

Bounded Authority, Executive Discretion and Institutional Constraint under Conditions of Necessity

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ABSTRACT

Exceptional authority was often framed as a choice between executive capacity and institutional restraint. This study examined a narrower design problem, namely whether authority enlarged by necessity remained open to later institutional reconsideration. A comparative qualitative document analysis was conducted across Indonesia, Malaysia, Pakistan, and Türkiye using constitutional provisions, emergency legislation, official institutional materials, and peer-reviewed research. The comparison found substantial variation in the formal points at which emergency authority could be reconsidered. Pakistan and Türkiye placed relatively explicit parliamentary and temporal conditions around continuation, although judicial review was restricted in important emergency domains. Malaysia combined parliamentary annulment with strong constitutional limits on judicial questioning. Indonesia gave the President a central role in declaration and stated fewer emergency-specific return requirements in the constitutional text. The findings supported bounded authority as a problem of institutional reversibility. Exceptional discretion was bounded when its continuation depended on institutions or later legal moments capable of approving, reviewing, revising, or terminating it.



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INTRODUCTION

Emergency authority begins with a practical difficulty rather than a constitutional abstraction. A serious threat may require decisions before ordinary procedures can produce them. Coordination becomes harder, information is incomplete, and delay may carry real costs. Constitutional systems therefore permit some enlargement of executive discretion when ordinary administration cannot respond with sufficient speed. Ferejohn and Pasquino (2004) describe the resulting law of exception as a recurring constitutional problem. Gross (2003) and Scheuerman (2006) likewise show why extraordinary power cannot be understood simply as ordinary authority exercised more intensely.

Formal emergency rules differ in ways that matter before any official acts. Bjørnskov and Voigt (2018a) show that constitutions distribute declaration powers, approval requirements, and emergency competences differently. Their later work connects those rules to decisions to invoke emergency arrangements and to the political conditions surrounding them (Bjørnskov & Voigt, 2018b). Rooney (2019) reaches a related issue from international conflict. Bjørnskov and Voigt (2020) show that the use of emergencies also varies with the character of threats rather than following one stable institutional script.

The pandemic made the problem more visible because executive action expanded while legislatures and courts were working under unusual constraints. Bar-Siman-Tov (2020) documents the pressure this placed on legislatures. Griglio (2020) examines the difficulty of sustaining parliamentary oversight when rapid executive measures dominate the policy response. Petrov (2020) adds the role of judicial checks, while Grogan (2022) places crisis responses within rule-of-law concerns. Yet constraint

is not an argument for administrative paralysis. Pozen and Scheppele (2020) show that executive underreach can itself produce serious harm. Ginsburg and Versteeg (2021) also find that pandemic executives were often more institutionally constrained than a simple narrative of unchecked power would suggest. Their finding is important because formal restraint can coexist with broad executive capacity rather than merely replace it.

Discretion is already familiar to public administration. Implementation rarely works through mechanical obedience to rules because officials still interpret conditions, priorities, and available means. Tummers and Bekkers (2014) treat discretion as part of implementation rather than an administrative defect. Accountability addresses a different question. Bovens (2007) locates it in a relationship where conduct can be explained and questioned before a forum, while Bovens (2010) distinguishes that mechanism from accountability understood only as a virtue. Brodtkin (2008) and Hupe and Hill (2007) show how discretion and accountability coexist in ordinary administrative settings. Schillemans (2008, 2011) adds the role of horizontal arrangements beyond direct hierarchy.

Emergency scholarship and public administration meet at the point where expanded discretion must remain answerable over time. Much of the emergency literature identifies safeguards or studies why declarations occur. Public administration explains discretion and accountability with greater institutional detail, but it rarely treats emergency design as a problem of whether exceptional authority can be brought back for reconsideration. Temporary legal devices matter for precisely this reason. Kouroutakis and Ranchordás (2016) show how sunset arrangements can prevent temporary measures from becoming ordinary law by inertia. Molloy (2021) reaches a similar caution from democratic safeguards. Szente (2025) places temporal and institutional control within contemporary rule-of-law requirements for crisis management.

