

The Effect of Implementing Apostille in the Era of Sustainable Development Goals

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ABSTRACT

Indonesia decided to ratify The Hague Convention Abolishing the Requirements for Legalization for Foreign Public Document or the Apostille Convention and appointed the Ministry of Law and Human Rights to administer the apostille service. The ratification carried out by the government is in line with the Sustainable Development Goals targeted by the government. Legalization and waarmarking are one of the authorities of a notary, in this case the notary has a role related to the convention as a general official who legalizes a deed or document for the public. Apostille service is a document legalization service and one of the documents that can be applied for is a notary document. The enactment of the apostille convention aims to simplify the process of legalizing public documents which takes a long time and is expensive and in this implementation the role of a notary is still needed as an authorized official in the legalization of foreign public documents.

KeyWord: Notary, Legalization of Documents, Apostille Convention

1. PREFACE

The term Apostille has been heard since 1961 through the Hague convention or better known as the Apostille Convention. The Apostille Convention is a method to shorten the notarization of signatures. The thing that underlies the signing of the Apostille convention is none other than because there are many countries that require original documents or those that have a valid or legally strong evidentiary power. The process of processing documents for use abroad has a fairly long processing period and considering that each country has a different regulation regarding acceptable documents.

The purpose of the application of this Apostille is to facilitate the process of legalizing documents to be used in foreign countries. The direct implementation of the Apostille is expected to have a good impact on the economy of a country, because the easier and more efficient process of legalizing a document can attract and make it easier for investors to enter and run a business between countries. Documents that must be used abroad must be legalized so that they can be valid in the country concerned. But basically legalization is the process of making conformity legal/official. The purpose of legalization is to prove that the documents made by the parties were indeed signed by the parties and the process was witnessed by a public official, in this case a Notary on the same date as the signing.

Legalization, in this case foreign citizens residing abroad, requires a power of attorney document that is given to their lawyer, which must be signed by a local Notary. The Apostille Convention replaces this time-consuming process with a single certificate issued by the competent authority designated in the country where the public document is to be executed.

If a country has signed the Apostille Convention agreement, of course it expects a change and

supports the process of processing legalization documents to be faster. Other countries that also accede to this convention have the same goal, namely to make it easier for every citizen who wants to carry out legalization arrangements.

This accession to legalization has been carried out by Indonesia, where this accession is contained in Government Regulation Number 2 of 2021 concerning Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Convention on the Elimination of Legalization Requirements for Foreign Public Documents). This Accession Policy can be judged to be in line with the sustainable goals to be achieved by the government which is a common goal determined by the United Nations as the world's agenda for the safety of humans and planet earth. This Sustainable Development Policy has 17 (seventeen) goals with 169 (one hundred and sixty-nine) achievements that have a set deadline to achieve. This Sustainable Development Goals Policy (hereinafter referred to as SDGs) is a global action plan to be achieved and/or applicable from 2016 to 2030 and this agenda is considered a global development agreement.

In connection with the SDGs goals that have been signed by the Indonesian government, they are interrelated with the Apostille policies, one of which is based on the 16 (sixteen) goals, namely Peace, Justice and Strong Institutions Supporting a peaceful and inclusive society for sustainable development, providing access to justice for all and build effective, accountable and inclusive institutions at all levels.

Apostille legalization which has been accessed by Indonesia is an online document legalization service from Indonesia which can then be used for the purposes of completing documents abroad, especially in countries that have joined the apostille convention. Apostille legalization applied in Indonesia provides legalization of 66 (sixty six) types of public documents, one of which is a notary document that can be applied for legalization of this apostille.

In general, legalization is an act of ratifying official documents carried out by authorized Indonesian officials and or notary officials. Legalization is one of the powers of a notary and is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary. The authority of a notary as regulated in this UUJN has certain differences with the regulation of the authority of a notary from another country and/or is different based on the legal system adopted by each country. This certainly has a considerable impact on the enforcement and validity of documents that have been legalized in Indonesia for use abroad.

For this reason, Indonesia has accessed the Apostille convention which aims to be able to assist the community or all citizens in managing documents that require legalization of documents to be used abroad.

