

## **Drowning in Neoliberalism: Rediscovering Constitutional Guarantees for Citizens**

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### **Abstract**

Even though workers' rights are generally important, this is often neglected, and changes towards neoliberalism occur. This can enrich a company and complicate the lives of workers. This research then aims to be able to see how to be able to reinvent the existence of guarantees for citizens when the country sinks into neoliberalism. The research method that will be used in this study uses a descriptive qualitative approach. The data used in this study come from different research results and previous studies, which still have relevance to the content of this research. The results of this study then found that neoliberalism eliminates the presence of guarantees for citizens to obtain their basic rights. The existence of a constitution can prevent public policy-making that erodes individual rights. Therefore, in general, the Indonesian state is not at all compatible with the concept of neoliberalism. This is because the elimination of the rights of citizens is very contrary to the contents of Pancasila itself.

**Keywords:** Neoliberalism, Rights, Policy, Society.

### **Introduction**

In the neoliberal framework that deregulates the market, privatizes to the ends of the soul, and excludes the dispossessed who cannot access the consumer market; a relationship of social indifference appears between included-excluded with an 80-20 model of society (eighty percent excluded, twenty percent included). The essential difference between an industrial society we trace back to the middle of the last century. A consumer society lies in the former using. In contrast, the hyper-consumerist society no longer needs the exploitation of the labor force but excludes it, thus, in the new world of consumers, mass production no longer requires mass labor (Duncan, 2022). That is why the poor, who once fulfilled the role of the reserve army of labor, now become consumers expelled from the market, reigning the new principle of modernization, downsizing (the reduction or reduction of personnel), turning people into easily replaceable and unnecessary social disposables, allowing you to seamlessly deploy your arsenal of domination (Castelli, 2022).

When the power of the market is installed in the crevices of society, it becomes almost impossible to look back at the human being. Since the beginning of the last century, Max Weber has warned about the consequences of a society governed by the market, which dominated all the acts of people. The market is the most impersonal life relationship in which the human being can enter, in this way, it is the capital and the exchange that dominates in the scenario of social development, focusing on things and not on the person (Falcão et al., 2022). Everything is explained in terms of the market, relationships become impersonal, and if the gaze is turned toward the individual, the question will only be to evaluate his success and again around his production within the market (Langlois & Elmer, 2019).

The theory of neoliberalism emerged after the Cold War. This theory is a critique of the

classical liberalist perspective. Neoliberalism is a theory in international relations that describes the concepts of rationality and contracts. The main concern of neoliberalism is achieving cooperation between states and other actors in the international system (McCann et al., 2020). Based on the opinion put forward by Keohane, international cooperation can occur when a country can adjust its behavior patterns to actual preferences so that a policy is followed by one government and can be said to be a facility for its cooperation partners to realize their own goals (Beiser-McGrath et al., 2021).

In its journey, this neoliberalism perspective is often referred to as the leading approach to studying international organizations and patterns of international cooperation. The actors involved in neo-liberalism are not only the state, but the involvement of non-state actors is also very influential. For example, international organizations, Non-Governmental Organizations (NGOs), International Governmental Organizations (IGOs), and Multinational Corporations (MNCs) (Mok, 2021). The state still has influence, but its influence is not too significant. Neoliberalism believes that cooperation is urgently needed in an anarchic international system to overcome obstacles that are likely to occur, which will lead to interdependence (Gallarotti, 2021).

Talking about neoliberalism in the aspect of intentions and capabilities, a character named Krasner criticizes that neoliberalism prioritizes intentions, interests, and information rather than capabilities. Based on the views of neoliberals, increasing capabilities is not important because cooperation can help a country survive in an anarchic situation (Mentini & Levatino, 2023). Another thing is about regimes and institutions, according to which neorealists think that regimes and institutions place great emphasis on the role of these two things in the international system because, in the view of neoliberals they believe that states will tend to cooperate (Alhammadi, 2022).

It was also explained that neoliberalism arose due to various failures of technocratic and interventionist economic policies in the 1960s, which gave birth to dissatisfaction and conflicts of interest. As with other economic ideas, the emergence of neoliberalism was triggered by a crisis in the form of stagflation in the 1970s in developed countries, which gave this direction to counterattack the pro-intervention camp and brought it back as the dominant economic policy discourse (Kiely, 2021). Neoliberal policies have successfully reduced inflation and encouraged economic growth in several countries. The British economy improved after Margaret Thatcher became British Prime Minister in 1979. Likewise, Ronald Reagan's leadership in the United States for two periods (1981-1989) reduced inflation and unemployment. Both implemented the same policies, namely privatization, deregulation, and reduction of taxes and subsidies (Garavini, 2022).

