

Suspended sovereignty as a result of the Apostille Convention: Legal review of Article 1337 of the Civil Code

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ABSTRACT

This study examines the risk of suspended sovereignty as a consequence of the ratification of the Apostille Convention in Indonesia from the perspective of Article 1337 of the Civil Code. The apostille system accelerates the legalization of foreign public documents, including international contracts, but reduces the substantive oversight function of Indonesian authorities. As a result, foreign documents that are formally valid and have obtained an apostille can still be recognized in Indonesia, even though they contradict national legal norms as stipulated in Article 1337 of the Civil Code. This condition creates a legal vacuum that weakens the practice of protecting national norms, so that substantive filtering can only be carried out after the document becomes a source of dispute. The research results recommend the urgency of a complementary mechanism in the form of regulations and substantive testing so that global administrative efficiency remains in line with the principles of legal sovereignty and the integrity of Indonesian values amid the tide of globalization of agreements.

Keywords: Apostille, suspended sovereignty, Article 1337, document legalization.

Introduction

The Apostille Convention, established through the 1961 Hague Convention, brought fundamental changes to the governance of public documents across countries. Through its ratification, Indonesia has adopted a new mechanism for certifying foreign documents, thereby simplifying and streamlining the previously multi-layered legalization process (Raysisca Elvide et al., 2023). Under this system, public documents that have obtained an apostille certificate from their country of origin can be immediately recognized as valid in Indonesia without the need for additional legalization steps at various institutions (Rifa Aziza Fajriani and Elan Jaelani, 2024). The administrative reforms offered by the Apostille Convention bring tangible benefits in terms of time efficiency, cost, and increased competitiveness for Indonesia at the international level. The use of apostille certificates is seen as being in line with the needs of globalization, where human mobility, investment flows, and cross-border document exchanges are increasing.

However, in the context of national legal sovereignty, this convenience raises important issues. Legal sovereignty itself requires that the state retain full authority to control every foreign document that enters and is used within its territory. Through the Apostille Convention, the administrative authority to verify document formalities – including the authenticity of signatures, official positions, and official stamps or seals – has been delegated to the country of origin of the document (Vina Fauziah and Elan Jaelani, 2024). Documents that have obtained an apostille certificate automatically receive administrative recognition in Indonesia, regardless of whether the content or cause of the document is in line with Indonesian legal norms and principles (Melly Aida et al., 2023). In fact, Indonesia has strict rules in Article 1337 of the Civil Code that do not recognize the validity of agreements that are contrary to law, public order, or morality (Michael Tunggono and Sri Harini Dwiyatmi, 2024).

When foreign public documents with a cause (causa) that is valid under the law of the country of origin but actually contradicts national law enter Indonesia, the phenomenon

of suspended sovereignty occurs. The sovereignty of the state in examining the substance of the causa at the initial administrative stage is seemingly suspended, because the benchmark used is only the formality criteria that have been verified by the country sending the document (M. Tri Artha Wijaya, 2025). The country of origin of the document indirectly determines whether the document is administratively valid in Indonesia, even though its substance may not necessarily be accepted in the national legal system. Indonesian authorities can only examine the substance of the cause after the document has been used in further legal proceedings, for example, in civil disputes in court. In practice, this weakness can have a number of consequences (Pepy Nofriandi, 2021).

Documents with content that actually violates the principle of halal under Article 1337 of the Civil Code can pass the administrative stage and be used for various purposes without state control (Natasia Maharani Kasih and Aris Yuni Pawestri, 2025). This not only has the potential to weaken the national legal protection mechanism, but also opens the door to the misuse of foreign documents that do not comply with Indonesian norms (Najma Fauziyah Rabbani and Elan Jaelani, 2024). On the other hand, the need for administrative convenience in the global era remains unavoidable, creating a tug-of-war between the principles of efficiency and the protection of legal sovereignty. In terms of implementation and administrative processes, there are still infrastructure obstacles, such as national readiness in terms of information technology, knowledge distribution in the regions, and the ability of relevant authorities to disseminate information and control potential document fraud (Mahdiyah Nur Fauziyyah et al., 2024). Other studies also highlight the need for public education and training for relevant officials so that the implementation of the convention can be effective and equitable throughout Indonesia.

