



Comparative Judicial Review of Emergency Declarations in Canada and Indonesia

Marcha Jeanne Mawene¹, Nabila Aulia Adek Putri²

^{1 2} Universitas Pembangunan Nasional Veteran Jakarta

Corresponding email: mjmawene@gmail.com¹, nabilaptrr@gmail.com²

Abstract: *This normative legal research examines the structural challenges of judicial review over executive emergency powers by comparing Canada's Emergencies Act of 1988 and Indonesia's Government Regulations instead of Laws (Perppu) under Article 22 of the 1945 Constitution. The analysis reveals that Canadian federal courts apply a rigorous reasonableness standard based on strict intelligence thresholds, effectively maintaining constitutional boundaries and providing retroactive remedial relief. Conversely, the Constitutional Court's judicialization of emergency powers in Indonesia suffers from systemic paralysis. This weakness stems from the strict application of the mootness doctrine when a Perppu is rapidly enacted into law, paired with the prospective nature of the Court's rulings, which leaves a remedial vacuum for human rights violations. Ultimately, this study argues that Indonesia must reform its procedural framework by decoupling judicial timelines from legislative ratification and introducing interim measures to prevent the normalisation of executive exceptionalism.*

Keywords: *Judicial Review, Emergency Powers, Perppu, Emergencies Act, Comparative Law*

A. Introduction

The adage *salus populi suprema lex esto* (the safety of the people is the supreme law) is a classical legal maxim asserting that, in times of crisis, public safety must be the primary priority, which may occasionally override existing legal regulations. Globally, balancing executive emergency powers with constitutional rights remains a critical challenge for modern democratic states. A notable contemporary incident occurred in Canada on February 14, 2022, when the federal government invoked the Emergencies Act of 1988 in response to the Freedom Convoy protests that paralysed major roads in Ottawa and surrounding areas. Justifying the unprecedented invocation as the first since the Act's inception, the government described the situation as a "public emergency" necessitating extraordinary measures to enforce the law.

However, judicial oversight proved crucial in checking this executive action. On January 23, 2024, the Federal Court of Canada ruled that invoking the Emergencies Act was unreasonable and *ultra vires* (beyond legal authority). Justice Richard Mosley concluded that the government lacked a reasonable basis to declare a “national emergency” or a “threat to national security”, and that the enacted measures violated Section 2(b) (freedom of expression) and Section 8 (protection against unreasonable search and seizure) of the Canadian Charter of Rights and Freedoms. Subsequently, on January 15, 2026, the Federal Court of Appeal unanimously upheld this decision. The appellate court affirmed that the Cabinet had no reasonable grounds to conclude a national emergency existed, explicitly stating, “No matter how bad and dangerous the blockade and convoy protests in Ottawa were, they were far from a threat to national security.” The court reiterated that emergency powers cannot override constitutional rights without clear, objective justifications, particularly regarding freedom of speech and protection against unreasonable arrest and detention.

This Canadian jurisprudential development provides a vital comparative lens for Indonesia, which possesses a different emergency framework but faces analogous human rights risks concerning executive overreach. Under Article 12 of the 1945 Constitution of the Republic of Indonesia, the President holds the absolute prerogative to declare a state of emergency, with the conditions and consequences established by law. Furthermore, Article 22 of the 1945 Constitution authorises the President to issue Government Regulations instead of Law (*Peraturan Pemerintah Pengganti Undang-Undang* or *Perppu*) in situations of “compelling urgency”. A significant lacuna in the Indonesian legal system is the lack of specific constitutional provisions that regulate the rights of affected communities or define strict, objective principles the government must follow when curtailing constitutional rights. Theoretically, three elements must be met simultaneously for a state of emergency: a dangerous threat, a reasonable need, and a time constraint. Yet, in practice, the executive often interprets “compelling urgency” broadly and subjectively, fulfilling only one element and undermining the Constitution's original intent. Recognising this risk, the Constitutional Court, through Decisions No. 138/PUU-VII/2009 and No. 145/PUU-VII/2009, affirmed that a *Perppu* creates new, binding legal norms. This gives the Court the authority to review a *Perppu*'s substance, even though the 1945 Constitution initially lacked specific institutional mandates for such oversight. Previous research on emergency constitutionalism has largely examined legal frameworks in isolation. For instance, studies by Jimly Asshiddiqie and other domestic scholars have extensively analysed the normative dimensions of Indonesia's *Perppu*, focusing on the subjective parameters of “compelling urgency” without looking at external comparative models. Similarly, earlier international studies evaluating the Canadian Emergencies Act focused primarily on the immediate aftermath of the 2022

