

Emergency Law as a Tool of Executive Centralization in Indonesia, Thailand, and Vietnam

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ABSTRACT: Emergency laws are often framed as necessary tools to respond quickly during national crises, but they also present significant risks to democratic structures. This paper explores how emergency powers can be used to centralize executive authority in Indonesia, Thailand, and Vietnam. The purpose of this study is to analyze how legal frameworks enable or fail to restrict executive power during emergencies. Using a doctrinal legal research method, the paper examines constitutional texts, relevant statutes, and key political events to assess how emergency powers function in practice. Findings show that while all three countries demonstrate varying degrees of executive flexibility, Indonesia



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stands out due to its lack of clear legal limits and minimal oversight, while Thailand is riddled with normative inconsistencies and multiple avenues for its executive branch to weaponize the state of emergency. Vietnam, on the other hand, subordinates all branches of state power to the overarching control of the Communist Party, resulting in possible limited legal accountability and significant potential for unchecked executive action. The study emphasizes the need for stronger legal safeguards to prevent emergency powers from becoming a lasting feature of governance.

KEYWORDS: Constitutionality; Emergency Powers; Executive Authority; Legal Oversight.

I. INTRODUCTION

Governments tend to show their true shape when they believe the normal rules no longer apply.¹ In times of crisis, procedures that usually take time are pushed aside, and decisions move faster, often through fewer hands. The idea is that urgent situations require urgent action, which in itself requires legal certainty.² What often follows is a shift in the balance of power, usually toward the executive, with the justification that there is no alternative. Law does not disappear, but it becomes flexible.³ That flexibility is where politics begins to move more freely and is manifested in a regulation,⁴ despite the risk of perverting the core principles of democracy and threatening key

¹ Anders Esmark, "Limits to Liberal Government: An Alternative History of Governmentality," *Administration & Society* 50, no. 2 (May 2015): 240–68, <https://doi.org/10.1177/0095399715587521>.

² Bayu Aryanto, "Fast-Track Legislation in A State of Emergency: A Comparative Study of Indonesia and The United Kingdom," *Journal of Constitutional and Governance Studies* 1, no. 2 (January 2025): 172–204, <https://doi.org/10.20885/JCGS.vol1.iss2.art4>.

³ Sarah Moulds and Anja Pich, "Reviewing Executive Decision-Making in Emergencies: Time to Consider a More Systematic Approach to Post Legislative Scrutiny in Australia," *University of Tasmania Law Review* 41, no. 2 (2022): 43–83.

⁴ Posner argues that this flexibility needs to be regulated because emergency situations imply the need to change and adapt to the situations and challenges brought to an administrative system that would otherwise run normally. See Debby Ekowati, "Emergency Law in the Indonesian Legal System," *Jurnal Hukum Progresif* 10, no. 2 (2022): 112–26, <https://doi.org/10.14710/jhp.10.2.112-126>.

human rights of the general population.⁵ Albeit justifiable, emergency-based laws remain a contentious issue that needs to be scrutinized as it straddles the thin line between public interest and executive power influence, which can alter the course of any country's development and civil discourse.

When a state acts under emergency law, it exposes the gap between how it says it functions and how it actually works when pressure is applied.⁶ Legal texts may remain in place, but interpretation changes, enforcement sharpens, and oversight becomes harder to find. The crisis becomes a reason to centralize power, and sometimes to do so even after the emergency is over, which is typically prohibited by a constitution, especially during peacetime.⁷ This raises questions that are not only legal but political. At what point does temporary authority become structural?⁸ What happens when exceptional power becomes part of how a government expects to operate? Most importantly, who gets to truly decide which state is a state of emergency?⁹ These are existential questions that need to be extensively discussed for the preservation of a democracy and to ensure that governments are making decisions only with the best

⁵ Petter Narby, "The Normality/Emergency Imaginary, Contingency and Political Possibility: Analysing the UK Pandemic Response," *Journal of Contingencies and Crisis Management* 32, no. 1 (March 2024): 1–11, <https://doi.org/10.1111/1468-5973.12542>.

⁶ Guido Bellenghi, "Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law," *European Journal of Risk Regulation* early-view, no. early-view (2025): 1–20, <https://doi.org/DOI: 10.1017/err.2025.17>.

⁷ Evangelia Petridou, "Politics and Administration in Times of Crisis: Explaining the Swedish Response to the COVID-19 Crisis," *European Policy Analysis* 6, no. 2 (December 2020): 147–58, <https://doi.org/https://doi.org/10.1002/epa2.1095>.

⁸ Michael Y Lee, "Enacting Decentralized Authority: The Practices and Limits of Moving Beyond Hierarchy," *Administrative Science Quarterly* 69, no. 3 (June 2024): 791–833, <https://doi.org/10.1177/00018392241257372>.

