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An Analysis of Judicial Considerations of the Capitalist Economy in the Tom Lembong Case

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Abstract

This study examines the intersection of economic ideology and criminal adjudication in the sugar-import licensing case of former Indonesian Trade Minister Thomas Trikasih Lembong. In July 2025, the Jakarta Corruption Court convicted Lembong for alleged corruption in sugar import permits, citing his prioritisation of market-oriented policies referred to as a "capitalist economic approach" as an aggravating factor. Subsequently, President Prabowo Subianto granted Lembong presidential abolition, terminating all legal proceedings and restoring his reputation. Employing a qualitative, document-analytical methodology, this research systematically reviews judicial opinions, ministerial decrees, and expert commentary to assess (1) the extent to which neoliberal ideology influenced the court's reasoning; (2) the legality of treating economic policy choices as criminal conduct; and (3) the broader ramifications for Indonesia's Democratic Economic System. Critical discourse analysis reveals that the court's invocation of capitalism as a quasi-legal standard lacks constitutional or statutory basis and undermines the mens rea requirement central to criminal law. Key informants including former Coordinating Minister Mahfud MD and public commentator Ferry contend that ideological characterisations are non-justiciable absent clear legislative prohibition. The verdict risks engendering policy paralysis by conflating administrative discretion with criminal liability, thereby deterring innovative market reforms and eroding investor confidence. Despite the remedial effect of presidential abolition, the precedent endures within judicial discourse, posing systemic challenges to policy transparency and regulatory predictability. The study concludes with recommendations for judicial restraint and legislative clarification to delineate policy critique from criminal prosecution, safeguarding institutional integrity and enabling adaptive economic governance in an evolving global environment.

Keywords: Capitalist Economy, Market Liberalization, Economic Policy.

Introduction

The July 2025 sentencing of former Indonesian Minister of Trade, Thomas "Tom" Trikasih Lembong, to 4.5 years in prison for corruption in sugar import policies has ignited a significant public and academic debate. The Jakarta Anti-Corruption Court found that while Lembong did not personally profit, his policies caused state losses of Rp194.72 billion. The verdict's most contentious element, however, was not the finding of state loss but the judicial panel's reasoning. A key aggravating factor in the sentencing was the assertion that Lembong's policies "prioritized capitalist economics over democracy and the Pancasila economic system" (Agatha et al., 2025).

This judgment raises profound questions at the intersection of law, economic policy, and state ideology, touching upon established academic discussions regarding corporate governance, state-owned enterprise liability, and the legal definition of state financial loss in Indonesia (Salampessy & Sopian, 2016). The court's decision to invoke a "capitalist economy" as a quasi-legal standard has been met with sharp criticism from various public figures and experts, who argue it represents a departure from established legal norms.

Subsequently, Thomas Trikasih Lembong was officially granted abolition by President Prabowo Subianto on August 1, 2025. President Prabowo submitted the abolition request through Presidential Letter No. R43/Pres/07/2025, dated July 30, 2025, which was subsequently approved by the Indonesian House of Representatives (DPR RI) in a consultation meeting on July 31, 2025. The granting of abolition terminated all ongoing legal proceedings against Tom Lembong in the alleged sugar import corruption case, including the appellate process following his conviction to 4.5 years' imprisonment and a fine of IDR 750 million by the Jakarta Corruption Court on July 18, 2025. Minister of Law Supratman Andi Agtas explained that this abolition was based on considerations of national unity and in commemoration of Indonesia's 80th Independence Day, recognizing Tom Lembong's significant contributions to the nation. Consequently, Tom Lembong, who had been detained at Cipinang Detention Center, was released on Friday night, August 1, 2025, and stated that the abolition not only provided his physical liberation but also restored his reputation and dignity as a citizen.

Looking at the judge's considerations in the Tom Lembong case which emphasized the capitalist economy. The Legal-Economic Critique Public commentator Ferry Irwandi (2025), in an online analysis, described the court's use of the term "capitalistic economic system" as a "fatal error" and a "reasoning flaw". He argues that from an academic standpoint, capitalism is a mode of production, not a formal economic system that can be legally contravened. Irwandi contends that since no constitutional or statutory provision forbids a "capitalistic" approach, using it as an aggravating factor introduces an ideological bias that is not grounded in legal norms, potentially providing a strong basis for an appeal.

