

# WHO WILL DEFEND US?: PARTICIPATION OF INDONESIAN CHURCHES THROUGH SOCIAL INQUIRY REPORT IN FULFILLING THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW

John Izaac Minotty Pattiwael, S.H.

*John, Jhony & Partners (Attorneys at Law), Indonesia*

---

**Abstract:** Rights and dignity for children are guaranteed by the UN Convention on the Rights of the Child (UN CRC), including for children in conflict with the law (CICL). One basic aspect that needs to be fulfilled in handling CICL case is the reviewing process of the case by relevant and competent party known as Social Inquiry Reports (SIR) that is being stipulated in Beijing Rules 1985 and Tokyo Rules 1990 as subsequent guidelines of the UN CRC. The importance of SIR plays a key role in determining the background of the CICL thus to determine the most appropriate sentencing. Indonesia as state party to the UN CRC also stipulates SIR through the promulgation of Law No. 11/2012 concerning Child Criminal Justice System. Furthermore Christian Conference of Asia (CCA) in 2018 has delivered a communiqué that states the commitment of Churches in Asia to be engaged in tactical action together with government to deal with juvenile justice system. Indonesian Churches as member constituency of CCA has also begun to develop the Child-Friendly Church Movement in conjunction with the current Law, to actively participate in the field of juvenile justice system. Through the Child-Friendly Church Movement, Indonesian Churches shall: Firstly, taking active posture in implementation of the movement in juvenile justice field. Secondly, taking active posture in forming solid cooperation on SIR with relevant government officials. Thirdly, training church's personnel to be able to participate in the process of SIR as required by the Law. Focusing on these 'active postures', the presentation will explore and extrapolate as to how the Indonesian Churches need to implement the movement and the possibilities ahead for the dignity and rights of children.

**Keywords:** Child-rights, Children in conflict with the law, Social Inquiry Reports, Indonesian Churches

---

## Introduction

Children is considered to be a blessing in many religions & cultures around the world, even to an extent that children being treated as symbol of status/social strata that signify prestige among the society. But aside from this 'glowing' reality, we know all too well that there's also the 'dark side' where children must endure violence in all sorts of way that is unimaginable, where they become victim of the society, family, and ironically the justice system itself. Children is expected to act and behave like adults whereas we must bear in mind that children in terms of behavior and psychological development cannot be treated as adults. Jane Fortin (2005) wrote her thought on this issue, "children has a right to be children and not adults." (p. 6), and thus being children, they are most definitely vulnerable and having no awareness of their basic rights and special rights as children to safeguard their wellbeing. In order to fulfill these rights, it is imperative to implement the principle 'for the best interest of children' in every policy and action taken on their behalf.

Christianity viewed children to an extent that children has special place even in the sight of God as mentioned in the Gospel of St. Mark 10: 14, "When Jesus saw this, he was indignant. He said to them: "Let the little children come to me, and do not hinder them, for the Kingdom of God belongs to such as these." Furthermore, the

Corresponding Authors' Email: [jimpattiwael@gmail.com](mailto:jimpattiwael@gmail.com), [johnpattiwael@jjlegalcounsel.com](mailto:johnpattiwael@jjlegalcounsel.com)  
Coordinator of Asia AdvocacyNetwork on Dignity and Rights of Children (AANDRoC) of the  
Christian Conference of Asia.

Christian Conference of Asia in its Consultation held in Jakarta, Rep. of Indonesia (16-20 Sept 2018) has affirmed: “We affirm that children are created in the image of God; they are our present as well as future. Children are in our midst to reveal God’s grand design and plan in our lives. They are signs to the Kingdom of God and heirs of God’s new order. Therefore, any discrimination against children is against the will of God, values of God’s Kingdom and the teachings of the Gospel of Jesus Christ.” (Christian Conference of Asia [CCA], 2019)

The United Nations Convention on the Rights of the Child (1989) (UN CRC) in its preamble also guaranteed the protection of children due to their physical and mental immaturity, and recognize the rights of children, as follows, “Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.”