⁹ Christian Bjørnskov and Stefan Voigt, "Why Do Governments Call a State of Emergency? On the Determinants of Using Emergency Constitutions," *European Journal of Political Economy* 54 (2018): 110–23, <https://doi.org/https://doi.org/10.1016/j.ejpoleco.2018.01.002>.

interests of the public in mind. Indonesia's centeredness around executive powers, Vietnam's one-party power manifestation in pandemic response,¹⁰ along with Thailand's history of existential political turmoil,¹¹ show that no democracy in the world is immune to existential threats that may very well turn a democratic society in a repressed one under authoritarian rule.

Indonesia, Thailand, and Vietnam offer three different ways of answering those questions. Each has a different political system, but all have used emergency law to reorganize state power in moments of disruption. Indonesia frames itself as a constitutional democracy, but its emergency responses reveal a pattern of executive dominance. Thailand's emergency law enables the Prime Minister to declare a state of emergency and exercise sweeping powers with limited parliamentary and judicial oversight, resulting in extensive executive control that can override normal checks and balances in times of crisis. Vietnam combines executive, legislative powers, and the role of the President in managing and developing the legal framework governing states of emergency. However, it is important to note that, according to the Constitution, the Communist Party of Vietnam is the sole political force representing all Vietnamese people and holds a comprehensive leadership role over all matters of the nation. As a

¹⁰ Kris Hartley, Bales Sarah, and Azad Singh and Bali, "COVID-19 Response in a Unitary State: Emerging Lessons from Vietnam," *Policy Design and Practice* 4, no. 1 (January 2021): 152–68, <https://doi.org/10.1080/25741292.2021.1877923>.

¹¹ Marco Bünte, "Uncivil Society and Democracy's Fate in Southeast Asia: Democratic Breakdown in Thailand, Increasing Illiberalism and Ethnic Cleansing in Myanmar," *Journal of Current Southeast Asian Affairs* 42, no. 3 (October 2023): 372–94, <https://doi.org/10.1177/18681034231208467>.

result, all branches of state power must operate within the strategic direction and guidance of the Party.¹²

Literature over the years has shown that emergency powers can indeed reveal the fragility of constitutional boundaries, particularly when vague legal provisions allow executives to expand their authority. Jayus and Ulum (2020) explain that Indonesia's post-Suharto constitutional revisions did not successfully limit presidential power during emergencies.¹³ Articles 12 and 22 of the 1945 Constitution remain imprecise, allowing the president to issue emergency regulations (Perppu) with minimal oversight and unclear criteria. This legal uncertainty enables the executive to act decisively without being meaningfully constrained. Mészáros (2020) describes a similar situation in Hungary, where the government used the COVID-19 pandemic to enact emergency decrees that reduced parliamentary involvement and concentrated power in the hands of the executive.¹⁴ Through a system of continuously renewed legal emergencies, the government restructured authority under the appearance of legality. These studies show how the use of emergency law tends to shift political processes away from institutional balance.

In contrast to earlier examples of overt and legally structured emergency rule, the works of Jonas, Thomson Ip, and Parmet offer a broader view of how states use crisis to shift power without always declaring it openly. Michael Jonas (2023) shows that during the First

¹² Schuler, Paul, *United Front: Projecting Solidarity through Deliberation in Vietnam's Single-Party Legislature*. Studies of the Walter H. Shorenstein Asia-Pacific Research Center series, Stanford: Stanford University Press, 2021.

¹³ Jayus Jayus and Muhammad Bahrul Ulum, "Presidential Power's Limitation to Emergency Provisions in Indonesia," *Jurnal Cita Hukum* 8, no. 2 (August 2020): 343–62, <https://doi.org/10.15408/jch.v8i2.12473>.

¹⁴ Gábor Mészáros, "How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary," *Israel Law Review* 57, no. 2 (2024): 288–307, <https://doi.org/DOI:10.1017/S0021223724000025>.

World War, Sweden managed deep political instability not by formally invoking emergency powers, but by relying on committee-based governance and administrative consensus.¹⁵ This informal process functioned like a state of exception in practice, even though it remained legally undefined. Stephen Thomson and Eric C. Ip (2020) describe how governments around the world responded to COVID-19 by enacting aggressive emergency measures that are often lacking in proper oversight, restricted civil liberties, and in some cases, became permanent.¹⁶ These responses, they argue, affected both authoritarian and democratic states, and blurred the line between public health necessity and political convenience. Fitra Arsil, Qurrata Ayuni, and Satya Arinanto (2022) add that while governments must act in emergencies, they still need to follow principles of democratic accountability and proportionality.¹⁷ Taken together, these authors show how emergency powers, whether openly declared or quietly practiced, often move authority away from democratic institutions and into the hands of fewer decision makers.

Although much has been written about the expansion of executive power during emergencies, existing scholarship tends to focus on either descriptive accounts of specific national experiences or abstract legal theory detached from regional legal-political contexts. There remains a gap in normative legal analysis that systematically compares how emergency laws function across distinct constitutional

¹⁵ Michael Jonas, "'Time of Turmoil': Sweden, Undeclared Emergencies, and the Experience of Crisis and Transformation in and around the First World War," *First World War Studies* 14, no. 2–3 (September 2023): 315–38, <https://doi.org/10.1080/19475020.2024.2371878>.

