

JAPANESE RESPONSE TO INDONESIAN LAW BANNING THE EXPORT OF RAW MINERALS

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ABSTRACT

Pemerintah Indonesia memberlakukan kebijakan yang melarang ekspor mineral mentah pada tahun 2009 yang terwujud dalam Undang-Undang No. 04 Tahun 2009 tentang Pertambangan Mineral dan Batubara. Undang-Undang tersebut mengamanatkan pemrosesan mineral mentah di dalam negeri sebelum dapat diekspor ke negara lain mulai dari tahun 2014. Kebijakan ini telah menarik tanggapan dari pemerintah Jepang sebagai salah satu negara pengimpor. Jepang telah mengancam untuk melapor kepada Organisasi Perdagangan Dunia mengenai masalah ini karena mereka mengeluhkan bahwa kebijakan tersebut melanggar Persetujuan Umum tentang Tarif dan Perdagangan. Studi ini membahas bagaimana kebijakan tersebut adalah upaya Indonesia untuk mengembangkan negaranya tanpa ada niat untuk menyakiti negara lain. Pembeneran atas berlakunya kebijakan tersebut diamanatkan di bawah UUD 1945 dan pada intinya, kebijakan tersebut tidak menyalahi Persetujuan Umum tentang Tarif dan Pertambangan. Pemberlakuan kebijakan tersebut telah mempengaruhi aktivitas ekspor mineral mentah di Indonesia di mana kegiatan ekspor mineral mentah paling tinggi pada tahun 2013 yang merupakan tahun terakhir di mana mineral mentah diizinkan untuk diekspor. Kebijakan tersebut memiliki dampak yang mungkin terjadi bagi industri pertambangan Jepang yang mengandalkan impor mineral mentah dari Indonesia dan yang memiliki investasi di industri pertambangan Indonesia. Jepang pada akhirnya membatalkan niatnya untuk melaporkan Indonesia ke Organisasi Perdagangan Dunia dan sepakat untuk menyelesaikan perselisihan tersebut melalui solusi bilateral.

Kata Kunci: Mineral Mentah, Hukum Pertambangan, Hukum Perdagangan Internasional, Indonesia, Jepang

1. Introduction

Indonesia is an archipelago united by the sea and formed on a collection of volcanoes, causing nearly the entire islands to have potential mineral resources. Indonesia is one of the exporters of different raw materials derived from natural resources, including materials such as mineral mining controlled by the state (S., 2005). The rights of state control provide the state with the authority to regulate, manage and supervise the management or exploitation of minerals, as well as the obligation to handle the minerals for the overall prosperity of the people.

Japan is one of the importing countries of raw minerals from Indonesia for decades and has been investing in Indonesia particularly in automotive, electronic goods, energy, and mining sectors. The government of Japan considered Indonesia as an important source of natural resources

including the resources from mining sectors. Indonesia is also regarded as a major market of the Japanese automotive and electronic goods (Elimin & Wariishi, 2010).

Japan is a country with relatively few natural resources and depends on other nations to fulfill majority of its supply. The country imports ores and concentrates to produce copper, lead, nickel, and zinc for its industrial production and use. Japan also imports intermediate products and refined them into other metals. Japanese trading houses, smelters and mining companies have investments all over the world and import raw materials to Japan for refinement and smelting (Clements, 2015).

In 2012, there were 2,286 mining establishments in Japan. The mining enterprises employed 21,427 people in their operations of those mining enterprises. The whole activity accounts for 215,484-million-

yen total cost of mining activity (Japan Statistic Bureau, 2017). A stable supply of raw materials to supply base-metal smelters was the objective of mining development pursued by Japanese mining and trading companies around the world, including those in Indonesia. In order to maintain its position as a globally competitive mineral processing nation, Japan plans to continue securing its long-term supply of raw material through foreign direct investment (Wacaster, 2016).

Indonesia has been exporting raw minerals of different kinds to different countries such as Japan, China, South Korea and the United States (World Integrated Trade Solution, 2017). Mining operations producing raw minerals in Indonesia must abide by the rules and regulations of Indonesia, including on the matters concerning export and foreign involvement.

In 2009, the government of Indonesia enacted Law No. 04 of the year 2009 (“**Law 04/2009**”) on Mineral and Coal Mining, or often regarded as Indonesian new mining law by other countries. The Law 04/2009 was enacted to revise the old mining law, Law 11/1967 which is deemed outdated for the current conditions of Indonesia. The revised law bans the export of raw minerals no later than 5 (five) years.

