

Juridical Dilemma of the Principle of Notary Prudence in the Verification of Foreign Documents After the Ratification of the Apostille Convention

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Abstract

The ratification of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention) through Presidential Regulation Number 2 of 2021 has simplified the legalization of foreign public documents in Indonesia. However, the apostille system creates a juridical dilemma for notaries because it only certifies the formal authenticity of documents (signature, official capacity, seal) without guaranteeing the material truth of their contents. This study aims to analyze the juridical dilemma faced by notaries in verifying foreign documents, as well as their legal responsibilities and protections. This research employs a normative legal method using statutory (statute approach) and conceptual (conceptual approach) approaches, analyzing primary legal materials (UUJN, Perpres No. 2/2021, Permenkumham No. 6/2022, Apostille Convention 1961) and secondary legal materials (journals, books, legal commentaries). The findings show that notaries remain obligated to apply the principle of prudence when examining foreign documents, despite the presence of an apostille certificate. The apostille does not eliminate the notary's duty under Article 16 paragraph (1) letter a of UUJN to act thoroughly (*cermat*) and protect the interests of the parties. The research identifies three specific dilemmas: (1) conflicting verification standards between the apostille system and notary prudence; (2) absence of regulations governing verification limits for foreign documents; and (3) increased legal risk due to digitization and e-apostille implementation. The study concludes that legal protection for notaries remains repressive (post-dispute) rather than preventive, and harmonization of regulations is urgently needed to establish clear verification standards and limits of notary responsibility.

INTRODUCTION

The development of legal relations between countries in the era of globalization has encouraged the increase in the use of foreign public documents in Indonesia and the use of Indonesian public documents abroad. These documents include various forms, such as birth certificates, diplomas, power of attorney, court decisions, and notary deeds that are used in business activities, education, mixed marriages, investments, and various other international legal interests. Before Indonesia ratified the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention)*, the process of ratifying foreign documents was carried out through a chain legalization mechanism involving a number of agencies, including notaries, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and diplomatic representatives of the destination country. The mechanism is seen as less effective and efficient because it requires a long procedure, a relatively long time, and a lot of money.

As an effort to harmonize national law and the development of international law, Indonesia has ratified the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention)* through Presidential Regulation Number 2 of 2021. The ratification was carried out to simplify the procedure for legalizing foreign public documents, so that the ratification process no longer requires a multi-layered legalization chain, but rather through the issuance of an *apostille certificate* by the competent authority. The implementation of the apostille system provides various conveniences, both for the public and business actors, because it is able to speed up the process of using documents across borders and increase legal certainty in various transactions and international legal relations (Ilmi, 2022; Junaidi, 2018).

However, the implementation of the *apostille* system has also raised various new juridical problems, especially related to the application of the principle of prudence and notary prudence in verifying foreign documents. Basically, the apostille only serves to verify the authenticity of the signature, the capacity of the official who signed, and the validity of the official stamp or stamp on a public document, without examining the substance or material of the document. In the practice of *notarity*, notaries still have the obligation to apply the *prudential principle* to every document that is used as the basis for making an authentic deed. This obligation is a juridical consequence of the provisions of Article 16 paragraph (1) letter a of the Notary Position Law which requires notaries to act trustworthy, honest, thorough, independent, impartial, and always protect the interests of interested parties in the making of deeds (Baharudin & Syamsuddin, 2020; Afifah, 2017).

Juridical problems arise when notaries receive foreign documents that have been completed with an *apostille certificate*. On the one hand, the existence of an *apostille* gives formal legitimacy to the document so that it is administratively recognized as valid for use in the destination country. However, on the other hand, notaries still bear legal responsibility to ensure that the documents used as the basis for making the deed do not contain legal defects, elements of forgery, or misuse of identity. This situation raises a juridical dilemma related to the limits of the verification obligation that must be carried out by a notary on foreign documents that have formally been recognized through the *apostille mechanism*.

