

Strengthening the Indonesian Notaries' Authority in Legalizing Apostille Documents

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Abstract. *As public officials, notaries are given the authority to make authentic deeds and legalize documents signed in the presence of a notary. The Minister of Law and Human Rights Regulation, No. 6 of 2022 Article 2, Paragraph 3, Letter d states that one of the recognized convention state documents is a document issued by a notary. The research applied a normative juridical method. This research links the authority of notaries as public officials in the Apostille legalization service process following the enactment of the Apostille Convention in Indonesia in October 2021. The study reveals the government policy of legalizing Apostille documents by notaries. The results show that notaries, as public officials, have the authority to carry out legalization. Still, after the Apostille Convention enactment, the law regulates explicitly Apostille. Still, it does not explain the legalization process by a notary to obtain an apostille certificate. Hence, the study concludes that no regulation regarding the legalizing of apostille documents by a notary brings implications for the notary's role in obtaining legal protection and certainty.*

Keywords: *Notary Authority; Legalization; Apostille Document; Indonesia.*

1. INTRODUCTION

According to Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary. The notary is a public official with the authority to publish authentic deeds and authority over other matters per the applicable legislation.¹ The position of a notary as a public official is a position that is respected, bestowed by the state in conjunction with the law, and appointed by the Ministry of Law and Human Rights (*Kementerian Hukum dan Hak Asasi Manusia*/Kemenkumham).² The authority given to the notary is obtained from the law of public notary (hereinafter referred to as UUJN/*Undang-Undang Jabatan Notaris*). After his appointment was determined by the Ministry of Law and Human Rights, notaries have autonomy in carrying out their roles and authority, not subject to the influence of the executive or

¹ Andrea Bonomi and Gian Paolo Romano, eds. *Volume XX Yearbook of Private International Law Vol. XX - 2018/2019* (Köln: Verlag Dr. Otto Schmidt, 2020), 57. See also: Vina Akfa Dyani. "Pertanggungjawaban Hukum Dan Perlindungan Hukum Bagi Notaris Dalam Membuat Party Acte." *Jurnal Lex Renaissance* 2, no. 1 (2017): 164.

² James W. Adams Jr, "The apostille in the 21st century international document certification and verification." *Houston Journal of International Law* 34, no. 3 (2011): 502. See Also: van Loon, Hans. "At the Cross-roads of Public and Private International Law—The Hague Conference on Private International Law and Its Work." In *Collected Courses of the Xiamen Academy of International Law*, ed. Chia-Jui Cheng (Leiden, The Netherlands: Brill Nijhoff, 2017), 2-3.

other government agencies. In carrying out his position, the notary obtains this position attributively by law. As a public official, he is delegated the general authority to publish an authentic deed, and the notary is given special authority to legalize the deed.³ The presence of this Apostille is no exception. Notaries have the authority to legalize public documents, including an apostille. The process of legalizing apostilles in Indonesia can be carried out online, and documents that have received this legalization can be used abroad, whether Indonesian citizens or foreigners, gathered at the apostille convention.⁴ The notary authority to do so and the legalization of apostilles vary in each country's legal system.

In condition negotiations involving other nations, public archives are often required. Still, they must be authenticated or legalized before being used abroad. Agreements between countries and between citizens are growing, and diplomacy is growing deeper in cooperative relations between nations and citizens in the era of globalization. Currently, this will also affect the development of relations between citizens.⁵ Currently, there are no limits, especially in the fields of business education, and this shows that there is an interest in establishing a relationship with countries is becoming very necessary and increasingly important, so that in such a situation in society, the legal instrument of international agreements becomes a sacred thing⁶ Therefore, when a nation collaborates with citizens from other countries, the correlation of business law in the context of civil relations will appear. Indonesia has implemented the apostille convention, which is expected to support the creation of a positive climate that can provide certainty to the law and increase the ease of doing business.⁷ Increasing cooperative relations between countries has increased the demand for international public documents, such as death certificates, marriage certificates, birth certificates, education certificates, and other crucial files necessary for daily activities.⁸ In order to provide correlation services between citizens efficiently and effectively, international agreements regarding the legality of files are essential.

Documents such as notarial deeds, power of attorney, and other files must be legalized before being legalized by the destination country.⁹ Apostille services are carried out online so that documents legalized in Indonesia can be recognized for use abroad by both Indonesians and foreign citizens who are members of the Apostille Convention. Apostille is an institution tasked with legalizing signatures, seals, and/or legal stamps in public archives by standardizing samples registered in a public institution. The Ministry

³ Ririn Rismawanti et al. "Apostille Convention: Notary Profession in Transnational Document Legalization." In *1st Brawijaya International Conference on Business and Law (BICoBL 2022)* (Atlantis Press, 2023), 137.

⁴ Erniwati. "Legalisasi Apostille: Legalisasi Online Dokumen dari Indonesia untuk Publik Luar Negeri." *Kantor Wilayah Nusa Tenggara Barat Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, August 5, 2022. <https://ntb.kemerkumham.go.id/berita-kanwil/berita-utama/5119-legalisasi-apostille-legalisasi-online-dokumen-dari-indonesia-untuk-publik-luar-negeri>.

