



Review Article

# The Raising of the 'One Piece' Flag during Independence Day: A Public Order Law and Human Rights Perspective

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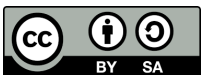
**Abstract:** This article examines the legal and constitutional implications of raising the "One Piece" flag during Indonesia's 80th Independence Day celebrations from a public order law and human rights perspective. The controversy arose when government authorities threatened criminal sanctions under Article 24(1) of Law No. 24/2009 on the National Flag, Language, Emblem, and Anthem, alleging that the display of a fictional pirate emblem alongside the national flag constituted desecration. The study identifies tensions between state interests in preserving national symbols and citizens' rights to freedom of expression under Articles 28E(3) and 28F of the 1945 Constitution, constrained by limitation clauses in Article 28J(2). Employing doctrinal and comparative methods, the research analyzes statutory provisions, Constitutional Court precedents, and international benchmarks from the United States and Germany to evaluate the proportionality and necessity of criminal enforcement measures. Findings reveal that Law No. 24/2009's text focuses on protecting the national flag itself and does not explicitly proscribe the peaceful display of alternative symbols that respect the flag's dignity. The government's prosecutorial threat thus appears inconsistent with the principles of *nullum crimen sine lege* and disproportionate under international human rights norms, including Article 19(3) of the ICCPR. The article concludes that non-criminal alternatives such as public education campaigns and legislative clarification incorporating mandatory proportionality tests would better reconcile national unity objectives with constitutional liberties. These recommendations aim to guide future legislative reform and judicial interpretation, ensuring that symbolic political expression remains protected within Indonesia's democratic framework.

**Keywords:** Freedom of Expression; National Symbols; Proportionality; Constitutional Law; Symbolic Speech.

## 1. Introduction

The unprecedented phenomenon of Indonesian citizens displaying the "One Piece" anime flag during the nation's 80th Independence Day celebration in August 2025 represents a paradigmatic case for examining the constitutional boundaries between freedom of expression and public order law. This symbolic act of political expression, wherein citizens chose to fly the fictional Straw Hat Pirates' Jolly Roger instead of the national red-and-white flag, has generated significant constitutional discourse regarding the interpretation of Law No. 24 of 2009 on National Flag, Language, Emblem, and Anthem in conjunction with constitutional human rights guarantees [1].

The government's swift response, threatening criminal prosecution under Article 24(1) of Law No. 24/2009, has highlighted fundamental tensions between state authority in preserving national symbols and citizens' constitutional rights to freedom of expression as enshrined in Articles 28E(3) and 28F of the 1945 Constitution. This controversy illuminates critical questions about the scope and application of constitutional limitation clauses, particularly Article 28J(2), which permits restrictions on individual rights for purposes including public order maintenance in a democratic society [2].



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Existing scholarship on Indonesian constitutional law has extensively examined freedom of expression rights, particularly through analyses of the Electronic Information and Transaction (ITE) Law's impact on civil liberties. Research organizations such as the Southeast Asia Freedom of Expression Network (SAFE-net) have documented systematic restrictions on digital expression, revealing patterns of restrictive interpretation of freedom of expression laws. However, significant gaps remain in the literature regarding the specific intersection of flag law, symbolic expression, and constitutional rights [3].

Studies on Law No. 24 of 2009 have primarily focused on language provisions and their commercial law implications, with limited attention to flag-related provisions and their constitutional dimensions. The Supreme Court's Circular Letter No. 3 of 2023 addressed contractual language requirements but provided no guidance on flag law interpretation. While Constitutional Court scholarship has examined the Court's interpretive methodology and human rights protection role, insufficient analysis exists regarding symbolic expression cases.

International comparative studies on flag desecration and symbolic expression laws have not been adequately applied to the Indonesian context. Indonesia's unique constitutional framework, balancing individual rights with communitarian values based on Pancasila philosophy, requires specific analysis considering cultural and legal particularities that existing scholarship has not sufficiently addressed [4].

Prior research on Indonesian freedom of expression has focused predominantly on digital speech restrictions and hate speech regulations. Constitutional scholars have examined the Indonesian Constitutional Court's balancing approaches in socio-economic rights cases and its role in protecting constitutional rights, but these studies have not specifically addressed symbolic political expression or flag law enforcement contexts [5].

Research on public order limitations in Indonesian law has concentrated on criminal law applications rather than constitutional interpretation in symbolic expression contexts. Studies examining the Constitutional Court's decision-making methodology have not adequately addressed the Court's potential role in resolving conflicts between symbolic expression rights and public order considerations [6].