The individualization that neoliberalism and its free market lead to prevents socially adequate values, such as commitment, the common good, and the claim of rights, from being diminished by the immense arsenal of an ideology imposed from the ends of the market; to maintain the establishment (understood as the social group that imposes and maintains the established order) requiring control of that immense population of excluded people who have been expelled from consumption and even marginalized from fundamental rights (Woodly et al., 2021). Thus, this new model of society is explained in a descriptive-critical way, trying to find the inputs for a public policy of harm reduction since constitutional law must face that planetary framework of power called globalism, which generates exclusion. For the stated purpose, constitutional guarantees and fundamental rights are necessary as invaluable

instruments to find a guarantee Policy that preserves the dignity of those alternative cultures of the excluded, managing to contain abuses of power and injustices.

### **Method**

This research will be carried out using a qualitative approach. The method in this research is a descriptive analysis method. The data to be used in this research comes from various previous studies and studies that still have relevance to the discussion of neoliberalism and its effects on society. The research data collected by the researchers will be processed immediately so that the results of this research can be concluded (Sari et al., 2022).

### **Result and Discussion**

#### **1. Development of Neoliberalism**

Neoliberalism conceals a latent exclusion. In recent years, we have appreciated an inclination on the part of the state towards privatization, flexibility, and control of crime through what is known as a heavy hand. This has caused, for example, unemployment to increase (flexibilization policies), which shows that there is a heavy-handed criminal policy that is inserted within the entire neoliberal swarm. What is at stake in this neoliberal framework is the exclusion of those people who, due to their situation of vulnerability, are distanced from those policies of flexibility or trapped by heavy-handed criminal policies (Nash et al., 2022).

Neoliberalism, as Klein argues, is the shorthand expression of an economic project that denigrates the public sphere and anything that is not a product, either of the functioning of the market or the individual decisions of consumers, leaving aside the participation of the state. It is the recipe that was applied in the 70s during some countries' dictatorships in the region. Active contribution and management of the Republic (public matter) by the private sector and zero state intervention; In this way, the neoliberal capitalist model could be summarized.

Like all ideologies, neoliberal hides and conceals its political function as a mere justification for exercising power. Thus, the neoliberal ideology intends to impose its model of exclusion, poverty, and apartheid through the hegemony held by small groups of financial power, who currently exercise power and sovereignty of the States through massive indebtedness, which has become the weapon used by economic totalitarianism. This reality that power presents can be subverted through rights taken seriously, through a political decision to propose, apply and comprehensively develop constitutional guarantees in the sphere of public policies (Giroux et al., 2022).

For example, there is a shortage of the most basic, malnutrition, and poverty, making our societies unequal and inequitable. Well then, how would this reality be counteracted through law or rights? If you do not become aware of that reality, you need the right and access to information to reveal what an ideology conceals. So that this right is not maintained at an illustrative level, institutions are required to guarantee real access to that information. In other words, we first implement the rights and then guarantee them through a Public Policy.

It is believed that neoliberalism comes from two voices: neo and liberalism. It intends to present itself as a new liberalism for this time. Neoliberalism is not related to the original liberalism product of the rising bourgeoisie with the arrival of the Industrial Revolution in the

eighteenth century. Innumerable considerations radically differentiate liberalism from neo-liberalism, but the most serious thing that neoliberalism advocates are the repudiation of Human Rights (McDowell, 2023).

Along these lines, its ideologues have implemented this rejection, including Milton Friedman, Ludwig von Mises and Friedrich von Hayek. The last two characters have been quoted and disseminated many times by various economists at the regional and world level. His proposal is based on two axes: the denial of a person to all human beings, since the human condition does not directly imply the condition of a person, completely breaking the principle of equality and non-discrimination; further emphasizing that our peoples are underdeveloped for not correctly adapting to market demands, thus leaving financial totalitarianism unscathed concerning the misery of two-thirds of the world's population. The second axis is configured by von Hayek: the separation between political and individual freedom. For von Hayek, there is no freedom without the freedom of the market, which translates as an example that a dictator, however cruel he may be, can govern liberally if the dictator implements a free market model. So we have that this ideology tends to eradicate democracy and human rights.