The Political-Legal Critique Former Coordinating Minister for Political, Legal, and Security Affairs, Mahfud MD, labeled the court's decision as "wrong". He emphasized that a core principle of criminal law requires proof of *mens rea*, or criminal intent, which he argues was absent. Echoing Irwandi, Mahfud stated that "capitalistic" is an idea, not a legal norm, and therefore cannot be used to secure a conviction. He explained that just as a citizen cannot be imprisoned for atheism despite the first principle of Pancasila ("Belief in One God"), a minister cannot be convicted for an economic ideology that has not been codified into a specific, sanction-bearing law (Mahfud MD Official, 2025).

The Official Defense In its official response, the Indonesian Prosecutorial Commission (Komisi Kejaksaan) affirmed that the legal proceedings against Tom Lembong constitute a legitimate enforcement of the law, untainted by political agendas or unwarranted criminalization. Pujiono Suwandi emphasized that, although concerns arose regarding potential politicization and undue criminalization, the Commission's inquiry remained purely legal in character. He observed that, while a more comprehensive investigation might have alleviated such anxieties, it ultimately heightened the legal risks involved. All individuals under scrutinyinc luding prominent political figures and their affiliates were subjected to an identical procedural strategy. Suwandi further clarified that the assessment of political risk is an integral element of investigatory strategy, rather than a novel or extrajudicial practice (Official Inews, 2025).

The central research problem of this study is to examine how capitalist economic principles have influenced the formulation and adjudication of state economic policy in the Tom Lembong sugar-import licensing case, and to evaluate the broader implications of this interaction for Indonesia's Democratic Economic System. Specifically, this research addresses (1) the extent to which judicial reasoning in the Lembong verdict reflects neoliberal or market-oriented ideologies; (2) how economic policy choices such as privileging private cooperatives over state-owned enterprises are construed as "capitalist" conduct subject to criminal sanction; and (3) the consequences of such legal-economic intersections for policy transparency, market efficiency, and institutional trust. By integrating law-and-economics theory, empirical analysis of court practice, and the perspectives of key actors, this study will clarify normative criteria for judicial review of economic policymaking and offer actionable insights to policymakers, jurists, and scholars seeking to balance market innovation with public interest in emerging economies.

Literature Review

The following review research published between 2020 and 2025 on (1) state officials' enactment of capitalist-oriented economic policies (often under the rubric of "state capitalism") and (2) import regulations implemented by state authorities in cooperation with private sector actors. It concludes by identifying key gaps warranting further study.

Kim (2023) traces the expansion of Indonesia's state-owned enterprises (SOEs) under President Joko Widodo, documenting a decade of "discreet liberalization" alongside intensified SOE roles as infrastructure developers. He highlights the coexistence of market liberalization and state-led investment in strategic sectors, noting the emergence of hybrid SOEs that leverage private financing while retaining significant government ownership.

Kim & Sumner (2021) revisit Indonesia's industrial policy, arguing for the re-integration of SOEs into economic development planning. They show that, post-2014, SOEs regained prominence not merely as bureaucratic relics but as active agents of capital allocation, often in partnership with domestic private firms and foreign investors.

Kim (2023) further elaborates on how Indonesia's state capitalist model under Jokowi differs from the Suharto era, stressing that state-led projects are justified by "market-friendly" discourses and accompanied by regulatory refinements that facilitate private-public financing structures.

Import Policy and Public-Private Collaboration. Bourdeau & Khasbulla (2025) analyze the 2025 import policy overhaul (MR 16/2025), documenting how cluster-based deregulation and simplified licensing aim to stimulate private investment in manufacturing. They report extensive coordination between the Ministry of Trade and industry associations to calibrate tariff waivers and port restrictions, enabling faster clearance for strategic commodities.

Siregar et al. (2024) examine determinants of soybean imports, finding that exchange-rate volatility, domestic consumption growth, and private importers' pricing strategies all shaped by government-set reference prices significantly affect import volumes. They emphasize imported-price moderation as a mechanism by which state agencies and private traders manage food security objectives.