From these two perspectives (religious perspective and international law perspective) it is clear that children must be guaranteed on their rights and dignity, even more when children are in conflict with the law, especially when they must endure the intricacy of due process of law that more often lead to incarceration/corporal punishment through imprisonment. Whereas the UN CRC and its subsequent governing law: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”) and United Nations Standard Minimum Rules for Non-custodial Measures (“Tokyo Rules) also guaranteed that deprivation of liberty for children is a measure of last resort and for the shortest period of time, also to implement the principle ‘for the best interest of children’ that must be applied to all children, especially for children in conflict with the law, where they must face the possibility of being deprived of their liberty.

Aside from that, the Beijing Rules also devised a special measure taken for child-related cases known as Social Inquiry Reports that will assess the children in conflict with the law with necessary information as to determine most appropriate measure or sentencing. It is hoped that during this data and information collection process, church as Faith Based Organization within the society shall actively participate in giving unbiased information in order to contribute to give a complete and holistic view on children in conflict with the law, that in the end aimed at hindering children of incarceration or corporal punishment based on the principle ‘for the best interest of children’.

Church in general and Indonesian Churches in particular is hoped to be an active participant in cooperating with stakeholders (government agencies) to contribute in the process of acquiring information to be included within the social inquiry reports. In order to participate in this endeavor Indonesian churches, need to implement their child-friendly church movement wholeheartedly in order to be able to contribute in the field child protection.

### **Importance of Church’s Involvement**

The purpose of this paper is to introduce, familiarize and explore the possibilities of Church’s involvement in child protection through its participation in the Social Inquiry Reports as part of the juvenile justice system. The baseline of this paper is the Lutheran thinking on Christian vocation as mentioned by John Witte Jr. (2016), “Every ‘good, descent, and useful’ occupation in which a Christian conscientiously engages should be treated as a Christian vocation. Each vocation was an equally virtuous and effective calling of God, though none was a pathway to salvation. The carpenter and the prince, the mine-worker and the judge, the housewife and the banker – all should accept their Christian responsibility to perform their tasks conscientiously and so far as possible, in the service of God and others. (Howard & Noll, 2016, p. 59)

Based on the Lutheran thinking on Christian vocation, it is inevitable that stakeholders need to work in harmony in the issue of child protection, particularly toward children in conflict with the law, solely for the best interest of children. Church as stakeholder, most certainly have the same struggle to take an active posture in giving

contribution to child protection. Child protection is a common struggle where all member of society (e.g. Church) need to immerse in the global-regional-national cooperation with various stakeholders to contribute no matter how small for the best interest of children.

The World Council of Churches (WCC), has initiated an open invitation to all its member Churches and partners through its 'Churches' Commitments to Children' document that aims to:

- Support effort by churches to prioritize children through a series of proposed common commitments.
- Promote collaborative efforts to improve children live by sharing experiences and skills among WCC member churches, ecumenical partners, and related organizations.
- Raise awareness of resonance that exist between Christian responsibilities toward children and children's right as expressed in the UN Convention on the Rights of the Child, reducing conceptual barriers to joint virtuous action. (World Council of Churches [WCC], 2017)

Rev. Dr. Olav Fykse Tveit, former General Secretary of World Council of Churches (WCC) addressed this issue on the commemoration of 2nd anniversary of the Churches' Commitment to Children and the 30th anniversary of the UN Convention on the Rights of the Child, saying: "In following the example of Jesus, many churches across the world have been putting children back at the center of attention., and acknowledging them as a model for all of us in our faith, hope and love" ("WCC Celebrates the Commitment of Churches towards Children", 2019). Through the Lutheran thinking of Christian vocation as baseline, it is imperative that Indonesian Churches will be able to immerse themselves through their vocation in the field of juvenile justice system.

### **Significance of Social Inquiry Report**

Social inquiry report has been viewed as tool to provide a holistic, fair and unbiased background of children in conflict with the law, due to their vulnerability when they must face due process of law. Lack of knowledge on their rights also contribute to the victimization of children in conflict with the law, where they must endure painstaking process which most likely leads to incarceration/imprisonment. In relation to the principle 'deprivation of liberty is a measure of last resort', social inquiry reports should be considered as one aspect of access to justice that must be fulfilled and guaranteed due to its importance in acting as a natural and effective filter to hinder children from deprivation of liberty or to divert children from criminal justice process.

