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Permanent Sovereignty in the Context of Trade Law: Addressing Legal Constraints on Downstream Policy Implementation

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Abstract

The Government of Indonesia has expressed a strong commitment to enhancing national welfare through the implementation of downstream policies across various trade sectors, including those involving natural resource commodities. A range of regulatory measures has been introduced, from mandates on domestic processing to the imposition of export bans. Nevertheless, the execution of such downstream policies has raised concerns regarding their compatibility with obligations under international trade agreements to which Indonesia is a party. This paper seeks to analyze the implementation of downstream policies in light of international trade law. Employing a normative juridical approach, the study finds that down streaming in the natural resources sector constitutes a manifestation of the principle of permanent sovereignty over natural resources. A thorough legal examination of this principle suggests that it may qualify as a norm of *jus cogens*, thereby holding a superior normative status that can prevail over conflicting provisions in international trade agreements.

Introduction

No country in the world possesses the full capacity to independently meet all of its domestic needs, particularly in the provision of goods and services. Consequently, international cooperation and relations in trade have become essential.[1] Economic interdependence among nations driven by globalization has blurred national borders and amplified the necessity for international trade systems.[2] Several decades have passed since the global resurgence of international trade following the collapse of the global economy after World War II, which had been precipitated by widespread protectionist[3] policies.[4]

The devastation of the global economy pushed major world powers at the time to gather and redesign the international economic system. This effort culminated in the 1944 Bretton Woods Conference in New Hampshire, which marked the beginning of a journey toward the establishment of the World Trade Organization (WTO) the only international organization with a mandate to regulate and supervise international trade practices among nations.[5] Following several rounds of negotiations, the WTO was officially established in 1994, carrying a liberal trade spirit, emphasizing trade that is free from protectionist barriers. The mechanisms of international trade are primarily governed through a range of trade agreements under the WTO legal framework.

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1 Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: Raja Grafindo Persada, 2011).

2 Marius-Răzvan Surugiu and Camelia Surugiu, "International Trade, Globalization and Economic Interdependence between European Countries: Implications for Businesses and Marketing Framework," *Procedia Economics and Finance* 32, no. 15 (2015): 131–38, https://doi.org/10.1016/s2212-5671(15)01374-x.

3 Protectionism is the act of imposing restrictions in trade, either through tariffs, quotas, subsidies, or other technical barriers (see Jingyao Fu in *International Trade Liberalization and Protectionism A Review*, Advances in Economics, Business, and Management Research, Vol. 203, 2021, 2480-2486, https://doi.org/10.2991/assehr.k.211209.403).

4 Serlika Aprita and Rio Adhitya, *Hukum Perdagangan Internasional* (Depok: Rajawali Pers, 2020).

5 Peter Van den Bossche and Werner Zdouc, "Non-Tariff Barriers," in *The Law and Policy of the World Trade Organization* (Cambridge University Press, 2017), 478–543, https://doi.org/10.1017/9781316662496.

Indonesia has formally bound itself as a member of the WTO since 1995[6], with the legal consequence of adhering to all obligations stipulated in the multilateral agreements on international trade among WTO member states. This includes the prohibition on non-tariff barriers as articulated in the General Agreement on Tariffs and Trade (GATT), which regulates trade in goods.[7] This prohibition represents just one among many binding commitments that WTO member states have agreed upon to foster a liberal international trade climate.

Indonesia's membership in the WTO is expected to support and promote trade development and economic growth through international trade relations. Therefore, it is imperative for the Indonesian government to ensure compliance with the obligations it has undertaken. However, this does not signify a forfeiture of Indonesia's freedom or authority in formulating domestic economic and trade policies, provided they remain consistent with the provisions of the WTO legal framework. Each WTO member state retains the capacity to advance its own national trade interests and policies, particularly in managing its international relations.[8]

Nevertheless, the legal boundaries regarding the extent to which WTO member states may pursue internal trade interests within the multilateral framework remain unclear. In the absence of explicit legal indicators, member states often act based on national calculations and assumptions, which can result in outcomes deemed detrimental or even threatening to the interests of other member states. This dynamic is evident in Indonesia's recent and consistent efforts to implement a downstreaming policy, particularly in the natural resource sector. This policy can be defined as a bold initiative, yet one that must be undertaken with caution, as many of its practical elements involve qualitative restrictions measures potentially in conflict with WTO's preference for quantitative, rather than qualitative, trade limitations.

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6 Indonesia has ratified the WTO Agreements through Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization, which came into force on January 1, 1995.

7 See *Article XI GATT: "No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licences … shall be instituted or mantained by any contracting party on the importation … or on the exportation … of any other contracting party."*

8 I Gusti Ngurah Parikesit Widiatedja and I Gusti Ngurah Wairocana, "The Rise of the Spirit of National Interest and the Existence of World Trade Organization Agreement : A Case Study of Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 4, no. 2 (2017): 319–40, https://doi.org/10.22304/pjih.v4n2.a6.

From the perspective of the Indonesian government, downstreaming is viewed as a breakthrough for advancing Indonesia's economic development and moving up the global value chain.[9] By adding value to the country's natural resources before export, downstreaming is believed to enhance Indonesia's capacity and influence in international trade.[10] This is consistent with Article 33(3) of the 1945 Constitution of the Republic of Indonesia, which mandates that the nation's natural resources must be utilized for the welfare of its people. The logical consequence is that natural resource management should primarily benefit the Indonesian population before generating advantages for external parties.[11]

However, other WTO member states may hold differing views regarding the essence of the downstreaming strategy. It may be seen as an extreme measure that disturbs the international trade environment and disrupts inter-member relations. The associated policy requirements are often closely tied to technical barriers, which are perceived as lacking mutual benefit for trade parties. More critically, such measures may interfere with or even alter global supply chains for targeted resources. The implementation of downstreaming in Indonesia's mining sector, particularly concerning nickel ore, has already become a point of global controversy. This is exemplified by the ongoing trade dispute between Indonesia and the European Union before the WTO's Dispute Settlement Body (DSB), in which the Panel ruled that Indonesia's export ban and domestic processing regulations violate WTO law.[12]

One might conclude that the boundaries and indicators for implementing national interests in international trade are clearly stipulated in WTO law. However, this does not categorically eliminate the possibility for member states to assert their sovereignty, especially

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9 Doan Mauli T Siahaan, Ibrahim Sagio, and Evi Purwanti, "Restriction of Indonesian Nickel Ore Export Based on the Perspective of Quantitative Restriction Principle in GATT," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 409–18, https://doi.org/10.30641/dejure.2021.V21.409-418.

10 Kementerian Sekretariat Negara Republik Indonesia, "Hilirisasi Terus Digaungkan, Presiden Jokowi: Jangan Mengulang Sejarah Eskpor Bahan Mentah," 2023, https://www.setneg.go.id/baca/index/hilirisasi_terus_digaungkan_presiden_jokowi_jangan_mengulang_sejarah_ekspor_bahan_mentah.

11 Rizal Falefi, "Nickel Ban and Indonesia's Defense: A WTO Dispute with the EU," *Journal of International Trade, Logistics and Law* 19, no. 2 (2023): 115–36, https://www.jital.org/index.php/jital/article/view/378.