¹⁶ Stephen Thomson and Eric C. Ip, "COVID-19 Emergency Measures Are Hurting Democracy Globally," *American Journal of Public Health* 110, no. 9 (September 2020): 1356–57, <https://doi.org/10.2105/AJPH.2020.305816>.

¹⁷ Qurrata Ayuni et al., "Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances during Crisis," *Revista de Investigações Constitucionais* 9, no. 1 (August 2022): 11–36, <https://doi.org/10.5380/rinc.v9i1.83557>.

frameworks in Asia, particularly in non-Western democracies and authoritarian hybrids. This paper contributes to that gap by offering a doctrinal, comparative study of Indonesia, Thailand, and Vietnam, analyzing how emergency provisions are framed, justified, and applied within each state's legal order. Its novelty lies in revealing how emergency law becomes a structural feature of governance rather than a temporary legal exception, showing how legal instruments intended for crisis management often serve to entrench executive authority under the appearance of constitutional legitimacy.

This study holds significant importance as it focuses on providing insights to understand how emergency laws can gradually change the way power works in a country, especially when rules meant for urgent situations start to feel normal. It looks at how different legal systems respond to crisis, and how those responses can quietly shape authority, limit public oversight, and affect the balance between law and power. The main goal of this is to add valuable insights to the ongoing discourse about how states manage uncertainty without drifting too far from democratic principles. One limitation is that this research stays within the legal framework, so it does not fully capture how these laws are experienced by people or influenced by political and social pressures, and how these aspects can, in turn, affect power dynamics in the government. Those parts of the picture are still important and worth exploring in future work.

II. METHODS

This study employs the doctrinal legal research method to facilitate a deep analysis of the legal norms presented by the relevant legal

frameworks.¹⁸ Typically, this involves the utilization of secondary data in the form of primary law sources, which are then used as a lens to analyze certain legal problems that are relevant to the topic of a study.¹⁹ Analysis of this study is also supported by a comparative approach to allow a comprehensive outlook on the divergence of relevant normative structures. Secondary data used in this study, as mentioned previously, are primary law sources that are collected through the literature review technique and analyzed descriptively. Primary law sources from Indonesia that are used in this study are 1945 Constitution of the Republic of Indonesia (Articles 12 and 22); Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation; Law No. 11 of 2020 on Job Creation; Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission. From Thailand and Vietnam, the study utilizes the 2017 Thai Constitution, the Martial Law Act 1914 of Thailand, and the 2013 Constitution of the Socialist Republic of Vietnam, respectively.

III. EXECUTIVE POWER STRUGGLE AND WHY IT IS INHERENTLY DANGEROUS FOR DEMOCRACY: A CONSTITUTIONAL PERSPECTIVE

Executive power plays a big role in how most democracies work today, though how much power it holds can look very different from one country to another. Most people tend to associate the idea of the executive with Montesquieu, who talked about it in *The Spirit of the Laws* as part of his bigger argument for separating powers to keep

¹⁸ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

¹⁹ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 5 (2021): 2463–78.

any one part of government from taking over.²⁰ But even before that, John Locke, in his *Second Treatise of Government*, wrote about the executive as the part of government that handles laws in practice and deals with fast-moving situations like foreign threats. Both thinkers saw the executive as necessary, but also as something that should not stand alone. The problem comes when emergencies let the executive stretch its reach beyond what the Constitution allows, often in the name of urgency. Over time, that can quietly shift the balance of power and make it harder for democracy to hold its ground, subsequently giving way to the executive branch to become the dominant power.

Democratic constitutions typically include provisions designed to avoid exactly this type of problem and prevent the anti-democratic implications that accompany them.²¹ Checks and balances, legislative approval, and judicial oversight all exist to keep executives within certain limits.²² But emergencies can easily weaken these provisions. When a crisis appears, legislatures can become slower, and courts can find it harder to react quickly enough.²³ Because of this, executives usually have an advantage, as they can respond immediately, bypassing processes that normally hold them accountable.²⁴ This power is meant to urgently tackle the immediate issues and provide

²⁰ Montesquieu even explicitly stated that the accumulation of impacts that are caused by small interests ceding to greater ones, such as foreign powers and crises, could ultimately benefit the executive power, or at least those who want to strengthen executive actors. See James Boesen, "A Reconsideration of Montesquieu's Liberal Pacifism" (Northern Illinois University, 2017).

²¹ Anna L Ahlers, "The Rise of Complexity: Internal Differentiation of Political Systems," in *Democratic and Authoritarian Political Systems in 21st Century World Society*, 1st ed. (Wetzlar: transcript Verlag, 2020), 39–108, <https://doi.org/doi:10.1515/9783839451267-004>.

²² Pablo Luis Manili, "Decree With Legislative Content in Comparative Constitutional Law," *As-Siyasi* 4, no. 1 (June 2024): 33–58, <https://doi.org/10.24042/as-siyasi.v4i1.22711>.