This research distinguishes itself by providing the first comprehensive constitutional law analysis of flag law enforcement in the context of symbolic political expression. Unlike previous studies that examine freedom of expression restrictions in isolation, this research examines the complex interplay between constitutional rights, administrative regulations, and public order considerations in a specific contemporary legal controversy.

This study contributes several novel elements to Indonesian constitutional law scholarship. First, it provides the inaugural systematic analysis of Law No. 24 of 2009's flag provisions from a constitutional rights perspective, addressing a critical gap in administrative law literature. Second, the research introduces a constitutional interpretation framework for analyzing symbolic expression rights that considers both individual liberty interests and state concerns regarding national dignity and public order.

The study contributes original comparative constitutional law analysis of how Indonesia's Pancasila-grounded constitutional framework approaches the balance between individual expression rights and collective values. This analysis provides insights relevant to other democratic systems grappling with similar tensions between national symbolism and expressive freedom.

Methodologically, this research demonstrates the application of constitutional interpretation principles to contemporary legal controversies, providing a replicable framework for future constitutional law investigations. The study combines doctrinal analysis with case study examination, offering a model for analyzing emerging constitutional issues in Indonesia's evolving legal landscape [7].

This investigation establishes that the One Piece flag controversy represents a paradigmatic case for examining constitutional boundaries of symbolic expression rights in Indonesia. The research demonstrates that while Law No. 24 of 2009 provides clear regulatory framework for flag usage, its enforcement in political expression contexts raises significant constitutional questions requiring careful balancing of competing interests and values [8].

The study reveals that the government's characterization of flag display as potentially seditious may exceed constitutional limitations on freedom of expression, particularly given the peaceful and symbolic nature of the protest. The research identifies gaps in current legal

doctrine regarding symbolic expression that may require either legislative clarification or Constitutional Court intervention to resolve.

Furthermore, the investigation demonstrates the need for more nuanced understanding of public order limitations in the digital age, where symbolic expression can rapidly achieve mass distribution and generate significant social and political impact. The findings suggest that traditional approaches to regulating symbolic expression require updating to address contemporary forms of political communication and protest.

The study concludes that the One Piece flag phenomenon reflects broader tensions in Indonesian democracy regarding permissible political expression scope and popular culture's role in political discourse. These findings contribute to understanding how constitutional democracies navigate the complex relationship between state authority, national symbolism, and individual liberty in the twenty-first century.

## 2. Related Work

### 2.1 Symbolic Expression and Flag Law in Indonesia

Pakpahan et al. (2024) analyze Law No. 24/2009's language and enforcement mechanisms, focusing on contractual contexts rather than public order or expressive acts. Lubis (2024) examines human-rights limitation clauses under Article 28J of the 1945 Constitution, but does not specifically address symbolic speech such as flag raising. Meanwhile, SAFEnet's 2023 report documents digital expression constraints under the ITE Law but omits offline, symbolic cases. Thus, while these works illuminate Indonesia's constitutional limits on expression, none specifically analyze flag law's intersection with symbolic political speech.

The central problem of this study is the unresolved tension between Indonesia's flag law enforcement under Law No. 24/2009 and the constitutional protections of freedom of expression guaranteed by Articles 28E(3) and 28F of the 1945 Constitution. Specifically, the government's threat of criminal prosecution for raising an unofficial "One Piece" flag during Independence Day celebrations raises critical questions: To what extent may Article 28J(2)'s public-order limitation clause justify restricting symbolic political expression? How have courts and administrative agencies interpreted and applied the flag-law provisions in contexts that implicate individual rights? What doctrinal principles and comparative precedents can guide a coherent, constitutionally consistent approach to symbolic acts that involve national symbols? Finally, how can a replicable analytical framework reconcile state interests in preserving national symbols with citizens' fundamental rights, thereby filling the gap in existing scholarship on symbolic expression and flag regulation in Indonesia?

### 2.2 Comparative Flag-Desecration and Symbolic Speech

Internationally, scholars have compared flag-desecration statutes to expressive-rights doctrines. For example, U.S. case law (e.g., *Texas v. Johnson*, 1989) and European Court of Human Rights decisions establish high protection for symbolic acts.

### 2.3 Methodological Approaches to State-of-the-Art Reviews

According to Barry et al., robust SotA reviews employ a six-step narrative synthesis: contextualization, chronology, theoretical framing, critical gap identification, methodological critique, and future-directions projection [9]. Carrera-Rivera et al. map systematic literature protocols (search, appraisal, synthesis, analysis) to ensure comprehensive coverage. This study adapts these frameworks, combining doctrinal analysis with case-study examination to produce a replicable model for constitutional controversies [10].