⁵ Ara Annisa Almi. "Mencederai Akses Apostille Convention dalam Mendukung Debirokratisasi Legalisasi Dokumen di Indonesia." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 246.

⁶ Peter Zablud. "The 1961 Apostille Convention-authenticating documents for international use." In *The Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing, 2020), 277.

⁷ Margaretha Uly Pakpahan. "Apostille's Effect on Doing Business in Indonesia." *Journal of Private International Law Studies* 1, no. 1 (2024): 102.

⁸ Stefan Schlauss. "The EU Regulation on Public Documents: A first step towards the abolition of the Apostille in the EU." *ERA Forum* 21, no. 1, (2020): 118.

⁹ Winshery Tan, Asmin Patros, and Rufinus Hotmaulana Hutauruk. "Legalization of Public Documents Through Apostille: A Legal Reform in Public Services." *Jurnal Ilmiah Kebijakan Hukum* 17, no. 3 (2023): 386.

of Law and Human Rights has the authority and power to ratify these documents. This, along with the context of supporting Indonesia to reach the top 40 ranking in the Ease of Doing Business (EoDB) index, the Directorate General of General Laws has accessed the apostille convention to reduce the authentication of documents to be legalized from 5 (five) to just one agency following with Presidential Decree no. 2 of 2021.¹⁰

To overcome problems related to the validation of the document, Indonesia has registered itself as a candidate country to the Apostille Convention since October 5th, 2021. It has been active since June 4th, 2022, after obtaining approval from the nations that had joined the previous Apostille Convention. Indonesia has become a state party to the Convention on the Abolition of Legalization Requirements against Foreign Public Documents (Apostille Convention) from June 4th, 2022. Indonesian Commitment to the apostille convention is then realized through an apostille service held by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights as a Competent Authority designated. Legalization or authentication of files is now increasingly simple and faster to the Apostille Service, which issues apostille certificates. Apostille certificates authenticate the validity of a file's origin and the signature of an official who legalizes particular public files, such as deeds of divorce, power of attorney, diplomas, birth certificates, and death certificates. Apostille guarantees the authenticity of documents through examination carried out by officials who hold authority over several aspects, including the originality of the file, the capability of the person certifying the document, and the identity of the file seal or stamp.¹¹ The presence of the Apostille from the law on the Position of Notaries, the notary here can provide legalization services for all documents, including public Apostille documents, but the legal instruments to support the Apostille legalization service process at the Ministry of Law and Human Rights still use the legal tools of the notary law. Suppose the presence of the Apostille is examined by the law regarding the position of notaries. In that case, the notary here can provide legalization services for all documents, including Apostille documents. However, the legal instruments to support the legalization services to obtain an Apostille certificate at the Ministry of Law and Human Rights for notaries are not yet available and implemented optimally.

2. RESEARCH METHODS

The research methods applied are normative research methods, which are techniques for collecting and documenting primary and secondary data used by researchers to examine factors related to the core problem. Therefore, you can obtain valid data to strengthen a study. The following research utilizes library information in the form of books and scientific journals. Apart from that, researchers will analyze the authority of notaries in legalizing deeds as regulated in Law No. 30 of 2004 concerning Notary positions and other laws and regulations governing the legalization of apostille documents. Approaches often used in legal research include approaches based on history, conceptual approaches, positive legal provisions approaches, and based on facts in the field. In this research, the approach to positive legal provisions is also conceptual.¹² The positive legal approach (statute approach) examines Minister of Law

¹⁰ David Tan. "Apostille Convention and Its Ramification Following the Accession of the Indonesian Legal Practices." *Padjadjaran Jurnal Ilmu Hukum* 8, no. 3 (2021): 314.

¹¹ Andy Putra Rusdianto. "Ruang Lingkup Dokumen Apostille." *Jurnal Abdikarya: Jurnal Karya Pengabdian Dosen Dan Mahasiswa* 5, no. 2 (2022): 133.

¹² Peter Mahmud Marzuki. *Penelitian Hukum*, 5th ed. (Jakarta: Kencana Prenada Media Group, 2009), 26.

and Human Rights Regulation No. 6 of 2022. This study examines the authority of notaries in legalizing apostille documents. At the same time, the conceptual approach explores legal issues that regulate the legalization of Apostilles in providing legal protection and certainty for documents legalized by notaries. In carrying out the analysis, several interpretations are used: a) grammatical interpretation, namely looking for meaning using text grammar; b) historical interpretation, namely analyzing the history of the formation of statutory regulations; c) systematic interpretation is looking for correlations between the enactment of one legal regulation and other legal regulations.

3. RESULTS AND DISCUSSION

3.1. The Authority of Notary in Legalization Apostille Document

Notaries are essential in their authority to issue authentic deeds in line with Article 1868 of the Civil Code. To strengthen this provision, promulgated the Notary Positions law, hereinafter referred to as the Law of Public Notary, regulates various aspects regarding notaries loading their authority.¹³ The position of Notaries in Indonesia is contained in UUJN as a national legal product. UUJN is in line with the application of Article 1868 of the Civil Code, which stipulates that authentic deeds should be issued by or in front of officials general who hold authority following the policies in place making a deed. Article 1868 of the Civil Code stipulates that a public official who is given the authority to issue authentic deeds is a Notary.¹⁴ In line with Article 15, Paragraph (1) and Article 1, Paragraph (7) UUJN, notaries have the authority to issue authentic deeds regarding all activities, agree, and wishes that are required by law or desired by the parties involved to pour in a deed, is called an authentic deed. Notaries must also ensure the time of publishing, archive, and submit a gross copy of the deed. The position of a notary as a public official with the power to publish authentic deeds is to maintain legal clarity by providing instruments with authentic written data.¹⁵ Documents issued by or made before this notary can be used as a legal basis for the parties involved on the legal correlation that can give rise to rights and obligations.