Wintribrata et al. (2025) conduct a bibliometric review of virtual laboratory research in STEM, noting how public grants and private partnerships drive innovations in agro-processing technologies an indirect driver of import substitution policies and private investment incentives in the food and beverage sector.

Identified Research Gaps

Despite rich descriptive accounts, integrated analyses remain scarce. Specifically:

1. Intersection of State Capitalism and Import Deregulation: No empirical study has examined how SOEs' growing infrastructure role (e.g., port upgrades) interacts with cluster-based import liberalization in shaping private sector entry and market structure.
2. Outcomes of Public-Private Licensing Frameworks: While MR 16/2025's procedural details are well documented, the impact on import lead times, compliance costs, and SME participation especially for non-traditional commodities awaits quantitative assessment.
3. Policymaker Private Sector Dynamics: Existing work outlines top-down policy design but lacks field-level studies of negotiation processes between trade officials, private import consortia, and SOEs, which determine the ultimate allocation of import quotas and technical standards.

Future research should employ mixed-methods combining firm-level surveys, customs clearance data, and SOE investment records to assess how state capitalist instruments (e.g., public-private infrastructure vehicles) and modernized import regimes jointly influence industrial competitiveness, market concentration, and the broader capitalist economy in Indonesia.

Research Method

This study will employ a qualitative research methodology centered on a descriptive and analytical document analysis. This approach is particularly suited for an in-depth exploration of the complex interplay between legal judgments and economic ideologies, a domain where quantitative metrics alone are insufficient (Dopp et al., 2019). The research will systematically analyze a curated corpus of documents, drawing upon peer-reviewed literature to establish a rigorous theoretical foundation (Baas et al., 2020). The primary data sources include:

a) Theoretical and Economic Texts: Foundational literature on capitalist economic theory, comparative economic systems, and the principles of the Pancasila economy.

b) Policy and Legal Documents: Official government records, including ministerial decrees concerning sugar import licensing, and the full judicial verdict from the case in question.

c) Expert and Public Commentary: Published analyses and transcripts from recognized Indonesian economists and public figures discussing the economic rationale and impact of the trade minister's decisions and the subsequent legal interpretation.

Data will be analyzed using a thematic content analysis approach, a method well-established for systematically identifying and interpreting patterns within textual data. The analysis will proceed by first identifying explicit references to key economic concepts such as market efficiency, state intervention, and public welfare within the documents. Subsequently, a critical discourse analysis will be applied to deconstruct how these economic concepts were framed and utilized to justify policy actions and judicial reasoning. This qualitative method allows for a nuanced understanding of the impact of import policies and the economic considerations behind ministerial decisions, consistent with advanced practices in economic policy evaluation (Bengtsson, 2016).

Results

1. The Judicial Framing of Economic Ideology as a Criminal Enhancer

Thematic analysis of the court's verdict reveals that the central finding was not merely the calculation of state financial loss, but the explicit criminalization of the economic ideology perceived to underlie the policy decision. The judicial panel identified Tom Lembong's prioritization of a "capitalist economic approach" as a principal aggravating factor in his sentencing (Romdoni & Nathasya, 2025). This finding is significant as it shifts the legal focus from a direct act of corruption (*actus reus*) or illicit intent (*mens rea*) to the perceived ideological foundation of a ministerial action. The court constructed a narrative in which market-oriented policies, such as those favoring private importers to stabilize sugar prices, were positioned as a transgression against the state's prescribed Pancasila economic system. This effectively transformed a debatable economic policy choice into a quasi-legal offense, a move strongly contested by legal and economic experts.

2. Divergent Interpretations of Ministerial Discretion and State Loss

The research reveals a fundamental conflict between legal and economic interpretations of Lembong's actions.

a. **The Judicial and Prosecutorial View**: From the court's perspective, the policy's outcome a state loss was sufficient to establish culpability, supported by the Prosecutorial Commission's defense of the verdict as a legitimate act of law enforcement. This implies an adherence to a *strict liability* standard, where negative consequences of a policy, regardless of intent, can trigger criminal liability, particularly when framed as ideologically deviant. The verdict was seen by some as an objective application of the law, holding a high-ranking official accountable for actions that harmed the state.

b. **The Economic and Legal Critique**: In stark contrast, commentators like Ferry Irwandi and Mahfud MD argue this interpretation represents a "fatal error" in reasoning. From a law-and-economics standpoint, capitalism is a mode of production or an analytical framework, not a legal norm that can be violated. Mahfud MD further emphasized that without proof of criminal intent, convicting a minister for the economic philosophy behind a policy is akin to punishing thought-crime, undermining the principle of legality. This perspective holds that policy decisions, even if they lead to losses, fall within the realm of administrative and political accountability, not criminal law, unless direct corruption is proven.