12 See *Report of the Panel: Indonesia – Measures Relating to Raw Materials WT/DS592/R*

when accommodating national interests within global trade.[13] The concept of sovereignty, and how it is constrained when a state becomes part of an international organization, remains a relevant legal issue. This discussion is closely connected to the long-standing international legal principle of Permanent Sovereignty over Natural Resources (PSNR), which grants states exclusive and absolute authority to manage their natural resources including decisions related to international trade.[14] This principle naturally extends to include decisions regarding international trade in those resources.[15]

However, it may be seen as contradictory to the WTO's emphasis on free and unimpeded trade, raising questions about the principle's relevance and impact on current international trade practices and regulations. In light of the increasing number of developing countries adopting similar downstreaming strategies, and the mounting legal challenges they face within the WTO framework, a timely legal reassessment of the balance between national sovereignty and trade obligations has become both urgent and necessary. As the international legal system struggles to reconcile domestic developmental needs with a rigid free trade paradigm, the absence of clear legal indicators regarding the limits of state discretion within the WTO system may further exacerbate trade tensions and economic inequality among member states.

While existing scholars has widely examined the compatibility of domestic trade measures with WTO provisions, limited attention has been devoted to exploring the normative status and legal implications of the principle of Permanent Sovereignty over Natural Resources (PSNR) within this context. This paper aims to fill this gap by analyzing whether PSNR, particularly when interpreted as a peremptory norm (*jus cogens*), could be invoked as a legal justification for resource-based trade policies, including downstreaming. Such an inquiry not only contributes to the ongoing debate regarding the hierarchy of norms in

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[13] Sigit Riyanto, "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer," *Yustisia Jurnal Hukum* 1, no. 3 (2012): 5–14, https://doi.org/10.20961/yustisia.v1i3.10074.

[14] Shihong Dou, "Shock of the Global Supply Chain from Resource Nationalism," *Resources Policy* 85 (2024): 103755, https://doi.org/10.1016/j.resourpol.2024.103755.

[15] Natalia Yeti Puspita, Elizabeth Nadeak, and Aloysius Deno Hervino, "Justifikasi Penerapan Prinsip Permanent Sovereignty Over Natural Resources Dalam Perdagangan Internasional," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 504–25, https://doi.org/10.23887/jatayu.v5i3.56398.

international law but also offers a critical perspective on the evolving relationship between sovereign rights and global trade governance.

Based on the above background, this paper seeks to address the following research questions: First, can the principle of PSNR be applied within the framework of international trade agreements under WTO law. Second, how is the implementation of industrial downstreaming evaluated under the WTO legal framework on international trade.

Method

This research was conducted through the juridical normative method. A research method that employs juridical literature study by analyzing literature and secondary data related to the issue being discussed such as prior researches.[16] This method was supported by several approaches, including the statutory approach and the conceptual approach.[17] The statutory approach involves the use of various relevant legal instruments, both from international legal sources (including, but not limited to, the WTO legal framework) and national legal sources related to natural resources and their management. Meanwhile, the conceptual approach applies analysis of the issues using theories, principles, and doctrines relevant to international agreements, international trade, and sovereignty.

The analysis is conducted qualitatively through a normative juridical framework, focusing on the interpretation and systematic evaluation of legal norms and principles. Additionally, a comparative legal analysis is employed to examine how similar downstream policies are regulated and implemented in other jurisdictions, offering broader perspectives and potential best practices. A critical legal analysis is also integrated to evaluate the power dynamics, underlying interests, and structural implications of international trade rules vis-à-vis state sovereignty over natural resources. By employing this method along with the aforementioned approaches, a holistic and comprehensive discussion can be developed in order to provide well-grounded answers and normative solutions to the issues under examination.

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16 Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013).

17 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

Result and Discussion

A. Downstreaming Plan: The Promoted Breakthrough

As a country endowed with abundant natural resources, Indonesia possesses immense potential to become a prosperous nation with guaranteed welfare for all its citizens. Aware of this, the framers of the constitution mandated that all the natural wealth of the country should be used solely for the greatest prosperity of the people. As a developing country, Indonesia continues to strive to enhance its economic sector in order to provide the welfare intended for its people. One of the tangible efforts advocated and implemented by the Indonesian government is the call for the implementation of downstreaming across almost all trade sectors in the country. Under the leadership of President Joko Widodo, especially, downstreaming has become an ongoing agenda that continues to be promoted for immediate implementation with the ultimate goal of benefiting and ensuring the welfare of the Indonesian people.[18] This is because, until now, Indonesia has only relied on the export of raw materials, earning the title of being a 'raw materials export specialist.'[19] Currently, downstreaming is still largely focused on the mineral mining industry, though it will eventually encompass all trade sectors in Indonesia.

Before delving deeper into the intricacies of implementing downstreaming, it is necessary to first understand what downstreaming itself means. Downstreaming is part of the production process, which involves processing raw materials into semi-finished or finished goods before being sold to customers or even end users.[20] In the mining industry, the downstreaming process includes smelting and refining. Products that have undergone smelting and refining naturally have a

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18 Gilang Abi Zaifa, Maria Yohana, and Al Fath, "The Legal-Political Urgency of Coal Industry Downstreaming for Democratic and Just National Development," *Recht Studiosum Law Review* 2, no. 2 (2023): 134–50, https://doi.org/10.32734/rslr.v2i2.13014.

19 Syahrir Ika, "Downstreaming Mineral Policy: Policy Reform to Increase State Revenue," *Kajian Ekonomi Keuangan* 1, no. 1 (2017), https://fiskal.kemenkeu.go.id/ejournal/index.php/kek/article/download/259/259.

20 Eva Johan, "The Protection of Domestic Industry through Safeguards Instrument GATT/WTO and Its Implementation on Downstream Steel Industry In Indonesia," *Indonesian Journal of International Law* 9, no. 4 (2012): 625, https://doi.org/10.17304/ijil.vol9.4.363.

higher market value.[21] Therefore, the Indonesian government aims to add value to raw materials before they are traded to increase state revenue. Downstreaming is considered one of the breakthroughs that can improve public welfare through the increased state income it brings. The Indonesian government then focuses on ensuring that the downstreaming process is carried out domestically so that Indonesian mining products will have a greater chance of competing in the global market.[22]

To support this, the government, through the Ministry of Trade and the Ministry of Energy and Mineral Resources, has issued a series of regulations that mandate domestic processing (Domestic Processing Regulation/DPR) and even impose export bans, with nickel ore being the most recent commodity to be prohibited from export.[23] These regulations include Government Regulation Number 1 of 2014 on the Second Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of Mining Business Activities for Minerals and Coal, Minister of Energy and Mineral Resources Regulation Number 1 of 2014 on the Improvement of Mineral Value Added Through Domestic Processing and Refining, and Minister of Trade Regulation No.004/MDAG/PER/1/2014 on Export Provisions for Processed and Refined Mining Products.[24]

In practice, downstreaming is not implemented without considering other intersecting aspects, including Indonesia's compliance as a WTO member state. The downstreaming efforts undertaken by Indonesia involve the imposition of obligations such as domestic processing requirements and export bans, which are in

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21 Armadani Rizki Illahi, "Hilirisasi Pertambangan Dan Dampaknya Terhadap Aspek Ekonomis Lingkungan Hidup Di Indonesia," *Justitia* 9, no. 3 (2022): 1436–44, https://doi.org/10.31604/justitia.v9i3.1436-1444.

22 Rizal Budi Santoso, "Indonesia's Rational Choice in the Nickel Ore Export Ban Policy," Cogent Social Sciences 10, no. 1 (2024): 2334456, https://doi.org/10.1080/23311886.2024.2334456.