Business relations between countries, especially Indonesia, have a crucial correlation because of the increasing business needs and administrative requirements that require the legality of official documents abroad.¹⁶ Considering the Indonesian position in the Apostille Convention, the procedures for ratification and verification of official files have become increasingly rapid, simple, and effective. The next matter makes business and administrative activities easier for Indonesian citizens who want to deal abroad. To process these documents, one can use the services of a notary to legalize administration and notarial deeds. In the regulatory authority for the legalization process of apostille documents, there is still unclear authority when referring to the provisions of Article 2 Paragraph 3, Letter d of Minister of Law and Human Rights

¹³ Denico Doly. "Kewenangan Notaris Dalam Pembuatan Akta Yang Berhubungan Dengan Pertanahan." *Negara Hukum* 2, no. 2 (2011): 271.

¹⁴ Deviana Yuanitasari. "The role of public notary in providing legal protection on standard contracts for Indonesian consumers." *Sriwijaya Law Review* 1, no. 2 (2017): 180.

¹⁵ Cahyani Aisyiah and Diah Aju Wisnuwardhani. "Notary, public official or public official: implications for the position of notary." *Jurnal Cakrawala Hukum* 13, no. 3 (2022): 245.

¹⁶ Andi Adini Thahira Irianti, Muhammad Ashri, and Iin Karita Sakharina. "Role of Notary Public in Increasing the Ease of Doing Business Index through the Apostille Convention." *Journal of Economics and Business* 2, no. 1 (2019): 3.

Regulation No. 6 of 2022, explaining that officials and notaries carry out signature validation.¹⁷ From the phrase of this provision, it can be interpreted that there is a dualism of authority, where the notary, in carrying out the legalization process, uses his authority based on the Notary Position Law Article 15, Paragraph 2, letter a, which states that the notary has the authority to certify the signature and confirm the date. On the other hand, the Ministry of Law and Human Rights uses its authority based on Article 1 point 1 of the Minister of Law and Human Rights Regulation No. 6 of 2022, which states that the legalization of an apostille is an action to validate an official signature, endorsement of a stamp, and/or official seal in a document requested based on verification. Verify it to make sure:

1. Conformity of the contents on the application form with uploaded supporting documents;
2. Match the official signature, seal, and/or official seal on the document with the specimen inside the Directorate General of Administration database Common law, and/or;
3. The validity of the electronic signature on the electronic document.

The provisions regarding legalization authority are also explained in Article 73, Paragraph (2) of Law No. 30 of 2014 concerning Government Administration, which states that the legalization of copying/photocopying a document can be carried out by other government agencies and/or officials who are authorized based on statutory regulations or authorized by a notary. Meanwhile, the explanation says that what is meant by copy/photocopy also includes the collationnee's copy.

Referring to these provisions, in processing apostille legalization services for notaries at the Ministry of Law and Human Rights, strengthening is needed in the form of regulating the service process for obtaining apostille certificates so that notaries can provide optimal legalization services for apostille documents, including speed in accessing and certainty of obtaining apostille certificate. This arrangement also strengthens the provisions of Article 2 (1) of the Minister of Law and Human Rights Regulation No. 6 of 2022, which states that Apostille is implemented by the Minister of Law and Human Rights through the Directorate General of AHU.

Even though the Minister of Law and Human Rights Regulation No. 6 of 2022, in its consideration, reminded us that to improve optimal service regarding the legalization of public documents, it is necessary to prepare technical guidelines regarding the implementation of apostille services, explained:

1. To improve services to the public in the field of legalization, a foreign public legalization model is needed that is fast, has affordable access, and adapts to global developments (developments in International Civil Law) that bridge civil interests across countries;
2. With the issuance of Presidential Regulation of the Republic of Indonesia, No. 2 of 2021, concerning the Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, it is necessary to prepare technical instructions regarding the implementation of Apostille services in Indonesia.

¹⁷ Karto Kurniawan, Iskandar Muda, and Mohammad Ryan Bakry. "The Sovereignty Aspects In Enactment Of The Apostille Convention In Law No. 6 Of 2022 Permenkumham The Analysis Of The Notaries Role For Legalization Of Apostille Public Documents." *Jurnal Independent* 11, no. 2 (2023): 449.

What is explained in the consideration considering the Regulation of the Minister of Law and Human Rights in the process of Apostille legalization services for notaries has not been implemented optimally.

