



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> [✉ dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) [☎ +62 811 7404 455](tel:+628117404455)DOI: <https://doi.org/10.38035/jlph>
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Notary Authority in Apostille Documents to be Used Abroad Through Apostille: Realizing the Ease of Document Legalization in Border Areas, Especially in Indonesia

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Abstract: The legalization of notary authority in Indonesia is a complex problem, with the issuance of an Apostille certificate to certify the authenticity of the signature, the ability of the person who signed it, as well as the identity of the stamp and seal. This is in line with Article 3 of the Convention on the Elimination of Requirements for the Legalization of Foreign Public Documents or the 1961 Hague Convention (Apostille Convention). The authority of Indonesian notaries to conduct apostille on Notary Deeds used abroad is related to the application of the Apostille Convention. The research used is normative juridical research, focusing on the relationship between the arrangement of apostille on documents used abroad and the application of the Apostille Convention. The authority to issue an apostille certificate depends on the individual country's regulations and the nature of the document. The allocation of authority to grant an Apostille depends on the legal nature of the document and the authority or institution that issued it. The proposed amendment to Permenkumham No. 6 of 2023 aims to delegate the authority to affix signatures on Notarus documents used abroad to notaries.

Keyword: Notary, Apostille, Border Area.

INTRODUCTION

In the era of globalization, private relationships between individuals and legal entities from various countries are commonplace. Related to this, documents from one country are required to be used in other countries. Parties who will use documents from a country in another country for their personal interests must first obtain legalization from the authorized agencies. The legalization or ratification of public documents for use in other countries or vice versa before the 1961 Hague Convention (Apostille Convention) is a complicated process. Apostille, especially for border areas, is very beneficial considering the dense circulation of foreign documents in border areas.[1]The ratification of the Apostille Convention was carried out by the Government of the Republic of Indonesia to serve the needs of international business.[2]The legalization method in the Apostille Convention is a new step to accelerate the

process of legalizing public documents between countries, in order to provide convenience for Indonesian citizens (WNI) who want to carry out private legal acts abroad.

After the ratification of the Apostille Convention by the Government of the Republic of Indonesia, all provisions of the Apostille Convention apply to public documents both from Indonesia that will be used in other countries and vice versa. However, in practice in Indonesia, Article 1 letter c of the Apostille Convention also raises the potential for the disclosure of secrets regarding Notary deeds and all information obtained in the context of making the deed as stipulated in Article 16 letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position. The provisions of Article 16 letter f above can be interpreted that the relevant law wants to protect the confidentiality of the Notary deed and the information obtained in the context of making the deed. So by submitting an application to the Director General of AHU of the Ministry of Law and Human Rights to obtain a certificate of authenticity, the contents of the Notary deed requested will have the potential to be leaked.[3] Documents that have been given an apostille become public documents that can be accessed by third parties. Notary Deed consists of deeds that are publicity and non-publicity. If the apostille of the Notary deed is non-public, it will certainly cause legal problems. For example, a third party may access the apostille certificate along with the authentic deed from a private document that holds the contents of the deed and the data of the parties to the deed, i.e. the authentic deed of the Singapore Notary SAL Commissioners of Oaths & Notaries Public for which an apostille certificate No. AC0L7F0KEB has been issued and the Appendix to the Act accessed by the Ministry of Transport Page. The same thing happened with the Alabama State apostille document. This potential risk of inconfidentiality arises against the Apostille document issued by the Director General of General Legal Administration of the Ministry of Law and Human Rights related to the legalization of one stop in Indonesia.

Therefore, the issuance of an Apostille certificate to certify the authenticity of the signature, the competence of the person who signed it, the identity of the seal and the stamp, as according to Article 3 of the Convention on the Elimination of Requirements for the Legalization of Foreign Public Documents or The Hague Convention 1961 (Apostille Convention) is doubtful of the validity of authentic deed documents made by Indonesian Notaries so as to reduce the authority of Indonesian Notaries. The two problems above are the background for conducting a legal study and pouring in the Thesis on the Authority of Notaries in Legalizing Notary Deeds for Use Abroad Related to the Implementation of The Hague Convention 1961 (Apostille Convention) in Indonesia.