Bounded authority is narrower than the broader claim that an executive is constrained. Ginsburg and Versteeg (2021) ask how executives were bounded during the pandemic. The present argument shifts attention from the executive actor to the continuity of exceptional authorization. Authority is bounded when formal rules create a route back to another institution or to a later legal decision before extraordinary power simply continues. The core property is institutional reversibility. Indonesia, Malaysia, Pakistan, and Türkiye place these return points differently. Their Muslim-majority status defines the comparison but does not explain the variation. Existing research already documents emergency-control questions in Indonesia through Ayuni et al. (2022) and Najib (2026). Azmi (2021) examines the Malaysian setting, while Göztepe (2018) and Turkut (2022) address Türkiye. The question is how executive discretion is formally authorized and constrained under conditions of necessity.

RESEARCH METHODS

The study uses comparative qualitative document analysis. Indonesia, Malaysia, Pakistan, and Türkiye were selected because each has a publicly accessible constitutional or statutory emergency framework and because the four systems differ in how executive action is connected to legislative involvement, legal review, and duration rules. The cases are used for close comparison, not as a representative sample of Muslim-majority states. The comparison therefore supports descriptive and interpretive claims about formal design rather than population-level generalization. Case selection was driven by documentary comparability and visible institutional variation, not by an effort to identify a typical national model.

Four questions were applied consistently to each case. The first concerns who can activate exceptional authority and what formal condition is required. The second examines whether the legislature must approve, may annul, or otherwise control continuation. The third asks whether the relevant emergency act or instrument can be reviewed by a court. The final question concerns duration and the legal act needed for continuation or termination. Table 1 shows how these questions are tied to the documentary evidence. The comparison does not convert them into scores because the mechanisms do not perform the same institutional function.

Table 1 Research and Analytical Architecture

Analytical dimension	Question used in the comparison	Main documentary evidence	Interpretive use
Authorization	Who can activate exceptional authority and what formal condition applies	Constitution and emergency legislation	Location of the initial decision and any immediate return requirement
Legislative involvement	Must parliament approve continuation or can it annul or terminate the arrangement	Constitution, statutes, and official parliamentary rules where needed	Form and timing of political reconsideration
Judicial review	Can the relevant emergency declaration or instrument be challenged before a court	Constitution and official judicial materials	Formal availability and scope of legal review
Temporal limitation	What duration rule applies and what happens without renewal or approval	Constitution and emergency legislation	Whether continuation depends on a later legal act

The analysis stays within the limits of the documents. A constitutional approval deadline can show that another institution must act, but it cannot show that parliament will scrutinize the executive closely. A restriction on constitutional review does not establish the absence of every other legal remedy. The article therefore does not rank democratic quality, measure crisis effectiveness, or infer that one arrangement prevents abuse. Claims about a stronger or more explicit return point refer only to the wording and institutional placement of formal rules.

RESULTS AND DISCUSSION

Exceptional Authorization Under Necessity

Indonesia places the initial declaration in presidential hands. Article 12 of the 1945 Constitution states that the President declares a state of danger, while the conditions and consequences are regulated by law. Perpu No. 23 of 1959 remains part of that legal framework and is still listed as in force in Indonesia's official legislation database. The constitutional text does not require prior parliamentary approval for an Article 12 declaration. Ayuni et al. (2022) and Najib (2026) both identify the sparse constitutional treatment of emergency control as a persistent feature of the Indonesian framework.

Malaysia also permits activation without prior parliamentary consent, although the constitutional structure is different. Article 150 allows the Yang di-Pertuan Agong to proclaim an emergency when satisfied that a grave emergency threatens security, economic life, or public order. The proclamation must later be laid before both Houses. Azmi (2021) shows how the meaning of those powers became practically important during the 2021 emergency. The relevant point here is narrower. Initial authority does not depend on parliamentary approval before the proclamation takes effect, so the first institutional return point occurs after activation.

Pakistan moves legislative involvement closer to the originating decision in some cases. Article 232 allows the President to proclaim an emergency when the constitutional conditions are met. For an internal disturbance beyond the power of a provincial government to control, a provincial assembly resolution is ordinarily required. If the President acts without that resolution, both Houses must approve the proclamation within ten days. The design preserves a route for rapid executive action but makes continuation depend on a prompt return to parliament. This is a formal constraint on persistence rather than proof that the underlying declaration is substantively justified.

