

The Proclamation of Emergency

Date: **4th November 2020 (Wednesday)**

Time: **9.00 pm – 9.40 pm**

Platform: **IIUM TV You Tube Channel**

<https://youtu.be/n14s-GRrCs>

Political Insights Questions

1) What does the word emergency denotes in the constitution?

The discussion here is within the context of Malaysia. The meaning and interpretation are based on the Federal Constitution of Malaysia and decided cases.

This is because the meaning and concept of emergency, and proclamation of emergency and emergency powers may be different in other countries. Different countries have different constitutions, different laws, different constitutional and legal frameworks pertaining to emergency. Thus, it is important to note that the concept and power of emergency maybe different on ther countries.

Not defined in the constitution.

Article 150(1) 'a grave emergency exists whereby the security, or the economic life, or public order is threatened'.

De facto (In Fact) – De jure (In Law)

Legally/Technically – 'Emergency is a situation whereby a there is a proclamation of emergency in force'.

Article 150. Proclamation of emergency.

(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.

- We are not in the 'state of emergency' even there are threats to the security, or the economic life, or public order if there is no proclamation of emergency.

De facto EMERGENCY De jure NO EMERGENCY

-We are in the state of emergency even there are NO threats to the security, or the economic life, or public order if there is a proclamation of emergency in force (in existence).

De facto NO EMERGENCY DE jure EMERGENCY

2) What are the factors that can lead to the proclamation of emergency?

Original Provision – Article 150(1)

(1) If the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part thereof is threatened, whether by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency.

War or external aggression, or internal disturbance which constitute threat the security or economic life.

Amendment was made in 1963.

Hence the current provision:

(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.

Any factor that may constitute a threat to the security, or the economic life, or public order. Not necessary threat to all, sufficient threat to one i.e. threat to economic life.

Look at 'factors' behind the proclamation of emergency in the country (ANSWERING QUESTION 3)

3) How many times did Malaysia proclaim its emergency?

1948 – Before Independence – until 1960 – Independence during emergency 1957

Post Independence

1963 – Indonesian Confrontation – Threat of external aggression

1966 – Sarawak Political Impasse – Stephen Kalong Ningkan's Saga – Political factor

1969 – Riots post 1969 election – No Parliament and No Government –

Public Order relates to politics

1977 – Kelantan Political/Constitutional Impasse – Political factors

4) Who will administer the country during the state of emergency?

Depends on the emergency power used during the state of emergency –

By default, if no extraordinary power used, the country will continue as it is (normal situation); executive body of federal and state, legislative body federal and state and judiciary

However, the emergency power is used, than there could be different arrangement:

If there is an existing federal government (federal political authority), it will be the beneficiary of emergency power. Different arrangements can be made which may defy

- Federalism (federal legislature and executive may make laws on all matters including the state)
- Separation of Powers (the federal executive may proclaim laws under the name of the King)
- Constitutional Supremacy (laws made under emergency power may defy or be inconsistent with the constitution i.e. Human rights – exception only on a few matters in (6A))

5) Is it relevant for the YDPA to declare an emergency? Why?

Subjective and depends on circumstances.

Different people have different way of sloving problems.

Have to be more specific under what circumstances?

6) Does the YDPA hold the sole prerogative power to enforce an emergency? Or does it require a consensus from the conference of rulers?

The wordings in Article 150(1) clearly states in relation to Proclamation of emergency.

“ If the Yang di-Pertuan Agong is satisfied that a grave emergency exists”

It means personal satisfaction. Personal discretion or prerogative.

How YDPA exercise up to his discretion. He can consult any person, institution that he may think fits.

Good practice discuss with members of Conference of Rulers & Senior civil servants

7) Do you think that by asking YDPA to declare an emergency can be considered as an abusive of power?

Since our country's situation is not that bad to the extent that we have to declare an emergency?

If no abuse of power how can it be regarded as abusive.

The country was in the state of emergency from 1963 until 2011 – Emergency power available, but never been abused by the successive Kings. Only the political authority use the power on some security matters, which being regarded as questionable.

8) Are the courts have the right to review the proclamation of emergency made by YDPA?

Amendment in 1981 puts an end to this with the inclusion of article 150(8)

- (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.

9) How does the proclamation of an emergency impact the lives of citizens?

Depends of what power used.

If power used does not affect rights and liberties of the people, than no or minimal impact.
But if extraordinary power used, might have great impact

10) What are the differences between proclamation of emergency due to war, external aggression and pandemics?

Proclamation is in the same manner, only power exercised must relate to the reason of proclamation.

Also depend on the area of proclamation.

11) Do you think that by proclaiming the emergency, it can destroy the democratic system and lead to a more dictatorship governing system in Malaysia?

May or Maynot. Same answer as earlier.

Depends of what power used.

If power used does not affect rights and liberties of the people, than no or minimal impact.
But if extraordinary power used, might have great impact

12) Could the decision of the YDPA be challenged using article 40(1) of the Federal Constitution?

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 - (ii) the continued operation of such Proclamation;**
 - (iii) any ordinance promulgated under Clause (2B); or
 - (iv) the continuation in force of any such ordinance.

13) By proclaiming an emergency, does it shows that Malaysia will be free from any political uncertainty?

Not a magic wand.

It maybe used wisely to solve problems, or solution could be done even without declaration. Usually for interim or temporary measure/solution.

14) As you know PM asked the YDPA to proclaim an emergency during this crisis and it has been refused by the YDPA.

May I know what actions that should be taken by the government except for emergency to curb the health and political issue?

The govet may continue using the current laws and existing power. Also if need be, can amend the exiting law to expand and improve the power as long as within the perimeter prescribed by the constitution.

15) In the 90s, it can be clearly seen that the enforcement of emergency can be easily being forced but it's different from nowadays, why do you think that happen?

Is it because of the advanced administrative system compared to the past? Or is it because of the advancement of technology?