Indonesia is registered as a participant in the Apostille Convention, so currently, processing the legalization of apostilles no longer involves several agencies; now, only the Ministry of Law and Human Rights handles the legalization of apostilles.¹⁸ Apostille legalization can be done online using the services of a notary registered with the Ministry of Law and Human Rights. This Apostille Convention has been ratified by 124 countries around the world.¹⁹ So, it has automatically been recognized by those 124 countries, including Indonesia, and on June 5th, 2024, there will be 125 out of 193 UN member countries. The last to register is Rwanda. Many nations that have joined the Apostille Convention have felt the benefits of publicizing the document ratification between countries and increasing attention to foreign investment. Therefore, access to the Apostille Convention brings several benefits, including 1). The validation process is getting more accessible because it only requires one step in validating foreign public files; 2) Realizing Indonesian loyalty to support a transparent and open government; 3) Raising the quality of public services by eliminating inefficient bureaucratic stages; and 4) Supports the increase in foreign capital because it makes easier to validate the public files required in the context of investment.²⁰ The Apostille Convention can provide enormous profitability for Indonesia, including increasing international capital attention and making it easier for someone in the Convention member country, especially those who need to legalize the validation of files across countries.²¹

The existence of an apostille convention as a middle way provides a more effective way to legalize public documents.²² The Directorate General of General Legal Administration has joined the Apostille Convention to simplify the document authentication process, which previously involved 5 (five) agencies, to only 1 (one) agency, namely the Ministry of Law and Human Rights, per Presidential Regulation No. 2 of 2021. The following matter is intended to increase the effectiveness of the legalization procedure document. Presidential Decree No. 2 of 2021, in consideration of the statement that in developed public facilities as well as help doing business accommodation in Indonesia, it is necessary to simplify the procedures for legalization of foreign public documents in line with the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Convention on Abolishing Requirements for Legalization of Foreign Public Documents) which appointed at The Hague Conference on Private International Law (The Hague Conference on Private International Law) on

¹⁸ Benny Djaja and Ardilla Juli Kristantie. "The Effect of Implementing Apostille in the Era of Sustainable Development Goals." *International Journal of Application on Social Science and Humanities* 1, no. 1 (2023): 1303.

¹⁹ Direktorat Jenderal Administrasi Hukum Umum. "Petunjuk Praktis Pengajuan Permohonan Layanan Apostille." *Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, June 4, 2022. <https://jabar.kemenkumham.go.id/attachments/article/9252/Petunjuk>.

²⁰ Mutiara Hikmah. "Indonesia dan Konvensi Apostille." *Hukum Online*, March 9, 2021. <https://www.hukumonline.com/berita/a/indonesia-dan-konvensi-apostille-lt60472d0144eec/>.

²¹ Reza Ria Nanda and Rouli Anita Velentina. "Tanggung Jawab Notaris Dalam Legalisasi Dokumen Warga Negara Asing Menurut Konvensi Apostille." *USM Law Review* 5, no. 1 (2022): 271.

²² Ninda Rizkawati. "The Legal Certainty of Notary Deeds in Indonesia Used in Countries Not Joining the Apostille Convention." *Sultan Agung Notary Law Review* 5, no. 3 (2023): 137.

October 5th, 1961, in The Hague, Netherlands.²³ The Apostille Convention aims to eliminate the qualifications for diplomatic or consular approval of foreign public files, as explained in the introduction to the Convention.²⁴

The Apostille Convention officially came into force on January 21st, 1965, and 124 member countries are participating. The provisions in the convention apostille are officially in public files published in the territory of member countries. These countries have included apostille provisions in their laws to facilitate authentication qualifications. Files that contain the meaning of public documents and are legalized abroad must use an apostille. By becoming a member country of this Convention, Indonesia must change the ratification procedures previously carried out by the Indonesian state to comply with the apostille facility.²⁵

In general, the procedure for ratifying documents in Indonesia that are used overseas or vice versa involves ratification at the file publication body, namely at the Ministry of Law and Human Rights and the Ministry of Foreign Affairs, where the procedure consists of several stages. In the first stage, a copy of the deed that is intended to be used abroad must be sent to the Ministry of Law and Human Rights to legalize the notary's signature, then sent to the Ministry of Foreign Affairs to legalize the signature of the Minister of Law and Human Rights, by an employee appointed explicitly for that purpose. Finally, it is sent to the country's embassy, where the deed will be used to legalize the signature of the Ministry of Foreign Affairs official.²⁶ To minimize the administrative stages in international relations, the step taken is to eliminate the qualification for validation of foreign legal documents through several ministries, even though these documents are related to business facilitation support.

Through the Apostille service, the legalization procedure for public files legalized in Indonesia is simplified by eliminating the validation stage by the Ministry of Foreign Affairs and Embassy/Consular. Thus, the legalization process becomes one step through issuing an apostille certificate by the Ministry of Law and Human Rights. Once the apostille certificate is attached to a document, the document can be immediately used in more than 124 member countries of the Apostille Convention.²⁷ Adding an apostille to a document is a way to confirm the validity of the signature in the file against the recipient under the position of another signature.²⁸

The registration application of Apostille and validation of files is the provision of services for citizens who wish to validate signatures, legalize seals, or legal stamps on a public file. This process involves standardization with samples through an institution, namely the Ministry of Law and Human Rights, as the competent or responsible Authority. The authentication process is carried out by a competent authority

²³ Presidential Regulation No. 2 of 2021 concerning the Convention on the Elimination of Legalization Requirements for Foreign Public Documents. See also, David P. Stewart. "Private International Law: A Dynamic and Developing Field." *University of Pennsylvania Journal of International Law* 30, no. 4. (2019): 1124.