2. RESEARCH METHODS

This study uses juridical-normative approach with descriptive nature. Type of data used is secondary data, which ranges from primary, secondary, and tertiary legal materials. This study uses data collection techniques in the form of literature studies, carried out through researching books, laws and legislation, law journals, internet articles, and others that supported this study. The approach used is data analysis in the form of qualitative data that has been obtained.

3. RESULT AND DISCUSSION

Application of the Apostille Convention in Indonesia

The Apostille Convention, or better known as The Hague Convention on the Abolishing Legislation of Foreign Documents, was agreed on October 5, 1961 and signed in The Hague, Netherlands. This Apostille Convention has the aim of removing the conditions for diplomatic or consular legalization of foreign documents that are public documents, as stated in the preamble of the convention, namely “*desiring to abolish the requirement of diplomatic or consular legalization for foreign public documents*”.

Through this apostille convention, foreign public documents between countries use the apostille certificate mechanism which explains the authenticity of the signature of the official issuing the document concerned. It is also intended to facilitate and expedite international relations between countries, especially countries that have ratified or acceded to this apostille convention.

The scope of the apostille convention as stated in Article 1 Paragraph 1 is applicable to public documents and documents that have been made in the territory of one of the participating countries and will be implemented or used in one of the other participating countries.

Document legalization is required for various purposes, including for the purpose of visiting abroad which is a supporting document in a visa application, or requested by agencies at home and abroad in order to obtain the validity of the document.

Indonesia positively welcomes the apostille convention and shows its seriousness in responding to it by ratifying or acceding to the Presidential Regulation of the Republic of Indonesia Number 2 of 2021 on January 5, 2021, and the joining of Indonesia as a country of the Apostille Convention on October 5, 2021. In ratifying the convention, Indonesia provides this apostille service online.

Apostille services based on these international conventions are expected to be the initial stage and a good momentum for the government to further study other international conventions under the auspices of the Hague Conference on Private International Law (HCCH) which are likely to provide good benefits and impacts in carrying out government for the better. The Apostille service was introduced through the official website of the Minister of Law and Human Rights (Menkumham) carried out by the Director General of General Legal Administration (Dirjen AHU) which was officially released on June 14, 2022.

Documents that have been legalized using this apostille service can be used in 121 countries that are parties to the apostille convention. There are also several documents that can be covered by this apostille convention, namely public documents consisting of administrative documents in the form of birth certificates, marriage certificates, death certificates, licensing documents, power of attorney, diplomas. Next are documents from an authority or official related to courts or state tribunals, including those from public prosecutors, court clerks or bailiffs (*huissier de justice*), official certificates attached to documents signed by individuals within their civil authority, such as a certificate that records the registration of a document or records a certain validity period of a document on a certain date and ratification of signatures by officials and notaries, as well as documents issued by a notary.

The Convention does not apply to documents signed by diplomatic or consular officials and to administrative documents directly related to commercial or customs activities. Submission of apostille through the website from the Director General of AHU can shorten the time for document legalization which basically takes quite a long time, but by using this apostille service it becomes faster and the cost of using this service only needs to be issued once and provides simplification of the process of legalizing public documents from the procedures that quite complicated and long.

In general, the legalization process in Indonesia to be used abroad or before ratification must go through several processes, including: legalization at the institution that issues documents, legalization at the Ministry of Law and Human Rights and legalization at the Ministry of Foreign Affairs. For example, it can be mentioned if there is a civil case before the District Court in Jakarta where one of the parties, for example the Defendant, lives abroad and delegates the case to a lawyer in Jakarta. In this case, the client (foreigner) who is abroad cannot directly sign the power of attorney document sent by his lawyer from Jakarta and send it back to his lawyer in Jakarta to be able to apply at the Court in Jakarta. The Power of Attorney document must be signed before a Notary Public, where the client lives or is domiciled. Then the Notary's signature must be legalized by the State Ministry of Justice, then the document (Power of Attorney) is submitted to the Ministry of Foreign Affairs of the country concerned which legalizes the signature of the Ministry of Justice Official. Then after the Power of Attorney is sent to the Embassy or Consulate of the Republic of Indonesia in the country concerned to be legalized once again by the Embassy or Consulate of the Republic of Indonesia concerned. Only then is the complete document (Power of Attorney) to be sent back to the client's attorney in Jakarta with a full stamp and signature of legalization from the relevant agencies to be submitted to the District Court in Jakarta.