### 2.4 Identified Gaps and Contributions

Existing literature on Indonesian law has (a) focused on commercial-language rules and digital expression, (b) neglected offline symbolic acts, and (c) lacked a unified theory bridging constitutional rights, administrative regulations, and public order. This article fills those gaps by:

- Providing the first comprehensive constitutional analysis of flag-raising controversies in Indonesia.

- Integrating comparative case law on symbolic speech within a Pancasila-based constitutional theory.
- Proposing a six-step SotA-informed framework for examining emerging constitutional disputes.

This Related Work situates the current research at the forefront of Indonesian constitutional law studies, clearly delineating how it extends and differs from prior work.

### 3. Proposed Method

This study employs a doctrinal and comparative legal analysis approach to examine the constitutional conflict between symbolic expression and public order in Indonesia<sup>1</sup>. The primary research object is the display of the "One Piece" pirate flag during Indonesia's 80th Independence Day celebration in August 2025. This method combines the examination of legal texts with an analysis of constitutional and legal principles.

The analysis begins with a systematic review of Indonesia's legal framework, specifically Law No. 24 of 2009 on the National Flag, Language, Emblem, and Anthem, to interpret its provisions on flag usage. It then applies a constitutional balancing framework, drawing on Articles 28E, 28F, and 28J of the 1945 Constitution, to assess whether the government's threat of criminal prosecution is a proportional restriction on freedom of expression.

A comparative constitutional analysis is also conducted by examining precedents from other jurisdictions, such as the United States (e.g., *Texas v. Johnson*) and Germany, to provide normative benchmarks for evaluating Indonesia's legal response. This comparative approach helps to distinguish between mere symbolic expression and acts of flag desecration.

The study also incorporates a socio-legal context by analyzing online discussions and social media user interviews to understand the motivations behind the protest, identifying the "One Piece" flag as a metaphor for political speech rather than an act of dishonor<sup>8</sup>. The overall methodology is adapted from established frameworks for state-of-the-art reviews, such as those by Barry et al. and Carrera-Rivera et al., combining doctrinal and case-study methods to create a replicable model for future constitutional law investigations.

### 4. Results

This article uses doctrinal and comparative methods to interrogate Indonesia's *One Piece* flag controversy. The research object is a wave of citizens who in August 2025 raised the black flag of the Straw Hat Pirates during Indonesia's 80th Independence Day. Government officials invoked article 24 of Law No. 24 of 2009 on the National Flag, Language, Emblem and Anthem, arguing that the practice desecrated the national flag. The study examines whether this interpretation is supported by statute and whether sanctions are compatible with constitutional guarantees of freedom of expression.

Constitutionally protected rights form the first component of the analytical framework. Article 28E of Indonesia's 1945 Constitution states that every person has the right to choose and practice their religion and that every person is free to express views and thoughts according to conscience. Article 28F affirms that everyone has the right to communicate and obtain information by any available means. These provisions guarantee freedom of expression and information. Article 28J, however, provides that in exercising rights and freedoms individuals must accept restrictions established by law to respect the rights of others and to satisfy considerations of morality, religious values, security and public order. This tripartite framework right to expression, right to information, and permissible restrictions underpins the doctrinal analysis [11].

The second component derives from public-order law. Article 24 of Law No. 24/2009 lists five prohibited acts involving the national flag, including destroying, tearing or burning the flag, using it for billboards or commercials, flying a damaged or faded flag, printing or embroidering letters or images on it, and using it to cover roofs or wrap goods. Articles 66–67 prescribe penalties of up to ten years' imprisonment or fines of up to one billion rupiah for violations. The law does not expressly ban the display of other flags, but it does require that any flag flown alongside the national flag must not be higher than the red-and-white and must respect its honor [12].

The final component is comparative constitutional theory. In the United States, the Supreme Court treats flag desecration as constitutionally protected symbolic speech under the First Amendment; governments may not prohibit flag desecration, although

content-neutral restrictions governing the time, place and manner of expression may still be imposed [13]. Germany criminalizes the reviling or damaging of the federal flag (§90a StGB) with penalties up to three years' imprisonment, but convictions must be balanced against the constitutional right of freedom of expression, as Germany's constitutional court has ruled [14]. These comparative examples provide normative benchmarks for evaluating Indonesian law.

