



Constitutionalisation of Emergency Law: A Comparative Study of State of Emergency in Indonesia and the Philippines

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Abstract Every democratic constitutional state recognizes the existence of emergency law as an extraordinary legal instrument. Indonesia and the Philippines, though sharing a presidential system and authoritarian historical backgrounds in Southeast Asia, have adopted fundamentally different approaches in regulating the state of emergency within their constitutional frameworks. Indonesia's Article 12 of the 1945 Constitution contains only two delegative sentences, leaving substantive regulation to legislation, whereas the Philippines constitutionalises emergency law comprehensively under Article VII Section 18 of the 1987 Constitution. The gap in the literature lies in the lack of studies that position the Philippines as Indonesia's comparative counterpart, as well as the lack of a holistic examination of how differences in regulatory levels shape the overall character of emergency law regimes in both countries. This study analyses and compares the regulation of the state of emergency in both constitutions in terms of constitutionalisation, legislative oversight mechanisms, and judicial review. Using normative juridical research with statutory, conceptual, and comparative approaches, this study finds that Indonesia's emergency law regime is normatively under-specified and institutionally fragile, lacking constitutional temporal limits, explicit legislative oversight, and judicial review of emergency proclamations. The Philippines, by contrast, establishes three layers of constitutional control: a sixty-day temporal limit, Congressional supremacy for extensions, and mandatory judicial review of the factual basis for proclamations. This study concludes that Indonesia requires fundamental reform by elevating essential norms temporal limits, parliamentary oversight, and judicial review to the constitutional level, in accordance with democratic rule of law principles post-amendment.

Keywords: State of Emergency, Constitutionalisation, Legislative Oversight, Judicial Review, Comparative Studies

A. Introduction

Every country that adheres to a constitutional democratic system essentially recognises an extraordinary legal regime, namely emergency constitutional law or, as it is known in contemporary constitutional literature, *a state of emergency*. A state of emergency is a constitutional instrument that enables the state to act beyond the bounds of normal law when the threat is serious and cannot be resolved through ordinary legal mechanisms. In this context, a state of emergency grants the government extraordinary

powers to take measures not normally permitted under ordinary circumstances to address serious threats to national security, public order, or other critical situations.¹ Extraordinary constitutional law. Subjectively, this is the state's right to act in conditions of danger or emergency.² This tension between the effectiveness of government action and the protection of constitutional rights makes the regulation of emergency law one of the most crucial issues in the study of comparative constitutional law.

Indonesia and the Philippines are two nations in South-East Asia that both adopt a presidential system, share a long history of authoritarianism, and have undergone significant democratic transitions. Nevertheless, they have adopted very different approaches to regulating emergency law in their constitutions. These differences make a comparison between the two important for academic discussion and valuable in practice. In Indonesia, provisions on emergency constitutional law appear in Articles 12 and 22 of the 1945 Constitution. Article 12 of the 1945 Constitution of the Republic of Indonesia consists of only two sentences: "*The President shall declare a state of emergency. The conditions and consequences of a state of emergency shall be prescribed by law.*" This formulation is delegative; the Constitution does not regulate the substance, procedures, or limits of emergency powers, but instead delegates those matters to legislation. Consequently, the entire burden of technical regulation falls on Government Regulation instead of Law No. 23 of 1959 on States of Emergency (*hereinafter referred to as Perppu 23/1959*), which remains in force to this day as the sole comprehensive regulation in this field. Perppu 23/1959 classifies states of emergency into three levels based on the intensity of the threat: civil emergency, military emergency, and war emergency.³

In stark contrast to Indonesia's approach, the Philippines has fully and comprehensively enshrined its emergency laws directly in the Constitution. The 1987 Philippine Constitution sets out the provisions governing *the state of emergency* in Article VII, Section 18. The absence of clear limits on the executive's emergency powers during that period allowed abuse of power to persist for a long time, prompting the drafters of the 1987 Constitution to enshrine direct constitutional protection at the highest level of the hierarchy of norms.⁴ Furthermore, the proclamation of martial law is constitutionally

