JICL

JOURNAL OF INDONESIAN CONSTITUTIONAL LAW
P-ISSN: 3063-704X E-ISSN: 3063-6728
Volume 3 Number 3 2026
https://ejournal.pustakaparawali.com/index.php/jicl

Beyond the Statute: Constitutional Limits on Extra-Statutory Measures under Vietnam's 2025 Emergency Law

Minh Hoang Le
Faculty of Law, Ton Duc Thang University, Vietnam
Corresponding Author: leminhhoang@tdtu.edu.vn

ARTICLE INFO

Article History
Received: July 17, 2026
Revised: October 13, 2026
Accepted: October 15, 2026
Online Available: October 27, 2026

Keywords
State of Emergency;
Extra-Statutory Measures;
Constitutional Legality;
Rights Restrictions;
Vietnam;

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ABSTRACT

This article determines the constitutional boundary between permissible emergency implementation and executive creation of new rights restrictions under Article 12(2)(c) of Vietnam's 2025 Law on the State of Emergency. Its objective is to reconcile operational flexibility with Article 14(2) of the Constitution, which reserves rights restrictions to law. The article contributes a rights-specific delegation framework—the open-means–closed-rights model—and operationalizes it through a legal-incidence test and a three-stage, seven-question Emergency Legality Test. It uses doctrinal analysis of the Constitution, Law No. 104/2025/QH15, Decree No. 190/2026/ND-CP and legislative materials, supplemented by functional comparison and ICCPR standards. The analysis treats reservation of law, delegation, proportionality and emergency constitutionalism as sequenced tools. It finds both a substantive deficit, because Article 12(2)(c) does not predetermine the legal incidence of an unprovided measure, and an institutional deficit, because the consenting "competent authority" and review deadline are undefined. Formal statutory authorization and proportionality cannot cure those deficits. The clause is defensible only for factually novel operational means within legislatively fixed rights boundaries; normatively novel duties, prohibitions, sanctions or intensified restrictions require National Assembly legislation. The article concludes that legality must precede balancing. It recommends written reasons, immediate publication, seven-day expiry, Standing Committee review, legislation for primary restrictions and accessible remedies. The framework is novel because it converts legality principles into a consequence-generating method for classifying residual measures and allocating constitutional authority.

Introduction

Emergency constitutional law confronts an allocation problem. A crisis may require action before the legislature can foresee every operational contingency, but urgency can also turn broad statutory language into executive lawmaking. Recent scholarship emphasizes legislative continuity, review, temporariness, publicity and reasons as safeguards against executive aggrandizement.[1] Those safeguards do not answer a prior question raised by residual clauses: which features of an emergency

[1] J. Ferejohn and P. Pasquino, "The Law of the Exception: A Typology of Emergency Powers," *International Journal of Constitutional Law* 2, no. 2 (April 1, 2004): 210–39, https://doi.org/10.1093/icon/2.2.210.

response may remain open to executive choice, and which must be fixed by legislation before rights are restricted?

Vietnam's Law No. 104/2025/QH15 makes the question immediate. Enacted on 3 December 2025 and effective from 1 July 2026, it replaced the ordinance framework with a National Assembly statute.[2] Article 12(2)(c) allows the Prime Minister, in true necessity and after consent of a "competent authority," to decide measures "not yet provided by law." It separately permits early use of provided measures before formal declaration. Article 12(3) requires later reporting to a competent Party authority, the National Assembly and its Standing Committee.[3] This article addresses only the first branch: unprovided measures.

Article 14(2) creates the constitutional difficulty: human and citizens' rights may be restricted only as prescribed by law and when necessary for specified public interests.[4] Delegation of emergency implementation is unavoidable. The problem is whether Article 12(2)(c) also delegates the legally decisive features of a restriction—the right, persons, intensity, duration, sanctions and safeguards—because the law has not provided them. If general authorization always suffices, an unprovided restriction becomes "prescribed by law" merely because a law permits unprovided measures.