Türkiye combines presidential activation with an immediate parliamentary return. Article 119 permits the President to declare a state of emergency under enumerated conditions for an initial period that cannot exceed six months. The decision is submitted to the Grand National Assembly on the same day. Parliament may shorten the period, extend it, or end the emergency. Göztepe (2018) and Turkut (2022) place these rules within a longer Turkish debate about emergency normalization and judicial politics. The formal sequence matters because activation and continuation are institutionally separated even though both occur within the same emergency regime.

Legislative Control And Judicial Review

Parliamentary control does not operate through one common mechanism. Indonesia's Article 12 contains no fixed deadline requiring the House of Representatives to approve a presidential declaration. Article 22 creates a separate approval process for government regulations in lieu of law, but that procedure should not be treated as if it automatically governs the declaration power in Article

12. The distinction matters because emergency declaration and emergency lawmaking are not the same institutional act. A document-based comparison has to preserve that legal separation rather than infer a check from an adjacent constitutional provision.

Malaysia uses annulment rather than mandatory approval as the central parliamentary device in Article 150. A proclamation and emergency ordinances are laid before both Houses, and both Houses may annul them. Continuation therefore does not depend on an affirmative parliamentary vote in the same way as a short approval deadline. The difference is easy to overlook if legislative oversight is recorded as a simple yes or no variable. Annulment places the burden on parliament to act against an emergency arrangement that is already in force, while approval requires a further act before authority can persist on the same terms.

Judicial review cuts across the parliamentary pattern. Article 150(8) in Malaysia restricts courts from questioning specified matters connected with the proclamation and emergency instruments. Pakistan's Article 236(2) also bars courts from questioning the validity of proclamations or orders made under the emergency part of the Constitution. These provisions are not evidence that all legal accountability disappears. They show, more precisely, that the constitutional architecture protects particular emergency decisions from ordinary judicial challenge. Petrov (2020) is useful here because emergency checks are better understood by their institutional location than by the assumption that courts or legislatures perform interchangeable roles.

Türkiye presents the clearest example of a mixed arrangement. Article 148 excludes constitutional review of presidential decrees issued during a state of emergency or war. The Turkish Constitutional Court states the same jurisdictional limitation in its official materials. Yet Article 119 also requires emergency presidential decrees to be debated and decided by the Grand National Assembly within three months. Unless parliament cannot meet because of war or force majeure, a decree that is not decided within that period lapses automatically. Parliamentary reconsideration is therefore relatively explicit even while direct constitutional review of the emergency decree is restricted.

The four systems cannot be placed on a defensible single scale from constrained to unconstrained. One arrangement may require rapid parliamentary action but restrict judicial review. Another may preserve a later political route for annulment without an automatic end date for the proclamation. Bovens (2007, 2010) helps explain why these differences should remain separate because accountability depends on the forum and the consequences attached to it. Comparative emergency research reaches the same caution from another direction. Formal rules and actual compliance can diverge sharply (Bjørnskov et al., 2022). Bjørnskov and Voigt (2026) therefore provide an important warning against reading institutional text as behavioral performance. The same written safeguard can matter very differently when political incentives, compliance practices, and access to review change across cases.

Table 2 Comparative Institutional Architecture of Bounded Authority

Case	Authorization	Legislative involvement	Judicial review	Temporal limitation	Overall pattern
Indonesia	President declares a state of danger under Article 12. Conditions and consequences are regulated by law.	Article 12 contains no ex ante or fixed-deadline parliamentary approval rule for the declaration.	No dedicated emergency-specific review route is stated in Article 12 or the 1959 framework. General review institutions remain separate.	Article 12 states no general automatic constitutional expiry for the declaration.	Executive-centered entry with fewer express emergency-specific return points in the constitutional text.
Malaysia	Yang di-Pertuan Agong proclaims an emergency under Article 150 when the constitutional threshold is met.	Proclamation and emergency ordinances are laid before both Houses. Both Houses may annul them.	Article 150(8) restricts judicial questioning of specified emergency matters.	The proclamation has no fixed automatic expiry in Article 150. Emergency ordinances and laws lapse six months after the proclamation ends.	Post-activation parliamentary annulment and later lapse rules coexist with strong non-justiciability.

