

CHAPTER 1

INTRODUCTION

A. Background

To promote the seamless movement of products and services across borders, a complex web of international agreements, legal standards, and regulatory frameworks make up the architecture of the global trade system. As countries negotiate the competing goals of furthering their economic interests and upholding their duties to international trade, disagreements emerge within this complex framework. These conflicts are more than just legal battles; they represent the dynamic contradictions between national regulatory goals and the fundamentals of the free trade agreement. A reassessment of the proper balance between state regulatory authority and the mandates of international trade law has become necessary due to the sharp increase in the frequency and intensity of these disputes in recent years, which has put the legal frameworks in place to the test.

Indonesia participates in international trade activities by using nickel, a natural resource, in its operations. An element that occurs naturally and is frequently found in the earth's crust is nickel. Numerous businesses, including batteries, alloys, electroplating, and the stainless steel sector, depend on nickel supplies. Stainless steel finds application in numerous downstream sectors, encompassing home appliances, transportation, and building. Indonesia became a nickel commodity supplier that occupied the global nickel supply chain in 2019 by producing 2.6 million tons of nickel (Hutabarat, 2023). Because nickel has good density and strength properties in hot temperatures and acidity, nickel is a very important commodity in the world of industrial machinery and Indonesia is one of the promising nickel producers for the economic sector. Cooperation between Indonesia and the European Union has been established and ongoing for a long time, influenced by the relationship between European Union and ASEAN. The European Union has a significant impact on the regional development of Southeast Asia because it was one of the founding members of ASEAN.

Indonesia has numerous cooperation with the European Union as one of the ideal regions to date. Indonesia's involvement in the EU and ASEAN cooperation that has been running since more than 30 years ago is seen in its participation in the signing of the ASEAN and EU cooperation agreement in 1980, which covers the fields of trade,

economic cooperation and development as a basis for institutional dialogue (Dr. Hj. Aleina Surya, 2011). The cooperative relationship between Indonesia and the European Union has a contributory and consistent attitude in a variety of export materials from Indonesia, one of which is nickel. For a considerable time, the steel sector has held a pivotal role in the economy, propelling expansion, creativity, and job creation inside the European Union, because the steel industry sector has linkages with many downstream industries such as automotive, electronics and others. EU steel production is the second largest after China with a total output of more than 177 million tons per year, 11% of the total global output (European Commission, 2022). It makes sense that the supply of raw materials, particularly Indonesian nickel, is crucial to the European Union's industrial operations. Given that it possesses the world's greatest nickel reserves, Indonesia plays a significant role in supplying the world's raw nickel materials. Quoting from the 2020 Nickel Mining Booklet launched by the Ministry of Energy and Mineral Resources sourced from the USGS 2020 and the Geological Agency 2019 (Kementerian Energi dan Sumber Daya Alam, 2020), nickel reserves owned by the whole world are 139,419,000 tons Nil, and 72 Million Nile Tons or 52% of them belong to Indonesia.

On January 1st, 2020, President Joko Widodo banned and suspended nickel ore export activities to improve mining governance in Indonesia. The Minister of Energy and Mineral Resources Regulation (Permen ESDM) Number 11 of 2019 which requires companies to establish smelters, this regulation can certainly make nickel ore processing in Indonesia have a better selling value (Dicky Dwi Radhica, 2023). Law (UU) No.3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining and its Derivative Regulations governs Indonesia's policy on mineral and coal mining as well. This regulation regulates metal mineral mining products to be processed and / or refined first by producer companies holding Mining Business License / Special Mining Business License (IUP / IUPK) before being exported. This makes nickel, which is a metal mineral mining product, needs to go through processing and / or refining before being exported by considering the increase in economic value and / or market needs, so that what is exported is no longer raw materials but semi-finished or finished goods. The background to the formation of the regulation is none other than the shock to Indonesia's national economy due to the Covid-19 pandemic. According to the Central Bureau of Statistics, the Indonesian economy in 2020 based on Gross Domestic Product (GDP) experienced a growth contraction of 2.07% compared to 2019. Thus, the regulation of nickel processing and refining is expected to

minimize economic disruptions so that they do not become sustainable disruptions. However, the European Union, one of the biggest nickel consumers in the world, has filed a lawsuit to dispute Indonesia's regulation. It feels very disadvantaged by the policies that have been set by Indonesia. Because of this, the European Union filed a complaint against Indonesia at the World Trade Organization (WTO), claiming that the country had broken GATT regulations. The WTO plays a major role in promoting free trade in the process of globalization. After going through a long trial, Indonesia was unable to prove the European Union's lawsuit. Minister of Energy and Mineral Resources (ESDM) Arifin Tasrif revealed the results of the final decision of the World Trade Organization (WTO) on the nickel export ban case. Indonesia's policy was declared proven to violate WTO provisions (Detik News, 2021).

