

## CHALLENGES IN THE IMPLEMENTATION OF THE LEGALIZATION OF FOREIGN PUBLIC DOCUMENTS BY NOTARIES THROUGH THE APOSTILLE MECHANISM IN INDONESIA

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### ABSTRACT

*The legality of foreign public documents is a crucial aspect of civil legal relations between countries. Prior to the 1961 Apostille Convention, the legalization process in Indonesia involved a lengthy and complicated procedure. Following Indonesia's accession as a country to the Apostille Convention through Presidential Regulation Number 2 of 2021 concerning the Ratification of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents in 2022, the legalization system underwent significant changes. This study aims to analyze the legal standing and authority of Notaries in the legalization of foreign public documents after the accession of the Apostille Convention and the challenges in implementing the Apostille mechanism by Notaries. This study employs a normative juridical method, utilizing a statutory regulatory and legal doctrine approach. The results of the study indicate that the implementation of the legalization mechanism through the Apostille has accelerated and simplified the legalization process, although challenges remain in synchronizing regulations and understanding legal practitioners.*

**Keywords:** Apostille, notary, legalization, foreign public document.

### INTRODUCTION

Technology continues to advance from time to time. The current

technological development is the empowerment of digital integration in the industrial sector, which is later known as Industry 4.0.<sup>1</sup> Along with this

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<sup>1</sup> Suharman and Hari Wisnu Murti. (2019). "Kajian Industri 4.0 Untuk Penerapannya di Indonesia", *Jurnal Manajemen Industri dan Logistik*. Vol.03, No. 01: 2

technological progress comes an increase in cross-border mobility. In this era, individuals are able to easily access communication, transactions, and diplomacy across various fields, including economics, politics, socio-culture, and law.<sup>2</sup> As a dynamic country that constantly innovates in diverse fields, Indonesia seeks to innovate in establishing international relations with other countries in accordance with technological developments.

These interstate relations will have implications for private law relations. Such private law must be regulated through international agreements, serving as the foundation for treaties between states that, in turn, can produce new legal values and norms. In its development, Indonesia has seen the need to immediately implement bureaucratic reform through accession to the 1961 Apostille Convention (Convention Abolishing the Requirement of Legalisation for Foreign Public Documents), initiated by the Hague Conference on Private International Law (HCCH). This accession is important because legalization in Indonesia remains

convoluted, often creating legal uncertainty and slowing down public services. The Apostille is also recommended by ASEAN countries in various forums and academic studies to strengthen cooperation among ASEAN countries and to achieve the goal of liberalization in the field of investment.<sup>3</sup>

The Apostille Convention provides a practical solution by introducing the “Apostille Certificate,” a single certificate that authenticates the origin of a signature, the capacity of the person signing, and the authenticity of an official seal or stamp on a public document for international use. The Apostille replaces the cumbersome and time-consuming chain legalization process, which previously required going through the Ministry of Foreign Affairs and embassies. Indonesia, as a country with a wide diaspora and increasing international engagement, acceded to the Apostille Convention through Presidential Regulation No. 2 of 2021 concerning the Ratification of the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* on October 5,

<sup>2</sup> Rabbani, Najma Fauziyah and Elan Jaelani, (2024). “Efektivitas dan Hambatan Yang Timbul dari Penegakan Konvensi Apostille di Indonesia”, *Jurnal Hukum, Politik dan Ilmu Sosial (JHPIS)* – Vol. 3, No. 1 : 384.

<sup>3</sup> Aida, Melly, Yunita Maya Putri, Ria Wierma Putri, Kasmawati, and Ria Silviana. (2023) “Kepentingan Indonesia Mengaksesi Konvensi Apostille dan Relevansinya Di Bidang Kenotariatan”, *Jurnal Ilmiah Hukum Kenotariatan* – Vol. 12, No. 1:88.

2021, and officially became a member on June 4, 2022, after other participating states raised no objections.