protests, before definitive judicial outcomes. The main limitation of these previous studies is the lack of a cross-jurisdictional analysis that utilises the most recent 2024 and 2026 Canadian federal court rulings as a benchmark for evaluating objective judicial review mechanisms. To address this gap, this paper introduces a novel comparative approach by contrasting the rigorous, objective thresholds newly established in Canadian jurisprudence with the broad executive discretion prevalent in Indonesia's emergency framework.

Therefore, this study compares the judicial review mechanisms for emergency declarations in Canada and Indonesia and explores how the stringent objective parameters established by Canadian courts can serve as an evaluative standard to prevent potential human rights violations in Indonesia. To achieve this, the article is structured around two primary research objectives. First, it investigates the substantive differences between the judicial review mechanisms for emergency declarations and executive actions in Canada and Indonesia. Second, it identifies specific legal principles from recent Canadian jurisprudence that can be adapted to strengthen objective oversight of presidential emergency powers in Indonesia.

B. Method

This article uses a qualitative research method to understand legal phenomena related to emergency declarations through descriptive, in-depth data collection. The primary approach is normative juridical, a legal research approach that refers to applicable laws and regulations in force. This approach examines legal theories, concepts, and principles on constitutional emergency powers. In addition to the normative approach, this article uses a statutory and case approach to examine the 1945 Constitution of the Republic of Indonesia, the Canadian Emergencies Act of 1988, and relevant landmark court decisions from both jurisdictions.

This article also uses a functional comparison method. Functional methods seek legal aspects that can be compared across two or more legal systems. In other words, this method identifies the legal elements that serve the same judicial review function in Indonesia and Canada. However, they may differ in normative formulation or application.

Data collection relies on primary legal materials such as the constitution and definitive rulings from the Constitutional Court of Indonesia and the Federal Court of Canada. The study also collects secondary legal materials, including official reports from the Public Order Emergency Commission, accredited legal journals, and authoritative reference books. Finally, the collected data is analysed deductively. This qualitative

analysis uses legal norms as the major premise and legal facts from specific emergency cases as the minor premise to formulate a comprehensive and objective conclusion.

C.Result & Discussion

1. Judicial Review of the Emergencies Act in Canada: Case Analysis and Court Rulings

a. Typology of Canadian Emergencies and Characteristics of Public Order Emergencies

Under the Emergencies Act of 1988, Canada establishes a structured emergency framework by classifying crises into four distinct legal categories. Each category possesses its own explicit legal characteristics and strict threat thresholds to prevent executive overreach. The first category is a public welfare emergency, which covers temporary, urgent, and critical situations that seriously threaten Canadians' lives, health, or safety, such as environmental disasters, severe floods, earthquakes, or global health crises like the COVID-19 pandemic. The second category is a public order emergency, which covers urgent, temporary situations that endanger the government's ability to preserve Canada's sovereignty, security, and territorial integrity. This specific emergency type encompasses severe threats such as sabotage, terrorism, subversion, and espionage. The third category is an international emergency, which arises from disturbances to international peace that directly threaten Canadian national security. The fourth category is a war emergency, which addresses imminent or actual military attacks against the state.¹