The WTO also helps producers of goods and services, exporters and importers in international trade activities. The main objective of establishing the WTO is to encourage and develop trade liberalization and provide a secure world trading system (Rusydziana, 2020). The Uruguay Round II and the GATT (General Agreement on Tariffs and Trade) agreements are two examples of international trade agreements whose rules are implemented in part by the WTO. Every nation will participate in international trade at the same level as a result of the WTO. Because of this, emerging nations now have to contend with established nations in the global economy. The WTO also has a role in resolving trade disputes between countries based on agreements that have been made between the two parties. Based on international legal principles including non-discrimination and fair and equal treatment, the WTO dispute settlement system is intended to make it easier to settle disputes pertaining to international trade in an effective, transparent, and equitable manner. It involves a series of steps, ranging from consultations between the disputing parties to the establishment of a panel and the filing of an appeal to the WTO Appellate Body if either party feels the ruling is unfair (Asa Patia Silalahi, 2011).

Against this backdrop, the dispute over Indonesia's nickel export ban, challenged by the European Union at the World Trade Organization (WTO), has emerged as an important example of this complex dynamic. Indonesia's decision to impose a nickel export ban, aimed at boosting its domestic processing and refining industry, was strongly opposed by the European Union, which viewed the measure as a violation of international trade rules. This confrontation at the WTO is a microcosm of the broader struggle faced by countries

seeking to align domestic policy objectives with the constraints of the global trading system.

Based on the explanation above, the author is interested in the reasons causes of Indonesia lost the EU lawsuit at the WTO hearing in stopping nickel ore exports to the European Union. Moreover, the author also wants to explore the core of the dispute, revealing the layers of law, evidence, and policies that define it. By examining the legal foundations of the dispute, including the application of certain articles of the 1994 General Agreement on Tariffs and Trade (GATT) and the evidentiary demands placed on Indonesia, as well as highlighting the challenges countries face in defending regulatory measures in the 1994 GATT agreement.

To facilitate the writer in analyzing the causes of Indonesia's lost of the European Union's lawsuit in the WTO trial of the Indonesia-EU nickel export suspension case, the writer used previous research as reference material and research and writing references. The previous the writer was a Scientific Journal, with the title "Juridical Study of the Government of the Republic of Indonesia's Lost of the European Union's Lawsuit Against the Termination of Nickel Ore Exports at the WTO Session" written by Ridwan Hardiawan and Andri Sutrisnodari from the IBLAM College of Law. In the study, Ridwan Hardiawan and Andri Sutrisnodari discussed the provisions of international trade law against the termination of nickel ore exports carried out unilaterally by the Indonesian government against the European Union. The difference from this research is that the author emphasize more on the causes of Indonesia's lost in the WTO dispute regarding the suspension of nickel exports by Indonesia to the European Union.

Based on the description that the researcher has written, the author is interested in conducting research that has been formulated with the title "Analyzing Indonesia's Failure in the Nickel Export Dispute with the European Union at the WTO".

B. Research Question

Based on the background that the author has mentioned earlier and based on the topic to be researched further, the problem formulation that the author finds is: "Why did Indonesia lose in the WTO dispute over the European Union's lawsuit regarding the suspension of Indonesia's Nickel Exports to the European Union?"

C. Theoretical Framework

To make it easier for the writer to analyze the problems under study and to choose the right concepts to form arguments, a theoretical framework is needed. In this writing, the writer takes Theory of Liberalism, International Trade Theory, and The Elements of Legalization

Theory of Liberalism

The theory of Liberalism focuses on economic dependence which can create prosperity in society (Kompas.com, 2023). Liberalism emphasizes national prosperity and stability, which believes that humans are basically social creatures who can cooperate with each other. It is believed that national prosperity and stability can be achieved by cooperation. Every human being has the freedom to obtain peace and tranquility in their interactions. This includes interacting between one country and another, and between organizations also through cooperation agreements. Fukuyama resurrects the old view among liberal internationalists, that the spread of a legitimate political order will eventually end international conflict (Scott Burchill, 2021).