The primary purpose of this Convention is to simplify cross-border relations by eliminating the requirement of diplomatic or consular legalization for foreign public documents. Moreover, the Apostille Convention is expected to facilitate smoother international exchanges. The provisions of the Apostille Convention apply to all public documents issued in the territory or in the territory of a member state. These documents must be recognized and can be used in the territory of other member states. According to the Apostille Convention, the following are considered public documents:<sup>4</sup>

- a. Documents originating from an authority or official related to a state court or tribunal, including those from public prosecutors, court clerks, or bailiffs (“huissier de justice”);
- b. Administrative documents;
- c. Documents issued by notaries;
- d. Official certificates affixed to documents signed by persons in their private capacity, such as certificates

recording the registration of a document, or certifying the validity of a document on a certain date, and authenticating signatures by officials and notaries.

However, the Convention does not apply to:

- a. Documents signed by diplomatic or consular agents;
- b. Administrative documents directly related to commercial or customs operations.

Indonesia's accession to the Apostille Convention is not only intended to keep up with international developments, but also as part of its commitment to bureaucratic reform, public service efficiency, and the strengthening of the national legal system in the transnational sphere. Accession is an act by which a state agrees to participate in a convention or international treaty. Indonesia, as one of the countries acceding to the Apostille Convention, is obliged to comply with its provisions. As of 2025, there are already 127 countries that have ratified or acceded to it.<sup>5</sup> The large number

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<sup>4</sup> Indonesia, (1961) “Naskah Urgensi Pengesahan Convention of 5 October 1961 Abolishing The Requirement of Legalisation For Foreign Public Documents (Konvensi 5 Oktober 1961 Tentang

Penghapusan Persyaratan Legalisasi Terhadap Dokumen Publik Asing).”

<sup>5</sup> HCCH. (2025) <https://www.hcch.net/en/instruments/conventions/s>

of countries joining through ratification or accession demonstrates that the convention is considered successful and beneficial by many states. The more countries that ratify or accede to the convention, the easier international exchanges will become, particularly in trade, investment, and private matters among citizens. However, such ease of process only applies between countries that are parties to the convention.

In implementing the Apostille in Indonesia, the Government issued the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2022 concerning Apostille Legalisation Services for Public Documents. This was because the Government of Indonesia designated the Ministry of Law and Human Rights of the Republic of Indonesia as the *competent authority* authorized to issue Apostille certificates. According to Article 2 of the Regulation of the Minister of Law and Human Rights (hereinafter referred to as PermenkumHAM), the Apostille applies to documents issued within the territory of Indonesia and can be used in the territory of other participating states. In paragraph (3), letter (a) specifies that one of these

documents is a document issued by a notary. Thus, documents considered public documents are those originating from an authority or official related to a state court or tribunal, including public prosecutors, clerks, or bailiffs (*huissier de justice*). These documents include, among others:<sup>6</sup>

- a. Administrative documents;
- b. Documents issued by a Notary;
- c. Official certificates affixed to documents signed by individuals in their private capacity, such as certificates recording the registration of a document, certifying the validity of a document on a specific date, and the authentication of signatures by officials and Notaries.

This is consistent with Article 15 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Position of Notary (hereinafter referred to as the UUJN-P), which states that Notaries are authorized to draw up authentic deeds concerning all acts, agreements, and determinations required by legislation or requested by the parties involved. Notaries are also responsible for ensuring the certainty of the date of the

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<sup>6</sup> Nanda, Reza Ria and Rouli Anita Velentina. (2022) "Tanggung Jawab Notaris Dalam Legalisasi

Dokumen Warga Negara Asing Menurut Konvensi Apostille," *Jurnal USM Law Review* 5, no. 1 : 270–81.

deed, safeguarding the deed, and issuing grosses, copies, and excerpts of the deed, provided there is no assignment or exception given to other officials or individuals by law. Therefore, based on this provision, authentic deeds and other documents drawn up and issued by Notaries fall within the category of public documents that may be legalized through the Apostille mechanism and subsequently used in other states that are also parties to the Convention.