²³ Stefan Voigt, "Contracting for Catastrophe: Legitimizing Emergency Constitutions by Drawing on Social Contract Theory," *Res Publica* 28, no. 1 (2022): 149–72, <https://doi.org/10.1007/s11158-021-09518-z>.

²⁴ Jayus and Ulum, "Presidential Power's Limitation to Emergency Provisions in Indonesia."

a country with a set of laws that can tackle the problems that it's currently facing.²⁵ While quick action is sometimes necessary, these actions can leave long-lasting marks on the system, changing what was meant to be temporary into something more permanent. This is especially true when such power is used to consolidate power within the government. While the struggle for this power is usually non-normative in nature, as it typically involves realpolitik elements, emergency laws created as an effort to consolidate power for the executive branch serve as a direct and explicit example of executive power consolidation.

Indonesia serves as an example of how executive power can expand within constitutional limits. Under its constitution, the Indonesian president has the power to issue regulations called *Perppu*.²⁶ Although often seen as an emergency measure, a *Perppu* is not strictly limited to emergencies. Presidents can utilize this instrument in various conditions that they argue require swift and decisive action, not necessarily involving an urgent crisis. The problem, however, is that the boundaries for its use are unclear. The Indonesian Constitutional Court has tried to set clearer boundaries for presidential regulations through judicial reviews,²⁷ but these interventions usually show up only after the regulations are already out, active, and affecting many people.²⁸ Because of this awkward

²⁵ Jayus and Ulum.

²⁶ Farrel Nouvaleo Akbar and Christine S T Kansil, "Kewenangan Presiden Dalam Keadaan Darurat: Kajian Perspektif Hukum Tata Negara," *Journal of Education Religion Humanities and Multidisciplinary* 2, no. 2 (November 2024): 1379–89, <https://doi.org/10.57235/jerumi.v2i2.4321>.

²⁷ Muhammad Taufiq Hafid, Willy Talentaniko, and Yudi Pratama Tanjung, "Antinomi Kewenangan Mahkamah Konstitusi Dalam Menguji Peraturan Pemerintah Pengganti Undang-Undang," *Amsir Law Journal* 2, no. 1 (September 2020): 1–11, <https://doi.org/10.36746/alj.v2i1.27>.

²⁸ This role of the judicial branch is also often referred to as "negative legislator", where judicial powers like the Supreme Court and the Constitutional Court have the capability to void the enactment of a particular law or regulation. See Bisariyadi Bisariyadi, "Yudisialisasi Politik Dan Sikap Menahan Diri: Peran Mahkamah Konstitusi Dalam Menguji Undang-Undang," *Jurnal*

timing, the president still gets to use a lot of personal judgment when deciding when to issue these regulations, with the Court basically playing catch-up instead of setting the rules ahead of time.

In Vietnam, the legislative body is the National Assembly. However, the current legal framework regarding the state of emergency is only issued in the form of ordinances, under the authority of the Standing Committee of the National Assembly. The law grants powers related to declaring, announcing, and terminating a state of emergency to the President or the Standing Committee of the National Assembly. In terms of command and administration, the law currently only assigns responsibilities to the Prime Minister, without clearly defining the roles of provincial-level People's Committee Chairpersons or the Standing Committees of People's Councils²⁹. This represents a combination of executive and legislative powers in the implementation of emergency policies. The activities of these two bodies are influenced by the will of the Communist Party of Vietnam, as stipulated by the Constitution of Vietnam. This country follows a socialist democratic regime. The participation of the people in state management must still ensure the will of the class of workers, the farmers, and the intellectuals, represented by the Communist Party of Vietnam.

Konstitusi 12, no. 3 (May 2016): 473–502, <https://doi.org/10.31078/jk1233>. In Indonesia, the judicial power with the competency for judicial review of executive-made regulations is the Supreme Court, while the Constitutional Court can review the constitutionality of law against Indonesia's constitution (1945 Constitution). See also Inna Junaenah, "Tafsir Konstitusional Pengujian Peraturan Di Bawah Undang-Undang," *Jurnal Konstitusi* 13, no. 3 (2016): 503–29, <https://doi.org/10.31078/jk1332>.

²⁹Duc Minh Do, "Vietnamese Laws on the State of Emergency, Martial Law, Curfew, and Issues Emerging." Paper presented at the online conference Law on the State of Emergency, co-hosted by the School of Law, Vietnam National University, Hanoi, and the Asian Law Centre, Melbourne Law School, June 16–17, 2020.

Comparing these three examples, what emerges is a common issue that executive power, when not clearly and consistently checked, can gradually shift away from democratic accountability. While elements of realpolitik can definitely play a dominant role, this does not excuse the normative gaps that allow instances of executive power consolidation to happen, especially in democratic countries. Most importantly, the issues associated with the executive power in the three countries show that the critical issue is not executive power itself, but the constitutional and institutional frameworks around it. Emergency laws or vague legal provisions do not necessarily harm democracy immediately. But they create the possibility for executive authority to quietly grow in a way that democratic institutions might struggle to contain. The real danger arises when temporary expansions of power during emergencies slowly become normal, making it increasingly difficult for democracy to revert to the balanced form it was intended to have.

