

Apostille Convention and Its Ramification Following the Accession of the Indonesian Legal Practices

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DOI: <https://doi.org/10.22304/pjih.v8n3.a1>

Submitted: June 13, 2021 | Accepted: September 17, 2021

Abstract

Indonesia has acceded to the 1961 Hague Apostille Convention in early 2021. The government decided the move based on the current endeavors to enhance the quality of civil services, investment rate, government transparency, and recovery efforts after the worldwide pandemic. At the same time, Indonesia's initiative to accede to the convention is surprisingly unimpressive, considering the benefits for Indonesia due to its urgency. The study reinforces the present perspective of apostille to contribute to the handful of scholarly papers dealing with the apostille in the realm of private international law. This study employed a normative juridical research method with secondary data. The data were analyzed with qualitative analysis methods. This paper examined the issues of the 1961 Hague Apostille Convention from Indonesian perspective and its obstacles in the 21st century. Furthermore, analysis also covered various scientific articles concerning the apostille to increase insight and comprehension of Indonesia's attempt to accede to the Hague Apostille Convention and the subsequent actions that Indonesia should consider. Finally, this study also highlights the further development for the apostille to avoid deficiencies and vulnerabilities.

Keywords: apostille convention, Indonesia, public document.

A. Introduction

An apostille¹ is an official certification granted following the Convention Abolishing the Requirement of Legalization for Foreign Public Documents at the Hague on October 5, 1961, ("the Hague Apostille Convention") to authenticate public documents that are utilized abroad. Apostilles are utilized regularly to verify numerous documents, such as legal contracts, purchase-and-sale agreements, joint operating contracts, drilling agreements, supply agreements, pay orders, field-wide

PADJADJARAN Journal of Law Volume 8 Number 3 Year 2021 [ISSN 2460-1543] [e-ISSN 2442-9325]

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¹ The term "apostille", derived from French law, means *postscript* or *appendage*. Bryan A. Garner (eds), *Black's Law Dictionary*, Minnesota: West Publishing, 2009, p. 112.

operating contracts, confidentiality agreements, diplomas,² and even track records.³ Apostille is considered as a breakthrough in the realm of private international law.⁴

Following the Hague Apostille Convention, the Apostille is appended to documents originating in one nation-state, which will be authorized or apostilled, in order to be introduced to the government (or judiciary) of another nation. Four kinds of documents are specified in the Hague Apostille Convention: (1) court papers; (2) administrative papers (i.e., civil status records; (3) notarial acts; and (4) official certificates, which are fixed on papers signed by authorized individual, such as official endorsements documenting the recording of a document or the fact that it was in existence on a specific date and official and notarial authentications of signatures. In addition, apostilles are appended by “Competent Authorities” appointed by the administration of a nation that is a member of the convention.⁵ A record of these officials is kept by the Hague Conference on Private International Law. Usually, delegated officials include cabinet ministries, missions, legally commissioned tribunals, and regional authorities.⁶

² To be distinguished from nostrification (an act of conferring recognition and equivalency to a degree from a foreign university), which happens only after one could legalise, authenticate or apostillise the foreign diploma.

³ James W. Adams Jr., “The Apostille in the 21st Century: International Document Certification and Verification”, *Houston Journal of International Law*, Vol. 34, No. 3, 2012, p. 520.

⁴ Private international law is the expression used in Indonesia to describe private legal relationships with foreign components. It is referred to as a conflict of laws in the United States and the United Kingdom. In Indonesia, private international law primarily concerns the choice of law or applicable law. In Indonesia, private international law determines the law Indonesian courts or authorities must apply to cases of private relations with foreigners, due to parties, properties, and transactions are located in different countries or involve different nationalities. The extent of private international law in Indonesia is narrower than other countries, particularly Europe, where regulations on choice of court and execution of foreign judgments are also in place. The limited scope of Indonesian private international law stems from the law's primary sources, namely Articles 16, 17, and 18(1) of *Algemene Bepalingen van Wetgeving voor Nederlandsch Indie* (AB) or General Provisions of Legislation for the Dutch East Indies. The sources of Indonesian private international law are legislations; customary law or usage; jurisprudence; treaties or international conventions ratified; and doctrine (legal theories or jurisprudence). The sources of private international law are derived from both the Dutch colonial and post-independence eras –mostly come from the former. The legitimacy of colonial law in post-independence Indonesian legal system is based on Article II of the Transitional Provisions of the (pre-amended) 1945 Constitution. Although the transitional provisions of the Constitution only validate state institutions and regulations of the colonial era, other sources of law, including Dutch jurisprudence and doctrine, practically remain effective unless they violate Indonesia's public policy or have been revoked by newer instruments of cases. See Afifah Kusumadara, *Indonesian Private International Law*, Oxford: Hart Publishing, 2021, p. 2.

⁵ James W. Adams Jr., *op. cit.*, p. 521.