## **2. Neoliberal Framework and Its Affect on Society**

The idea of the free market is a constant in a neoliberal society. The effects of this ideology on its political role translate into employment and underemployment, reaching only one-third of the economically active population worldwide. In contrast, half the population lives on less than two dollars a day since the logic is that the market regulates itself, relegating people as simple instruments at the service of capital. So much for the economic sphere. But the ideology reaches the entire political sphere as the government of the polis. The budget cut through the so-called adjustments, annulment of the achievements of social groups such as the claim of rights, access to decent housing, the decline of social claims, discrimination against ethnic groups, the generation of poverty, insecurity, and the accentuation of inequities and inequalities, added to the rapid deterioration of the environment, the extinction of species, the contamination of the biosphere and we could continue. The vindication of fundamental rights has been a conquest carried out by long years of social struggle, all of which have been set aside by neoliberal policies that are defined as a series of destructions of the collective action of humanity (Peters, 2022).

An alternative to this neoliberal framework can be found in constitutional law through specific strategies, techniques, and tactics that shield people and institutions from the onslaught that globalization tries to penetrate our countries through its neoliberal ideology, generating dehumanization due to economic and social exclusion.

A specific guarantee could trace the path of liberation for us: the guarantee of the right to dignity, which includes and frames many other rights, such as respect for life, security, freedom of choice, and self-determination of people. This guarantee is part of an axiological method intended for transformation. For this construction, fundamental rights and constitutional guarantees are powerful tools for empowering our people in their struggle for emancipation and liberation (Dumont, 2022).

For Ferrajoli, the most important conquest of contemporary law has been “the legal regulation of positive law itself, not only in terms of the forms of production but also concerning the contents produced,”; which has caused our legal system to ensure in a reinforced way the fundamental rights in the Constitution and for this, it uses guarantees that can be: a) political

guarantees; b) organic; c) jurisdictional guarantees or d) supranational or international guarantees.

In this study, political guarantees are taken as a starting point. The central idea is that we can achieve great progress through a true harm reduction policy, which protects the essential content of people's rights or the sphere of the undecidable, in the words of Ferrajoli. To this end, it is necessary "to also include substantial norms such as the principle of equality and fundamental rights, which in different ways limit and bind the legislative power, excluding or imposing certain contents on it" (Zaidi & Fordham, 2021).

Linking power around rights is achieved through political guarantees that print what to do and what not to do on the part of the state to contain the advance of those policies that exclude. Political guarantees seek to uncover and counteract the effects of a policy that excludes. That is why they are called harm reduction policies. While a criminal policy acts with repression, a harm reduction policy acts at the level of prevention.

Let's exemplify this idea on a damage reduction policy. Agus injects heroin, Agus is addicted and has caused disturbances in the neighborhood where he lives. The neighbors are upset, Agus is a problem for the entire neighborhood, he sells drugs, injects himself, frequents brothels, and doesn't work, in short, he represents a danger. The neighborhood residents believe the solution is to lock up Agus and forget about him. Indeed, at the slightest infraction, the police arrest him, a court judges him, and he goes to jail. In prison, Agus learns other forms of crime, and he comes out deteriorated, now he knows where to get cheaper drugs, and from time to time, he steals violently. Agus returns to the neighborhood that saw him grow up. He learned a better way to sell drugs without being detected, he hates the people around him because they put him in hell, and one of those days, Agus goes out to look for his merchandise, but then he realizes that the money it is not enough Agus, who contracted HIV in prison, goes out to steal to get the money that allows him to buy drugs. Agus, in the struggle with the victim, kills her.

Now two serious problems have been generated, Agus as a consumer and murderer, as well as the victim. On the one hand, the neoliberal ideology of the market presents a life of luxury that our precarious neighborhoods yearn to obtain, and for this, they commit crimes. Although they are not the only ones who commit crimes since the large financial organizations commit them on a large scale, it is they, like Agus, who enter prisons; on the other hand, the heavy-handed criminal policy imprisoned Agus, aggravating the problem for him and society. Here you can analyze the neoliberal ideology and a heavy-handed criminal approach.