The Background of the Enactment of Law Banning the Export of Raw Minerals

Minerals and coal are non-renewable natural resources controlled by the state. According to the 1945 Constitution of the State of the Republic of Indonesia (“**1945 Constitution**”), the management of the resources should add value to the national economy in order to achieve prosperity and welfare for the people. Thus, the management of mineral and coal shall be based on the principle of benefit, justice and balance, as well as alignments to the interests of the nation. One of the reasons

behind the banning of export of raw minerals is to encourage adding value to the raw minerals through the establishment of smelters inside the country. In order to add value to the minerals and coal, the resources shall be processed and refined, and the activity must be controlled by the state (Ministry of Energy and Mineral Resources, n.d.).

Before the law was enacted, the mining industries in Indonesia have explored and export raw minerals from Indonesian territory since the colonial time. The mining exploitation continued up to recent years without giving enough attention for sustainability and environmental development by intensely exploiting the raw minerals. This kind of practice contributed little to the Indonesian economy in general especially to the conservation of the environment (Ministry of Trade, 2014). Mining businesses can also take up huge profits simply by exporting raw minerals without processing.

The government of Indonesia has long considered limiting the export of raw minerals and was finally materialized under Law 04/2009. The law makes a new paradigm in the mineral mining management in the country. It adheres to the principle of the constitution which prescribes that the natural resources of the state shall be used for the wealth of its own people. This policy of banning the export of raw minerals also supports the *Rencana Pembangunan Jangka Panjang Nasional* (RPJPN) or the National Long-Term Plan. This document of development planning is a form of explanation of the purpose of the establishment of the government of Indonesia listed in the Preamble of the 1945 Constitution.

RPJPN of the year 2005 – 2025 states about the direction of the long-term development for the nation on various fields including the development of natural

resources and the environment. The utilization of natural resources and the environment is directed at increasing the value added of natural resources products while still emphasizing on the maintenance of natural resources. It is also directed to build sustainability for all sectors.

The RPJPN also states about the management of minerals and energy resources that should be directed not to be consumed directly but used for production processes that can produce optimal added value domestically. The procedure of processing and refining raw minerals inside the country is a realization to the requirement. In order to foster sustainable development, the natural resources should be maintained and utilized to continue building the added value and competitiveness of the nation. Thus, the effort of the government to increase the added value of raw minerals by enacting Law 04/2009 is all in line with the development plan.

Law 04/2009 on Mineral and Coal and other following regulations that has been discussed in the previous sections are enacted with the background as follows:

1. State sovereignty in mining
2. Legal and political rights to conduct governance over mining sector
3. Sustainable and environmental development of the mining sector
4. Added value and competitiveness of mining products (Ministry of Trade, 2016)

One of the background of the issuance law banning the export of raw minerals, as pointed out above, addresses on the state sovereignty in mining. State sovereignty is the constitutional rights for the people of Indonesia which is universally applicable for other nations. The sovereignty gives the rights to manage and exploit all natural resources in Indonesia which includes the mining sector. This is done in

the utmost desire to reach and serve the interests of the welfare of the people of Indonesia (Ministry of Trade, 2016).

Throughout the history of Indonesian mining regulatory framework, it seemed that the mining regulations are arranged within the rights of state control, resource nationalism and anti-imperialism (Devi & Prayogo, 2013). The rights of state control are reflected in the 1945 Constitution and the idea of resource nationalism is driven by the intention of the state to protect its national interests.

The 1945 Constitution sets guidelines for the state administration and it is the principle that forms the basis for other rules and regulations of the country. The constitution provides the basic concept of control by the state in the management of mining sectors in Indonesia. Article 33, paragraph 3 of the 1945 Constitution states, "*Soil and water and natural wealth contained therein shall be controlled by the state and used for the welfare of the people to the utmost.*" The 1945 Constitution gives the right to the state to control the earth and the natural resources contained within for the prosperity of the people of Indonesia.

The rights of state control as stated in Article 33 of the 1945 Constitution positions the state as regulator and guarantor of the welfare of the people. The function of the state cannot be separated from one another. This gives a line of business of natural resources to private sector that should be accompanied by other forms of regulation and supervision by the state. Thus, the obligation to realize the utmost prosperity of the people is still controlled by the state (Mawuntu, 2012). The rights of state control also justify the state in exploiting natural resources associated with public utilities and public services on the basis of consideration for the general welfare and the welfare of the people. Natural resources referred to in this context

is on mining specifically the minerals and coal.