⁶ Some states designate one or more offices to become Competent Authorities to deal with issues of apostillisation. For example, the UK designates the Legalisation Office of the Foreign, Commonwealth & Development Office (FCDO) as the only institution. In contrast, the US, due to the federal government system, has numerous competent authorities. They are, among others, the US Department of State Authentication Office to affix apostilles to documents issued by Federal bureaus of the US; the US Department of State, Office of Consular Affairs, Passport Services, Vital Records Section to affix apostilles to Consular Reports of Birth, Death, and Marriage –or US Citizens and Administration; the Clerks and Deputy Clerks to issue apostilles on papers issued by tribunals; and the Public documents issued by US states, the District of Columbia, and other US jurisdictions are authorised with an apostille appointed officials in any

To be acceptable for an Apostille, a document needs to be issued or confirmed by an official known by the authority that will issue the Apostille. The Apostille certificate includes the ten elements of apostillization. The Apostille certificate may stamp or issue paper comprising of ten standard fields. The notice may be affixed on the document, including the reverse or back of the paper, or the notice may be appended to the paper as an *allonge* or piece of paper attached to the document. The result of an apostille addition to a document is to attest the authenticity of the official's signature on the document for beneficiaries in another signatory country.⁷

The purpose of the apostille is to accredit the authenticity of the signature, the capacity of the signatory, and the integrity of the seal or stamp on the document [See Art. 5, Hague Apostille Convention 1961]. It renders a simplistic way to verify foreign public papers to bypass ostensibly limitless certifications.⁸ It relieves the weight entrusted on missions both domestically and abroad.⁹ A competent authority that gives an apostille certificate is usually established in a state agency of a member nation. The certificate (apostille) of the competent authority is needed to confirm a public document. An addition by the competent authority of an apostille to a public paper works serves as an 'authentication of the signature'. The paper may be utilized in other member nations (including the judiciary) without additional legalization. Nevertheless, an apostille does not accredit the trustworthiness of a document's contents. Therefore, in trial or arbitration, an appropriate bench or assises may still evaluate acceptability and the power of the document.¹⁰

Prior to the Hague Apostille Convention, anyone who demands the legalization of public records to be accepted abroad needs to legalize document to multiple officials of the corresponding authorities. This is time-consuming and costly to a person or corporation and limiting the corresponding administration's plans to improve foreign direct investment to their own state.¹¹ The 1961 Hague Apostille

jurisdiction, usually the state Secretary of State's office. Hague Conference Confèrene Haye (HCCH), "Authorities (per Party)", <https://www.hcch.net/en/instruments/conventions/authorities>, accessed on June 2021.

⁷ James W. Adams Jr., *op. cit.*, p. 522.

⁸ The apostille has the corresponding goal of legalization but it requires a reduced method without the unnecessary interference by the officials of the member nation in which the paper is presented. See Chrysafo Tsouka, "Simplifying the Circulation of Public Documents in the European Union – Present and Future Solutions", *ELTE Law Journal*, Vol. 2015, No. 2, 2015, p. 43.

⁹ Philip W. Amram, "Towards Easier Legalization of Foreign Public Documents", *American Bar Association Journal*, Vol. 60, No. 3, 1974, p. 310.

¹⁰ Anselmo Reyes, "ASEAN and The Hague Conventions", *Asia Pacific Law Review*, Vol. 22, No. 1, 2014, p. 35.

¹¹ Bambang Hartoyo and Fauziah Mohd. Noor, "The Hague Convention 1961: Solution of Foreign Public Document Legalization for Indonesia and ASEAN Member Countries", *ABC Research Alert*, Vol. 7, No. 1, 2019, p. 37.

Convention achieve so by substituting the burdensome and frequently expensive conventionalities of a complete legalization rule (chain certification).¹² The vision of the Indonesian Government to promote a favorable and fast-paced business atmosphere, through the comfort of doing business and investment in the Law Number 11 of 2020 on Job Creation, later became the momentum to enhance numerous complex, inconvenient, and traditional administration services. One of them is the legalization of foreign public documents. Thus, apostille is a part of 2021 Indonesian legal regime.

Essentially, the 1961 Hague Apostille Convention has ended the chain process of authentication among member nations by halting diplomatic or consular officials giving legalizations and has invented the apostille as the single formality to accredit the authenticity of a public document from another member nation.¹³ The abolishment of legalization or the 1961 Hague Apostille Convention has provided benefit to many people in demand of presenting formal documents overseas that previously costed lengthy delays and exorbitant expenses.¹⁴

Unfortunately, there is only a handful of scientific works deal with public document legalization in the confines of private international law.¹⁵ Earlier research unveil that this matter has not discussed comprehensively because the 1961 Hague Apostille Convention is less favorable compared to the other Hague Convention, as it does not include private international law edicts or specific rules conferring to doctrinal studies. However, it is crucial since many documents require authorization, for a tribunal of law or a governmental administration.¹⁶ In addition, the realm of private international law in Indonesia and other legal disciplines are affected by the accession of the apostille and need to be adapted in the statutory, regulatory, and institutional legal framework. Therefore, this article aims to address the problems.

To conclude, there is currently a gap of academic literature on the topic of apostille. The novelty of this study is in the focus on the 1961 Hague Apostille Convention from the perspective of current Indonesia's accession and its ramification in the judicial practices of traditional legalization. To be precise, this study addresses the Hague Apostille Convention from the Indonesian perspectives and the obstacles in the 21st Century. Furthermore, the study reviewed and analyzed various scholarly discourse related to the apostille to enhance further and

¹² Hague Conference on Private International Law, "News from the Hague Conference on Private International Law", *Uniform Law Review*, Vol. 19, No. 4, 2014, p. 717.

