

## **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**

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### *Abstract*

Global challenges and demands to accelerate economic development are the responsibility of the government in an effort to promote the welfare of society. This also affects the development of relations between citizens. In such a situation of the world community, the legal instruments of international treaties become sacred. The Indonesian government can bind itself to an international treaty in various ways, one of which is by accession. It is expected that an international agreement will become positive law applicable in Indonesia when the agreement applies to Indonesia. Ease of doing business as a key subject in economic development should be encouraged through various aspects of administrative procedures, one of which is the elimination of foreign public document legalization requirements. The presence of Apostille adds to the role of notary as a public official of state administration in the field of law. This research discusses the importance of Indonesia as a participant in the Apostille Convention. It is necessary to reaffirm the role of Indonesian representatives abroad for the legalization of public documents originating from abroad. There is still a need for wider socialization of Apostille legalization. Permenkum HAM Regulation Number 6 of 2022 needs to be followed up with ratification into law.

**Keywords:** Apostille Convention, Notary, Document Legalization

### **Introduction**

Global challenges and demands to encourage economic acceleration are the responsibility of the government in efforts to promote people's welfare.<sup>1</sup> Through international agreements, both signatory countries and countries that will participate in the future, can create the new legal framework needed to regulate relations between countries and between their citizens.<sup>2</sup>

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<sup>1</sup> Ahmad Haris Junaidi, "Urgensi Dan Tantangan Indonesia Dalam Akses Konvensi Apostille", Jurnal Rechts

Vinding Media Pembinaan Hukum Nasional, volume 7, nomor 2, Agustus 2018, h.1.

<sup>2</sup> Mochd. Burhan Tsani, *Hukum dan Hubungan Internasional*. Yogyakarta: Liberty, 1990, hlm.8-9

An international agreement is expected to become law that applies to Indonesia if the agreement affects Indonesia.<sup>3</sup> Indonesia's participation in the Apostille Convention is very important because it is a developing country with rapid economic growth and increasing international traffic. The act of preparing foreign public documents or public documents intended for foreign use, even if the application has been used, still requires a lot of time and costs.<sup>4</sup> The long process of preparing public documents in the traditional way is sometimes confusing and seems confusing, especially when it comes to preparing legal documents, such as divorce papers, power of attorney or other letters related to civil matters. One of the obstacles to the spread of international private law is the use of documents from foreign countries for domestic purposes or vice versa foreign documents will be used for existing purposes.

Legalization must be signed by a notary acting as the person authorized to carry it out, or approved and signed for the document to have full force.<sup>5</sup> Many scholars have previously conducted research on the Apostille Convention, including: First research, the thesis/dissertation entitled "Reform of Notary Practices in Indonesia in the Perspective of International Conventions" written by Bambang Hartoyo.<sup>6</sup>

The results of this study are that there are still obstacles in ratifying the Apostille by partner countries participating in the Apostille Convention in other countries. The second study, Journal entitled "Responsibility of Notaries in the Legalization of Documents of Foreign Citizens According to the Apostille Convention" by Reza Ria Nanda, Rouli Anita Velentina.<sup>7</sup> As with the previous studies described above, the type of research used in this research is normative juridical.

Notary work is still required to prepare many documents to be used for foreign publics. The third study, Journal entitled "Juridical Analysis of the Authenticity of

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<sup>3</sup> Ara Annisa Almi," Mencederai Akses Apostille Convention dalam Mendukung Debirokratisasi Legalisasi Dokumen di Indonesia", *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, volume 2, nomor 2, Juli-Desember 2022, h.247

<sup>4</sup> Ahmad Haris Junaidi,"Urgensi Dan Tantangan Indonesia Dalam Akses Konvensi Apostille", *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional*, volume 7, nomor 2, Agustus 2018, h.1.

<sup>5</sup> Galuh Puspaningrum, "Notaris Pailit Dalam Peraturan Jabatan Notaris," *Diversi Jurnal Hukum* 4, no. 2 (2018): 201, <https://doi.org/10.32503/diversi.v4i2.371>

<sup>6</sup> Bambang Hartoyo, *Reformasi Praktik Kenotariatan di Indonesia dalam Perspektif Konvensi-konvensi Internasional*, 2019.