Three years since Indonesia acceded to the Apostille Convention through Presidential Regulation Number 2 of 2021 concerning the Ratification of *the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, there have been significant changes in the mechanism for legalizing public documents for cross-border purposes. With the Apostille, the legalization process is expected to become simpler, improve public service efficiency, and strengthen legal certainty in international legal relations, particularly in notarial practice. According to the Ministry of Law and Human Rights, within the first 10 days after the Apostille service took

effect in Indonesia, there was a positive response, evidenced by 2,918 applications, most of which were notarial documents directly related to business activities.<sup>7</sup> The implementation of the Apostille illustrates how reforms in private international law can serve as an instrument of macroeconomic policy

However, in practice, the implementation of the Apostille Convention still faces various challenges, ranging from issues involving stakeholders, technical execution, and public understanding. This study will discuss the legal standing and authority of Notaries in the legalization of foreign public documents following the enforcement of the Apostille Convention in Indonesia, as well as the challenges faced by Notaries in applying the Apostille mechanism for the legalization of foreign public documents in Indonesia.

## METHOD

This study employs a normative legal research method, focusing on literature review as the primary source of data. This approach emphasizes content analysis of existing laws and regulations related to the legal issues examined by the

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<sup>7</sup> Kementerian Hukum dan Hak Asasi Manusia. (2022). <https://portal.ahu.go.id/id/detail/75-berita-lainnya/3053-luncurkan-layanan-apostille->

[kemenkumham-pangkas-proses-legalisasi-dokumen](https://kemenkumham-pangkas-proses-legalisasi-dokumen), Access on September, 05 2025 at 10.00.

author. The data used in this study are secondary data, including relevant legislation, legal literature, journal articles, and academic works by legal scholars. Data collection was conducted through a literature study by reviewing various references related to the Apostille and the Notary Profession. The collected data were then analyzed using a qualitative descriptive method to provide explanations and descriptions expressed in words of the findings concerning the Apostille and the role of Notaries.

## RESULT AND ANALYSIS

### **The Legal Standing and Authority of Notaries in the Legalization of Foreign Public Documents After the Apostille Convention Took Effect in Indonesia**

Indonesia's accession to the Apostille Convention was formalized through Presidential Regulation (Perpres) Number 2 of 2021 concerning the Ratification of the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (Convention on the Abolition of Legalisation Requirements for Foreign Public Documents). This Presidential Regulation officially took effect on June 4, 2022, serving as the primary legal basis for the implementation of the Apostille in

Indonesia and binding the state to comply with the principles of the Convention. As the implementing regulation, the Government appointed the Ministry of Law and Human Rights (Kemenkumham) as the *competent authority* through the issuance of Regulation of the Minister of Law and Human Rights (Permenkumham) Number 6 of 2022 concerning Apostille Legalisation Services for Public Documents. This is in accordance with Article 6 of the Apostille Convention, which mandates participating states to

designate a single competent authority responsible for issuing Apostille certificates. This regulation provides detailed technical and procedural guidelines regarding the scope of Apostille services, the types of eligible documents, and the procedures for Apostille certificate applications.

The existence of the Presidential Regulation and the Ministerial Regulation demonstrates the government's seriousness in establishing a strong legal foundation for the Apostille Convention. However, it also raises questions about how quickly and effectively these regulations can be translated into smooth operational practice, especially considering the complexity of transitioning from the long-established

traditional legalization system. Regulation is an essential first step, but successful implementation requires more than just a legal framework; it also demands adequate infrastructure, comprehensive training, and behavioral adaptation from all stakeholders involved. According to Article 2 paragraph (3) of Presidential Regulation Number 2 of 2021 concerning the Ratification of the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, the types of public documents eligible for Apostille certification include:<sup>8</sup>

- a. Documents originating from an authority or official related to a state court or tribunal, including those from public prosecutors, court clerks, or bailiffs (*huissier de justice*);
- b. Administrative documents;
- c. Documents issued by a notary;
- d. Official certificates affixed to documents signed by individuals in their private capacity, such as certificates recording the registration of a document, certifying the validity of a document on a specific date, and authentication of signatures by officials and notaries.