The background also refers to the legal and political rights of Indonesia to conduct governance over mining sector. The governance in mining sector is the will of the people of Indonesia conveyed through their representatives in the House of Representatives to be formulated into legislation. This is done in order to ensure that the implementation of the policies in the mining sector will be run in proper, order, transparent, effective and efficient manner. Such implementation is in the hope to create good governance over the mining sector in order to give a positive impact on the national economy (Ministry of Trade, 2016).

Another point regarding the background of the issuance of the law is about the concern over sustainable and environmental development of the mining sector. Indonesia is a country which is rich in potential mineral resources. However, the natural resources have not been used optimally for the capacity of national development and instead to support the industrial development of other countries. Non-renewable natural resources, such as minerals and energy resources are to be managed and utilized by finding alternative sources and more environmental friendly substitutes. Therefore, the development in the mining sector should be managed in a good, effective and efficient manner, as well as to satisfy sustainable development. The policy development in the mining sector also aims to prevent overexploitation in the mining sector that could possibly damage and harm the environment.

Lastly, the government of Indonesia also aims to produce added value and competitive mining products. There is a need to set a comprehensive program for the development of downstream industries on the basis of added value and competitiveness of mining products. One of the government

policies supporting this program is through the establishment of the policy which bans the export of raw minerals and the export controls of the mining products which has meet the minimum level of processing and refining (Ministry of Trade, 2016).

Table 1
 The Export Volume of Metallic Mineral in Indonesia
 Source: *Badan Pusat Statistik* (processed by Ministry of Trade, 2016)

Mining Products	Volume (million ton)						Trend (%)	Change (%)	
	2011	2012	2013	2014	2015	January – September			
						2015	2016	11-15	16/15
Metallic Mineral	97.3	90.0	145.8	10.2	4.9	3.7	4.4	-55.73	19.25

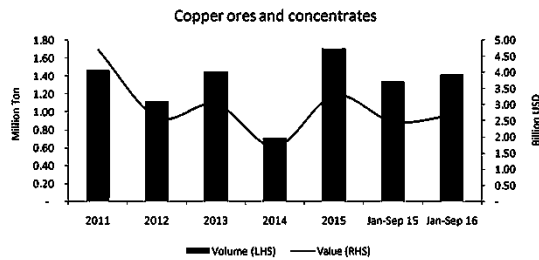


Figure 1 The Export Volume of Copper Ores and Concentrates
 Source: *Badan Pusat Statistik* (processed by Ministry of Trade, 2016)

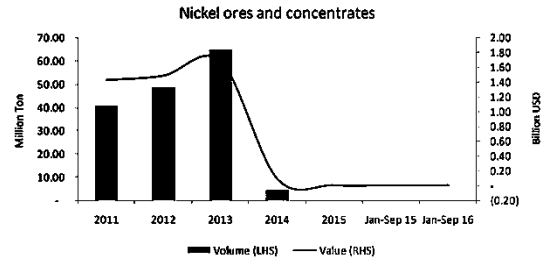


Figure 2 The Export Volume of Nickel Ores and Concentrates
 Source: *Badan Pusat Statistik* (processed by Ministry of Trade, 2016)

Figure 1 shows how the export volume of copper ores and concentrates fluctuates from the year 2011 until 2016 and did not fall to zero in 2014. This is because the government enforce the policy of relaxation of export with minimum level of processing or refining of commodities before being exported. Unlike nickel and aluminum ores (bauxite), copper ores can be processed into concentrates and exported if it reaches the minimum level of processing or refining. As a result, the export performance of copper ores and concentrates fluctuates from 2011 to 2016, however fell to its lowest in 2014 due to the transition period of the implementation of the raw minerals export ban policy. The export performance increases again later on in the following years.

From the year 2011 until 2015, the trend of export value of copper ores and concentrates fell 10.9% per year and the export volume fell 1.5% per year.