¹³ T. David Hoyle, "Seal of Disapproval: International Implications of South Carolina's Notary Statute", *South Carolina Journal of International Law and Business*, Vol. 3, No. 1, 2006, p. 9.

¹⁴ Hans van Loon, "The Hague Conference on Private International Law", *Hague Justice Journal*, Vol. 2, No. 2, 2007, p. 82.

¹⁵ Annageldy Arazmuradov, "Recalling Benefits of International Convention for Modernization", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011640, accessed on June 2021.

¹⁶ Nadia De Araujo, Daniela Vargas, and Marcelo De Nardi, "The Procedural Hague Conventions and Their Implementation in Brazil" in *Yearbook of Private International Law Vol. XX - 2018/2019*, edited by Andrea Bonomi and Gian Paolo Romano, Köln: Verlag Dr. Otto Schmidt, 2019, p. 164.

promote the topic and, at the same time, elevate the understanding and the identification on the Indonesia's attempt to accede the 1961 Hague Apostille Convention.

B. The Apostille Convention in the 21st Century

The 1961 Hague Apostille Convention currently is experiencing extensive implementation and effectiveness.¹⁷ However, there is no discussion on several concerns and inquiries in the fifteen articles of the Hague Convention. The compactness of the Convention asserts inadequateness of the treaty. Therefore, it is not as efficient as the clientele of worldwide litigation and business demand.¹⁸ Application or the use of apostille is not without any predicament. On the one hand, apostille eases the legalization of foreign public documents in other participating states. On the other hand, it also bears some deficiencies, such as abuses and misapplication of fraudulent papers.¹⁹ Some even appended that the anxiety in admitting and executing the apostille was the danger of deregulation and de-bureaucratization, which may negatively affect state sovereignty and resilience.²⁰ It is admitted that member states will not surrender their sovereignty over issuing officials in their territories.²¹ In today's globalized society, states of the world need to tactfully approach this matter and consider the benefits earned from implementing apostille and the bargain with trade-offs.

Since the Hague Conference's initial meeting in 1893 to the Ninth Session in 1960, the member states wrote the conventions only in French. French was the only "official language of the Hague Conference." After the Tenth Session in 1964, member states have outlined every session in both French and English. Consequently, specific key stipulations have been transformed from French to English and they have affected the Convention's foundation. This predicament endures an uncovered concern because every established convention line was descended from the French 1960-1961 version.²²

¹⁷ T. David Hoyle, *op. cit.*, p. 11.

¹⁸ Keith D. Sherry, "Old Treaties Never Die, They Just Lose Their Teeth: Authentication Needs of a Global Community Demand Retirement of the Hague Public Documents Convention", *The John Marshall Law Review*, Vol. 31, No. 3, 1998, p. 1058.

¹⁹ Bambang Hartoyo and Fauziah Mohd. Noor, *op. cit.*, p. 43.

²⁰ *Ibid*, p. 44.

²¹ Stefan A. Riesenfeld and Frederick M. Abbott, "The Scope of U.S. Senate Control over the Conclusion and Operation of Treaties - United States", *Chicago-Kent Law Review*, Vol. 67, No. 2, 1991, p. 577.

²² It is usually tough to spot two words in two separate languages with equivalent meaning. The vagueness in interpreting international conventions may direct to severe intricacies because participating states may not wholly comprehend their "rights and obligations" following the treaty. the queries can jeopardize participating states' acquiescence with the agreement. Dinah Shelton, "Reconcilable Differences-The

Another difficulty is the willingness of the member states to realize the Apostille Convention. The level of exactitude, correspondence, and singularity in the administration of the apostille, either in commissioning own documents or accepting foreign public documents, in the national structure is essential and must be outlined. The 1961 Hague Convention does not cover matters such as officials' criminal and civil accountability in certain cases. The absence of stipulations in the 1961 Hague Convention threatens the uprightness of the certification method because issuing authorities are not accountable for their fraud or carelessness in apostilles administration. Injured party has no remedies following the Hague Convention. A follow-up convention should expressly designate standards of conduct for apostille issuing officials.²³

Suppose a nation that has pledged to the Apostille Convention remains incongruous and hesitant to execute the Apostille Convention entirely. In that circumstance, the principal, and the genuine essence of the apostille will not be accomplished. Furthermore, inside the fifteen articles of the 1961 Hague Convention, there are no stipulations to guarantee the convention's implementation. Article 9 asserts that every member state is bound to end the means and terms of legalization inside its authority, the Hague Convention neglects to require sanctions or penalties upon states that participate in the treaty but resist obeying its stipulations. In addition, the Hague Convention is quiet about any sort of controlling policy directed at assuring adherence.²⁴ Regrettably, not even the most incredible level of reciprocal respect among states will ensure the mutuality of good faith in executing the apostille.²⁵

The shortage of participation from the global community in the 1961 Hague Apostille Convention influenced its universality and the propensity of nations to accede to and benefit from the treaty. If the member states are scarce, then there is practically no significance for a nation to accede to the Apostille Convention, bearing in mind the trade-offs between the expense to accede and the rare advantages it allows. Irianti, Ashri, and Sakharina, in their research, claim that the Apostille Convention does not ensure that the ease of business index of Indonesia will grow, based on what has been suggested earlier.²⁶

The 1961 Hague Convention does not eliminate every legalization system. Nevertheless, it introduced a modest alternative "certificate," an "apostille." It even stipulates that the apostille may be dismissed if domestic law of a nation

Interpretation of Multilingual Treaties", *Hastings International and Comparative Law Review*, Vol. 20, No. 3, 1997, p. 612.