23 Atik Krustiyati and Gita Venolita Valentina Gea, "The Paradox of Downstream Mining Industry Development in Indonesia: Analysis and Challenges," *Sriwijaya Law Review* 7, no. 2 (2023): 335–49, https://doi.org/10.28946/slrev.Vol7.Iss2.2734.pp335-349.

24 Nabila Aulia Rahman, et.al., "Legal Politics of Environmental Licensing Governance After Job Creation Law", *Hang Tuah Law Journal* 6, no. 2, 123–134, https://doi.org/10.30649/htlj.v6i2.109.

conflict with trade barrier regulations under the WTO.[25] So, is downstreaming a common practice in international trade, and are there other countries that have implemented similar measures? According to a report by the Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF), downstreaming is undertaken by most developing countries that believe raw materials must be processed domestically rather than exported in unprocessed form to achieve industrial development. Some of the factors determining the downstreaming process include[26]:

Several factors influence the successful implementation of downstreaming policies in different countries. These include the guarantee of both domestic and international market demand, supported by good location and adequate infrastructure. Equally important is reliable and affordable access to energy, which serves as the backbone of industrial processing. The availability of specialized workers and experts, fostered through healthy competition, also plays a crucial role in strengthening downstream industries. In addition, a conducive business environment which backed by strong government support and coherent policies that provides stability and predictability for investors. Monetary and macroeconomic stability further enhances confidence in long-term downstream investments. Finally, the proximity of raw materials significantly reduces costs and increases efficiency in the production chain. Based on IGF research, several countries have already implemented downstreaming strategies for various commodities in different ways, which can be summarized in the following table:

TABLE 1. Comparation on Downstream Implementation

Country	Commodity	Downstreaming Efforts
Botswana	Gems	Build institutions and infrastructure to support downstreaming (diamond park); Invite gemstone cutting and

[25] I Gusti Ngurah Parikesit Widiatedja, "Indonesia's Export Ban on Nickel Ore: Does It Violate the World Trade Organization (WTO) Rules?," *Journal of World Trade* 55, no. 4 (2021): 561–82, https://doi.org/10.54648/trad2021028.

[26] Perrine Toledano and Nicolas Maennling, "Local Content Policies in the Mining Sector: Fostering Downstream Linkages," *Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development*, 2018, https://www.iisd.org/system/files/publications/local-content-policies-mining-direct-local-employment.pdf.

		polishing companies worldwide to set up factories in Botswana.
Nigeria	Petroleum	Increase domestic refinery capacity
Indonesia	Minerals (Bauxite, nickel, tin, etc.)	Export ban; Domestic refining and processing obligation.
Singapore	Petroleum	Build infrastructure to support refinery activities (bunkering port) for easier access.
Australia	Steel (Iron ore)	Import restrictions, export ban on iron ore.

Sources: Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development, 2018 (edited)

Of the countries that have pursued downstreaming as shown in the table above, there are some that have received 'important notes' regarding the implementation of downstreaming. Some of these countries include Australia, Nigeria, and Indonesia. For Australia[27] and Indonesia[28], which both apply import restrictions, export bans, and other technical barriers, the actions taken often conflict with WTO regulations, which frequently backfire in downstreaming efforts due to a weakened interest and investment power to engage in downstreaming activities as a result of disputes before the WTO's Dispute Settlement Body (DSB). In contrast, Nigeria's[29] failure in its downstreaming efforts is due to government intervention through state-owned or nationalized refinery companies, which are heavily burdened by corruption and political interests, thus hindering the development of downstreaming companies. The misalignment of regulations between institutions also impedes the downstreaming process in those countries.

In contrast, Botswana[30] and Singapore[31] have been relatively successful in promoting downstreaming by focusing on infrastructure development and ensuring the readiness of locations that are capable

27 Perrine Toledano and Nicolas Maennling, "Case Study Australia : Downstream Linkages," 2018, https://doi.org/10.7916/d8-ae18-hr64.

28 Perrine Toledano and Nicolas Maennling, "Case Study Indonesia: Downstream Linkage," 2018, https://doi.org/https://dx.doi.org/10.2139/ssrn.3670266.

29 Perrine Toledano and Nicolas Maennling, "Case Study Nigeria : Government-Led Investments," 2018, https://doi.org/https://dx.doi.org/10.2139/ssrn.3670269.

30 Perrine Toledano and Nicolas Maennling, "Case Study Botswana : Downstream LINKAGES," 2018, https://doi.org/https://doi.org/10.7916/d8-2sat-fx87.

31 Perrine Toledano and Nicolas Maennling, "Case Study Singapore : Downstream Linkages," 2018, https://doi.org/https://dx.doi.org/10.2139/ssrn.3670274.

of supporting downstream activities, making them attractive to investors looking to establish smelting and refining businesses due to the infrastructure offered. These two countries do not heavily rely on restrictive policies but rather on what they can offer to potential investors willing to engage in refinery activities in their countries.

Thus, it can be understood that downstreaming activities are quite common in industrial and international trade contexts, with various forms and approaches being employed. However, until now, there has been no specific regulation, particularly at the international level, that governs how downstreaming should be conducted. Whether or not downstreaming succeeds will be a matter for each country to decide and address, but what is more important to answer is: what about downstreaming efforts that are in conflict with WTO trade regulations? Should efforts to manage natural resources with the goal of bringing prosperity and welfare to the people still align with the consequences of being a WTO member state?

B. PSNR Principle and International Treaty

The relationship between natural resources and humans has been seen as important and developed since the mid-19th century, marked by the increasing number of new countries declaring their independence while simultaneously asserting sovereignty over the natural resources within their territories.[32] After World War II, which was closely tied to colonial practices, many countries were decolonized and subsequently sought validation of their sovereignty, including over their natural resources. These countries embarked on efforts to achieve prosperity for their nations, which is why the management of natural resources became essential to support such endeavors.[33] This was the case for Indonesia, which declared its independence in 1945, along with the establishment of a constitution that regulated the management of natural resources for the greatest prosperity of its people.

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[32] Petra Gümplová, "Sovereignty over Natural Resources - A Normative Reinterpretation," *Global Constitutionalism* 9, no. 1 (2020): 7–37, https://doi.org/10.1017/S2045381719000224.

[33] Imad A Ibrahim, "Redefining the Principle of Permanent Sovereignty over Natural Resources," *International Community Law Review* 25, no. 3–4 (2023): 281–302, https://doi.org/10.1163/18719732-bja10090.

The process of decolonization[34] of these new countries was also accompanied by their desire to establish a new and universally applicable principle or regulation that would support their position in the international community, including in efforts to build international relations for the development of the country's social and economic life.[35] The process of establishing this principle was not easy, as the desire to create something 'absolute,' 'permanent,' or 'irrevocable' became a trigger for other countries, particularly the developed ones that had already existed. The presence of absolute sovereignty limits other countries from intervening in the management of the natural resources of other nations.[36] This was part of the adjustment process during the decolonization era when colonizers had to relinquish their control over the natural resources of countries that were once under their rule.

After a complex drafting process, the United Nations General Assembly eventually issued UN General Assembly Resolution No. 1803 on The United Nations Declaration on Permanent Sovereignty over Natural Resources, which became a universally accepted principle in international law, known as the Principle of Permanent Sovereignty over Natural Resources (PSNR).[37] This principle essentially grants full sovereignty to countries regarding the regulation, protection, and management of natural resources within their own territories.[38] This was particularly advantageous for developing countries, especially newly established ones, as it shielded them from the influence and intervention of developed nations.