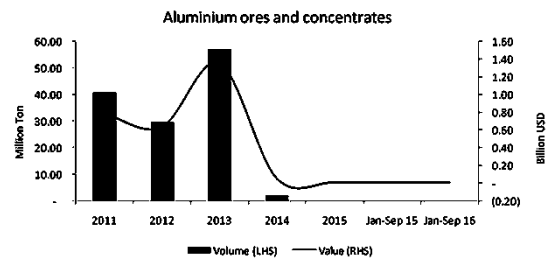


Figure 3 The Export Volume of Aluminium Ores and Concentrates
 Source: *Badan Pusat Statistik* (processed by Ministry of Trade, 2016)

Figure 2 and 3 shows how the export volume of nickel and aluminum (bauxite) ores and concentrates reached its highest in 2013 before the export is banned in 2014. In 2014, the export volume of nickel and aluminum (bauxite) ores and concentrates fell significantly as a result of the implementation of the raw minerals export ban policy. Nickel ores cannot be processed into concentrates that fulfills the condition of relaxation of export and as a result, the export performance of nickel ores and concentrates stopped in 2014 and the following years.

From the year 2011 until 2015, the trend of export value of nickel ores and

concentrates fell 56.4% per year and the export volume fell 48.1% per year. While the trend of export value of aluminum ores and concentrates fell 53.6% per year and the export volume fell 56.2% per year.

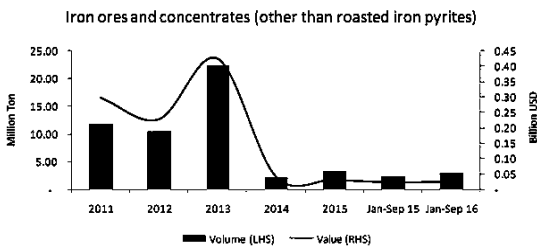


Figure 4.4 The Export Volume of Iron Ores and Concentrates
 Source: *Badan Pusat Statistik* (processed by Ministry of Trade, 2016)

Figure 4 shows the bar and line graph for the export volume and value of iron ores and concentrates from Indonesia in the period of 2011 until 2016. The export volume of iron ores and concentrates, like nickel and aluminum ores (bauxite) and concentrates, was highest in 2013, before the export fell significantly in 2014.

From the year 2011 until 2015, the trend of export value of iron ores and concentrates fell 46.7% per year and the export volume fell 34.6% per year.

3. The Objections from the Government of Japan and the Rules of WTO

Indonesia and Japan are countries with significant difference on their economic profile. However, they have long established a relationship for almost 60 years until today. Prior to the establishment of the relationship, both of the countries went through a period of hard times during the World War II where the Japanese occupied Indonesia, then the Dutch East Indies, for three and a half years from the year 1942 – 1945.

During the presidency of the first president of Indonesia, Soekarno, the Japanese government supported him in maintaining the stability within the country.

The Japanese continued to contribute to the reparation fund of Indonesia when the Western funding to Indonesia stopped. The contribution is part of the effort to help free Indonesia from its difficult economic situation. It was done by paying the war reparation funds through foreign aid and investments as well as importing from Indonesia (Anwar, 1990).

For many years, Japan has remained among the top investors in Indonesia. From the year 2011 until 2014, Japan has remained the top two investors in Indonesia, either after or before Singapore. Japan was also the top investor in 2013 accounting for 4.7 billion USD investment (*Badan Koordinasi dan Penanaman Modal*, 2016).

Despite the long years of friendship, the new policy banning raw minerals export has threatened the relationship as it is deemed disadvantageous to the Japanese industries. Japan has been importing and investing in the field of the largest mines in Indonesia and the enactment of such laws may affect the Japanese mining industries. The Japanese government has shown their objections towards the issuance of the enactment of the Indonesian new mining law. Japan had also threatened to report and complain to the WTO that Indonesia has violated the rules of WTO by imposing export restriction on selected raw minerals.

Japan has been importing different kinds of raw minerals from Indonesia such as nickel, copper and aluminum (bauxite) from Indonesia for decades. 44% of Japanese total nickel ore import in 2012, down from around 60% in 2009, is imported from Indonesia. Indonesia has been a long-term supplier of nickel to Japan until the Indonesian government introduce the raw minerals export ban policy in 2009 which is to be enforced latest by 2014. The export ban is disadvantageous for Japan as its domestic industries is highly dependent on the supply of certain raw minerals from

Indonesia, particularly nickel ("Japan nickel users face higher costs, supply hunt after Indonesia ban", 2014).

