

ABSTRAK

Kebijakan hilirisasi mineral dilakukan pemerintah dalam rangka memberikan nilai tambah dan mewujudkan kesejahteraan umum. Upaya pemerintah tidak diimbangi dengan pembentukan peraturan yang menjamin perlindungan hukum terhadap pelaku usaha. Artikel ini mengeksplorasi hubungan antara legitimasi kebijakan larangan ekspor nikel berdasarkan hukum nasional dan internasional juga dampak hukum bagi pelaku usaha tambang dengan dikeluarkannya kebijakan percepatan larangan ekspor nikel di Indonesia. Penelitian dilakukan menggunakan metode normatif yang dilengkapi dengan wawancara. Berdasarkan teori kedaulatan, kebijakan larangan ekspor nikel mempunyai legitimasi baik secara instrumen hukum nasional maupun internasional. Peraturan Menteri ESDM Nomor 11 Tahun 2019 mempunyai dampak positif maupun negatif bagi pelaku usaha tambang nikel di Indonesia: (1) Dampak positif berupa peningkatan nilai tambah bruto dan potensi keuntungan jangka panjang. (2) Dampak negatif berupa ketidakpastian hukum, ketidaklengkapan peraturan, praktik monopoli oleh industri smelter, tambang ilegal dan ekspor ilegal, gugurnya kontrak dan tuntutan ganti rugi akibat wanprestasi. Dampak hukum yang terjadi diakibatkan ketidaksesuaian penerapan prinsip kepastian hukum, berujung pada pertanggungjawaban negara terhadap kerugian materiil yang diderita pelaku usaha tambang nikel.

Kata Kunci: Dampak Hukum, Percepatan, Larangan Ekspor Nikel, Tambang

ABSTRACT

The mineral downstream policy is carried out by the government in order to provide added value and realize public welfare. The government's efforts are not balanced with the formation of regulations that guarantee legal protection for business actors. This article explores the relationship between the legitimacy of the nickel export ban policy based on national and international law as well as the legal impact on mining businesses with the issuance of the policy to accelerate the nickel export ban in Indonesia. The research was conducted using a normative method which was complemented by interviews. Based on the theory of sovereignty, the nickel export ban policy has legitimacy both in national and international legal instruments. The Minister of Energy and Mineral Resources Regulation Number 11 of 2019 has positive and negative impacts for nickel mining business actors in Indonesia: (1) Positive impacts in the form of increasing gross added value and potential long-term profits. (2) Negative impacts in the form of legal uncertainty, incomplete regulations, monopolistic practices by smelter industry, illegal mining and illegal exports, termination of contracts and claims for compensation due to default. The legal impact that occurs is due to the non-compliance with the application of the principle of legal certainty, leading to state accountability for material losses suffered by nickel mining business actors.

Keywords: Legal Impact, Acceleration, Ban on Export of Nickel, Mining