Furthermore, international law also plays a key role in combating the adverse effects of a dangerous shift to non-democracy, as such a change may inadvertently affect the relationship with other countries, particularly the neighboring ones. At the global level, the most relevant instrument is perhaps the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia, Thailand, and Vietnam are all parties. The framework allows the derogation of certain rights in times of emergency but strictly requires that such measures are limited, justified, and subject to safeguards against abuse. This is reflected in Article 4 of the ICCPR, which stipulates that any state of emergency must be publicly declared, strictly necessary in the exigencies of the situation, and non-discriminatory, with core rights enshrined in other key international law instruments remaining non-derogable.

IV. EXECUTIVE POWER AND THE VULNERABILITIES OF DEMOCRACY IN CONSTITUTIONAL TEXTS

Emergency powers create an inevitable constitutional tension in democratic countries, particularly for the executives who typically have access to these powers during crises. Albeit necessary at times as tools that enable governments to respond to severe crises swiftly, emergency powers inherently risk undermining democratic structures by enabling executives to overreach, which can result in power consolidation and the erosion of checks and balances in any government system. Previous analyses show that structural issues exist in Indonesia, Thailand, and Vietnam, which leave room for potential power consolidation with permanent consequences for each country's governmental landscape. These issues need to be dissected directly to concretely identify actual weaknesses within the country's legal frameworks that shape the existing landscapes.

The main basis for a country's government structure, separation of powers, and rights of the citizens are enshrined in a constitution. Constitutions typically attempt to reduce the risks of power consolidation and authoritarian tendencies during emergency states or crises by defining strict limits and ensuring oversight of emergency powers through clear institutional checks. However, in practice, these limits are often ineffective or ignored, as explained previously. These potential vulnerabilities within democratic systems can be further exploited during times of crisis, which warrants a deep analysis of the constitutions of the countries compared. As assumed earlier in this study, the structural issues that can allow executive power consolidation and the erosion of democracy in any form within the

government can stem from actual normative issues that leave certain checks and balances processes ineffective.

Indonesia's 1945 Constitution demonstrates this tension clearly through its strong emphasis on presidential authority in emergencies. Article 12 explicitly gives the Indonesian President the power to declare a state of emergency and create all necessary regulations. Additionally, Article 22 allows the President to issue regulations instead of laws, which the legislature must subsequently ratify. However, legislative oversight often proves weak in practice, either because it is delayed significantly or treated as merely procedural rather than a robust check. This constitutional arrangement thus permits the President to consolidate significant power, posing serious risks to democratic accountability and balance.

Although Article 22 does not explicitly state that presidential regulations issued in emergencies take immediate effect, its structure leaves little ambiguity. The President is authorized to issue a regulation "in lieu of law" without any requirement for prior legislative approval, and is only required to submit it to the DPR for consideration in the next legislative session. This sequencing implies that such regulations are fully operative from the moment of issuance, which is a view consistent with both legal interpretation and administrative practice in Indonesia.³⁰ As a result, executive decrees under emergency conditions function with the full force of law before any democratic oversight is applied, reinforcing the argument that

³⁰ Fatma Reza Zubarita, "Analisis Yuridis Peraturan Pemerintah Pengganti Undang-Undang No. 1 Tahun 2020 Tentang Kebijakan Keuangan Covid-19 Terhadap Penggunaan Anggaran Di Masa Pandemi," *Jurnal Lex Renaissance* 7, no. 2 (2022): 265–80, <https://doi.org/10.20885/jlr.vol7.iss2.art4>.

the constitutional design prioritizes unilateral action and treats legislative review as a retrospective formality.

The legal basis for the exercise of executive emergency powers in Thailand is found primarily in Sections 172, 173, and 176 of the 2017 Thai Constitution. Section 172 authorizes the King, upon advice of the Council of Ministers, to issue an Emergency Decree with the force of law whenever urgent action is deemed necessary. Legally, the Prime Minister and Cabinet initiate such decrees, which are then subject to parliamentary approval, relying on the Council of Ministers to submit the decree for consideration by the National Assembly. If either chamber disapproves, the decree loses its legal effect. Section 173 adds more to the mechanism by allowing one-fifth of members in either legislative chamber to initiate a Constitutional Court review regarding the validity of the emergency decree. Lastly, Section 176 places the royal prerogative to declare and lift martial law in the hands of the King, allowing the executive power to declare an emergency situation.

