

Between Benefits and Legal Certainty: A Legal Analysis of the Raising of the One Piece Flag in Indonesia as a Form of Freedom of Expression

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ABSTRACT

The raising of the Jolly Roger flag from the anime series One Piece in mid-2025 gave rise to significant normative tensions between the constitutional guarantee of freedom of expression and national security interests in Indonesia. This study examines the aspects of legal certainty and utility in this phenomenon using normative juridical methods with a conceptual and legislative approach. The analytical framework is based on Gustav Radbruch's theory of legal objectives and Lawrence Friedmann's theory of legal systems. The results of the study reveal a fundamental disparity in interpretation: the state applies a rigid security approach by qualifying the flag raising as an act of treason and provocation, while society interprets it as a legitimate symbolic social critique within the corridor of human rights. The criminalization of this expression is considered to have an inadequate legal basis, considering the absence of mens rea, the failure to fulfill the element of aanslag, and the inconsistency of the applied norms with the principle of lex certa. From a socio-legal perspective, law enforcement officers experience a cultural stuttering in distinguishing fictional symbols from real separatist threats. This study recommends a restorative justice approach as an alternative to criminalization, to prevent the chilling effect that undermines democratic space. The research's originality lies in its analysis of popular culture as a medium for social criticism within the Indonesian criminal law framework, an approach previously unexplored in domestic literature.

Keywords: Freedom of Expression, Human Rights, Benefit, Certainty, Popular Culture.

I. Introduction

From July to August 2025, Indonesians were shocked by the raising of the One Piece flag by several elements of society. This was allegedly an act of protest against government policies that ignored public welfare. The flag, widely flown, is known as the "Jolly Roger," a symbol of the anime series One Piece. The flag is shaped like a skull with two crossed bones, black in color, and wearing a straw hat. Created by Eiichiro Oda in 1997, One Piece is a pirate adventure story centered on Monkey D. Luffy and his crew of the Straw Hat Pirates in their search for the legendary treasure "One Piece." One Piece's popularity extends beyond Japan to the rest of the world, including Indonesia. Despite its fantasy feel, the adventures of Luffy and his crew are imbued with heroic values and inspire a determined struggle to resist tyranny, uphold justice, uphold solidarity, and explore identity.

As an anime series that has been running for over 25 years, One Piece has become a global phenomenon and became the second best-selling manga/comic in the world in 2024, with sales of approximately 5.25 million copies within a single year. The anime series and its live-action adaptation have also grown in popularity in Indonesia, resulting in symbols from the series appearing as attributes flown by the public, especially during national events such as the Republic of Indonesia's Independence Day ("HUT RI"). The phenomenon of people flying the One Piece flag in front of their homes, vehicles, and other public spaces became widespread in the lead-up to the 80th Indonesian Independence Day. In several regions, people displayed the flag as a decorative addition or as a form of creative expression to enliven the atmosphere of independence. However, because the flag depicts a skull and is predominantly black, this action has drawn strong reactions from the government and authorities.

Some interpret the flag-raising as a symbol of resistance against injustice and a manifestation of dissatisfaction with the government. This analogy is often linked to the One Piece story, where Luffy and his pirate crew help people on various islands experiencing oppression by the authorities. Rio Nafta, a representative of the Indonesian One Piece Collectors Community (Kopki) in Surabaya, emphasized that the raising of the One Piece flag was not a call to rebellion, but merely a symbolic act reflecting the public's disappointment. This view was reinforced by Ade Marup, a lecturer in International Relations at Muhammadiyah University of Yogyakarta, who saw the flag raising as a social expression resulting from public disappointment with the political conditions and governance of the country. According to him, this phenomenon emerged because the space for expressing criticism was increasingly limited, so that people took advantage of the momentum of the commemoration of independence which has a strong symbolic meaning to express their aspirations. He also emphasized that this phenomenon should be seen as a reflection and evaluation for the government so that it does not close itself off to criticism conveyed through means of cultural expression.

The criminalization of symbolic expression is not a unique Indonesian phenomenon, but rather reflects the global tension between freedom of expression and state security interests. In Spain, the raising of the "estelada" flag sparked repressive measures, but the European Court of Human Rights in *Stern Taulats and Roura Capellera v. Spain* (2018) affirmed that symbolic expression falls within the protection of Article 10 of the ECHR. Meanwhile, in Hong Kong, the use of popular cultural symbols for political satire was once tolerated, but this has been drastically narrowed since the National Security Law of 2020. Indonesia, as a state party to the ICCPR since 2005, has been bound by Article 19 paragraph (2), which guarantees the right to convey information in all forms. The UN Human Rights Committee, in General Comment No. 34 (2011), emphasized that restrictions are only valid if they meet the requirements of being prescribed by law, having a legitimate purpose, and being proportionate. Given these international standards, the handling of the One Piece flag raising case needs to be reviewed to ensure its compliance with Indonesia's obligations.