¹ M. Reza Saputra, Irwan Triadi, dan Taufiqurrohman Syahuri, 2024, Hukum Tata Negara Darurat dalam Perspektif HAM : Dilema Antara Keamanan Negara dan Hak Asasi Manusia, *Birokrasi : Jurnal Ilmu Hukum dan Tata Negara*, Vol 2, No 4, DOI : <https://doi.org/10.55606/birokrasi.v2i4.1585>

² Achmad Alif Nurbani dan Qurrata Ayuni, 2022, Konstitusi RIS 1949 Dan UUDS 1950 Status Hukum Tata Negara Darurat Yang Di Utamakan Tentang Pemerintahan, *Justicia Sains: Jurnal Ilmu Hukum*, Vol 7, No 2, <https://jurnal.saburai.id/index.php/hkm/index>

³ Fitra Arsil dan Qurrata Ayuni, 2020, Model Pengaturan Kedaruratan dan Relevansinya Bagi Pembaruan Hukum Kedaruratan di Indonesia," *Jurnal Hukum & Pembangunan* Vol 50, no. 2, <https://scholarhub.ui.ac.id/jhp/vol50/iss2/4>

⁴ Michael Henry Yusingco, 2020, The Philippines' Dalliance with Authoritarianism in Times of National Emergency. *Verfassungsblog: On Matters Constitutional*. <https://doi.org/10.17176/20200421-182538-0>

limited to a maximum period of sixty days, and any extension beyond this limit may only be granted with the joint consent of Congress. The 1987 Philippine Constitution explicitly states that the Supreme Court has the authority and indeed the obligation to review *the 'sufficiency of the factual basis'* for any proclamation of martial law or suspension of *the writ of habeas corpus*, and that every citizen has the right to bring such a challenge.⁵

Studies on emergency constitutional law in Indonesia have attracted the attention of several researchers in recent years. Ayuni et al. analysed the concept and implementation of states of emergency in Indonesia, focusing on strengthened *checks and balances* during crises, and concluded that existing emergency regulations no longer align with constitutional concepts following the amendments to the 1945 Constitution.⁶ Rusdiana et al. placed Indonesia in a Southeast Asian context by analysing emergency law as an instrument of executive centralisation in Indonesia, Thailand, and Vietnam. They concluded that Indonesia stands out for its lack of clear legal limits on emergency powers.⁷ Meanwhile, Najib examines constitutional checks on emergency powers within Indonesia's presidential system in comparison with South Korea and Brazil, concluding that Indonesia's framework for emergency powers remains normatively *under-specified* and institutionally fragile.⁸ Nevertheless, all these studies leave two gaps that remain unfilled: firstly, none of them specifically positions the Philippines as a comparative counterpart to Indonesia, even though, as a fellow Southeast Asian country with a presidential system and a comparable authoritarian background, the Philippines offers a far more contextual and relevant comparison; secondly, existing studies have largely focused on partial aspects such as legislative oversight or *checks and balances* in general, without comprehensively examining how differences in the levels of regulation between the constitution and subordinate legislation shape the overall character of the state of emergency regimes in both countries.

This study aims to analyse and compare the provisions on *the state of emergency* in the 1945 Constitution and the 1987 Philippine Constitution from the perspective of the constitutionalisation of emergency governance law, as well as to identify fundamental differences in the mechanisms of legislative oversight and *judicial review* regarding the

⁵Ahmad Ainun Najib, 2026, Constitutional Control Of Emergency Powers In Indonesia's Presidential System, *Constitutional Law Society*, 5(1), 154–175. <https://doi.org/10.36448/jcls.v5i1.144>

⁶Qurrata Ayuni, Satya Arinanto, Fitra Arsil, Maria Farida Indrati, 2022, *Concept and Implementation on the State of Emergency in Indonesia*, *Revista de Investigações Constitucionais* 9, No 1, DOI : <https://doi.org/10.5380/rinc.v9i1.83557>.