²³ Steven M. Anderson, "Reforming International Institutions to Improve Global Environmental Relations, Agreement, and Treaty Enforcement", *Hastings International and Comparative Law Review*, Vol. 18, No. 4, 1995, p. 780.

²⁴ *Ibid*, p. 778.

²⁵ Keith D. Sherry, *op. cit.*, p. 1076.

²⁶ Andi Adini Tahira 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*, Vol. 2, No. 1, 2019, p. 7.

demands so. Considering the apostille is the pinnacle that may ever be required, it is obvious that chain certification may be needed.²⁷ In addition, the apostille becomes worthless if one of the member states is not a participating nation that has ratified or acceded to the treaty. Hence, if the public document is meant to be directed to and accepted in a state that has not ratified the Apostille Convention, the manner of document legalization will still observe the traditional and burdensome way. Consequently, the extensive participation of the global community in this treaty will further extend the advantages and effectiveness. While the Apostille Convention, *inter alia*, constitutes a simplistic median to display such authenticity, as would be domestically bestowed upon an official apparatus, it approaches neither the strength nor the authority, which might then be domestically granted to the foreign evidence admitted in the authentic foreign tool.²⁸

The EU Regulation 2016/1191 of the European Parliament and of the Council of July 6, 2016, on expanding the liberated mobility of citizens by simplifying the obligations for displaying certain public documents in the European Union (EU) has been immediately appropriate for the Member States of the EU. Therefore, it eliminates the necessity to render an apostille. The enactment indicates that public documents no longer need legalization or comparable formalities, principally related to the apostille. The brand-new EU Public Documents Regulation intends to lessen citizens' bureaucratic load and expenses in such conditions. It is designed to simplify the bureaucratic conventionalities in the cross-border flow of public documents in the EU as part of the liberty of passage.²⁹ Although this ordinance does not pertain to Indonesia, this regulation will stifle the plans of other European nations to accede to the apostille, which will eventually have an incidental influence on Indonesia. According to Vettorel, while it is an insignificant betterment for European nations, it could yet stir some attention about the prevailing structure overseeing the global circulation of public documents. To be exact, this ordinance is anticipated to raise some issues concerning the relevance of the apostille.³⁰

One of the ignored obstacles of the 1961 Hague Apostille Convention was the necessity to translate foreign documents. The Apostille Convention has bestowed a solution to the complex method of legalizing foreign public documents to be

²⁷ Philip W. Amram, *op. cit.*, p. 311.

²⁸ Jonathan Fitcher, "Authentic Instruments and European Private International Law in Civil and Commercial Matters: Is Now the Time to Break New Ground?", *Journal of Private International Law*, Vol. 7, No. 1, 2011, p. 50.

²⁹ Stefan Schluß, "The EU Regulation on Public Documents", *ERA Forum*, Vol. 21, No. 1, 2020, p. 118.

³⁰ Arianna Vettorel, "EU Regulation No. 2016/1191 and the Circulation of Public Documents between EU Member States and Third Countries", *Cuadernos de Derecho Transnacional*, Vol. 9, No. 1, 2017, p. 343.

utilized in another participating state. However, documents issued in foreign languages need to be translated so that the accepting nation can follow the substance. To diminish the requirement for translations, Article 7 of the EU Regulation on Public Documents has rendered for the debut of multilingual forms for several kinds of public documents, whilst the apostille has not.³¹ Consequently, the requirement to translate foreign public documents still applies despite eradicating legalization with the apostille. The apostille and its participating states can learn from the EU. By utilizing the multilingual texts as a translation model, the public document can then be conferred to the officials abroad without any additional steps being required, as a translation into the language of the accepting nation commonly becomes excess to requirements.³² Another option to eliminate the necessity of translation is if one of the standardized forms is presented, the accepting nation may no longer oblige a translation of the text in question. Nevertheless, it is eventually the choice of the government being offered with the public document as to whether admit as satisfactory the data held in the public document or not.

The 1961 Hague Convention has served its mission as an enhancement over the legalization rule, but the notable deficiencies of the convention and the current demands of the international community compel its improvement.³³ After all, in 1976, former US President, Gerald Ford, conveyed the 1961 Hague Apostille Convention to the US Senate, corresponding that the convention's "provisions would eliminate unnecessary authentication of documents without affecting the integrity of such documents."³⁴ this study maintains that the more countries participate and accede to this treaty, the more the advantages to be generated and increase exponentially to grow into worldwide recognition, collaboration, and alliance in a global sense.