This dilemma has become increasingly complex because until now there has been no regulation that expressly regulates the verification standards that must be applied by notaries to foreign documents after the implementation of *the apostille*. A number of studies have shown that the ratification of the *Apostille Convention* has not been fully accompanied by the harmonization of norms in notary practice in Indonesia, especially with regard to the limits of notary liability for the correctness of foreign documents used by the parties. In addition, the development of electronic documents and the digitization of public administration have also increased the potential for misuse and use of fake documents across countries which are materially difficult to verify by notaries (Alwajdi, 2020; Priatna, 2024).

The novelty of this study is fivefold. First, it systematically identifies and analyzes three specific juridical dilemmas faced by notaries: (a) the conflict between apostille verification (formal authenticity only) and notary prudence (substantive examination); (b) the normative void in regulations governing notarial verification limits for apostilled documents; (c) increased legal risk from e-apostille and cross-border digitization. Second, it provides a comparative analysis of verification scope between the Apostille Convention 1961 (Article 5) and UUJN

(Article 16 paragraph (1) letter a), demonstrating that the apostille does not eliminate the notary's duty to act thoroughly. Third, it maps the forms of notary responsibility (civil, criminal, administrative, ethical) in the post-apostille context, identifying the legal basis and potential sanctions for each form of liability. Fourth, it critically evaluates existing legal protection mechanisms for notaries (UUJN, Notary Honorary Council) as repressive (post-dispute) rather than preventive, arguing for the need for clear verification standards. Fifth, it offers concrete recommendations for regulatory harmonization, including proposed amendments to Permenkumham No. 6/2022 and the development of a digital-based cross-border document verification system.

From the perspective of evidentiary law, a notary deed is an authentic piece of evidence that has perfect evidentiary power (Mahadewi et al., 2022). Therefore, errors in the use of basic documents for making deeds can cause serious legal consequences, both in the form of a decrease in the power of proof of the deed and the emergence of legal liability for notaries, which include civil, administrative, and criminal liability (Dewi & Nugraha, 2021). Based on this, a juridical study is needed regarding the application of the principle of notary prudence in verifying foreign documents after the ratification of the *Apostille* Convention, as well as to analyze the form of legal protection for notaries in exercising their authority related to the use of foreign documents.

Therefore, this research is important to study juridically how the dilemma faced by notaries in verifying foreign documents that have processed *apostille* certificates, as well as how the form of responsibility and legal protection for notaries in the use of foreign documents as the basis for making authentic deeds after ratification of *the Apostille* Convention. Based on this description, several formulations of the problem that will be discussed in this study are formulated: 1) What is the juridical dilemma faced by notaries in verifying foreign documents that have obtained an apostille certificate? 2) What is the form of legal responsibility and protection for notaries against the use of foreign documents in the making of authentic deeds after the ratification of the Apostille Convention?

METHOD

This research employed a normative legal research method (*yuridis normatif*) using statutory approach (statute approach) and conceptual approach (conceptual approach). The statutory approach is conducted by examining various regulations related to the apostille system and notary obligations, including: the Apostille Convention 1961, Presidential Regulation Number 2 of 2021 concerning Ratification of the Apostille Convention, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), Regulation of the Minister of Law and Human Rights Number 6 of 2022 concerning Apostille Legalization Services in Public Documents, and related civil and criminal procedural laws. The conceptual approach is used to analyze the principles of notary prudence (prudential principle), legal responsibility (liability), legal protection, and the theory of office liability (liability of office).

The legal materials used consist of three categories. Primary legal materials include the Apostille Convention 1961, Perpres No. 2/2021, UUJN, Permenkumham No. 6/2022, and the Indonesian Civil Code (KUHPdt) and Criminal Code (KUHP) provisions relevant to document forgery and notary liability. Secondary legal materials include textbooks on notary law (Habib

Adjie, 2015), private international law (Sudargo Gautama, 2010), journal articles from Google Scholar and SINTA databases (2018-2025) specifically addressing the apostille convention and notary responsibility, legal commentaries, and previous research results. Tertiary legal materials include legal dictionaries and encyclopedias. Data collection techniques are carried out through library research (*studi kepustakaan*) by tracing legal sources from physical libraries, online databases (Google Scholar, SINTA, JSTOR, and the official website of the Hague Conference on Private International Law), and official government websites (*peraturan.go.id*, *dpr.go.id*, *kemenkumham.go.id*).

