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## The Indonesian Government's Dilemma between National Law and International Law in the Nickel Dispute

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### Abstract

*Indonesia possesses the world's largest nickel reserves, estimated at around 21 million tonnes or approximately 30% of total global reserves, positioning nickel as both a strategic national asset and a crucial instrument in international economic relations. Recognising its importance, the Indonesian government introduced a down streaming policy by prohibiting raw nickel ore exports beginning in 2019. This measure is designed to increase domestic value-added production, enhance economic sovereignty, and fulfil the constitutional mandate of Article 33 of the 1945 Constitution. Employing a normative juridical method with legislative, conceptual, and case approaches, this study examines the conflict between Indonesia's domestic legal framework and international trade law in the context of the nickel dispute at the World Trade Organization (WTO). The analysis reveals that while the down streaming policy has yielded significant benefits, such as higher exports of processed products and increased state revenues, Indonesia also faces challenges following the European Union's successful claim at the WTO. The export ban was deemed to contravene Article 11 of GATT 1994. This dispute underscores the dilemma between sovereign rights over natural resource management and compliance with international trade obligations. The study concludes that reconciling sovereignty with international commitments requires harmonisation through legal, economic, and diplomatic strategies.*

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## INTRODUCTION

Indonesia is known as one of the countries with the largest natural resources in the world, including nickel, which is currently a strategic commodity in supporting the global energy transition (Simatupang & Wulandari, 2024). Nickel is an important raw material in the manufacture of electric vehicle batteries, for which demand continues to rise in line with the global decarbonization agenda (Nugraha et al., 2024; Arif, 2023; Harinowo & Khaidir, 2022). This makes nickel not only highly valuable economically, but also gives it a geopolitical dimension that determines a country's bargaining position in the global arena.

As the owner of the largest nickel reserves, Indonesia is seeking to capitalize on this potential through hilirisasi policies as outlined in 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 Operations (Riedho, 2024). This policy prohibits the export of raw nickel ore with the aim of processing these resources domestically, thereby adding value, promoting industrialization, and

strengthening national economic independence (Atiyah, 2023). Hilirisation is seen as a strategic step to break away from dependence as an exporter of low-value raw materials.

However, this national policy has had consequences in the realm of international trade. The European Union, as one of the consumers of nickel, has filed a complaint against Indonesia with the World Trade Organization (WTO), arguing that the ban on nickel ore exports violates the General Agreement on Tariffs and Trade (GATT) 1994, specifically Article 11 on quantitative restrictions (World Trade Organization, 2022). This lawsuit highlights the tension between Indonesia's national interest in maintaining its economic sovereignty and its international obligations arising from its membership in the WTO.

The WTO panel's ruling in favor of the European Union highlights the dilemma faced by Indonesia. On the one hand, Indonesia has sovereign rights over the management of its natural resources as mandated by its constitution. However, on the other hand, as a member of the WTO, Indonesia is bound by international trade rules that restrict protectionist policies. This situation raises fundamental questions about the extent to which a country has the right to prioritize national legal sovereignty when faced with a binding international legal regime.

This issue is further complicated by concerns over the sustainability of Indonesia's nickel reserves, which are expected to be depleted within a certain period of time. The government believes that down streaming policies are necessary to protect the long-term interests of the nation by striking a balance between the exploitation of natural resources and sustainable economic development (Manurung, 2024). However, these measures are viewed as barriers to trade by Indonesia's international partners. Thus, Indonesia is at a crossroads between maintaining national sovereignty and complying with the demands of global trade liberalization.