Ms. Marta Santos Pais in her statement delivered at the World Congress on Juvenile Justice (Geneva, 2015) said: "Access to justice is a fundamental right and also a prerequisite for the protection of children's rights everywhere, including in the justice system. It requires a system that children understand, trust and feel empowered to use. And a system that is ready to act and safeguard children's rights in all context and at all times, and certainly also when children are exposed to violence as victims, witness or alleged offenders. Access to justice is particularly important when children are at risk of criminalization and deprivation of liberty."

The Beijing Rules in its article 16.1 stipulates social inquiry reports as follows: "In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall properly investigated so as to facilitate judicious adjudication of the case by the competent authority."

Furthermore, in its commentary of article 16.1, it is elaborated as follows: "Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel

attached to the court board. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.”

The Tokyo Rules in its article 7.1 also stipulates social inquiry reports as follows: “If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person’s pattern of offending and current offences. It should also contain information & recommendation that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.”

As a comparison, Australia implement social inquiry reports known as pre-sentence reports as follows:

“Pre-sentence reports are taken into account by magistrates when they are sentencing young people. These reports have been a feature of the children’s courts since they were established, and in many jurisdictions’ pre-sentence reports are mandatory if the court is considering sentencing a young person to detention. Pre-sentence reports are known under variety of names, depending on the jurisdiction (social background report, assessment panel report, court report, and so on). Essentially, they are prepared in order to supply background information on the offender and to assist the court in determining the most appropriate way of dealing with a young person.” (Cunneen & White, 2011)

Having the awareness of significance of social inquiry reports as implementation of the principle ‘for the best interest of children’, we need to identify more on the purpose of social inquiries as outlined by the Kenya Probation & Aftercare Service as follows: “In the context of pre-sentence investigations, the aim of social inquiries is to produce information that forms the basis for assessing offenders and advising the courts on the suitability for a particular mode of sentence. Specifically, the aim of social investigations in the light of a pre-sentence report is to:

- Appraise the background, personality and conduct of the offenders in the light of the offence committed and what they think of their ill action
- Identify the criminogenic factors at play (the offender’s risk and needs factors) • Evaluate the seriousness of the offence and the impact on victims in order to determine a proportionate sanction
- Identify the likely impact of a sentence on any dependents (children or any other dependent members of the (extended) family)
- Engage families, employers, partnership organizations and significant others in the community about the offender (“Guidelines for Social Investigations”, 2017)

### **Social Inquiry Reports in Indonesian Context**

Indonesia as state party to the UN CRC recognize the dignity and rights of children as stated in the preamble of Law on Child Protection (Law No. 35/2014): “Children are seedlings, potential, and young generation, successor to the ideals of the struggle of the nation, possessing a strategic role and special traits and characteristic that ensure the continuity and existence of the nation and the state to the future”.

Furthermore, Indonesia has legislated the Law on Juvenile Justice System through Law No. 11 Year 2012, that also acknowledge the existence of social inquiry reports known as Penelitian Kemasyarakatan (Litmas)/community research reports. Gultom (2013) elaborates that such reports consist of:

- Child individual data, family, education, child social information

- Background of the alleged crime committed
- Victim's condition considering bodily & life harm inflicted
- Other consideration deemed necessary
- Diversion report
- Conclusion & recommendation of the Probation Officer

Moreover, Indonesian law on Child Criminal Justice System regulate the mandatory order to police investigator when investigating child in conflict with the law, to seek consideration and suggestion from probation officer through community research reports (Litmas) to be submitted no later than 3 x 24 hours after such request filed by the police investigator (as stipulated in article 27 (1) of Law No. 11 Year 2012). Where it is deemed necessary however, the police investigator may also seek consideration and suggestion from education expert, psychologist, psychiatrist, religious figure, professional social worker or social welfare worker, and other experts (as stipulated in article 27 (2) of Law No. 11 Year 2012).