The public order emergency was the exact mechanism invoked during the 2022 Freedom Convoy crisis. Its legal characteristics necessitate a high threshold involving espionage, sabotage, subversion, or terrorism targeting national security. Legal scholarship establishes that two cumulative thresholds must be fulfilled to declare a public order emergency legally. First, the situation must be urgent, critical, and temporary. It must significantly threaten the life, health, or safety of Canadian citizens or the government's capacity to preserve national independence, security, or territorial integrity. Second, the crisis must exceed the affected province's constitutional authority or administrative capacity, rendering all other existing Canadian laws ineffective in resolving the issue. Therefore, a public order emergency does not merely require a general public safety concern, but it must explicitly escalate to the level of a national security emergency.

This clear distinction between a public welfare emergency and a public order emergency is vital to subsequent judicial review. A public welfare emergency focuses primarily on physical safety and public health, whereas a public order emergency targets

¹ Kent Roach, "The Emergencies Act and the Freedom Convoy Protests," *Constitutional Forum Constitutionnel* 31, no. 1 (2022): 45–48.

existential threats to state sovereignty. In Canadian legal practice, a public order emergency is the least frequently utilised instrument because of this exceptionally high legal barrier. Applying this framework to the Freedom Convoy was an inappropriate use of executive power because the situation was fundamentally a general public demonstration. Under the Emergencies Act of 1988, an eligible threat to national security must be far greater than ordinary public disturbances or economic blockades. Legal scholars argue that public order emergencies must be reserved exclusively for large-scale organised crime networks, international terrorist rings, or espionage operations. Using these extraordinary powers against disruptive but non-sovereign threats violates the statutory limits on executive authority. For comparative analysis, this rigid typology provides an objective baseline that requires the government to prove the crisis matches the specific legal threshold of the declared emergency category.²

b. Chronology of the 2022 Freedom Convoy Protests and Executive Actions

The legal timeline of the Freedom Convoy demonstrates how quickly executive power can concentrate during a perceived crisis. The protest movement began in December 2021, when truck drivers opposed mandatory COVID-19 vaccination policies for cross-border travel between Canada and the United States. By January 2022, the protesters established highly disruptive roadblocks in Ottawa, effectively blocking major transit routes surrounding healthcare facilities and the Canadian Parliament. The domestic escalation forced Ontario Premier Doug Ford to declare a provincial state of emergency on February 11, 2022. Shortly after, on February 14, 2022, Prime Minister Justin Trudeau invoked the Emergencies Act of 1988 for the first time since its enactment. The federal cabinet subsequently declared a public order emergency under Part II of the Act on February 15, 2022.³

Upon invoking the Act, the executive branch implemented extreme measures that are highly unusual within the standard Canadian legal order. First, the government ordered the immediate freezing of payments and financial assets belonging to the demonstrators without requiring prior judicial approval. Second, the police carried out direct vehicle impoundments without obtaining standard court warrants. Third, the executive established unlimited administrative fines for individuals found violating the emergency regulations. Fourth, the government authorised compulsory service mandates, forcing qualified individuals to perform specific duties to clear the blockades.

² Eric M. Adams, "Emergency Powers and Constitutionalism in Canada," *University of New Brunswick Law Journal* 73 (2022): 1-20.

³ Vanessa MacDonnell, "The Rule of Law and Emergency Powers in Canada," *National Journal of Constitutional Law* 45 (2022): 75-98.