<sup>7</sup> Reza Ria Nanda, Rouli Anita Velentina, *Tanggung Jawab Notaris Dalam Legalisasi Dokumen Warga Negara Asing Menurut Konvensi Apostille*, *Jurnal USM Law Review*, Volume 5, Nomor 1, 2022

Notary Deed after Apostille is Implemented in Indonesia" by Unggul Basoeky. This article concludes, firstly, with the adoption and implementation of the Apostille system in Indonesia, the formality chain for the distribution of notarial deeds must be redesigned and adapted to the provisions of the Apostille Convention with new approaches and ways to change the system.

Fourth research, Journal entitled "Urgency and Challenges of Indonesia in Accession to the Apostille Convention" by Ahmad Haris Junaidi.<sup>8</sup> This article concludes, the Ministry of Law and Human Rights and the Ministry of Foreign Affairs as institutions authorized to legalize Indonesian public documents for use abroad have shown their readiness as Competent Authorities who are competent in creating an information technology-based legalization system.

Among the four studies above, the literature review focuses more on the concept of the Apostille Convention from the government's perspective. The author hopes that the results of this research can be useful in increasing readers' knowledge about the concept of the Apostille Convention in the field of governmental sovereignty as stated in the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 concerning Ratification of Public Documents.

### **Literature Review**

The word Notary comes from the word Notarius, which is the name given in Roman times to people who carry out the work of writing. The name Notarius gradually came to mean those who kept records in shorthand, like today's stenographers.<sup>9</sup> Notaries work as civil servants because they are appointed by the government to meet the state's need for legal documents. The notary has legal authority, which is to give the power to sign and determine the date and secrecy of the

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<sup>8</sup> Ahmad Haris Junaidi, *Urgensi dan Tantangan Indonesia dalam Akses Konvensi Apostille*, Jurnal Rechtsvinding Media Pembinaan Hukum Nasional, Volume 7, Nomor 2, 2018.

<sup>9</sup> R. Soegono Notodisoerjo. 1993. *Hukum Notariat Di Indonesia Suatu Penjelasan*. Jakarta. Raja Grafindo Persada.

letter and register it in a special deed.<sup>10</sup> Notaries have a role in the Apostille Convention approved by Indonesia as the official authority to approve any law.

From this Apostille Convention, regarding the legalization of public documents includes the following matters, namely administrative documents, notarial deeds or official certificates attached to documents signed by persons in a personal capacity, such as official certificates and showing the registration of documents or the fact that documents -the document exists on a certain date, and shows the official signature authentication of officials and notaries.

The authority of a notary and the legal process in each country is very different. The basis for the formation of the Apostille Convention is partly due to the development of relations between subjects across countries, including civil law relations based on the need for public documents. The process of legalizing foreign documents is a complex process and passes through many government agencies.

Legalization of documents is validation of the signature of an authorized official or authority stated on a document. Public documents are written or printed documents signed by an authorized official as evidence of a statement and/or affixed with a stamp and/or service stamp. The Apostille Convention replaces this cumbersome process with a document designated in the country where the public document is to be issued.<sup>11</sup>

In practice, the government has pushed through the public document approval process derived from documents for use abroad. Since 1965, member states of the Hague Conference on Private International Law (HCPIL) have worked to remove the legal requirement for foreign public documents. Among the functions of a Notary, which includes providing legalization of public documents for individuals or corporations to be used abroad.

### **Research Methods**

The approach in this study is a historical approach, namely studying historically the development of law, the development of arrangements regarding the issues at hand,

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<sup>10</sup> Iskandar Muda,” Undang-Undang Jabatan Notaris, Perubahan dan Penjelasannya dalam Satu Naskah Beserta Putusan Mahkamah Konstitusi Terkait”, Universitas Yarsi,2021.

<sup>11</sup> Suede Nazar, “Indonesia Mungkin Tidak Lagi Menerlukan Legalisasi Dokumen Publik Asing,” Bola Madura, 2021.

understanding the philosophy of the rule of law from time to time, understanding changes and developments in the philosophy that underlies the rule of law and is useful for framework for tracking the history of legal institutions over time.