²⁴ Rusdianto. "Ruang Lingkup Dokumen Apostille." 234.

²⁵ Ara Annisa Almi. "Mencederai Akses Apostille." 247.

²⁶ Tan Thong Kie. *Studi Notariat & Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru van Hoeve, 2007), 33.

²⁷ Direktorat Jenderal Administrasi Hukum Umum. "Petunjuk Praktis Pengajuan Permohonan Layanan Apostille." *Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, June 4, 2022. <https://jabar.kemenkumham.go.id/attachments/article/9252/Petunjuk>.

²⁸ Rusdianto. "Ruang Lingkup Dokumen Apostille." 235.

appointed by each country. Indonesia has appointed the Ministry of Law and Human Rights c.q. The Directorate of Central Authorities and International Law (*Otoritas Pusat Hukum Internasional/OPHI*) is authorized to issue apostille certificates. Since June 2022, Apostille Certificates can be issued for various documents in various fields, including education, sports, religion, tourism, social, population, police, court decisions, and land. The process can be completed within three working days if the file requirements are complete. However, suppose it is found that qualifications have not been met. In that case, the applicant will be given seven days to complete the documents. Several countries party to the Apostille Convention, including Indonesia, have implemented e-Register for all Apostille Certificates issued. With e-Register, all parties can verify Apostille Certificates by scanning the barcode or via the Competent Authority website.²⁹ The issued Apostille Certificate must be e-register and archived in the Directorate General of General Legal Administration database. E-register is a system for storing information about documents that have been apostilled by participating countries so that participating countries can ensure the validity of apostilled documents. This is to prevent misuse of fake documents.³⁰ An Apostille Certificate is a piece of paper attached to the relevant file. Meanwhile, the Apostille certificate register contains the following:

1. Certificate number and time, as well as
2. Name, position, and name of the institution from the high officer that approved the document.

Apostille is applied to files issued in regions in Indonesia. Later, It will be used in regions of other countries and member countries of the Convention. The files include:

1. Files issued by authorities or high-ranking officials related to legal councils or state courts, including the public prosecutor, clerk of the legal assembly, or bailiff;
2. Administrative files;
3. Documents issued by a notary;
4. The valid certificate attached on file is approved by people with their civil authority, for example, a certificate that documents the registration of a file or those who document the special validity period of a file at a particular time, as well as the legalization of signatures by high officials and notaries.³¹ Apostille certificates do not expire, but of course, you must pay attention to the document's validity period to which the Apostille is attached.

However, the Apostille Convention does not apply to:

1. Documents signed by diplomatic or consular officials;
2. Administrative file directly related to commercial or customs activities;
3. Files issued by the prosecutor's office as the prosecuting body as contained in Presidential Regulation No. 2 of 2021 concerning Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents.³²

²⁹ Direktorat Jenderal Administrasi Hukum Umum. "Petunjuk Praktis Pengajuan Permohonan Layanan Apostille." *Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, June 4, 2022. <https://jabar.kemenkumham.go.id/attachments/article/9252/Petunjuk>.

³⁰ Pratiwi. *Layanan Apostille: Peran Kementerian Hukum Dan Hak Asasi Manusia Dalam Reformasi Legalisasi Dokumen Publik* (Jakarta: BALITBANGKUMHAM Press, 2023), 24.

³¹ Presidential Regulation No. 2 of 2021 Article 2, Paragraph 3 Concerning the Convention on the Elimination of Legalization Requirements for Foreign Public Documents

³² Presidential Regulation No. 2 of 2021 Article 8 Concerning the Convention on the Elimination of Legalization Requirements for Foreign Public Documents.

The implementation of apostille regulations also stipulates that judicial institutions must recognize the validity of public documents made abroad if an apostille certificate has accompanied the document. After the implementation of the Apostille Convention, the traffic of public documents between one country and another is expected to become more straightforward.³³ Accession to the 1961 Hague Apostille Convention reformed the exchange of foreign public documents between various countries and jurisdictions.³⁴ Joining the Hague Conference, Conférence Haye (HCCH), is a bold and prosperous step for Indonesia, and it will help it gain real benefits from membership.³⁵ HCCH could set a requirement for the contracting states that are already using or want to use the e-APP, according to which the members would have to follow uniform standards when issuing electronic apostilles.³⁶ Furthermore, establishing an international digital certificate for the qualification of electronic signatures could solve security issues during verification. The introduction of a common e-register would be ideal for the accessibility of information on apostilles and underlying public documents.³⁷

3.2. Strengthening the Role of Notaries in Legalizing Apostille Documents

The General Authority of a Notary is contained in Article 15 UUJN, which includes the Authority of a Notary to issue authentic deeds regarding all activities, agreements, as well as provisions required by law and/or requested by related parties to be published in authentic deeds. The notary is also tasked with ensuring the timeliness of the deed issuance, archiving the deed, and providing grosse, a copy, and a deed excerpt. As the law regulates, issuing these deeds cannot be delegated or allocated to other parties.