Data analysis is conducted qualitatively using descriptive-analytical methods, with the following procedure: (1) identification and inventory of regulations and literature on the apostille system and notary verification obligations; (2) reduction and classification of data based on three themes: the juridical dilemma, forms of responsibility, and legal protection; (3) comparative analysis of verification scope between the Apostille Convention (Article 5) and UUJN (Article 16 paragraph (1) letter a); (4) systematic interpretation of norms using grammatical, systematic, and teleological interpretation methods; (5) drawing conclusions using deductive syllogism (from general principles to specific applications). No statistical software is used; analysis relies on legal reasoning and doctrinal interpretation. Validity of legal materials is ensured through source cross-checking (comparing primary sources with secondary sources) and the use of authoritative official documents. The research procedure follows five stages: (1) identifying the legal issues related to the post-apostille notary dilemma; (2) collecting primary and secondary legal materials; (3) analyzing the verification standards of the apostille system versus notary prudence; (4) identifying forms of notary responsibility and existing legal protection mechanisms; (5) formulating conclusions and recommendations.

RESULTS AND DISCUSSION

Juridical Dilemmas Faced by Notaries in Verifying Foreign Documents That Have Obtained Apostille Certificates

The ratification of *the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention)* by Indonesia through Presidential Regulation Number 2 of 2021 has brought significant changes to the mechanism for legalisation of foreign public documents in Indonesia. Before the implementation of the *apostille system*, foreign documents to be used in Indonesia must go through a multi-layered legalization procedure involving a notary, relevant ministries, the Ministry of Foreign Affairs, and diplomatic representatives of the destination country. The mechanism is considered less effective and efficient because it takes a relatively long time, large costs, and complicated bureaucratic procedures. Through the implementation of *the apostille system*, the legalization procedure is simplified by replacing the chain legalization mechanism with the issuance of a single *apostille certificate* by the competent authority in the document's country of origin.

Although it provides convenience in the administrative aspect, the implementation of the apostille system also raises a new juridical dilemma for notaries in Indonesia, especially related to the obligation of notaries to apply *the prudential principle* in verifying foreign documents that are used as the basis for making authentic deeds. This dilemma arises because *the apostille* basically only validates the formal aspects of a document, such as the authenticity of the signature, the capacity of the signatory official, and the official stamp, without examining the

material substance of the document. Therefore, the existence of *an apostille* certificate on a foreign document does not automatically guarantee the legal correctness of the content or data contained in the document.

In the practice of *notariety*, notaries have the obligation to act carefully, carefully, and carefully as stipulated in Article 16 paragraph (1) letter a of the Law on the Notary Position which states that notaries are obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties. The phrase "thoroughly" in the provision means that the notary must carefully examine the identity of the witness, the validity of the document, and the suitability of the data used in making the deed. Therefore, notaries not only function as "authors of the will of the parties", but also as public officials who are obliged to ensure that the deed made meets the formal requirements and does not contradict the law (Taufiqi, 2026; Budiarto, 2018).

Juridical problems arise when notaries receive foreign documents that have been formally completed with an apostille certificate. In such circumstances, the notary is in a dilemmatic position. On the one hand, *the certificate of apostille* gives formal international legitimacy to foreign public documents so that they are recognized for their validity for use in other countries that are parties to the convention. However, on the other hand, notaries still bear legal responsibility if later the document is proven to be fake, contains incorrect data, or is used as a means to commit unlawful acts (Nanda & Velentina, 2022; Elvide et al., 2023).

The juridical dilemma basically stems from the difference in the scope of verification between the apostille system and the principle of notary scrutiny. Apostille only verifies:

1. Authenticity of the signature of the office;
2. Capacity of document signing officials; and
3. Authenticity of the official seal or seal of a public document.