Japan is home to several largest stainless steel producers in the world and nickel is used as raw materials to produce stainless steel. The raw material is needed for its global automotive industry. The policy from Indonesia might contribute to the rise of nickel prices and Japan will be disadvantaged if nickel prices were to rise. Japan will have to face higher cost and seek new sources to supply nickel after the ban of export took effect in Indonesia.

Pacific Metals Co., Ltd. from Japan is the third biggest ferronickel producer in the world and it said that it would boost imports from the Philippines and New Caledonia to replace the imports from Indonesia. However, Sumitomo Metal Mining Co., Ltd. as the largest nickel ore smelter company in Japan requested assistance from the government of Japan in order to approach the government of Indonesia. This is because their industry will not be able to operate if they are short of nickel supply which might lead to significant job losses. In response to the request, Japanese government officials at various levels have attempted to approach the government of Indonesia ("Japan nickel users face higher costs, supply hunt after Indonesia ban", 2014).

Japan also imports copper ore from Indonesia, but it only represents 7% of its total imports of copper in 2012. The supply of copper ore from Indonesia can be replaced as the Japanese dependency on Indonesian copper ore is low and there is an oversupply in the global copper market ("Japan's nickel smelters to be hit hard by Indonesia export ban", 2013). However, Japan has investments in several copper mines in Indonesia such as Batu Hijau copper mine in West Nusa Tenggara and they have concerns about the possible

impact of this policy on the company they invested in (Ministry of Economy, Trade and Industry of Japan, 2015).

Japan has also been one of the major export markets and importer for raw minerals from Indonesia. Japanese companies for years had invested in several mining companies in Indonesia. The enactment of the policy that bans the export of raw minerals may impact their return on investments as those companies are no longer allowed to export raw minerals. Potentially, there is a period of time when the profit of the companies decreases due to the export ban. The companies will also be required to perform processing and refining of the raw minerals inside the country which may increase the cost for processing facilities such as smelters.

The government of Japan had talks with Indonesia through the WTO in early 2014 in order to resolve the issue. If the issue was not resolved, Japan had plans to request for a panel from the WTO to be appointed to examine the case. The government of Japan had also indicated that if the bilateral approach is unsuccessful, it will likely to bring this issue to the Dispute Settlement Body of the WTO in order to obtain a final settlement.

The Indonesian Industry Minister at the time, Mohamad Suleman Hidayat said that the government of Indonesia would defend its domestic interest of development of downstream industries on the basis of added value on the natural resources. According to him, Indonesia is trying to grow their industry by securing raw materials and thus would like to find a win-win solution for both countries (Yulisman, 2014).

Although the WTO is yet to receive a formal request and report from the government of Japan, the Indonesian Trade Minister at the time, Muhammad Lutfi who was also the former Indonesian Ambassador to Japan, has received a letter from the

Japanese Minister of Foreign Affairs at the time, Kishida Fumio, in April 2014. It indicated that Japan felt that it was forced to bring the case to the WTO as its industry is affected by the policy ("Japan Turns to World Trade Organization over Indonesia's Mineral Export Ban", 2014).

In anticipating the possibility of Japan in bringing the case to the WTO, the possible claims that might be used would be the clause that Indonesia is inconsistent to the Article XI of GATT on Quantitative Restriction on exports. Article XI of GATT adopted by the WTO states that the member countries of WTO should abolish Quantitative Restriction on exports. This means that the member countries of WTO are not allowed to hinder export from a member country to another member country. The justified instruments to regulate exports are duties, taxes on exports, quotas or export licenses. However, under Article XI paragraph 2 (a) and (b), bringing its mining industry to a downstream industrialization in order to gain economic value is an essential right for Indonesia as a member country of the WTO. Thus, the development of downstream industries justifies the enactment of ban on the export of raw minerals as regulated in Article XI GATT.

Article XX of the GATT concerning the General Exception, states that Quantitative Restriction is allowed to be imposed by a country on the export of raw materials if it aims at the protection of gold and silver sources (c), and the protection and conservation of exhaustible natural resources but should be in conjunction with the restriction on domestic production or consumption (g). There is no regulation implemented to produce or consume more of the exhaustible natural resources domestically until today. The policy itself is aimed to protect and conserve the environment and also has at least five years for the policy to come into force.