However, in practice, the authority granted by Section 176 is exercised at the government's discretion and can be activated by military authorities under the Martial Law Act in urgent situations.³¹ Also important to note, the repeal of martial law in any area, according to the Martial Law Act 1914 Article 5, must be by Royal Proclamation, giving yet another executive authority regarding the issue of state emergency. Most importantly, it is also important to note that Thailand's military maintains decisive influence over the interpretation, declaration, and enforcement of emergency law,

³¹ This is embedded in the Martial Law Act 1914 through Article 2, 4, and 6.

particularly after the successful coup by the army in 2014.³² As a result, during crises, formal executive powers often operate under the overriding authority and tutelage of the armed forces, rendering constitutional checks especially fragile in practice, and putting the executive power as a vessel for entrenched military power in the government.

Vietnam represents a notably peculiar constitutional example among the three cases considered. In terms of legal framework, the state of emergency is recognized in the Constitution but has not yet been specifically regulated through a separate law. Instead, it is governed by a sub-law document called the Ordinance on the State of Emergency (2000), issued by the Standing Committee of the National Assembly. This legal document is classified as a state secret, and therefore, it is not accessible to individuals or organizations. Regarding the role of the state apparatus, the state of emergency in Vietnam is primarily managed by central state agencies under the leadership of the Communist Party. The National Assembly holds the exclusive authority to issue regulations on emergencies (Clause 13, Article 70 of the 2013 Constitution and Clause 3, Article 17 of the 2014 Law on Organization of the National Assembly), while the Standing Committee of the National Assembly is responsible for declaring or lifting a state of emergency based on the proposal of Prime Minister (Clause 1, Article 74 of 2013 Constitution). This procedure involves issuing normative resolutions, followed by the President formally announcing or lifting the emergency. If the Standing Committee

³² Chris Baker, "The 2014 Thai Coup and Some Roots of Authoritarianism," *Journal of Contemporary Asia* 46, no. 3 (July 2016): 388–404, <https://doi.org/10.1080/00472336.2016.1150500>. As a result, the 2017 Thai constitution itself is not free of military power's influence within the government, to facilitate better control of the country's political landscape. See also Marcus Teo, "Constitutional Civil–Military Dynamics in Southeast Asia," *International Journal of Constitutional Law* 20, no. 1 (January 2022): 237–71, <https://doi.org/10.1093/icon/moac007>.

cannot convene, the President is granted the authority to announce or lift a state of emergency nationwide or in specific localities under Clause 5, Article 88 of the 2013 Constitution. Once declared, the Government and local authorities implement necessary measures to protect national security and public welfare (Clause 3, Article 96 of the 2013 Constitution). Even though formal powers rest with the legislature, executive authority and the President, particularly during emergencies, remain heavily influenced by the Communist Party directives. Article 4 of the 2013 Constitution explicitly designates the Communist Party of Vietnam as the leading political force directing all state operations, including state emergencies. The explicit constitutional role assigned to the Communist Party effectively gives it considerable leverage over executive, legislative, and judicial branches, thereby significantly limiting meaningful institutional independence.³³ Typically, the Communist Party leads the country on behalf of the people through two main approaches: formulating development strategies to guide the operations of the state apparatus, and appointing Party members to positions within state agencies to implement those strategies³⁴.

The following table clearly illustrates and compares the constitutional basis and practice of emergency powers across the three countries, including specific references to relevant articles previously omitted:

Table 1: Constitutional analysis of emergency laws and their implications in democracy

³³Thiem Hai Bui, "Constitutionalizing Single Party Leadership in Vietnam: Dilemmas of Reform," *Asian Journal of Comparative Law*, 2016, <https://doi.org/10.1017/asjcl.2016.22>.

³⁴Cong Giao Vu and Tri Uc Dao, "State of Emergency in Vietnamese Law: Reflections on the Government Response to the Covid-19 Pandemic." *Australian Journal of Asian Law*, 22, no. 2 (2022), <https://ssrn.com/abstract=4064282>.

Country	Relevant Constitutional Articles	Legislature's Role in Emergencies	Checks on Executive Power	Governance Context
Indonesia	Articles 12, 22	Limited, retrospective ratification	Weak; minimally effective oversight	Presidential democracy
Thailand	Section 172, 173, 176	Limited, it can even be illusory with the military control within the government	Weak; executive power has other instruments to influence the state of emergency	Constitutional monarchy (with military influence)
Vietnam	Articles 4, 70, 74, 96	Formal power of declaration	Weak; it was intervened by the Communist Party, the President, and the legislative power	Socialist one-party governance

In sum, while emergency powers are essential for governance during crises, their constitutional regulation must effectively balance swift executive action with robust democratic checks. Indonesia highlights how inadequate legislative oversight can lead to excessive executive authority. Thailand's inconsistent normative structure also shows a problematic power dynamic, giving the executive power more than

one instrument for immediate control of the government and the lives of the Thai people. In Vietnam, the implementation of a state of emergency involves the participation of central state agencies, including the executive, the legislature, and the President, under the leadership of a single ruling party. However, overlapping authorities among these agencies, the absence of a specialized law governing emergencies under constitutional powers, and the extensive interference of the political apparatus, legislative body, and the President have hindered the role of the Government to respond effectively and independently in times of crisis³⁵. Recognizing these constitutional vulnerabilities is crucial in developing more resilient democratic institutions capable of handling emergencies without sacrificing democratic principles.

