



The principle of legal certainty concerning the implementation of legalization according to the apostille convention viewed from an international civil law perspective

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ABSTRACT

The principle of legal certainty is a foundational principle in the field of international law. The law must possess clarity, predictability, and accessibility for all individuals. The Apostille Convention is a multinational agreement that streamlines the procedure of authenticating public documents for international use. This is achieved by eliminating the need for authentication by a diplomatic or consular officer. This research study investigates the concept of legal certainty within the framework of the Apostille Convention. In writing this legal research, the author uses the concept of legal research with a comparative approach to compare the application of Apostille in Indonesia with Apostille in other countries. According to the researcher, implementing the Apostille Convention, already underway in Indonesia, has yet to fulfil reasonable legal assurance regarding international private law. The reason is that international law has a different legal system and regulations; the HCCH organization, as an Apostille melting pot, still needs legal arrangements that apply to all convention countries equally. Indonesia has more documents that can be ratified in submitting an Apostille application, but not all countries are the same in confirming an Apostille document.



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INTRODUCTION

In the current era of globalization, there are certainly many significant changes in society and the country. Various countries in this part of the world are currently in a recent phase dealing directly with the convenience of communicating in the electronic field that is easily accessible to all people. Regarding the influence of digital technologies on development, the World Bank stated in 2021 that they can aid in the reduction of poverty and inequality while fostering inclusive growth (Vinichenko et al., 2022). It is the same with existence in the state government environment; most of the time, the government environment has developed rapidly, as is the case in legal regulations, which continuously develop over time. The system used in this government has begun to move into the digital era, with work programs becoming more practical and efficient in today's technological developments, along with the survival of society in this digital era, of course, by directly creating new legal products for digital systems against Electronic Transactions according to Law 19 of 2016. With the sophistication of today's technology, changing people's lifestyles has become more effective and efficient. Initially, information technology was only used by certain groups, in contrast to the past. The aforementioned report identifies the ten most significant technological advancements that will occur in 2022. Among these are the metaverse and the pervasive implementation of artificial intelligence (World Economic Forum, 2022). Almost all levels of society now use it, both public and private. We take advantage of the sophistication and practicality of government agency information technology to manage all kinds of information, share information and provide practical services, such as public services through government websites and others, likewise, in private offices or companies that use information

technology to manage all kinds of information through online sales transactions (e-commerce) (Bagiastra, 2023).

Similar to the latest information, there are currently new regulations in the process of legalizing foreign public documents that produce legal products through the issuance of Presidential Decree Number 2 of 2021 concerning the Convention on the Abolition of Legalization of Foreign Public Documents or "APOSTILLE" which was first promulgated by President Joko Widodo on January 5, 2021, in line with the provisions of article 12 of the Convention on the Elimination of Requirements for Legalization of Foreign Public Documents (Apostille Convention) which came into effect in Indonesia and was stipulated on June 4, 2022 (Rudi Candra et al., 2022). This decision is a continuation of the Convention on the Elimination of Laws and Regulations Concerning Public Documents, ratified by Presidential Decree Number 2 of 2021. Ratification by Apostille, starting now referred to as "Apostille", is an action on public documents (Djaja & Kristantie, 2023). Forms of validation of official signatures and stamps and official stamps. In implementing this program, the Apostille Convention will be implemented by the competent authorities or bodies, namely the Ministry of Law and Human Rights, through the Directorate General of Legal Administration based on Permenkumham Number 6 of 2022.

To the central Authority available from the Ministry of Law and Human Rights as the competent authority in Using samples sent and stored in the database of the Ministry of Law and Human Rights, check whether, according to the verification results, the contents of the application form and supporting documents uploaded are appropriate, correspondence, approval stamp, when legalizing the official logo against the authorized signature of the requested document with the model in the database of the Directorate General of Public Law Administration and/or electronic correspondence of the electronic signature of the record, the Directorate General of Legal Administration can easily issue an apostille certificate as proof. Foreign public documents are legal and can be used in various countries. It is the goal of the application (Dranisa, 2022).

The purpose of the ratification of this convention is to legalize by removing the requirements specified in the preamble of the Convention for the legalization of foreign public documents by diplomatic or consular authorities. The overture "desiring to abolish the requirement of diplomatic or consular legalization for foreign public documents" (Nurhidayatullah, 2023).

Currently, the extent to which the Ministry of Law and Human Rights of the Republic of Indonesia as the competent authority of the Apostille Convention is ready with the implementation of the E-Apostille, bearing in mind that issuing an E-Certificate requires documents and the signature of the Apostille application, and it is carried out in several stages. In the Apostille Convention, only the authenticity of the stamp and signature was ratified; the contents of the apostilled document are not important in the document legalization process. Based on the provisions of Article 15 of the ITE Law, "every electronic system owner is required to use the electronic system reliably and safely and is responsible for the correct operation of the electronic system". The intention is not to mean Security by the user but by what happened. Electronic data and/or electronic documents are valid and binding evidence (Makarim, 2017).

