

Protection of Children`S Rights in Criminal Juvenile Justice System: Comparative Study Between Indonesia and Madagascar



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ABSTRACT: As Ratifying States of the Convention on the Rights of Child, Indonesia, and Madagascar must protect children`s rights in the juvenile criminal justice system. This comparative study aims to analyze the similarities and differences between Law No. 11 of 2012 (Indonesia) and Law No. 2016-018 (Madagascar) as well as establish mutual improvements in both countries` systems. The methods of the research: the type of research is legal doctrinal; the approach used is a statutory approach complemented by a comparative approach; the legal materials used are primary and secondary legal materials; and the method of analysis is a qualitative juridical analysis. Results reveal that both countries have made efforts to prioritize the well-being and rights of children in conflict with the law, incorporating principles such as the best interests of the child, diversion programs, and educational opportunities. However, variations exist in areas such as the age of criminal responsibility, the scope of protection, and diversion systems.

KEYWORDS: Children`s Rights, Indonesia, Juvenile Justice, Madagascar, Convention on Rights of Child

I. INTRODUCTION

The establishment and recognition of children's special protection within the juvenile criminal justice system have evolved, reflecting changing societal attitudes and a deeper understanding of child development and justice. Historically, children were often treated as adults in the criminal justice system, lacking appropriate consideration for their unique vulnerabilities and potential for rehabilitation. When it comes to the juvenile justice system, there is a tension between respecting the child's liberty and taking into consideration their greater vulnerability once they are within the system (Hollingsworth, 2007). It is reasonable to state that, of all the components of juvenile justice, the denial of liberty receives the greatest attention (Doek, 2016). However, significant milestones have paved the way for the establishment of a separate system that prioritizes the well-being and development of juvenile offenders.

One crucial development in the recognition of children's special protection in the juvenile justice system occurred with the establishment of the first juvenile court in Cook County, Illinois, in 1899. The Cook County Juvenile Court introduced a revolutionary approach by diverting children away from the adult criminal justice system and focusing on rehabilitation rather than punishment. It recognized that children should be treated differently due to their distinctive needs and capacities, aiming to address the root causes of delinquency through individualized services and to improve the quality of juvenile justice around the world (Winterdyk, 2002).

International standards for the treatment of juvenile offenders have also played a significant role in advancing children's special protection within the juvenile justice system. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules," were adopted by the UN General Assembly in 1985. These rules guided various aspects of juvenile justice, including diversion, non-institutional measures, and fair treatment, emphasizing the need for individualized responses to children in conflict with the law. As an example, the Beijing Rules have influenced the growth of juvenile justice in Europe (Dünkel, 2016).

Furthermore, the United Nations Convention on the Rights of the Child (hereinafter referred as "UNCRC"), adopted in 1989, has been instrumental in shaping the recognition and protection of children's rights within the juvenile justice system. Indeed, The UNCRC has a strong connection to juvenile justice (Goldson, 2018). The UNCRC underscores the importance of child-friendly justice, fair treatment, and the best interests of the child. It has influenced legal frameworks and practices in numerous countries, fostering the establishment of specialized juvenile justice systems that prioritize the rehabilitation and reintegration of children

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in conflict with the law. The example of the Indian Juvenile Justice statute conforming to the 1989 UNCRC standards is relevant (Saibaba 2012).

The development of children's special protection within the juvenile criminal justice system extends to various countries, including Indonesia and Madagascar. These nations have taken steps to address the unique needs and rights of children in conflict with the law, adapting international standards to their respective contexts.

In Indonesia, the recognition of children's special protection in the juvenile justice system has been influenced by both national regulations and international conventions. The Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred as "Law No. 11 of 2012") emphasizes the importance of diversion, restorative justice, and the best interests of the child in dealing with juvenile offenders (Arliman, 2017). Furthermore, Indonesia ratified the UNCRC in 1990, reinforcing its commitment to safeguarding children's rights within the justice system. Indeed, the examination of Indonesia's juvenile justice system's history is inseparable from its early ratification of the UNCRC (Davies & Robson, 2016). By participating in international conferences on children hosted by the United Nations (UN), such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Indonesian government demonstrates its commitment to and particular attention to the protection of children (Daud & Cahyaningtyas, 2020). These legal frameworks have contributed to the establishment of specialized courts and diversion programs that focus on the rehabilitation and reintegration of young offenders.