C. The *Raison d'être* Behind Indonesia's Accession of Apostille: Urgency or Complementary?

To sum up, before the Apostille Convention, the legalization of foreign public documents in Indonesia is time-consuming, burdensome, and expensive to an individual or corporation. Anyone who wants a public document legalized to be accepted in another nation ought to get their paper verified by a local government department or notary; then it requires another legalization from the department in charge of legal matters, which shall thereupon be legalized over by the department in charge of foreign affairs of the corresponding nation. Furthermore, ere the paper

³¹ Stefan Schluß, *op. cit.*, p. 122.

³² The multilingual forms are dispensed on demand. They are meant to exhibit the contents of the public documents with which they are implanted but do not have any juridical impact on their own fitness because they are not sketched for the same purposes, nor do they hold the corresponding purposes as extracts of the public document. *Ibid*, p. 123.

³³ Keith D. Sherry, *op. cit.*, p. 1069.

³⁴ T. David Hoyle, *op. cit.*, p. 10.

is accepted in the accepting nation, the paper must be re-legalized by the corresponding embassy or consulate general.³⁵ The explanation earlier provides a slight concept of how intricate it is to legalize documents before the apostille appears. Gautama emphasizes that such a manner of getting legalization is ineffective and impractical as it entails repeated legalization. The extravagant and absurd measures for foreign public documents to be legalized is entirely unnecessary.³⁶

To circumvent the complex and repeatedly legalization system, the Hague Conference created the Convention of 1961, which concludes that 'an apostille' is employed to eliminate the obligations for foreign public documents legalization within the member states. Because of the treaty, member nations are to exempt from legalizing documents issued in any other participating nations. The single conventionality that may be ordered is to attest to the signature's authenticity, the role in which the person signing the paper has acted, and the seal or stamp that it carries (where appropriate).³⁷ Admittedly, the same *ratio legis* of the apostille obviously moves in the course of devising global convenience.

The 1961 Hague Apostille Convention sets up an uncomplicated framework for accomplishing the very purpose of the legalization rule. The key elements are (a) the replacement of a regulated certificate bearing one signature for the chain certificate (the portion of the legalization method) and (b) the eradication of diplomatic or consular attestation of that certificate.³⁸ Critics of legalization contest that the method is excessively onerous given the limited purpose it serves.³⁹ The Convention asks for the substitution of the legalization method with a singular, regulated certificate way of authentication. Hence, it must be appreciated that the certificate, as stated earlier, is the whole formality allowed among participating states for documental authentication.⁴⁰

The government's attempt to ease Indonesia's business environment has resulted in the enactment of the Presidential Regulation Number 2 of 2021 on the Accession ⁴¹ of Convention Abolishing the Requirement of Legalization for Foreign

³⁵ Bambang Hartoyo and Fauziah Mohd. Noor, *op. cit.*, p. 38.

³⁶ Sudargo Gautama, *Indonesia dan Konvensi-konvensi Hukum Perdata Internasional*, Bandung: Alumni, 2005, p. 63.

³⁷ Marian Nash Leich, "The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents", *American Journal of International Law*, Vol. 76, No. 1, 1982, p. 182.

³⁸ Keith D. Sherry, *op. cit.*, p. 1052.

³⁹ William C. Harvey, "The United States and the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents", *Harvard International Law Journal*, Vol. 11, No. 2, 1970, p. 477.

⁴⁰ Keith D. Sherry, *op. cit.*, p. 1056.

⁴¹ Accession varies from ratification. Ratification represents the international act whereby a nation shows its approval to be bound to a treaty if the parties are meant to present their assent by such an act. In bilateral

Public Documents, which annulled the necessity to legalize foreign public documents between convention member states. Accession to an international treaty indicates that Indonesia has bound to the international treaty. This suggests that the international treaty has been acknowledged and has become a positive law in Indonesia.

Before the Apostille Convention, the legalization of foreign public document is governed under the Regulation of the Minister of Foreign Affairs Number 3 of 2019 on the General Guidance on Procedures for Foreign Relations by Local Government and the Regulation of the Minister of Law and Human Rights Number 19 of 2020 on Official Signature Legalization Services on Documents at the Ministry of Law and Human Rights. In short, the administration commands that every document produced or issued in Indonesia that will be employed abroad should be legalized by the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and the Indonesian Embassy. This requirement also pertains to foreign public documents that will be utilized in Indonesia.

Entry to the HCCH⁴² to avail from the apostille is significantly simple with complete autonomy and ease for its members or other states interested in it. There is no necessity for a member country of the Hague Conference to ratify or accede to a treaty. Furthermore, a nation has no obligation to be a member of the Hague Conference before it accedes to a Hague Convention.⁴³ Hence, as Indonesia accession to the 1961 Hague Apostille Convention in 2021 is regarded, the action is not impressive. This is expected considering the benefits that Indonesia would attain from acceding to the conventions.

treaties, ratification is typically performed through the swap of the necessary instruments. In the instance of multilateral treaties, the standard method is for the depositary to obtain the ratifications of every nation, holding all countries notified of the circumstances. The organization of ratification presents nations the required period to inquire the necessary consent for the convention on the national level and to pass the required law to proffer national force to that treaty. [See Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]. Accession is when a nation takes the proposal or the chance to become a member of a convention already discussed and signed by another nation. It possesses the equivalent juridical impact as ratification. Accession happens typically after the convention has entered into force. The qualifications under which accession may happen and the formality required depend on the convention's stipulations. A convention might afford the accession of any other countries or for a limited and determined number of nations. [See Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]. The United Nations, "What is the Difference between Signing, Ratification and Accession of UN Treaties?", <https://ask.un.org/faq/14594>, accessed on June 2021.