⁷Shelvi Rusdiana, Le Ho Trung Hieu, Ampuan Situmeang, Winda Fitri, David Tan, 2025, Emergency Law as a Tool of Executive Centralization in Indonesia, Thailand, and Vietnam, *International Law Discourse in Southeast Asia*, Vol 4, no. 2, DOI : <https://doi.org/10.15294/ildisea.v4i2.23634>.

⁸Ahmad Ainun Najib, 2026, 'Constitutional Control of Emergency Powers in Indonesia's Presidential System', *Constitutional Law Society*, 5(1), 154–175. <https://doi.org/10.36448/jcls.v5i1.144>

declaration of a state of emergency in both countries. Based on these objectives, this study formulates the following two research questions: first, how are the provisions on *the state of emergency* in the 1945 Constitution and the 1987 Philippine Constitution viewed from the perspective of the constitutionalisation of emergency law; and second, what are the fundamental differences in the mechanisms of legislative oversight and *judicial review* regarding the declaration of a state of emergency between Indonesia and the Philippines.

B. Research Method

This study employs a normative legal research method (*Doctrinal legal research*). The normative approach was chosen because this study conceptualises law as a closed system of norms encompassing principles, doctrines, dogmas, and the manifestation of written rules in constitutional texts and judicial precedents.⁹ is directed toward a theoretical-textual analysis of *the constitutionalisation of emergency powers*, focusing on the degree of accountability of the executive branch in Indonesia and the Philippines.

To analyse the complexity of the legal issues identified, this study employs three approaches:

1. *The Statutory Approach*, used to conduct a literal grammatical interpretation of the emergency clauses enshrined in the 1945 Constitution of the Republic of Indonesia (UUD 1945) and the 1987 Constitution of the Republic of the Philippines¹⁰
2. Conceptual Approach: An analytical foundation for examining both classical and contemporary doctrines concerning states of emergency, constitutional dictatorship, the limits of executive discretion, and the doctrine of derogation of rights in exceptional situations.
3. Comparative Approach: Applied by way of contrast to identify asymmetrical constitutional design between the Indonesian and Philippine systems of government. This approach specifically examines differences in triggering events, time limitations, and patterns of checks and balances.¹¹

⁹Peter Mahmud Marzuki, "Metode Penelitian Hukum: Edisi Revisi," (Jakarta: Kencana Prenada Media Group, 2021), hlm. 35.

<https://books.google.co.id/books?id=CKZADwAAQBAJ&printsec=copyright#v=onepage&q&f=false>
¹⁰Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), hlm. 301 <https://bintangpusnas.perpusnas.go.id/konten/BK26135/teori-and-metodologi-penelitian-hukum-normatif/preview>

¹¹Mark Tushnet, "The Comparative Law of State of Emergency," dalam *Handbook of Comparative Constitutional Law*, ed. Tom Ginsburg dan Rosalind Dixon (Cheltenham: Edward Elgar Publishing, 2011), hlm. 357 <https://www.e-elgar.com/shop/gbp/handbook-of-comparative-constitutional-law-9781848445390.html>.

The legal arguments in this article are supported by secondary data classified into three hierarchical levels of legal sources:

1. Primary Legal Sources: Binding legal authorities, including Articles 12 and 22 of the 1945 Constitution, Government Regulation instead of Law (Perpu) No. 23 of 1959 on States of Emergency, Article VII, Section 18 of the 1987 Philippine Constitution, as well as case law relating to states of emergency from the Constitutional Court of the Republic of Indonesia and the Supreme Court of the Philippines, in particular the landmark decision in *Lagman v. Medialdea*.¹²
2. Secondary Legal Sources: Non-legal documents providing scholarly analysis, including manuscripts on comparative constitutional law, articles from reputable journals, historical accounts of the amendment process of the 1945 Constitution, and comparative reports from reputable legal research institutions.
3. Tertiary legal materials, comprising extensive legal dictionaries (such as Black's Law Dictionary) and encyclopaedias, serve as tools for semantic clarification of technical terms such as 'Martial Law', 'State of Emergency' and 'State of Siege'.