METHOD

Therefore, the issuance of an Apostille certificate to certify the authenticity of the signature, the competence of the person who signed it, the identity of the seal and the stamp, as according to Article 3 of the Convention on the Elimination of Requirements for the Legalization of Foreign Public Documents or The Hague Convention 1961 (Apostille Convention) is doubtful of the validity of authentic deed documents made by Indonesian Notaries so as to reduce the authority of Indonesian Notaries. The two problems above are the background for conducting a legal study and pouring in the Thesis on the Authority of Notaries in Legalizing Notary Deeds for Use Abroad Related to the Implementation of The Hague Convention 1961 (Apostille Convention) in Indonesia.

The approaches that can be taken in normative legal research in this study are:[8]

1. Statute Approach

The legislative approach is an approach that is carried out by researching all laws and regulations related to the legal issues being handled.

2. Historical Approach

The historical approach is carried out by examining the background of what is being researched and the development of regulations regarding the legal issues that are being faced. This kind of study is needed by researchers to uncover the philosophy and mindset that gives birth to something that is being researched. This historical approach is necessary if the researcher considers that the expression of philosophy and mindset when something is studied is born, and indeed has relevance to the present.

3. Comparative Approach

A comparative approach is carried out by comparing the laws and regulations of a country with the laws and regulations of one or several other countries regarding the same matter. In addition, it can also be compared in addition to laws and regulations, namely court decisions in several countries for the same case.

4. Conceptual Approach

The conceptual approach departs from the views and doctrines that have developed in legal science. By studying views and doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the problems at hand. Understanding these views and doctrines is the basis for researchers in building legal arguments in solving the problems they are facing.

The type of data source is about where the data is obtained from. Whether it is obtained from direct sources (primary data) or data obtained from indirect sources (secondary data). Accuracy of selection and determination of the wealth of data obtained. As previously explained, the type of normative legal research is a literature study, so the type of data from this study is secondary data.

Data analysis is the activity of deciphering something into its components and then examining the relationship of each component with the overall context from various points of view. The review is carried out in accordance with the objectives of the research being applied. In conducting empirical legal research, it can be done by researching written law and recorded customary law.

To analyze the data, the researcher used content analysis. With the following steps:

1. Surveys aim to get abstracts, know ideas, see the arrangement or organization of writing and also make it easier to remember and understand the content of the writing.
2. Read, read section by section and then look for answers to the questions asked, concentrate on the main idea and the important details that support the main idea;
3. Recite (recall), in this case a pause is made on each part read, then answer questions and mention the important things of the part in question, and end by taking notes. This is done repeatedly to read the chapter;
4. Review, reviewing the entire content of the reading by re-browsing the headings, subheadings, and other important sections. Important parts are usually typed with a concatenated, underlined, bolded, or numbered with numbers or letters.

The practice of appointing a Competent Authority varies depending on the category of documents to be used abroad in accordance with the provisions of article 9 of the Apostolic Convention, i.e. the document is authorized by the authority that understands the document. However, this is different from the practice in Indonesia as explained above, namely all documents including those issued by notaries that will be used abroad must be apostilled at the Ministry of Law and Human Rights as stipulated in the Permenkumham above. Meanwhile, under the Apostille Convention, an Apostille can only be issued by an Authorized Authority appointed/established by the accession State. The Competent Authority is also required to record in the register any Apostille that it has issued. Each Competent Authority must be able to carry out both of these functions effectively.

In the era of globalization, private relationships between individuals and legal entities from various countries are commonplace. Related to this, documents from one country are required

to be used in other countries. Parties who will use documents from a country in another country for their personal interests must first obtain legalization from the authorized agencies. The legalization or ratification of public documents for use in other countries or vice versa before the 1961 Hague Convention (Apostille Convention) is a complicated process. Apostille, especially for border areas, is very beneficial considering the dense circulation of foreign documents in border areas.