Similarly, Madagascar has made efforts to promote children's special protection within its juvenile criminal justice system. Law No. 2016-018 concerning Measures and Procedures Applicable to Children in Conflict with The Law (hereinafter referred as "Law No. 2016-018") provides a framework that aligns with international standards and prioritizes the rights and well-being of children in conflict with the law (RASOLOARIVONY, 2015). This law and the measures for its application reflect the country's commitment to international standards in this area and to the children's rights instruments ratified by Madagascar such as UNCRC (RALAIVITA, 2019). The country has implemented measures such as diversion programs, alternative sentencing, and the establishment of specialized juvenile courts to ensure the effective treatment and reintegration of juvenile offenders.

A comparative study between Madagascar and Indonesia on the protection of children within the juvenile criminal justice system is of great importance. It enables the identification of shared challenges and gaps in each country's approach, facilitates the exchange of knowledge and best practices, promotes cross-cultural learning, and provides knowledge of the different rules and institutions that are compared (Sacco, 1991). By examining similarities and differences, policymakers can address common issues and implement effective strategies to safeguard children's rights. Furthermore, such a study contributes to the advancement of international standards and practices, informing global discussions and policy recommendations for the protection of children in conflict with the law. Indeed, this comparative analysis offers valuable insights for enhancing the juvenile justice systems of Madagascar and Indonesia, promoting the well-being and rehabilitation of young offenders, and supporting the development of more effective strategies for protecting children's rights.

II. RESEARCH PROBLEMS

This article discusses two issues, namely:

1. What are the differences and similarities between Law No. 11 of 2012 and Law No. 2016-018 in the implementation of special protection of children?
2. How can the experiences and lessons learned from Madagascar and Indonesia contribute to the advancement of the protection of children's rights within the juvenile criminal justice system of both countries?

III. RESEARCH METHODS

This study uses legal doctrinal research, which involves a systematic exposition of analysis, and critical evaluation of regulations, principles, concepts, or doctrines, and their interrelationships (Rezah, 2022). The researchers use a statutory approach (Johnny, 2008) and a comparative approach (Peter, 2009) to analyze and obtain information about the issues discussed. Moreover, the legal materials used in this research are in the form of primary legal material, namely Law No. 11 of 2012 and Law No. 2016-018, and secondary legal material (scientific journals, books, and other scientific works) (Soerjono, 2010). The data will be analyzed by using qualitative juridical analysis.

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IV. DISCUSSION

Theoretical Background of the Law No. 11 of 2012 and Law No. 2016-018

1. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System in Indonesia

Law No. 11 of 2012 as a substitution of Law No. 03 of 1997 concerning Juvenile Court, is a significant regulation in Indonesia that governs the treatment, rights, and procedures related to children in conflict with the law. This substitution is due to the fact that the Juvenile Court Law is no longer in accordance with the legal needs of society and has not comprehensively provided special protection for children who conflict with the law (Ariani, 2014). Thus, Law No. 11 of 2012 was enacted to address the special protection of children based on their unique needs and vulnerabilities within the criminal justice system and to ensure their protection, rehabilitation, and reintegration into society. According to Arif Gosita, child protection is an effort that supports the implementation of rights and obligations. A child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means that he is treated fairly and is protected from harmful threats. Efforts to protect children can be a legal action that has legal consequences, thereby preventing children from arbitrary parental actions (Faisal, 2005).

The theoretical background of Law No. 11 of 2012 is rooted in international legal frameworks and principles, particularly those outlined in the UNCRC, to which Indonesia is a signatory. The UNCRC recognizes that children have distinct rights and requires states to establish appropriate legal measures to protect these rights. It emphasizes the importance of treating children in conflict with the law differently from adults and providing them with specialized measures that focus on their rehabilitation and best interests (Davies, 2016).