A number of studies have examined the issue of nickel down streaming in Indonesia and the dispute at the WTO throughout 2020-2024, generally focusing on legal and economic dimensions. Legally, previous studies have largely concluded that the nickel ore export ban policy violates the provisions of Article XI of the 1994 GATT and highlight the weaknesses in Indonesia's arguments in utilizing the exceptions in Article XX of the GATT. This analysis has provided a strong understanding of the normative incompatibility between national policy and the global trading regime (Zampara Mernissi et al., 2023; Pandyaswargo et al., 2021). Meanwhile, from an economic perspective, several studies highlight the success of the down streaming policy in increasing the value of nickel exports and attracting downstream investment (Nurrahayu Prasetyani et al., 2024; Tangkudung & Kaseger, 2024; Santoso et al., 2023). The advantage of these studies is that they successfully dissect the WTO provisions that have been violated and provide preliminary empirical data on the positive impacts of down streaming. However, the shortcoming of the majority of previous studies is that they tend to focus on the formal normative outcomes of the WTO (win/lose) and have not fully explored the philosophical conflict between permanent sovereignty over natural resources (Gümplová, 2020) and the primacy of international law (Techet, 2021) as a dilemma that requires long-term strategic solutions for developing countries. Previous studies often stop at the conclusion of a conflict of norms and have not fully formulated adaptive legal and diplomatic strategies, such as the optimization of progressive export tariffs and arguments for special and differential

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treatment, as a middle ground (point of balance) between global compliance and the constitutional interests of Article 33 of the 1945 Constitution.

The novelty of this research lies in its in-depth analysis of philosophical-conceptual legal conflicts (dilemmas) and the formulation of specific, pragmatic legal-policy alternatives that are compatible with the WTO framework to maintain national economic sovereignty without becoming isolated from the global trading system.

Based on the above description, it can be understood that the nickel dispute at the WTO is not merely a technical trade issue, but reflects the major dilemma faced by Indonesia in managing its strategic resources. This study aims to analyze the dilemmas experienced by the Indonesian government in upholding national law while fulfilling its international obligations, as well as to find a middle ground between state sovereignty and the global trade regime. Thus, this study is expected to contribute academically to the understanding of the relationship between national law, state sovereignty, and international trade law.

## **METHODOLOGY**

This study uses a normative legal method with a qualitative juridical approach (Soekanto & Mamudji, 2011; Marzuki, 2006). The normative legal method was chosen because the focus of the study is to examine the legal norms governing international trade and national natural resource management in the context of the nickel dispute between Indonesia and the European Union at the WTO. The approaches used include a statute approach to analyse the provisions of GATT-WTO, the Agreement on Subsidies and Countervailing Measures (ASCM), and national legislation such as the Minerba Law and Minister of Energy and Mineral Resources Regulation No. 11 of 2019. In addition, a conceptual approach is used to understand the concepts of state sovereignty, economic sovereignty, and the principle of international trade liberalisation, as well as a case approach by examining Indonesia's nickel ore export ban dispute at the WTO (Irwansyah, 2020).

The legal sources used consisted of primary legal materials in the form of international legal instruments and national legislation, secondary legal materials in the form of literature, books, scientific articles, and expert opinions, and tertiary legal materials in the form of legal dictionaries and encyclopaedias. The analysis technique used is descriptive-qualitative analysis (Irwansyah, 2020), which involves describing, interpreting, and connecting national and international legal norms to find points of intersection and contradictions that create a dilemma for Indonesia. With this approach, this study is expected to provide a comprehensive understanding of how the Indonesian government maintains national legal sovereignty in the international trade regime regulated by the WTO.

## **RESULTS AND DISCUSSION**

### **A. Nickel as a National Strategic Resource**

Indonesia is the country with the largest nickel reserves in the world, amounting to approximately 21 million metric tonnes or 30% of total global reserves, on par with Australia, which contributes 21% of the world's reserves. Data from the United States Geological Survey (USGS) in 2022 shows that Indonesia is also the largest nickel producer with a total production

of 1.6 million metric tonnes, or 48.48% of global production, which reached 3.3 million metric tonnes (Sutrisno, 2023). This dominance places Indonesia in a strategic position in the global economic arena, particularly in the context of the energy transition towards the use of electric vehicles (Gultom et al., 2024). This position makes nickel one of the strategic mineral resources for national development as well as an important instrument in the international economic arena (Simatupang & Wulandari, 2024). Nickel is not just a trading commodity, but has become a strategic commodity directly related to the global energy transition agenda. This can be seen from the increasing global demand, especially for the electric vehicle (EV) battery industry, which is now seen as a future transportation solution in reducing carbon emissions and dependence on fossil fuels (Barizi & Triarda, 2023).