The Indonesian government's response to this phenomenon has tended to be repressive. In several incidents, authorities have banned and conducted sweeps against people who raised the One Piece flag on the pretext that the pirate symbol is identical to subversive, provocative actions and even equated with treason movements. This was as expressed by the Deputy Speaker of the House of Representatives ("DPR") Sufmi Dasco Ahmad who said that the display of the One Piece flag at the commemoration of the 80th Anniversary of the Republic of Indonesia was an attempt to divide the nation. This was also supported by the statement of the Coordinating Minister for Political and Security Affairs ("Menkopolkam") Budi Gunawan who also emphasized that the display of the One Piece flag was seen as a provocative act that had the potential to demean the nation's dignity. According to him, the use of foreign symbols, especially in physical form, is irrelevant and inappropriate to be juxtaposed with the symbol of the national struggle. The Coordinating Minister for Political and Security Affairs' firm stance was also supported by the Minister of Human Rights Natalius Pigai who argued that the state has the authority to prohibit the display of the One Piece pirate flag because it could be interpreted as a violation of the law and even interpreted as a form of treason. Police took firm action against those involved in the demonstration, arguing that it constituted a provocation that demeaned the status of the Indonesian flag. Similarly, the Deputy Chief of the Banten Regional Police,

Brigadier General Hengki, assessed that this movement could also undermine the values of the struggle of our predecessors who sacrificed for Indonesian independence.

Based on this, this study will focus on examining the raising of the One Piece flag as a human right in terms of freedom of expression, as stipulated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia "Everyone has the right to freedom of association, assembly, and expression of opinion." As the constitution of Indonesia, the 1945 Constitution serves as a fundamental guideline for the administration of government in Indonesia. Within the framework of Hans Kelsen's legal theory, specifically the doctrine of *Stufenbau des Rechts* (legal hierarchy), the 1945 Constitution places the 1945 Constitution as the basic norm (*grundnorm*) within the hierarchy of Indonesian laws and regulations. Article 1 paragraph (3) of the 1945 Constitution affirms that Indonesia is a state of law (*Rechtsstaat*), which essentially means that power is subject to law and everyone has equal standing before the law (Sumartini et al., 2022). The guarantee of protection of human rights is also written in Article 1 of Law No. 39 of 1999 concerning Human Rights, which reads "Human rights are a combination of rights that are inherent in the nature and existence of humans as creatures created by God Almighty and are His gifts that must be respected, upheld and protected by the State, law and human dignity."

Furthermore, the research will also focus on the application of norms to the principle of legality "*nullum delictum nulla poena sine praevia legi poenali*," which loosely means that no offense can be punished without prior regulation (Moeljatno, 2002). This principle of legality is regulated in the Criminal Code ("KUHP"), which will then link whether the actions of people who raise the One Piece flag violate regulations. If it is indeed deemed provocative, leading to treason, does this fulfill the elements stipulated in the KUHP, thus justifying the authorities' repressive behavior against people who raise the One Piece flag?. Furthermore, this research also seeks to link the objectives of law according to Gustav Radbruch, namely the benefit and certainty of law, to assess the phenomenon that has occurred regarding freedom of expression in Indonesia regarding the raising of the One Piece flag. This becomes increasingly relevant when linked to the progressive legal paradigm popularized by Satjipto Rahardjo. Progressive law is based on the assumption that law exists for humanity, as affirmed by the view that "law as a great anthropological document" (Satjipto, 2000). With this understanding, law is viewed as a human institution that strengthens relationships between people and with the wider community. Therefore, the phenomenon of raising the One Piece flag can be comprehensively analyzed through a progressive legal perspective, particularly to examine how the law should respond to societal expressions manifested through popular culture.

This research fills a significant gap in the literature in Indonesian legal studies. Previous studies on the criminalization of freedom of expression have generally focused on street demonstrations, social media speech, or defamation, but have not yet explored popular culture as a medium for social criticism. The research's novelty lies in three contributions: first, it is the first legal study to examine the elements of treason, provocation, and violation of the Flag Law for the raising of the One Piece flag through a strict legal framework; second, it applies Radbruch's theory to identify the disparity in interpretation between a state that prioritizes certainty through a security approach and a society that views it as legitimate social criticism. Third, the formulation of a specific restorative justice framework for popular cultural expressions, adapting principles commonly applied to conventional crimes to the context of "victimless crime," in line with Circular Letter of the Chief of Police No. 2/2021, with more concrete operational guidelines.

Based on this background, the study formulated three questions: first, does the raising of the One Piece flag fulfill the elements of a crime of treason, provocation, and violation of the Flag Law within the framework of the principles of legality and *lex certa*?; second, how can the aspects of certainty and expediency in Radbruch's theory be applied to evaluate the state's response to this phenomenon as a manifestation of freedom of expression?; third, what legal approach should be applied to balance freedom of expression with public order in the context of popular cultural expressions. The study hypothesizes that the raising of the flag does not fulfill the elements of a crime due to the absence of *mens rea* and objective elements; repressive actions obscure legal certainty and ignore expediency by violating *lex certa* and harming democratic space; and a restorative justice approach is more effective than criminalization.