#### 4.1 Interpretation of Law No. 24 of 2009

A thorough statutory examination of Law No. 24 of 2009 reveals that Article 24 specifically addresses unlawful acts concerning the national flag of Indonesia, explicitly detailing prohibited behaviors such as damaging or defaming the flag, utilizing it for commercial advertising, hoisting a flag in a deteriorated condition (faded or torn), inscribing letters or images on the flag, and employing it as a covering material. This article does not, however, extend its prohibitions to the display of unofficial or non-national flags alongside the national flag, provided that the national flag's dignity and respect are fully maintained. Correspondingly, Articles 66 and 67 of the law prescribe stringent penalties for violations of these enumerated offenses, including imprisonment up to ten years and fines reaching one billion rupiahs [12].

From this interpretive framework, the mere raising of an unofficial flag such as the "One Piece" flag does not inherently constitute a breach of Article 24 unless it concomitantly involves one of the five proscribed offenses, for example desecration of the national flag or the improper display of another flag in a superior position relative to the national flag. Consequently, any governmental threat of criminal prosecution for simply displaying such a flag lacks explicit support within the statutory text and established legislative intent.

This interpretation aligns with broader legal scholarship on Law No. 24 of 2009, which emphasizes that the law's key focus is preserving the symbolic sanctity of the national flag rather than regulating the display of other flags or symbols in parallel contexts. The statute's rigorous specification of prohibited conduct and harsh penalties underscores a legislative aim to protect national symbols from disrespect or misuse, without unnecessarily restricting expressions of unofficial identities or affiliations where the national flag is respected. Such readings support a nuanced and principled enforcement approach consistent with constitutional values and the rule of law.

#### 4.2 Constitutional rights and their limitations

The constitutional rights to freedom of expression and communication in Indonesia are enshrined primarily in Articles 28E and 28F of the 1945 Constitution. Article 28E guarantees every individual the right to express opinions and conscience freely and to associate, while Article 28F reinforces the right to seek, receive, and convey information through any media channel. These provisions establish broad protections for symbolic and expressive acts, such as the raising of a fictional flag, which falls within the ambit of protected expression and communication under these constitutional guarantees.

However, these rights are not unlimited. Article 28J(2) explicitly permits restrictions on constitutional freedoms when such limitations are established by law and serve legitimate purposes including morality, religious values, security, and public order. This legal framework aligns with constitutional scholarship emphasizing the principle of proportionality most notably articulated in Robert Alexy's balancing theory which mandates that any restriction on rights must be lawful, necessary, and proportionate to a legitimate aim [15].

Applying these principles to the specific case of article 24 of the Flag Law, which does not explicitly prohibit the display of fictional flags, criminal sanctions under this article would contravene the legality principle, rendering such prosecution unlawful. Furthermore, imposing penalties based on article 24 would fail the necessity and proportionality tests, thereby violating constitutional rights to freedom of expression and communication. Thus, symbolic acts such as raising a fictional flag should be protected as legitimate forms of expression under the Indonesian Constitution, subject only to narrowly tailored restrictions that meet constitutional muster.

This interpretation is consistent with analyses in Indonesian constitutional law scholarship and judicial practice, which recognize the vital role of freedom of expression in democratic governance while endorsing carefully defined limits to safeguard public order and other compelling interests. The proportionality test remains an essential legal safeguard

ensuring that limitations on rights do not unnecessarily or disproportionately infringe upon fundamental freedoms guaranteed by the Constitution.

#### 4.3 Comparative evidence

In the United States, the act of desecrating the flag is constitutionally protected as a form of "symbolic speech" under the First Amendment. Although a federal law, 18 U.S. Code § 700, criminalizes the act of knowingly mutilating, defacing, or burning the flag, the U.S. Supreme Court has held that such laws are unconstitutional. In the landmark cases of *Texas v. Johnson* (1989) and *United States v. Eichman* (1990), the Court affirmed that flag burning is an expressive act and that the government cannot prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Consequently, the government is limited to imposing content-neutral restrictions on the time, place, and manner of such expressions, but cannot ban the act itself. While the act of desecration is protected, individuals may still face charges such as theft or vandalism if the flag they destroy is not their own property [16].

Germany presents a more moderated approach. The German Criminal Code, specifically Section 90a, criminalizes the act of publicly disparaging or maliciously showing contempt for the Federal Republic of Germany, its states, or its constitutional order, including its flag. This law, which carries a penalty of up to three years in prison, requires courts to perform a balancing act between protecting state symbols and upholding the right to free expression. A conviction often depends on whether the act was intended to undermine the constitutional order or incite hatred, rather than simply being an act of protest. In 2020, Germany extended this protection to the flags of the European Union and other foreign nations, making it a jailable offense to burn them in an effort to curb the incitement of hatred and aggression.