Recent studies even highlight the dimension of sovereignty more specifically by analyzing the potential for a legal vacuum or norm vacuum at the point of recognition of documents that are formally valid according to the convention, but whose substance or purpose actually violates local norms (Geofani Lingga Meryadinata et al., 2025). The consequences of the suspension of sovereignty become even more complex when linked to international agreements that result in foreign contracts or notarial deeds with a cause that is legal in the country of origin but contrary to Indonesian law, public order, or morality. In this context, previous studies have also highlighted how the process of substantive testing should remain the domain of the destination country as a last resort to protect the integrity of the national legal system.

An analysis of existing literature and research shows that the majority of research still focuses on the administrative benefits, technical implementation, and practical legal challenges of implementing the Apostille Convention. Studies on the dynamics of legal sovereignty, particularly in the realm of substantive testing of document content, comparative research on cases of documents that are unlawful according to national law, and mitigation of the risk of suspended sovereignty, are still limited and often only appear in brief discussions.

This has given rise to a gap analysis in the corpus of Apostille research in Indonesia. First, the aspect of the resilience of national legal sovereignty against the possibility of documents that conflict with local norms passing through the apostille procedure has not been analyzed in depth, especially at the level of comparing real cases or cross-country simulations (David Tan, 2021). Second, further harmonization efforts between the apostille administrative system and substantive control by domestic authorities have not been elaborated on systematically, even though this issue is crucial for the protection of national law amid the globalization of cross-border transactions (Aam Hernita Sriwulan et al., 2023). Third, longitudinal studies on the effectiveness of the convention in the context of protecting

national interests, whether in terms of economics, civil law, or the protection of the domestic community, have primarily not been comprehensively elaborated in the national literature (Tan, Davi, 2021).

Ultimately, developments in the study of the Apostille Convention in Indonesia show that the adoption of this international instrument is a necessity in an era of globalization that demands accelerated services, administrative efficiency, and the strengthening of Indonesia's global position (Fauziah, Vina, and Elan Jaelani, 2024). However, this progress must be accompanied by critical scrutiny and systemic anticipation of the potential weakening—or at least suspension—of the substantive autonomy of the state, especially in the context of testing the cause of foreign documents before they are formally and materially enforced and recognized in the national legal sphere (Najma Fauziyah Rabbani and Elan Jaelani, 2024). Future research and development need to be directed towards designing risk mitigation mechanisms, effective substance review systems, and educating stakeholders so that the harmonization between international principles and the protection of national sovereignty can be optimally realized. This effort is significant to ensure that the administrative trust granted through the apostille does not lead to compromises on the fundamental values and norms that form Indonesia's legal identity.

State-of-the-art research on this topic also shows a push to examine further the mitigation of document forgery, administrative fraud, and the protection of confidential data that is the responsibility of notaries and national public officials after the convention comes into force (Muhamad Taufik La Ode, 2025). Both normative and empirical studies have found several dilemmas and gaps between the need for public service efficiency and the urgency of maintaining the integrity and sovereignty of national law (Vindy Karina Leksono et al., 2025). Researchers such as Ara Annisa Almi and Priskila P. Penasthika, for example, have also highlighted the importance of drafting derivative regulations and strengthening the awareness of officials, notaries, and the general public to anticipate the misuse of apostille certificates and ensure that the substance of documents remains adequately supervised at the domestic level. Furthermore, the research agenda is now beginning to move towards harmonizing the global apostille system with the mechanism of material causa testing by national authorities, given the potential for cross-border contracts that could lead to conflicts of norms and violations of Indonesian legal principles.

One of the recent developments in this research is the exploration of the empirical reality that the Apostille mechanism has not been able to entirely prevent the risk of suspended sovereignty, because in practice, the administrative recognition granted through apostille certificates opens up the possibility that documents that conflict with national law can be formally accepted before finally being tested in court (Maretha Crisindiana and Nanik Trihastuti, 2022). This consequence challenges researchers and policymakers to continue to combine the speed of public service with substantive protection of national norms and sovereignty, through the adoption of a multi-layered examination system or continuous education for stakeholders. Thus, recent research has evolved from simply highlighting the administrative advantages of the convention to a critical analysis of the need for adaptive regulatory design and legal governance so that Indonesia's membership in the Apostille Convention has an optimal impact without sacrificing the essential principles of the country's legal sovereignty (Tan David, 2021).