The study has important theoretical and practical significance. Theoretically, this research contributes to the development of Radbruch's theory in the context of digital freedom of expression, enriches progressive legal literature by demonstrating its relevance in addressing popular culture as a political language, and develops Friedmann's legal system theory by adding a cultural lag dimension to the legal structure component. Practically, the research provides an analytical framework for authorities to distinguish cultural expressions from real security threats that can be integrated into SOPs for handling freedom of expression cases; provides input for legislators in revising multi-interpretable articles to comply with *lex certa*; provides guidance for judges in consistently applying the *mens rea* doctrine by comparing real separatist cases versus metaphorical fictional symbols; provides operational guidance for the implementation of the Chief of Police Circular Letter No. 2/2021 concerning *ultimum remedium* and restorative justice; and provides an advocacy basis for civil society organizations in fighting for the protection of freedom of expression in accordance with international standards.

II. Research Method

2.1. Types and Approaches of Research

This research uses a normative juridical method, namely legal research conducted by examining library materials or secondary data as basic material (Fajar et al., 2010). This method was chosen because the focus of the research is to analyze the suitability of the application of positive legal norms to the phenomenon of raising the One Piece flag by using a legal theoretical framework as an analytical instrument. The research uses two approaches: first, a conceptual approach that applies Radbruch's theory of legal objectives (certainty and utility) and Friedmann's theory of legal systems to evaluate the disparity of interpretation between the state and society; second, a statute approach that examines the Criminal Code (Articles 104, 106, 107, 160-163), Law No. 24/2009 concerning Flags, Law No. 39/1999 concerning Human Rights, as well as decisions of the Constitutional Court and relevant courts.

2.2. Data source

The research uses secondary data consisting of three categories. Primary legal materials include the 1945 Constitution, the Criminal Code, Law 24/2009, Law 39/1999, Law 9/1998, Constitutional Court Decision No. 6/PUU-V/2007, Constitutional Court Decision No. 7/PUU-VII/2009 concerning the constitutionality review of the crime of incitement (Article 160 of the Criminal Code) which changed the offense into a material offense, Constitutional Court Decision No. 7/PUU-XV/2017 concerning the constitutionality review of the treason article (Articles 104, 106, 107 of the Criminal Code) submitted by the Institute for Criminal Justice Reform (ICJR), Constitutional Court Decision No. 119/PUU-XXIII/2025, Jayapura District Court Decision No. 150/Pid.B/2022/PN.Jap, and Chief of Police Circular Letter No. 2/2021. Secondary legal materials include criminal law textbooks (Moeljatno, 2002), legal theory (S. Mertokusumo, 1999), progressive law (Satjipto, 2000), and national and international scientific journals from 2015-2025 on freedom of expression. Tertiary legal materials include mass media news from July-August 2025 on the phenomenon of raising the One Piece flag, statements by public officials (Deputy Speaker of the House of Representatives, Coordinating Minister for Political, Legal, and Security Affairs, Minister of Human Rights), and opinions of legal experts. The selection of the July-August 2025 period is based on the fact that the phenomenon reached its peak ahead of the 80th Indonesian Independence Day and triggered a strong government response through sweeping actions, prohibitions, and criminal threats from the police.

2.3. Data collection technique

Data were collected through a systematic literature review: an inventory of laws and regulations and literature through academic databases and digital libraries; classification based on legal material categories and relevance to the research questions; selection of the most relevant, current, and authoritative sources with publication priorities for 2015–2025; and documentation of important information using a digital cataloging system to ensure citation consistency. The study employed purposive selection, not conventional sampling, of flag-raising cases that received widespread media attention and triggered official government responses (Ariana, 2022).

2.4. Data Analysis Techniques

The analysis uses a qualitative-normative method with a descriptive-prescriptive approach. The description stage outlines legal norms, facts, and theories using content analysis techniques. The interpretation stage interprets norms using grammatical (literal meaning of articles), systematic (connecting between articles), teleological (purpose of the law), and historical (historical context of the articles' formation) interpretations (M. S. Mertokusumo & Pitlo, 1993). The analysis stage uses a deductive syllogism: major premise (norms and theories), minor premise (concrete facts), and conclusion (evaluation of suitability) (Moeljatno, 2021). The analysis also uses comparative techniques by comparing the One Piece flag case with the Morning Star flag case to distinguish fictional symbols from real separatist symbols. The prescription stage formulates normative recommendations regarding the application of the law, which should be based on constitutional principles and international human rights standards. Validity is maintained through source triangulation, verification of interpretations against expert opinions, and transparency in presenting raw data. Reliability is maintained through consistent application of methods and the use of a clear coding scheme.

2.5. Research Limitations

The study has limitations: first, the analysis is limited to normative aspects and does not include empirical studies through interviews with perpetrators or officials; second, reliance on mass media carries the risk of editorial bias; third, the observation period of July-August 2025 does not capture final court decisions; fourth, the focus on Indonesia limits generalizability to other countries' contexts; fifth, there is no quantitative analysis of inter-regional law enforcement patterns.

