



**“JUVENILE CRIMINAL JUSTICE SYSTEM: A COMPARATIVE
APPROACH TO THE PROTECTION OF CHILDREN’S RIGHTS IN
INDONESIA AND MADAGASCAR”**

UNDERGRADUATE THESIS

Submitted to complete the tasks and fulfil the requirements to complete the
Bachelor of Law Program

By:

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INTERNATIONAL UNDERGRADUATE PROGRAM

FACULTY OF LAW UNIVERSITAS DIPONEGORO

SEMARANG

2024

APPROVAL SHEET

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TEST PAGE

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STATEMENT OF ORIGINALITY

I hereby declare that this Undergraduate Thesis has never been submitted to obtain a degree in another university, and to the best of my knowledge there are no works or opinions that have been written or published by other people, except those that are written in this manuscript and mentioned in the bibliography.

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MOTTO AND DEDICATION

“Andramo ka izahao fa tsara Jehovah, sambatra izay olona mialoka Aminy.”

(Salamo 34:8)

This Undergraduate Thesis is dedicated to:

My Parents (*Dada sy Neny*), My Siblings (*Sarah, Jodéa, Sandrah*), My Grand-Mother in Heaven (*Bebe*), All My Lecturers, and My beloved Madagascar.

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This submission of Undergraduate Thesis is to complete the tasks and fulfil the requirements to complete the Bachelor of Law Program at Universitas Diponegoro. The Author is fully aware that this accomplishment is the result of invaluable assistance from numerous parties. As a result, the Author wishes to express profound gratitude and appreciation to the following parties:

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The Author acknowledges that this Undergraduate Thesis may have certain shortcomings. Therefore, the Author welcomes suggestions in the form of criticism and advice from all parties to enhance this Undergraduate Thesis. It is the Author's aspiration that this Undergraduate Thesis proves to be beneficial for its readers and those in need.

Semarang, January 12, 2024

A handwritten signature in black ink, appearing to read 'Ramalina Ranaivō Mikea Mānitra', with a large, stylized flourish at the end.

Ramalina Rānaivō Mikea Mānitra

ABSTRACT

The development and acknowledgment of children's special protection within the Juvenile Criminal Justice System ("JCJS") have undergone a transformation over time. Children in conflict with the law become juvenile offenders in JCJS, however international legal instruments such as the CRC and Beijing Rules stand as foundational treaties advocating for their protections. Indonesia and Madagascar as State Parties to those legally binding instruments have enacted respectively Law No. 11 of 2012 and Law No. 2016-018 concerning JCJS. The objective of this comparative study is to find the similarities and differences between Law No. 11 of 2012 and Law No. 2016-018 in the protection of children's rights as well as to establish law reform of JCJS in Indonesia and Madagascar. The research method is sociolegal research, with statutory, sociological, historical and comparative approach, using secondary data in the form of primary, secondary and tertiary legal materials, which is analyzed with normative qualitative analysis. The finding and discussion use the legal system theory of Lawrence Friedman as a framework, namely legal structure, legal substance and legal culture. On the one hand, the JCJS of Indonesia and Madagascar presents similarities in the legal structure by establishing special juvenile institutions; in the legal substance by implementing diversion system and octroying fundamental and procedural rights to juvenile offenders; in the legal culture by having traditional values favorable to juvenile offenders' development and rehabilitation. However, they present also differences in the legal structure such as requirements for juvenile institutions; in the legal substance such as minimum age of criminal responsibility and procedural rights of juvenile offenders; while in term of legal culture they do not have significant differences but rather meet challenges with negative social stigma on JCJS and diversion system. On the other hand, law reform is essential for both countries, which can be achieved through the observation of their comparison and the compliance with international standards.

