority and function. The most authoritative are Primary Legal Sources, which consist of legally binding instruments such as the 1945 Constitution, statutes, government regulations, and established jurisprudence. Secondary Legal Sources, which provide explanations about primary legal sources, such as bills, research results, scholarly works, and others. Finally, Tertiary Legal Sources, which provide information about primary and secondary legal sources, such as legal dictionaries, encyclopedias, magazines, mass media, and the internet.

This study uses a Qualitative Research Method, which focuses on in-depth observation. The qualitative method posits that its use is influenced by and represents a paradigm that reflects a perspective on reality.¹⁷ Qualitative research is chosen when the research goal is to understand how a community or individual reacts to certain issues.¹⁸

It is essential for researchers using qualitative methods to ensure the quality of the research process, as they will interpret the data they have collected. In this study, the author employs a philosophical approach to ensure the validity and accountability of the research results.

¹⁶ Peter Mahmud Marzuki, *Pengantar ilmu hukum*, (Jakarta: Prenada Media, 2021), 32.

¹⁷ Joanna EM. Sale, Lynne H. Lohfeld, and Kevin Brazil, "Revisiting the quantitative-qualitative debate: Implications for mixed-methods research," *Quality and quantity* 36, no. 1 (2002): 48. See too, I Gde Pantja Astawa, *Metodologi Penelitian Bidang Hukum*, (Jakarta: Sonpedia Publishing Indonesia, 2023), 23.

¹⁸ K. McCusker, and S. Gunaydin, "Penelitian menggunakan metode kualitatif, kuantitatif atau campuran dan pilihan berdasarkan penelitian," (2015): 537.

Type and Data Collection Techniques In conducting this research, the author uses secondary data, which can be divided into various levels. Secondary data are collected through literature studies, which include laws and regulations, legal books, legal journals, expert opinions, and legal research findings related to the research topic. This research utilizes a comprehensive legal framework derived from binding national legislation and relevant international trade agreements as its primary data sources. The foundational authority is the 1945 Constitution of Indonesia, specifically Article 33, Paragraph (3), which establishes state control over natural resources, including nickel, for the people's maximum prosperity. This constitutional mandate is operationalized through Law Number 4 of 2009 concerning Mineral and Coal Mining, as amended by Law Number 3 of 2020.¹⁹ This primary legislation mandates value addition for mineral resources, prohibits the export of unprocessed minerals, and obligates Mining Business Permit (IUP) and Special Mining Business Permit (IUPK) holders to conduct domestic processing and refining. Further obligations under this law, such as environmental management and post-mining reclamation as stipulated in Article 96(c), underscore the integrated policy approach.

The implementation of this legal mandate is detailed in a series of derivative regulations. Government Regulation Number 1 of 2014 provides the overarching framework for executing mining activities.²⁰ This is supplemented by key ministerial regulations from the Ministry of Energy and Mineral Resources, which form the core of the downstreaming policy architecture: Ministerial Regulation Number 1 of 2014 on Increasing Added Value through Domestic Processing, Ministerial Regulation Number 25 of 2018 on Mining Business Operations (and its subsequent amendments through Ministerial Regulation Number 11 of 2019 and Ministerial Regulation Number 17 of 2020), and crucially, Ministerial Regulation Number 96 of 2019 which specifically governs the export of processed and refined mining products, directly enacting the domestic processing requirement.²¹

¹⁹ "Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning the prohibition on the export of raw minerals by requiring holders of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK)." See too, "Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law)".

²⁰ "Government Regulation (PP) No. 1 of 2014 concerning the Implementation of Mineral and Coal Mining Activities."

²¹ "Minister of Energy and Mineral Resources Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business." See too, "Minister of Energy and Mineral Resources Regulation No. 11 of 2019 concerning the Second Amendment to Minister of Energy and Mineral Resources Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business.;" "Minister of Trade Regulation No. 96 of 2019 concerning Provisions for the Export of Processed and Refined Mining Products."; "Minister of Energy and Mineral Resources Regulation Number 17 of 2020 concerning the Third Amendment to Minister of Energy and Mineral Resources Regulation Number 25 of 2018 concerning Mineral and Coal Mining Businesses."