Law No. 11 of 2012 reflects the principles of restorative justice, diversion, and the best interests of the child. Restorative justice is a fundamental principle that seeks to repair the harm caused by the offense and to restore the relationship between the offender, the victim, and the community. It promotes the idea that the primary focus should be on rehabilitating the child and reintegrating them into society, rather than emphasizing punitive measures (Yunus, 2013).

The law also emphasizes the principle of diversion, which involves diverting children away from formal court proceedings and exploring alternative measures such as mediation, reconciliation, and community-based programs. Diversion aims to address the underlying causes of the offense and to provide children with an opportunity to learn from their mistakes and reintegrate into society without the stigma and long-term consequences of a criminal record (Prasetyo, 2015).

Furthermore, Law No. 11 of 2012 places a strong emphasis on the best interests of the child. It recognizes that decisions and interventions related to children in conflict with the law should consider their age, maturity, individual circumstances, and developmental needs. This principle ensures that their rights and well-being are safeguarded throughout the entire juvenile justice process, promoting their rehabilitation and reintegration into society as productive and law-abiding citizens (Riza, 2021).

The enactment of Law No. 11 of 2012 also acknowledges a change to the system of punishing children. One of the changes is the Institution for Specialized Development for Children (LPKA). In accordance with the implementation of this Law for at least 3 (three) years, because a child who is convicted or deemed to have committed a crime or criminal act, must still be entitled to his rights while in the Special Child Development Institution (LPKA) (Eleanora, 2018).

The theoretical background of Law No. 11 of 2012 reflects the international legal principles of the UNCRC and the recognition that children in conflict with the law require specialized treatment and protection. By incorporating the principles of restorative justice, diversion, and the best interests of the child, the law aims to provide a comprehensive and rights-based framework for addressing juvenile delinquency in Indonesia. It seeks to ensure the protection, rehabilitation, and reintegration of children in conflict with the law, promoting their well-being and prospects within society.

2. Law No. 2016-018 concerning Measures and Procedures Applicable to Children in Conflict with The Law

In the beginning, the provisions about children in conflict with the law were regulated in Ordinance No. 62-038 concerning the Protection of Children. However, the Ordinance was not sufficient due to the fact that it only regulated children in danger in its article 3 (RASOLOARIVONY, 2015). Thus, the Law No. 2016-018 was enacted as a significant legislation that governs the treatment, rights, and procedures related to children in conflict with the law. The theoretical background of this law is rooted in international legal frameworks and principles, as well as the specific needs and challenges faced by children in the criminal justice system in Madagascar.

What characterizes the child is his youth and his vulnerability. Indeed, the child is a being in full growth, an adult in the making, who does not have the means to protect himself alone. Also, the child must be the object of a particular interest and specific protection. It is with this in mind that texts proclaiming the protection of children and their rights have been adopted. In 1991, Madagascar ratified the UNCRC (CRIN, 2009). Law No. 2016-018 aligns with UNCRC as seen in its preamble. It emphasizes

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the protection and well-being of children in conflict with the law. Madagascar, as a signatory to the UNCRC, is committed to upholding the rights of children and ensuring their specialized treatment within the criminal justice system.

It is important to note that in Madagascar's Juvenile Criminal Justice System, there are two terms to identify the juvenile mentioned in Law no. 2016-018, distinctively "*enfant*" and "*mineur*" or "child" and "minor", children are necessarily minors but minors are not necessarily children (ANDRIANAIVONTSEHENO, 2013). Moreover, another distinction regarding the frequency of juvenile criminal acts exists in Madagascar, namely: primo-delinquents (first time delict), intermediary delinquents (several delicts in a limited time), and real juvenile delinquents (permanent and recidivist delict) (MÂLE, 1984).