### **3. Human Rights Within Neoliberal Framework**

Well, what would a guaranteed harm reduction policy have done? The best example is found in Portugal. In the European country since 2001, has implemented a policy of harm reduction in terms of drug users. For them, there is no prison, only treatment. Drug use is a disease that can be treated, and with patience, it can also be cured, becoming a matter of public health and not prison. Since consumption was decriminalized and users received treatment, the indicators indicate that consumption, HIV infection, death from overdose, and drug-related crime have drastically decreased. We see then that Portugal took the dignity of these people seriously, welcomed them, interpreted their shortcomings and inconveniences, and transformed them. That makes a harm reduction policy (Lafferty et al., 2020).

Rights in this scenario are essential because, in an inequitable society like ours, violations of rights are daily, therefore, the state and anybody with jurisdiction to hear such violations must take into account that “rights are not only violated by actions –acts of aggression- but they are also violated by omission, - the omission violates them to give others the help or resources that are necessary to develop a dignified and autonomous life”. From this, it can be deduced that social rights are not opposed to individual rights but that the former appears as an extension of the latter, achieving a greater scope of protection.

According to what has been exposed, the guarantees of fundamental rights outline a whole strategy capable of controlling the advance of neoliberal policies since its application implies protection by the state of its citizens as long as their rights are violated by action or omission. All these accumulated rights and guarantees exposed manage to protect citizens in an increasingly exclusive and less inclusive society. The solution is directed by taking fundamental rights seriously (Busilacchi & Giavanola, 2023).

As has been pointed out, a public policy that protects and guarantees rights is necessary, for this, the protection of human assets is necessary as a guarantee policy, which is the line that has been developed. However, for this idea to be truly embodied, the Rule of Law is needed, and therefore, a democratic political system as an inclusive State. If the neoliberal framework projects an 80-20 society, the limits and links imposed on public powers must be in line with respect for and protection of human goods, as Finnis calls them, which are “a sphere of what is -not decideable- by any majority”, which would open decision-making spaces for the excluded; allowing to evaluate in a real way the content of the decisions of those public powers that implement or create policies aimed at vulnerable social sectors.

The protection of the sphere of the -non-decidable- therefore implies a new conception of law, it means recognizing that “there is something knowable legal that is valid as such, although it has not been socially recognized or arranged”; which imposes on the state and its governing bodies the recognition of what is unavailable in their actions: human dignity. Neoliberalism is not alien to Indonesia, much less its policies in the economic and sociocultural sphere in the old days. There are a few policies that have been implemented because of neoliberalism in another country, too, such as: 1) A Cabinet is formed where the Ministers are direct representatives of business groups; 2) The remission of tax and employer debts is granted to large economic groups; 3) Expansion of labor flexibility and the dismissal of public officials; 4) The submission of monetary policy to private banks; 5) The reinstatement of bilateral investment treaties that weaken the state against foreign capital, which causes an openness and surrender on the part of the state to foreign investment (Gorobets, 2020).

For example, let’s assume that the state decides to exploit any natural resources from a protected zone, which will supposedly generate wealth for the fiscal coffers, but poverty, marginalization, and exclusion for the uncontacted peoples of the area. In this example, the state must refrain from acting for two reasons. The first is because the content of his decision is unconstitutional as it affects fundamental rights, such as the right to life, a healthy environment, or the self-determination of people, even more so if he does not carry out a prior consultation. Then the second reason It directly affects human goods that are the “sphere of the undecidable”, since no majority, not even unanimity, can legitimately decide the violation of a freedom right or not decide the satisfaction of a social request; Thus, by affecting the population, fundamental rights would be violated and neoliberal policies would be expanded, which threatens the horizontal coexistence of society.

Liberal guarantees (liberty rights) and social guarantees (social rights) are essential for the protection of rights since both manage to give effect to fundamental rights as “a matter of degree, that it depends on the precision of the positive or negative links imposed on the public powers by the constitutional norms and by the system of guarantees that ensure a more or less high rate of effectiveness to such links”, which means that the measure of a true democracy is based on the gradualness with which it links the state concerning the protection of fundamental rights (De Gregorio, 2020).