These extraordinary interventions bypass the traditional procedural protections of the regular court system.⁴

This chronological escalation highlights a critical flaw in the federal executive's justification. Because Ontario Premier Ford had already invoked provincial emergency powers and expressed readiness to act, the statutory requirement for federal intervention was not met. The federal emergency measures grant sweeping authority directly to the police and central government by stripping away standard judicial oversight. In the ordinary legal system, asset freezing requires an explicit court order based on rigorous evidence, vehicle impoundments necessitate formal judicial processes, and fines must adhere to strict statutory maximums. This concentration of executive power serves as a critical point of comparison for Indonesia, illustrating that while the executive branch can seize extraordinary authority during a crisis, a resilient constitutional democracy requires independent judicial mechanisms to review and invalidate the declaration.⁵

c. Ratio Decidendi of Judicial Decisions (2024 FC 75 and 2026 FCA 6)

The judicial response to the 2022 Freedom Convoy provides a profound analysis of the limits of executive discretion. On January 23, 2024, Federal Court Judge Richard Mosley issued Decision 2024 FC 75, declaring that the invocation of the Emergencies Act was entirely unreasonable and unjustifiable. The *ratio decidendi* of this initial ruling established that the Freedom Convoy failed the mandatory three-part test required for a national emergency. First, the court ruled that no objective national danger existed because the blockades did not threaten Canada's independence, security, or territorial integrity. Second, the government lacked a reasonable justification because ordinary legal mechanisms, including the Criminal Code and existing provincial statutes, were fully sufficient to handle the roadblocks. Third, the situation failed the temporal requirement because the economic disruption did not constitute an urgent, pressing national emergency. Judge Mosley emphasised that the government failed to present objective evidence of a national security threat as defined by the Canadian Security Intelligence Service Act of 1984, which limits threats to espionage, terrorism, subversion, and foreign-influenced activities. Consequently, the emergency regulations directly violated Section 2(b) on freedom of expression and Section 8 on protection against unreasonable search and seizure under the Canadian Charter of Rights and Freedoms.⁶

⁴ Leah West, "National Security and the Emergencies Act: Legal Thresholds and Democratic Accountability," *Canadian Journal of Law and Society* 38, no. 2 (2023): 201–220.

⁵ Kent Roach, "The Freedom Convoy and the Rule of Law," *Constitutional Forum Constitutionnel* 31, no. 2 (2023): 11–15.

⁶ Craig Forcese and Leah West, "The Future of Canada's Emergencies Act," *National Journal of Constitutional Law* 46 (2023): 113–142.

This legal position was definitively solidified on January 15, 2026, when the Federal Court of Appeal unanimously upheld the lower court ruling in Decision 2026 FCA 6. The appellate panel, consisting of Justices Roper, Letourneau, and St-Noir, determined that the Cabinet lacked a reasonable factual basis to conclude that a national emergency existed, rendering the entire invocation *ultra vires*. The Court of Appeal's ratio decidendi clarified that while the convoy protests in Ottawa were highly disruptive, alarming, and economically inconvenient, they never escalated into a threat to national security. The court established proportionality as an objective standard, ruling that extreme executive measures such as asset freezes and unlimited fines were completely disproportionate to the actual threat level. Furthermore, the court explained that the statutory definition of a national emergency requires a crisis to exceed a province's legal capacity, not merely its political willingness to act. Because Ontario was prepared to intervene under provincial law, federal overreach was legally unnecessary.

This landmark appellate ruling proves that Canadian courts do not practice blind judicial deference toward the government during emergencies. Instead, the judiciary conducts a rigorous, independent review of the factual and intelligence foundations of the executive declaration. The ruling reinforces the constitutional principle that executive power remains bound by the Charter of Rights and Freedoms even in times of crisis, ensuring that public disruptions cannot be used to bypass fundamental civil liberties without objective justification.⁷

2. Dynamics and Problematics of Judicial Review Over Executive Emergency Powers in Indonesia

Indonesia's constitutional architecture implements a dual emergency framework that strictly separates emergency instruments based on the intensity and nature of a crisis through Article 12 and Article 22 of the 1945 Constitution. Article 12 governs the traditional state of emergency, operationalised through Law Number 23/Prp/1959 on the Declaration of a State of Danger.⁸ This constitutional path addresses existential threats to national security by stratifying emergencies into three progressive levels: a Civil Emergency, a Military Emergency, and a War Emergency. The core characteristic of Article 12 is the direct devolution of extraordinary power to the executive branch, allowing wide restrictions on civil liberties, the enforcement of curfews, and the

⁷ Roach, Kent. "Canadian Democracy and the Emergencies Act after the Freedom Convoy." *Constitutional Forum Constitutionnel* 32, no. 1 (2023): 1–15.