The ITE Law against regulations stipulates that every legal subject can use an electronic signature (e-signature) with or without an electronic certificate's support. However, electronic transactions in the context of public services must be carried out with an electronic signature supported by an electronic certificate (certificate provider/CSP) to clarify legal entities and protect security. The authenticity of electronic data or documents sent through the system (Makarim, 2016).

The documents required by Apostille are official documents, which are completely written or printed letters signed by an authorized official and stamped and verified by an authorized institution. Official documents and public acts that can be sent as requests for Apostille are Court-related documents, administrative documents (birth certificates, intellectual property certificates, educational certificates, death certificates, marriage certificates, or marriage certificates), documents issued by an Indonesian notary (company establishment documents, property document, property separation document). Qualified accounts, certificates attached to documents, especially signature authentication) (Baskoro, 2022).

Penasthika (2015) in her research state, with the enactment of the Apostille in Indonesia, international relations between countries are established. In this case, the stronger the relationship between countries, the more indirect the relationship between citizens. For a legal relationship according to civil law to occur in the interaction between these countries and so that the implementation

of the legal relationship leads to public legal documents, in practice, papers originating from abroad must first be legalized and easy on-site handling.

Indeed, each independent sovereign territory has a different International Private Law system. By facilitating the legalization process in the event of a civil issue involving more than one country; countries usually establish international cooperation by drafting convention agreements aimed at unification in the field of law, especially civil law (Suparman, 2012).

However, the Apostille Convention only allows the legalization of some documents to be easily carried out in the countries participating in the convention. In practice, the Apostille Convention provides after confirmation. After examination, the competent authority may refuse to issue an Apostille, in particular: An official document not drawn up in a country that has not ratified or is in the process of confirming the Apostille Convention. However, the competent authority which has refused to issue it will refuse to issue an Apostille if the applicant is the country to which the official Documents are Exempted Documents. These documents are expressly excluded from the scope of the Apostille Convention documents. Documents that are not official documents according to the laws of the country of origin.

RESEARCH METHODS

This study employs descriptive normative legal research, utilising multiple approaches including the statute approach, comparative method, and conceptual approach. Normative legal research involves the examination of both the existing state of the law and its ideal state (Leiter, 2022). In writing this legal research, the authors use the concept of legal research with a comparative approach, namely comparing the application of Apostille in Indonesia with Apostille in other countries.

RESULTS AND DISCUSSION

1. Elimination of Legalization Requirements for Foreign Public Documents Applicable in Indonesia.

The legal basis for carrying out the legalization of an apostille contract is as follows: A. Staatsblad 1909 No. 291 concerning Signature Validation; B. Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number 1 of 2017 concerning Procedures for Legalizing Public Documents; C. Decision of the Supreme Court of the Republic of Indonesia dated September 18, 1986 Number 3038K/Pdt/1981; D. Decree of the Minister of Law and Human Rights Number 6 of 20022 concerning Apostille Service for Legalization of Public Documents; e. Attachment to Regulation of the Minister of Foreign Affairs No. 09/A/KP/XII/2006/01 concerning General Guidelines for Foreign Relations and Regional Government Cooperation.

In practice, in legalizing this public document, obtaining an Apostille certificate is carried out in several stages, including applying, verifying it by the Director General of AHU, making payment for the application, and printing the Apostille certificate. It can be done by accessing the apostille service on the AHU website. For an application, it is sufficient to state the identity or identity of the attorney general if the applicant is unable to attend and/or cannot register independently, then fill in which country the document will be used for and the type of document requested for the issuance of the apostille certificate, the name of the official who signed the document and agency that issued the document. The applicant also needs to upload the documents that will be applied for by Apostille (Nurhidayatullah, 2023).

Judging from several provisions of each country, the government in choosing the Competent Authority of each country is different, for example in Indonesia itself, the executor and person in charge of this Apostille Convention are the Ministry of Law and Human Rights of the Republic of Indonesia (Tan, 2021), in comparison with the South Korean state, that in this country by the Korean Foreign Affairs Office (MOFA). MOFA is responsible for issuing Apostille for documents issued in South Korea or papers published abroad to be used in South Korea. The steps for the Apostille process in South Korea are Original documents and copies of documents to be Apostilled, documents with a Public Notary Office or State Court, after which the documents are sent to the Office of Foreign Affairs.