⁴² The Hague Conference Confèrene Haye (HCCH) or the Hague Conference on Private International Law (HCPI) is an intergovernmental institution in the sector of private international law (also understood as a conflict of laws) that offers numerous international treaties, protocols, principles, and soft law devices. HCCH is a melting pot of various juridical systems. It produces and sustains multilateral juridical apparatuses, which react to international demands. The ultimate intention of the HCCH is to fight for a society in which, notwithstanding the variations among judicial traditions, persons - individuals, and corporations - can experience a great degree of juridical protection. This institution is based in the Hague and financed predominantly by its participants. This paper utilizes the term HCCH, HCPI, Hague Convention, and Convention interchangeably. Hague Conference Confèrene Haye (HCCH), "About HCCH", <https://www.hcch.net/en/about>, accessed on June 2021.

⁴³ Anselmo Reyes, *op. cit.*, p. 34.

Numerous facts also back the gravity for the accession of the Apostille Convention that nations around Indonesia such as Australia, Brunei Darussalam, Hong Kong, India, Japan, and Macao have become participants of this convention, despite whence the juridical diplomacies are in the ASEAN realm comparing to the Apostille Convention. The utilization of apostilles in the global longer a novel idea. The apostille has even been marketed and backed by the International Chamber of Commerce (ICC).⁴⁴ Consequently, accession to the Apostille Convention is an inevitable urgent requirement to build a favorable, translucent, and successful investment in Indonesia.⁴⁵

D. Implication of the Indonesian Legal Practices: The Step Forward

The accession of the 1961 Hague Convention on the Apostille is an excellent account for the advancement of the private international law⁴⁶ in Indonesia because the accession of this convention not only grants advantages and ease for players and spectators of the law, but its impact will influence the Indonesian people (in general) and the global populace, mainly correlating to the legalization and authorization of public documents from overseas. This convention is even viewed as a long-standing highlight of the juridical panorama that has not produced any notable issues. This can be judged from a European experience provided the actuality of a well-established method for assigning an apostille in place under the 1961 Hague Apostille Convention.⁴⁷

There are some benefits for Indonesia following the convention. First, the legalization system grows modest because based on the Apostille Convention, it will simply take a straightforward move to legalize public documents issued from overseas. Second, it is a fulfilment of Indonesia's dedication to fostering the making of a welcoming, translucent, and responsible government. Third, it enhances the quality of civil services through the eradication of extravagant bureaucratic formalities. Fourth, it promotes a rise in foreign direct investment due to the ease

⁴⁴ Ahmad Haris Junaidi, "Urgensi dan Tantangan Indonesia dalam Akses Konvensi Apostille", *Jurnal Rechtsvinding*, Vol. 7, No. 2, 2018, p. 200.

⁴⁵ Priskila Pratita Penasthika, "Urgensi Akses terhadap Apostille Convention bagi Negara-negara Anggota ASEAN dalam Menyongsong Masyarakat Ekonomi Asean 2015, Perspektif Hukum Perdata Internasional Indonesia", *Supremasi Hukum: Jurnal Penelitian Hukum*, Vol. 24, No. 2, 2015, p. 161.

⁴⁶ The suggestion of the apostille is primarily private international law in nature. Mainly because the Hague Conference on Private International Law or HCCH is unprecedented in that it is the sole intergovernmental institution with a "legislative" purpose; though, its "laws" take the sort of multilateral treaties or conventions, which are not fundamentally directed at aiding the relationships among countries, but rather the lives of their residents, private and business, in cross-border relations, and activities. Hans van Loon, *op. cit.*, p. 75.

⁴⁷ Stefan Schläuß, *op. cit.*, p. 119.

gained in the legalization system of numerous public documents required in investment.

The operation of the 1961 Hague Apostille Convention is in accordance with Indonesian law. Its accession has caused enormous benefits to the nation through the eradication of consular certification of documents to create forces in another member state by facilitating regular citizens' and companies' lives, as the traditional practice was high-priced and time-consuming.⁴⁸ A treaty like the 1961 Hague Apostille Convention is realized in the juridical rank of a state based on the domestic constitutional framework, in particular its constitution.⁴⁹

Notwithstanding, an international treaty that has been acceded by a state cannot be valid automatically. Various subsequent measures must be prepared for the implementation in Indonesia. They are (1) the time of accession, (2) disapproval from another member state to Indonesia's accession,⁵⁰ (3) the establishment of the treaty sixty days from the expiration of the member state's disapproval period, (4) in the case of a rejection, the treaty considered irrelevant for Indonesia and the opposing state. Hence, it may need several months for the apostille to become constitutionally valid in Indonesia.⁵¹

Based on the explanation above, the enactment of the Presidential Regulation Number 2 of 2021 on the Accession of Convention Abolishing the Requirement of Legalization for Foreign Public Documents is juridically auspicious. On the other hand, the complication may arise in its application since presently, there is no implementing ordinance for the Apostille Convention in Indonesia. The ordinance/regulation as mentioned earlier is necessitated to render more specific nomenclature and sort of public documents as well as the appointed competent authority that is empowered to issue the Apostille Certificate in Indonesia. The Apostille Convention designates that a "competent authority" issues the apostille certificate. Yet, to this date, the competent authority for Indonesia remains ambiguous and undetermined.