V. PRACTICAL IMPLICATIONS AND DANGEROUS TRENDS

The issues highlighted previously serve as a stark warning of what could actually happen to a country when the executive branch is allowed access to an insurmountable amount of power in times of emergency or crisis. The constitutional flaws identified prove that power consolidation from the executive branch is not merely a realpolitik issue, but also a normative one. Although the dominant factors in an effort to consolidate power by the executive branch can vary, adequate normative structures within the constitution can provide the first and last line of defense to protect democracy through a fair set of checks and balances. This is the case with South Korea's

³⁵ Cong Giao Vu and Tri Uc Dao, "State of Emergency in Vietnamese Law: Reflections on the Government Response to the Covid-19 Pandemic." *Australian Journal of Asian Law*, 22, no. 2 (2022), <https://ssrn.com/abstract=4064282>.

martial law case that happened in late 2024,³⁶ where the country barely survived nationwide chaos through the democratic will of the citizens and the bravery shown by the assembly members to protect democracy in the face of military interventions, serving as a strong reminder for countries like Indonesia, Thailand, and Vietnam. The existence of a mechanism to nullify the decision for martial law, albeit reactionary, ultimately showed the importance of having foundational support for checks and balances.

In the case of Indonesia, the issuance of emergency laws like *perppu* remains unclear and ambiguous. This is largely due to the absence of a clear parenthetical comment or a well-established judicial interpretation of what constitutes a state of emergency. The practical implications of this problem are even more complex, as the country's president can issue such laws when there is barely any sense of emergency worth intervening, and remains idle when an actual emergency happens. This seemingly flexible and even hypocritical power bestowed upon the executive branch is evident with the release of *perppu* regarding job creation (*cipta kerja*), where President Joko Widodo issued Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. While there was a noble intention to clear up the ambiguities of the controversial omnibus-based Job Creation Law (Law No. 11 of 2020 on Job Creation), which was deemed conditionally unconstitutional by the Constitutional Court,³⁷ The state of emergency was never properly established, and the president

³⁶ Victoria Kim, "For Some Koreans, Martial Law Stirs Harrowing Memories of Gwangju Uprising," *The New York Times*, December 2024.

³⁷ Dinda Suciana Rambe and Ely Dasnawati, "Penetapan Perppu Cipta Kerja Menjadi Undang-Undang Nomor 6 Tahun 2023 Perspektif Sosiologi Hukum," *WICARANA* 2, no. 2 (October 2023): 88–100, <https://doi.org/10.57123/wicarana.v2i2.38>.

appeared to be trying to cover up a mistake made by the legislative branch.

On the other hand, the executive power notoriously remained idle and chose not to intervene during the even more controversial legislative controversy involving the amendment of Indonesia's Corruption Eradication Commission legal basis in Law No. 19 of 2019 on the Second Amendment to Law No. 30 of 2002 on the Corruption Eradication Commission,³⁸ despite the overwhelmingly heated public reaction and demand for the president to issue a *perppu* as displayed in a survey done by Indonesian Survey Institute (LSI).³⁹ This selective use of a power capable of shifting the trajectory of a democratic country demonstrates that, ultimately, the executive branch, when enabled structurally as is the case in Indonesia, can end up serving only the vested interests of elite political figures and not the well-being of the people.

More importantly, the issuance of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation also raises structural concerns about institutional capacity. Emergency regulations are typically intended as swift and targeted responses to urgent conditions, yet the regulation replicates a highly complex omnibus law, complete with multi-sector legal reforms that would ordinarily require extensive deliberation by the DPR. This raises serious questions about whether the executive branch alone could, or should, have the institutional capacity to produce such a legal instrument. The sheer scale and complexity of the regulation suggest a blurring of constitutional boundaries, where emergency powers become a proxy for full

³⁸ Ihsanuddin Krisiandi, "Presiden Jokowi Tolak Tuntutan Untuk Cabut UU KPK," Kompas.com, September 2019.

³⁹ Pemred Saptari, "Hasil Survei LSI: 76,3% Publik Setuju Jokowi Terbitkan Perppu Batalkan UU KPK," Jurnal Sumbar, October 2019.

legislative authority, absent the procedural safeguards that normally constrain it.

Perhaps the most unique and challenging is the circumstances surrounding Thailand, as the country is riddled with normative inconsistencies in its constitution, creating an imbalanced power dynamic between the other branch of power within the government, against the executive branch that is equipped with more than one instrument to declare a state of emergency, with the strong support of the military, as governed in the Martial Law Act 1914. Most importantly, the country's strong military influence throughout the government has had decades of precedence, further supported by the successful coup in 2014, which eventually affected the 2017 Thai Constitution. While not explicitly obvious in the normative sense, this puts the executive power as either a vessel for the will of the deeply entrenched military influence or a power that can easily collude with the evidently strong military influence during the case of a state of emergency.