3. State Capitalism as the Implicit Economic Norm

The court's admonishment of a "capitalist" policy is best understood within the contemporary context of Indonesia's political economy, which has seen a significant expansion of state capitalism under the Joko Widodo administration. Research Kim (2023) highlights that since 2014, State-Owned Enterprises (SOEs) have been re-centralized as key "agents of development," especially for major infrastructure projects, with their total assets growing from 43% to 60% of GDP between 2014 and 2020. This state-led development model, often justified with "market-friendly" discourse, has become an implicit benchmark for economic policy (Kim & Sumner, 2021). The verdict against Lembong, therefore, can be interpreted as a judicial reinforcement of this norm, penalizing a policy that prioritized private sector mechanisms over state-centric ones. The decision implicitly delegitimizes liberal economic approaches that diverge from the prevailing state-capitalist consensus.

4. Implications for Economic Governance and Legal Certainty

The findings indicate that the verdict carries significant consequences for future economic policymaking in Indonesia.

a. **Heightened Policy Risk**: Criminalizing economic policy based on its ideological label introduces profound uncertainty for public officials. This could lead to "policy paralysis," where ministers become risk-averse, avoiding innovative or decisive market-based solutions for fear of future legal challenges based on vague ideological grounds. This concern is amplified by research indicating that policy inconsistency and a lack of transparency already negatively affect market stability and investor confidence in Indonesia (Salmon, 2025).

b. **Erosion of Legal Certainty**: The use of an abstract and undefined term like "capitalist economy" as a basis for a criminal conviction contravenes the legal principle that laws must be clear and specific. This ambiguity creates a risk that judicial decisions could be applied inconsistently, depending on the political or ideological leanings of the judiciary.

c. **Intensified State-Market Tension**: The case brings the enduring tension between state control and market liberalization in the Indonesian economy into the courtroom (Saleh, 2020). While recent regulations aim to simplify import licensing and reduce bureaucracy to attract investment (Hariyatno et al., 2024), the Lembong verdict sends a countervailing signal, suggesting that policies aligned with such liberalization could face legal jeopardy. This contradiction complicates Indonesia's efforts to balance its developmental goals with the need for a predictable and efficient regulatory environment for trade and investment (Feryanto, 2025).

d.

Discussion

This study's analysis of the Tom Lembong case brings to light a fundamental tension at the heart of economic policymaking in emerging economies: the conflict between market-oriented reforms and entrenched conceptions of the state's economic role. The case serves as a critical juncture for examining how principles of a capitalist economy, such as deregulation and private sector empowerment, are interpreted and judged within a national context that is navigating the complexities of a mixed economic system (Kovnir & Kuznetsova, 2021).

The Economic Rationale of Deregulation and Market Efficiency

From a law-and-economics perspective, the decision to deregulate sugar imports by prioritizing private cooperatives over State-Owned Enterprises (SOEs) can be seen as a classic move towards fostering market efficiency. Import licensing regimes are often identified as significant non-tariff trade barriers that can create distortions greater than their benefits. Such regulations can impose substantial costs, including delays and warehousing expenses, and disproportionately affect Small and Medium-sized Enterprises (SMEs) that lack the resources to navigate complex bureaucratic requirements (Cheok & Kuriyama, 2017). By relaxing these licensing rules, the policy aimed to increase competition, which theoretically leads to lower prices and innovation for the benefit of consumers (Dolan, 2024).

Recent policy shifts in Indonesia corroborate this economic logic. The government's decision to scrap import quotas for several commodities, including industrial materials, was explicitly framed as a strategy to create a more "conducive business environment" by easing regulatory bottlenecks and attracting investment. This reflects a broader recognition that deregulation is a key lever for enhancing economic competitiveness in the face of global trade volatility. Therefore, the policy choice in the Lembong case aligns with established economic theories and contemporary policy trends aimed at liberalizing trade to stimulate growth and private sector participation (Cheok & Kuriyama, 2017).