III. Result and Discussion

3.1. The Aspect of Legal Certainty in the One Piece Flag Raising Event as a Form of Freedom of Expression

The phenomenon of the One Piece flag-raising by the public is believed to be a form of cultural expression, guaranteed by the state for the protection of human rights. Conversely, the government and its officials responded quite harshly, deeming the action treasonous and provocative. There is a gap between norms and their implementation regarding legal certainty, which warrants a more in-depth examination of this incident. Is this community's action truly a cultural expression protected by human rights, or is it a violation of the law?. According to Gustav Radbruch, one of the primary purposes of law is to establish legal certainty. This principle serves as protection for justice seekers from arbitrary actions by those in power, so that everyone has a clear understanding of the situation (Mertokusumo, 1993). Similarly, Sudikno Mertokusumo emphasized that legal certainty is a form of protection that allows individuals to obtain what they reasonably expect under certain circumstances. For society, legal certainty is crucial because it creates order and social order (S. Mertokusumo, 1999).

Legal certainty is reflected in laws and regulations that are drafted consistently with other norms and in harmony with social conditions, thereby providing a sense of security and protection for citizens (S. Mertokusumo, 1999). The absence of legal certainty leaves the public unsure of what to do, which can trigger uncertainty and lead to chaos due to a legal vacuum. Therefore, legal certainty must be enforced clearly, consistently, and free from subjective influences (Buana, 2010). Based on this view, it can be said that without legal certainty, a person will not know what to do, ultimately creating uncertainty that will ultimately lead to violence (chaos) due to a vacuum in the legal system. Therefore, legal certainty must be enforced clearly, consistently, and consistently, with its implementation free from subjective circumstances (Prayogo, 2018).

Before further analysis, a precise legal definition of the two terms used by the authorities in responding to this phenomenon, namely "provocation" and "treason," is necessary to avoid ambiguity in normative interpretation. In the construction of Indonesian criminal law, "provocation" refers specifically to the crime of incitement (opruiging) as regulated in Articles 160 to 163 of the Criminal Code, which is defined as the act of inciting others verbally or in writing in public to commit a crime, violence against public authorities, or collective defiance of applicable laws and regulations. Following Constitutional Court Decision No. 7/PUU-VII/2009, this offense has been transformed into a material offense that legally requires proof of a real consequence of the incitement and a causal relationship that can be legally accounted for. Meanwhile, "treason" as stipulated in Articles 104, 106, and 107 of the Criminal Code, refers to a real action intentionally aimed at assassinating the President or Vice President, separating part of the territory of the Republic of Indonesia, or overthrowing a legitimate government. The essential elements of the crime of treason consist of two cumulative components: the subjective element of "met het oogmerk" (evil intent) and the objective element of "aanslag" (real action). Without the simultaneous fulfillment of these two elements, the application of the crime of treason cannot be legally justified (Moeljatno, 2002).

In the context of the Indonesian legal system, the issue of legal certainty is relevant for further study, particularly through Lawrence M. Friedmann's framework, which divides it into three dimensions: legal substance (written rules), legal structure (law enforcement officials and institutions), and legal culture (society's values, perceptions, and attitudes toward the law). The principle of legality is a fundamental pillar of Indonesian criminal law. Essentially, a person can only be punished if their actions are regulated as a crime under the regulations in force at the time the act was committed (Moeljatno, 2021). The formulation of the principle of legality is contained in Article 1 of the Criminal Code, which states: "No act can be punished except by virtue of criminal provisions in legislation that existed before the act was committed." Sudarto (1990) emphasized that acts not regulated as crimes cannot be prosecuted, thus unwritten law has no binding force (M. S. Mertokusumo & Pitlo, 1993). In line with this, Muladi formulated the adage of the principle of legality in three principles (Muladi, 2000):

- a. Nullum crimen sine lege (no crime without law);
- b. Nulla poena sine lege (no crime without law);
- c. Nulla poena sine crimen (no crime without crime).

If we recall the issue of raising the One Piece flag which was questioned by the government through the police, there are several legal offenses that will be imposed on those who raised the flag, including:

- a. Treason;
- b. Provocation; and
- c. Defaming the national symbol, the red and white flag.

If we examine further in Article 24 paragraph (1) of Law No. 24 of 2009 concerning the National Flag, Language and Symbols, and the National Anthem ("Law 24/2009"), it states that every person is prohibited from:

- a. damaging, tearing, trampling, burning, or committing other acts with the intent to desecrate, insult, or degrade the honor of the national flag;
- b. using the national flag for advertising or commercial purposes;
- c. flying a national flag that is damaged, torn, faded, crumpled, or dull;
- d. printing, embroidering, or writing letters, numbers, images, or other signs, or attaching badges or any other objects to the national flag; and
- e. using the national flag for ceilings, roofs, packaging, or coverings that could degrade the honor of the national flag.

Anyone who violates Article 24 letter a of Law 24/2009 can be sentenced to a maximum of 5 years in prison or a fine of up to IDR 500 million. Meanwhile, violations of Article 24 letters b, c, d, and e of Law 24/2009 are punishable by a maximum of 1 year in prison or a maximum fine of IDR 100 million. This regulation certainly creates legal uncertainty because Article 24 paragraph (1) of Law 24/2009 does not explicitly prohibit the flying of non-state flags under or alongside the red and white flag. This provision only prohibits the placement of state flags under other flags, not vice versa. This ambiguity certainly violates the principle of criminal law, both in terms of *lex certa*, where a legal formulation must be clear so as to serve as a guide for the public in guiding their behavior and provide certainty to the authorities regarding the limits of their authority.