The provisions of Article 1 point (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries (UUJN) emphasize that a Notary is a public official who has the authority to issue authentic deeds as well as other authorities under the provisions of the UUJN or other active policies. Challenges and opportunities in the era of Industrial Revolution 4.0 by notaries must be addressed well and wisely as those powers are given to public officials.³⁸

According to the explanation of Article 15, Paragraph 2, UUJN Notaries also have special authority:

1. Legalize the signature also ensures timeliness on files that are made privately by

³³ Maretha Crisindiana and Nanik Trihastuti. "The Procedure for Legalizing Foreign Public Documents After the Apostille Convention Accession: A Statutory Approach Study." *Corporate Law and Governance Review* 4, no. 2 (2022): 10.

³⁴ Nikolaos Lavranos and Ruth A. Kok, eds. *Hague Yearbook of International Law / Annuaire de La Haye de Droit International, Vol. 26 (2013)* (Leiden, The Netherlands: Brill Nijhoff, 2017), 25.

³⁵ Tan. "Apostille Convention." 314.

³⁶ Senna Aljabar, Tri Prihatinah, and Sri Handayani. "The Strength of the Deed of Deposit for Electronic Contract Conducted by Notary in Electronic System Implementation in Indonesia." *Problems of Legality* 161 (2023): 254. See also, Ika Yuli Agustin and Ghansham Anand. "Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective." *Lentera Hukum* 8 (2021): 49.

³⁷ Nazrin Hasanova. "The Electronic Apostille in Worldwide Circulation of Public Documents." *Baku State University Law Review* 9, no. 1 (2023): 24. See also, Yudha Priyo Kuspratomo, Lailatul Nur Hasanah, and Sri Endah Wahyuningsih. "Making Implementation Deed Electronically Based on Law of Notary." *JURNAL AKTA* 6, no. 4 (2019): 691.

³⁸ Dista Vennesya Mirna Talita and Edith Ratna M.S. "Peran Notaris Sebagai Pejabat Umum Dalam Era Revolusi Industri 4.0." *Notarius* 16, no. 2 (2023): 872.

- registering it on a special book;
2. Documenting all documents made privately by registering them in a special book;
3. to do duplicates of files made under the hand that cover descriptions as written and illustrated in the original files.
4. Carry out verification of duplication compatibility with the original file.
5. Delivering legal outreach related to the issuance of deeds.
6. Issue deeds related to land transactions; or
7. Issuing the auction minutes deed.

When issuing an authentic deed, the notary's authority allows them to formulate the wishes of each party represented in the deed based on what is documented by the notary based on the desires of the parties as the appearing parties.³⁹ In carrying out duties, Notaries obey Article 1868 of the Civil Code, which states that an authentic deed is issued following the format determined by law, by or in front of a responsible public official at the location of the deed published. Indonesian notaries are, to date, qualified as public officials.⁴⁰ The notary's position can be traced through the Notary's Oath and Promise of Office as stated in Article 4 UUJN.⁴¹

The notary also has special authority to correct the mistake of the writing or typographical omissions that appear in the minutia of the deed by issuing a justification report as well as a duplicate of the minutes. The notary must also provide the corrected report and a copy to the relevant parties. Notaries offer services to the interests of other members of the general public who act as related parties in a deed.⁴² A notarial document as an authentic deed should ensure clarity and legal safeguarding for society, serving as the most impeccable evidence.⁴³ Not only the authorities that have stated that notaries have other authorities contained in statutory policies. This authority includes the ability to carry out legalization, watermarking, and copy collation.

These three types of terms have different meanings, namely legalization, which means that the file/letter made privately is legalized before a notary after the file/letter is pronounced or explained by the relevant notary. Therefore, the time of the related files or letters is similar to the time of approval from a notary. Legalization here: the notary maintains the validity of the signatures of all parties whose approval is also legalized. After being explained by the notary, the party who agrees to the file regarding the contents of the letter cannot deny and state that the person concerned does not understand the contents of the file/letter. 1) the time and also signature are past; (2) because a notary describes the content of the deed, the person who signs cannot state that he does not understand what is being signed (crucial for illiterate individuals as

³⁹ Anita Afriana. "Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya." *Poros Hukum Padjadjaran* 1, no. 2 (2020): 247.

⁴⁰ Habib Adjie. *Problematisa Dan Solusi Terpilih Tentang Hukum Kenotariatan Indonesia* (Citra Adiya Bakti, 2020), 15.

⁴¹ Bachrudin. *Hukum Kenotariatan: Perlindungan Hukum Dan Jaminan Bagi Notaris Sebagai Pejabat Umum Dan Warga Negara* (Yogyakarta: Thema Publishing, 2021), 22.

⁴² Habib Adjie and Sri Agustini. "Kode Etik Notaris Menjaga Isi Kerahasiaan Akta Yang Berkaitan Hak Ingkar Notaris." *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (2022): 16.