Methods Research

The most appropriate research method to use in this study is the normative juridical method with a legislative and conceptual approach. This approach was chosen because the

primary focus of the study lies in the analysis of legal norms, both those sourced from national legislation, such as the Civil Code and implementing regulations related to the Apostille Convention, as well as international legal instruments that have been ratified by Indonesia (Randyarsa Nurindra Irawan, 2022). In its implementation, this method will examine primary legal documents, such as the text of the Apostille Convention itself, national legislation related to the legalization of foreign documents and its implementing regulations after ratification, as well as relevant jurisprudence or court decisions (Azka Zulfa Khairina, 2023). In addition, the analysis will also involve a review of legal doctrines and expert opinions on the concepts of sovereignty, document ratification, and reconciliation between national legal principles and international norms.

The main advantage of the normative juridical method lies in its ability to systematically identify, interpret, and provide solutions to legal issues based on the text of laws, international legal documents, implementing regulations, and relevant jurisprudence. Through an in-depth study of the Civil Code (KHPerdota), particularly Article 1337, as well as Presidential Regulations and technical regulations implementing the Apostille Convention, researchers can analyze the process of transposing global norms into the national legal sphere (Auliya Yasyfa Anwar and Togi Marolop Pradana Pangaribuan, 2021). A detailed study of the original text of the Apostille Convention and a comparison with ratification practices in various countries provides a comprehensive understanding of the compatibility and potential conflict of norms, particularly regarding legality (*causa*) in cross-border agreements.

The integration of literature studies with normative analysis allows researchers to explore and critique legal doctrines and authoritative opinions from experts. This approach is important for identifying gaps between the ideal normative arrangements contained in legislation and the reality of practice in the field—for example, in relation to Indonesia's ability to maintain full authority in screening the substance of foreign documents amid the administrative convenience promoted by the apostille system (Sidi Ahyar Wiraguna et al., 2025). Comparisons with other countries' legal systems are crucial to see how other countries adapt and anticipate similar challenges in maintaining domestic legal sovereignty when faced with international standards (Andi Tenripadang, 2025). Prescriptive analysis in this method takes the research beyond mere description.

The researchers produced concrete recommendations in the form of a formulation of a document substance verification system in Indonesia, alternative risk mitigation measures for suspended sovereignty, and a contextual design for derivative regulations in line with the nation's needs. This means that the output produced does not merely describe the problem, but provides solutions based on in-depth reflection on the effectiveness of law enforcement and offers policy directions to maintain harmony between international openness and the protection of key principles of national law.

Results and Discussion

Indonesia's ratification of the Apostille Convention marks a new chapter in the management of foreign documents, including agreements or contracts that often form the backbone of business activities and international civil relations. Its history began with Indonesia's need to simplify and accelerate the process of legalizing foreign documents, which for years had been considered slow, bureaucratic, and expensive. With Presidential Regulation No. 2 of 2021, Indonesia finally officially became a member state of the Apostille Convention. The essence of this change is the simplification of the legalization scheme, from a multi-step system involving notaries, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and diplomatic representatives, to a single step of apostille

verification carried out by the authority of the document's country of origin – which in the context of international agreements means the country where the contract or deed was made (Aida, Melly, Yunita Maya Putri, Ria Wierma Putri, and Ria Silviana, 2023).

The transfer of authority for the legalization of treaty documents has complex legal consequences. With the increasing flow of business and cross-border cooperation, there are more and more contracts or agreements that require document legalization to be effective in Indonesia. The apostille mechanism ensures that documents that have been legalized in the country of origin no longer need further legalization in Indonesia, so that they are automatically accepted for administrative and even litigation purposes (Pradana, W., & Fakhry, F, 2024)

The positive impact of this step is indeed very noticeable in terms of ease and speed of service. Business actors, foreign investors, and interested parties gain efficiency in terms of time, costs, and legal certainty earlier (Ayu Rosita Nugiantari, 2025). The mobility of business contracts, partnership agreements, inter- institutional deeds of gift, and even cross-border family documents (such as marriage and inheritance certificates) has become smoother in terms of legal formalities. Moreover, in the modern economic climate, cross-border investment transactions increasingly require legal instruments that are recognized not only *de facto* but also *de jure* in many jurisdictions at once.