The nature of the research in this study is exploratory legal study, namely legal research that is basic in nature and aims to obtain information, information, and data on matters that are not yet known through the interview method. This type of research is normative-empirical legal research (applied law research), namely research conducted directly by looking at real things that happen in the field and based on an analysis of the function of law in society.

## **Research Results and Discussion**

### **Position of Ministerial Regulation in the Legal System**

This system comes from the Greek word *systema* which means whole with different parts. If it is associated with the legal system, in short it can be interpreted as a unit, structured, organized which seeks to achieve certain goals. As is known, the legal system of each country is different, such as the Anglo-Saxon legal system, continental European legal system, Islamic legal system, social legal system, etc.

The regulations that exist in Indonesia are numerous and of various forms or types. Even so, not all of these regulations can be categorized as Legislation. Because there are several indicators that must be met, so that these regulations can be referred to as Legislation.

### **Authorities, Rights, Obligations and Prohibitions of a Notary Based on UUJN**

#### **a. Authority**

The authority of a notary and the legal system of each country is very different. There is no difference in legal procedure in the Apostille Convention, but not in this article, a notary as a public official has the right to act quickly and has the right to legalize and process public instruments. Authority is a legal action that is regulated and given to a position based on the applicable laws and regulations governing the position. Juridically, the authority granted by the Law to a Notary is to make authentic deeds, this is as stated in Article 1 point 1 UUJN. The position of a notary is as a public official, in the sense that the authority of a notary is never given to other officials.

#### **b. Right**

In carrying out his duties as a public official, a notary has rights that can be obtained in carrying out his duties as UUJN provisions, this right is important to be respected in connection with his work as a public official, namely as follows:

1) Leave entitlement

Notaries in carrying out their duties are entitled to access leave as referred to in Article 25, Article 26, Article 28, Article 29, Article.30, Article 3, Article 32 UUJN. The right to request leave and leave as much as possible is issued for more than twelve (twelve) years during his reign.

2) Right to get Honorarium

Apart from being entitled to leave, a notary is also entitled to receive payments for services provided by clients in accordance with their rights. Fees that can be collected by a notary are regulated in the provisions of article 36 UUJN. Apart from being entitled to leave, a notary is also entitled to receive payments for services provided by clients in accordance with their rights. Fees that can be collected by a notary are regulated in the provisions of article 36 UUJN.

c. Obligation

The notary's obligation is something that must be carried out by a notary, which if it is not carried out or violated, then the notary will be subject to sanctions for the violation. Part of the notary's oath/promise is that the notary will keep the contents of the deed and the information obtained in the implementation of the office of a notary Article 4 paragraph 2 UUJN, and in Article 16 paragraph 1 letter f UUJN, that the notary is obliged to keep secret everything regarding the deed he made and all information obtained for making the deed in accordance with the oath/pledge of office, if the law determines otherwise.

The provisions of Article 16 paragraph 1 letter f UUJN apply as a notary obligation. The obligation to keep all information about the deed and other documents confidential is to protect the interests of all parties involved in the deed. That the instrument of refusal for a notary is highlighted as one of the obligations of a notary as referred to in Article 16 paragraph 1 letter e of the UUJN, so that the refusal's obligation for a notary is associated with the work of a notary.

d. Prohibition

In this case, there is 1 (one) prohibition that must be underlined regarding the subject matter of Article 17 letter b, namely leaving the territory of office for more than 7 (seven) consecutive working days without good reasons. The notary has a territory of 1 (one) province (Article 18 paragraph (2) UUJN) and is domiciled in 1 (one) city or district in the province (Article 18 paragraph (1) UUJN). In this case, what is prohibited according to the provisions of Article 17 letter b UUJN is leaving the territory of office (province) for more than 7 (seven) working days.

### **Position of The Hague Convention 1961 in the Indonesian Legal System**

The Hague Convention 1961 (The Convention Abolishing the Requirement of Legalization for Foreign Public Documents was signed in The Hague on 5 September 1961) resulted from the difficulties of individuals or individuals and corporates in the early 1950s to obtain legalization of public documents to be used in other countries.