⁴³ Sumari and Umar Ma'ruf. "The Role of Notaries in Making Limited Liability Company Legal Entity Deeds through the General Legal Administration System." *Jurnal Konstatering* 2, no. 4 (2023): 580.

well as individuals who pretend not to understand); (3) the signatory is the individual whose name is contained in the statement.⁴⁴

Legalization is proof of the files issued and signed by the party, where a notary witnesses the procedure for issuing the agreement. *Waarmerking* is a file/letter related to a list in a special book published by a notary. Generally, *Waarmerking* is carried out if the file/letter has been marked and handled beforehand by each party before being given to the notary. Meanwhile, copy collation *nee* is where a notary makes a copy (rewrites) of a document. The notary copies the original letter made privately as a duplicate containing a description stated in the letter and illustrated in the related letter. In the explanation of 73 Law no. 30 of 2014 concerning Government Administration, what is meant by copy/photocopy also includes the collation *nee's* copy.

In order to carry out their duties, a Notary must have responsibilities, namely:

1. Notaries are required to issue deeds properly and correctly, which means that the deed issued has a legal orientation and the request of the party concerned because of their position.
2. Notaries are required to issue quality deeds, which means that the deed issued is in line with legal regulations and the parties' true intentions, not illusory. The notary should describe the parties concerned, the content accuracy, and the stages of the deed issued.
3. It has a positive effect, which means that the subject which will later legalize the content of the notarial deed has complete facts.⁴⁵

Therefore, notaries must carry out their positions independently and neutrally. In carrying out his office, a notary must always act honestly, trustfully, thoroughly, independently, fairly, and impartially towards any of the parties and be able to safeguard the interests of the parties, doing an original deed that is kept as part of the notarial protocol, the original deed must be accompanied by fingerprints. The issues appeared in the copies or deed extracts from original deeds and the first extract of the original deed, providing services to the community and maintaining confidentiality regarding the deeds they are made.⁴⁶

As public officials, notaries are given the authority to certify signatures and other powers.⁴⁷ A notary has the authority to ratify private deeds that will be used to ratify public documents. The following matter, as explained in article 15 letter a UUJN, is that the notary has special authority to legalize signatures and ensures the timeliness of documents privately by registering them in a special book. A notary's authority can legalize public documents so that the files can be used and then submitted to the country in question. The intended public files include files from institutions or officials related to the courts of judicial institutions in a country, administrative files, notarial deeds, and the legal certificates attached to files signed by the responsible official.⁴⁸ As

⁴⁴ Kie. *Studi Notariat*, 520

⁴⁵ Wiriya Adhi Utama and Ghansham Anand. "Perlindungan Hukum Terhadap Notaris Pengganti Dalam Pemanggilan Berkaitan Dengan Kepentingan Peradilan." *Jurnal Panorama Hukum* 3, no. 1 (2018): 108.

⁴⁶ Amelia Meynanda Puspitasari and Aan Efendi. "Perlindungan Hukum Notaris Pengganti Dalam Pemeriksaan Sebagai Saksi Di Pengadilan Berdasarkan Rahasia Jabatan Notaris." *Jurnal Kajian Konstitusi* 2, no. 2 (2022): 135-169.

⁴⁷ Fitra Deni and Dara Fauziah. "Tanggung Jawab Notaris Terhadap Tindak Pidana." *Otentik's: Jurnal Hukum Kenotariatan* 5, no. 1 (2023): 43.

⁴⁸ Nanda and Velentina. "Tanggung Jawab Notaris." 272.

explained in No. M.HH-01.AH.03.01 of 2022 List of Types of Documents Regulation of the Minister of Law and Human Rights of the Republic Indonesia for Apostille Legalization Services on Public Documents. The files that can be submitted in Indonesia contain validation of 66 types of public files which are used as benchmarks for visa applications as well as marriage registration (mixed marriages), or educational qualifications and training abroad, for example, diplomas and grade transcripts, along with public files.⁴⁹ Public documents that do not have an apostille legalized for use abroad cannot be used in countries participating in the Apostille Convention. Apostille institution will undoubtedly make it easy to validate foreign files publicly in Indonesia, which is increasingly rapid and effective. Documents that have received legalization by the Ministry of Law and Human Rights and have received an Apostille certificate can be valid for all countries participating in the Apostille Convention, and vice versa, documents that have been Apostille legalized abroad which are participants in the Apostille Convention can also be valid in Indonesia.

The procedure for ratifying documents must go through the Ministry of Law and Human Rights, which wants to unify the signature. So that notaries can legalize apostilles, each notary who wishes to carry out their position should send a sample of their signature to the Ministry of Law and Human Rights.⁵⁰ It is just that in Article 2, Paragraph 3, Letters b, c, and d of the Minister of Law and Human Rights Regulation No. 6 of 2022, the Notary's Authority related to apostilles includes a) administrative files, b) files issued by a notary as well as c) valid certificates attached to files authorized by individuals with their civil authority, for example certificates documenting the registration of a file, or those documenting legally time special to a file, as well as legalization of signatures by officials and notaries. Before the apostille convention, the Ministry of Law and Human Rights issued Minister of Law and Human Rights Regulation No. 19 of 2020 concerning the Legalization of Official Signatures on Documents at the Ministry of Law and Human Rights, which has revoked Minister of Law and Human Rights Regulation no. 1 of 2017 which does not specifically regulate the process of legalizing an apostille carried out by a notary, it explains that legalization of an official signature is legalization which is a step to validate the official signature in the requested document based on matching the signature and/or stamp with the specimen. Meanwhile, a specimen is an example of a signature and/or stamp as a comparison for the signature of a government official, institution, or public official appointed by the government, which has been submitted and stored in the Ministry of Law and Human Rights database. In carrying out his office to legalize the Apostille, a notary must send a sample of his signature to the Ministry of Law and Human Rights. Therefore, clarity on government policy is needed to strengthen the role of notaries as public officials who are given the authority to legalize public documents from within the country and abroad to simplify public document authentication. So, notaries need regulation to carry out their positions and get legal protection and certainty in legalizing apostille documents until an apostille certificate is issued. Protection in form

