THE IMPACT OF THE RULE OF LAW ON THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN INDONESIA AND AUSTRALIA

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Abstract

This thesis concerns the implementation of the *Convention on the Rights of the Child* (‘the CRC’) in Indonesia: The chasm between theory and practice. Despite the enactment of several laws and regulations aimed at protecting the rights of the child, Indonesia’s implementation of children’s rights remains very limited. The theme of this thesis is that, despite the existence of adequate written laws, a state can fail to achieve an effective implementation of human rights, as exemplified by Indonesia. This thesis will focus on the impact of the rule of law on the holistic well-being of children, a group that Indonesia has acknowledged plays ‘a strategic role’ and is in a ‘unique position [to ensure] the continued existence of the nation’.

The development of the rule of law and its impact on the implementation of the *CRC* in Indonesia will be compared to Australia, a state where the *CRC* has been much better implemented. There is an inextricable link between the rule of law and human rights. The prevailing view is that the rule of law does not depend on written laws; the rule of law is more about the extra-legal aspects of a society, such as culture, socio-economic factors and political factors. In the absence of the rule of law, human rights can only be selectively implemented and enforced.

The rights of the child are a global human rights issue, which is particularly pertinent to Indonesia, a nation with a poor record for implementing children’s rights. Children’s rights are well established in international law, largely due to the adoption of the *CRC*. The *CRC* has provided the greatest contribution to the field of children’s rights and will serve as the focus of this thesis. Apart from being the most
universally ratified human rights convention in history, the CRC expressly recognises a range of children’s rights including civil, political, socio-economic and cultural rights. More importantly, the CRC shifted the responsibility for implementing children’s rights from parents and local communities to State Parties. The CRC is thus an advanced tool for assessing the standard of children’s rights internationally and for implementing change, and will be used to compare the current status of children’s rights in Indonesia and Australia.

Arguably, the issue of children’s rights is complex and the implementation of children’s rights requires a multifaceted approach. This thesis will conclude with recommendations on how Indonesia can move forward to achieve a better implementation of children’s rights.
Preface

When I embarked on my LLM, I wanted my thesis to contribute to the betterment of my country, the Republic of Indonesia. Having worked as an in-house lawyer in a multinational company for 10 years, I have developed a strong interest in the development of the rule of law and law enforcement in Indonesia. As a country with a civil law system, Indonesia relies heavily on its written laws. Although Indonesia has adequate written laws, there are discrepancies when it comes to their implementation.

In considering a topic which may be relevant to a discussion of the rule of law in Indonesia, I became aware that the rule of law is a very broad topic. I chose to focus on the impact of the rule of law on the holistic well-being of children, a group that Indonesia has acknowledged plays ‘a strategic role’ and is in a ‘unique position [to ensure] the continued existence of the nation’ in the Preamble to its Law Number 23 Year 2002 on Child Protection.

From an international perspective, Indonesia has ratified the Convention on the Rights of the Child (‘the CRC’) and accepted international obligations to protect children’s rights. Despite the enactment of several laws and regulations aimed at protecting the rights of the child, Indonesia’s implementation of children’s rights remains very limited. Thus the theme of this thesis is that, despite the existence of adequate written laws, a state can fail to achieve effective implementation human rights, as exemplified by Indonesia.
The development of the rule of law and its impact on the implementation of the CRC in Indonesia will be compared to Australia, a state where the CRC has been much better implemented. I hope that this work will remind the Indonesian people that the rule of law has impacted on the development and rights of Indonesian children, and will continue to do so into the future.

As a final note, although I relied on a variety of sources in writing my thesis, I have tabled only the most important authorities, namely municipal laws, conventions and treaties, United Nations documents, cases, books and journal articles.

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