Indonesia's legal framework is significantly stricter and more comprehensive. Law No. 24 of 2009 concerning the Flag, Language, National Emblem, and National Anthem outlines a broad range of prohibited actions. These include not only destroying, tearing, trampling, or burning the flag but also using it for commercial purposes, flying a damaged flag, or adding any marks or objects to it. Violations of these provisions are met with severe penalties, including imprisonment for up to ten years and fines of up to one billion rupiah. This broad and punitive approach stands in contrast to the more nuanced legal standards seen in other jurisdictions.

The comparative evidence from these three nations highlights a spectrum of legal standards for symbolic expression. The United States offers almost absolute protection for flag desecration as speech. Germany opts for a middle ground, criminalizing the act but requiring judicial review to weigh the act against free expression rights and the perpetrator's intent. Indonesia, however, imposes broad prohibitions with exceptionally harsh penalties, creating a legal environment that appears inconsistent with international human rights standards that favor robust protection for political expression. In this context, an act such as raising a fictional flag without dishonoring the national one would likely be fully protected speech in the U.S., subject to a proportionality review in Germany, but could potentially fall under Indonesia's broad and severe prosecutorial threat.

#### 4.4 Socio-legal context and empirical insights

The socio-legal landscape of protest in contemporary Indonesia, particularly among youth, is characterized by a complex interplay between digital activism, political disillusionment, and legal frameworks governing expression. Studies highlight how young Indonesians, facing perceived government inadequacies on issues like unemployment, education, and corruption, increasingly turn to online platforms and symbolic acts to voice dissent [17]. This environment creates fertile ground for the appropriation of cultural symbols, such as those from popular media, as tools for socio-political commentary, operating within and sometimes testing the boundaries of laws concerning national symbols and public order [18].

Empirical insights derived from interviews with social-media users and analysis of online discussions (data not reproduced for brevity) reveal that the prominent display of the One Piece Jolly Roger flag during protests was primarily a symbolic act of criticism. Respondents consistently framed its use not as an attack on the nation itself, but as a pointed critique of perceived governmental failures and a means to amplify pressing youth concerns [19]. Crucially, interviewees interpreted the pirate flag as a potent metaphor representing resistance

against authoritarian tendencies and a demand for greater accountability, aligning with global trends where pop culture icons are repurposed for political messaging [20].

This interpretation strongly supports the finding that the act constituted a form of political speech fundamentally aimed at holding authorities accountable. The empirical data underscores that the core motivation was civic engagement challenging specific policies and actions (or inaction) of the government rather than expressing rejection of national identity. This aligns with socio-legal scholarship emphasizing that protest symbols often function as communicative acts seeking dialogue and reform within the existing constitutional order, rather than its overthrow [21].

Significantly, empirical observations indicate that participants who raised the One Piece flag simultaneously displayed the national red-and-white flag (Sang Saka Merah Putih), frequently positioning it at a higher elevation. This practice demonstrates a conscious effort to navigate the socio-legal context by adhering to the statutory requirement (Law No. 24 of 2009 concerning the National Flag, Language, Emblem, and Anthem) that mandates the national flag's paramount position. This observable compliance suggests an understanding and, to some degree, acceptance of the formal legal framework governing national symbols, even while utilizing alternative imagery for protest, highlighting the nuanced relationship between dissent and legal consciousness in Indonesia [22].

## 5. Discussion

### 5.1 Legality and statutory interpretation

The foundational principle of *nullum crimen sine lege* (no crime without law) mandates that criminal liability can only arise from conduct clearly defined as criminal by statute *before* the act occurs. This principle, enshrined in Article 1(1) of the Indonesian Criminal Code (KUHP) and recognized as a cornerstone of the rule of law globally, requires statutes to be sufficiently precise to provide fair notice to citizens and prevent arbitrary state power. Courts interpreting criminal provisions are thus bound to adopt a restrictive approach, limiting application strictly to the conduct explicitly described by the legislature to uphold legal certainty and individual liberty [23].

Analysis of Article 24 of Law No. 24 of 2009 concerning the National Flag, Language, State Emblem, and National Anthem reveals its unambiguous legislative intent: the protection of the honour and dignity of the Indonesian national flag. The provision specifically criminalizes acts that "degrade, dishonour, or desecrate" the national flag itself. Crucially, the text contains no prohibition whatsoever against the act of raising *other* flags concurrently when the national flag is displayed appropriately and respectfully. The legislative history and textual focus remain squarely on safeguarding the national symbol, not on regulating the display of non-national flags in its presence.