With the Apostille Convention, the process of legalizing public documents across countries has become simpler, more effective, and more efficient. In addition, the Apostille Convention provides legal certainty to parties who apply for legalization of documents for the purposes of legal relations at the international level. The Apostille Convention must be applied to public documents that will be used in other countries, one of the public documents according to Article 1 letter c of the Apostille Convention is a public document issued by a Notary. Based on the provisions of Article 1 letter c mentioned above, the Notary deed to be used in other countries must follow the provisions of the Apostille Convention. If used in one's own country, the provisions of the Apostille Convention do not apply to the Notary Deed.

RESULTS AND DISCUSSION

In the era of globalization, private relationships between individuals and legal entities from various countries are commonplace. Related to this, documents from one country are required to be used in other countries. Parties who will use documents from a country in another country for their personal interests must first obtain legalization from the authorized agencies. The legalization or ratification of public documents for use in other countries or vice versa before the 1961 Hague Convention (Apostille Convention) is a complicated process. Apostille, especially for border areas, is very beneficial considering the dense circulation of foreign documents in border areas.

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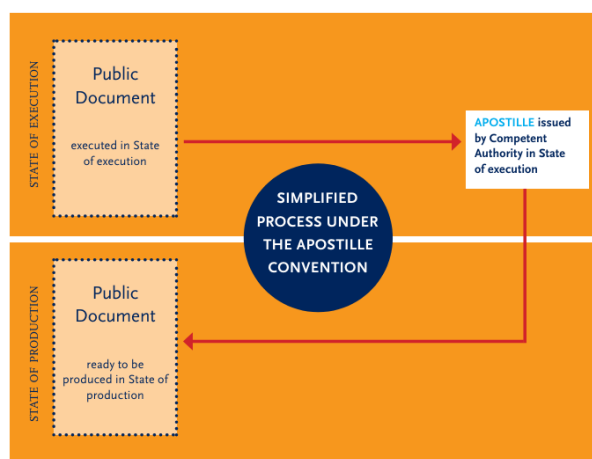


Figure 1. Apostil

Source: How to join and implement the Hague Apostille Convention, HCCH

In Indonesia, in 2021, the Government of the Republic of Indonesia has ratified the Apostille Convention through Presidential Regulation of the Republic of Indonesia Number 2 of 2021 concerning the Ratification of the Convention on the Elimination of the Obligation to Legalize Foreign Public Documents. Furthermore, in 2022 the Ministry of Law and Human Rights of the Republic of Indonesia issued Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 concerning Apostille Legalization Services on Public Documents, to serve as a guideline in the implementation of apostille legalization services. The provisions of Article 2 paragraph (1) of the Regulation of the Minister of Law and Human Rights regulate the implementation of the Apostille carried out by the Minister through the Director General. The ratification of the Apostille Convention was carried out by the Government of the Republic of Indonesia to serve the needs of international business.

In addition, Article 1 letter c of the Apostille Convention also raises the potential for the disclosure of confidentiality regarding the Notary deed and all information obtained in the context of making the deed as stipulated in Article 16 letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position. The provisions of Article 16 letter f above can be interpreted that the relevant law wants to protect the confidentiality of the Notary deed and the information obtained in the context of making the deed. Therefore, by submitting an application to the Director General of AHU of the Ministry of Law and Human Rights to obtain a certificate stating the authenticity of the stamp specimen, signature, and identity in a document that will be used abroad, the content of the document has the potential to be disclosed.

Meanwhile, the provisions regarding Apostille Authorization in a country are determined based on the Apostille Convention. For countries, both as accession countries and countries that are acceding to it, it is necessary to pay attention to the provisions in the convention regarding authorization. In addition to appointing the Competent Authority to issue and register the Apostille under the Convention, the Apostille Convention also regulates the following obligations which may affect the activities of the authorities of the States Parties to the Convention. As provided for in Article 9, the State Party shall take the necessary steps to establish the Competent Authority to issue and register the Apostille. See Relevant authorities including those that require documents originating from other States to be legalized for official use in other States, e.g. courts, other government service agencies, notaries, embassies and others as well as those involved in legalization processes relevant to the object of the apostille.[5]Based on the Apostille Handbook published by HCCH as an SOP for each country acceding to and acceding to the apostille convention, this book regulates how countries determine the authorized institutions related to authorization to issue apostille for apostille objects in accordance with the relevance of the apostille object. With a view to ensuring that the obligations under the Apostille Convention are properly implemented, States Parties should take the following steps.