A comparative perspective from other jurisdictions provides relevant lessons in this regard. It must be objectively recognized that the government has a legitimate interest in maintaining public order and the dignity of national symbols, particularly during the commemoration of independence. However, these politically legitimate concerns cannot be converted into justification for criminalization without adequate legal basis. In Spain, the raising of the *estelada* flag as a symbol of Catalan independence triggered repressive action by the central government, but the European Court of Human Rights in its decision *Stern Taulats and Roura Capellera v. Spain* (2018) confirmed that symbolic expression remains within the scope of protection of Article 10 ECHR as long as it does not contain explicit calls for violence. In Hong Kong, following the enactment of the 2020 National Security Law, the use of popular cultural symbols as a medium for political satire has experienced a significant narrowing of space and has been strongly criticized by the international community as a setback for democracy. These two comparative experiences demonstrate that the dividing line between restrictions on legitimate expression and excessive criminalization is largely determined by the existence of clear norms, the proportionality of state actions, and the absence of explicit calls for violence. Indonesia, as a state party to the ICCPR since 2005, is bound by Article 19 paragraph (2), and the UN Human Rights Committee in its General Comment No. 34 (2011) emphasized that restrictions are only valid if they meet three cumulative requirements: prescribed by law, legitimate purpose, and proportionality (*Stern Taulats and Roura Capellera v. Spain*, 2018).

The government's attempt to frame the One Piece flag-raising phenomenon as an act of treason and provocation is also considered excessive, referring to the opinion of a legal expert from the National University, Ismail Rumadan, who stated that the One Piece flag-raising phenomenon has not been qualified as a crime, because the flag-raising is not solely for committing an act of treason as regulated in Article 104 "Treason to assassinate the President/Vice President," Article 106 "Treason to separate part of the territory of the Republic of Indonesia," and Article 107 "Treason to overthrow the legitimate government." If we examine the elements of these articles further, the act of raising the One Piece flag is not the same as an act of separatism, which subjectively contains "*met het oogmerk*" with the intention and objective element of "*aanslag*" (treason) carried out in order to separate part of the territory from the state. The essence of treason is the existence of real actions with the specific aim of overthrowing a legitimate government, separating a country's territory or challenging the nation's sovereignty.

The One Piece Jolly Roger flag, featuring a skull, wearing a straw hat, and colored black, is a fictional symbol originating from the work of Eiichiro Oda. The flag certainly does not represent a country, a separatist movement, or a group seeking to separate from the Unitary State of the Republic of Indonesia (NKRI) through rebellion or declaring war. On any occasion, people simply raise this flag as a form of freedom of expression

and social criticism, not a call for separatism as stipulated in the Criminal Code. The absence of malicious intent (*mens rea*) is also the strongest reason for not imposing criminal charges against the community. This certainly cannot be equated with cases of treason, such as the raising of the RMS (Republic of South Maluku) flag or the Morning Star flag in Papua, which are closely linked to separatist agendas. Constitutional Law expert Bivitri Susanti also emphasized that there is no strong legal basis for prosecuting those who raise the Jolly Roger flag because the flag does not represent a specific state entity or separatist movement. The government's tendency to use multi-interpretable legal norms as an instrument to silence public expression is not a new phenomenon in the history of Indonesian law enforcement. Article 154 of the Criminal Code was widely applied during the New Order era to prosecute activists and students who voiced criticism of public policy, including student groups who staged peaceful demonstrations in the 1980s and activists who distributed pamphlets criticizing economic policies in the 1970s. This empirical reality was the substantive consideration of the Constitutional Court in issuing Decision No. 6/PUU-V/2007, which declared Articles 154 and 155 of the Criminal Code unconstitutional. The Constitutional Court asserted that the phrase "expressing feelings of hostility, hatred, and insult" was too broad in scope, did not meet the *lex certa* requirement, and opened the door to arbitrary application of expression, which is essentially a citizen's constitutional right (Constitutional Court Decision No. 6/PUU-V/2007).

Reflecting on the Jayapura District Court Decision No. In case No. 150/Pid.B/2022/PN.Jap dated August 29, 2022, the Panel of Judges at the Jayapura District Court found the seven defendants guilty of raising the Morning Star flag and sentenced them to 10 months in prison. The Panel of Judges considered that the defendants had legally and convincingly fulfilled the elements of the crime of treason and violated Article 106 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. The Panel also considered that the defendants had met the *mens rea*, namely malicious intent in the form of an explicit aspiration for Papuan independence. Analysis of the elements of treason often includes the following elements: explicit intent, demonstrative actions, and separatist aspirations, as proven by the Panel of Judges. Considering the phenomenon of raising the One Piece flag, the actions of the people raising the flag certainly do not meet these elements of the crime.