This means that *the apostille* basically does not provide a guarantee of the truth of the substance of the document, does not examine the content of the agreement, and does not ensure the material validity of the legal facts contained in the document. In the practice of *notariety*, there is still an assumption that foreign documents that have obtained *an apostille* certificate automatically have full validity so that they no longer require further examination by a notary. In fact, such a view has the potential to pose serious legal risks, especially if the document turns out to contain legal defects, incorrect data, or elements of forgery.

For example, a person can use a foreign company deed that has obtained *an apostille* to conduct investment transactions in Indonesia. Formally, the document appears to be valid because it has been legalized through *an apostille*. However, if it turns out that the company has been dissolved in its home country or there is a falsification of the authority of the board of directors, then the notary who uses the document as the basis for making the deed has the potential to be considered negligent in applying the principle of care. This condition indicates that *the apostille* does not remove the obligation of the notary to carry out additional verification of foreign documents.

Another problem lies in the absence of regulations that explicitly regulate the limits and verification standards that must be carried out by notaries on foreign documents that have obtained *an apostille* certificate. Regulation of the Minister of Law and Human Rights Number 6 of 2022 basically only regulates the administrative mechanism for the issuance of *apostille* certificates, without providing technical guidelines regarding the scope of notary examination

of the material validity of foreign documents used as the basis for making deeds. This situation creates a void of norms that has implications for legal uncertainty in notary practice, especially regarding the limits of notary liability if in the future it is found that there are legal defects in foreign documents that have obtained an apostille certificate (Nurhidayatullah, 2023; Nurannisa, 2024).

From the perspective of the theory of *liability of office*, notaries can be held accountable if they are proven negligent in carrying out their obligations as a public official. These responsibilities can be in the form of (Widiastuti, 2024; Amalia et al., 2021):

1. Civil liability;
2. Administrative responsibilities;
3. Even criminal responsibility if the notary knows of the falsification of documents but still makes a deed based on the document.

This raises fundamental juridical questions about the extent to which notaries are obliged to verify foreign documents that have been formally recognized through *an apostille*.

This dilemma has become increasingly complex as the digitization of public documents develops. Currently, various countries have implemented the use of electronic documents, digital signatures, and electronic legalization systems (*e-apostille*). In Indonesia, the ability of notaries to verify the authenticity of foreign electronic documents is still relatively limited because not all foreign countries' administrative systems can be accessed or verified directly. This condition causes notaries in practice to often rely only on the formal aspects and administrative appearance of documents, without having adequate ability to conduct a thorough examination of the material validity of documents (Puteri & Makarim, 2024; Ananda, 2025).

In addition, there are problems related to the difference in the legal system between countries (*conflict of laws*). Documents that are legal according to the law of the country of origin are not necessarily in accordance with the Indonesian legal system. For example, some countries recognize certain forms of power of attorney or deed of company that are not recognized in Indonesian law. Under these conditions, notaries are in a dilemma between respecting the recognition of foreign documents through *apostille* and the obligation to ensure the conformity of documents with national law (Chong, 2020; Kusumadara, 2021).

Critically, it can be stated that the ratification of the *Apostille Convention* in Indonesia has not been fully followed by adequate harmonization of notary regulations. The state has succeeded in simplifying the administrative aspect of document legalization, but has not provided adequate legal protection for notaries as parties who use the document in national legal practice. As a result, the responsibility for verification in practice is actually imposed on the notary without the support of legal instruments or clear cross-border verification mechanisms (Aida et al., 2023; Irianti et al., 2023).

In terms of legal certainty, this condition has the potential to cause differences in practice between notaries. Some notaries may conduct an in-depth examination of foreign documents, while others rely only on *an apostille* certificate as proof of formal validity. These differences in standards can cause legal uncertainty and increase the risk of misuse of foreign documents in Indonesia.

Therefore, a more comprehensive arrangement is needed regarding the standards for verification of foreign documents by post-apostate notaries. The regulation is important to provide clear boundaries regarding the scope of notaries' responsibilities, the mechanism for

examining foreign documents, and legal protection for notaries who have acted in good faith and applied the principle of due diligence to the maximum. In addition, it is necessary to build a digital-based cross-border verification system that allows notaries to directly check the validity of foreign public documents that have obtained *an apostille*.