Nickel ore has unique physical properties, namely a hard, silvery-white metal with a slight golden tinge. This metal is strong, dense, heat-resistant, and corrosion-resistant. In addition, nickel is a good conductor of electricity and heat, and is one of the four main ferromagnetic metals, meaning it can be magnetised at room temperature. These characteristics make nickel highly valuable in various applications, ranging from the stainless-steel industry and electronic components to the main material for manufacturing lithium batteries for electric vehicles. Therefore, nickel is considered a green metal that supports clean energy innovation and the green economy (Rylski & Siczek, 2025; Ahangari et al., 2024; Kang et al., 2023).

Empirically, production data shows a significant upward trend over the past three years. According to data from the Central Statistics Agency (BPS), Indonesia's nickel ore production in 2021 was recorded at 65.5 million tonnes, increasing to 98.1 million tonnes in 2022, and surging to 137.8 million tonnes in 2023. Thus, there was an increase of 49.88% in 2021–2022, 40.35% in 2022–2023, and if calculated from 2021–2023, the total increase reached 110.33% (Publikasi Statistik Pertambangan Non Minyak dan Gas Bumi, 2025).

**Table 1:** Indonesian Mineral Mining Production Data for 2021–2023

<b>Types of Mines</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Coal</b>	614.058.577	687.402.285	775.183.592
<b>Bauxite</b>	25.781.187	28.808.674	9.889.569
<b>Nickel</b>	-	-	-
<b>Gold</b>	78.996	85.203	82.972
<b>Silver</b>	-	-	-
<b>Granite</b>	-	-	-
<b>Iron Sand</b>	-	-	-
<b>Tin Concentrate</b>	52.467	57.735	67.625
<b>Copper Concentrate</b>	3.377.023	3.321.239	3.999.565
<b>Nickel Ore</b>	65.509.854	98.187.963	137.801.372

**Source:** (Publikasi Statistik Pertambangan Non Minyak dan Gas Bumi, 2025)

The above data is reinforced by records from the United States Geological Survey (USGS), which state that Indonesia's nickel production in 2021 reached 1 million metric tonnes, or 37% of the global total production of 2.7 million metric tonnes. This figure represents

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a sharp increase compared to 2020, which was only 771,000 metric tonnes (Sugito, 2023). This fact confirms Indonesia's dominance in the global nickel market, while also demonstrating the extent to which industrialised countries depend on nickel supplies from Indonesia. It is not surprising that developed countries, including the European Union and China, have a strong interest in the stability of nickel supplies from Indonesia (Putra, 2024). However, despite Indonesia's vast nickel reserves, not all production is directed towards high-tech industries. Currently, only a small number of companies, such as the Harita Group in Kawasi, South Halmahera, North Maluku, produce nickel for lithium battery raw materials. Most companies are still oriented towards second-grade production for the steel industry (Myllyvirta et al., 2024). Therefore, the downstreaming policy that began in 2019 aims to shift the paradigm from raw material exports to domestic processing. This policy is not only to increase economic added value but also to strengthen Indonesia's position in the global supply chain of the electric vehicle industry.

From a normative legal perspective, this policy has a strong basis in Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people (Elvis, 2024). Thus, nickel management is not only seen as an economic issue, but also as a constitutional obligation of the state to ensure that natural resources are used for the benefit of the Indonesian people. Therefore, nickel's position as a strategic commodity places Indonesia at an important crossroads between national interests, legal sovereignty, and global trade dynamics.

The implementation of state control over mineral resources is further regulated in Law No. 4 of 2009 concerning Mineral and Coal Mining and its amendments. This regulation emphasises the government's obligation to optimise the management of natural resources through policies oriented towards national added value. One such policy is down streaming, which is implemented by prohibiting the export of raw nickel ore as stipulated in Minister of Energy and Mineral Resources Regulation No. 11 of 2019. With this policy, the government is not only seeking to strengthen the national industrial base, but also striving to reduce dependence on raw material exports, which have been less than beneficial to the economy.