⁸ Yatani, V. G. (2026). *Kenya's Asylum Governance: A Critical Inquiry into Policy-Practice Continuum*.

temporary transfer of civil administration to military commands to preserve state sovereignty.

Conversely, Article 22 of the 1945 Constitution regulates the President's prerogative to enact Government Regulations instead of Laws, commonly known as Perppu, under the specific condition of compelling urgencies. This mechanism serves as a legislative emergency tool that grants the executive immediate legislative discretion. It allows the President to bypass standard, time-consuming parliamentary debates to resolve regulatory deficits swiftly during unexpected crises.

In contemporary Indonesian legal practice, this clear separation has shifted destructively, culminating in the rise of a shadow emergency regime. The executive branch consistently avoids declaring a formal State of Danger under Article 12, preferring instead to use Article 22 Perppu to manage complex non-military crises, including economic instability, global health pandemics, and anti-corruption institutional impasses. This pragmatic preference causes a dangerous conceptual overlap. Through a Perppu, the executive can unilaterally alter state budgets and suspend organic laws without triggering the intense political accountability and parliamentary scrutiny associated with a traditional State of Danger. As a result, the boundary between normal law and exceptional emergency law blurs, thereby normalising emergency governance in daily public administration.

Before 2009, the phrase "matters of compelling urgency" in Article 22 of the 1945 Constitution was interpreted as an absolute subjective prerogative of the President. The assessment of what constituted an emergency fell exclusively within executive political discretion, and the courts deemed it non-justiciable. The only available check was the subsequent political approval or rejection by the House of Representatives, known as the DPR, during the next legislative session. This absolute paradigm changed fundamentally with the landmark Constitutional Court Decision Number 138/PUU-VII/2009. Through this monumental ruling, the Court initiated the judicialization of emergency powers, holding that while the President makes the initial assessment, the objective justification for such emergency measures must undergo rigorous judicial review by the Constitutional Court to prevent arbitrary rule.

To evaluate the validity of the President's assessment, the Constitutional Court established three cumulative and absolute benchmarks that a Perppu must satisfy:

- a) There must be an urgent and critical need to resolve a specific legal issue swiftly under the prevailing laws.
- b) The required law does not yet exist, creating a distinct legal vacuum, or the existing laws are deemed fundamentally inadequate to mitigate the crisis effectively.

- c) The legal vacuum cannot be remedied through standard legislative procedures because the ordinary law-making process requires significant time, whereas the urgent situation demands immediate legal certainty⁹.

By establishing these three parameters, Decision Number 138/PUU-VII/2009 expanded the Constitutional Court's jurisdiction from merely evaluating the substantive text of laws to exercising absolute competence to review the formal validity, factual foundations, and sociological premises underlying executive emergency legislation.

Despite possessing these objective metrics, the actual efficacy of judicial review over Perppu in Indonesia frequently suffers from systemic paralysis. This institutional weakness arises from a direct clash between rigid procedural law and temporal dynamics, creating a difficult race against time. Article 22 of the Constitution requires submitting a Perppu to the DPR in its next session for political approval or rejection. This parliamentary process often moves much faster than judicial adjudication in the Constitutional Court, which typically requires several months for preliminary hearings, petition revisions, and expert testimony. Consequently, a severe procedural obstacle occurs. Before the Court can deliver a final judgment, the DPR often passes a plenary vote approving the Perppu, thereby transforming it into a permanent statute.