Thus, the juridical dilemma faced by notaries in the verification of foreign documents after *the apostille* is essentially a clash between the demands of global administrative efficiency and the principle of prudence in national notary law. *The Apostille* does simplify the formal legalization process of documents, but it cannot be used as a basis to override the obligation of notaries to carefully verify the documents used in the creation of authentic deeds.

Forms of Responsibility and Legal Protection for Notaries against the Use of Foreign Documents in the Making of Authentic Deeds After the Ratification of the *Apostille Convention*

The ratification of the *Apostille Convention* has simplified the procedure for legalizing foreign public documents in Indonesia, as the convention basically aims to remove the layered legalization mechanism and replace it with the issuance of a single *apostille certificate* by the competent authority in the document's country of origin. However, the simplification cannot be interpreted as the elimination of verification obligations by notaries. Normatively, *the apostille* only certifies the authenticity of the signature, the capacity of the signatory official, and the identity of the seal or official seal listed in the document, without checking the material correctness of the content of the document. At this point, juridical problems arise, namely when notaries in Indonesia are faced with foreign documents that have formally been recognized through *an apostille*, but must still be ensured that they do not contain legal defects, elements of forgery, or abuse in transactions that are the basis for making authentic deeds.

In the legal framework of *notarity*, notaries do not solely play the role of administrative intermediaries, but as general officials who carry out preventive functions in preventing disputes through the creation of authentic deeds (Werik et al., 2025). The Law on the Notary Position emphasizes that notaries are obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties in a legal act. Therefore, when a foreign document is used as the basis for the creation of a deed, the principle of prudence cannot be ruled out just because the document has obtained an apostille certificate. Notaries are still obliged to assess the suitability of identity, authority of the parties, the relevance of the documents, and their conformity with the applicable national law. Critically, this condition suggests that *the apostille* does simplify the formal recognition of cross-border documents, but does not remove the professional responsibility of notaries to conduct *legal due diligence* independently.

The form of notary responsibility in that context can appear in several aspects. The literature on notary liability shows that the responsibility for making an authentic deed can include civil and criminal liability, liability under the Notary Position Law, as well as responsibility based on the professional code of ethics. In the civil realm, if the notary commits negligence that causes loss, the aggrieved party can file a claim for compensation as long as there is a causal relationship between the notary's error and the loss that occurred. In the criminal realm, notaries can be held accountable if it is proven that they know of unlawful elements, forgery, or document engineering, but still use the document in making the deed. In the administrative and ethical realm, notaries can also be sanctioned if they do not carry out

their obligations to act carefully and carefully as stipulated in the law and the professional code of ethics. Thus, the responsibility of the *post-apostille* notary is essentially not diminished; what changes is the only source of legal risk, as notaries are now faced with foreign documents that are easier to use across borders but more complicated to verify substantially (Rossulliaty et al., 2023; Habibah et al., 2024).

In terms of legal protection, notaries do have a number of protection instruments, but these protections have not been fully able to answer the problem of verifying foreign documents after the implementation of *the apostille*. Normatively, laws and regulations affirm that notaries as public officials need to obtain legal protection and guarantees in order to realize legal certainty. In terms of civil liability, doctrine as well as various decisions and academic studies show that legal protection for notaries can also be realized through the mechanism of the Honorary Council of Notaries which is independent, especially when notaries are summoned by law enforcement officials. However, the protection basically functions more at the stage of examination or sanction enforcement, not at the preventive stage when the notary must determine the feasibility of using foreign documents as the basis for making the deed. Thus, the legal system in practice provides more protection after a dispute occurs, but does not provide a detailed and uniform verification standard to prevent disputes from arising in the first place (Randomis, 2025; Purwowibowo, 2021).