The nickel down streaming policy can be understood as the embodiment of the theory of state sovereignty over natural resources, which has developed in international law since United Nations General Assembly Resolution No. 1803 of 1962 (Gümplová, 2020). This theory asserts that every country has full and sovereign rights to regulate, manage, and utilise natural resources within its territory in accordance with national interests. Thus, Indonesia's move to restrict exports of raw nickel ore and encourage domestic processing is a concrete form of exercising state sovereignty in managing strategic mineral resources.

Indonesia's policy has given rise to international legal dynamics when faced with a lawsuit from the European Union at the WTO. Although Indonesia adheres to the argument of national sovereignty, the WTO considers that the ban on nickel ore exports is contrary to the General Agreement on Tariffs and Trade (GATT) 1994. This confirms the conflict between national law based on Article 33 of the 1945 Constitution and the principle of sovereignty over natural resources with the international trade legal regime that promotes liberalisation and non-discrimination. This conflict is in line with Hans Kelsen's thinking on the theory of the

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hierarchy of norms, in which international law and national law often find themselves in conflicting positions (Veriero Siregar, 2024).

According to John Austin's thinking on legal sovereignty and Hans Kelsen's thinking on the primacy of international law, these can be used as a reference for analysis. Austin emphasises that law is the command of a sovereign ruler, so that downstreaming policies reflect the state's authority to protect the interests of its people (Fauzani et al., 2021). However, Kelsen, through his Grundnorm theory, places international law as a system of norms that binds states, including Indonesia as a member of the WTO (Ardiansyah, 2021). These differing views highlight Indonesia's dilemma, where efforts to maintain economic sovereignty through nickel management must be carried out while still considering its obligations under the international trade law regime. Thus, nickel is not only an economic commodity, but also the locus of a conceptual battle between national law and international law.

## **B. Down streaming Policy and Conflict with the WTO**

The down streaming policy pursued by the Indonesian government through Minister of Energy and Mineral Resources Regulation No. 11 of 2019 is a strategic step in strengthening national economic independence. The essence of this policy is to prohibit the export of raw nickel ore so that processing is carried out domestically, thereby allowing Indonesia to directly enjoy the added value (Wijaya et al., 2021). From a national legal perspective, this policy is in line with the mandate of Article 33 of the 1945 Constitution, which requires the state to control and manage natural resources for the prosperity of the people. Thus, from a domestic legal perspective, the nickel down streaming policy has strong legitimacy as a form of state control over strategic mineral resources.

However, this policy conflicts with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994, which forms the legal basis for international trade within the framework of the World Trade Organisation (WTO). Article 11(1) of GATT prohibits all forms of quantitative restrictions, including export bans, except under certain conditions that are strictly regulated. Within the framework of international law, restrictions can only be imposed in the form of transparent tariffs, not in the form of absolute export bans. Therefore, the European Union views Indonesia's down streaming policy as an action that contradicts the principle of free trade, which is the spirit of GATT-WTO.

From a conceptual perspective, this difference reflects the clash between the theory of state sovereignty over natural resources and the principle of international trade liberalisation. The theory of sovereignty places the state as the sole owner of the right to determine its natural resource management policies (Azikin, 2023). Conversely, the principle of trade liberalisation emphasises market openness, the most-favoured nation (MFN) principle, and non-discrimination among WTO members. It is this conceptual battle that has caused Indonesia's downstreaming policy to face global resistance as it is considered to hinder the smooth flow of trade and reduce other countries' access to strategic raw materials.