The collection of legal materials was carried out through library research techniques, by cataloguing both physical and digital literature obtained from databases of reputable international journals. The collected legal materials were then analysed using content analysis through deductive legal reasoning. This syllogism operates by establishing the universal principles governing the limitation of emergency powers under the 1987 Philippine Constitution as the minor premise. It then concludes on the implications of these constitutional design differences for the effectiveness of *legislative oversight* and *judicial review* in mitigating the risk of *executive aggrandisement*.

C. Results & Discussion

1. Indonesia's Delegative Approach versus the Philippines' Full Constitutionalisation

A closer comparison between Indonesia and the Philippines on regulating *states of emergency* raises a more fundamental question: how does a state design its constitutional architecture to handle emergencies? Although both countries place emergency powers with the executive, their constitutions differ significantly in how they define, limit, and oversee the use of these powers. Indonesia has chosen a path of delegation, leaving further regulation to legislation. In contrast, the Philippines has taken the opposite approach by establishing limits and oversight mechanisms directly in the Constitution. These differing constitutional design choices are not merely technical matters of legislation; they also reflect fundamental differences in perspective on where to draw the

¹²*Supreme Court of the Philippines, Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al., G.R. No. 231658, 4 Juli 2017. Salinan putusan orisinal dapat diakses melalui repositori digital Lawphil Project: https://lawphil.net/judjuris/juri2017/jul2017/gr_231658_2017.html.*

boundary between executive power and the protection of citizens' constitutional rights, and how to ensure its continuity.

a. The Degree of Constitutionalisation in the Constitutions

The regulation of *states of emergency* in Indonesia and the Philippines reveals a fundamental difference in the degree of constitutionalisation of emergency law. Indonesia adopts a delegative constitutional approach, with Article 12 of the 1945 Constitution containing just two sentences: "*The President shall declare a state of emergency. The conditions and consequences of a state of emergency shall be prescribed by law*".¹³ This formulation is purely delegative – the Constitution does not itself regulate the substance, procedures or limits of emergency powers, but leaves these entirely to legislation. Consequently, the entire burden of technical regulation falls on Government Regulation instead of Law No. 23 of 1959 on States of Emergency (Perppu 23/1959), which remains in force to this day as the sole comprehensive regulation in this field.¹⁴

In contrast, the Philippines has fully and comprehensively constitutionalised its emergency law directly in the Constitution under Article VII, Section 18 of the 1987 Constitution. The 1987 Philippine Constitution not only grants the President the authority to proclaim *martial law*, but also enshrines various constitutional safeguards directly at the highest level of the legal hierarchy, including: (1) a maximum time limit of 60 days for the proclamation of martial law; (2) the requirement for the joint consent of Congress for any extension; (3) the explicit authority of the Supreme Court to review *the sufficiency of the factual basis*; and (4) the right of every citizen to bring a legal action.¹⁵

TABLE 1. Comparison of the Constitutionalisation of Emergency Law in Indonesia and the Philippines.

Comparative Aspects	Indonesia	Philippines
Location of Provisions	Article 12 of the 1945 Constitution (2 delegatory clauses)	Article VII, Section 18 of the 1987 Constitution (detailed)
Degree of Constitutionalisation	Purely delegative; substance is left to	Full: substance, procedure and limits are set out in the

¹³Jimly Ashoruddin, "Kedaruratan dan Konstitusi," *Jurnal Konstitusi* 18, no. 2 (2021): https://www.mkri.id/public/content/infoumum/ejurnal/pdf/ejurnal_Juni.pdf

¹⁴Alboin Pasaribu dkk, "Urgensi Mendesain Ulang Hukum Negara Dalam Keadaan Darurat", Laporan Penelitian, Pusat Penelitian dan Pengkajian Perkara, dan Pengelola Perpustakaan Mahkamah Konstitusi Republik Indonesia (2021)