To analyze the international legal dimensions and justification of Indonesia's export policy, this research also examines the General Agreement on Tariffs and Trade (GATT) 1994. The analysis engages with Article XI:1, which generally prohibits quantitative restrictions on exports, creating the central legal tension. It then explores potential justifications under Article XI:2, which allows temporary export prohibitions to prevent critical shortages of essential products, and Article XX(d), which provides a general exception for measures necessary to secure compliance with domestic laws or regulations that are not inconsistent with other WTO provisions.

The data analysis used in this study is based on case studies and regulations, employing a descriptive qualitative method. The collected data are explained logically and systematically, and then analyzed to provide clarity on how to solve the problem.

C. DISCUSSION

1. Impact of the Nickel Ore Export Ban Policy on Added Value for Indonesia

The Indonesian government's policy to ban nickel ore exports was strategically implemented to foster the development of a robust domestic processing industry, primarily through the construction of smelters.²² The central objective is to generate significant domestic value addition by transitioning from a raw material exporter to a producer of higher-value intermediate and finished nickel products.²³ This fundamental shift in industrial policy is anticipated to profoundly impact the national economy by catalyzing downstream industrial growth, enhancing export revenues, creating skilled employment, and structurally transforming Indonesia's position within the global nickel supply chain.²⁴

The nickel ore export ban is intended to encourage mining companies to invest in domestic smelting facilities.²⁵ By processing raw nickel within Indonesia into higher-value products such as ferronickel, nickel pig iron (NPI), and nickel sulfate, the country seeks to capture a greater portion of the value-

²² Erikson Sihotang, and I. Nyoman Suandika, "Kebijakan Larangan Ekspor Bijih Nikel Yang Berakibat Gugatan Uni Eropa Di World Trade Organization," *Jurnal Raad Kertha* 6, no. 1 (2023): 339.

²³ Novi Ratna Cahyani, "Kebijakan Pemberhentian Ekspor Biji Nikel Indonesia Tahun 2020: Tinjauan Neomerkantilisme," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 6, no. 2 (2023): 428.

²⁴ FHUntarofficial, "Jeremy Bentham dan Fondasi Utilitarianisme dalam Reformasi Hukum Modern," *FHUntar.com*, Mei 26, 2025, Retrieved in September 24, 2025 from. www.fh.untar.ac.id. See too, Shiddiq, "Hilirisasi Nikel Menjadi Baterai Dongkrak Nilai Tambah 67 Kali," *Nikel.com*, 11 Jul 2025, Retrieved in September 24, 2025 from. www.nikel.co.id.

²⁵ Dwi Najah Tsirwiyyati, "Kebijakan Larangan Ekspor Nikel Indonesia," *Jurnal Hukum Respublica* 22, no. 2 (2023): 1268. See too, Nooraini Dyah Rahmawati, and Erbin Swara, "Indonesia's Nickel Export Ban: Between Industrial Downstreaming and International Trade Disputes," *Fortiori Law Journal* 5, no. 01 (2025): 21.

added supply chain.²⁶ This shift towards domestic processing enhances the country's economic value by producing products with higher market prices and creating employment opportunities in the smelting and refining sectors. It also ensures that Indonesia can maintain control over its mineral resources while reducing the need to export raw materials, which typically result in lower profits compared to processed goods.²⁷

Additionally, the policy encourages the development of local industries, such as Electric Vehicle (EV) batteries and other green energy technologies, where processed nickel plays a crucial role in enhancing production capabilities. This strategic focus on downstream processing generates substantial added value by transforming raw materials into higher-value products, thereby fostering economic diversification beyond traditional exports. As a result, Indonesia strengthens its competitive position in the global market for high-tech goods, attracting investments and creating jobs. Ultimately, this approach not only drives robust economic growth but also aligns with global sustainability goals by promoting resource-efficient industries and reducing reliance on unprocessed commodities.