Once a Perppu becomes a formal statute, Constitutional Court jurisprudence dictates that the pending judicial review petition automatically loses its legal object, applying the mootness doctrine. Applying this doctrine has severe repercussions for human rights protection and access to justice. The Court cannot retroactively remedy or annul constitutional injuries or violations of citizens' rights suffered during the Perppu's active enforcement period. Aggrieved petitioners are forced to restart their constitutional challenges from the beginning, filing entirely new petitions to review the newly enacted statute that replaced the Perppu.¹⁰

This lack of judicial efficacy is exacerbated by the Constitutional Court's absence of provisional measures or interim injunctions to suspend a Perppu's enforceability during active litigation. Because a Perppu gains immediate binding force upon its promulgation, the executive can execute highly intrusive policies without immediate judicial intervention. Thus, judicial oversight of emergency powers in Indonesia operates almost exclusively post factum, stripping constitutional review of its immediate protective momentum and rendering it unable to serve as an instant institutional buffer against executive aggrandisement.

⁹ Ait-Aoudia, B. M. (2025). Legal certainty in times of crises. *Statute Law Review*, 46(3), hmaf026.

¹⁰ Azzahra, S. S., & Pratama, A. B. (2025). Legal Interpretation of Constitutional Court Decision Number 24/PUU-XXII/2024 Regarding the Authority to Submit a Judicial Review in State Administrative Disputes. *Manabia: Journal of Constitutional Law*, 5(02), 209-228.

The judiciary's institutional courage in reviewing emergency powers is heavily shaped by the prevailing system of government and the architecture of the separation of powers. In Canada's Westminster parliamentary system, the executive branch is fused with the legislative branch. The Prime Minister remains in office because they command the confidence of the House of Commons. During the 2022 crisis, Prime Minister Trudeau's minority government secured the New Democratic Party's backing, ensuring swift parliamentary ratification of the Emergencies Act invocation. Because party discipline and coalition voting can neutralise legislative oversight in a parliamentary system, the Canadian Federal Court was institutionally forced to step outside traditional deference. The judiciary acted as the primary constitutional guardian, showing judicial courage by striking down executive overreach when Parliament functioned as a mere rubber stamp.

In contrast, Indonesia's presidential system guarantees a strict separation between the executive and legislative branches. However, contemporary political dynamics feature a mega coalition where the President holds absolute dominance over the DPR. When the President issues a Perppu, the parliament rarely exercises its political veto. Unlike the Canadian courts, the Indonesian Constitutional Court faces immense socio-political pressure. The Court must navigate a delicate balance between upholding constitutionalism and avoiding direct institutional confrontation with a highly consolidated executive-legislative alliance, occasionally resulting in a more deferential posture toward the executive's subjective declarations.

The parameters the judiciary uses to evaluate the legality of emergency declarations differ significantly in their jurisprudential foundations. The Canadian Federal Court utilised the administrative law standard of reasonableness, shaped by the Vavilov framework, to assess the invocation of the Emergencies Act. The court strictly scrutinised the objective intelligence threshold, examining whether the government's decision was supported by rational, cogent, and compelling evidence of a threat to national security as defined by the CSIS Act. The Federal Court concluded the executive's decision was unreasonable and *ultra vires* because the factual intelligence data did not meet this high statutory threshold, regardless of how politically inconvenient the protests were.¹¹

By contrast, the Indonesian Constitutional Court uses a proportionality framework guided by the three cumulative parameters of Decision Number 138/PUU-VII/2009. Rather than scrutinising classified intelligence data, the Court assesses whether the crisis's socio-economic or legal impacts are proportional to the need to bypass standard legislative procedures. The Court essentially asks whether the legal vacuum severely

¹¹ Shah, B. (2026). Building a Protective Administrative Law Framework (Harv. CR-CL forthcoming). *Boston College Law School Legal Studies Research Paper (forthcoming)*.

paralyses state functions. However, the Indonesian judiciary often grants the President a broader margin of appreciation in determining what constitutes compelling urgency, focusing more on the necessity of the legal intervention than on applying a rigid, empirical evidentiary test like the Canadian courts.