However, behind this convenience lies a significant challenge, especially when linked to Article 1337 of the Civil Code. This article stipulates that the cause (*causa*) of an agreement must be lawful: it must not conflict with the laws, public order, or morality in Indonesia (H. Nanang Hermansyah, 2020). The existence of cross-border agreements that are drafted and verified in the country of origin, then legalized through the apostille process, creates a situation where Indonesia loses its momentum to conduct material verification of the cause or purpose of the contract before the document is used in the national legal jurisdiction.

For example, there may be a business contract between a foreign company and an Indonesian partner where the country of origin legally permits online gambling, the narcotics processing business, or other transactions that are clearly prohibited by Indonesian law and whose cause is not lawful³¹. Suppose such a contract has fulfilled the formalities in the country of origin and obtained an apostille certificate. In that case, the document is administratively accepted and can be used as evidence or a basis in administrative proceedings in Indonesia (Ferinda K Fachri, 2022). It is at this stage that there is a potential conflict with Article 1337 of the Civil Code, namely that Indonesian officials or authorities may be forced to recognize the existence of the document formally, but cannot yet examine its substance at the initial stage.

The most significant risk that arises is the entry and use of contracts that conflict with the national legal system and values, which then causes further conflicts at the implementation level in the business world, state administration, and even in the courts (Imagrace Triamorita Tampubolon et al., 2025). This practice not only challenges the integrity and authority of national law but also risks being exploited by parties seeking to profit from loopholes in cross-jurisdictional legalization (Ade Nugroho et al., 2025). In addition, the apostille policy also encourages new responsibilities for Indonesian public officials in conducting education and mitigation, so that the speed of document ratification does not necessarily blunt the quality control or substantive value of the agreement (Irawan, Randyarsa Nurindra, 2022).

Ultimately, although the ratification of the Apostille Convention brings undeniable benefits in terms of the ease and efficiency of international document management, this system creates a gray area in national legal protection, most notably in agreement or

contract documents containing questionable causes (Fauziah, Vina, and Elan Jaelani ,2024). This is why, in managing apostilles for cross-border contracts and agreements, it is essential to design a subsequent material testing system that can still protect the supremacy of Article 1337 of the Civil Code, even though administrative recognition has already occurred at an early stage through the apostille certificate (Vita Sylvaniesha Febridha, 2024).

Suspended sovereignty in the Ratification of the Apostille Convention

The concept of suspended sovereignty is essentially a reflection of a situation in which the sovereignty of a state in performing certain functions, particularly in the context of testing the substance of foreign documents, is suspended or limited due to the adoption of international mechanisms (A. Yannis,2002). In the classical sense, sovereignty is synonymous with the absolute authority of a state to enforce and interpret the law within its territory, particularly in determining the validity of a legal relationship such as a contract or agreement. However, the globalization of legal instruments such as the Apostille Convention presents a new situation, in which some of these determining functions are transferred to legalization procedures abroad through apostilles, and the destination country—Indonesia, in this case—accepts the results without conducting a substantive examination at the outset (Fauziah, Vina, and Elan Jaelani ,2024).

Theoretically, suspended sovereignty in this context does not mean a complete loss of legal authority or prestige, but rather a postponement and restriction of the authority of proof at the administrative stage (Fajriani, Rifa Aziza, and Elan Jaelani ,2024). Formally, when a foreign contract enters Indonesia with an apostille certificate, Indonesian officials and authorities are forced to trust the validity of the document based on the certification of a foreign country that is a member of the convention. This mechanism was deliberately designed internationally to facilitate and accelerate cross-border transactions (Randyarsa Nurindra Irawan et al., 2024). However, as a consequence, the state's authority to assess the cause of the agreement (*causa*) as mandated in Article 1337 of the Civil Code cannot be exercised directly at the initial stage.