The weakness is substantive and institutional. Article 12(2)(c) does not distinguish a new method from a new coercive norm or specify rights, maximum burden, duration, sanctions or safeguards. It does not identify the consenting "competent authority."[5] Article 12(3) sets no review deadline, consequence of disapproval or automatic expiry. Articles 3(5) and 32(3) supply general principles and a parallel Standing Committee power, but no boundary between implementation and primary restriction. Decree No. 190/2026/ND-CP adds no consent, publication, confirmation or remedial procedure for the clause.

The issue is urgent before implementation practice develops. Extra-statutory measures can cause irreversible loss of liberty, privacy or property before ex post reporting matters. Vietnam also lacks a specialized constitutional court able to supply an immediate centralized answer. Early practice may therefore determine whether Article 12(2)(c) is an operational safety valve or a precedent for executive norm

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[2] Shelvi Rusdiana et al., "Emergency Law as a Tool of Executive Centralization in Indonesia, Thailand, and Vietnam," *International Law Discourse in Southeast Asia* 4, no. 2 (September 13, 2025): 48–76, https://doi.org/10.15294/ildisea.v4i2.23634.

[3] Minh Tuan Dang and Thi Ai Quynh Hoang, "The Challenges for the Rule of Law in the State of Emergency and the Case of Vietnam during the COVID-19 Pandemic," *Journal of Infrastructure Policy and Development* 8, no. 9 (September 6, 2024): 7497, https://doi.org/10.24294/jipd.v8i9.7497.

[4] Kien Tran and Khoi Trong Dao, "'Desperate Times, Desperate Measures': An Appraisal on Vietnamese Law's Limitation of Rights in the COVID-19 Crisis," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2024.2350558.

[5] Sébastien Lafrance, Shruti Bedi, and Hannah De Gregorio Leão, "Constitutional Theories of Emergency Powers and Their Limits: Perspectives from Vietnam, India and Canada," *Vietnamese Journal of Legal Sciences* 4, no. 1 (June 1, 2021): 1–33, https://doi.org/10.2478/vjls-2021-0006.

creation. An ex ante classification rule is more protective than reconstructing limits after effects occur.

Four literatures illuminate but do not resolve the problem. Emergency-power studies examine executive concentration, duration and oversight at regime level.[6] Vietnamese scholarship explains Article 14(2) and proportionality in legislative review.[7] Work on Vietnam's emergency-law project and Indonesian emergency legislation addresses necessity, hierarchy and institutional design, not the final residual clause.[8] Delegation and quality-of-law doctrines demand bounded and foreseeable discretion, but provide no rights-specific method for classifying a factually unforeseen yet potentially law-creating measure.[9]

The gap is therefore theoretical, not merely textual. Existing approaches ask whether an emergency was declared, an executive checked, a restriction proportionate or a delegation generally bounded. They do not separate factual from normative novelty in a single residual measure or assign consequences among the Prime Minister, Standing Committee and National Assembly. A measure may be temporary and proportionate yet still be created by an institution lacking authority to make it.

This article asks to what extent Article 12(2)(c) can authorize unprovided measures that restrict constitutional rights. It argues for a constitution-conforming reading: means of implementing a legislatively defined measure may remain open, but the legal incidence of rights must remain closed. The Prime Minister may choose

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[6] Jan Petrov, "The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?," *The Theory and Practice of Legislation* 8, no. 1–2 (May 3, 2020): 71–92, https://doi.org/10.1080/20508840.2020.1788232.; Joelle Grogan, "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis," *Hague Journal on the Rule of Law* 14, no. 2–3 (December 15, 2022): 349–69, https://doi.org/10.1007/s40803-022-00168-8.; Ronan Cormacain, "Keeping Covid-19 Emergency Legislation Socially Distant from Ordinary Legislation: Principles for the Structure of Emergency Legislation," *The Theory and Practice of Legislation* 8, no. 3 (September 1, 2020): 245–65, https://doi.org/10.1080/20508840.2020.1786272.; Tom Ginsburg and Mila Versteeg, "The Bound Executive: Emergency Powers during the Pandemic," *International Journal of Constitutional Law* 19, no. 5 (December 31, 2021): 1498–1535, https://doi.org/10.1093/icon/moab059.