In international legal practice, the WTO panel ultimately ruled in favour of the European Union's claim on the grounds that Indonesia could not prove a legitimate justification for imposing export bans (Hassanah, 2021). The panel rejected Indonesia's arguments referring to the exceptions in Article 11(2) and Article 20 of the GATT because they did not meet the

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criteria of emergency or vital needs that would allow quantitative restrictions (Holil & Tjokorda Istri Diah Widyantari Pradnya Dewi, 2024). This ruling highlights Indonesia's weak bargaining position in international forums, while also demonstrating that the global trade legal regime prioritises the principle of market openness over respect for domestic economic policies.

According to Hans Kelsen's thinking on the hierarchy of legal norms, international law is often placed above national law in the context of inter-state relations (Veriero Siregar, 2024). However, H.L.A. Hart's theory of the rule of recognition is also relevant to understanding this dilemma. Hart emphasises that the validity of law is not only determined by higher norms, but also by social and political acceptance of those norms within a legal system (Morrison, 2021). Thus, Indonesia's down streaming policy, although considered a violation of GATT-WTO, remains legally valid under national law because it has constitutional legitimacy. This conflict highlights a fundamental dilemma: the state wants to maintain national legal sovereignty, but at the same time is bound by international legal obligations that limit its room for manoeuvre.

### **C. The Dilemma Between National Sovereignty and International Obligations**

The WTO panel ruling in favour of the European Union has placed Indonesia in a dilemma. As a sovereign state, Indonesia adheres to the constitutional principle of Article 33 of the 1945 Constitution, which mandates the state to control and utilise natural resources for the prosperity of the people. On this basis, the nickel down streaming policy is considered legally valid under national law as a long-term development strategy. However, Indonesia's membership in the WTO also creates international legal obligations that limit the scope of national policy, particularly with regard to trade protectionism.

This dilemma arises because there is a conflict between national regulations, such as Minister of Energy and Mineral Resources Regulation No. 11 of 2019, and international provisions in the GATT-WTO. National law emphasises sovereignty over natural resources, while international law promotes market openness and prohibits quantitative restrictions. The disharmony between these norms gives rise to normative conflicts that are difficult to avoid, especially since the WTO has a dispute settlement mechanism that is binding on all its members.

Conceptually, this dilemma can be explained through the theory of permanent sovereignty over natural resources, which affirms the full rights of states over their natural resources (Gümplová, 2020). However, this theory conflicts with the doctrine of international trade liberalisation, which forms the basis of the WTO. This contradiction highlights the tension between state sovereignty and international obligations. Indonesia wants to maintain the sustainability of its nickel reserves as a strategic national asset, but this move is considered a violation of the most-favoured nation (MFN) and non-discrimination principles of the WTO.

According to Hans Kelsen's view on the primacy of international law, Kelsen argues that the international legal system is above national law in relations between states, so that conflicts of norms should be resolved by giving priority to international law (Veriero Siregar, 2024). Conversely, Carl Schmitt's thinking is relevant to assert Indonesia's position, as Schmitt emphasises that sovereignty is the highest decision of the state in maintaining its existence, even when faced with external pressure (Ayuni, 2024). Thus, the debate over Indonesia's

dilemma is also a philosophical debate about whether the state should submit completely to the global regime or maintain its domestic sovereignty.

The dilemma between national sovereignty and international obligations experienced by Indonesia in the nickel case reflects a major challenge for developing countries in the era of legal globalisation. On the one hand, countries must open themselves up so as not to be isolated from the world trading system. However, on the other hand, countries also have an interest in maintaining control over their strategic resources for the sake of national economic sustainability. This situation requires Indonesia to strengthen its legal and international diplomacy strategies so that national interests are maintained without completely losing space in the global trade regime.

#### **D. Justification and Defence Efforts by Indonesia**

Facing a lawsuit from the European Union at the WTO, Indonesia argued that the policy to ban nickel ore exports was not merely a protectionist measure, but rather a strategy to preserve limited natural resources. The government considers nickel to be a strategic commodity whose availability is declining, and therefore needs to be managed carefully in the interests of sustainable development. This argument is in line with the constitutional principle of Article 33 of the 1945 Constitution and the theory of permanent sovereignty over natural resources, which recognises the full right of states to regulate the management of their natural resources.