- a. notify all relevant authorities of each apostille object of the entry into force of the Apostille Convention; and
- b. provide information and training to the relevant authorities in the States Parties to the Apostille Convention on the purpose and implementation of the Apostille Convention, and its impact on existing procedures.

Under the above SOPs, each State Party is required to appoint one or more authorities authorized to issue an Apostille (known as the Authorized Authority). The appointment of the Authorized Authority is essential for the effective operation of the Apostille Convention. Each State is free to determine the identity and number of Authorized Authorities according to the relevance of its apostille object.

COUNTRY	APOSTILLE AUTHORITY
Hungary	Including documents legalized by notary deeds and state civil registration documents; and the Ministry of Foreign Affairs
Indonesian: Australia	Apostille services submitted to public authorities are also provided by private institutions according to the nature of their documents.
Spain	electronic procedure for issuing Apostille and electronic records for its registration. In Spain, the implementation of the electronic Apostille procedure is carried out with a unified system but is spread among the various administrative authorities that have the competence to issue it according to the nature of the document.
France	Electronic procedure for issuing an Apostille and an electronic record for its registration. In Spain, the implementation of the electronic Apostille procedure is carried out with a unified system but is spread among the various administrative authorities that have the competence to issue it according to the nature of the document.
United States	Based on the relevance of the apostille object: A separate Competent Authority has been appointed for each territorial unit (province, state, canton, etc.); and for other States, a separate Competent Authority has been appointed for each major category of public documents (e.g., the Ministry of Justice is authorized to issue Apostilles for court documents); The Ministry of Education is authorized to issue Apostilles for diplomas issued by public institutions; The Ministry of Foreign Affairs is authorized to issue Apostilles for civilian status records; and the professional body for notaries authorized to issue Apostilles for notary deeds.
Indonesia	Through the Ministry of Law and Human Rights

CONCLUSION

The Apostille Convention has simplified the process of legality of documents to be used abroad which previously went through a lengthy process and involved many authorized agencies both from the country of origin of the document and in the country where the document will be used. The Apostille Convention has been implemented by 121 countries. Apostille is the process of legalizing or checking the authenticity of documents that will be used abroad. The Apostille provides assurance that the stamp, signature, identity of the specimen of the document are in accordance with the original for use in the country that is a member of the Apostille Convention, without the need for a conventional legalization process. The Apostille Convention aims to regulate the procedures for the legalization of specimen stamps, signatures, and identities in documents. Meanwhile, the protection of the personal interests of parties who will use documents between countries for business purposes is not regulated in the Apostille Convention. The Apostille Convention has simplified the process of legality of documents to be used abroad which previously went through a lengthy process and involved many authorized agencies both from the country of origin of the document and in the country where the document will be used. The Apostille Convention has been implemented by 121 countries. Apostille is the process of legalizing or checking the authenticity of documents that will be used abroad. The Apostille provides assurance that the stamp, signature, identity of the specimen of the document are in accordance with the original for use in the country that is a member of the Apostille Convention, without the need for a conventional legalization process. The Apostille Convention aims to regulate the procedures for the legalization of specimen stamps, signatures, and identities in documents. Meanwhile, the protection of the personal interests of parties who will use documents between countries for business purposes is not regulated in the Apostille Convention. That apostille practice for documents to be used in transboundary territories is separated according to the nature of the document as provided for

in the Convention. Especially for documents issued by a Notary that will be used abroad, the Apostille should be performed by the Notary concerned. This is in line with the provisions of the Apostille Convention. The regulation of apostille in Indonesia should be regulated by Government Regulation because it includes State administration.

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