Law No. 2016-018 recognizes the importance of rehabilitating children in conflict with the law and reintegrating them into society. It acknowledges the need to provide appropriate measures and procedures that focus on their development, well-being, and prospects. By adopting a child-centered approach, the law emphasizes the individual circumstances, rights, and best interests of the child throughout the entire juvenile justice process.

Furthermore, Law No. 2016-018 underscores the significance of community involvement in the rehabilitation and reintegration of children in conflict with the law. It recognizes the role of community organizations, social workers, and other relevant stakeholders in providing support, guidance, and resources to promote the successful reintegration of children into society. This community-based approach aims to create a nurturing and supportive environment that facilitates the positive development of children and prevents their further involvement in criminal activities.

The Law No. 2016-018 also emphasizes the importance of education and vocational training as part of the rehabilitation process for children in conflict with the law. It recognizes the need to provide educational opportunities and skills development programs that empower children to build a better future and contribute positively to society. Additionally, Law No. 2016-018 recognizes the significance of diversion programs as an alternative to formal prosecution and punishment. It encourages the use of restorative justice practices, mediation, and community-based interventions to address the underlying causes of the offense and promote the rehabilitation of children. By diverting children away from the formal court system, the law aims to provide them with opportunities for personal growth, accountability, and the restoration of harm caused by their actions (RALAITSIROFO, 2017).

The theoretical background of Law No. 2016-018 underscores Madagascar's commitment to upholding the rights and well-being of children in conflict with the law. By including child-centered strategies, community participation, education, vocational training, and diversion programs, the law aims to establish a comprehensive framework for addressing juvenile delinquency in Madagascar. Its ultimate goal is to ensure the protection, rehabilitation, and successful reintegration of children, while promoting their rights and enabling them to become responsible and productive members of society.

Similarities and Differences Between Law No. 11 of 2012 and Law No. 2016-018 in the Implementation of the Protection of Children in the Juvenile Criminal Justice System

1. Definitions Of Children In Conflict With The Law

Article 1(3) of Law No. 11 of 2012 states:

"Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime."

Law No. 11 of 2012 in Indonesia defines "children in conflict with the law" as individuals aged 12 to 18 years who commit acts defined as criminal offenses under Indonesian law. This age range sets the parameters for determining the application of the juvenile justice system and differentiates children in conflict with the law from adults. The law recognizes that children within this age range should be treated differently from adults in the criminal justice system due to their unique vulnerabilities and developmental needs.

On the other hand, Law No. 2016-018 in its

Article 3 "A child means any human being under the age of 18" *juncto*

Article 5 "A child is in conflict with the law when he is liable to prosecution for any breach of criminal law" *juncto*

Article 8 "Age of criminal responsibility is set at 13 years",

defines "children in conflict with the law" as individuals aged 13 to 18 years who have allegedly committed an offense punishable by the law. Juvenile delinquency mainly concerns adolescents, even if in a residual way children under the age of 13 can take this path. When the judge finds himself in front of a child, he must verify his age. Minors aged 13 are criminally irresponsible, while those aged 13 to 18 are subject to a special jurisdiction: the juvenile court (RALAITSIROFO, 2017).

The disparity in the defined age ranges reflects different cultural, societal, and legal perspectives on the age of criminal responsibility in Indonesia and Madagascar. It highlights variations in the understanding of when children can be held accountable for their actions and the age at which they should be subject to the juvenile justice system. It is important to note that the age

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ranges specified in the laws do not represent a universally agreed-upon standard (Reichel, 2016). Different countries and legal systems may have varying age thresholds for determining the age of criminal responsibility. By establishing these definitions, both laws aim to ensure that children in conflict with the law receive appropriate protection, care, and rehabilitation within the juvenile justice system. They recognize the need for tailored approaches that consider the age, maturity, and individual circumstances of the child (Cipriani, 2016).

2. Principles of Juvenile Criminal Justice System

Article 2 of Law No. 11 of 2012:

"The Juvenile Criminal Justice System is implemented based on the principles of a. protection; b. justice; c. non-discrimination; d. the best interests of the child; e. respect for children's opinions; f. survival and development of children g. fostering and guiding children; h. proportional; i. deprivation of liberty and punishment as a last resort; and j. avoidance of retaliation".