Neoliberal Ideology and Policy Formation in Emerging Markets

The controversy in the Lembong case is deeply rooted in the influence of neoliberal or market-oriented ideologies on economic policy. The adoption of such policies is a well-documented phenomenon in emerging markets over the past few decades, often driven by internationally trained economists and technocrats who champion liberalization as the most credible path to development. These frameworks prioritize free markets, private ownership of capital assets, and minimal state intervention as pillars of economic prosperity (Chwieroth, 2007).

However, the application of neoliberal policies in developing nations is not without its critics or complexities. Studies show that while these policies can attract investment, they can also exacerbate structural inequality and marginalize vulnerable groups if not accompanied by robust social safety nets and regulations to protect the public interest. The transition to a more capitalist economic model can lead to structural injustices if social and economic rights are not adequately protected. The criticism leveled in the Lembong caset hat the policy was "capitalist" conduct taps into this critical discourse, reflecting a societal concern that market-driven policies may conflict with national interests or a people-centered development paradigm (Pandey, 2023).

Reconciling Economic Strategy and Institutional Trust

A core finding of this research is the dangerous conflation of economic policy philosophy with criminal conduct. Commentators cited in the research rightly argue that capitalism is an analytical framework, not a legal standard that can be violated. Economic policy decisions, particularly those concerning trade and market structure, are inherently strategic choices made under conditions of uncertainty. They are designed to achieve specific economic goals, such as stabilizing prices or boosting supply, and should be evaluated based on their outcomes and adherence to administrative processes, not their ideological underpinnings.

Punishing a policymaker for the economic theory behind a decision, absent direct proof of corruption or personal gain, sets a hazardous precedent. It risks creating "policy chill," where officials become hesitant to pursue innovative or bold reforms for fear of legal repercussions. This could stifle the very policy experimentation needed to address complex economic challenges in a dynamic global environment. Ultimately, for a market economy to function effectively, there must be a clear distinction between administrative or political accountability for policy outcomes and criminal liability. The long-term health of Indonesia's Democratic Economic System depends on fostering an environment where policy can be debated and decided on its economic merits without the specter of undue criminalization, thereby safeguarding institutional trust and the integrity of its economic governance.

Policy Recommendations

To enhance Indonesia's economic outcomes in the sugar sector and reduce reliance on imports, the following evidence-based recommendations are proposed. Each recommendation draws on empirical findings from peer-reviewed Scopus-indexed studies and related analyses.

1. Modernize Processing Infrastructure

   Invest in revitalizing aging sugar mills and associated logistics to raise processing efficiency and reduce unit costs. System-dynamics modeling in East Java demonstrates that modernized milling can mitigate farmer income losses when imports constitute up to 10% of domestic production, limiting income declines to under 40% per annum compared to bankruptcy risks at higher import shares (Fudhlaa et al., 2021).

2. Enhance Agricultural Productivity

   Deploy improved sugarcane varietals and agronomic practices. Multiple-regression analysis of national time-series data (1995–2021) confirms that expanding harvested area and boosting cane yields are significantly negatively correlated with import volumes (βharvested_area = –0.47; βproductivity = –0.36; $p < 0.01$). Provide extension services and subsidized inputs (e.g., high-quality seed and fertilizer) to smallholders to raise per-hectare yields by at least 20% within five years (Inayaturrohmah et al., 2023).

3. Implement Data-Driven Import Quotas

   Establish dynamic import quotas calibrated to real-time production and stock forecasts using a system-dynamics early-warning framework. Simulation results indicate that imposing quotas aligned with up to 20% of projected domestic output maintains market stability without triggering severe farmer income shocks (Fudhlaa et al., 2021).

4. Expand Financial Support Mechanisms

   Scale up low-interest credit programs such as Kredit Usaha Rakyat (KUR) to finance both upstream (planting, harvesting) and downstream (processing, warehousing) investments. Evidence from Indonesia's broader agro-processing sector shows that targeted credit reduces working-capital constraints and yields 15–25% higher returns on private investment (Nugraha & Antriyandarti, 2025).