[7] Dat T. Bui and Tien-Duc Nguyen, "The Inadvertent Migration of Proportionality and the Role of Ex-Ante Constitutional Review in the Vietnamese Lawmaking Process," *The Theory and Practice of Legislation* 13, no. 1 (January 2, 2025): 1–30, https://doi.org/10.1080/20508840.2024.2399481.; Nam Giang Do and Dat T. Bui, "The Dialogue Between Public Law and Private Law in Vietnam Under the Migration of the Proportionality Doctrine to Asia," *German Law Journal* 26, no. 6 (July 6, 2025): 1075–91, https://doi.org/10.1017/glj.2025.10169.; Ngoc Son Bui, "Vietnam's Mixed Constitution and Human Rights," *The Law & Ethics of Human Rights* 16, no. 2 (November 25, 2022): 295–319, https://doi.org/10.1515/lehr-2022-2007.

[8] Putra Perdana Ahmad Saifulloh et al., "The Ratio Legis of Government Regulation in Lieu of Law as Emergency Legislation," *Journal of Indonesian Constitutional Law* 3, no. 1 (March 26, 2026): 28–55, https://doi.org/10.71239/jicl.v3i1.230.; Bui and Nguyen, "The Inadvertent Migration of Proportionality and the Role of Ex-Ante Constitutional Review in the Vietnamese Lawmaking Process."

[9] Nicola Lupo, *The Role of Parliament in Delegated Legislation: Principles for Safeguarding Legislative Transparency and Democratic Accountability* (International Institute for Democracy and Electoral Assistance (International IDEA), 2026), https://doi.org/10.31752/48637.

factually novel methods; the Prime Minister may not create a normatively novel duty, prohibition, sanction, affected class or materially intensified interference.

The article makes three connected contributions. The open-means–closed-rights model bridges emergency theory and delegation doctrine by distinguishing operational novelty from changes in legal position. The legal-incidence test identifies those changes through duties, sanctions, affected rights, persons, intensity, duration and safeguards. The Emergency Legality Test is sequential and consequence-generating, not a renamed proportionality test: classification and competence precede justification, and failure produces implementation, modification, expiry, suspension, restoration or legislation.

The inquiry is narrow. It excludes the full catalogue of Articles 13–15, information and fiscal controls, the pre-declaration branch and empirical effectiveness. It evaluates one residual clause and the constitutional design problem it represents.

Methods

This study uses doctrinal constitutional research. The primary corpus is the Constitution as amended in 2025, Law No. 104/2025/QH15, Decree No. 190/2026/ND-CP, the government proposal and official legislative materials. Textual analysis identifies Article 12(2)(c)'s object, conditions, consent and reporting. Systematic analysis reads Articles 3, 12, 31 and 32 with the constitutional allocation of legislative, oversight and executive functions. Purposive analysis tests the enacted mechanism against the legislative record's reliance on Article 14(2) when replacing the ordinance framework.[10]

The framework assigns distinct functions to four doctrines. Reservation of law asks whether the legislature determined the legally significant boundaries of a restriction, not merely whether an Act can be cited. Delegation doctrine separates implementation from primary norm creation. Proportionality evaluates justification within a valid power and therefore follows legality and competence. Emergency constitutionalism supplies containment through temporariness, publicity, legislative continuity, review and restoration. Treating these functions separately prevents one doctrine from masking failure under another.

The framework has three stages and seven questions. Stage One classifies the act: does it alter legal incidence, and is any rights effect linked to legislatively fixed boundaries? Stage Two allocates authority: has an identifiable state institution acted within competence through a reviewable public-law decision? Stage Three tests containment: are necessity documented, proportionality and scope demonstrated, reasons published, expiry and legislative scrutiny provided, and remedies available?