Article 2 of Law No. 2016-018:

"Fundamental principles, including the best interests of the child, non-discrimination, the right to life, survival and development, the right to expression, and the exceptional nature of detention, must be respected at all stages of the procedure.

The measures taken with regard to a child in conflict with the law must be proportionate to the circumstances, the seriousness of the offense, and the needs of the child, in particular educational and social.

In the event of conviction, the principle of the personalization of the sentence is respected".

Both Indonesia and Madagascar emphasize the principle of considering the best interests of the child throughout the juvenile criminal justice process. This principle ensures that decisions and actions taken regarding the child's case prioritize their overall well-being and development. Additionally, both countries recognize the principle of non-discrimination, promoting equal treatment and protection for all children involved in the criminal justice system, regardless of factors such as race, religion, ethnicity, or gender. They also acknowledge the importance of ensuring the survival and development of children, emphasizing the need to provide appropriate support, opportunities, and interventions that contribute to the child's growth and positive outcomes, regardless of their involvement in the criminal justice system.

Another shared principle is that of proportionality. Both countries emphasize the importance of determining measures that are proportionate to the circumstances, the seriousness of the offense, and the specific needs of the child. This principle ensures that interventions or sanctions are appropriate and fair in response to a child's offense.

While Indonesia explicitly includes the principle of respecting children's opinions in its juvenile criminal justice system, Madagascar's law does not mention it. This suggests that Indonesia places importance on considering the views and perspectives of the child during decision-making processes, while Madagascar's approach might be less explicit in this regard. Furthermore, Indonesia includes the principle of fostering and guiding children as part of its juvenile criminal justice system. This principle implies that efforts should be made to support and guide children towards positive behavior and rehabilitation. On the other hand, Madagascar's law does not specifically mention this principle, indicating a potential difference in their approach to supporting and guiding children in the criminal justice system.

In terms of the use of deprivation of liberty and punishment, Indonesia's law highlights the principle that these measures should be used as a last resort in dealing with juvenile offenders. This principle emphasizes the importance of exploring alternative measures before resorting to incarceration or punitive actions. In contrast, Madagascar's law does not explicitly mention this principle. Similarly, Indonesia includes the principle of avoiding retaliation within its juvenile criminal justice system, promoting a focus on rehabilitation and restorative justice rather than punitive actions driven by revenge. Madagascar's law does not explicitly mention this principle, suggesting a potential difference in their approach to addressing the emotional and psychological aspects of justice for juvenile offenders.

Lastly, Madagascar's law includes the principle of personalization of the sentence, highlighting the importance of tailoring the sentencing to the individual circumstances, needs, and characteristics of the child. This principle emphasizes the significance of individualized approaches to rehabilitation and reintegration. In contrast, Indonesia's law does not explicitly mention this principle, suggesting a potential difference in their approach to addressing the unique needs and circumstances of each juvenile offender.

3. Diversion System Objectives

The diversion process in Indonesia is regulated under Article 6 to Article 15 of Law No. 11 of 2012. While the diversion process in Madagascar is regulated under Article 12 to Article 28 of Law No. 2016-018. It is in the name of the extra-judiciary process. However, for comparative purposes, we will use Article 6 of Law No. 11 of 2012 and Article 14 of Law No. 2016-018.

Article 6 of Law No. 11 of 2012:

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“Diversion aims: a. achieve peace between the victim and the child; b. resolve cases of children outside the judicial process; c. prevent children from deprivation of independence; d. encourage people to participate, and e. instill a sense of responsibility to children.”

Article 14 of Law No. 2016-018:

“The objectives of conciliation are: to suspend the effects of criminal proceedings; to ensure compensation for the damage caused to the victim; to put an end to the disturbance resulting from the offense; to contribute to the social reintegration of the child, author of the offense by emphasizing restorative and non-punitive justice.”