⁴⁹ Winshery Tan. "The Needs For Public Services Relating To The Legalization of Public Documents In Education." *SASI* 28, no. 4 (2022): 634.

⁵⁰ Ahmad Haris Junaidi. "Urgensi Dan Tantangan Dalam Akses Konvensi Apostille," *Jurnal Rechtsvinding* 7, no. 2 (2018): 189.

convenience in access service Apostille, and protection in form certainty law from existing certificate Apostille issued by the Ministry of Law and Human Rights.⁵¹

Regarding the Apostille document that was legalized, Apostille maintains the authenticity of the file by verifying it by the responsible official, including regarding the originality of the file that produces the signature, guaranteeing a personal capacity to sign a form, as well as the identity of the stamp or seal of the file. The Apostille Convention, however, does not verify whether all public documentation is original or content. The competent authority does not have to verify the quality of the files relating to the certificate according to Article 1(2)(d) of the Convention.⁵²

Since the Apostille facility became official in Indonesia on June 4th, 2022, or 10 days after it was ratified, there have been 2,918 applications, of which many files submitted were notarial files related to business activities, educational files such as diplomas and grade transcripts, along with population files.⁵³ A notary in legalization arrangements takes a position as a public official with the authority to legalize signatures and certify documents relating to foreign citizens who require validation of files to be sent through their country to other countries. A notary is still needed to approve a number of files that will be used for foreign public files. The Apostille Convention aims to facilitate legal formalities regarding the originality of each party's signature, which is carried out in front of a Notary Public. The authority organized through the signatory of the file, giving a stamp and the identity stamp on the deed, is an element of affixing a certificate which, as is already contained in Article 4 of Minister of Foreign Affairs regulation No. 13 of 2019.⁵⁴ The apostille convention has abolished, simplified, or eliminated the legalization of document processing public.⁵⁵

4. CONCLUSION

According to the Notary Position Law, notaries are given the authority to legalize documents. In other parts, the Ministry of Law and Human Rights also has the authority to legalize Apostille documents. In carrying out his position to legalize apostille documents, notaries need to be strengthened through regulations in the service process for legalizing apostille documents related to the Ministry of Law and Human Rights. This is to fulfill the considerations considering letter b of Minister of Law and Human Rights Regulation No. 6 of 2022 that these regulations can be implemented optimally. Indonesia's participation in the Apostille Convention has provided the benefit of simplifying the legalization process for published public documents by eliminating the legalization stage by the Ministry of Foreign Affairs and Embassy/Consular Affairs. By issuing an apostille certificate by the Ministry of Law and

⁵¹ Aam Hernita Sriwulan, Jelly Nasser, and Yuliana Setiadi. "Legal Protection of Apostille Arrangements in Relation To the Notary in Indonesia." *European Journal of Research Development and Sustainability (EJRDS)* 4, no. 07 (2023): 43. See also, Winahyu Erwiningsih and Mahrus Ali. "Notary and legal arrangement of criminal law: Legal protection for notaries facing criminal cases." *Corporate Law & Governance Review* 5, no. 2 (2023): 151.

⁵² Rusdianto. "Ruang Lingkup Dokumen Apostille." 234.

⁵³ Erniwati. "Legalisasi Apostille."

⁵⁴ Gravita Sari Rahajaan. "The Obligations for Consularization and Legalization of Credit Guarantee Documents Signed in Singapore based on the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 13 of 2019 concerning Procedures for Legalization of Documents at the Ministry of Foreign Affairs (Case Study of PT X Guarantee Document at Bank Y)." *LEGAL BRIEF* 11, no. 3 (2022): 1471.

⁵⁵ Nanda and Velentina. "Tanggung Jawab Notaris." 272.

Human Rights, which has been attached to a document, the document can be immediately used in more than 124 countries party to the apostille convention of the 193 members of the United Nations (UN), so that it will provide benefits for the convenience of investing in Indonesia.

As public officials, notaries have authority delegated by the state based on attributions from the state through law, and notaries are determined by the Ministry of Law and Human Rights, given the authority to legalize deeds. The laws and regulations governing the legalization of apostilles do not explain the process of apostille legalization services carried out by notaries at the Ministry of Law and Human Rights. In contrast, notaries must be given legal protection and certainty in carrying out their duties in processing the legalization of Apostille documents. Notaries within their role to legalize the Apostille, each notary must send a sample signature to the Ministry of Law and Human Rights. There are 66 types of apostille services carried out by the Ministry of Law and Human Rights. Suppose the public document does not have an apostille legalized. In that case, the document cannot be used in the destination country.

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