[10] Dang and Hoang, "The Challenges for the Rule of Law in the State of Emergency and the Case of Vietnam during the COVID-19 Pandemic."

https://doi.org/10.71239/jicl.v2i3.194

The order is substantive. A missing statutory-rights nexus cannot be repaired by strong necessity or favorable balancing.

International and comparative materials have a limited function. ICCPR Article 4 and General Comment No. 29 govern derogations, not all emergency limitations, but clarify exceptionality, justification and confinement.[11] European legality cases, German delegation doctrine, South Africa's emergency clause and pandemic oversight studies test the proposed criteria without being transplanted as binding rules. The study is normative because no developed Article 12(2)(c) practice exists; it evaluates design, not implementation outcomes.

Discussion

From Regulatory Omission to a Constitutional Allocation Problem

Article 12 has three layers. Paragraph 1 states governing priorities. Paragraph 2 authorizes listed measures, duration, and implementing actors. Subparagraph (c) adds a residual power based on "true necessity" and prior consent, covering unprovided measures and early use of provided measures. Paragraph 3 adds ex post reporting.[12]

The first finding is twofold. The substantive deficit concerns the object: *pháp luật chưa quy định* reaches a measure unprovided by the legal system, yet no criterion separates a new method from a new norm governing persons. The institutional deficit concerns control: "competent authority" is undefined, reporting has no fixed time, and the Law gives no legal effect to silence or disapproval. Officials lack an enacted classification rule; affected persons lack traceable public-law authorization.

General safeguards do not eliminate the deficits. Article 3(5) requires necessity, clear grounds, proportionality, transparency and non-discrimination. Article 31 requires termination, correction, return of property and restoration. Article 32(3) gives the Standing Committee a separate power to decide unprovided measures and report to the National Assembly.[13] These provisions govern justification and aftermath, not what the Prime Minister may originate or why the two residual routes have different constitutional consequences.

Decree No. 190/2026/ND-CP confirms the design gap: it addresses Articles 23, 28 and 33, not consent, publication, duration, confirmation or remedy under Article 12(2)(c). The legislative history deepens the contradiction. The proposal invoked Article 14(2) to replace ordinance and subordinate regulation with an Act,

[11] Yoomin Won, "Emergency Powers and COVID-19 Derogations," *International Journal of Constitutional Law* 23, no. 1 (July 25, 2025): 113–47, https://doi.org/10.1093/icon/moaf010.
[12] Hanh Dang Thi My and Minh Tuan Nguyen, "Public Participation in Legislative Process during the State of Emergency in Vietnam," *Ius Humani. Law Journal* 14, no. 2 (September 9, 2025): 140–71, https://doi.org/10.31207/ih.v14i2.432.
[13] Huong Thi Lan Phan and Kien Trung Doan, "Examining Human Rights Derogation in State Emergencies Insights from Vietnam's COVID-19 Control Policies," *Journal of Southeast Asian Human Rights* 8, no. 1 (June 29, 2024): 37, https://doi.org/10.19184/jseahr.v8i1.37763.

yet the final Act permits an executive decision about what law has not provided. Statutory rank alone does not ensure legislative determination of future restrictions.

The contradiction reveals "statutory self-reference." A legislature formally complies with a reservation of law by enacting an open clause, then refers the substance of restrictions back to the executive. Formal origin and substantive determination diverge. The problem extends beyond Vietnam wherever rights reservations coexist with residual emergency clauses. Legality must therefore ask what the legislature determined, not merely whether an executive decision can trace authority to an Act.

Legality as a Gatekeeper, Not a Balancing Factor

The strongest defense is formal: Law No. 104 is an Act, Article 12 grants power, emergencies are unpredictable, and necessity, consent and reporting constrain action. This correctly rejects legislative micromanagement of rescue routes or technology. It fails, however, when it equates authorization to act with legislative determination of legal consequences.