However, while the ban undoubtedly delivers long-term benefits through increased added value and industrial maturity, its short-term effects pose notable challenges, particularly concerning the readiness of domestic industries.²⁸ Key hurdles include the urgent need for advanced infrastructure development, such as processing plants and logistics networks, alongside a shortage of skilled labor trained in modern metallurgical techniques. If not managed with careful planning and targeted investments, the ban could trigger supply shortages in global markets or induce price volatility for nickel products.²⁹ Indeed, the transition from raw ore exports to comprehensive domestic processing demands substantial capital outlays, technological upgrades, and considerable time to achieve stability and efficiency.

²⁶ Grace Hutabarat, "Sengketa Ekspor Nikel Indonesia dengan Uni Eropa di World Trade Organization," *Jurnal Ilmu Hubungan Internasional LINO* 3, no. 2 (2023): 121. See too, Shiddiq, "Produksi Nikel RI Semester 1-2025 Over Supply, APNI soroti dampaknya terhadap HargaGlobal," *Nikel.com*, July 1, 2025, Retrieved in September 24, 2025 from. www.nikel.co.id.

²⁷ Rachma Putri, Sintya Widisty, and Ajie Danto Wicaksono, "Penyelesaian Sengketa Pemberhentian Ekspor Nikel Indonesia ke Uni Eropa oleh World Trade Organization," *Jurnal Ilmu Sosial Dan Humaniora* 27, no. 1 (2022): 49. See too, Naya Rahmauliya Syahputri, "Evaluasi Ekonomi Sektor Non-Migas Pasca Larangan Ekspor Bijih Nikel di Indonesia," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 24 (2024): 256.

²⁸ Dwi Najah Tsirwiyati, "Kebijakan Larangan Ekspor Nikel Indonesia," *Jurnal Hukum Respublica* 22, no. 2 (2023): 1269. See too, Azis Setyagama, Wawan Susilo, Eko Wahyono, and Muchamad Su'ud, "Indonesian Government Policy Prohibits the Export of Nickel Ore in the Form of Raw Materials," *Journal of Law and Sustainable Development* 12, no. 2 (2024): 1163.

²⁹ Erikson Sihotang, and I. Nyoman Suandika, "Kebijakan Larangan Ekspor Bijih Nikel Yang Berakibat Gugatan Uni Eropa Di World Trade Organization," *Jurnal Raad Kertha* 6, no. 1 (2023): 342. See too, Kamaruddin Azis, "Bersahabat Lingkungan : Inspirasi Pembangunan Indoensia\," *Pelitakita*, July 24, 2025, Retrieved in September 24, 2025 from. www.pelitakita.id.

2. Ministerial Regulation 96/2019 Art. 3: Processed Mining Exports and World Trade Organization WTO Compliance

Ministerial Regulation Number 96 of 2019, particularly Article 3, meticulously governs the export of processed and refined mining products, with a specific emphasis on nickel and similar commodities. This provision mandates that certain mining products, including nickel ore, undergo domestic processing or refining prior to any exportation, effectively prohibiting the shipment of raw mineral ores unless they meet these value-adding criteria. The underlying objective is to maximize the economic benefits derived from Indonesia's abundant mineral resources by compelling local industrialization, thereby capturing greater added value that would otherwise be lost to foreign processors.³⁰ This policy strategically promotes the growth of domestic processing industries, such as smelters and refineries, fostering job creation, technological transfer, and enhanced revenue streams for the national economy through higher export values of semi-finished and finished products.³¹