The principle of Permanent Sovereignty over Natural Resources (PSNR), as enshrined in United Nations General Assembly Resolution 1803, lays down eight fundamental assertions that affirm the right of nations to exercise full authority over their natural wealth. First, it

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34 Wojciech Ostrowski, "The Twilight of Resource Nationalism: From Cyclicality to Structural Change," Third World Quarterly 44, no. 8 (2023): 1621–39, https://doi.org/10.1080/01436597.2023.2211054.

35 Nicolaas Schrijver, *Realizing the Right to Development* (United Nations, 2013).

36 Jeremy Allan, "Natural Resource Exploitation in Western Sahara: International Law Perspectives," *Journal of International Humanitarian Legal Studies* 13, no. 1 (2022): 55–79, https://doi.org/10.1163/18781527-bja10045.

37 Filip Nawrot, "Principle of Permanent Sovereignty over Natural Resources in Rulings of International Courts," *Prawne Problemy Górnictwa i Ochrony Środowiska* 2020, no. 1–2 (2020): 97–109, https://doi.org/10.31261/PPGOS.2020.01-02.07.

38 Cut Asmaul Husna TR, "Adopsi Prinsip Permanent Sovereignty Over Natural Resources (PSNR) Migas," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 149, https://doi.org/10.21143/jhp.vol46.no2.74.

establishes that nations possess the right to permanent sovereignty over their resources, a right that must be exercised for the purposes of national development and the well-being of their people. This includes the prerogative to manage the exploration, development, and utilization of natural resources, as well as to regulate the inflow of foreign capital, subject to conditions, restrictions, or prohibitions that each nation deems necessary. In instances where foreign investment is involved, the resolution emphasizes that such capital must comply with national legislation and international law, and that profits generated are to be shared on the basis of terms mutually agreed upon, thereby ensuring that sovereignty remains uncompromised.

Furthermore, the principle recognizes the legitimacy of nationalization, expropriation, or requisition of resources, provided such measures are taken in the interest of public utility, security, or national interest, with appropriate compensation offered in accordance with both national and international law, and disputes settled either domestically or through international arbitration. The exercise of sovereignty, however, must be grounded in the principle of mutual respect among states and the recognition of their sovereign equality. Beyond the national context, the resolution also calls for international cooperation in the form of investment, technical assistance, and scientific exchange, aimed particularly at promoting the economic development of developing countries while safeguarding their sovereignty over natural resources. Any act that violates a nation's sovereignty over its natural wealth is deemed contrary to the spirit of the United Nations Charter and detrimental to international cooperation and peace. Lastly, the resolution underscores the importance of honoring foreign investment agreements freely entered into and in good faith, while obligating both states and international organizations to respect national sovereignty over natural resources in accordance with the UN Charter and the principles embodied in this resolution.

The PSNR Principle was further solidified through the establishment of the United Nations General Assembly Resolution 3201 in 1974, which pertains to the Charter of Economic Rights and Duties of States (CERDS).[39] This resolution asserts that every state possesses full and permanent sovereignty over its natural resources.

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[39] Article 2(1) CERDS: *"Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal over all its wealth, natural resources and economic activities"*.

Through CERDS, the interpretation of the PSNR Principle expands beyond merely a right to include the corresponding duties or obligations of the concerned states. The PSNR Principle is now increasingly understood as a state duty rather than merely a state right. One of the duties accompanying the PSNR Principle is the obligation to conduct environmental impact assessments and to notify other states if the exploitation or use of natural resources could pose risks to, or harm, other states.[40]

A principle that is formed based on the collective will and agreement of states, especially those within the United Nations, will be followed up to ensure it is implemented within the framework of international law. This may be expressed in resolutions, model laws, or new international treaties. Regarding international treaties, reference is made to The 1969 Vienna Convention on the Law of Treaties (VCLT). International treaties hold a pivotal position in the international legal system, serving as the primary written source of international law.[41] VCLT regulates the validity of international treaties, both substantively and formally.[42] This significant position of international treaties makes them the primary reference for policy implementation and the resolution of disputes within international law. The terms and agreements set forth in an international treaty are legally binding, and as such, they are often referred to as "hard law" within the realm of international law.

When applying a principle in an international treaty, it is important to first examine whether the principle has been widely accepted and is recognized as a common practice in international customs. Alternatively, the principle may have evolved into jus cogens, a peremptory norm in international law. Essentially, a jus cogens norm is a universally recognized and binding norm with not only legal but also moral force, meaning that regardless of a state's participation in a

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40 Ricardo Pereira and Orla Gough, "Permanent Sovereignty over Natural Resources in the 21 St Century : Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law," *Melbourne Journal of International Law* 14 (2013): 1–45, https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1687487/04PereiraGough-Depaginated.pdf.

41 See Article 38 para.1 of the International Court of Justice Statute on what include as the sources of international law.

42 Daniel Jose, "The Vienna Convention of 1969 on the Law of Treaties and Humanitarian Law," *International Review of the Red Cross* 136 (1972): 367–380, https://international-review.icrc.org/articles/vienna-convention-1969-law-treaties-and-humanitarian-law.

treaty containing such a principle, all states must comply with the principle.[43]

The concept of jus cogens is addressed in VCLT Article 53[44], which states:

> *"...a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."*

This provision clearly emphasizes that jus cogens norms cannot be undermined or violated by the terms of an international treaty and can only be modified by a new norm of the same character in general international law.[45] The VCLT further underscores that jus cogens holds a hierarchical position superior to that of international treaties, meaning that any treaty conflicting with a jus cogens norm is considered void.[46]

To qualify as a *jus cogens* norm, a rule or principle must meet specific characteristics that distinguish it from ordinary norms of international law. As proposed by Verdross, as cited in Amanwinata[47], such a norm must first derive from the collective interest of the international community, meaning that its foundation rests upon values recognized as fundamental by states as a whole rather than by individual consent alone. Second, it must be established for humanitarian purposes, reflecting its function in safeguarding basic rights and protecting the dignity of humanity. Third, any such norm must be consistent with the principles of the United Nations Charter,

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43 Krzysztof Niewęgłowski, "The Emergence of Jus Cogens in the Vienna Convention on the Law of Treaties," Zeszyty Prawnicze BAS 22, no. 2 (2022): 55–75, https://doi.org/10.31268/ZPBAS.2022.22.

44 Hui-Chol Pak, Hye-Ryon Son, and Son-Gyong Jong, "Analysis on the Legal Definition of Jus Cogens Provided in Article 53 of the Vienna Convention on the Law of Treaties," *International Studies* 59, no. 4 (2022): 315–35, https://doi.org/10.1177/00208817221133567.

45 Hélène Ruiz Fabri, "Jus Cogens Before International Courts," Netherlands International Law Review 69, no. 1 (2022): 1–25, https://doi.org/10.1007/s40802-022-00219-5.

46 Referring to Article 53 juncto Article 64 of the VCLT which affirm that: "*existing treaty is void and terminates if it conflicts with a peremptory norm of general international law or when a new peremptory norm of general international law emerges.*"

47 Rukmana Amanwinata, "Kekuatan Mengikat UDHR 1948 Terhadap Negara Anggota PBB Khususnya Indonesia," *Jurnal Hukum* 7, no. 14 (2000): 31–45, https://doi.org/https://doi.org/10.20885/iustum.vol7.iss14.art2.

ensuring coherence with the broader framework of international peace, security, and cooperation.