Article 14(2) is both a source and responsibility rule. It excludes restrictions based only on infra-legislative preference and requires the legislature to retain decisions about the affected right, objective, persons, maximum burden, duration, sanctions, safeguards and review. The executive may choose how to implement those choices, but it cannot supply the missing legal incidence. This fits the constitutional roles of the National Assembly, Standing Committee, Government and Prime Minister and the supremacy of the Constitution.[14]

Vietnamese proportionality scholarship supports this reading by linking Article 14(2) to statutory restriction and ex ante legislative review.[15] Its main question is whether a restriction is justified. Article 12(2)(c) poses a prior question: who may define the restriction to be balanced? This article advances the literature by treating legality as an allocation rule. A proportionate measure remains defective when its maker lacked authority to create its legal effects.

Quality-of-law and delegation doctrines illuminate but do not complete the threshold. Foreseeability requires law to indicate the scope and manner of discretion.[16] Germany requires legislative determination of content, purpose and scope;[17] South Africa combines short emergency duration with parliamentary and

[14] Tran Thi Thanh Thuy, "Protecting Constitution in Vietnam," *Journal of Cultural Analysis and Social Change*, January 7, 2026, 1337–43, https://doi.org/10.64753/jcasc.v11i1.4094.
[15] Do and Bui, "The Dialogue Between Public Law and Private Law in Vietnam Under the Migration of the Proportionality Doctrine to Asia." Bui and Nguyen, "The Inadvertent Migration of Proportionality and the Role of Ex-Ante Constitutional Review in the Vietnamese Lawmaking Process."
[16] Kyriakos N. Kotsoglou and Marion Oswald, "Falling behind the PACE: Lie Detectors, Policing and Lack of Foreseeability – an FOI-Based Study," *Legal Studies* 45, no. 1 (March 6, 2025): 58–78, https://doi.org/10.1017/lst.2024.43.
[17] Ivan D. Popov, "Bavaria and the Adoption of the Basic Law for the Federal Republic of Germany," *Vestnik of Saint Petersburg University. History* 68, no. 3 (2023): 743–58, https://doi.org/10.21638/spbu02.2023.312.

judicial control.[18] These create a legal corridor but do not classify whether a particular data system, technology or disclosure rule stays inside it. Macro studies of emergency oversight likewise do not classify a single residual measure.[19]

The second finding is methodological: legality is a gatekeeper, not a factor inside proportionality. Proportionality evaluates an authorized interference through suitability, necessity and balance.[20] If applied first, operational benefit can appear to manufacture authority. The proper sequence is legal basis, competence, legitimate objective, suitability, necessity and fair balance.

The sequence also separates domestic authority from international derogation. ICCPR Article 4 permits strictly required, temporary derogations during an officially proclaimed national emergency.[21] Those standards constrain international permissibility but confer no domestic power. A measure can satisfy Article 4 and still lack the statutory basis or competent maker required by Article 14(2).

The Open-Means–Closed-Rights Model

The open-means–closed-rights model supplies the missing classification by separating factual from normative novelty. Factual novelty concerns technology, logistics, or operational sequence. Normative novelty changes persons' legal positions. "Open means" allows the executive to address factual novelty within an existing statutory measure. "Closed rights" requires legislation to fix the boundaries of coercion. Factual incompleteness is inevitable; it does not shift legislative responsibility for the incidence of rights.

The legal-incidence test makes the distinction observable. A measure becomes primary norm creation if it creates a new duty or prohibition, sanction, affected right, class or territory; materially enlarges intensity or duration; or removes an essential safeguard. Any one indicator may suffice. The executive may select how law operates, not what law will newly require or permit against individuals.

The model's distinct contribution lies between delegation and emergency design. Delegation doctrine asks whether legislation states content, purpose and scope; emergency theory asks whether exceptional power is temporary and checked.

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[18] John Hatchard, "The Constitution of the Republic of South Africa," *Journal of African Law* 38, no. 1 (July 28, 1994): 70–77, https://doi.org/10.1017/S0021855300011499.

