Legal Alert
Implementing Apostille Convention in Indonesia
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As previously highlighted in our Law Fact through a separate publication, in January 2021, Indonesia declared its accession to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (commonly known as “Apostille Convention”) by way of the promulgation of Government Regulation No. 2 of 2021.

The Apostille Convention was adopted in the Hague Conference on Private International Law on 25 October 1961 in Hague, Netherlands. A large number of countries have joined the Apostille Convention, making it one of the most successful international treaties in the area of international legal and administrative cooperation.

The accession of the Apostille Convention is a part of the government’s continuous effort to improve public service and increase ease of doing business in Indonesia by simplifying the legalization process of foreign public documents.

In this article, we will elaborate on the background, effects of an Apostille, scope of the Convention, as well as its implementation in Indonesia.

Background

Public documents are often used in situations or transactions taking place in other countries. However, such documents will first need to be authenticated/certified when used abroad. Thus, the “legalization” system is developed to certify the origin of public documents through a series of formalities in the country from which the public document emanates.

Under existing regulations, traditional requirements for legalization of documents apply to public documents. The requirements include, inter alia, the application to the Ministry of Law and Human Rights, Ministry of Foreign Affairs, and the foreign Embassy or Consulate of the country where the document is to be produced. In practice, a legalization chain involving a number of authorities often results in an inconvenience as it is frequently slow, cumbersome and costly.

Effect of an Apostille

The purpose of the Apostille Convention is to simplify the traditional requirement of legalization to a single formality, i.e. an authentication certificate, namely an “Apostille”.

Under the Convention, the “Competent Authority” will issue the Apostille. Hence, without need for further authentication in the country of origin, the “apostilled” document is ready to be produced in the country of destination.
The Apostille, however, only authenticates the origin of the underlying public document by certifying the signature, the capacity of the signer and the seal or stamp it bears. It does not authenticate the content of the document.

**Scope of Apostille Convention**

Apostille Convention applies only to public documents. Pursuant to Article 1(2) of the Convention, the following are deemed as public documents:

a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");

b) administrative documents;

c) notarial acts;

d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or its existence on a certain date and notarial authentications of signatures.

Note that the above list is not exhaustive. Practically, some countries apply the Apostille Convention to a wider variety of documents, including birth, marriage and death certificates, extracts from commercial and other registers, patents, and diplomas issued by public educational institutions. The question whether a document is of public nature, for the purposes of Apostille Convention, is ultimately determined by the laws of the country of origin.

Apostille Convention further stipulates that it is not applicable to documents executed by diplomatic or consular agents or to administrative documents dealing directly with commercial or customs operations.

Following the accession to the Apostille Convention, kindly note that the Indonesian government has made reservations to exclude the application of Apostille Convention for documents issued by the prosecutor office as the prosecuting body in Indonesia.

**Implementation in Indonesia**

To date, the Convention has yet to enter into force since Indonesian government is still required to deposit the instrument of accession to Ministry of Foreign Affairs of the Netherlands, and still subject to the six-month objection period. It will be enforced sixty days after the expiration of the objection period. Once the above process has been done, the Convention can be implemented in Indonesia.

In our view, further implementation of the Apostille Convention into the Indonesian legal system may create several challenges. At various stages of implementation, the Indonesian government must remove any obstacles in the existing laws and regulations, especially those which are inconsistent with the provisions under the Apostille Convention, e.g. several ministerial regulations related to legalization of
documents. To avoid confusion in its application, the implementing regulations must sufficiently determine the scope of public documents subject to the Apostille Convention.

Additionally, as per Article 6 of the Apostille Convention, the Indonesian government must designate one Competent Authority (or several Competent Authorities, subject to future legislation), which will be authorized to issue an Apostille. The government should also allocate necessary resources to support the Competent Authority.

In any case, we understand that the government will prepare relevant regulations, which hopefully will shed light on the abovementioned issues relating to the implementation of Apostille Convention.

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