Concerning the PSNR Principle, especially within the context of international treaties, several international law experts have argued that the PSNR has evolved becoming a jus cogens norm. Among the few who support this view are Kamal Hossain and Subrata Roy Chowdhury[48], who consider the PSNR as a peremptory norm/jus cogens. Similarly, Ashish Kaushik provides an analysis suggesting that the concept of permanent sovereignty should be recognized as jus cogens.[49] It is justified by noting the consistent use of the term "permanent," identifying permanent sovereignty as inalienable. Moreover, when discussing human rights, which are undeniably jus cogens, several international human rights covenants explicitly assert that "nothing... shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources." Kaushik further argues that permanent sovereignty has been widely accepted and recognized as jus cogens because it meets the criteria established in VCLT Article 53.[50]

For the PSNR Principle to be fully recognized as jus cogens, further evidence from international customary practices and additional support from international legal scholars are needed.[51] However, based on Verdross's criteria, alongside its absolute and permanent nature, the PSNR Principle might be classified as jus cogens because it fulfills the three essential elements: first, it arose from the collective interests of the international community, as it was established to support the development of newly independent nations and ensure their survival within the international order, enabling them to provide for the welfare of their people; second, it is intended for humanitarian purposes since the right to manage natural resources is inherently connected to human rights and aims to ensure the well-being and better living standards of a nation's population; and third,

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48 Kamal Hossain and Subrata Roy Chowhury, *Permanent Sovereignty over Natural Resources in International Law and Practices* (London, 1984), https://archive.org/details/permanentsoverei0000unse.

49 Ashish Kaushik, "Permanent Sovereignty over Natural Resources of State under International Law: An Analysis," *World Journal of Advanced Research and Reviews* 17, no. 3 (2023): 678–84, https://doi.org/10.30574/wjarr.2023.17.3.0427.

50 Ibid.

51 Krzysztof Niewęgłowski, "Normative Aspects of Jus Cogens Identification in Vienna Convention on the Law of Treaties," *Zeszyty Prawnicze BAS* 26, no. 2 (2023): 77–95, https://doi.org/10.31268/ZPBAS.2023.26.

it aligns with the United Nations Charter, as the PSNR principle was adopted through a UN General Assembly Resolution and does not conflict with the Charter.

The PSNR Principle has evolved beyond its origins as a political assertion of post-colonial states, particularly developing states into a foundational or peremptory norm of international law.[52] The UN General Assembly Resolution 1803 (XVII) on PSNR is basically non-binding, however, its consistency of invocation in multilateral instruments, juridical decisions, and state practice suggests an emerging consensus that PSNR Principle reflects as a peremptory norm. Moreover, the linkage between the PSNR Principle and the right to self-determination principle, which has already classified as a jus cogens and become one of the basis foundations of the PSNR Principle, further elevates the PSNR Principle into the realm of jus cogens norms, given that self-determination itself has been widely recognized as such norm.[53]

Case studies also strengthened the argument for PSNR Principle as a jus cogens. In the context of occupation, international legal discourse has consistently condemned the act of exploitation of natural resources by the occupying power as a violation of peremptory norm. Back in Timor-Leste, for instance, the unauthorized extraction of oil and gas resources during the Indonesian occupation drew widespread international criticism and later addressed through international arbitration and state practice affirming that East Timor has every right to its exclusive sovereign rights including on natural resources.[54] The international community treats violations of PSNR Principle not merely as political disputes but as transgressions of fundamental legal order, supported by widespread recognition strongly supports the conclusion that PSNR Principle is a norm of jus cogens.

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52 Shawkat Alam and Abdullah Al Faruque, "From Sovereignty to Self-Determination: Emergence of Collective Rights of Indigenous Peoples in Natural Resources Management," *The Georgetown Environmental Law Review* 32, no. 1 (2019), https://researchers.mq.edu.au/en/publications/from-sovereignty-to-self-determination-emergence-of-collective-ri.

53 Shoji Matsumoto, "Jus Cogens and the Right to Self-Determination - Falsifiability of Tests -," 2020, https://www.policycenter.ma/sites/default/files/RP_20-12_Matsumoto.pdf.

54 Roger S Clark, "Some International Law Aspects of the East Timor Affair," *Leiden Journal of International Law* 5, no. 2 (1992): 265–271, https://doi.org/10.1017/S0922156500002508.

Based on the analysis above, it can be concluded that the PSNR Principle meets the criteria to be considered a jus cogens norm within the international legal system. Therefore, it carries the consequences outlined in VCLT Article 53, which means that existing international treaties cannot violate, exclude, diminish, or disregard the PSNR principle in the execution of their rights and obligations. This is particularly relevant for international treaties in areas such as international trade, especially those governed by the World Trade Organization (WTO), which must ensure that the PSNR Principle is respected and upheld in all relevant agreements.

C. PSNR Principle as Bridge Between WTO and Downstream

Currently, international trade is conducted under the system governed by the World Trade Organization (WTO). The existing trade system has undergone a long and dynamic evolution since the establishment of the first international trade organization. Historical experiences of countries worldwide have demonstrated that unilateral or protectionist actions tend to lead to the collapse of the global economy, primarily due to the resulting discrimination and instability.[55] This reality underpins the founding of the WTO, which was built on the spirit of trade liberalization and free from trade barriers and protectionist practices that harm other nations in the context of international commerce.

If member states are unwilling to comply with their obligations under this framework, it raises questions regarding the very meaning and purpose of their WTO membership. The current system operates on a rule-based approach, in contrast to the power-based approach used in the pre-WTO regime.[56] The implication of the rule-based system is that all measures taken within the realm of international trade must be grounded in the rules that have been agreed upon and are in force within the WTO.

At first glance, this suggests that the implementation of downstreaming (or value-added industrial policies) as a trade measure

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55 Susan Ariel Aaronson, "What Are We Talking about When We Talk about Digital Protectionism?," *World Trade Review* 18, no. 4 (2019): 541–77, https://doi.org/10.1017/S1474745618000198.

56 Aileen Kwa, *Power Politics in the WTO Edited By*, ed. Alec Bamford (Bangkok: Focus on the Global South, 2003), https://www.ecolomics-international.org/n_san_kwa_power_politics_in_the_wto.pdf.

must comply with existing WTO regulations. In other words, downstreaming efforts must not violate WTO obligations. However, this significantly restricts the space available for countries to implement downstreaming, especially considering that WTO rules currently do not explicitly accommodate such measures. Consequently, downstreaming policies are limited to what is permitted within the WTO framework—even though downstreaming, by nature, tends to create new forms of trade restrictions.

In this context, the Principle of Permanent Sovereignty over Natural Resources (PSNR) may serve as a bridge that allows a member state's domestic interests to be recognized within the WTO forum. The PSNR Principle establishes an inalienable right concerning the management of natural resources.[57] With respect to managing commodities that constitute a country's natural resources, the PSNR Principle affirms a state's freedom and discretion to regulate and govern such resources.[58] Considering that the PSNR Principle may be viewed as jus cogens within the structure of international law, international trade agreements must be interpreted in light of Article 53 of the Vienna Convention on the Law of Treaties (VCLT), which mandates that such peremptory norms be accommodated.