Liberalism theory or the modernization theory is a paradigm that has epistemological assumptions and the same teleology of social change, ideas about progress, the right path for political development (Hashemi, 2010). Liberalism intends restraint, because many interests are shared, the state tends to behave in a moderate way to establish compromise or cooperation to avoid clashes. States also engage in acts of social cooperation by constantly restraining themselves so that (human) passions do not influence power in international politics.

Liberalism, with its emphasis on the role of international organizations and institutions in facilitating cooperation among states, provides a basic perspective for analyzing the effectiveness of the WTO dispute settlement mechanism. It argues that international institutions such as the WTO help mediate conflicts by providing a platform for dialogue, negotiation, and legal arbitration, thereby reducing the likelihood of unilateral action and promoting a rules-based international order. In the context of the Indonesia-EU dispute, Liberalism will highlight how the WTO serves as an arena for conflict resolution arising from the interpretation and application of international trade laws, facilitating cooperation by adjudicating issues based on an agreed legal framework. This dispute underscores the tension between trade liberalization and environmental protection, two goals that are

increasingly at odds in the context of global trade disputes. Indonesia's rationale for banning nickel exports, based on the goals of environmental sustainability and economic self-sufficiency, raises important questions about how WTO rules accommodate-or fail to accommodate-national policies aimed at sustainable development. The efficacy of the WTO dispute settlement mechanism in addressing these diverse issues is the main focus of this study, which provides insights into the WTO's capacity to mediate between trade liberalization and the protection of environmental and economic interests.

International Trade Theory

Schmitthoff defines trade law as "the body of rules governing commercial relationships of a private law nature involving different nations". From this definition, the following elements can be seen (Adolf, 2004):

1. International trade law is a set of rules that regulate commercial relations which are civil law in nature.
2. These legal rules regulate transactions in different countries.

Schmitthoff emphasized that the area of international trade law is not included in the rules. Another important note is the relationship between international trade law and other laws related to international trade. At the beginning of this article, the broad scope of international trade law can be seen. The breadth of the coverage area makes it difficult for what is studied not to overlap with other fields, such as international economic law, international business transaction law, international commercial law, and others.

The definition of international trade law according to Michelle Sanson, a scholar from Australia is: "... the regulation of the conduct of parties involved in the exchange of goods, services, and technology between nations" (Dr. Serlika Aprita, 2019). Sanson said that this area of law is regulation of the conduct of parties, as well as laws that regulate trade behavior between countries.

One area of economic activity that has grown quickly recently is international trade. The increasing volume of capital, labor, and goods traded across nations indicates that global interest in international commerce is growing. Due to the cross-border nature of economic ties, international trade law has a very broad application. Countries or legal entities are eager to engage in international commercial transactions for a variety of reasons. The reality is that commerce on a global scale has emerged as the primary means

by which nations attain prosperity, strength, and prosperity. The emergence of international trade laws can be attributed mostly to the growing number of bilateral, regional, and multilateral international agreements that are being negotiated. This stage, in particular, became prominent following the end of World War II. The 1947 founding of the GATT was one of the multilateral agreements made during this time.

Trade disputes between countries or international trade are commonplace in carrying out their activities. With this, each WTO member country can choose to bring its dispute into the WTO dispute resolution system, because the WTO provides a legal framework that has been regulated in GATT 1994 to resolve disputes fairly and objectively. As is the case in the dispute regarding the termination of nickel ore exports. Because there are no specific regulations governing the cessation of nickel ore exports, this action could become the subject of debate and trade disputes if other countries feel that this action violates existing bilateral or multilateral trade agreements. If there is a dispute involving stopping nickel ore exports between WTO member countries, the country can use the WTO settlement system to find a solution. The WTO dispute resolution process involves consultation, mediation if necessary, and the establishment of a dispute resolution panel to assess whether the action violates WTO trade rules.

The Elements of Legalization

One aspect that determines the effectiveness of an international agreement according to Kenneth W. Abbot is legalization. Defined as the degree to which rules are obligatory, the precision of those rules, and the delegation of some functions of interpretation, monitoring, and implementation to a third party. Legalization is a series of characteristics possessed by an institution. These characteristics are defined in three dimensions such as obligation, complicity, and delegation (International Organization, 2000).