Both laws recognize the importance of diversion as an alternative to formal court proceedings and incarceration for children in conflict with the law. They aim to provide rehabilitative measures that address the underlying causes of criminal behavior and promote the successful reintegration of children into society. In Indonesia, Law No. 11 of 2012 emphasizes the use of diversion programs as an integral part of the juvenile justice system. It encourages the application of diversion measures at various stages of the criminal justice process, including pre-trial, trial, and post-trial phases. Similarly, Law No. 2016-018 in Madagascar recognizes the significance of diversion programs for children in conflict with the law. It promotes the use of diversion measures in the form of conciliation as an alternative to formal prosecution and punishment.

However, there are some differences in the diversion systems of the two laws. In Indonesia, Law No. 11 of 2012 explicitly provides for various diversion options, such as mediation, reconciliation, and community-based programs. It encourages the involvement of multiple stakeholders, including community members and social workers, in the diversion process. In contrast, Law No. 2016-018 in Madagascar does not specifically outline the types of diversion measures available. It only provides reconciliation as a means of diversion process. Additionally, Law No. 11 of 2012 in Indonesia explicitly recognizes diversion as an essential part of the juvenile justice system. It emphasizes the importance of diverting children away from formal court proceedings and exploring alternative measures, such as mediation, reconciliation, and community-based programs. The law underscores the need to address the underlying causes of the offense and focus on the child's rehabilitation and reintegration. Law No. 2016-018 in Madagascar acknowledges the significance of diversion as an alternative to formal prosecution and punishment. However, it may provide fewer specific details or guidance on the operational aspects of diversion programs. The emphasis in the law appears to be more on community-based rehabilitation programs and the involvement of community organizations in the reintegration of children.

4. The Rights Of Child In Conflict With The Law

Article 3 of Law No. 11 of 2012:

“Every child in the criminal justice process has the right: a. treated humanely by taking into account the needs according to their age; b. separated from adults; c. obtain legal assistance and other assistance effectively; d. carry out recreational activities; e. free from torture, punishment, or other cruel, inhumane, and degrading treatment and dignity; f. not sentenced to death or life imprisonment; g. not be arrested, detained or imprisoned, except as a last resort and for the shortest time; h. obtain justice before a Juvenile court that is objective, impartial, and in a session closed to the public; i. identity is not published; j. obtain the assistance of parents/guardians and people trusted by the child; k. obtain social advocacy; l. acquire a private life; m. gain accessibility, especially for children with disabilities; n. get education; o. obtain health services; and p. obtain other rights in accordance with the provisions of the legislation.)”

Article 6 of Law No. 2016-018:

“A child in conflict with the law benefits from fair and humane treatment and a fair trial. All the rights inherent in his person must be respected at all stages of the procedure, in particular: consideration of his best interests in all decisions that concern him; the right to be protected against all forms of discrimination or punishment based on the race, color, sex, language, religion, political or other opinion of the child or of his parents or legal representatives, national, ethnic or social origin, disability, financial situation, medical situation, birth or any other situation; the right of every child to participate in decisions affecting him and in particular the right to be heard in any judicial or administrative proceedings; the right of a child capable of discernment to be heard directly or by a legal representative and to express his opinions freely on any question which interests him, opinions duly taken into consideration having regard to his age and degree of maturity; the right to life, survival and the harmonious development of one's personality; the right to protection against torture and cruel, inhuman or degrading treatment in accordance with the provisions of Law No. 2008-008 of June 25, 2008 on the fight against torture and cruel, inhuman or degrading treatment; the right to be heard with all useful non-coercive measures to facilitate and shorten his testimony; the right not to be unlawfully or arbitrarily deprived of liberty.”

Both laws recognize the fundamental rights of the child, aligning with international standards such as the UNCRC. They emphasize the child's right to life, survival, development, and protection from all forms of violence, abuse, and exploitation. These

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rights underscore the commitment of both countries to safeguarding the well-being and dignity of children within the juvenile criminal justice system. Moreover, both laws emphasize the child's right to legal representation. They recognize that children in conflict with the law should have access to legal aid and assistance to ensure their rights are protected and upheld during legal proceedings. This ensures that children can effectively participate in their defense and have their voices heard. Furthermore, both laws acknowledge the child's right to privacy and confidentiality. They emphasize the importance of preserving the child's identity and ensuring that their personal information is handled confidentially and sensitively. This right aims to protect children from stigmatization, discrimination, and potential harm that may arise from the disclosure of their involvement in the criminal justice system.