With the stipulation of The Hague Convention 1961, documents that will be used abroad no longer need to be legalized repeatedly in important institutions. The convention that Indonesia must accede to is the 1961 Hague Convention (Convention Abolishing the Requirement of Legalization for Foreign Public Documents), which was signed in The Hague, Netherlands, on 5 October 1961.<sup>12</sup>

### **Existence of the Hague Convention 1961**

The Hague Convention 1961 was signed in The Hague, Netherlands, on October 5, 1961.<sup>13</sup> The convention entered into force on 21 January 1965 with 120 member states. Article 1 of the convention regulates the scope of the 1961 Apostille Convention. At this time the Apostille convention was adopted and ratified by 122 countries in the world.

The Hague Convention 1961 or also known as the Apostille Convention was created and enacted to standardize the process of legalizing foreign public documents. This is clearly stated in the preamble to The Hague Convention 1961, which seeks to remove diplomatic and consular legalization requirements or obligations for foreign public documents and replace them with a simpler system.

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<sup>12</sup> Zulfa Djoko Basuki, “Kemungkinan Indonesia Mengaksesi *The Hague Convention Abolishing The Requirement Of Legalization For Foreign Public Documents*”, 2020, h. 1

<sup>13</sup> Riza Ria Nanda, *et. al.*, “Tanggung Jawab Notaris Dalam Legalisasi Dokumen Warga Negara Asing Menurut Konvensi *Apostille*”, Jurnal USM Law Review, Volume 5, Nomor 1, Tahun 2022, h. 4

## **Legalization of Public Documents in The Hague Convention 1961**

Previously it was explained that what is meant by public documents are documents made for the needs of individuals or legal entities or certain companies. The legalization of foreign public documents is an act of legalizing public documents from Indonesian individuals or corporations intended for use abroad, carried out by institutions or officials who are authorized to do so.

Based on Article 1 letter a Presidential Regulation No. 2 of 2021 Public documents are documents originating from documents that have authorities or officials related to state courts or tribunals, including public prosecutors, clerks or bailiffs ("huissier de justice"). In practice, if these public documents originate from abroad, they must be legalized beforehand so that they can be used in the jurisdictions of the countries concerned.

### **Government Regulation Number 2 of 2021**

Responding to the wishes of the wider community regarding the need to facilitate the legalization of public documents for overseas purposes or vice versa, the Indonesian government issued RI Presidential Regulation No. 2 of 2021 concerning Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Convention on the Elimination of Legalization Requirements for Foreign Public Documents).

Waiting for the ratification process in the form of a law to be made in the DPR RI, the Indonesian government issued RI Presidential Regulation No. 2 Year 2021 first. Regulation of the President of the Republic of Indonesia No. 2 of 2021 which was stipulated on January 4, 2021 and the content is quite short, it only has 2 (two) articles, namely Article 1 concerning ratification and a copy of the text, Article 1 letter a Presidential Regulation No. 2 of 2021 which explains that this convention applies in the territory of the participating countries that are acceding to it in terms of processing the legalization of public documents.

### **The Concept of the Apostille Convention in the Aspect of Sovereignty**

The Apostille Convention or the Apostille Convention is a convention that attempts to simplify the administrative process by entering into an agreement to eliminate the requirements for ratifying foreign public documents (convention). With the Apostille idea as described above and the spirit of the Indonesian government to



encourage ease of doing business, one of which is to speed up documents, Indonesia has become a member of the Hague Conference on Private International Law and acceded to The Hague Apostille Convention.

Based on the Regulation of the Ministry of Law and Human Rights of the Republic Number 6 of 2022 Article 1 paragraph 1 Legalization of the Apostille, hereinafter referred to as the Apostille, is an action to certify the official's signature, stamp approval, and/or official seal in the requested document based on verification. The background for the formation of the Apostille Convention is due, among other things, to the development of relations between subjects across national borders, including civil law relations based on the need for the legalization of public documents.