Article 1337 of the Civil Code affirms the doctrine that every contract *causa* must be lawful and must not violate the law, public order, or morality (Hermansyah, 2020). However, in practice, differences in systems and perceptions regarding lawful causes between Indonesia and other countries often cannot be filtered through the apostille mechanism (Elvide, Raysisca, Yuhelson Yuhelson, Yuherman Yuherman, and dkk, 2023). The country of origin may view lawful *causa* differently, so that agreements containing illegal activities in the lens of Indonesian law may be declared valid in their country of origin and obtain an apostille certificate.

This situation becomes even more complex when apostille-certified documents are entered and used in the administrative sphere (e.g., for business notifications, agreement registrations, or submissions to state authorities). Officials sometimes have no basis for rejecting such documents administratively, so that documents with unlawful causes can still be processed until a dispute arises and is brought to court (Agus Riyanto and Rizki Tri Anugrah Bhakti, 2023). This is where the function of Indonesian legal sovereignty is delayed the state can only cancel or reject the contract if the case goes to court, or if there is a complaint/further examination of the substance.

The concept of suspended sovereignty emphasizes the importance of mitigation efforts namely, strengthening the regulatory system, screening documents for substance at the post- administrative stage, and educating public officials—so that the state does not entirely lose control in upholding national legal values and norms (Andri Wahyudi, 2025). In normative legal analysis, the application of Article 1337 of the Civil Code continues to play a

key role in selecting agreements that can obtain binding legal force in Indonesia, even though they have passed formal recognition through the apostille mechanism (Renata Christina Auli,,2023). This confirms that harmonization between the openness of the international agreement system and the firmness of national legal norms is essential to prevent the degradation of the state's legal authority. Otherwise, the risk of suspended sovereignty could develop into an erosion of the substance of Indonesia's legal sovereignty in the long term (Abdul Halim Barkatullah, 2016). Thus, the theory of suspended sovereignty is not merely a sociological or political concept, but is evident in the practice of notarial and international agreements in Indonesia. Its practical and theoretical consequences must be managed with a layered testing design, so that the effectiveness of the apostille system does not reduce the essence of protection of national legal values, norms, and principles as mandated by Article 1337 of the Civil Code.

Discussion

The Legal Dimension of the Ratification of the Apostille Convention on the Mechanism of Legalization of Foreign Agreements in Indonesia

The application of Article 1337 of the Civil Code (KUHPerdata) is an absolute foundation in determining the validity of every agreement that applies in Indonesia (Renata Christina Auli,,2023). In the Indonesian legal system, the requirements for a valid agreement are clearly formulated in Article 1320 of the Civil Code, which regulates four elements, namely the agreement of the parties, the legal competence of the parties, a specific matter as the object of the agreement, and the existence of a lawful causa (Resa I.S, 2025). This element of lawful causa is the main essence of the test in Article 1337 of the Civil Code, which states that a cause or causa is not permissible if it is prohibited by law, contrary to public order, or violates morality. Thus, even if the agreement has fulfilled the formal aspects, if the causa or purpose underlying it is considered unlawful in the lens of Indonesian law, the agreement is null and void and does not obtain legal recognition or protection (Hermansyah, 2020).

Theoretically, the meaning of causa in an agreement is not merely an administrative tool, but a manifestation of the fundamental values and norms embodied in national law (E. Prima Rateisari et al., 2024). Classical contract law theory, according to both the freedom of contract school of thought and the social school of thought in the development of European continental doctrine, places the requirement of lawfulness as an instrument of balance between the freedom of the parties and the restrictions on public interests protected by the state. From an Indonesian perspective, the principle of freedom of contract is not unlimited freedom; rather, it is freedom that must comply with the provisions of legislation and the values of communal life (Ananda Bunga Neesya et al., 2025). Therefore, Article 1337 of the Civil Code not only binds Indonesian citizens in making contracts, but also applies universally to any agreement document that has legal consequences in Indonesia, whether it is a domestic document or a foreign document that is to be enforced in Indonesian jurisdiction.