Normatively, Indonesia's defence refers to Article 11(2) of the GATT, which provides an exception to the prohibition of quantitative restrictions if they are implemented to prevent critical shortages of foodstuffs or other essential products. In addition, Article 20 of the GATT also regulates general exceptions that allow member countries to take certain actions for reasons of public morals, human health, conservation of non-renewable natural resources, and price stabilisation. On this basis, Indonesia seeks to justify its nickel down streaming policy as a legitimate measure to protect national reserves while supporting the global energy transition agenda.

However, the WTO panel rejected Indonesia's argument on the grounds that the conditions proposed did not meet the criteria for exceptions as stipulated in the GATT. According to the panel, Indonesia failed to prove the existence of a compelling emergency or supply crisis that could be used as a basis for a total export ban. In other words, Indonesia's policy was considered more protectionist than a national rescue measure. This ruling shows that the WTO dispute settlement system places greater emphasis on trade liberalisation than on full recognition of the economic sovereignty of member states.

From a legal theory perspective, Indonesia's defence can be understood through the lens of Carl Schmitt, who asserts that sovereignty lies in the state's ability to make the highest decisions to protect its interests, even when those decisions conflict with the international legal regime. However, Indonesia's weak bargaining position in the WTO highlights the relevance of Hans Kelsen's theory, which places international law as a norm above national law in relations between states. Thus, this dilemma not only concerns formal legal aspects but also reflects a shift in the balance of power in global trade governance.

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This situation shows that Indonesia needs to strengthen its legal and diplomatic strategies in dealing with international disputes. Policy alternatives that are more in line with the WTO framework, such as the application of progressive tariffs on nickel ore exports or temporary restrictions justified by a supply crisis, could be more legally defensible options. In addition, Indonesia must develop more solid legal arguments by invoking the principle of special and differential treatment recognised for developing countries. With this strategy, Indonesia can not only maintain its economic sovereignty, but also negotiate more flexible policy space within the international trade regime.

#### **E. Implications for Indonesia's Economic Sovereignty**

Indonesia's defeat in the nickel dispute at the WTO has significant implications for national economic sovereignty. The WTO ruling shows that the state's freedom to regulate natural resources is not entirely unrestricted, but is limited by binding international trade rules. This shows that although the 1945 Constitution mandates the state to control natural resources for the prosperity of the people, in practice this sovereignty is confronted by a global regime that demands market openness and rejects protectionism.

On the one hand, the down streaming policy has had a tangible positive impact on the national economy. Data shows that Indonesia's export revenue increased sharply after the nickel ore export ban was implemented, with the value of exports jumping from around USD 3 billion to more than USD 30 billion. This increase confirms that down streaming is an important instrument for freeing Indonesia from its dependence as an exporter of low value-added raw materials. Thus, down streaming has proven to be consistent with the long-term development strategy and vision of national economic independence (Tangkudung & Kaseger, 2024).

However, on the other hand, pressure from international trading partners has the potential to weaken Indonesia's economic sovereignty. The WTO ruling could be used as a precedent by other countries to oppose similar policies in the future, thereby narrowing Indonesia's policy space. This situation risks placing Indonesia in a vulnerable position, where domestic interests must be compromised in order to comply with international law. Therefore, strengthening legal arguments and diplomatic strategies is key to maintaining a balance between national sovereignty and global engagement.

Another implication that needs to be considered is the need to formulate alternative policies that are more compatible with WTO provisions. One solution that can be pursued is to impose progressive export tariffs, which are normatively more acceptable within the GATT framework than a total export ban. In addition, Indonesia can seek bilateral and multilateral cooperation in the form of joint investment, so that down streaming policies are not only seen as a barrier to trade, but also as an opportunity for mutually beneficial economic collaboration.

Thus, the implications of Indonesia's defeat in the nickel dispute at the WTO are not limited to legal losses, but also raise awareness that economic sovereignty must be maintained through adaptive and intelligent strategies. Indonesia needs to build a strong downstream industry, strengthen its national legal framework, and expand its economic diplomacy to create more flexible policy space. This step will ensure that strategic resources such as nickel can continue to be managed for the greatest prosperity of the people, without completely losing its position in the global trading system.