- a. Obligations, meaning a country is linked by a set of rules or commitments. Legally related to a commitment or rule in the sense that it is subject to supervision based on general rules, procedures and discourse of international law or domestic law.
- b. Precision means that the rules clearly define the actions they require, permit, or even prohibit.
- c. Delegation, means that a third party has been given the authority to implement, interpret and apply the rules to resolve disputes and create further rules.

Legalization increases law enforcement capacity. Tough legal commitment. Which have been interpreted and applied by arbitration or judicial institutions such as the WTO (Goldstein, 2001). Because legal review allows accusations and defenses to be tested based on applicable standards and procedures. International law said to have a high level of legalization if the three legalizations (bond, precision, and delegation) or the bond and delegation aspects are high. Vice versa, if these three legalizations are low then the legalization of international law will also be low. However, these three aspects cannot be used as a single unit that determines the form of legislation because each aspect of legalization has a level, both low and high, independently. This condition is what Abbot calls "The dimension of legislation". From there, it ultimately gives rise to the effect of the implementation process of international law which has a high level of commitment, precision and delegation, but the element of delegation is low, and there is also legalization where these three aspects are low/weak.

In trade issues, the WTO adopted GATT 1994 as a legal source. GATT 1994 has high legality and requires all WTO member countries to comply with GATT 1994. Every member country is required to comply with GATT 1994 because GATT 1994 has the characteristics of high legality in the sense of having clear obligations, precision and delegation so that it is considered to have high legality. In the case of the dispute regarding the termination of nickel exports carried out by Indonesia, the panel concluded that Indonesia lost the WTO trial because it did not comply with the 1994 GATT.

D. Hypothesis

Based on the background and theory that has been explained, I hypothesize that the reasons causing Indonesia to lose in the WTO dispute trial with the European Union are:

1. Indonesia has violated Article XI:1 GATT 1994.
2. Indonesia can not show relevant evidence in accordance with Article XI:2 (a) GATT 1994.
3. Indonesia failed to show that the export ban fell within the scope of Article XX (d) GATT 1994.

E. Methodology

In writing this research, the methods used are as follows:

1. Type of Research

The writer uses descriptive research in analyzing the causes of Indonesia's lost with the European Union over the lawsuit to stop nickel exports at the WTO trial with the theory of liberalism. The descriptive method is used to describe, illustrate, and analyze an object of the problem being studied using the author's point of view based on secondary studies of various reading materials such as books, journals, writings, readings that are in accordance with what the researcher will examine (Rusandi, 2021).

2. Type of Data

The type of data that the writer will use will be obtained through literature studies, data collection, analysis of official documents, and literature relevant to International Trade Law Theory. This secondary data will provide a strong theoretical and conceptual foundation.

3. Data Collection Technique

The data collection technique that the writer will use is the library research method, where the writer will obtain and manage data sourced from laws and regulations, books, official documents, publications, research results, and other related literature. The use of literature sources will ensure the accuracy and sustainability of the information.

4. Data Analysis

Data analysis is carried out in a qualitative descriptive manner, where general conclusions are reached based on particular facts about the subject matter under investigation, and the research results are presented in the form of explanations and descriptions of language that are simple to read and understand to be interpreted.

F. Scope Of Research

This research is focused on the causes of Indonesia's lost of the European Union's lawsuit to stop nickel exports based on the theory of liberalism. This research will delve in-depth into the WTO provisions that have been violated by Indonesia, causing it to lose the dispute over the suspension of Indonesia's nickel exports.

G. Writing System

In order to facilitate the writing carried out by the writer, this writing will be divided into five chapters in the following order:

CHAPTER I

In the first chapter, the background of the problem, research question, theoretical framework, hypothesis, methodology, scope of research, and writing systematics will be described. This chapter will provide a comprehensive overview for an initial understanding of the research topic.

CHAPTER II

The second chapter will discuss Indonesia and its nickel downstream policy which caused a nickel dispute with the European Union. After that, the chapter will elaborate on the response from the European Union regarding the termination of Indonesian Nickel exports to the European Union which ended up on the WTO dispute hearing table and the cause of Indonesia's lost in the WTO dispute hearing.

CHAPTER III

The third chapter will be the closing chapter that summarizes the conclusions of the entire research as well as recommendations related to Indonesia's lost in the EU lawsuit through the WTO dispute hearing related to the nickel export suspension policy.