Furthermore, the application of Article 1337 becomes a clear-cut normative filter for international business documents entering Indonesia, so that the state is obliged –legally and morally to filter contracts whose substance has the potential to conflict with the law, public order, or morality (Ismaidar Ismaidar et al., 2025). This examination of substance or causa should ideally be carried out before the document obtains administrative recognition, as an illustration of the state's protection of its national legal system and character. The validity requirements for agreements under Article 1337 are also in line with the theory of the state's preventive duty, which is to exercise control from the initial stage over any foreign legal product that is to be enforced within its territory⁵⁴. The subjection of every contract to

the *causa halal* filter should not be a mere formality, but requires the sovereign authority of the state to actively screen any document, regardless of its origin, whether it is the result of bilateral or multilateral cooperation, or the result of private cross-border transactions.

However, the dynamics of cross-border treaty law have changed significantly since Indonesia ratified the Apostille Convention. Prior to the adoption of this convention, all foreign treaty documents—whether in the form of business contracts, cooperation agreements, or partnership documents—had to go through a multi-level legalization process that provided sufficient space for Indonesian authorities to examine not only administrative aspects, but also allowed for substantive checks by various relevant agencies. The manual legalization system, which was divided into stages involving notaries, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and finally Indonesian diplomatic representatives, ensured that, although it tended to be slow, the state retained complete control over which documents were legally valid in its territory.

After the ratification of the Apostille Convention, the entire legalization procedure changed to a single window of automatic legalization by the authorities of the country of origin through the apostille system. The apostille format is merely a formal certification by a member state of the convention that ensures the authenticity of the signature, the position of the official, and the seal on the document, without any authority over the content or legal substance of the document submitted (Pradana, 2022). In practice, business documents or contracts that are created and legalized in accordance with the laws of the country of origin can be used immediately for administrative, business, or even litigation purposes in Indonesia, simply by obtaining an apostille certificate from the country where the document was created or signed (Made Santrupti Brahmi and I Nyoman Suyatna, 2023). This is the primary source of the fundamental shift in the Indonesian Government's system of monitoring foreign documents.

In the context of international agreement or contract documents whose cause or purpose is not in line with Article 1337 of the Civil Code, the apostille system creates a vacuum of authority in which the Indonesian state no longer has a substantive filtering mechanism at the administrative stage of document entry (Erriyanti Samuhedah Puteri and Edmon Makarim, 2024). Agreements that are declared legal in their country of origin and do not conflict with local norms can obtain apostille legalization, even though, from the perspective of Indonesian law, the basis for the agreement may be clearly prohibited. The clearest examples can be found in cases of online gambling agreements, surrogacy, or crypto business agreements that are legal in several European or American countries and have even obtained apostilles, but are never considered valid, let alone enforced, in Indonesia because they are fundamentally contrary to positive law and Indonesian societal values.

The problem becomes even more serious because with Indonesia's acceptance of apostille-certified documents at the administrative stage, such documents appear to have been legitimized from the outset without any substantive review by national legal authorities⁶⁰. The Indonesian state loses the initial opportunity to immediately reject or delay the acceptance of documents that conflict with the main danger: legal sovereignty in filtering norms is temporarily removed by cross-border administrative mechanisms. The absence of regulations or supporting systems, whether in the form of substantive assessments by certain agencies, warning mechanisms, or at least risk labeling on documents that potentially violate national law, makes the automatic apostille legalization system vulnerable to becoming a gateway for problematic agreement documents to enter the national legal sphere. Suppose that at the initial administrative stage, the state authorities are unable to take action. In that case, the only opportunity for rejection or removal is at the post-administrative stage, for example, when a dispute arises in a civil court that is

reviewing the substance of the cause in accordance with Article 1337 of the Civil Code.

This imbalance is even more pronounced when we consider that Indonesian legal doctrine places the screening of legal causes not only as an *ex post* cancellation mechanism, but also as a preventive measure to ensure that only contracts that meet national legal requirements have binding force and legal effect in Indonesia. Therefore, the transition of the foreign agreement document legalization system from a tiered system to an apostille system should be balanced by strengthening substantive testing instruments or additional regulations capable of anticipating the potential for suspended sovereignty, where the state's substantive filtering authority is delayed or even delegated to another country. This mechanism gap has not been filled to date, either in the practice of public notarial services, immigration bureaucracy, or civil court proceedings dealing with apostille-certified foreign documents.