In terms of differences, Law No. 11 of 2012 in Indonesia explicitly recognizes the child's right to education and vocational training. It emphasizes the importance of providing educational opportunities to children in conflict with the law as part of their rehabilitation and reintegration process. This provision reflects the recognition that education plays a crucial role in the child's development, empowerment, and prospects. On the other hand, Law No. 2016-018 in Madagascar does not explicitly mention the right to education within the context of the juvenile criminal justice system. While this does not necessarily mean that the right to education is disregarded, it highlights a difference in the level of explicit recognition and emphasis placed on this right within the specific law.

Mutual Contribution Between the Law No. 11 of 2012 and Law No. 2016-018 in Implementing the Protection of Children's right in the Juvenile Criminal Justice System

1. Madagascar to Indonesia

Madagascar's juvenile criminal justice system offers valuable insights and improvements that can contribute to enhancing Indonesia's system based on the identified differences between the two. By analyzing these differences, we can identify areas where Madagascar's system can enhance Indonesia's approach to better protect and support children in conflict with the law.

One significant difference is the age of criminal responsibility. Madagascar sets the age of criminal responsibility at 13, while Indonesia's Law No. 11 of 2012 sets it at 12. Madagascar's lower age of criminal responsibility recognizes the need to provide additional protection and support to younger children, considering their developmental immaturity and vulnerability. Indonesia can learn from this difference by considering the lower age of criminal responsibility to align with international standards and best practices, ensuring that young children are not unnecessarily exposed to the formal criminal justice system.

Furthermore, Madagascar's focus on restorative justice principles can greatly contribute to Indonesia's system. Law No. 2016-018 promotes the repair of harm caused by offenses and the restoration of relationships between offenders, victims, and the community. This approach emphasizes accountability, personal growth, and the reintegration of children into society. Indonesia can benefit from incorporating restorative justice principles into its system, fostering an environment that prioritizes the rehabilitation and reintegration of children in conflict with the law. Indonesia should considerably review its diversion process as under Article 7 paragraph (2) subparagraph an of Law no. 11 of 2012 a child cannot be the subject of a diversionary effort under the terms if the crime committed carries a sentence of at least seven (seven) years in prison. However, the preamble of the CRC states that the basic philosophy of child protection is that "the child needs special protection because of physical and mental inadequacy," so the efforts of non-formal alternative settlement through diversion and restorative justice should be made as much as possible in the children's case and retributive justice retaliation should start to be abandoned and replaced by the alternative punishment (Sinatrio, 2019), instead of basing on proponents of positive law (Amnawary, 2019).

By incorporating these differences and adopting relevant aspects of Madagascar's system, Indonesia can enhance its juvenile criminal justice system. Raising the age of criminal responsibility, promoting community involvement and support, incorporating restorative justice principles, and prioritizing education and vocational training can collectively contribute to a more effective and child-centered approach. These improvements will better protect and support children in conflict with the law, promoting their rehabilitation, reintegration, and overall well-being.

2. Indonesia to Madagascar

Indonesia's juvenile criminal justice system can provide valuable insights and improvements to Madagascar's system based on the identified differences between the two. By analyzing these differences, we can identify areas where Indonesia's system can enhance Madagascar's approach to better protect and support children in conflict with the law.

One notable difference is the age of criminal responsibility. Indonesia's Law No. 11 of 2012 sets the age of criminal responsibility at 12 years old, while Madagascar's Law No. 2016-018 sets it at 13 years old. Indonesia's higher age of criminal responsibility encourages Madagascar to pertain the lower age of criminal of criminal responsibility while inciting the juvenile to a structured educational measure without laxism.