¹⁵Muhammad Syarif Nuh, "Hakekat Keadaan Darurat Negara (State Of Emergency) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang", *JURNAL HUKUM* NO. 2 VOL. 18 (2011) : 229 - 246. <https://media.neliti.com/media/publications/83099-ID-hakekat-keadaan-darurat-negara-state-of.pdf>

	legislation	constitution
Implementing Regulations	Government Regulation in Lieu of Law No. 23 of 1959 (still in force today)	No separate subsidiary regulations required
Classification of Emergency Levels	3 levels: civil emergency, military emergency, state of war	Only martial law and suspension of the writ of habeas corpus
Temporal Limits	No constitutional limitations	Maximum of 60 days; extension requires parliamentary approval
Triggering Event	Not defined in the constitution	Actual rebellion or invasion + public safety requirement

These differences give rise to very distinct characteristics of the emergency law regimes. The Indonesian regime is **normatively under-specified** and **institutionally fragile because** it lacks clear legal limits on the executive's emergency powers.¹⁶ Meanwhile, the Philippine regime is **a structured constitutional mechanism** featuring differentiated emergency regimes, temporal limitations and strong judicial oversight as key tools for constraining executive discretion.

2. Mechanisms of Legislative Oversight: Minimal Oversight in Indonesia versus Congressional Supremacy in the Philippines.

One equally important aspect of this comparison is how each legal system involves the legislature in overseeing and limiting the executive's emergency powers. Legislative oversight is, in fact, one of the most important instruments in a constitutional democracy, given its vital role in ensuring that the extraordinary powers granted to the executive during a crisis do not lead to abuse and remain constitutionally accountable. Interestingly, this is also where Indonesia and the Philippines once again reveal a significant divide. On the one hand, Indonesia has, to date, not established an adequate, structured mechanism for legislative oversight within its emergency regulations, creating a constitutional loophole that cannot be ignored. On the other hand, the Philippines has established a strict and systematic legislative oversight system directly through its constitution, as a constitutional response to the dark history of the abuse of emergency powers during the Marcos regime. This fundamental difference will be explored in more detail in the following two sub-sections.

a. Legislative Oversight in the Indonesian System

¹⁶Jimly Ashorudin, *Op. cit.*

Indonesia's legislative oversight of the declaration of a state of emergency has significant structural weaknesses. Article 12 of the 1945 Constitution, which merely states that “the conditions and consequences of a state of emergency shall be determined by law”, does indeed implicitly involve the House of Representatives (DPR) in the drafting of legislation; however, it does not explicitly regulate the mechanism of *legislative oversight* after the President has proclaimed a state of emergency.¹⁷

Consequently, this suggests that Indonesia's existing emergency regulations no longer align with constitutional concepts following the amendments to the 1945 Constitution, due to the lack of *checks and balances* during a crisis. Rusdiana et al. emphasise that Indonesia stands out in the Southeast Asian context for its lack of clear legal limits on emergency powers and for emergency law's function as an instrument of executive centralisation. The absence of effective *legislative oversight* mechanisms in Perppu 23/1959 creates an inherent risk of abuse of power without constitutional accountability.¹⁸

b. The Mechanism of Congressional Supremacy in the Philippine System

The 1987 Philippine Constitution designates Congress as the supreme oversight body over the proclamation of martial law, with a highly detailed mechanism:

1. *Mandatory Reporting Requirement*: The President must immediately submit a report to Congress regarding the proclamation of martial law, accompanied by a comprehensive factual basis
2. *60-Day Automatic Termination*: A declaration of martial law automatically expires after 60 days unless extended by Congress
3. *Congressional Vote for Extension*: An extension beyond 60 days may only be granted with the joint approval of Congress (*both Houses voting jointly*)
4. *Congressional Power to Revoke*: Congress may revoke the proclamation of martial law through a joint vote, although the President may exercise a veto

Philippine constitutional law scholars refer to this mechanism as a ‘*trip-wire of time limits, mandatory reporting, legislative supremacy and judicial scrutiny*’ embedded within the President's emergency powers. This system creates an *active oversight mechanism* that effectively prevents long-term abuse of emergency powers, in contrast to the experience of authoritarianism during the Marcos era, when martial law lasted for an exceptionally long period.