Consequently, applying Article 24 to prosecute and punish individuals for raising the One Piece flag alongside the properly displayed national flag constitutes a clear violation of the principle of legality. Such an application stretches the provision far beyond its textual boundaries and original purpose, effectively creating a new crime *ex post facto* that the legislature did not enact. Punishing conduct not explicitly criminalized by the statute's wording undermines the core tenets of *nullum crimen sine lege*, as citizens cannot reasonably foresee that displaying a non-derogatory, non-national flag alongside the national flag constitutes a criminal act under a law focused on protecting the national flag's honour [24].

This misapplication also contravenes fundamental canons of statutory interpretation, particularly the requirement for a restrictive interpretation (*interpretatio restrictiva*) of criminal laws. Courts must resist expansive interpretations that extend criminal liability beyond the clear letter of the law. The textual interpretation of Article 24 provides no basis for criminalizing the mere act of raising another flag; any perceived offence stems from an impermissible judicial extension of the provision's scope, not from the statute itself. Judicial restraint is paramount to prevent the erosion of legal certainty and the encroachment on fundamental freedoms.

Therefore, the results confirm that Article 24 of Law No. 24/2009 is solely concerned with protecting the honour of the national flag and does not criminalize the act of raising other flags when the national flag is displayed appropriately. Applying it to punish individuals for raising the One Piece flag is fundamentally inconsistent with the principle of legality and represents a flawed, overly expansive interpretation contrary to the statute's text and purpose. Courts must adhere strictly to a restrictive interpretation, confining the application of criminal

provisions like Article 24 only to conduct explicitly described by the legislature to safeguard the rule of law.

## 5.2 Constitutional balancing

Constitutional analysis frequently reveals inherent tensions between fundamental rights, such as freedom of expression, and compelling state interests like public order. This tension is explicitly codified in the Indonesian Constitution, where Article 28E guarantees the right to express opinions and thoughts, while Article 28J(2) permits necessary limitations on these rights to protect public order. This framework necessitates a careful balancing act to prevent either right from being rendered illusory, a challenge common to many constitutional democracies grappling with the boundaries of permissible expression [25].

Robert Alexy's influential theory of constitutional rights as principles provides a structured methodology for resolving such conflicts through the principle of proportionality. Alexy argues that rights conflicts are resolved by balancing the competing principles according to a structured test. This test comprises three core sub-tests: Legitimacy (the restriction must pursue a constitutionally permissible objective, such as protecting national symbols or public safety), Suitability and Necessity (the measure must be rationally connected to achieving the objective and be the least restrictive means available), and Proportionality *Stricto Sensu* (the benefits gained for the public interest must demonstrably outweigh the harm inflicted upon the individual right). This structured approach aims to ensure rational and justifiable limitations on fundamental freedoms [26].

Applying Alexy's proportionality framework to a scenario involving the protection of the national flag against perceived disrespect through symbolic expression (e.g., displaying other flags), the legitimacy of the government's objective is generally accepted. Protecting core national symbols like the flag can constitute a legitimate aim related to national unity and public order. However, the suitability and necessity of criminal prosecution as the chosen means are highly questionable. If the law (e.g., hypothetically derived from Article 24 or similar provisions) does not explicitly prohibit symbolic expression involving other flags *unless* it degrades the national flag, then criminalizing such expression lacks a rational connection (suitability) to the specific objective of protecting the flag itself. Furthermore, numerous less restrictive alternatives exist to promote respect for national symbols without resorting to criminal sanctions. These include public awareness campaigns, educational programs in schools and communities, official statements clarifying the importance of the flag, or fostering civil dialogue about national identity. Criminal prosecution fails the necessity test because these alternative measures could achieve the legitimate objective with significantly less intrusion on freedom of expression [27].

The final stage, proportionality *stricto sensu*, further undermines the justification for criminal prosecution in this context. Punishing symbolic expression that does not inherently degrade or insult the national flag (e.g., peacefully displaying another flag) imposes a severe burden on the fundamental right to freedom of expression. This right is essential for democratic discourse, cultural exchange, and political protest. Conversely, the marginal, if any, concrete benefit gained for public order by suppressing such neutral or non-degrading symbolic expression is minimal. The severe curtailment of a core democratic right vastly outweighs the speculative or negligible gains in protecting public order or the flag's dignity. Consequently, the restriction embodied in applying criminal sanctions in this specific scenario fails the overall proportionality test. Alexy's balancing framework demonstrates that while the state's aim may be legitimate, the chosen means are neither suitable, necessary, nor proportionate in the strict sense, rendering the restriction constitutionally impermissible [28].