Legal certainty regarding provocative acts must also be examined further by proving the elements that fulfill the requirements for raising the One Piece flag. Articles 160 through 163 of the Criminal Code regulate incitement in public, whether verbally or in writing. Following Constitutional Court Decision No. 7/PUU-VII/2009, this offense became a material offense, requiring proof of the actual consequences of the incitement and a causal relationship with the inciting act. This provision also requires strict elements of evidence to ensure legal certainty and prevent excessive criminalization. Proving Article 160 is difficult when there is no explicit call to commit a crime, violence, or rebellion by the One Piece flag raisers.

Within the framework of strengthening freedom of expression, legal certainty requires the existence of clear, consistent, and predictable norms (*lex certa*). This principle is crucial to prevent arbitrary state action and the chilling effect, where public participation in upholding constitutional rights is hampered, silenced, or halted (Constitutional Court Decision No. 119/PUU-XXIII/2025 dated August 28, 2025). As the highest norm in the hierarchy of Indonesian legislation, the 1945 Constitution, through Article 28E paragraphs (2) and (3), guarantees the right of every citizen to express their thoughts, attitudes, and freedom of opinion. Furthermore, Article 28F guarantees the right to obtain, convey, and disseminate information through various channels. This guarantee should be interpreted broadly, including the use of symbolic channels, such as raising the One Piece flag, as part of the constitutional expression of society.

The principle of *lex certa* is an important guideline for the state and law enforcement officials in enforcing regulations, as a form of commitment to legal certainty. Norms that are not clearly formulated, such as articles on treason, provocation, or insults to state symbols, are vulnerable to excessive interpretation by officials. In the context of the treason article, a judicial review was submitted to the Constitutional Court by the Institute for Criminal Justice Reform (ICJR) against Article 87, Article 104, Article 107, Article 139a, Article 139b, and Article 140 of the Criminal Code, on the grounds that they contradict the right to protection of oneself, family, dignity, and human rights as stipulated in Article 28G paragraph (1) of the 1945 Constitution.

Although the application was rejected through Constitutional Court Decision No. In its Decision No. 7/PUU-XV/2017 dated January 25, 2018, the Constitutional Court emphasized the need for careful application of the treason article to prevent it from becoming an instrument for silencing freedom of expression in a democratic state (Constitutional Court Decision No. 7/PUU-XV/2017 dated January 25, 2018).

Indonesian positive law requires strict and specific limitations on the fulfillment of criminal elements, in this case respecting the national flag, as well as acts of treason and provocation. Criminalizing these acts based on arbitrary interpretations by the government has the potential to violate the *lex certa* principle, which requires the formulation of definite norms that are not open to multiple interpretations. Therefore, raising the One Piece flag is part of the freedom of expression guaranteed by the 1945 Constitution and all human rights principles. Any restrictions must be legitimate, based on definite norms, a legitimate purpose, and proportionality, within a framework of just legal certainty. In other words, legal certainty provides clarity to the public regarding rights and obligations according to law, regarding what can and cannot be done and also what is or is not prohibited by law (Afdhali & Syahuri, 2023).

3.2. The Beneficial Aspect of the One Piece Flag Raising Event as a Form of Freedom of Expression

In addition to being protected by Article 28E paragraph (3) of the Constitution, freedom of expression is further regulated in Law No. 9 of 1998 concerning Freedom of Expression in Public and Law No. 39 of 1999 concerning Human Rights, which serve as the basis for legitimacy for people flying the One Piece flag. In this case, existing legal norms should be able to provide benefits to society, and the value of this benefit can be placed within the framework of positive Indonesian law. The government's argument that this disturbs public order, as stated in Articles 154 and 155 (1) of the Criminal Code, can certainly be further examined regarding its benefits and legitimacy.

It must be objectively acknowledged that the government has a politically understandable argument, namely that flying foreign symbols in public spaces during the commemoration of independence has the potential to degrade the value of historical struggle and create confusion about national identity. However, from the perspective of legal expediency, as formulated by Jeremy Bentham through the principle of "the greatest happiness of the greatest number," criminalizing symbolic expressions that do not contain calls for violence actually results in greater social harm. This is because a repressive approach not only fails to address the root cause of public dissatisfaction with public policy, but also creates a "chilling effect" that hinders democratic participation and narrows the space for dialogue between citizens and the government (Buana, 2010).

In 2007, the Constitutional Court ruled that Articles 154 and 155 of the Criminal Code were unconstitutional in Decision No. 6/PUU-V/2007 ("MK Decision No. 6"). This is quite interesting considering that both articles are considered similar to the phenomenon of raising the One Piece flag. The government has applied this offense to criminalize the perpetrators of raising the One Piece flag, as it fulfills the elements of "acts committed in public," "expressing feelings of hostility," and "hatred or contempt for the Indonesian government." The public does not use the One Piece flag raising to spread hostility or hatred, but rather as an expression of social criticism towards the government that issues policies that do not favor the welfare of the people, and also as an aspiration to the government so that the Corruption Eradication Commission (KPK) is not weakened, corruption is eradicated to its roots, nepotism is rejected and meaningful participation in the process of making laws and regulations in the DPR.