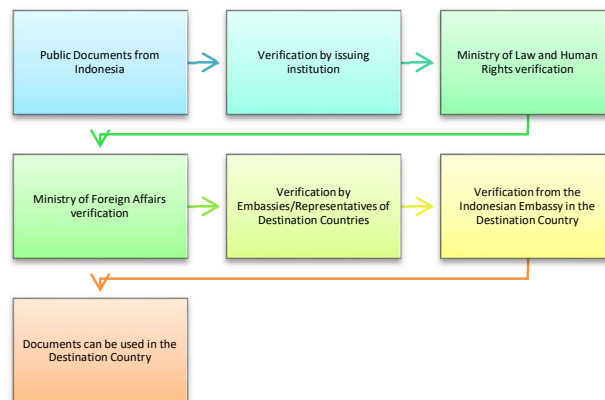
### **Apostille process related to Public Documents before the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 regarding the Legalization of Public Documents**

The process of legalizing public documents originating from abroad or public documents to be used abroad involves a complicated, lengthy procedure and requires a lot of money. The legalization process in Indonesian government agencies usually consists of two stages, namely legalization at the Ministry of Law and Human Rights and then legalization at the Ministry of Foreign Affairs of the Republic of Indonesia.

After that, the document can be submitted to the embassy for legalization. In general, the legalization process is described as follows:

**Figure 2**

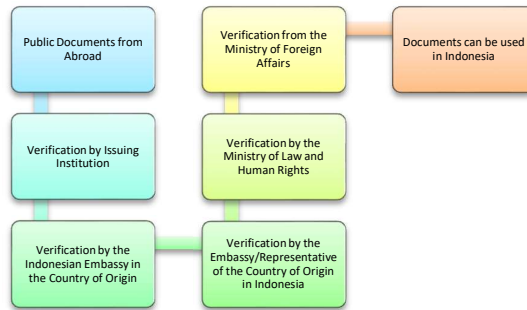
#### **Legalization Process for Public Documents from Indonesia**



Source: processed from various sources

**Figure 3**

**Legalization Process for Public Documents from Overseas**



Source: processed from various sources

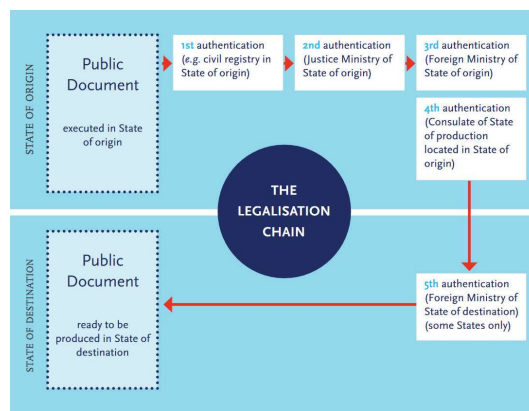
**Apostille process related to Public Documents after the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 regarding the Legalization of Public Documents**

Documents made or issued in Indonesia, including regional ones, and intended for use in other countries, must be legalized by the Indonesian Ministry of Law and Human Rights, the Indonesian Ministry of Foreign Affairs and Indonesian Representatives abroad, while foreign documents issued abroad and intended to be used in the territory of Indonesia, must also follow the same procedure, namely being legalized by the Ministry of Justice and/or the Ministry of Foreign Affairs of the country concerned and the Representative of the Republic of Indonesia in that country.

In general, the legalization process that applies between countries is as follows:

**Figure 4**

**Interstate Document Legalization Process**

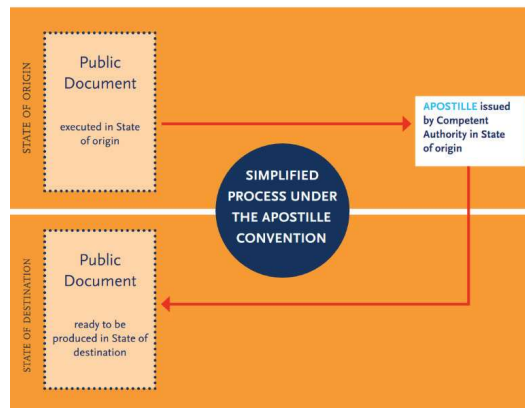


Source: Apostille Handbook “A Handbook on the Practical Operation of the Apostille Convention”

This process is not much different from the legalization process in Indonesia. Another key to the implementation of legalization in Indonesia is the use of technology in the legalization process, although it does not reduce the legalization process. The Apostille Convention abolishes the legalization process and replaces it with a legal process, namely issuing a license or what is called an Apostille issued by an authorized official appointed by the country of origin (Competent Authority).