In the case of Vietnam, the governing state of emergencies is currently facing several significant challenges in practice. Firstly, the regulation and implementation of emergency measures involve multiple state agencies⁴⁰. At face value, this suggests that Vietnam adopts a strong control over emergency governance, differing significantly from Indonesia and Korea. However, the roles and responsibilities of each agency are not clearly defined, leading to overlapping authority and confusion in practice. Specifically, the measures implemented by the Government must follow a complex procedural framework set out in

⁴⁰ Thi Kim Ngan Nguyen, "Law of some Asia countries on the state of emergency and suggestions for Vietnam", *Journal of Legal Science*, March 1st 2024, <https://vjol.info.vn/index.php/tclh/article/view/91989>.

the 2013 Constitution and the Ordinance on the State of Emergency 2000, with considerable involvement from both the National Assembly and the President. This reduces the flexibility and responsiveness needed in managing emergencies. Moreover, the division of authority between the Standing Committee of the National Assembly and the President regarding the declaration and proclamation of a state of emergency remains ambiguous⁴¹. These two actions are often conflated, as both involve informing certain parties or the public about an emergency, which causes confusion for the Government when implementing such measures. Additionally, the state of emergencies directly affects human rights and civil liberties—constitutional rights enshrined in the Vietnamese legal system. However, the legal instruments governing emergencies are mainly found in a sub-law document (an Ordinance), rather than in a law document. This creates a legal gap and poses difficulties in enforcement, while also complicating the Government's role to issue clear and effective guidance.

The practical implications of emergency governance in Vietnam are less about sudden overreach and more about the normalization of state powers within a one-party framework. Unlike Indonesia, where crises prompt visible expansions of executive authority, Vietnam's political structure and the intervention of other state agencies, especially the legislative body, ensure that the status of emergencies reinforces existing patterns of centralized rule. Based on the will of the Communist Party, the Government implements emergency measures following either an announcement by the Government or a

⁴¹ Minh Tuan Dang and Thi Ai Quynh Hoang. "The Challenges for the Rule of Law in the State of Emergency and the Case of Vietnam during the COVID-19 Pandemic." *Journal of Infrastructure, Policy and Development*, 8, no. 9 (2024): 7497. <https://doi.org/10.24294/jipd.v8i9.7497>.

declaration by the Standing Committee of the National Assembly, in accordance with the legal provisions issued by the National Assembly. As a result, the use of emergency powers is not a constitutional deviation but an affirmation of routine political practice.

The COVID-19 response highlighted this reality. Vietnam received global recognition for its fast and coordinated pandemic management. This is because the operational decisions were primarily handled by party-led task forces that functioned independently of formal government oversight.⁴² While efficient, this method bypassed institutional accountability, relying on party channels rather than constitutional processes. It demonstrated that success in crisis management can coexist with some systematic erosions of legal safeguards and administrative transparency. For instance, in the event that mismanagement is found to be negatively impacting citizens, holding the government actors accountable can be difficult, as the responsibilities of state agencies under current legal provisions remain unclear, leading to overlapping functions during implementation and hindering the effective execution of strategies set forth by the Communist Party. Moreover, the legal framework governing states of emergency still lacks a formal law that clearly defines the role of the National Assembly as well as the directives of the Communist Party⁴³. This absence has resulted in limitations in

⁴² Ho Trung Hieu Le, Oanh Dinh Le, Yen Nguyen Thi, Trung Thanh Nguyen, and Jennifer Baylon Verrances. "Why Does the Government of Vietnam Become Successful in the Fight Against the COVID-19 Pandemic from Legal Perspectives?" *In Conference Proceedings of COVID-19 Pandemic and Public Health System*, 1 (1), (2021). 25-42, <https://doi.org/10.32789/covidcon.2021.1003>

⁴³ Dang, Minh Tuan, and Thi Ai Quynh Hoang. "The Challenges for the Rule of Law in the State of Emergency and the Case of Vietnam during the COVID-19 Pandemic." *Journal of Infrastructure, Policy and Development* 8, no. 9 (2024): 7497. <https://doi.org/10.24294/jipd.v8i9.7497>.

both the oversight and the effectiveness of the Government's policy implementation.

VI. CONCLUSION

Emergency powers are meant to help governments act quickly in times of crisis, but in reality, they often open the door for executives to expand their authority in ways that are hard to reverse. The implications of the study's findings highlight a power that is arbitrary in nature and ambiguous at best, enabled by constitutions that have inadequately provided a system of checks and balances. The analysis revealed that each of the countries compared has its own distinct challenges, noting that the executive branch can use a state of emergency as a way to centralize governmental power, either out of its own political will or understanding of necessity, or out of other influences. Nevertheless, the highlighted normative issues serve as a stark warning that stability, or the perceived lack thereof, can be weaponized as a way to benefit a certain group within the government, particularly when there are inadequate normative checks and balances in the key frameworks. The three countries must reconsider the current state of their frameworks to assess possible risks of nationwide destabilization that can occur when these executive powers actually utilize the tools that they possess for their own benefit.

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COMPETING INTEREST

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