Indonesia has administered this policy as mandated by its law in a uniform, impartial and reasonable manner under Article X paragraph 3 of the GATT. The laws concerning minerals and coal particularly on export ban and requirement of processing and refining inside the country is meant for all parties without discrimination to domestic and foreign entities which is uniform and impartial. Thus, the regulation in this sector has been consistent with the rules of the WTO.

In the light of the provisions mentioned above, the policy of raw minerals export ban as mandated by Law 04/2009 is consistent with the rules of the WTO. The dispute settlement process in the WTO can be very lengthy if seen from past cases and if the government of Japan were to report it, by the time the WTO releases decisions regarding the matter, smelters might have been built already.

4. The Proposal of the Conditions for Export of Raw Minerals and Concentrates by the Government of Japan and the Bilateral Solution

In order to find solutions to the problems, the Japanese government had given proposal to be considered by the Indonesian government. The proposed intention by the Japanese government is in the conditions for export of raw minerals and concentrates from Indonesia.

The Japanese industries need to develop sustainable mining and refining industries while preserving the environment. They also need to have greater added value which is important to maintain the close relationship between Indonesia and Japan. With that in mind, the Japanese government proposed in the meeting between the Ministry of Economy, Trade and Industry of Japan, and the Ministry of Energy and Mineral Resources of the Republic of Indonesia that the companies which are

allowed to continue the export of raw minerals and concentrates are those respecting the purpose of the Indonesian new mining law and promoting environmental protection and industrial development. This is under the following conditions:

1. Clear and Clean
2. Fulfill the responsibility of tax payment
3. Comply with environmental standards
4. Have processing and refining facilities, or any future construction plans of such facilities in Indonesia (Ministry of Economy, Trade and Industry of Japan, 2015).

One of the conditions proposed by the Japanese government above is on the status of Clear and Clean which means that the mining license is not overlapping with other IUP and not in the area of protected forestry. Clear and Clean IUP is a license which is according to the regulation.

The Japanese government also proposed that mining businesses that comply with environmental standards should be allowed to continue export raw minerals. This is in the condition that the companies implement Environmental Impact Assessment (EIA) and disclosing the EIA results to the government. The companies should also accept inspections done by the Ministry of Environment and Forestry every six months. They should maintain annual expense reserved for funding mine closure and rehabilitation such as backfill and tree planting after excavation.

According to the Japanese government, joint ventures in Indonesia invested by Japanese companies such as PT Newmont Nusa Tenggara and PT Smelting meet the conditions proposed. They have been contributing to sustainable development for Indonesia. Japanese companies will continue to provide

technical cooperation on production of ferronickel to PT Antam in order to maintain the continuing and close relationship between Japanese companies and PT Antam.

In response to the proposal, all the implementing regulation is inseparable part of the law and it is closely monitored by the parliament. Therefore, it is not simple to change the rules. Environmental destruction is an impact of any kind of industrial activity including mineral mining and the government is trying to control it. The aim of the Indonesian new mining law and its implementing regulations is not to ban mining activity in Indonesia, but to balance the environment, economic and social aspects. Mineral reserve, environmental protection and sustainable development is necessary to benefit not only Indonesia but also the world, now and in the future. Thus, Indonesia needs the support from Japan on these matters (Ministry of Trade, 2015).

The potential dispute with Japan over the raw mineral export ban policy has eased after both sides understood the concept of developing processing facility or smelter. The Indonesian government has taken into consideration the proposal by the Japanese government and had the good faith in finding solutions to the problems together. The good faith can be seen through the relaxation of export duty as well as the relaxation of export of raw minerals which has meet the minimum level of processing and refining.

5. Conclusion

The law that bans the export of raw minerals from Indonesia is enacted in the intention of national pursuit and development of the nation. The state aims to manage its own natural resources entirely for the benefit and welfare of its people. However, such intention of using its own natural resources for the interest of

its own people may affect sustainable activities in other countries and would lead to tension to bilateral relations.

Japan has shown its objections towards Indonesia as the policy affects their need for supply of raw minerals from Indonesia in order to maintain the sustainable development of its industries. The ban on the export of raw minerals may have possible impacts on the industries in Japan that need the raw minerals from Indonesia. In response the policy, the Japanese government seek to find solutions to meet their needs for stable source of raw materials for their industries as well as maintaining the long-established relationship between Indonesia and Japan.