From the standpoint of World Trade Organization (WTO) regulations, Article 3 of Ministerial Regulation Number 96 of 2019 could be interpreted as a potentially trade-restrictive measure that deviates from the principle of free trade. The WTO framework, through Article XI:1 of the General Agreement on Tariffs and Trade (GATT), explicitly prohibits members from instituting quantitative restrictions or outright bans on exports, aiming to prevent artificial barriers that distort global commerce.³² However, exceptions may apply under Article XX of the GATT, which permits such measures if they are deemed necessary to protect exhaustible natural resources or public health, provided they do not constitute arbitrary discrimination or disguised trade restrictions. In this context, Indonesia's nickel processing requirement might invoke these carve-outs to justify conservation efforts and sustainable resource management, though it remains subject to scrutiny in potential dispute settlements.³³

³⁰ Muhammad Agung, and Emmanuel Ariananto Waluyo Adi, "Peningkatan Investasi Dan Hilirisasi Nikel Di Indonesia," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, no. 2 (2022): 349.

³¹ Hilmi Prabowo, "Alternatif Penyelesaian Sengketa Larangan Ekspor Nikel Indonesia Di WTO," *PROGRESIF: Jurnal Hukum* 18, no. 1 (2024): 46. See too, Arthur Gideon, "4 Strategi Indonesia Menang Proses Kasus Nikel di WTO," *Liputan6.com*, April 9, 2024. Retrieved in September 24, 2025 from. <https://liputan6.com>.

³² Rachma Putri, Sintya Widisty, and Ajie Danto Wicaksono, "Penyelesaian Sengketa Pemberhentian Ekspor Nikel Indonesia ke Uni Eropa oleh World Trade Organization," *Jurnal Ilmu Sosial Dan Humaniora* 27, no. 1 (2022): 51. See too, Khairus Febryan Fitrahady, "The Indonesian Government's Dilemma between National Law and International Law in the Nickel Dispute," *Intellectual Law Review (ILRE)* 3, no. 1 (2025): 38.

³³ Feyza Adha Alsyanda, Wafda Vivid Izziyana, and Helen Intania Surayda, "Analisis Yuridis Gugatan Uni Eropa Kepada Wto Terkait Kebijakan Hilirisasi Nikel Indonesia Perspektif Hukum Perdagangan Internasional," *Semarang Law Review (SLR)* 5, no. 1 (2024): 19. See too,

However, Indonesia's nickel export ban policy finds strong justification under Article XX(d) of the GATT, which explicitly permits members to impose restrictions on exports when such measures prove essential for the conservation of exhaustible natural resources, such as nickel ore deposits.³⁴ Indonesia has robustly argued in international forums that the prohibition on raw ore shipments is indispensable for preserving these finite resources, preventing their rapid depletion through unchecked foreign exploitation. By channeling nickel toward domestic processing, the policy not only safeguards long-term resource availability but also catalyzes the development of vital mining and smelting industries.³⁵ This strategic approach promises substantial economic benefits, including heightened value addition, technology localization, job generation in downstream sectors, and bolstered national revenues, positioning Indonesia as a leader in sustainable mineral economies over the long term.³⁶

The WTO's stance on such export restrictions hinges critically on whether they satisfy the stringent conditions of necessity and proportionality embedded in these GATT exceptions.³⁷ Panels and the Appellate Body rigorously assess if the measures are genuinely aimed at conservation without serving as mere protectionist tools. If deemed overly restrictive, arbitrary, or insufficiently linked to bona fide resource preservation such as through inadequate domestic utilization evidence the policy may encounter legal challenges from aggrieved WTO members, potentially leading to dispute settlements or mandated adjustments.³⁸

3. Legal Reasoning Behind the WTO Decision on the Nickel Ore Export Ban Lawsuit Against Indonesia

In the WTO dispute over Indonesia's nickel ore export ban, the legal analysis focused on whether the policy aligned with WTO trade rules, especially

Muhammad Raisha Aulia Putranta, and Rangga Fayyaza Mulyawan, "Pengaruh Larangan Ekspor Nikel dan Bauksit Terhadap Lingkungan," *Jurnal Ilmiah Ekonomi Dan Manajemen* 3, no. 2 (2025): 93.

³⁴ Erikson Sihotang, and I. Nyoman Suandika, "Kebijakan Larangan Ekspor Bijih Nikel Yang Berakibat Gugatan Uni Eropa Di World Trade Organization," *Jurnal Raad Kertha* 6, no. 1 (2023): 344.