This is particularly relevant to the experience of the Government of Indonesia, which implemented downstreaming through parliamentary policy and export bans—both of which were deemed contrary to WTO rules. However, the Indonesian government could have advanced the argument that such measures represent a realization of the PSNR Principle, which grants sovereign authority to manage and regulate natural resources, including within the context of both domestic and international trade.

Indonesia's loss at the stage of examination by the Panel of the Dispute Settlement Body (DSB) unfortunately was caused largely because the Indonesian government failed to emphasize the PSNR Principle in its legal reasoning. The principle was neither explicitly invoked nor positioned as a fundamental basis for the contested

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[57] Anthony Caramento, "The Return of Resource Nationalism to Southern Africa," *The Extractive Industries and Society* 12, no. 2 (2023): 101205, https://doi.org/10.1016/j.exis.2023.101205.

[58] Japhace Poncian, "Resource Nationalism and Community Engagement in Extractive Resource Governance: Insights from Tanzania," *Review of African Political Economy* 48, no. 167 (2021): 550–67, https://doi.org/10.1080/03056244.2021.1920469.

measures. Had supporting evidence been presented to demonstrate that the PSNR Principle has attained jus cogens status, Indonesia could have found itself in a more favorable strategic position. Interestingly, it was the WTO Dispute Settlement Body (DSB) Panel that provided acknowledgement of the PSNR Principle, as reflected in the concluding section of the Panel Report.[59]

The invocation of the Principle of Permanent Sovereignty over Natural Resources (PSNR) is not unique to Indonesia. Several developing countries have also referred to this principle as a basis for asserting control over their natural wealth in the context of international economic relations. For instance, Ecuador has relied on the PSNR principle in its disputes with multinational corporations in the oil sector. In the case of *Chevron Corp. v. Republic of Ecuador*, the Ecuadorian government emphasized its sovereign rights to regulate and enforce environmental standards over extractive operations within its territory, arguing that such measures were grounded in its permanent sovereignty over natural resources, particularly in response to environmental degradation in the Amazon region.[60]

Similarly, Bolivia, during the nationalization of its hydrocarbon sector in 2006, explicitly invoked the PSNR principle to justify the expropriation of foreign-owned assets and reassert state control over oil and gas resources. Bolivian authorities defended the move as a legitimate exercise of sovereign rights for the benefit of its population, consistent with the principle recognized in UN Resolution 1803 and reinforced through the Charter of Economic Rights and Duties of States (CERDS).[61] These examples demonstrate that PSNR has

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[59] See Point 7.137 *Report of The Panel DS/592/R:* "*The Panel understands that the GATT 1994 must be interpreted in a manner consistent with general principles of customary international law, including the principle of permanent sovereignty over natural resources. The Panel agrees with the panel in China – Raw Materials that the ability to enter into international agreements such as the WTO Agreement is a quintessential example of the exercise of sovereignty. The Panel also notes that the principle of harmonious interpretation requires that Members must exercise their sovereignty over natural resources consistently with their WTO obligations. At the same time, the flexibilities built in the GATT 1994 and the other covered agreements must be interpreted in a way that respects this principle as well as the goals of the Preamble of the WTO Agreement with respect to sustainable development.*"

[60] Petra Gümplová, "Yasuní ITT Initiative and the Reinventing Sovereignty over Natural Resources," *Filozofia* 74, no. 5 (2019): 378–93, https://doi.org/10.31577/filozofia.2019.74.5.3.

[61] Humberto Campodonico, "Recovering Sovereignty over Natural Resources: The Cases of Bolivia and Ecuador," *South Centre*, vol. 71, 2016, https://www.southcentre.int/research-paper-71-october-2016/.

increasingly become a legal and political tool for resource-rich developing countries to reclaim control over their natural wealth, especially in response to historical imbalances in international economic arrangements. This trend underscores the broader relevance and applicability of PSNR beyond the Indonesian context, particularly as a principle that continues to shape legal arguments within international trade and investment forums.

This acknowledgement suggests that the WTO, in fact, recognizes the existence of the PSNR Principle, although it anticipates a degree of harmonization between this principle and existing WTO rules. Accordingly, if a state's action such as implementing downstreaming contravenes obligations under a WTO trade agreement, but the action in question is a manifestation of the PSNR Principle, then the state may possess a strong legal basis for upholding such a policy, as the principle enjoys a higher normative standing. Nonetheless, it must not be inferred that the PSNR Principle provides a loophole for WTO members to adopt protectionist or destructive policies under the guise of sovereignty. This risk can be mitigated by formally accommodating the PSNR Principle within the regulatory framework of international trade.

At the very least, the integration of the PSNR Principle into international trade regulations should cover the following points:

First, the PSNR Principle was originally established to accommodate the interests of developing countries. Therefore, its application should focus primarily on the specific needs of developing nations. The WTO already incorporates the concept of Special and Differential Treatment (SDT)[62], which grants preferential treatment to developing countries—such as extended implementation periods, lower obligation thresholds, and other flexibilities. The PSNR Principle should similarly be included within the scope of SDT, thereby allowing developing countries to implement it as part of their international trade practices. This would provide opportunities to advance their national interests, particularly in managing natural resources in the trade sector.

Second, the application of the PSNR Principle in the trade context must be subject to a time limitation. It is entirely possible for states to invoke the PSNR Principle as justification for protectionist

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62 Fatma Muthia, "World Trade Organization, Negara Berkembang, Dan Special and Differential Treatment," *Pandecta: Research Law Journal* 10, no. 1 (2015), https://doi.org/ 10.15294/pandecta.v10i1.4193.

measures. If such a practice goes unchecked, it could ultimately undermine the broader goals of international trade. Therefore, to balance both objectives, the PSNR Principle should be treated as a temporary measure, with clearly defined parameters regarding potential harm or losses, and should be formally notified to trading partners, for example, in cases involving downstreaming policies.

In particular, when addressing downstreaming policies, reliance on the PSNR Principle alone is insufficient, even if it provides a strong legal foundation. The specific measures adopted by a state to implement downstreaming must be carefully considered and thoroughly prepared. For instance, Indonesia's export ban, enacted through parliament, encountered difficulties due to inadequate infrastructure readiness. This illustrates that downstreaming policies must be aligned with inter-agency coordination and a serious assessment of the necessary prerequisites and potential consequences.

The PSNR Principle should serve as a bridge between a country's sovereign interests in improving the welfare of its people and the binding obligations of WTO membership.

While the PSNR Principle affirms a state's exclusive and absolute right to control and utilize its natural resources, however its implementation in the context of international trade and long-term investment contracts necessitates a temporal limitation. This limitation would not undermine the essence of sovereignty but to provide a balance between the principles of legal certainty and legitimate expectations of foreign investors. As the business actors including investors would seek for certainty in a circumstance that still beneficial for them, that is why the regulation on PSNR Principle on trade practices must be governed with clarity. Temporal limitations may be justified only when they serve a legitimate public interest matters such as environmental protection, indigenous rights[63], or national development priorities and bounded by applicable laws.