The government used Article 155 of the Criminal Code on the grounds that the One Piece flag was considered an act of broadcasting, displaying paintings of feelings of hostility, hatred, and insults against the Indonesian Government. These two articles are considered very dangerous for the continuity of democracy in Indonesia. The government can arbitrarily take repressive action against people who raise the One Piece flag on the basis of public order. Fortunately, the Constitutional Court annulled both articles in the Criminal Code. According to experts, as stated in the legal considerations section of MK Decision No. 6, if Article 154 of the Criminal Code is read with too subjective a lens, the provision is prone to misuse and contradicts the principles

of *lex certa*. The phrase "expressing feelings of hostility, hatred, and insults" has a broad and all-encompassing scope, so it has the potential to be applied to actions that are not actually criminalized because they are part of the constitutional rights of citizens to express opinions as guaranteed by the 1945 Constitution, especially Article 28E paragraph (3), which emphasizes that everyone has the right to freedom of association, assembly, and expression of opinion. In addition to imposing the aforementioned criminal offense under the Criminal Code, the government also intends to criminalize those who fly the One Piece flag based on Law 24/2009 concerning national flags. As previously explained, the norm does not specifically prohibit fictional flags; the prohibition is directed only at acts that demean the honor of the National Flag or improper use, not the existence of fictional symbols.

From a utility perspective, the state provides guarantees, namely Article 28E paragraph (3), to maximize democratic benefits by maintaining space for public aspirations to the government. While Law 24/2009 also serves to protect national symbols from attempts to harass and dishonorable acts against them. The principle of utility must be prioritized when the government does not need to overly prohibit and repressive actions, but rather simply provides limits on what is and is not allowed to be done, so that the public's interest in expressing aspirations is maintained and the government continues to fulfill its role in maintaining order. Regarding this, the researcher provides recommendations to ensure the benefits of the law, namely: (1) The government can increase its public communication role so as not to cause worry and fear in the community by conveying prohibitions or taking firm action against people who raise the One Piece flag, with good government communication the government will increasingly increase its trust from the community and will bring happiness to the community. (2) The government must increase the level of literacy and education for the community, by increasing dialogue spaces and learning spaces for the community in its efforts to convey orderly criticism and not disturb public order.

These recommendations need to be operationalized in a more concrete and measurable manner for effective implementation. First, the police need to develop Standard Operating Procedures (SOPs) that explicitly distinguish between popular cultural expressions, symbolic social criticism, and real security threats, with measurable criteria including the presence or absence of explicit calls for violence, the identification of concrete separatist actors, and the potential for objectively verifiable disturbances to public order. Second, the House of Representatives (DPR) needs to encourage revisions to articles that are still open to multiple interpretations to comply with the *lex certa* principle, by referring to the standard for limiting rights in Article 19 paragraph (3) of the ICCPR. Third, a special mediation mechanism needs to be established for disputes concerning freedom of expression involving popular cultural expressions as a medium for social criticism, so that resolution does not directly lead to criminalization (Muladi, 2000).

In the Indonesian legal system, law enforcement is known to rely on four main pillars: the police, the prosecutor's office, the judiciary, and correctional institutions (Wadhana, 2011). Since the enactment of the Advocates Law, the number has increased to five, as stipulated in Article 5 paragraph (1). Furthermore, there are also views that add out-of-court dispute resolution institutions as part of the legal structure of the Indonesian legal system (Santoso, 2012). A fundamental problem in law enforcement, particularly regarding the protection of the human right to freedom of expression, is the existence of repressive actions by law enforcement officials (Ansori, 2018). The police, for example, often view the exercise of the right to freedom of expression, expressly guaranteed by the constitution, as a threat to state order and security.

This is evident in the attitude of officers who criminalize, conduct sweeps, and even take repressive action against people flying the One Piece flag. From a utilitarian perspective, such an approach has the potential to violate Jeremy Bentham's principle of "the greatest happiness of the greatest number," because actions that are essentially symbolic expressions of society are instead criminalized, thus giving rise to public injustice. If the police continue to interpret these symbolic messages as violations of the law, the social benefits intended to be achieved through the law could be lost, and the public could feel constrained in expressing their aspirations.

Bagir Manan believes that law enforcement in Indonesia often fails to achieve the goals envisioned in the law (Rizky, 2008). To address these weaknesses, this study considers the restorative justice approach

worthy of consideration as an alternative, as it is based not only on a normative legal approach but also on a socio-cultural one. This model can also expedite the criminal justice process by simplifying procedures without neglecting the principle of the rule of law and the basic standards of a fair and just criminal process (Albercht, 2001).

In practice, a balance between legal certainty and protection of freedom of expression in cases of popular cultural expression can be achieved through a three-stage mechanism. The first stage is an initial assessment, in which authorities evaluate whether the expression in question contains explicit calls for violence, real representations of separatist groups, or measurable potential for unrest. The second stage is a proportional response, where if the assessment indicates the absence of these elements, authorities prioritize educational dialogue and persuasive communication. The third stage is an impact evaluation, in which each law enforcement action related to cultural expression is evaluated based on its social impact on public trust and the quality of democracy. Looking ahead, this phenomenon should serve as momentum for significant legal reform, particularly in harmonizing the new Criminal Code with international human rights standards regarding freedom of expression, as well as developing jurisprudence that clearly distinguishes between fictional symbols, cultural symbols, and separatist symbols within a responsive and humane Indonesian criminal law framework (Indonesian National Police Chief Circular Letter No. 2/2021).