³⁵ Novi Ratna Cahyani, "Kebijakan Pemberhentian Ekspor Biji Nikel Indonesia Tahun 2020: Tinjauan Neomerkantilisme," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 6, no. 2 (2023): 429.

³⁶ Riady Ibnu Khaldun, "Dampak kebijakan hilirisasi nikel terhadap peningkatan ekspor komoditas besi dan baja indonesia," *Relasi: Jurnal Ekonomi* 20, no. 1 (2024): 158. See too, , Admin Bappeda, "Pembangunan Ekonomi dalam Konsep Pembangunan Berkelanjutan," *bappeda.bulelengkab*, 30 Mei 2017, Retrieved in September 24, 2025 from. www.bappeda.bulelengkab.go.id.

³⁷ Febyanti Juliastica, and Akim Akim, "Respon Indonesia Terhadap Putusan World Trade Organization dalam Kasus Pelarangan Ekspor Nikel," *Jurnal Perdagangan Internasional* 1, no. 2 (2023): 88.

³⁸ Nandang Sutrisno, "3 Langkah Penyelesaian Sengketa Nikel Indonesia di WTO," *Hukum Online*, September 13, 2024, Retrieved in September 24, 2025 from. <https://hukumonline.com>.

regarding export restrictions and allowable exceptions for conserving natural resources.³⁹ The WTO ultimately ruled against Indonesia, finding that the ban breached multiple provisions of the GATT, including Article XI:1 and Article 12.⁴⁰

Indonesia's defense rested on the argument that the export ban was necessary for the conservation of its nickel resources, a view supported by Article XX (d) of the GATT, which allows for exceptions to export restrictions when they are deemed necessary for the conservation of exhaustible natural resources. Indonesia contended that by banning nickel ore exports, the country could better manage its nickel resources, promote the development of its smelting industry, and ensure long-term economic benefits through value-added production.⁴¹

However, the WTO's ruling found that Indonesia's policy did not meet the criteria established under Article XX. Specifically, the WTO determined that the restrictions imposed were not considered "necessary" in relation to the objectives of resource conservation.⁴² The WTO panel concluded that Indonesia had not sufficiently proven that the export ban was the least trade-restrictive measure available to achieve its goals.⁴³ Furthermore, the WTO found that Indonesia's policy was inconsistent with other WTO obligations, including Article XI:1 of the GATT, which prohibits export bans and restrictions, and the non-discrimination principle under the WTO agreements.

The legal reasoning of the WTO focused on the principle of proportionality and whether Indonesia's policy was the least restrictive measure available to achieve its objectives. The panel argued that Indonesia could have adopted less trade-restrictive measures, such as promoting domestic processing without imposing a complete export ban, or ensuring that the smelting industry was prepared to handle the increased demand for raw

³⁹ Hilmi Prabowo, "Alternatif Penyelesaian Sengketa Larangan Ekspor Nikel Indonesia Di WTO," *PROGRESIF: Jurnal Hukum* 18, no. 1 (2024): 49.

⁴⁰ Rainer Marampa Bari, Nanik Trihastuti, and Pulung Widhi Hari Hananto, "Indonesia's nickel export restriction policy: alternative on environmental approach for Article XI: 1 GATT justification," *Journal of International Trade Law and Policy* 22, no. 1 (2023): 18.

⁴¹ Doan Mauli Tua Siahaan, Ibrahim Sagio, and Evi Purwanti, "Restriction of Indonesian Nickel Ore Export Based on the Perspective of Quantitative Restriction Principle in General Agreement on Tariffs and Trade," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 412. See too, Syukron Mahal Farawansa, and Elfirda Ratnawati Gultom, "Diagnosis Of Nickel Industry Downstreaming Policy In Export Restriction Towards Increasing Economic Added Value In Indonesia," *Jurnal Legalitas* 17, no. 1 (2024): 13.