5. Foster Public–Private Collaboration

   Create multi-stakeholder platforms linking government agencies, growers' cooperatives, research institutions, and private processors. Case studies in similar agricultural trade reforms highlight that such collaborations accelerate technology adoption and improve supply-chain coordination, reducing post-harvest losses by 10–15% (Crifasia, 2024).

6. Promote Demand-Side Management

Launch educational campaigns and fiscal measures (e.g., tiered sugar taxes) to moderate per-capita sugar consumption growth. Regression analysis finds that a 10% reduction in aggregate consumption correlates with a 6% decline in import dependency over a two-year horizon ($p < 0.05$) (Inayaturrohmah et al., 2023).

7. Strengthen Market Information Systems

   Develop an integrated data platform to provide timely price, production, and import-licensing information to stakeholders. Transparent, high-frequency data dissemination reduces speculative volatility and improves decision-making for both policymakers and market participants, as demonstrated in APEC analyses of import-licensing regimes (Cheok & Kuriyama, 2017).

By implementing these interconnected measures modernizing infrastructure, boosting productivity, calibrating import quotas, expanding finance, fostering collaboration, managing demand, and enhancing information flows Indonesia can progressively shift toward greater self-sufficiency, protect farmer livelihoods, and maintain stable domestic sugar markets.

Conclusion

This analysis of judicial considerations regarding the "capitalist economy" in the Tom Lembong case reveals a profound departure from established legal principles and creates significant implications for Indonesia's economic policy framework and judicial integrity. The court's decision to invoke "capitalist economy" as a quasi-legal standard represents an unprecedented judicial overreach that conflates economic ideology with criminal liability, fundamentally challenging the separation between policy debate and criminal prosecution.

The research demonstrates that the judicial panel's characterization of market-oriented policies as inherently transgressive against Indonesia's Pancasila economic system lacks constitutional and statutory foundation. As established through expert commentary and legal analysis, no provision in Indonesian law criminalizes "capitalistic" approaches to economic policy, rendering the court's reasoning constitutionally deficient and procedurally flawed. The absence of mens rea criminal intent in Lembong's policy decisions further undermines the legitimacy of the conviction, as confirmed by former Coordinating Minister Mahfud MD's assessment that ideological preferences cannot constitute criminal conduct absent specific statutory prohibition.

The implications of this precedent extend beyond individual culpability to systemic concerns regarding policy paralysis and institutional integrity. By criminalizing economic policy based on ideological characterization rather than statutory violation, the verdict introduces profound uncertainty into Indonesia's governance framework, potentially deterring innovative market-based solutions and creating a chilling effect on ministerial decision-making. This judicial activism threatens to undermine Indonesia's efforts to maintain a predictable regulatory environment essential for investment and economic development.

Furthermore, the case illuminates the persistent tension between state intervention and market liberalization in Indonesia's developmental trajectory. While recent regulatory reforms aim to streamline bureaucratic processes and attract foreign investment, the Lembong verdict sends contradictory signals that may compromise investor confidence and policy coherence. The court's implicit rejection of market mechanisms in favor of undefined "people-centered" approaches creates legal ambiguity that could impede necessary economic reforms.

The subsequent presidential abolition granted to Lembong, while providing individual relief, does not address the underlying systemic concerns raised by the initial verdict. The precedent established by criminalizing economic ideology remains embedded within Indonesia's judicial discourse, potentially influencing future cases involving policy decisions with market-oriented characteristics.

This study concludes that the Tom Lembong case represents a critical juncture in Indonesian jurisprudence, highlighting the urgent need for clearer delineation between administrative accountability for policy outcomes and criminal liability for statutory violations. The long-term health of Indonesia's Democratic Economic System requires judicial restraint that respects the separation of powers and avoids ideological criminalization of legitimate policy choices. Only through such institutional discipline can Indonesia maintain the policy flexibility and legal predictability necessary for effective economic governance in an increasingly complex global environment.

The research recommends immediate judicial reform to establish clear boundaries between policy critique and criminal prosecution, ensuring that future economic policy decisions are evaluated on their statutory compliance rather than their ideological underpinnings. Such reforms are essential to preserve institutional trust and maintain Indonesia's capacity for adaptive economic governance.

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