Keywords: *Children's Rights; Indonesia; Juvenile Justice; Madagascar*

ABSTRAK

Perkembangan dan pengakuan terhadap perlindungan khusus anak dalam Sistem Peradilan Pidana Anak (“SPPA”) telah mengalami transformasi seiring berjalannya waktu. Ketika anak melanggar hukum, ia akan disebut anak yang berkonflik dengan hukum (“ABH”) di SPPA, namun instrumen hukum internasional seperti KHA dan Peraturan Beijing tetap menjadi perjanjian dasar yang mengadvokasi perlindungan mereka. Indonesia dan Madagaskar sebagai negara yang telah meratifikasi instrumen yang mengikat secara hukum tersebut telah mengesahkan masing-masing Undang-Undang No. 11 Tahun 2012 dan Law No. 2016-018 tentang SPPA. Tujuan dari studi banding ini adalah untuk mengetahui persamaan dan perbedaan antara UU No. 11 Tahun 2012 dan Law No. 2016-018 dalam perlindungan hak anak serta menciptakan reformasi hukum SPPA di Indonesia dan Madagaskar. Metode penelitian yang digunakan adalah penelitian sosiolegal, dengan pendekatan perundang-undangan, sosiologis, historis dan komparatif, dengan menggunakan data sekunder berupa bahan hukum primer, sekunder, dan tersier, yang dianalisis dengan analisis normatif kualitatif. Hasil dan pembahasan penelitian menggunakan teori sistem hukum Lawrence Friedman sebagai kerangkanya, yaitu struktur hukum, substansi hukum, dan budaya hukum. Di satu sisi, SPPA Indonesia dan Madagaskar memiliki kesamaan dalam struktur hukum dengan mendirikan lembaga khusus anak; substansi hukum dengan menerapkan sistem diversi dan mengekang hak-hak dasar dan prosedural bagi ABH; dalam budaya hukum dengan memiliki nilai-nilai tradisional yang mendukung perkembangan dan rehabilitasi ABH. Namun, terdapat juga perbedaan dalam struktur hukum seperti persyaratan untuk aparat hukum anak; dalam substansi hukum seperti usia minimal pertanggungjawaban pidana dan hak prosedural ABH; sedangkan dari segi budaya hukum tidak memiliki perbedaan yang signifikan namun justru menghadapi tantangan berupa stigma sosial negatif terhadap SPPA dan sistem diversi. Di sisi lain, reformasi hukum sangat penting bagi kedua negara, yang dapat dicapai melalui pengamatan terhadap perbandingan SPPA mereka dan kepatuhan terhadap standar internasional.

Kata Kunci: *Hak Anak; Indonesia; Madagaskar; SPPA*

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LIST OF ABBREVIATIONS

Abbreviation	Meaning
<i>Bapas</i>	Correctional Center (<i>Balai Pemasyarakatan</i>)
Beijing Rules/SMRJJ	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRAJJ) Adopted by the United Nations General Assembly in Its Resolution 40/33 of November 29, 1985
BRSAMPK	Social Rehabilitation Center for Children in Need of Special Attention (<i>Balai Rehabilitasi Sosial Anak Yang Memerlukan Perlindungan Khusus</i>)
CJS	Criminal Justice System
CRC	United Nation Convention on the Rights of Child Adopted by General Assembly in Its Resolution 45/25 of November 20, 1989
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of Their Liberty Adopted by the United Nations General Assembly in Its Resolution 45/113 of December 14, 1990
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

ICRPD	International Convention on the Rights of Persons with Disabilities
JCJS	Juvenile Criminal Justice System
Law No. 11 of 2012	Law No. 11 of 2012 concerning Juvenile Criminal Justice System (<i>Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak</i>)
Law No. 2007-023	Law No. 2007-023 concerning the Rights and Protection of Children (<i>Loi No. 2007-023 relative aux Droits et Protection de l'Enfance</i>)
Law No. 2016-018	Law No. 2016-018 concerning Law No. 2016-018 Concerning of Measures and Procedures Applicable to Juvenile offenders (<i>Loi No. 2016-018 Relative aux Mesures et à la Procédure Applicables aux Enfants en Conflit avec la Loi</i>)
Law No. 23 of 2002	Law No. 23 of 2002 concerning Protection of Child <i>juncto</i> Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 (<i>Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak juncto Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002</i>)
LPAS	Temporary Child Placement Institution (<i>Lembaga Penempatan Anak Sementara</i>)
LPKA	Institution for Specialized Development for Children (<i>Lembaga Perkembangan Khusus Anak</i>)

LPKS	Child Social Welfare Implementation Institutions <i>(Lembaga Penyelenggaraan Kesejahteraan Sosial)</i>
MACR	Minimum Age of Criminal Responsibility
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency Adopted by the United Nations General Assembly in Its Resolution 44/112 of December 14, 1990
Tokyo Rules	United Nations Standard Minimum Rules for Non- Custodial Measures Adopted by the United Nations General Assembly in Its Resolution 45/110 of 14 December, 1990
UDHR	Universal Declaration of Human Rights
UN	United Nations