Table 2 Continuation

Case	Authorization	Legislative involvement	Judicial review	Temporal limitation	Overall pattern
Pakistan	President proclaims under Article 232. Internal-disturbance cases ordinarily require a provincial assembly resolution or rapid bicameral approval.	Where the President acts without the provincial resolution, both Houses must approve within ten days.	Article 236(2) bars courts from questioning the validity of proclamations or orders under the emergency part.	Continuation and emergency-made laws are subject to constitutional approval and expiry rules.	Prompt legislative return points and temporal rules coexist with a formal judicial ouster.
Türkiye	President declares under Article 119 for an initial period of no more than six months.	The declaration is submitted the same day. Parliament may shorten, extend, or lift it. Emergency presidential decrees must be decided within three months or lapse, subject to the constitutional exception.	Article 148 excludes constitutional review of presidential decrees issued during a state of emergency or war.	The initial declaration has a six-month ceiling. Continuation requires parliamentary action. Emergency decrees also face the three-month parliamentary rule.	Immediate parliamentary involvement and explicit temporal return points coexist with restricted decree review.

Temporal Boundaries And Continuation

Time changes the institutional meaning of emergency authority. Indonesia's Article 12 does not itself state a general automatic expiry date for a declaration. Malaysia's Article 150 does not impose a fixed endpoint on the proclamation either, although emergency ordinances and laws made because of the emergency cease to have effect six months after the proclamation ends, subject to the constitutional text. Pakistan links continuation to parliamentary approval and contains expiry rules for emergency-made laws. Türkiye sets a six-month ceiling for the initial declaration and requires parliamentary action for continuation.

Expiry rules alter who must act when extraordinary authority is to continue. If an emergency ends unless renewed, persistence requires a fresh institutional decision. If it continues until it is affirmatively revoked, those seeking termination carry the burden of action. Kouroutakis and Ranchordás (2016) describe the democratic significance of temporary legal devices in related terms. Molloy (2021) also cautions that a sunset rule is only a safeguard on paper unless its design actually creates a meaningful point of reconsideration. This is why the present comparison pays attention to what follows inaction, not merely to whether a time period appears in the text.

Türkiye's three-month rule for emergency presidential decrees makes the distinction especially visible. The decree is not merely published and left to ordinary political contestation. Parliament must decide on it within a stated period or it lapses, subject to the constitutional exception for an Assembly unable to meet because of war or force majeure. That rule does not tell us whether parliamentary debate is searching or deferential. It does show that the legal life of the instrument is made dependent on a later institutional act. Szente (2025) treats this continued attachment to legal and institutional limits as central to rule-of-law crisis management. The rule matters analytically because it links the life of the emergency instrument to a later parliamentary decision rather than to executive preference alone.

Temporal design can still mislead if it is treated as a proxy for substantive restraint. A short emergency may be renewed repeatedly. An arrangement without a fixed constitutional end date may be terminated quickly in practice. The evidence used here cannot resolve those behavioral possibilities. It can only identify which institution must act and what happens if no new act occurs. That narrower question is enough for the present purpose because institutional reversibility concerns the formal possibility of revisiting exceptional authority, not an assumption that the revisiting institution will necessarily resist the executive.

Bounded Authority And Institutional Reversibility

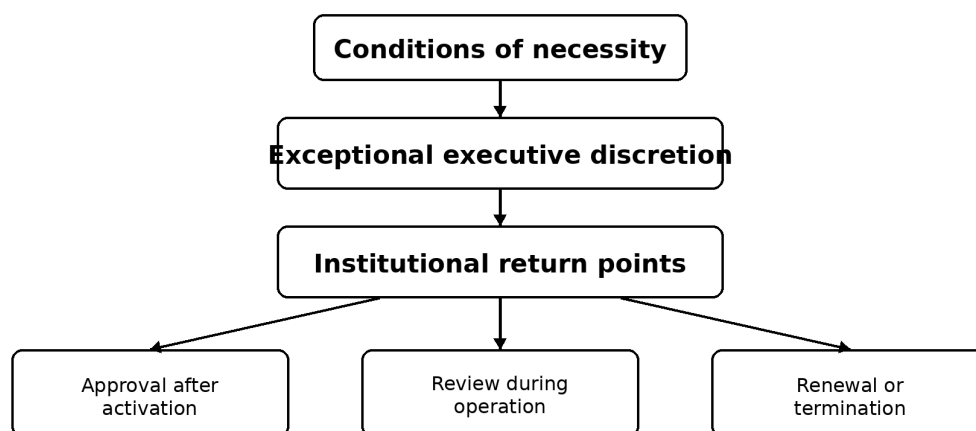
Bounded authority follows from this distinction between initial permission and continuing authority. Necessity may justify an enlarged field of discretion at the moment of crisis, but the legal system can still refuse to treat that first decision as self-sustaining. Indonesian penal policy shows a related pattern, as formal reform can reorganize discretion without necessarily reducing state authority (Kadir, 2026a). A parliamentary approval requirement creates one route back. Judicial review can create another where it is available. Expiry or renewal rules create a later point where inaction has legal