In law enforcement practices, authorities should prioritize restorative justice as an effort to create justice and balance between perpetrators and victims (Arief & Ambarsari, 2018). This approach becomes relevant when the government chooses repressive measures by charging perpetrators with criminal offenses. In this case, the police are expected to prioritize education and a persuasive approach to avoid creating the impression of excessive criminalization of the reported party. Furthermore, the implementation of restorative justice is also crucial for maintaining a clean, healthy, ethical, and productive digital space. This aligns with the National Police Chief's Circular Letter Number SE/2/II/2021 concerning Ethical Cultural Awareness to Achieve a Clean, Healthy, and Productive Indonesian Digital Space, which provides several strategic guidelines for authorities in handling cases related to freedom of expression in public and digital spaces, including:

- a. The Indonesian National Police (Polri) is required to adapt to the ever-changing dynamics of the digital space, along with the complexity of the issues that accompany it.
- b. Officers need to have a deep understanding of ethical culture in cyberspace, by identifying problems and their impact on society.
- c. Preemptive and preventive measures must be prioritized, including the use of virtual police and virtual alerts, which function to monitor, provide education, provide warnings, and prevent potential cybercrimes.
- d. When handling reports, investigators are obliged to clearly distinguish between criticism, suggestions, hoaxes, and defamation that meet criminal elements, before taking law enforcement action.
- e. Criminal law must be positioned as a last resort (*ultimum remedium*), so a restorative justice approach needs to be prioritized as a case resolution mechanism.

With the enactment of this Circular, it is hoped that the Police will increasingly prioritize the principle of restorative justice in responding to the phenomenon of raising the One Piece flag, emphasizing an educational, preventive, and restorative approach, so as not to immediately emphasize a repressive approach by carrying out criminalization efforts. If this is implemented, then raising the One Piece flag will be seen as an expression of popular culture that requires more in-depth education, rather than being considered a criminal offense. Thus, the principle of benefit directs that the law can provide real benefits to society by bringing a sense of justice and benefit to the public.

IV. Conclusion

The phenomenon of the One Piece flag-raising in Indonesia demonstrates how the law does not always operate ideally as envisioned, but rather is always intertwined when confronted directly with the social and cultural realities of society. What some consider merely a symbol of popular culture may be viewed by state officials as a threat. It is at this point that the researcher believes the law needs to be tested against its fundamental objectives: certainty and expediency. Regarding legal certainty, the author encounters a serious problem in the formulation of articles in the Criminal Code. Terms such as "provocation," "insult," or even "treason" often open up vast scope for interpretation. When interpretation is left entirely to the authorities, legal certainty is weakened. How can the public know what is permissible and what is not if legal norms are vague? In this context, the researcher borrows Mochtar Kusumaatmadja's words: law without power is wishful thinking, power without law is despotism.

Furthermore, regarding expediency, the state certainly has an interest in maintaining order. However, greater benefits will not be achieved if the law actually creates fear and stifles public creativity. The adage "salus populi suprema lex esto," meaning the safety of the people is the highest law, must be reread in this context. The safety of the people does not only mean being safe from the threat of treason, but also from state repression. True benefits arise when citizens feel protected and free to express themselves. Regarding the third hypothesis of this study, namely that a restorative justice approach is more effective than criminalization in dealing with popular cultural expressions, the discussion in this study confirms the truth of this hypothesis. It is proven that not a single criminal element is cumulatively fulfilled in the phenomenon of raising the One Piece flag, neither the elements of mens rea nor aanslag in the crime of treason, nor the element of real consequences in the crime of provocation following the Constitutional Court decision No. 7/PUU-VII/2009. Thus, criminalization is not only legally baseless but also socially counterproductive because it widens the gap of trust between the state and its citizens. In contrast, the restorative justice approach, based on the SE Kapolri No. Law No. 2/2021 has proven more capable of accommodating the state's interests in maintaining order while protecting citizens' constitutional rights to freedom of expression. This approach prioritizes dialogue, education, and social reconciliation as primary instruments, replacing repression, which has been shown to chill democratic spaces.

Finally, the researcher argues that the issue of raising the One Piece flag reaffirms the need to position law as the art of balancing three values, as expressed by Gustav Radbruch: justice, certainty, and utility. If any one of these is omitted, the law loses its moral legitimacy. Therefore, a law that is too harsh will lose its sense of justice; a law that is too vague will erode certainty; and a law that is too repressive will fail to provide social benefits. In closing, the researcher emphasizes that the law must be bolder, not merely firmer. Facing cultural expressions like the One Piece flag, the law should be humane, not repressive. This is as expressed by Satjipto Rahardjo: law is for humans, not humans for law. Therefore, the law must serve, protect, and promote human welfare, not merely treat it as a rigid, textbook-based regulation.

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