The scheme of concession which is common in extractive industries where states grant private entities the right to explore or exploit natural resources for a fixed period under specified terms would support the implementation of temporal implementation, which will create a predictable legal environment that encourages investment and ensure the sovereignty of states over natural

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63 Leif Wenar, "Fighting the Resource Curse: The Rights of Citizens Over Natural Resources," *Ethics & International Affairs* 35, no. 2 (2021): 153–76, https://doi.org/10.1017/S0892679421000209.

resources.[64] To preserve the normative strength of the PSNR Principle, the concession contracts should clearly define the scope and conditions, mechanisms for dispute resolution and compensation. Although this approach still remains in the realm of *ius constituendum*, however developing concrete criteria for temporal limitation within mentioned scheme would enhances the normative coherence of this evolving legal framework and helps to reconcile sovereign prerogatives with international trade obligations, and later would strengthen the legitimacy of the PSNR Principle within contemporary global governance to be more sustainable.

Conclusion

Downstreaming represents an effort to increase the added value of domestic products before they are exported. This process may encompass various sectors of trade, including natural resource commodities. Government efforts to implement downstreaming are carried out through various policies and measures, which at times may conflict with international trade regulations under the framework of the World Trade Organization (WTO). In managing natural resources, the Principle of Permanent Sovereignty over Natural Resources (PSNR) grants absolute sovereignty to states to determine how such resources are governed, including the mechanisms by which these commodities are to be traded. Currently, PSNR is increasingly regarded as a binding norm of jus cogens status, and therefore, international agreements—including those related to trade—should align their obligations accordingly to accommodate this principle. Consequently, in the context of implementing downstreaming policies for natural resource commodities, states may exercise the freedom to determine the necessary measures based on PSNR. However, to ensure the attainment of shared global interests, further regulatory frameworks remain necessary to guide its practical implementation.

References

Aaronson, Susan Ariel. "What Are We Talking about When We Talk about Digital Protectionism?" *World Trade Review* 18, no. 4 (2019): 541–77. https://doi.org/10.1017/S1474745618000198.

64 Priscilla M F Leung and Guiguo Wanc, "State Contracts in the Globalized World," *The Journal of World Investment & Trade* 7, no. 6 (2006): vii–855, https://doi.org/10.1163/221190006X00018.

Adolf, Huala. *Hukum Perdagangan Internasional*. Jakarta: Raja Grafindo Persada, 2011.

Alam, Shawkat, and Abdullah Al Faruque. "From Sovereignty to Self-Determination: Emergence of Collective Rights of Indigenous Peoples in Natural Resources Management." *The Georgetown Environmental Law Review* 32, no. 1 (2019), https://researchers.mq.edu.au/en/publications/from-sovereignty-to-self-determination-emergence-of-collective-ri.

Allan, Jeremy. "Natural Resource Exploitation in Western Sahara: International Law Perspectives." *Journal of International Humanitarian Legal Studies* 13, no. 1 (2022): 55–79. https://doi.org/10.1163/18781527-bja10045.

Amanwinata, Rukmana. "Kekuatan Mengikat UDHR 1948 Terhadap Negara Anggota PBB Khususnya Indonesia." *Jurnal Hukum* 7, no. 14 (2000): 31–45. https://doi.org/https://doi.org/10.20885/iustum.vol7.iss14.art2.

Aprita, Serlika, and Rio Adhitya. *Hukum Perdagangan Internasional*. Depok: Rajawali Pers, 2020.

Ashish Kaushik. "Permanent Sovereignty over Natural Resources of State under International Law: An Analysis." *World Journal of Advanced Research and Reviews* 17, no. 3 (2023): 678–84. https://doi.org/10.30574/wjarr.2023.17.3.0427.

Bossche, Peter Van den, and Werner Zdouc. "Non-Tariff Barriers." In *The Law and Policy of the World Trade Organization*, 478–543. Cambridge University Press, 2017. https://doi.org/10.1017/9781316662496.

Campodonico, Humberto. "Recovering Sovereignty over Natural Resources: The Cases of Bolivia and Ecuador." *South Centre*. Vol. 71, 2016. https://www.southcentre.int/research-paper-71-october-2016/.

Caramento, Anthony. "The Return of Resource Nationalism to Southern Africa." *The Extractive Industries and Society* 12, no. 2 (2023): 101205. https://doi.org/10.1016/j.exis.2023.101205.

Clark, Roger S. "Some International Law Aspects of the East Timor Affair." *Leiden Journal of International Law* 5, no. 2 (1992): 265–271. https://doi.org/10.1017/S0922156500002508.

Dou, Shihong. "Shock of the Global Supply Chain from Resource Nationalism." *Resources Policy* 85 (2024): 103755. https://doi.org/10.1016/j.resourpol.2024.103755.

Fabri, Hélène Ruiz. "Jus Cogens Before International Courts." *Netherlands International Law Review* 69, no. 1 (2022): 1–25. https://doi.org/10.1007/s40802-022-00219-5.

Falefi, Rizal. "Nickel Ban and Indonesia's Defense: A WTO Dispute with the EU." *Journal of International Trade, Logistics and Law* 19, no. 2 (2023): 115–36. https://www.jital.org/index.php/jital/article/view/378.

Gümplová, Petra. "Sovereignty over Natural Resources - A Normative

Reinterpretation." *Global Constitutionalism* 9, no. 1 (2020): 7–37. https://doi.org/10.1017/S2045381719000224.

——. "Yasuní ITT Initiative and the Reinventing Sovereignty over Natural Resources." *Filozofia* 74, no. 5 (2019): 378–93. https://doi.org/10.31577/filozofia.2019.74.5.3.

Hossain, Kamal, and Subrata Roy Chowhury. *Permanent Sovereignty over Natural Resources in International Law and Practices*. London, 1984, https://archive.org/details/permanentsoverei0000unse.

Ibrahim, Imad A. "Redefining the Principle of Permanent Sovereignty over Natural Resources." *International Community Law Review* 25, no. 3–4 (2023): 281–302. https://doi.org/10.1163/18719732-bja10090.

Ika, Syahrir. "Downstreaming Mineral Policy: Policy Reform to Increase State Revenue." *Kajian Ekonomi Keuangan* 1, no. 1 (2017), https://fiskal.kemenkeu.go.id/ejournal/index.php/kek/article/download/259/259.

Illahi, Armadani Rizki. "Hilirisasi Pertambangan Dan Dampaknya Terhadap Aspek Ekonomis Lingkungan Hidup Di Indonesia." *Justitia* 9, no. 3 (2022): 1436–44, https://doi.org/10.31604/justitia.v9i3.1436-1444.

Jingyao Fu, International Trade Liberalization and Protectionism A Review, *Advances in Economics, Business, and Management Research*, Vol. 203, 2021, 2480-2486, https://doi.org/10.2991/assehr.k.211209.403

Johan, Eva. "The Protection of Domestic Industry through Safeguards Instrument GATT/WTO and Its Implementation on Downstream Steel Industry In Indonesia." *Indonesian Journal of International Law* 9, no. 4 (2012): 625. https://doi.org/10.17304/ijil.vol9.4.363.

Jose, Daniel. "The Vienna Convention of 1969 on the Law of Treaties and Humanitarian Law." *International Review of the Red Cross* 136 (1972): 367–80, https://international-review.icrc.org/articles/vienna-convention-1969-law-treaties-and-humanitarian-law.

Kementerian Sekretariat Negara Republik Indonesia. "Hilirisasi Terus Digaungkan, Presiden Jokowi: Jangan Mengulang Sejarah Eskpor Bahan Mentah," 2023. https://www.setneg.go.id/baca/index/hilirisasi_terus_digaungkan_presiden_jokowi_jangan_mengulang_sejarah_ekspor_bahan_mentah.