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Another difference lies in the scope of protection and rights afforded to children. Indonesia's Law No. 11 of 2012 places a strong emphasis on the rights of the child, drawing from international conventions such as the UNCRC. This recognition ensures that children in conflict with the law are treated with dignity, respect, and fairness throughout the justice process, among others detention.

Indeed, the number of children in detention remains high in Madagascar; according to statistics from the Ministry of Justice at the end of December 2019, 1052 children were in prison in Madagascar, including 45 girls. 63% of children in prison in Madagascar, i.e. 664 at the end of December 2019, were in preventive detention, and had not yet been tried (RALAIVITA, 2019). Madagascar must take into consideration a stronger implementation of children's rights in its system by adopting a similar rights-based approach, ensuring comprehensive protection of children's rights in line with international standards. By prioritizing the rights of the child, Madagascar can create a more supportive and child-centered juvenile justice system.

Additionally, Indonesia's emphasis on diversion programs and restorative justice principles can greatly contribute to Madagascar's system. Indonesia recognizes the value of diversion as an alternative to formal court proceedings, providing opportunities for rehabilitation and reintegration. By diverting children away from the criminal justice system and towards community-based interventions, Indonesia aims to address the underlying causes of offenses and promote positive behavioral change. It is important to note that Indonesia uses penal mediation in the juvenile justice system, which must be based on Pancasila (Cahyaningtyas, 2018). Madagascar should take the example from Indonesia by enhancing its system by implementing similar diversion programs that focus on restorative justice and penal mediation, thereby allowing for tailored interventions that prioritize rehabilitation and reintegration over punitive measures.

Furthermore, Indonesia's efforts to provide access to education and vocational training for children in conflict with the law can greatly benefit Madagascar's system. Education and skills development are crucial in supporting the rehabilitation and reintegration of children. Indonesia's implementation of various educational programs and vocational training initiatives within juvenile justice institutions demonstrates a commitment to equipping children with the necessary knowledge and skills for their future. Madagascar can improve its system by prioritizing access to quality education and vocational training programs, empowering children, and increasing their prospects for successful reintegration.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

In conclusion, the comparative analysis of Indonesia's and Madagascar's juvenile criminal justice systems reveals both similarities and differences in their approaches to the protection of children's rights and the implementation of measures aimed at their rehabilitation and reintegration. Both countries have made significant efforts to establish legal frameworks that prioritize the well-being and rights of children in conflict with the law. Indonesia's Law No. 11 of 2012 and Madagascar's Law No. 2016-018 demonstrate a commitment to international standards and conventions, emphasizing the best interests of the child, diversion programs, and the provision of education and vocational training.

Despite these similarities, there are also notable differences between the two systems. These differences include the age of criminal responsibility, the scope of protection and rights afforded to children, the diversion system, the definition of children in conflict with the law, and the theoretical background of the respective laws. From a comparative perspective, both countries can learn from each other's experiences and advancements. Indonesia can benefit from Madagascar's emphasis on community involvement, restorative justice principles, and the higher age of criminal responsibility. On the other hand, Madagascar can draw inspiration from Indonesia's implementation of diversion programs, its strong emphasis on the rights of the child, and the provision of education and vocational training opportunities.

Recommendations

To enhance the implementation of the protection of children's rights in their juvenile criminal justice systems, Indonesia and Madagascar should consider several key recommendations. Firstly, harmonizing the age of criminal responsibility with international standards is essential, ensuring a more appropriate approach to dealing with children in conflict with the law. Moreover, strengthening community involvement and collaboration, as well as promoting restorative justice principles, can create a nurturing and supportive environment for rehabilitation and reintegration. Additionally, expanding diversion programs and prioritizing access to education and vocational training will provide tailored interventions and equip children with essential skills for their future. Lastly, establishing robust monitoring and evaluation mechanisms will ensure the systems remain responsive and effective. By implementing these recommendations, both countries can foster a more comprehensive and child-centered approach to juvenile justice, safeguarding the rights and well-being of children involved in the criminal justice system.

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