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<sup>8</sup> Apostille Convention, Art.1, “The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.”

However, this Convention does not apply to:

- a. Documents signed by diplomatic or consular officials;
- b. Administrative documents that are directly related to commercial or customs activities.

Apart from the types of public documents regulated above, the Convention does not apply, and therefore, such documents cannot be legalized through the issuance of an Apostille certificate. Legalization for these documents must be carried out through the conventional legalization process. In general, the conventional legalization process for public documents in Indonesia can be carried out as follows:<sup>9</sup>

- a. The concerned individual brings the public document to be legalized to the Directorate of Civil Affairs, Directorate General of General Legal Administration (Ditjen AHU) under the authority of the Ministry of Law and Human Rights of the Republic of Indonesia for verification of the

<sup>9</sup> Almi, Ara Annisa. (2022). Mencandra Aksesi Apostille Convention dalam Mendukung Debirokratisasi Legalisasi Dokumen di Indonesia, “*IPMHI LAW JOURNAL*”, Vol. 2(1): 253.

signature of the official who issued the public document;

- b. After obtaining legalization from the Ministry of Law and Human Rights, the document is then submitted to the Sub-Directorate of Clearance and Legalisation at the Ministry of Foreign Affairs of the Republic of Indonesia to verify the signature of the Ministry of Law and Human Rights official;
- c. Once both legalizations have been obtained, the document is then brought to the Embassy of the destination country, specifically to its Consular Section.

One of the types of documents that can be requested for Apostille certification is a notarial document, as stated in Article 2 paragraph (3) letter (c) of Presidential Regulation Number 2 of 2021 concerning the Ratification of the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*. This is consistent with Article 15 of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 on the Position of Notary (hereinafter referred to as UUJN-P), which stipulates that Notaries are authorized to draw up authentic deeds concerning all acts, agreements, and determinations required

by legislation or requested by the parties involved. Notaries are also responsible for ensuring the certainty of the date of the deed, safeguarding the deed, and issuing grosses, copies, and excerpts of the deed, provided there is no delegation or exception granted to other officials or individuals by law. The provision in this article shows that authentic deeds and other documents prepared by Notaries fall within the category of public documents that may be legalized through the Apostille mechanism to ensure their validity for use outside the territory of states that are parties to the Convention.

Before Indonesia acceded to the Apostille Convention, Notaries played a very important role in the legalization of private documents, such as signature legalization and document registration (*waarmerking*), as stipulated in Article 15 paragraph (2) of the UUJN-P. However, these documents still required multiple layers of legalization if they were to be used abroad. This multi-tiered legalization process was intended to ensure the authenticity and origin of the documents so that they could be legally accepted in the destination country when used across

borders.<sup>10</sup> In the practice of international relations, the transmission of public documents across countries was conducted through diplomatic channels based on the *Vienna Convention (1961) on Diplomatic Relations* and the *Vienna Convention (1963) on Consular Relations*, utilizing diplomatic or consular representatives in each respective country.<sup>11</sup>

After Indonesia acceded to the Apostille Convention, the role of Notaries remained crucial and even experienced an expansion of authority (extensification). Notaries now act as public officials authorized to issue documents—such as private deeds—that can be directly submitted for the issuance of an Apostille certificate to the Ministry of Law and Human Rights (Kemenkumham) through the Directorate General of General Legal Administration (Ditjen AHU). This expansion of authority is highly relevant for notarial documents that will be used in countries participating in the Apostille Convention. In the Apostille process, the Ministry of Law and Human Rights (Kemenkumham) verifies the notary's

signature against the specimen stored in its database. The notary's role has shifted from being merely a “gatekeeper” in a lengthy chain of legalizations to becoming an initial “facilitator” in a more efficient process. The notary now serves as a crucial starting and ending point in ensuring that documents meet the requirements for obtaining an Apostille. The notary is no longer the initial actor in the conventional, multi-layered legalization process, which previously required authentication from the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and the Embassy of the destination country. This transformation demands adaptation in practice and understanding of the new system. With the Apostille mechanism in place, notaries must ensure the authenticity of private or notarial acts so that they meet Kemenkumham's standards for Apostille issuance, without bearing responsibility for the material truth of the public document's content being apostilled..