This problem is increasingly evident because the *apostille mechanism* in Indonesia still focuses on public document legalization services and has not provided technical guidelines regarding the verification of foreign documents in notary practice. Regulation of the Minister of Law and Human Rights Number 6 of 2022 does regulate the service of *apostille* for public documents, but from the perspective of the practice of the notary position, the regulation does not explain the limits of the examination that must be carried out by notaries, including the extent to which notaries are obliged to check the authenticity of documents that have obtained *an apostille*, is it enough to check the apostille certificate or still need to verify with the agency from which the document originated. The ratification of the *Apostille Convention* essentially aims to simplify the mechanism for the ratification of foreign public documents through the elimination of layered diplomatic and consular legalization procedures. However, this administrative simplification does not necessarily remove the obligation of notaries to continue to apply the principle of prudence in assessing documents used as the basis for making authentic deeds. This condition puts notaries in a dilemma between the demands of cross-border administrative efficiency and the obligation to maintain legal certainty. Excessive reliance on *apostille certificates* has the potential to open up opportunities for the use of documents that are materially invalid, while overly strict scrutiny can actually hinder the goal of harmonization and efficiency that is the basis for the implementation of the *Apostille Convention* (Putri & Ranawijaya, 2025; Sukmana, 2024).

In addition, research on legal protection of apostille certificates shows that this mechanism also raises problems related to the confidentiality of notary deeds, because notary documents submitted to obtain apostille can be uploaded to official databases, potentially causing confidential information leaks (Elvide et al., 2023). This condition is important to be critically examined because legal protection for notaries is not only related to the protection from prosecution of misdeeds, but also includes protection of the confidentiality of the position and the security of client data (Hidayah, 2025). Thus, notaries are between two interests that

both have legitimacy, namely the obligation to maintain the secrecy of office on the one hand and the need for the apostille system for administrative verification on the other. At that point, Indonesia's positive law still leaves room for ambiguity that must be anticipated through the application of the principles of professional prudence, orderly examination documentation, and a strict understanding of the limits of notary authority.

Conceptually, the most appropriate form of protection for notaries in such situations is protection based on compliance with the obligations of the position (Indarto & Suraji, 2024). Notaries who act within the limits of their authority, examine documents in good faith, document the verification process, and do not ignore indications of document irregularities, should obtain legal protection if a dispute arises in the future. On the other hand, if the notary only relies on the apostille certificate without conducting the proper minimum verification, it will be difficult to take refuge on the grounds that the document has been "legalized". This is because the apostille basically only proves certain formal aspects, so the notary is still obliged to ensure that the foreign document is suitable as the basis for making an authentic deed according to Indonesian law. Thus, the core of its juridical dilemma lies in the fact that the apostille does accelerate the formal recognition of cross-border documents, but does not remove the professional responsibility of the notary to prevent the occurrence of legal defects in the creation of authentic deeds (Fauzan & Latief, 2019).

CONCLUSION

The ratification of *the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention)* through Presidential Regulation Number 2 of 2021 has facilitated the process of legalisation of foreign public documents through the simplification of cross-border administrative procedures. However, the application of the apostille system also raises a juridical dilemma in the practice of notary in Indonesia, especially related to the application of the principle of notary scrutiny to foreign documents that have obtained an *apostille* certificate. *The apostasy* only provides endorsement of the formal aspects of the document and does not guarantee the material correctness of the content of the document. Therefore, notaries are still obliged to carefully verify the identity of the parties, the validity of the documents, and their conformity with national law before being used as the basis for making an authentic deed. This dilemma is increasingly complex because there is no regulation that expressly regulates the standards and limits of notary verification for foreign documents after *the apostille position*, thus causing legal uncertainty and differences in practices in the implementation of the notary position. The form of notary responsibility for the use of foreign documents in the preparation of authentic deeds after ratification of the Apostille Convention can include civil, criminal, administrative, or liability based on the professional code of ethics. Notaries can be held accountable if they are proven to be negligent, do not apply the principle of prudence, or continue to use documents that contain elements of forgery in making the deed. On the other hand, legal protection for notaries is basically available through laws and regulations and the mechanism of the Notary Honorary Council, but this protection is still repressive and has not been supported by clear verification technical guidelines. Therefore, it is necessary to harmonize notary regulations after the ratification of the Apostille Convention to clarify the standards for verification of foreign documents as well as the limits of

responsibility and legal protection for notaries in order to create legal certainty in the practice of notaries in Indonesia.

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