Korea (MOFA) by sending by post, Apostille payment is made, and then documents can be taken; this process takes 1-2 weeks, depending on the number of records to be Apostille and the time needed to verify. In South Korea, the types of documents required for an Apostille are: 1). birth certificate; 2). marriage certificate; 3). Death Certificate; 4). Educational Documents (diplomas, grade

transcripts), 5). Business documents (statements, contracts). In Indonesia, more documents are included in the legalization of the Apostille, containing the 66 (sixty-six) types of documents described above.

There are no regulations governing the determination of limits and types of documents to be legalized; with this difference, countries that are members of the Apostille Convention can deal with this legal certainty the same as other countries.

2. Completion of the Legal Requirements for Legalizing Foreign Public Documents Between Destination Countries in International Private Law.

Applying the Apostille Convention involves several countries, including Indonesia, with different legal systems between countries; of course, this can be a problem concerning how law enforcement is in the event of a conflict between nations. What steps will be taken if a conflict of law occurs during the implementation of the Apostille Convention? There are several roles of international law aimed at achieving peace and prosperity in a country, including the following: 1). International law can be an attempt to maintain peace and ignore all kinds of regulations that are not needed in various rules related to high politics, for example, peaceful wars, affairs between countries that can cause conflict, and human rights related to the rights of states, diplomatic rights and obligations of each. Each in its implementation must follow the rules in international relations that have been mutually agreed upon; a country that has developed cooperation with other countries must have diplomatic relations in the country concerned that have been determined internationally in that country; 2). The task of international law in the daily life of foreign offices and lawyers at the international level is to apply, improve and consider solutions to all problems by using the rules of international law for various issues and related cases.; 3). The purpose of international law is to assess the multiple violations of international law resulting from war or conflict caused by military aggression and the failure of a state to prevent trouble in that country (Udiani et al., 2022).

Research has been carried out that in the legalization of the Apostille Convention, no case examples can be outlined in this research. Suppose there is a conflict of law (legal conflict) in the context of the Apostille Convention in the legal settlement. In that case, it will return to its respective national law meaning that the law will depend on the country that is a party to the conflict; the Apostille Convention was born from an international agreement that regulates the legalization process from various countries; several steps can be taken in a legal settlement in the event of a conflict of law, namely: 1. Interpretation of the Convention is the first step taken to interpret the provisions of the Apostille Convention relating to the conflict. Sometimes the conventions themselves provide guidelines or rules for dealing with conflicts of law; 2. In national law, if the Apostille Agreement does not give clear instructions on how to resolve a conflict situation, the next step is to familiarize yourself with the federal laws of the conflict situation, usually every country that has signed the Apostille Agreement has domestic laws and regulations that set the process, regarding document legalization. These national laws can guide how to resolve conflict situations; 3. Negotiation and consultation if this legal conflict cannot be resolved by interpreting the Apostille Agreement through domestic law. The parties then try to negotiate or negotiate with the countries involved in the conflict; this can be done through negotiations between the authorized officials of each government or using existing dispute resolution mechanisms such as arbitration or conciliation. 4. Settlement through International Institutions If this effort fails, the parties may consider submitting a resolution to the conflict through an authorized international institution, for example, may apply to an international court or international committee body, which of course, has the right to jurisdiction over the legal issues in question.

The settlement of conflict of law in the context of this Apostille is returned to the respective national law countries. Therefore, legal advisers from legal experts or consultants experienced in international law issues in the Apostille Convention are necessary.

CONCLUSION

The study reveals variations in the government's selection of the Competent Authority for each country, as indicated by many statutes. In Indonesia, the Ministry of Law and Human Rights of the Republic of Indonesia is responsible for implementing and overseeing the Apostille Convention, unlike other countries. In South Korea, the responsibility for carrying out such task lies with the Korean Ministry of Foreign Affairs (MOFA).

In order to prevent conflicts pertaining to international law, there are many functions of international law that strive to attain tranquility and economic well-being inside a nation. These functions encompass: International law serves as a means to uphold peace and disregard unnecessary regulations in various areas concerning high-level politics, such as peaceful warfare, potential conflicts arising from inter-country affairs, and human rights pertaining to states' rights, diplomatic rights, and corresponding obligations. Each implementation must adhere to the mutually agreed-upon rules in international relations. A nation that has established collaboration with another nation must possess globally recognized diplomatic ties with the respective government. The role of international law in the daily activities of foreign offices and international lawyers is to enforce, enhance, and address the resolution of all issues by applying the principles of international law to numerous interconnected situations and cases. The objective of international law is to evaluate different transgressions of international law arising from armed conflict or military aggression, as well as the failure of a nation to address internal issues.

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