



# Emergency Powers and Executive Orders

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# Emergency Measures

Proclamation of  
Emergency

[Article 150 of the  
Federal Constitution  
("FC")]

Emergency (Essential  
Powers) Ordinance 2021

Emergency (Essential  
Powers) (No. 2)  
Ordinance 2021

Emergency (Essential  
Powers) (Amendment)  
Ordinance 2021



# Brief Timeline

18.3.2020 - The Government imposed a Movement Control Order (“MCO”). MCO was subsequently extended over the course of 2020 and 2021.

25.10.2020 - The King expressed that there was no need for a state of emergency.

11.1.2021 - Following an audience granted to the Prime Minister and upon his advice, the King issued a Proclamation of Emergency. Emergency (Essential Powers) Ordinance 2021 was promulgated on 14.1.2021.

11.3.2021 - Emergency (Essential Powers) (No. 2) Ordinance 2021 was promulgated.

31.3.2021- Emergency (Essential Powers) (Amendment) Ordinance 2021 was published in the Federal Government Gazette.

26.7.2021 - The then Law Minister informed the House of Representatives that all Emergency Ordinances had been revoked on 21.7.2021.



# Effects on the Separation of Powers

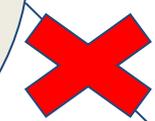
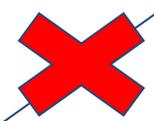
- ❑ The Judiciary does not have the jurisdiction and power to review the validity of the Proclamation and any ordinance promulgated.
- ❑ The Executive exercised legislative powers without any checks or balances and/or scrutiny by the Legislature.



# Federal Constitution



## Executive



## Legislative



## Judiciary



# (A) The Judiciary does not have the jurisdiction and power to review

## Article 150 of the FC

(1) If the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security, or the economic life, or public order in the Federation or any part thereof is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect.



# Article 150 of the FC

(6) Subject to Clause (6a), no provision of any ordinance promulgated under this Article, and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shall be invalid on the ground of inconsistency with any provision of this Constitution.



# Article 150 of the FC

(8) Notwithstanding anything in this Constitution—

(a) the satisfaction of the Yang di-Pertuan Agong mentioned in Clause (1) and Clause (2b) shall be final and conclusive and shall not be challenged or called in question in any court on any ground; and

(b) no court shall have jurisdiction to entertain or determine any application, question or proceeding, in whatever form, on any ground, regarding the validity of—

(i) a Proclamation under Clause (1) or of a declaration made in such Proclamation to the effect stated in Clause (1);

(ii) the continued operation of such Proclamation;

(iii) any ordinance promulgated under Clause (2b); or

(iv) the continuation in force of any such ordinance.



## **(B) Provisions of the Emergency (Essential Powers) Ordinance 2021 that are particularly concerning:**

- (a) Suspension of Federal and State legislative proceedings (sections 14 and 15);**
- (b) Suspension of Federal and State elections (sections 12 and 13);**
- (c) Entrenchment of the position of the current Executive at Federal and State levels (section 11);**
- (d) Vast powers afforded to the armed forces (section 7);**



## **(B) Provisions of the Emergency (Essential Powers) Ordinance 2021 that are particularly concerning:**

**(e) Vast powers to temporarily take possession of any land, building or movable property (section 3);**

**(f) An “immunity provision” (section 10) which seeks to shield the Government from any acts taken in carrying out the provisions of the Emergency Ordinance. The qualification that such acts must be done in “good faith” does not provide sufficient redress, as it still affords the Government with immunity in situations of negligence.**



- ❑ Emergency powers should not permit the Executive to exercise legislative powers without any checks or balances and/or scrutiny by the Legislature.
  
- ❑ Legislative oversight, in particular, seeks to ensure that the Executive remains responsive and accountable for its actions — a check and balance.



# (C) Provision Relating to the Dissemination of Fake News

## Emergency (Essential Powers) (No. 2) Ordinance 2021

Creating, offering, publishing, etc., fake news or publication containing fake news

4. (1) Any person who, by any means, with intent to cause, or which is likely to cause fear or alarm to the public, or to any section of the public, creates offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for every day during which the offence continues after conviction.



# Thank you