Emergency powers inherently collide with human rights, making judicial protection of non-derogable rights a critical metric of effective judicial review. In Canada, the Emergencies Act explicitly states that it remains subject to the Canadian Charter of Rights and Freedoms. The Federal Court scrutinised the executive's unilateral decision to freeze bank accounts and suspend vehicle insurance without prior judicial warrants, finding it an arbitrary deprivation of property and a severe infringement of the right against unreasonable search and seizure. The Canadian judiciary established that economic sanctions used for crowd control during a public order emergency cannot bypass fundamental Charter rights.¹²

In Indonesia, Article 28I of the 1945 Constitution anchors human rights protection during emergencies by enumerating non-derogable rights that cannot be limited under any circumstances. Furthermore, utilising the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the comparative analysis reveals a critical vulnerability in Indonesia. While a Perppu can legitimately suspend organic laws, the Constitutional Court must ensure that it does not infringe upon absolute rights such as the right to life, freedom from torture, and freedom of thought. Because a Perppu is frequently used for non-security crises, the Court faces challenges in preventing the executive from subtly eroding derogable rights under the guise of an economic or administrative emergency.¹³

Both jurisdictions highlight a universal constitutional vulnerability regarding the potential failure of legislative oversight. The comparative analysis underscores the critical role of the courts as the ultimate bulwark of constitutionalism. When parliament fails to constrain the executive because of coalition dominance, party discipline, or political complicity, the state enters a perilous zone of legal authoritarianism where emergency powers are continuously extended or normalised. In the Canadian context, parliamentary committee oversight was polarised and politically charged, leaving the Federal Court as the only objective forum capable of independently cross-examining intelligence directors and cabinet ministers. Similarly in Indonesia, when the DPR expeditiously approves a highly controversial Perppu, the Constitutional Court remains the sole institutional

¹² McGinnis, R. (2024). *Unjustified: The Freedom Convoy, The Emergencies Act, And The Inquiry That Got It Wrong*. Sutherland House.

¹³ Salman, R., Ristawati, R., & Singarimbun, B. N. (2025). Judicial Review on Health Emergency Law: The Challenge to Judicial Independence of Indonesian Constitutional Court. *Jurnal Wawasan Yuridika*, 9(1), 1-18.

counterweight. This dynamic proves that robust judicial review is not a usurpation of democratic processes, but rather a mandatory constitutional failsafe when the legislative branch abdicates its supervisory duties.

The most striking divergence between the two jurisdictions lies in the post-judgment impact and the remedies available to citizens whose rights were violated by emergency measures. When the Canadian Federal Court ruled the invocation of the Emergencies Act as unreasonable and *ultra vires*, it stripped the executive actions of their legal immunity. This declaration of unconstitutionality paved the way for massive civil litigation. Citizens, truck drivers, and businesses whose financial assets were unlawfully frozen gained the legal standing to sue the federal government and financial institutions for damages, constitutional torts, and financial restitution. The judicial review in Canada thus provided tangible and restorative justice.¹⁴

Conversely, Indonesia's remedial landscape is severely constrained. Decisions of the Indonesian Constitutional Court are fundamentally prospective, not retroactive. If the Court declares a Perppu unconstitutional, the ruling only applies forward from the moment the judgment is read. Legal actions, incarcerations, or financial losses the state carried out while the Perppu was active remain legally valid and are not retroactively annulled. Consequently, citizens whose fundamental rights were infringed during the emergency regulation's lifespan are left in a remedial vacuum, finding it exceedingly difficult to claim damages or restore their constitutional rights. This lack of retroactive restitution significantly weakens the deterrent effect of judicial review against executive overreach in Indonesia.