⁴² Febyanti Juliastica, and Akim Akim, "Respon Indonesia Terhadap Putusan World Trade Organization dalam Kasus Pelarangan Ekspor Nikel," *Jurnal Perdagangan Internasional* 1, no. 2 (2023): 89.

⁴³ Ferdinand Jason, Rina S. Shahrullah, and Elza Syarief, "Implikasi Putusan World Trade Organization terhadap Larangan Ekspor Nikel Indonesia oleh Uni Eropa," *Jurnal Supremasi* (2024): 136.

nickel.⁴⁴ The WTO emphasized that trade restrictions should be applied in a manner that is not overly burdensome on trading partners or contrary to the principles of free trade.⁴⁵

The WTO's decision underscored its unwavering commitment to upholding transparent, predictable trade policies that fully comply with international obligations under the GATT framework.⁴⁶ While acknowledging the legitimacy of Indonesia's goals in resource conservation and economic development through downstream processing, the WTO panel emphasized that such measures must avoid disproportionate trade restrictions or breaches of core commitments. Ultimately, Indonesia's nickel export ban was deemed overly broad, inconsistently applied, and insufficiently justified even under Article XX exceptions resulting in a definitive ruling against the policy and calls for corrective adjustments.⁴⁷

This landmark decision illuminates the intricate balance nations must navigate between advancing domestic economic imperatives, such as industrial growth and resource sovereignty, and adhering to binding international trade disciplines. For Indonesia, the ruling acts as a pivotal reminder to refine future policies, ensuring robust alignment with WTO regulations through evidence-based justifications, non-discriminatory application, and proportional measures that genuinely promote sustainable development without unduly hampering global commerce.

D. Conclusion

This study finds that Indonesia's nickel ore export ban has significantly contributed to domestic value-added creation by accelerating the development of smelting and downstream industries. The policy has shifted Indonesia's role from a raw material exporter toward a producer of higher-value nickel products, supporting industrial upgrading, job creation, and integration into strategic sectors such as electric vehicle batteries. However, the WTO dispute revealed that, despite these economic objectives, the ban was judged inconsistent with GATT Article XI:1 and failed to meet the necessity and proportionality requirements under Article XX. The WTO concluded that Indonesia did not sufficiently demonstrate that the export ban was the least trade-restrictive measure available to achieve conservation and development goals.

⁴⁴ Hilmi Prabowo, "Alternatif Penyelesaian Sengketa Larangan Ekspor Nikel Indonesia Di WTO," *PROGRESIF: Jurnal Hukum* 18, no. 1 (2024): 45.

⁴⁵ Nafiatul Munawaroh, "Arti Penafsiran Hukum Argumentum A Contrario," *Hukum Online*, January 11, 2023, Retrieved in September 24, 2025 from. www.hukumonline.com.

⁴⁶ Merdita Manik, "Pengaruh perdagangan internasional terhadap pertumbuhan ekonomi Indonesia," *E-Mabis: Jurnal Ekonomi Manajemen dan Bisnis* 23, no. 2 (2022): 18.

⁴⁷ Dwi Najah Tsirwiyati, "Kebijakan Larangan Ekspor Nikel Indonesia," *Jurnal Hukum Respublica* 22, no. 2 (2023): 1272.

Practically, the findings highlight the tension between national industrial policy and international trade law. For policymakers, the case underscores the importance of designing resource-based industrial strategies that balance domestic value addition with WTO compliance, particularly by avoiding overly broad or rigid trade restrictions. Theoretically, this study contributes to international political economy and trade law literature by illustrating how global trade rules constrain state-led industrialization strategies in resource-rich countries, reinforcing the role of proportionality and necessity as central legal standards in WTO dispute settlement.

Future research should examine alternative, WTO-consistent policy instruments such as subsidies, export taxes, or investment incentives that can promote downstream processing without violating trade rules. Comparative studies with other mineral-exporting countries may also provide insights into best practices for aligning sustainable resource management, industrial development, and international trade obligations.

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