Based on the analysis, the law banning the export of raw minerals substantiates under the national law and the rules of the WTO. The 1945 Constitution, as the constitution of Indonesia, sets guidelines for the state administration. It is referred to as the principles that form the basis for other rules and regulations of the country. The constitution mandated that the management of the resources should add value to the national economy in order to achieve prosperity and welfare for the people particularly under Article 33 paragraph 3 of the 1945 Constitution. There is a right for the state to control the earth and the natural resources contained within the state for the prosperity of the people of Indonesia.

The enactment of the law banning the export of raw minerals is based on the idea of Indonesian state sovereignty in mining, legal and political rights to govern and foster sustainable and environmental development of the mining sectors. It aims to optimize the added value and competitiveness of the mining products for the growth of the downstream industry, to secure the availability of raw materials, to foster local employment, and increase the state revenues.

The policy also supports the RPJPN or the National Long-Term Plan of the year 2005 – 2025 which states about the direction of the long-term development for the nation. The development plan of natural resources and the environment is directed at increasing the added value of natural resources products while still emphasizing on the maintenance of natural resources.

In essence, the policy does not deny the conditions under the rules of the WTO as under the provision of Article XI paragraph 2 (a) and (b) of the GATT. This is because bringing its mining industry to a downstream industrialization in order to gain economic value is an essential right for Indonesia as a member country of the WTO. The General Exception under Article XX of the GATT states that Quantitative Restriction is allowed to be imposed by a country on the export of raw materials if it is aimed at the protection of certain resources. Indonesia has also administered this policy as mandated by its law in a uniform, impartial and reasonable manner under Article X paragraph 3 of the GATT.

In the light of the conditions mentioned above, the policy of the ban of the export of raw minerals enacted for those reasons is therefore substantiate under the national law and the rules of the WTO.

The enactment of the raw minerals export ban policy has impacts on the national mineral export activity. Based on available data, mining exploitation increased sharply after the establishment of the new mining law. Mining entities extract as much as possible before the export of raw minerals is banned. The export activity of mineral ores and concentrates was highest in 2013, the year before the export of raw minerals is banned. After 2013, the export volume of several minerals such as aluminum (bauxite), nickel and iron ores decreased significantly as the result of the enactment of the law. This is because those minerals

cannot be processed into concentrates which are still allowed to be exported after the implementation of raw minerals export relaxation policy.

The policy does not only have impacts on the national raw mineral export activity but also on the activity of the countries related to the Indonesian mining industries, one of which being Japan. Japan is not only one of the biggest importing countries of raw minerals from Indonesia but also one with large investments in several areas of mining in Indonesia. With that in mind, their smelters in Japan might not receive enough supply of raw mineral ores if the new policy lead to decreasing activity or even closure. There will be a need to find alternative supply which might incur higher cost.

Japan is also one of the world's biggest stainless-steel producer which needs nickel in their production. During the years of trading, Japan imported large numbers of nickel ores from Indonesia and Indonesian export ban would harm their stainless-steel industry. Japanese companies also have shares in different mining companies in Indonesia. The banning of export will decrease profit for the companies and bring less return on investment. The policy is therefore considered to have possible damage to the Japanese industries which rely on its import of raw minerals from Indonesia as well as those having investments in Indonesia.

The circumstances above thus draw objections from Japan on the raw minerals export ban policy from Indonesia. The Japanese government had indicated its intention to complain and report the Indonesian government to the WTO regarding the export ban policy, as a violation of GATT. After negotiations between Indonesian and Japanese government, both parties were able to find a win-win solution regarding the matter.

The bilateral solution between the two countries in solving the potential dispute might consider the long-established relations for almost 60 years. It is also taken into consideration the fact that Japan has invested and contributed in different fields within Indonesia. Indonesia and Japan also acknowledge the impact the export ban might have on both countries. As part of the proposal from the Japanese government, companies are allowed to continue exporting raw minerals for a period of time as long as they fulfill certain conditions. The Indonesian government also later introduce the policy on the relaxation of the export of raw minerals under certain specified conditions.

In conclusion, the issue highlights the significance of diplomacy and the long-established relationship between two countries in solving potential disputes. The policy is enacted not in the intention to hurt any country but simply of a bigger goal for Indonesia to be able to develop its national industries and manage its own resources. Bilateral discussions prevented the case to be brought to WTO and created a new balance in the reinforced relationship. The Japanese government apparently is satisfied with the raw minerals export relaxation policy as the solution to the matter.

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