¹⁷Madania, "Pengawasan Kekuasaan Eksekutif oleh Lembaga Legislatif dalam Sistem Pemerintahan Indonesia", *Jurnal Kajian Keislaman*, vol. 15, no. 1, (2021)

¹⁸Shelvi Rusdiana dkk, “Emergency Law as a Tool of Executive Centralization in Indonesia, Thailand, and Vietnam”, *International Law Discourse in Southeast Asia*, Volume 4, Issue 2 (2025).

3. The Absence of Constitutional Oversight Mechanisms in the Indonesian Legal System versus Independent Judicial Oversight in the Philippines.

Beyond legislative oversight, another dimension warrants serious attention in this comparative study: the extent to which the judiciary has the constitutional scope and authority to oversee and correct the executive's use of emergency powers. Judicial oversight is essentially regarded as the last line of defence in the system of *checks and balances*, particularly when legislative mechanisms are deemed not yet fully capable of preventing the potential abuse of power that frequently arises in the midst of a crisis. Unfortunately, in this regard, Indonesia and the Philippines once again find themselves at two very different poles. In Indonesia, no *judicial review* mechanism explicitly tests the constitutional validity of a state of emergency declaration; consequently, the executive's discretion in emergencies operates, in practice, without a clear and firm framework of judicial oversight. This stands in stark contrast to the Philippines, whose constitution explicitly grants the Supreme Court both the authority and the duty to review the adequacy of the factual basis for any emergency proclamation, ensuring that judicial oversight has become one of the main pillars of constitutional accountability in that country. The author will elaborate on this striking difference in the following two subsections.

a. Weaknesses of Judicial Review under the Indonesian System

Indonesia lacks an explicit constitutional judicial review mechanism regarding the declaration of a state of emergency under Article 12 of the 1945 Constitution. The Constitution does not explicitly grant the Constitutional Court or the Supreme Court authority to review the adequacy of the factual basis for proclaiming a state of emergency. Consequently, no *constitutional safeguard* can check executive discretion in declaring a state of emergency.¹⁹

Although the Constitutional Court has the authority to review a Government Regulation instead of Law (Perppu) against the 1945 Constitution (as in Judgment No. 138/PUU-VII/2009), this judicial review is post-hoc and limited to the substance of the Perppu, not to the facts of the declaration of a state of emergency itself. Najib examines constitutional control over emergency powers in Indonesia's presidential system in comparison with South Korea and Brazil, and concludes that Indonesia's framework for emergency powers remains normatively under-specified and institutionally fragile because it lacks explicit judicial review.

¹⁹Irwan Triadi, dkk, Analisis Yuridis Penerapan Darurat Militer di Indonesia : Kajian Terhadap Perppu Nomor 23 Tahun 1959 dalam Persepektif Ketertiban Umum dan Tantangan Era Digital" Hukum Dinamik Ekselensia, Volume 07, No. 4, (2025).
<https://journalversa.com/s/index.php/hde/article/view/4885/5617>

Perppu 23/1959, more than 60 years old, is a 'legal fossil' that is no longer relevant and is dangerous because it lacks effective *checks and balances*, including judicial review. The absence of explicit judicial review creates the risk of *executive aggrandisement* without constitutional safeguards.²⁰

b. The Power of Independent Judicial Scrutiny in the Philippine System

The 1987 Philippine Constitution explicitly states that the *Supreme Court* has both the authority and the duty to review *the sufficiency of the factual basis* for any proclamation of *martial law* or suspension of *the writ of habeas corpus*, and that every citizen may challenge such measures. This provision creates a mechanism of *independent judicial scrutiny* that functions as a third '*trip-wire*' alongside *time limits* and *legislative supremacy*, effectively limiting executive discretion during a state of emergency.