consequences. These mechanisms differ, yet each can make continued exceptional authority dependent on something beyond the originating executive judgment.

Institutional reversibility is therefore the narrower contribution of the concept. It does not claim that a constrained executive is always weak, nor that emergency powers are legitimate merely because a review mechanism exists. Studies of legality and living law likewise show how recognition can widen interpretive authority when limits remain unclear (Kadir, 2026b, 2026c). The concern is whether extraordinary authorization can be reconsidered without first requiring the executive that received the authority to surrender it voluntarily. In that sense, bounded authority differs from a safeguard checklist. A checklist counts devices. Reversibility asks whether the design contains an institutional route by which exceptional authority can be revisited while it still matters.

The cases show several ways in which that route can be incomplete. Pakistan and Türkiye combine explicit legislative and temporal return points with restrictions on judicial scrutiny in important emergency domains. Malaysia gives parliament an annulment power but places strong limits on judicial questioning under Article 150. Indonesia expresses fewer emergency-specific return requirements in Article 12 itself, although general accountability institutions continue to exist outside the narrow emergency provision. These differences should not be turned into a rank order without evidence about how the institutions behave. Schillemans (2011) makes a similar point in ordinary administrative settings when asking whether accountability arrangements actually work rather than merely exist on paper.

The Muslim-majority setting does not yield a common constitutional model, and the analysis gives religion no causal role. The value of the four cases lies in their institutional variation. Public affairs scholarship can therefore use them to examine a general problem of discretionary authority without treating them as a separate constitutional species. Bounded authority brings emergency powers closer to familiar questions of delegation and accountability because the issue is not only who receives power during crisis. It is also whether the structure leaves another institution, or a later legal moment, capable of altering the terms on which that power continues. Picture 1 presents this relationship without implying a causal sequence in practice.



Institutional reversibility is the core property of bounded authority

Picture 1 Bounded Authority and Institutional Reversibility

CONCLUSION

Emergency authority in the four cases is not adequately described by the identity of the declaring actor. The more revealing difference is what must happen after activation. Pakistan and Türkiye place comparatively explicit parliamentary or temporal conditions around continuation. Malaysia relies more heavily on post-activation parliamentary annulment while restricting judicial questioning of specified emergency matters. Indonesia's Article 12 places declaration in presidential hands and states fewer emergency-specific return requirements in the constitutional text. These are differences in formal institutional architecture rather than findings about crisis performance or democratic quality. Bounded authority captures the possibility that exceptional discretion remains institutionally reversible. The concept is narrower than the claim that an executive is constrained in a general sense. It asks whether the authorization can return to a forum or legal moment that is capable

of changing its continuation. That emphasis avoids treating every safeguard as equivalent and keeps the analysis tied to the documents. A time limit, an approval vote, and judicial review do different work even when each can interrupt the persistence of extraordinary authority. Their institutional value also depends on when they operate and on what legal consequence follows if no further decision is made. This is why reversibility is more useful here than a simple count of safeguards.

The study cannot show whether these formal return points are used effectively, whether courts find indirect routes around review restrictions, or whether legislatures merely ratify executive choices. Those questions require evidence from actual declarations, votes, litigation, renewals, and termination decisions. The present claim is deliberately smaller. Necessity can justify greater executive room for action without making the first authorization self-validating for the duration of a crisis. Where formal rules preserve a route for later reconsideration, exceptional discretion remains bounded by the possibility of institutional reversal.

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