The legalization process as described above is simplified which can be illustrated as follows:

**Figure 5**  
**Simplification of Inter-Country Document Legalization Process**



Source: *Apostille Handbook “A Handbook on the Practical Operation of the Apostille Convention”*

### **Constraints to the Apostille Process**

The obstacle in using public documents is that public documents that have been legalized by agencies or ministries in Indonesia cannot be accepted immediately, but must go through a re-legislation process in accordance with the formal procedures of the destination country. One of the obstacles in the traffic of international civil and trade law practices is documents originating from abroad to be used domestically or vice versa domestic documents will be used abroad to be used as authentic evidence, it is necessary to chain legalization of these documents to used held.

On various occasions it has been revealed that the obstacles in terms of attracting foreign investment include the licensing process,<sup>14</sup> security, certainty, legal protection,<sup>15</sup> country's image regarding, high cost economy (illegal levies resulting in high cost economy), local policies, human resources,<sup>16</sup> and others.

**Substance of Sovereignty Regulated in the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 Regarding the Legalization of Public Documents**

Theoretically, it can be said that the identity and form of sovereignty will always be in the dialectical process of being a state, and will even determine how the process of the pattern of dialectical relations.<sup>17</sup> In submitting the accession instrument from the Government of the Republic of Indonesia regarding the Apostille convention, the Ministry of Law and Human Rights of the Republic of Indonesia issued Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 6 of 2022 which applies as a guideline for the implementation of Apostille legalization services.

**Figure 1**

**Example of Indonesian Apostille Legalization**



Source : <https://jtc-indonesia.com/legalisasi/kedutaan/belanda.html>

<sup>14</sup> Andika Wahyu Wibowo dan Ida Bagus Rai Djaja, “Kendala Perizinan Penanaman Modal Asing di Indonesia,” *Hukum Bisnis Fakultas Hukum Universiti Udayana*, 2013, h.2.  
<sup>15</sup> Wahana Grahawan Manurung et al, “Analisis Terhadap Perlindungan Investor Asing Dalam Kegiatan Penanaman Modal,” *USU Law Journal*, Vil.1 No.1, 2013, h.2  
<sup>16</sup> Isaa Ismail, “Kendala Investasi di Era Otonomi Daerah,” *Journal POLITIKA*, Vol. 5, No. 1, (Oktober 2014), h.9  
<sup>17</sup> Mohammad Ryan Bakry, *Kedaulatan Rakyat Dan Dialektika Bernegara Dalam Konteks Keindonesiaan*, *Supremasi Jurnal Hukum*, Volume 1, Nomor 1, 2018, h. 62.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 concerning Apostille Legalization Services on Public Documents<sup>18</sup> consider;

- a. that in order to improve services to the public in the field of legalization, a model for the legalization of foreign public documents is needed that is fast and affordable and adapts to global developments (developments in international private law) that bridge cross-border civil law interests;
- b. that with the issuance of Presidential Regulation of the Republic of Indonesia Number 2 of 2021 concerning Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, it is necessary to prepare technical guidelines regarding the implementation of Apostille services in Indonesia.

### **Conclusions and Recommendations**

The substance of sovereignty is regulated in the Notary Office Law Number 2 of 2014 to provide information to the public regarding the legalization of the Apostille convention. Assisted by a Notary in providing information on public document legalization services in the Apostille system at AHU online.

Regarding the Regulation of the Minister of Law and Human Rights Number 6 of 2022 concerning the Apostille Convention, it makes it easy for individuals and corporations (legal entities). Indonesia needs to make Regulations regarding International Civil Code due to legal certainty in legalizing public documents that are passed between countries and within the country.

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<sup>18</sup> Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 6 Tahun 2022 tentang Layanan Legalisasi Apostille pada Dokumen Publik.

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