[19] Petrov, "The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?"; Grogan, "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis."; Gábor Mészáros, "How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary," *Israel Law Review* 57, no. 2 (July 29, 2024): 288–307, https://doi.org/10.1017/S0021223724000025.; Rizqya Nafila Putri and Muhammad Ali Ausath, "The Oversight Role Of Legislative Institutions In Emergency Situations (Comparison Of Indonesia With The United States)," *Constitutionale* 5, no. 1 (September 6, 2024): 67–84, https://doi.org/10.25041/constitutionale.v5i1.3376.

[20] Ariel L. Bendor and Tal Sela, "How Proportional Is Proportionality?," *International Journal of Constitutional Law* 13, no. 2 (April 29, 2015): 530–44, https://doi.org/10.1093/icon/mov028.

[21] Veronika Haász and Melinda Szappanyos, "Derogations from the ICCPR and Guide to the Duty of Notification: Apropos the COVID-19 Pandemic," *Austrian Review of International and European Law Online* 25, no. 1 (July 12, 2022): 37–64, https://doi.org/10.1163/15736512-02501002.

The legal-incidence test compares the concrete residual act with statutory rights boundaries before proportionality review. It makes the reservation of law usable by the Prime Minister, Standing Committee, National Assembly and reviewing bodies, even without an express non-delegation clause.

An evacuation example illustrates the boundary. Drone mapping of blocked routes, with minimized and deleted images, may change only the method of an authorized evacuation. Compulsory nationwide real-time collection of every phone's location, backed by disclosure duties and penalties, changes legal positions and intrudes on privacy at scale. Calling the second scheme an emergency "tool" cannot turn normative novelty into implementation.

On this reading, "measures not yet provided by law" means methods unspecified by law within closed rights boundaries. The clause can address changing technology, failed infrastructure and operational adaptation, but not legislative gaps in coercive authority. A decision must identify the statutory measure implemented, explain why legal incidence is unchanged and show that incidental rights effects remain within the statutory maximum. Otherwise the measure falls on the closed-rights side.

The distinction is transferable because residual clauses across systems face the same question: is the executive filling an operational gap or a legislative gap? Institutional answers may differ, but classification prevents factual urgency from silently relocating lawmaking power.

Institutional Allocation and the Meaning of Consent

Classification must be matched by an identifiable institution. The National Assembly legislates and exercises supreme oversight; the Standing Committee is permanent and has constitutional and emergency functions; the Government and Prime Minister implement and remain accountable.[22] Rapid administration is compatible with this design, but primary norm creation remains legislative.

Against that allocation, "consent of the competent authority" is too indeterminate. Citizens and implementers must know which state institution authorized a rights-affecting measure, in what form and for what reasons. Article 12(3) distinguishes reporting to a Party authority from reporting to state institutions. Political approval may matter, but it cannot replace a reviewable public-law act where rights and duties change.

For an open-means decision with incidental rights effects, the Standing Committee is the coherent organ of rapid state-law scrutiny because of its permanent status, emergency competence, supervisory powers and parallel authority under Article 32(3). Comparative research also links effective emergency control to active

[22] Gyeongsu Yeo, "The Constitution of Vietnam : Characteristics and System," *The Legal Studies Institute of Chosun University* 32, no. 1 (April 18, 2025): 255–80, https://doi.org/10.18189/isicu.2025.32.1.255.

https://doi.org/10.71239/jicl.v2i3.194

legislatures able to approve, modify or terminate measures.[23] Confirmation should be written and reasoned, identifying the statutory measure, rights, scope, duration and basis for classifying the act as implementation.

Standing Committee involvement cannot cure a missing statutory basis. It may scrutinize implementation, suspend an unlawful decision and bridge the period before legislation. It cannot turn a new primary restriction into one "prescribed by law" through an interim resolution. Normative novelty requires expedited National Assembly legislation.

Article 12(3) also needs a temporal consequence. Reporting "at the earliest possible time" neither authorizes nor reviews. Emergency-legislation scholarship links exceptional power to automatic expiry and recurrent legislative control.[24] This article proposes lapse after seven days unless the Standing Committee confirms the open-means classification. Seven days is a Vietnam-specific design recommendation, not a universal rule.