The ease in managing legalization which has become simpler is in line with one of the sustainable development goals that have been signed by Indonesia which is listed in the Sustainable Development Goals (SDGs). The SDGs are a global initiative that aims to create a better human life in social and economic aspects and can synergize with the environment. The 70th General Assembly of the United Nations (UN) in September 2015 in New York, United States, became a new historical point in global development. A total of 193 heads of state and world government were present to agree on a new universal development agenda contained in the document entitled Transforming Our World: the 2030 Agenda for Sustainable Development – which contains 17 goals and 169 targets that apply from 2016 to 2030.

Of the 17 goals to be achieved by the government, there are several goals that are quite closely related to the policies of the government, in this case one example is the policy of providing this apostille service. These services are related to SDGs goal number 16, namely peace, justice and strong institutions, which include supporting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Ratification of the apostille convention is a government policy that is closely related to goal number 16 considering that the target expected by the government is to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements, which can strengthen relevant national institutions, including through international cooperation and building accountable and transparent institutions at all levels.

It is said to be closely related considering that the purpose of the ratification is to provide

simple, more effective and efficient services to the public through the Apostille Legalization service from the website of the Director General of AHU online.

There are several benefits that can be obtained by Indonesia when acceding to this convention, among others:

- 1) The legalization procedure becomes simpler because based on the Apostille Convention it will only take one step to legalize public documents originating from abroad;
- 2) It is a realization of Indonesia's commitment to continue to encourage the creation of an open and transparent government;
- 3) Improving the quality of public services by eliminating inefficient bureaucratic procedures; and
- 4) Encouraging an increase in foreign investment because of the convenience obtained in the legalization procedure of various public documents required in the investment sphere.

Besides the ease of filing for legalization, which is enough to be submitted online, there are also some limitations of the Apostille, namely:

- 1) Apostille only authenticates the Origin of The Underlying Public Document. The implications of an apostille are limited, where the apostille only authenticates the Origin of Public Document.
- 2) Apostille does not guarantee the contents of the Underlying Public Document. In other words, Apostille is not related in terms of the content of the Underlying Public Document. Although the document usually states that the content in the document is true and appropriate, the apostille does not touch further (enhance), or add any legal significance to, the legal effect that the signature and/or seal would produce without an apostille.
- 3) Apostille does not guarantee that all the requirements of domestic law, or in other words Apostille does not guarantee that a public document has been executed in accordance with all the provisions of its domestic law (proper execution of the underlying document are met).
- 4) The apostille does not affect the recipient, acceptability, or evidentiary value of the public document. The Apostille Convention does not affect the authority of the destination State to determine the recipient, admissibility and evidentiary value of foreign public documents.
- 5) Apostille does not limit the validity period of the document. The Apostille Convention does not include a time limit for the effect of the Apostille.

Indonesia is known not to be the original participant of the apostille convention, however, if you wish to participate in this convention, you can use the accession method. Accession is a legal act whereby a country which is not the original party to a multilateral treaty (in this case the 1961 Hague convention on Apostille), declares its consent to be bound by the treaty. Then the country sends its charter of accession to the depositary country. In other words, accession means a statement of consent to be bound definitively to a treaty.

With the implementation of the accession, it is hoped that it can become a positive law in Indonesia through Presidential Regulation Number 2 of 2021 concerning the ratification of the Convention on the Elimination of Legalization Requirements for Foreign Public Documents.

The Role of Notaries as Public Officials After the Implementation of the Apostille Convention

As previously noted, the purpose of implementing this apostille convention is to abolish the lengthy and complicated legalization requirements of public documents. With the

implementation of the accession to the convention, it is hoped that it can encourage accelerated changes to Indonesian civil law that are more modern and at the same time harmonious and in line with the civil rights of other countries, especially matters relating to the legalization of public documents.

A notary is a person who has the power of attorney from the government (in this case the power of attorney from the Ministry of Justice) to ratify and witness various agreements, wills, deeds etc. Notaries can be said in carrying out their positions must provide services to people who have an interest in making authentic deeds, and other letters that have perfect evidentiary power.