TABLE 1. Comparative Breakdown of Emergency Judicial Review

Analytical Dimension	Canada (Federal Courts)	Indonesia (Constitutional Court)
Primary Constitutional Basis	Emergencies Act 1988	Articles 12 and 22 of the 1945 Constitution
Emergency Typology	Four distinct statutory categories with specific legal thresholds	Dual framework separating State of Danger from Perppu
Core Judicial Standard	Reasonableness framework using explicit statutory definitions	Proportionality test using three cumulative parameters

¹⁴ Yeager, M. G., & Chappelle, M. (2022). Restorative justice: the feasibility of alternative models of justice. *Contemporary Justice Review*, 25(1), 122-140.

Nature of Factual Scrutiny	Strict independent evaluation of empirical intelligence data	Broader margin of appreciation regarding regulatory necessity
Human Rights Integration	Bound strictly by the Canadian Charter of Rights and Freedoms	Governed by Article 28I and the Siracusa Principles
Temporal Efficacy of Review	Resilient against political shifts and independent of parliament	Susceptible to paralytic mootness if Perppu becomes statute
Availability of Remedial Relief	Retroactive invalidation opening path to civil damages	Prospective application leaving prior injuries without remedy

D. Conclusion

This comparative analysis shows that while both Canada and Indonesia grant extraordinary emergency powers to the executive branch to navigate crises, the efficacy of judicial review in checking these powers diverges fundamentally because of differences in their structural and procedural architectures. The Canadian framework, governed by the Emergencies Act of 1988, operates on a rigid statutory typology that legally confines public order emergencies to objective, existential threats to national security. By employing a stringent reasonableness standard and conducting rigorous, independent evaluations of empirical intelligence data, the Canadian Federal Court successfully acts as an impenetrable constitutional bulwark. The judiciary's willingness to strike down the executive's invocation of emergency powers, despite prior parliamentary backing, establishes a high threshold of institutional courage that explicitly protects non-derogable rights and provides retroactive remedial relief to aggrieved citizens.

In contrast, Indonesia's emergency constitutionalism suffers from the normalisation of exceptionalism through the frequent utilisation of Article 22 Government Regulations instead of Laws (Perppu) as a shadow emergency mechanism. While Constitutional Court Decision Number 138/PUU-VII/2009 theoretically judicialized the President's subjective prerogative by establishing objective parameters of compelling urgency, the practical enforcement of this judicial review remains severely paralysed. The Indonesian framework is hindered by procedural vulnerabilities, most notably the strict application of the mootness doctrine when a Perppu transitions into a formal statute before the adjudication process concludes. Furthermore, the absence of interim injunctions and the strictly prospective nature of the Constitutional Court's rulings leave a dangerous remedial vacuum, rendering citizens unable to seek restitution

for human rights violations endured during the active lifespan of an unconstitutional Perppu.

Ultimately, to prevent the steady encroachment of executive aggrandisement and safeguard democratic resilience, Indonesia must reform its judicial review mechanisms regarding emergency powers. Drawing from the Canadian experience, the Indonesian constitutional framework must decouple the judicial review timeline from the legislative ratification process, introduce provisional measures to suspend highly intrusive executive decrees during active litigation, and allow retroactive invalidation of unconstitutional emergency measures. Without these institutional failsafes, judicial review over executive emergency powers in Indonesia will remain a post-factum formality rather than an active mechanism for constitutional preservation.

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Authors Biography

Marcha Jeanne Mawene, born in Depok on June 13, 2005, is currently an undergraduate student at the Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, pursuing a Bachelor of Laws (S.H.) degree. Her research interests focus on constitutional law, administrative law, comparative law, and contemporary legal issues.

Nabila Aulia Adek Putri was born in Jakarta on March 31, 2005. She is currently an undergraduate student at the Faculty of Law, National Development University "Veteran" Jakarta, pursuing a Bachelor of Laws (S.H.) degree. Her research interests focus on constitutional law, administrative law, comparative law, and contemporary legal issues.