Confirmation must not ratify illegality. An open means may be confirmed, modified or allowed to expire; a primary restriction should be suspended and referred for legislation. Both the original and reviewing decisions should be published. Only operational details may enter a narrowly tailored classified annex; legal effects, rights, duration and review routes must remain public.

A Three-Stage Emergency Legality Test

The Emergency Legality Test converts the model into practice. Unlike proportionality, it can terminate analysis before balancing; unlike quality-of-law checklists, it classifies the act and assigns a consequence; unlike general emergency principles, it operates measure by measure. Stage One classifies, Stage Two allocates authority and Stage Three tests justification and containment.

Stage One asks two questions. First, does the act create or enlarge a duty, prohibition, sanction, affected right, class, territory, intensity, duration or lost safeguard? Second, has a National Assembly statute fixed the objective and maximum rights boundaries? An absent statutory-rights nexus identifies a primary restriction. The consequence is suspension and legislation, not further balancing.

Stage Two asks whether authority is traceable to the constitutionally competent state institution through a public-law decision. Internal coordination or political endorsement cannot replace that act. The inquiry makes Articles 14(2), 69–74 and

[23] Ginsburg and Versteeg, "The Bound Executive: Emergency Powers during the Pandemic."; Petrov, "The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?"; Putri and Ausath, "The Oversight Role Of Legislative Institutions In Emergency Situations (Comparison Of Indonesia With The United States)."; Christian Bjørnskov and Stefan Voigt, "The Architecture of Emergency Constitutions," *International Journal of Constitutional Law* 16, no. 1 (May 12, 2018): 101–27, https://doi.org/10.1093/icon/moy012.

[24] Cormacain, "Keeping Covid-19 Emergency Legislation Socially Distant from Ordinary Legislation: Principles for the Structure of Emergency Legislation."

https://doi.org/10.71239/jicl.v2i3.194

94–95 operational by identifying who is responsible for making or supervising the measure.

Stage Three begins with documented necessity. The record must identify the operational gap, why provided measures are insufficient and why delay threatens the protected interest. General references to urgency or public health are conclusions, not reasons. The authority restricting rights bears the justificatory burden.[25]

Next, proportionality is combined with precision. The measure must fit the objective, lack an equally effective less restrictive alternative and impose no excessive burden. It must identify the smallest territory and class, commencement, duration and automatic expiry. Continuation of an emergency does not automatically justify continuation of each measure.[26]

The sixth question concerns reasons and legislative control. The decision, legal basis, essential facts, rights, scope, expiry and review route must be published immediately and sent to the Standing Committee. Within seven days it should confirm, modify, terminate or identify a primary restriction requiring legislation. Silence should not approve. Continuing primary restrictions belong in a National Assembly law.

The seventh question concerns review, remedy and restoration. Affected persons must know how to challenge basis, scope and application. Distributed constitutional review in Vietnam makes legislative and administrative controls especially important.[27] Article 31 should be implemented through deadlines, responsible bodies, return or compensation, data deletion or correction and cessation of sanctions founded on an invalid measure.[28]

Applied to compulsory mobile-location collection, the Test ends at Stage One. Population-wide disclosure duties, privacy interference and penalties alter legal incidence, while an evacuation power fixes none of those effects. Necessity and technical effectiveness cannot supply legislative authority. The Prime Minister cannot create the scheme; the Standing Committee should suspend it and, if indispensable, seek a law specifying data, persons, purpose, access, retention, oversight, expiry and remedies.

Applied to anonymized drone mapping, the Test may reach Stage Three. The method remains within an authorized evacuation, creates no duty or sanction, and