In the landmark ruling in *Lagman v. Medialdea* (GR No. 231658, 9 October 2017), the Supreme Court of the Philippines affirmed that *judicial review* of a proclamation of *martial law* is a *justiciable* power and cannot be set aside by a claim of *executive prerogative*. The Court established three fundamental principles governing the exercise of *judicial scrutiny*:²¹

First, the Supreme Court can review *the sufficiency of the factual basis* independently of Congress's actions, because *judicial review* is *separate and distinct* from *legislative oversight*. This differs from the Indonesian system, which lacks an explicit mechanism for *judicial review* of the facts underlying a state-of-emergency proclamation, meaning there is no *constitutional safeguard* to check *executive discretion*. Second, the scope of *judicial review* is limited to the information available to the President when the proclamation is issued, rather than *an independent investigation* by the Court. The Court merely assesses whether there is a *reasonable basis* to determine that (a) *an actual rebellion or invasion* has occurred, and (b) there is a *public safety* requirement necessitating the proclamation of *martial law*. Third, *the President must be strictly confined* to two constitutional elements: *an actual rebellion or invasion as the triggering event*, and a *public safety requirement as the necessity test*. If either element is not met, the proclamation may be declared unconstitutional.²²

The legal implication of this *independent judicial scrutiny* is the creation of a Philippine system structured around strong constitutional accountability, in which *executive overreach* can be mitigated through three layers of control: (1) a 60-day *time limit*, (2) *congressional supremacy* regarding extensions, and (3) *mandatory judicial review of the factual*

²⁰ *Ibid.*

²¹ Muhammad Syarhif Nuh, *Op. cit.*

²² Qurrata Ayuni, "Tipologi Penggunaan Hukum Tata Negara Darurat: Sebuah Studi Literatur". <https://www.scribd.com/document/859280357/Catatan-Qurrata-Ayuni-Tipologi-Penggunaan-Hukum-Tata-Negara-Darurat-Sebuah-Studi-Literatur-1>

basis. This contrasts with Indonesia, which is normatively under-specified and institutionally fragile because it lacks explicit *judicial review*, *legislative oversight*, and constitutional time limits.

D. Conclusion

This study demonstrates a fundamental difference between Indonesia and the Philippines regarding the constitutionalisation of emergency law (*state of emergency*). Indonesia adopts a delegative approach, whereby Article 12 of the 1945 Constitution contains only two sentences that delegate all technical regulations to legislation. Consequently, to this day Indonesia remains reliant on Government Regulation instead of Law No. 23 of 1959 – over 60 years old – as the sole comprehensive regulation in this field. Indonesia's state-of-emergency legal regime is normatively *under-specified* and institutionally fragile, as it has no constitutional time limits, no explicit legislative oversight mechanisms, and no *judicial review* of the facts underlying the declaration of a state of emergency itself. This situation creates a real risk of abuse of executive power without adequate constitutional accountability.

The Philippines, by contrast, has fully and comprehensively constitutionalised emergency law directly in Article VII, Section 18 of the 1987 Constitution. The Philippine system establishes three robust layers of control: (1) a maximum *temporal limitation* of 60 days for the proclamation of martial law; (2) *congressional supremacy*, which requires congressional approval for any extension; and (3) *mandatory judicial review* by the Supreme Court of the sufficiency of the factual basis for the proclamation. This is as affirmed in the *landmark* ruling in *Lagman v. Medialdea* (2017), which established the Philippine regime as a *structured constitutional mechanism* with strong accountability for executive discretion.

Overall, this comparison demonstrates that Indonesia needs to undertake fundamental reforms to its legal framework governing states of emergency, particularly by elevating essential norms—such as temporal limitations, parliamentary oversight mechanisms, and *judicial review* of emergency proclamations—to the constitutional level, to align with the principles of a democratic rule of law following the amendments to the 1945 Constitution.

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Aulia Cantika Maharani was born in Jakarta on June 15, 2005. From a young age, she developed a strong passion for law, which motivated her to pursue higher education in this discipline. She is currently a student at the Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta.

Yasmeen Auliandini Arafah was born in Surabaya and has lived and studied in Jakarta for most of her life. I started my education at Hangtuh 6 Elementary School in Jakarta, continued at State Junior High School 228 in Central Jakarta, and finished high school at State Senior High School 72 in North Jakarta. Now I'm a sixth-semester Law student at Universitas Pembangunan Nasional Veteran Jakarta.

Shaffa Nathaniela was born in Depok, Indonesia, on March 12, 2005. She is a law student interested in child protection, legal governance, and human rights, and she is actively engaged in legal research and academic writing.