## **F. Finding the Equilibrium Point**

The nickel dispute between Indonesia and the European Union reflects the fundamental challenges faced by developing countries in balancing national sovereignty and international obligations. On the one hand, Indonesia seeks to preserve its strategic natural resource reserves to support long-term development through down streaming policies. On the other hand, its adherence to the international legal regime, particularly the WTO, limits the country's room for manoeuvre with the principles of liberalisation and non-discrimination. This situation creates conceptual and practical dilemmas that require a balanced policy strategy.

A balance can be found by formulating policies that are economically pragmatic but legally defensive. This means that any protectionist measures taken by Indonesia must have a strong international legal basis so that they cannot be easily overturned in dispute settlement forums. In this case, the exception stipulated in Article 20 of the GATT regarding the conservation of non-renewable natural resources can be used as a basis for arguing in favour of maintaining the down streaming policy. Thus, national policy is not merely positioned as a form of protectionism, but as a legally valid sustainable development strategy.

In addition to strengthening the legal basis, international diplomacy is also an important instrument in maintaining balance. Indonesia needs to establish intensive communication and negotiations with its main trading partners, including the European Union, to create an understanding that nickel down streaming is not merely a trade barrier, but a step towards long-term global supply stability. Through bilateral and multilateral mechanisms, Indonesia can change its bargaining position from being merely an exporter of raw materials to a strategic partner in the global electric vehicle industry supply chain.

From a legal perspective, the balance also requires harmonisation between national and international law. By strengthening the domestic legal framework governing mineral resource management, Indonesia can demonstrate policy consistency based on the constitutional mandate of Article 33 of the 1945 Constitution. At the same time, Indonesia must utilise international legal instruments that allow flexibility for developing countries, such as the principle of special and differential treatment in the WTO. This dual strategy allows Indonesia to maintain the legitimacy of its down streaming policy without deviating from its international commitments.

Thus, a balance can only be achieved if Indonesia is able to synergise domestic interests and international obligations through integrated legal, diplomatic and industrial development strategies. Nickel down streaming needs to be positioned not merely as an economic policy, but also as a manifestation of state sovereignty oriented towards the prosperity of the people. However, to prevent this policy from being repeatedly questioned in international forums, Indonesia must strengthen its legal arguments, improve the quality of its negotiations, and ensure active involvement in the global trading system. This balance will be key to preventing Indonesia from continually finding itself in a dilemma whenever it faces international regulations.

## **CONCLUSION AND SUGGESTION**

Indonesia faces a dilemma in maintaining national legal sovereignty over the management of strategic mineral resources, particularly nickel, amid its commitment to the

WTO international trade regime. The down streaming policy through a ban on raw nickel ore exports, as stipulated in Minister of Energy and Mineral Resources Regulation No. 11 of 2019, is an implementation of Article 33 of the 1945 Constitution and the principle of permanent sovereignty over natural resources. However, this policy is considered to violate the provisions of the General Agreement on Tariffs and Trade (GATT) 1994, particularly Article 11 on quantitative restrictions, resulting in Indonesia losing a lawsuit filed by the European Union at the WTO. This highlights the conflict between national interests in preserving nickel reserves as a sustainable development strategy and international obligations to achieve global trade liberalisation.

To resolve this dilemma, Indonesia needs to adopt more adaptive legal and policy strategies. One alternative is to replace the total export ban with progressive export tariffs in accordance with WTO provisions, as well as to strengthen the legal argument based on Article 20 of GATT regarding the conservation of non-renewable natural resources. In addition, Indonesia needs to enhance economic diplomacy with its main trading partners, accelerate the development of the domestic nickel downstream industry, and strengthen the national legal framework so that the downstream policy has stronger legitimacy in international forums. With these steps, Indonesia can maintain its economic sovereignty while continuing to play an active role in the global trading system.

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