This change is expected to simplify the work of notaries as officials responsible for legalizing documents for

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<sup>10</sup> Pakpahan, Margaretha Uly. (2024). Pengaruh Apostille Terhadap Kemudahan Berusaha di Indonesia, “*Journal of Private International Law Studies*”, Vol.1, No.: 101.

<sup>11</sup> Kementerian Hukum dan Hak Asasi Manusia, (2019). “Naskah Urgensi Pengesahan Convention of 5 October 1961

Abolishing The Requirement of Legalisation for Foreign Public Documents (Konvensi 5 Oktober 1961 Tentang Penghapusan Persyaratan Legalisasi Terhadap Dokumen Publik Asing),” Direktorat Jenderal Administrasi Hukum Umum.

clients dealing with international documentation. It also highlights how international legal reforms can influence the domestic practice of legal professions. The implementation of Apostille legalization has brought significant changes to the role and practice of notaries in Indonesia. The adoption of the Apostille represents an *extension* of existing notarial authority, particularly regarding documents intended for use in Apostille Convention member states. The notarial profession in Indonesia is now required to evolve and adapt to the demands of the digital and global era. This calls for capacity building and continuous professional development. Notaries must ensure that the documents they legalize or produce meet the standards required for Apostille certification. This demonstrates that a notary must possess a deeper understanding of international requirements; hence, continuous training is essential to ensure that notaries can effectively fulfill this new role. Moreover, it opens new opportunities for notaries who specialize in international documentation. Globalization and digitalization are not only transforming how governments operate but are also reshaping the roles of traditional legal professions, demanding new forms of adaptation and specialization.

## **Challenges in Implementing the Apostille Mechanism by Notaries in Legalizing Foreign Public Documents**

While Indonesia's accession to the Apostille Convention has brought clear benefits, it has also presented several challenges, as follows:

### **1. Issues of Stability and Functionality in the AHU Online System Layanan**

Apostille telah tersedia secara online melalui portal <https://apostille.ahu.go.id/>. Namun, terdapat indikasi masalah fungsionalitas seperti munculnya laman "*Maintenance*". Keberadaan laman ini menunjukkan potensi ketidakstabilan atau kebutuhan pemeliharaan berkala pada sistem. Adanya laman "*Maintenance*" menunjukkan bahwa meskipun ada aspirasi kuat untuk digitalisasi layanan publik, realitas infrastruktur teknologi informasi di Indonesia mungkin belum sepenuhnya matang untuk mendukung operasional 24/7 tanpa gangguan. Ini merupakan tantangan umum dalam implementasi *e-government* di negara berkembang.

### **2. Absence of Universal Technical Standards for e-Apostille**

Globally, one of the main challenges in adopting the e-Apostille is the absence of universal technical

requirements regarding format, content, and methods of electronic verification.<sup>12</sup> Different countries employ varying formats for electronic documents, types of digital signatures, and methods for attaching Apostilles, which may complicate international authentication. Furthermore, participation in the Electronic Apostille Program (e-APP) is voluntary, resulting in discrepancies where some countries fully implement digital solutions, while others still issue paper Apostilles. This situation calls for stronger efforts by the Hague Conference on Private International Law (HCCH) to develop stricter or more harmonized technical guidelines. For Indonesia, this means being proactive in adopting international best practices and investing in broadly compatible technologies.

### 3. Transition from Centralized to Decentralized Issuance Services

Initially, Apostille certificates had to be collected directly from the Ministry of Law and Human Rights in Jakarta. This arrangement was considered inefficient for applicants residing outside Jakarta, as it required

significant time and travel expenses. In response, the Ministry implemented a decentralization policy, allowing Apostille certificates to be printed at regional offices of the Ministry (Kantor Wilayah Kemenkumham) across provinces. This policy aims to improve service accessibility and expedite the document legalization process for the public. The shift from centralized to decentralized issuance reflects the government's adaptability and responsiveness to public feedback. However, it may still pose logistical and cost challenges for applicants located far from Ministry offices.