[25] Evan J. Criddle and Evan Fox-Decent, "Human Rights, Emergencies, and the Rule of Law," *Human Rights Quarterly* 34, no. 1 (February 2012): 39–87, https://doi.org/10.1353/hrq.2012.0001.
[26] Pavel Ondřejek and Filip Horák, "Proportionality during Times of Crisis: Precautionary Application of Proportionality Analysis in the Judicial Review of Emergency Measures," *European Constitutional Law Review* 20, no. 1 (March 28, 2024): 27–51, https://doi.org/10.1017/S1574019624000051.
[27] Ngoc Son Bui, "Why Do Countries Decide Not to Adopt Constitutional Review?," in *Constitutional Courts in Asia* (Cambridge University Press, n.d.), 335–64, https://doi.org/10.1017/9781108163903.015.; Giao Cong VU and Kien TRAN, "Constitutional Debate and Development on Human Rights in Vietnam," *Asian Journal of Comparative Law* 11, no. 2 (December 6, 2016): 235–62, https://doi.org/10.1017/asjcl.2016.27.
[28] VU and TRAN, "Constitutional Debate and Development on Human Rights in Vietnam."

can be minimized, territorially limited, reasoned, published and reviewed. It may qualify as an open means. The contrast shows that the framework directs emergency speed toward execution while reserving new coercive norms to legislation.

The recommendations are specific: identify the consenting state organ; require a written legal-incidence assessment; confine residual authority to methods within statutory rights boundaries; publish decisions; impose seven-day expiry and Standing Committee review; route primary restrictions to expedited legislation; and provide suspension, complaint, restoration and compensation. These changes preserve an operational safety valve without making Article 12 an executive substitute for law.[29]

Conclusion

This study concludes that Article 12(2)(c) is constitutional only for factually novel means of implementing a legislatively defined measure that do not alter rights' legal incidence. The Prime Minister may select unforeseen methods within statutory boundaries, but may not create new duties, prohibitions, sanctions, affected classes, removed safeguards or materially intensified restrictions. General permission to adopt measures "not yet provided by law" does not by itself satisfy Article 14(2).

The original contribution is a rights-specific account of residual emergency delegation. The open-means–closed-rights model separates factual uncertainty from normative uncertainty; the legal-incidence test makes the distinction observable; and the three-stage Test assigns consequences. Unlike proportionality, it can stop an unauthorized measure before balancing. Unlike a general checklist, it allocates responsibility among the Prime Minister, Standing Committee and National Assembly and identifies when expiry, suspension, legislation or restoration follows.

Vietnam has broader significance because it shows how an Act may formally satisfy a reservation of law while recreating executive discretion through a self-referential residual clause. The danger is not only openly extralegal action; it is an Act used as a gateway through which the executive supplies the substance of restrictions. Systems combining rights reservations with broad emergency delegation therefore need an intermediate classification rule.

The immediate reforms are to identify the consenting state authority, require written incidence reasons, publish decisions, impose seven-day expiry, mandate Standing Committee scrutiny, reserve primary restrictions to National Assembly legislation and make restoration effective. The limitation is temporal: implementation remains undeveloped. Future research should test actual reasons, scope, duration, scrutiny and remedies. Necessity may justify exercising lawful power; it cannot create the power.

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[29] Grogan, "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis."; Mészáros, "How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary."

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Acknowledgement

The author gratefully acknowledges the constructive comments and suggestions of the anonymous reviewers and the editorial team of the Journal of Indonesian Constitutional Law, which helped strengthen the manuscript. The author remains solely responsible for the arguments, interpretations, and any remaining errors.

Author(s)' Contributions

Minh Hoang Le is the sole author of this manuscript and was responsible for the conceptualization, research design, methodology, investigation, collection and analysis of legal materials, doctrinal analysis, preparation of the original draft, revision and editing, verification of sources, and final approval of the manuscript.

Conflict of Interest Statement

The author declares that there is no conflict of interest, financial or otherwise, that could have influenced the research, analysis, authorship, or publication of this manuscript.

Generative AI Statement

The author used OpenAI ChatGPT (GPT-5.6 Pro) for idea exploration, manuscript structuring, English-language editing, and citation organization. The author independently reviewed and verified all legal authorities and citations, substantively revised the analysis and conclusions, and accepts full responsibility for the accuracy, integrity, and originality of the manuscript. No AI-generated output was accepted without substantive human review.

Funding Information

The author received no financial support or external funding for the research, authorship, and/or publication of this manuscript.