Krustiyati, Atik, and Gita Venolita Valentina Gea. "The Paradox of Downstream Mining Industry Development in Indonesia: Analysis and Challenges." *Sriwijaya Law Review* 7, no. 2 (2023): 335–49. https://doi.org/10.28946/slrev.Vol7.Iss2.2734.pp335-349.

Kwa, Aileen. *Power Politics in the WTO Edited By*. Edited by Alec Bamford. Bangkok: Focus on the Global South, 2003, https://www.ecolomics-international.org/n_san_kwa_power_politics_in_the_wto.pdf.

Leung, Priscilla M F, and Guiguo Wanc. "State Contracts in the Globalized World." *The Journal of World Investment & Trade* 7, no. 6 (2006): vii–855. https://doi.org/10.1163/221190006X00018.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.

Matsumoto, Shoji. "Jus Cogens and the Right to Self-Determination - Falsifiability of Tests -," 2020, https://www.policycenter.ma/sites/default/files/RP_20-12_Matsumoto.pdf.

Muthia, Fatma. "World Trade Organization, Negara Berkembang, Dan Special and Differential Treatment." *Pandecta: Research Law Journal* 10, no. 1 (2015), https://doi.org/ 10.15294/pandecta.v10i1.4193.

Natalia Yeti Puspita, Elizabeth Nadeak, and Aloysius Deno Hervino. "Justifikasi Penerapan Prinsip Permanent Sovereignty Over Natural Resources Dalam Perdagangan Internasional." *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 504–25. https://doi.org/10.23887/jatayu.v5i3.56398.

Nawrot, F. "Principle of Permanent Sovereignty over Natural Resources in Rulings of International Courts." *Prawne Problemy Górnictwa i Ochrony Środowiska* 2020, no. 1–2 (2020): 97–109. https://doi.org/10.31261/PPGOS.2020.01-02.07.

Niewęgłowski, Krzysztof. "Normative Aspects of Jus Cogens Identification in Vienna Convention on the Law of Treaties." *Zeszyty Prawnicze BAS* 26, no. 2 (2023): 77–95. https://doi.org/10.31268/ZPBAS.2023.26.

——. "The Emergence of Jus Cogens in the Vienna Convention on the Law of Treaties." *Zeszyty Prawnicze BAS* 22, no. 2 (2022): 55–75. https://doi.org/10.31268/ZPBAS.2022.22.

Ostrowski, Wojciech. "The Twilight of Resource Nationalism: From Cyclicality to Structural Change." *Third World Quarterly* 44, no. 8 (2023): 1621–39. https://doi.org/10.1080/01436597.2023.2211054.

Pak, Hui-Chol, Hye-Ryon Son, and Son-Gyong Jong. "Analysis on the Legal Definition of Jus Cogens Provided in Article 53 of the Vienna Convention on the Law of Treaties." *International Studies* 59, no. 4 (2022): 315–35. https://doi.org/10.1177/00208817221133567.

Pereira, Ricardo, and Orla Gough. "Permanent Sovereignty over Natural Resources in the 21 St Century : Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law." *Melbourne Journal of International Law* 14 (2013): 1–45, https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1687487/04PereiraGough-Depaginated.pdf.

Poncian, Japhace. "Resource Nationalism and Community Engagement in Extractive Resource Governance: Insights from Tanzania." *Review of African Political Economy* 48, no. 167 (2021): 550–67. https://doi.org/10.1080/03056244.2021.1920469.

Rahman , N. A. ., Mochtar, Z. A., Rafiqi, I. D., & Jalloh, M. Y., "Legal Politics of Environmental Licensing Governance After Job Creation Law", *Hang Tuah Law Journal* 6, no. 3 (2022): 123–134, https://doi.org/10.30649/htlj.v6i2.109.

Riyanto, Sigit. "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer." *Yustisia Jurnal Hukum* 1, no. 3 (2012): 5–14. https://doi.org/10.20961/yustisia.v1i3.10074.

Santoso, Rizal Budi. "Indonesia's Rational Choice in the Nickel Ore Export Ban Policy." *Cogent Social Sciences* 10, no. 1 (2024): 2334456. https://doi.org/10.1080/23311886.2024.2334456.

Schrijver, Nicolaas. *Realizing the Right to Development*. United Nations, 2013.

Siahaan, Doan Mauli T, Ibrahim Sagio, and Evi Purwanti. "Restriction of Indonesian Nickel Ore Export Based on the Perspective of Quantitative Restriction Principle in GATT." *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 409–18. https://doi.org/10.30641/dejure.2021.V21.409-418.

Soekanto, Soerjono, and Sri Mahmudji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2013.

Surugiu, Marius-Răzvan, and Camelia Surugiu. "International Trade, Globalization and Economic Interdependence between European Countries: Implications for Businesses and Marketing Framework." *Procedia Economics and Finance* 32, no. 15 (2015): 131–38. https://doi.org/10.1016/s2212-5671(15)01374-x.

Toledano, Perrine, and Nicolas Maennling. "CASE STUDY AUSTRALIA : DOWNSTREAM LINKAGES," 2018.

——. "CASE STUDY BOTSWANA : DOWNSTREAM LINKAGES," 2018. https://doi.org/https://doi.org/10.7916/d8-2sat-fx87.

——. "Case Study Indonesia: Downstream Linkage," 2018. https://doi.org/https://dx.doi.org/10.2139/ssrn.3670266.

——. "Case Study Nigeria : Government-Led Investments," 2018. https://doi.org/https://dx.doi.org/10.2139/ssrn.3670269.

——. "CASE STUDY SINGAPORE : DOWNSTREAM LINKAGES," 2018. https://doi.org/https://dx.doi.org/10.2139/ssrn.3670274.

——. "Local Content Policies in the Mining Sector: Fostering Downstream Linkages." *INTERGOVERNMENTAL FORUM on Mining, Minerals, Metals and Sustainable Development*, 2018. https://www.iisd.org/system/files/publications/local-content-policies-mining-direct-local-employment.pdf.

TR, Cut Asmaul Husna. "Adopsi Prinsip Permanent Sovereignty Over Natural Resources (PSNR) Migas." *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 149. https://doi.org/10.21143/jhp.vol46.no2.74.

Wenar, Leif. "Fighting the Resource Curse: The Rights of Citizens Over Natural Resources." *Ethics & International Affairs* 35, no. 2 (2021): 153–76. https://doi.org/10.1017/S0892679421000209.

Widiatedja, I Gusti Ngurah Parikesit. "Indonesia's Export Ban on Nickel Ore: Does It Violate the World Trade Organization (WTO) Rules?" *Journal of World Trade* 55, no. 4 (2021): 561–82, https://doi.org/10.54648/trad2021028.

Widiatedja, I Gusti Ngurah Parikesit, and I Gusti Ngurah Wairocana. "The Rise of the Spirit of National Interest and the Existence of World Trade Organization Agreement : A Case Study of Indonesia." *Padjadjaran Jurnal Ilmu Hukum* 4, no. 2 (2017): 319–40. https://doi.org/10.22304/pjih.v4n2.a6.

Zaifa, Gilang Abi, Maria Yohana, and Al Fath. "The Legal-Political Urgency of Coal Industry Downstreaming for Democratic and Just National Development." *Recht Studiosum Law Review* 2, no. 2 (2023): 134–50. https://doi.org/10.32734/rslr.v2i2.13014.

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