Based on Article 1868 of KUHPerdata states that:

“An authentic deed is a deed which, in the form determined by law, is made by or before public officials who have the power to do so at the place where the deed was made.”

The authority of a notary in making an authentic deed is regulated in Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN), in addition to having the authority to make an authentic deed, a notary also has other powers as regulated in Article 15 of the UUJN. The authority of a notary based on Article 15 of the UUJN is divided into:

- a) General Authority of Notary Public;
- b) Special Authority of Notary Public;
- c) Authority of Notary which will be determined later.

One of the powers of a notary is the legalization authority. Legalization is the ratification of an underhand letter which is read by a Notary and signed by appearer in front of the Notary at that time to guarantee the certainty of the date of the letter in question. The role of the notary himself in the apostille convention which has been accessed by Indonesia has been stated in the Presidential Regulation on apostille, namely documents that can be requested for apostille through the Ministry of Law and Human Rights, one of which is a public document, namely documents issued by a notary. Notaries are required to register notary personal data and specimens of their signatures as one of the officials who can carry out legalization through the apostille service.

Legalization of documents by a notary so that the document can be used in another country by the party concerned. The authority obtained by a notary cannot be separated from the responsibility for the deed or document he made. The principle of liability of a notary is based on error. The notary can be held accountable if there is an element of error he did. It is necessary to hold proof of the elements of errors made by the notary, including:

- 1) Day, date, month and year facing;
- 2) Time (at) facing;
- 3) The signature listed in the minutes of the deed.

The responsibility of the notary profession in carrying out its position is related to civil liability. The responsibility is not only based on morals but also based on law. This departs from the idea that everything that a person does must be held accountable.

Legalized deeds or documents are usually made under the hand (the contents are not made by a Notary although in practice it is a Notary who has a draft or who types and prints it) which is brought and read/explained and signed in front of a Notary and then recorded in the register book by giving a number. In this case, the notary is not responsible for the contents of the deed

in question, considering that the person who signed the deed or document is a person or party who has been competent and approved the contents of the document or deed.

If the notary in making a deed, then includes something in the deed not as ordered by the parties, then the act based on Article 1365 of KUHPerdata can be said to have committed an unlawful act and if the result of the act causes a loss to another person or his client, the notary is obliged pay compensation for the losses incurred. In addition, the deed or document that has been made by a notary will become legally flawed and only become a deed or document under the hand with imperfect proof power and the related deed and document can be null and void by law.

So in this case, the role of a notary is still needed to carry out legalization, but since the implementation of this apostille service, notaries can legalize public documents more easily and can support government programs to be better in the future. And the notary is still responsible for the legalized documents but is only limited to the match or similarity of the day, date, month, time and signature of the appearer.

4. CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The government's accession to the Apostille Convention has been properly carried out and is in line with the SDGs targets that have been signed by the government and can be expected to further advance government agencies in increasing international cooperation with foreign countries and making use of digital technology. The role of a notary is still needed to legalize several foreign public documents. Accession to the Apostille convention which aims to simplify the formality of ratification of the authenticity of the signatures of the parties that must be carried out before a notary. This authority is in accordance with Article 15 of the UUJN. Documents that still use legalization in general by a notary still have the potential to be valid in the destination country, if the legalization carried out through the apostille service website still cannot run optimally. As well as the legalization sticker that has been issued after the legalization is received, it is hoped that in the future the sticker can be in the form of an electronic sign, so that the public can simply download it from the account registered on the apostille service website.

RECOMMENDATIONS

The government in introducing a new service that aims to make it easier for the community to carry out legalization of public documents must ensure that the program or service must be appropriate and ready to operate so that the service can achieve the goal that actually provides convenience and does not confuse the public over enforcement of these rules and services. The apostille service must be socialized more often to the Indonesian people so that the apostille service can be utilized by the entire community. And in the future, it is hoped that the government will be able to fully implement the apostille service electronically and that applicants whose submissions have been received can download evidence of apostille electronically from the applicant's account. Finally, the government must continue to supervise the implementation of the apostille service considering that this service is still the latest service

and to avoid violations of the potential use of the apostille service, so in this case the government does not only immediately make a rule or service but is also obliged to carry out supervision. The government must also coordinate with the officials involved, such as notaries and other officials to ensure this service can run well.

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