Regarding the role of probation officer in the community research reports (Litmas), the Juvenile Justice System (Law No. 11 Year 2012) has given the authority to the probation officer to make community research reports (Litmas) and to seek relevant information from various sources such as parents, community, school and police investigator. The information obtained will give an accurate data as basis for recommendation to be considered by the presiding judge in order to give a just verdict by prioritizing the best interest of children principle. (Department of Research & Development of the Ministry of Law & Justice of the Republic of Indonesia [Balitbang Kumham RI], 2017)

The community research reports (Litmas) produced by the probation officer will determine the fate of the children in conflict with the law, because it will continue to be used all the way to trial stage at the district court, and even must be taken into consideration by the presiding judge, where any verdict given without considering the community research reports (Litmas) will be considered null and void (as stipulated in article 60 (4) of Law No. 11 Year 2012).

Considering the importance of community research reports (Litmas) for children in conflict with the law, it is imperative that we must take serious consideration on the quality of the said reports to be well prepared and with a comprehensive result that will be used as recommendation in determining whether the case will be continued to the next stage within criminal justice system or to stop the case and giving other alternative measures. The aim is to divert children in conflict with the law from the criminal justice system, to the greatest extent feasible.

### **Social Inquiry Reports and Participation of Indonesian Churches**

Indonesian Christian as part of the society consists around 11% -15% out of 270.000.000 population, prove a significance in contributing to the implementation of child protection. Indonesian government also encourage faith-based organization (e.g. Church) as part of the community to partake in the common struggle for a better child protection effort in Indonesia, where under the current law on Child Protection, Indonesia has legislated a broader participation of the community (including the Church as community organization) to be involved in the field of child protection (as stipulated in article 25 of Law No. 35/2014 on Child Protection).

In the process of resolving child cases, community must always be involved, in the interest to jointly seek a fair solution for parties, both the perpetrator and the victim by emphasizing restoration without having to implement criminal justice in correctional facility. Under the current law, the community has been given a role and responsibility to actively participate on the protection of children from prevention effort to the process of social

child re-integration, therefore the obligation to implement the juvenile justice system not only rest on the law enforcement agencies but also the society.

Answering the call to partake in the common struggle of child protection effort in Indonesia, the Communion of Churches in Indonesia has initiated the child-friendly church movement that is defined as participation movement of Indonesian Christian to fulfill child's right within the church as concrete contribution in the realization of child-friendly District/Municipality. (Panduan Gereja Ramah Anak, 2019)

In order to implement the child-friendly church movement, several indicators have been devised to measure the implementation of the movement as follows:

- Existence of Child protection policy in Churches/Synods
- Sufficient funding for child-related matters (Min 20 % of the budget allocated)
- Formation of a group/forum that allows child participation in making decisions on their behalf
- Existence of Church-based child protection system
- Sufficient resource within the Church to protect children in contact with the law (Child Victim, Child Witness & Children in Conflict with the Law). (Commission of Guidance and Development of Human Resources-Family Capacity Building of the Protestant Church in western part of Indonesia (Gereja Protestan di Indonesia bagian Barat) Marga Mulya Congregation, 2019)

Furthermore, the Synod of Protestant Church in Western part of Indonesia (Gereja Protestan di Indonesia bagian Barat/GPIB) as member of the Christian Conference of Asia hosted the Asia Regional Consultation on 'Upholding Rights and Dignity of Children' in 2018 that in its final communique states a call to action urging churches to be engaged in tactical action with governments, civil society organizations, faith-based networks and seek professional assistance as well as pool together resources within the churches to deal with juvenile justice system, issue of sexuality, drug abuse, etc. (Asia Regional Consultation, 2018)

### **Recommendation**

Indonesian churches need to address issues that become barrier in the implementation of child protection. The ongoing child-friendly church movement has laid the foundation for Indonesian churches to cooperate fully with stakeholders as a way of moving outside of the confine of the church itself, where even the very definition of church that derived from medieval latin ekklesia, which means: called, summoned, to call out. Therefore, it is imperative that Indonesian churches will adapt themselves to the juvenile justice system particularly in their participation as contributor to social inquiry reports (community research reports/Litmas) in order to give a holistic, unbiased and qualified reports for the best interest of children as embodiment of the Lutheran thinking of Christian vocation.