### 4. Understanding of the Apostille System

As the Apostille is a relatively new mechanism, continuous education and regulatory enforcement are necessary to ensure uniform understanding and adaptation across the legal ecosystem. Awareness-raising and education efforts must target not only the general public but also legal professionals and government institutions directly involved in the process.

### 5. Verification of Officials Signature

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<sup>12</sup> Schmidt. (2025). "Electronic Apostille (e-APP): benefits, challenges, and global implementation." <https://schmidt-export.com/news/electronic->

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## Specimens

One of the administrative challenges arising in the Apostille verification process occurs when the signature specimen and seal of the official who signed the submitted document are not yet available in the database of the Directorate General of Legal Administration (Ditjen AHU). In such cases, applicants must obtain the specimen directly from the relevant institution. This process can increase complexity and processing time, potentially diminishing some of the efficiency benefits offered by the Apostille Convention. The reliance on the completeness of the officials' signature specimen database creates potential bottlenecks in verification. If the database is not comprehensive or regularly updated, an otherwise efficient process may be delayed by the need for manual retrieval of specimens. This demonstrates that digitalization and automation rely heavily on complete and accurate foundational data. Therefore, the Ministry of Law and Human Rights (Kemenkumham) must ensure that the officials' signature specimen database is proactively and comprehensively updated. This may require close cooperation with various

document-issuing institutions to continuously collect and maintain this data.

## 6. Public Awareness and Literacy Regarding Apostille

Although the Apostille service offers significant benefits to the public, there remains an urgent need to increase public awareness and deepen understanding of the importance of Apostilled documents in various international affairs. Innovations in public services, though advantageous, often face adoption challenges due to low awareness and literacy among citizens. The success of implementation depends not only on the availability of the service itself but also on the government's ability to effectively communicate the value and procedures of the service to the public. A public service innovation will only be effective if the intended users understand and are willing to utilize it, underscoring the crucial role of public communication strategies in the success of policy implementation

The implementation of the Apostille Convention in Indonesia requires strong coordination and harmonization among government agencies involved in the document issuance and verification

chain. Harmonization entails the alignment of objectives, information sharing, and system integration between institutions. This is a continuous process that requires strong leadership and formal coordination mechanisms. The success of cross-sectoral policy implementation depends heavily on the ability to overcome coordination barriers and build inter-agency synergy often a process more challenging than drafting the regulation itself.

## CONCLUSION

Indonesia's accession to the Apostille Convention represents a significant step forward in simplifying the legalization process for foreign public documents. This initiative holds great potential to improve the ease of doing business, attract foreign investment, and facilitate individual mobility in areas such as education, civil administration, and international civil transactions. Although its benefits have begun to be felt, the initial implementation has not been without challenges. Identified issues include technical obstacles within the online system (such as stability concerns and the absence of universal e-Apostille standards), administrative barriers in the transition from centralized to decentralized certificate issuance, and limited

understanding and outreach among the general public and stakeholders—including notaries and recipient institutions.

The Indonesian government, through the Ministry of Law and Human Rights, has demonstrated a strong commitment to addressing these challenges through various initiatives. These include the development of an e-Apostille system, decentralization of certificate issuance to regional offices, broader socialization and educational programs, and the improvement of information technology infrastructure and service governance. However, realizing the full potential of the Apostille Convention requires sustained and coordinated efforts involving all relevant stakeholders.

Lessons from other countries' experiences indicate that harmonizing international law in the digital era is a complex and adaptive process. Successful implementation demands flexibility in approach, continuous investment in technology and human resource development, and close international collaboration. By adopting the strategic recommendations outlined above, Indonesia can strengthen its Apostille implementation—ensuring that the service is not only efficient but also inclusive and

accessible to all levels of society. Ultimately, this will support national development goals and enhance Indonesia's position as a key player in the global legal and economic landscape.

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