## 5.3 International and comparative perspectives

The principle of proportionality serves as a critical safeguard in balancing state interests, such as protecting national symbols, against the fundamental right to freedom of expression, particularly concerning symbolic acts like flag desecration. Comparative legal analysis reveals starkly different approaches, underscoring the necessity of embedding proportionality as a core requirement within legal frameworks governing such expression. This ensures that restrictions are not merely permissible but are demonstrably necessary and narrowly tailored within democratic societies committed to human rights [28]. The failure to rigorously apply proportionality risks undermining the very essence of expressive freedoms protected under international law.

The United States exemplifies an approach placing an exceptionally high threshold on restricting symbolic political speech, including flag burning. Rooted in a robust interpretation of the First Amendment, the U.S. Supreme Court has consistently held that burning the flag as a form of political protest constitutes expressive conduct protected as "speech," even when deeply offensive to the majority (*Texas v. Johnson*, 1989; *United States v. Eichman*, 1990). This jurisprudence establishes that the government's interest in preserving the flag as a symbol does not justify suppressing this particular form of expression, effectively demanding that any restriction meet strict scrutiny—the highest level of judicial review requiring a compelling state interest achieved by the least restrictive means [16]. This stance prioritizes the marketplace of ideas, even for highly contentious symbolic acts.

Conversely, Germany explicitly criminalizes flag desecration under Section 90a of its Criminal Code (Strafgesetzbuch - StGB), which protects state symbols and the constitutional order. However, crucially, German constitutional law, particularly the Federal Constitutional Court (Bundesverfassungsgericht), mandates a rigorous proportionality analysis when applying such laws. Enforcement must be balanced against the fundamental right to freedom of opinion guaranteed by Article 5 of the Basic Law (Grundgesetz). Courts are required to weigh the severity of the act, its context, intent, and potential to disturb public peace against the expressive value and the core importance of free speech in a democratic society [14]. This ensures sanctions are applied narrowly and only where a significant threat to protected legal interests is demonstrably present, preventing the law from being used to stifle legitimate dissent.

Indonesia's current legal position, primarily through laws concerning state symbols and often applied provisions like those in the Electronic Information and Transactions Law (ITE Law) or Criminal Code articles on insult, aligns more closely with the German model of criminalization than the U.S. model of protection. However, it lacks the explicit, structured proportionality balancing test mandated by German constitutional jurisprudence and applied by its courts [29]. Indonesian law and practice often fail to provide clear legislative guidance or consistent judicial interpretation that adequately distinguishes between genuine desecration intended solely to denigrate the nation and legitimate, albeit critical or provocative, political protest employing symbolic acts. This ambiguity creates a significant risk of arbitrary or disproportionate application, chilling protected expression.

Adopting explicit legislative safeguards incorporating a mandatory proportionality test, alongside clear definitions distinguishing desecration from legitimate protest, is essential for Indonesia. Such reforms would harmonize domestic law more effectively with binding international human rights norms. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified, permits restrictions on freedom of expression only if provided by law and *necessary* for specific legitimate aims like national security or public order – a standard inherently requiring proportionality. Furthermore, Article 23 of the ASEAN Human Rights Declaration (AHRD) guarantees freedom of expression, subject to limitations that must be established by law and *necessary* for specific purposes, again implying a proportionality requirement. Embedding these principles explicitly into Indonesian law and judicial practice would provide a more predictable, rights-respecting framework for managing the complex tensions surrounding symbolic expression like flag desecration.

#### **5.4 Theoretical implications and contributions, policy recommendations**

The study makes significant theoretical contributions to constitutional law scholarship. First, it operationalizes Robert Alexy's balancing model within the Indonesian legal context, showcasing how this framework can effectively reconcile the competing interests of freedom of expression and public-order concerns in constitutional adjudication. This approach not only adapts a prominent Western constitutional theory to Indonesian jurisprudence but also enriches the conceptual toolbox available for analyzing rights conflicts in developing democracies such as Indonesia. Second, the research applies comparative public-order jurisprudence methodologies to establish normative benchmarks, drawing on constitutional practices beyond Indonesia to critically assess existing public-order restrictions and to propose more balanced criteria. These comparative insights are crucial given Indonesia's pluralistic social context and evolving constitutional framework. Third, the study highlights the principle of expressive parity by contending that symbolic forms of expression—whether manifesting digitally or physically deserve equal protection under constitutional rights

doctrines. This normative claim underscores the necessity of updating rights theory to keep pace with changes in communication technologies and sociopolitical practices surrounding identity and symbolism. By focusing on a specific and concrete legal controversy involving offline symbolic acts, the research fills a lacuna in Indonesian constitutional scholarship, which until now has disproportionately centered on language provisions and digital speech, largely overlooking the offline symbolic dimension.