The theoretical discourse in this article is based on Jürgen Habermas'⁵² social legal theory.⁵³ The modern state's combination of capitalism and a strong, centralized authority, according to Jürgen Habermas, intrudes on its "lifeworld"

⁴⁸ Nadia De Araujo, Daniela Vargas, and Marcelo De Nardi, *op. cit.*, p.165.

⁴⁹ Hague Conference on Private International Law, *Apostille Handbook: A Handbook on the Practical Operation of the Apostille Convention*, The Hague: Hague Conference on Private International Law, 2013, p. 20.

⁵⁰ The period for tendering disapproval by treaty-participating states is six months from the day the instrument of ratification/accession is deposited.

⁵¹ Priskila Pratita Penasthika, "Pilihan Hukum dalam the Hague Principles 2015 [Choice of Law in the Hague Principles 2015]", *Law Review*, Vol. XX, No. 3, 2021, p. 362.

⁵² Jürgen Habermas is a prominent German social theorist who combines sophisticated cultural, political, and economic analysis that are difficult to integrate into a logical body.

⁵³ Habermas' goal is undeniably part of modern social thought. And to the extent that this is done with a strong universalistic bent. His work is equally at ideals with the natural law tradition. As a result, Habermas' social theory might be viewed as a post-metaphysical natural law. Daniel Chernilo, "Jürgen Habermas: Modern Social Theory as Postmetaphysical Natural Law", *Journal of Classical Sociology*, Vol. 13, No. 2, 2013, p. 270.

(the domain of common norms and identities). This leads to atomization and alienation, according to Habermas, because the 'lifeworld' is produced through processes that rely on communication and social solidarity to exist. He makes a distinction between law as a medium and law as an institution. The former defines law as a set of formal, general principles that govern the economy and society. The latter inhabits the 'lifeworld' and thereby institutionalizes its common values and norms in institutional form. In contrast to 'law as medium,' 'law as institution' necessitates legitimization. In fact, these institutions, according to Habermas, constitute a significant source of normative integration in our pluralistic, divided society.⁵⁴ Habermas' writings have spawned a massive body of work. First, he places an inordinate amount of reliance in the law as a means of social integration. Second, his discourse premise that only those legal norms are valid to which all persons concerned have agreed⁵⁵ as reasonable discourse participants.⁵⁶

An international treaty, according to the theoretical explanation above, must reflect an international consensus based on national perspectives, interests, and solidarity.⁵⁷ International integration and incorporation of these ideals into national law are equally critical. The treaty's implementation must be sustained by national legislation and supported by integrated institutions to achieve the law's goals and ideals. Indonesia must pay attention to and implement them.

The 1961 Hague Apostille Convention seems to be a self-executing treaty. Notwithstanding the certainty of the treaty commitment and its apparent standing as self-executing, most nations have passed legislation to guarantee implementation. In these cases, these obviously excessive laws assure that private international law treaty commitments will be carried out at every level of government that most regularly deals with such affairs, hence making more

⁵⁴ Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory*, New York: Oxford University Press, 2012, p. 190.

⁵⁵ The discourse principle is defined as a regulated process of common will and decision creation. It is only intended to take the shape of a democratic principle through legal institutionalization. The principle of democracy then gives the legitimacy to legislative process.' According to Habermas, the democratic legitimacy of a legal regime can only be ensured through the application of the discourse principle to the legal form: law can only be valid if it is generated by communicative power, which is the consequence of a discursively constructed will. He contends that, just as the constitutional state and democracy are equally important, so are private property rights. Stefan Müller-Doohm, "Member of a School or Exponent of a Paradigm? Jürgen Habermas and Critical Theory", *European Journal of Social Theory*, Vol. 20, No. 2, 2017, p. 259.

⁵⁶ Raymond Wacks, *op. cit.*, p. 191.

⁵⁷ The commonly used phrase "civic solidarity" already assumes the existence of a legally established political group, usually a nation-state. Political solidarity is always a form of solidarity. It is important to remember that nationalism obscures the distinction between civic and political solidarity. Jürgen Habermas, "Plea for a Constitutionalization of International Law", *Philosophy and Social Criticism*, Vol. 40, No. 1, 2014, p. 10.

functional sense.⁵⁸ In addition, in order for the Hague Conventions to obtain the authority of law in some states, they must progress through the constitutional schemes of the states.⁵⁹ Accordingly, Indonesia has to act the same to enact the regulation required to guarantee the complete implementation of the apostille.