But where are those fundamental rights? They are found in the instruments of Human Rights, whose positivization in international legislation is reflected in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in the year 1948, the same that occurred as a result of the genocidal enterprise of World War II. It is well known that the mere fact of a declaration does not directly improve people’s lives, and therefore these rights must have a programmatic value. Giving them programmatic value means giving them a function for their effectiveness. The mandate to consider every human being as a person is the main function of human rights, with its programmatic value as minimum respect for the dignity of people.

The function of human rights in the country must be heuristic, understanding the needs that our reality imposes on us. For this, political guarantees are an axis where the implementation of each right and its guarantee of reinforced protection must prevail. It is intended to achieve the effective social realization of fundamental rights to fight against the forms of domination of the current planetary moment, prioritizing human dignity through respect for human and natural rights.

Thus, our country is confronted with two State models: an inclusive, democratic, redistributive, egalitarian, independent, and with social justice, and an exclusive, authoritarian, non-redistributive state with extreme inequality and market dependence. To insert ourselves into the first, it is necessary to understand that the Constitution and its political guarantees establish a duty that can be achieved through three assumptions that allow analyzing the development and compliance with the constitutional realization. Let’s imagine three steps, and the inclusive state is at the top, at the end of the road. These stands contain in each step a rule or measure to verify that the inclusive state is being carried out following the constitutional precepts. These three steps or steps are the Constitution, the constitutional reality, and the degree of constitutional realization.

The Constitution establishes, as we said, the duty to be where fundamental rights and guarantees have been subsumed. Constitutional reality is measured by the contribution of the data that reality throws through a sociological investigation, allowing us to assess the constitutional realization, that is to say, the degree of realization of these norms, in reality, is the verification of the social being by way of the judgment of what is established and prescribed by the Constitution, for this task the obvious guarantee that must prevail is the political guarantee, for these are the ones that work with being and reality. In the inclusive state, each institution tends to effectively realize rights and constitutional guarantees whose measure is verified in the three premises stated.

For example, the Constitution determines that the right to work guarantees workers full respect for their dignity with fair wages and compensation, so we can safely climb that step, relying on the constitutional premise. Now we go to the constitutional reality, in it we stagger,

and we observe that in reality, many companies keep their workers for more than three years on probation and then fire them without compensation or bonuses, just as we realize that the remunerations are unfair. In conclusion, the Ministry of the Branch, the institution in charge of ensuring workers' rights, has failed to comply with its political guarantee of providing the Constitution.

The questions that arise are how to measure those steps. How are they carried out? Each of these steps must live the impulse "towards the realization of the basic norm of constitutional anthropology. Every human being is a person, we are born with equal dignity and rights", which produces that the constitutional realization is measured, always responding to human dignity.

The new paradigm of public policies is located at the level of guaranteeing the human goods of all people. In this paradigm of constitutionalism, the very function of law and justice remains to be discussed. In this guarantee model, neoliberal policies have no place because they openly deny human rights and people's dignity, and the market prevails over people. The guarantee rests a duty destined to the dignity of every person whose foundation is found in the constitutional realization.

Then the harm reduction policy will be liberating, democratic, and humane, recognizing the status of a person to all human beings and guaranteeing that their demands and rights are heard by the institutions in charge of offering them protection, without exception. Constitutionalism is directed toward the construction of an inclusive State.

### **Conclusion**

We have shown that neoliberalism prevents carrying out a whole policy program that guarantees rights in line with the Indonesian legal system. According to this, the Rule of Law must, by constitutional imperative, link its actions to fundamental rights through a public policy of harm reduction. Without that premise, finding a State of rights and justice is impossible. Likewise, this link can occur in guarantee, where the undecidable is the basis of an effective democracy. The essential content of the rights is that Constitution prevents any public policy from undermining the rights of people. These fundamental rights are erected as a basis for questioning the decisions of power, precisely in the policies intended for our coexistence as a society. With this premise, it becomes untenable to advocate neoliberal policies. A public policy of harm reduction that promotes the liberation of the excluded takes dialogue seriously as a tool, for which the state must direct all its efforts to listen to their requests, their claims, and their rights. Along the same lines, constitutional law must guarantee rights and, through politics, manage to direct constitutional realization at the level of being, through the Constitution, its reality, and its implementation. The organs of power must refrain from implementing public policies that undermine the rights or guarantees of their population. The main alternative is a policy that is in tune with the constitutional paradigm.

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