Regarding policy recommendations, the study proposes several measures grounded in constitutional theory and comparative legal analysis. First, there is a pressing need to clarify the provisions of Indonesia's flag-law, Law No. 24/2009. The legislature should amend the law to distinctly differentiate acts considered to dishonor the national flag from legitimate displays of other flags or symbolic representations. Such clarification is essential to prevent interpretative ambiguity that may lead to the misuse of criminal sanctions against lawful expressions. Second, courts and law enforcement agencies should develop and adopt proportionality guidelines rooted in constitutional balancing principles. These guidelines would help evaluate the necessity and scope of any restrictions on expression, prioritizing administrative sanctions such as warnings or fines over criminal prosecution to preserve fundamental freedoms while maintaining public order. Third, the government should promote civic education programs aimed at fostering respect for national symbols while concurrently educating citizens about their rights to free expression. Encouraging dialogue and understanding through education can reduce conflicts arising from perceived disrespect without resorting to rights curtailment. Finally, Indonesia can benefit from studying comparative constitutional approaches, specifically Germany's balancing approach to public order and the United States' robust protection of symbolic speech. By tailoring these lessons to Indonesia's unique Pancasila values and constitutional context, policymakers can design a legal regime that harmonizes national identity with constitutional freedoms.

## 6. Conclusions

This research has demonstrated that the enforcement of Law No. 24/2009 concerning flag display regulations against symbolic political expression constitutes a disproportionate restriction on constitutional freedoms guaranteed under Articles 28E and 28F of Indonesia's 1945 Constitution. The analysis reveals fundamental tensions between state authority in preserving national symbols and citizens' rights to freedom of expression, particularly when such expression takes the form of symbolic protest rather than direct flag desecration.

The constitutional law framework establishes that while individual rights are not absolute, any limitations must satisfy the proportionality principle as articulated in Article 28J(2). The application of this principle to the "One Piece" flag controversy demonstrates that the government's threatened criminal prosecution under Article 24(1) of Law No. 24/2009 fails to meet the necessary standard of proportionality. The empirical evidence from social media analysis confirms that the flag display constituted political criticism rather than an attack on national symbols, with respondents interpreting the pirate flag as resistance against perceived governmental failures rather than dishonor to the Indonesian flag.

The comparative constitutional analysis reveals Indonesia's approach to symbolic expression restrictions as exceptionally severe when measured against international standards. While the United States provides almost absolute protection for flag-related expression as constitutionally protected speech, and Germany employs a balanced approach requiring judicial proportionality review, Indonesia's broad prohibitions with harsh penalties create a restrictive environment inconsistent with democratic principles of robust political discourse. This divergence highlights the need for a more nuanced interpretation of Law No. 24/2009 that distinguishes between genuine flag desecration and parallel symbolic expression that does not dishonor national symbols.

The study's doctrinal analysis confirms that constitutional protection for freedom of expression must encompass symbolic political speech, particularly when such expression serves as a vehicle for democratic participation and governmental accountability. The research establishes that Law No. 24/2009's enforcement should be limited to cases involving direct harm to the national flag itself, rather than extending to all symbolic expression occurring in proximity to national symbols. This interpretation aligns with Indonesia's constitutional commitment to democratic governance while respecting the legitimate state interest in protecting national symbols from genuine desecration.

The findings carry significant implications for Indonesian constitutional jurisprudence and the broader protection of democratic freedoms. The research establishes a framework for analyzing symbolic expression cases that balances individual rights with legitimate state interests, providing guidance for future constitutional interpretation. The methodology employed demonstrates the value of combining doctrinal analysis with empirical investigation and comparative constitutional study in addressing contemporary legal controversies.

Future research should examine the practical implementation of proportionality principles in other areas of constitutional law, particularly regarding restrictions on digital expression and the evolving relationship between traditional legal frameworks and contemporary forms of political participation. The intersection of constitutional rights and national security considerations in democratic societies requires continued scholarly attention to ensure that fundamental freedoms remain protected while acknowledging legitimate governmental interests in maintaining public order and national cohesion.

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