In order to implement the participation of Indonesian churches, several postures as means of methodology that need to be taken as follows:

- Active posture of the church to implement the child-friendly church movement by raising awareness of the duty and obligation of the church itself to be an active stakeholder in the field of child protection in general;
- Active posture of the church to implement the child-friendly church movement by selecting certain individuals with passion to child protection, to form a multi-disciplinary group to be familiarized with

current laws and regulations pertaining to child protection and juvenile justice system through capacity building in joint program involving relevant law enforcement agencies;

- Active posture of the church to implement child-friendly church movement by strengthening the existing cooperation with relevant stakeholders from law enforcement agencies (e.g. District Police, District Probation Office, Prosecutor Office, Court) and civil society organizations/faith-based organizations (e.g. National communion of churches, regional ecumenical organization, etc.)
- Active posture of the church to implement child-friendly church movement by actively taking part in the social inquiry reports (community research reports/Litmas) to assist the probation officer in giving information regarding children in conflict with the law, to contribute in giving a complete view on the said reports.

### **Conclusion**

I began this paper by citing a question, “who will defend us?” and throughout this paper I have elaborated the baseline of the paper on Lutheran thinking of Christian vocation, legal basis (National & International), efforts, and hopes for Indonesian Churches to participate in social inquiry reports to fulfill the rights of children in conflict with the law as one aspect on access to justice. It will be a long journey ahead, and the child-friendly church movement is in its advent. Therefore, Indonesian churches need to build awareness and capacity building internally and networks with other stakeholders externally.

In the end, Indonesian churches, law enforcement agencies, alongside with the society and stakeholders need to answer that cry for the best interest of all Indonesian children. German Theologian Dietrich Boenhoffer circa 1940 once said: *“the test of the morality of a society, is what it does to its children.”* It is a strong message on child fate to all humankind from an era where the world was in turmoil that still resonate to us living in the restless world today.

### **Reference**

- Asia Regional Consultation on ‘Upholding Rights and Dignity of Children’ Communique. (2018). Retrieved from <https://www.cca.org.hk/wp-content/uploads/2018/09/Communique-Dignity-of-Children.pdf>
- Christian Conference of Asia (CCA). (2019). Upholding the dignity and rights of children. Chiang Mai, Thailand: Santipab Pack-Print Co., Ltd., p. 97
- Commission of Guidance and Development of Human Resources-Family Capacity Building of the Protestant Church in western part of Indonesia (Gereja Protestan di Indonesia bagian Barat) Marga Mulya Congregation. (2019). Membina Jemaat Merespons Tantangan [Developing congregation to respond challenges]. Gejayan, Indonesia: Cakrawala Sketsa Mandiri, p. 109-110.
- Cunneen, C., & White, R. (2011). Juvenile justice: youth and crime in Australia. Victoria, Australia: Oxford University Press, p. 281
- Department of Research & Development of the Ministry of Law & Justice of the Republic of Indonesia (Balitbang Kumham RI). (2017). Kesadaran hukum masyarakat dalam penerapan undang-undang sistem peradilan pidana anak [Public legal awareness in the implementation of juvenile justice system]. Jakarta, Indonesia: Percetakan Pohon Cahaya, p. 70.
- Fortin, J. (2005). Children’s rights and the developing law. Cambridge, United Kingdom: Cambridge University Press, p. 6
- Guidelines for social investigations and pre-sentence reports. (2017). Retrieved from <https://cdn.penalreform.org/wp-content/uploads/2017/07/Guidelines.pdf>
- Gultom, M. (2013). Perlindungan hukum terhadap anak [Legal protection for children]. Bandung, Indonesia: PT. Refika Aditama, p.125

Howard, T.A. & Noll, M.A. (Eds.). (2016). Protestantism after 500 years. NY, United States of America: Oxford University Press, p. 59

Panduan Gerakan Ramah Anak [Child-friendly movement guidance]. (2019). Jakarta, Indonesia: Literatur Perakantas, p. 15.

World Council of Churches. (2017). Retrieved from [https://www.unicef.org/about/partnerships/files/wcc\\_commtmntchildren\\_UNICEF\\_ENG\\_PRODweb.pdf](https://www.unicef.org/about/partnerships/files/wcc_commtmntchildren_UNICEF_ENG_PRODweb.pdf)

WCC celebrates the commitment of churches towards children. (2019, November 20). Retrieved from <https://pres-outlook.org/2019/11/wcc-celebrates-the-commitment-of-churches-towards-children/>