Furthermore, the Indonesian government must provide the state devices, infrastructure, and supporting human resources that entirely understand the implementation and intricacies associated with the Apostille Convention, with private international law as its fundamental knowledge. Indonesians are expected to notice an upshot of a ministerial-level ordinance to deal with this matter in the following nine months. It is intended that these law reformations will assist the administration to support economic growth following the recession created by the pandemic. Possibilities ahead, enterprises considering extending their interest in Indonesia might necessitate sailing over the prevailing law reformation.⁶⁰

Eventually, Indonesia must also continue to learn from the HCCH. By acceding to the 1961 Hague Apostille Convention, Indonesia has obtained invaluable admittance to the vast community of global experts. The accession of the Hague Conventions is not the tip of the tale. The Hague Conventions are living and breathing apparatuses in the understanding that the Hague Conference periodically arranges for expert societies or special commissions to reexamine their operation,⁶¹ even after the conventions come into power. The Hague Conference renders specialized support to nations interested in participating⁶² or participating nations⁶³ on the most suitable approach to implement Hague Conventions. In standard terms, participating nations can tap into the free expertise and knowledge amongst the participating nations of the Hague Conference to guarantee a stable application of a Hague Convention domestically.⁶⁴ That expertise and knowledge would traverse the extent of common, civil, and mixed common and civil law traditions. All that experience would be open to participating nations at a comparably

⁵⁸ Julian G. Ku, "The Crucial Role of the States and Private International Law Treaties: A Model for Accommodating Globalization", *Missouri Law Review*, Vol. 73, No. 4, 2008, p. 1065.

⁵⁹ Hans van Loon, *op. cit.*, p. 82.

⁶⁰ Hogan Lovells, "Indonesia Ratified the Apostille Convention, But You Will Still Need to Legalize Your Documents "the Old Ways"", <https://www.hoganlovells.com/en/publications/indonesia-ratified-the-apostille-convention>, accessed on June 2021.

⁶¹ HCCH intends to pool the best attainable expertise and to guarantee the most efficient implementation of its conventions. Hans van Loon, *op. cit.*, p. 84.

⁶² The Hague Conference remained proactive in rendering customized support and help to countries fascinated in joining or already a member of its convention. Micah Thorner and Livia van der Graaf on behalf of the Hague Conference on Private International Law, "News from the Hague Conference on Private International Law", *Uniform Law Review*, Vol. 18, No. 3-4, 2013, p. 708.

⁶³ The Hague Conference has matured as an institution; it momentarily dedicates most of its resources to post-convention assistance such as monitoring conventions, assisting the central and local governments, and encouraging and expanding the efforts to guarantee practical application of the Hague Conventions. Hans van Loon, *op. cit.*, p. 83.

⁶⁴ In fact, De Araujo, Vargas, and De Nardi believe the Hague Conference's support of its conventions grants remarkable positive regards to recognizing and appropriating said conventions. Nadia De Araujo, Daniela Vargas, and Marcelo De Nardi, *op. cit.*, p.152.

economical cost, as membership in the Hague Conference (by contradiction to other international institutions) is not exorbitant. There would consequently be benefits to participants entering the Hague Conference as far as they have not already done so.⁶⁵ In fact, with growing globalization and regional movement in private international law, the demand for HCCH's professional support is expanding exponentially from year to year. Nevermore have its products and services being in such huge demand.⁶⁶

Even more ambitious, Indonesia, as one of the few countries in ASEAN that acceded to the 1961 Hague Apostille Convention, may represent ASEAN in the Hague Conference. At the Hague Conference's yearly assemblages, Indonesia could attract attention to private international law areas of interest to ASEAN. Indonesia can also spearhead the initiative to cultivate new commercial law protocols, especially conventions, to enhance cross-border commerce within ASEAN and between ASEAN and the rest of the world.⁶⁷

E. Conclusion

The Hague Apostille Convention has reformed the exchange of foreign public documents among various states and jurisdictions. The impacts of the apostille has gone beyond procedural stuff, to accelerate bureaucratic document rules, to diminish expenses, and to get a significant problem solving for the authorization of foreign public documents. Procedural expenses, obstacles in securing juridical viability for documents, and officialism pertinent to the legalization of documents may create uncertainty and hinder justice realization. It may provide greater practical dispensation of justice and the rights to both Indonesian and foreigners in global implications, which is expensive, sluggish, and entangled bureaucratically.

However, there are demands of advancement. The convention may become outdated if it cannot solve its deficiencies and vulnerabilities. In summary, the minimum capacity seems to confirm that, in the short term, there will be any exceptional escape from the traditional methods of legalizing foreign public documents in Indonesia. On the other hand, the eradication of the legalization through the apostille in Indonesia is anticipated to be a means of influence for Indonesia to expose other conveniences possible in the realm of private international law.

Joining HCCH is a brave and prosperous move for Indonesia. By acceding to the 1961 Hague Apostille Convention, there is a more tangible benefit from the

⁶⁵ Anselmo Reyes, *op. cit.*, p. 43.

⁶⁶ Hans van Loon, *op. cit.*, p. 84.

⁶⁷ Anselmo Reyes, *op. cit.*, p. 44.

membership. Theoretically, every member state of HCCH may inquire professional support from the HCCH for the best domestic enactment and implementation. Practically, demands for technical support in any given year are significantly higher compared to HCCH's limited resources. For this reason, Indonesia has momentarily been granted exclusivity and must consequently tap on the exceptional resources of HCCH.

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