This phenomenon must be viewed within the broader framework of the relationship between the national legal system and the influence of international legal instruments. The Apostille Convention, as a form of Indonesia's commitment to simplifying and harmonizing the management of international business documents, does indeed promise efficiency, speed, and a reduction in bureaucratic barriers in cross-border transactions. However, from the perspective of securing the substance of legal agreements, it leaves a significant issue regarding the erosion of the protection of national legal sovereignty. The Indonesian legal system, through the interpretation of Article 1337 of the Civil Code, has actually built a firewall for the substance of all agreement documents applicable in Indonesia, but the apostille mechanism, with its automation, suspends this firewall at the administrative stage.

Theoretically, this relationship shows a real picture of suspended sovereignty in contemporary international treaty law. State sovereignty, in this case Indonesia's, is not entirely lost but is suspended or its preventive access is limited⁶⁵. The state can only exercise filtering when there is a material test due to a lawsuit, a request for cancellation, or a public report regarding a problematic agreement. From the perspective of legal protection and legal certainty, this is clearly not ideal because the state merely becomes a passive actor that only reacts after a violation or disturbance of interests has occurred due to foreign documents that conflict with national norms entering and even circulating in society.

In such a situation, the practical consequence is that foreign agreement documents that have obtained an apostille can be used by certain parties to justify businesses, activities, or transactions that are not recognized by the Indonesian state⁶⁷. This loophole is widened by the ease with which documents that have passed the apostille formality can be used immediately in business registration processes, opening bank accounts, applying for permits, or even in court proceedings before the substance of the cause is thoroughly examined. The absence of a supporting mechanism based on substantive value testing puts the national legal system at risk of becoming fertile ground for the passage of documents that conflict with national law for specific interests.

A normative legal review will show that, in order to create maximum legal protection without sacrificing the efficiency and modernization of the system, Indonesia should regulate a second substantive review mechanism or a dual system verification. Thus, even though apostille certificates are recognized internationally for administrative formalities, there must still be a special domestic authority or body authorized to review the substance of every agreement/business document that will have legal consequences in Indonesia (Ninda Rizkawati and Arpangi Arpangi, 2023). This mechanism can be designed, for example, through supporting regulations that require review by the Ministry of Law and Human Rights, the Notary Authority, or even involve the District Court for international business agreement documents that have the potential to cause significant legal implications

in Indonesia (Ali Abdullah, 2024).

In addition, in a critical normative review, it can be examined that the factors of transparency and bureaucratic accountability are key factors in the effectiveness of such a substantive support mechanism (Arifin Muksin et al., 2023). The state can encourage the digitization of the document testing system with risk mapping based on the origin of the document, the field of the agreement, and the legal practices of the country of origin. Socialization and special training for public officials, notaries, and private parties are also important to ensure that all parties understand the principles of *causa halal* and national legal protection, and know the extent to which the recognition of apostille formalities can be limited or canceled in practice.

An in-depth normative analysis also requires public policy reforms that are responsive to the limitations of the apostille system. The state must not only reinforce the position of Article 1337 of the Civil Code as a last resort, but also expand its ability to take preventive action from the initial stage to the final settlement of an agreement (Herman Herman et al., 2022). The harmonization of national law with the international legal system must be directed at creating a balance between the openness of global administrative services and maintaining the spirit of national law as the heir to the values, identity, and objectives of the state (Olivia Rizka Vinanda et al., 2024).

The entire study confirms that the phenomenon of suspended sovereignty is not a myth or an abstract concern, but an empirical reality that has occurred and will continue to occur if there are no regulatory corrections or adjustments at the national level. State sovereignty, which should provide comprehensive protection for all agreement documents in Indonesia, must be hacked by a new legal instrument that is commensurate, creating a system of substantive filters, supervision, and legal education that ensures all applicable and recognized contracts are not only formally valid, but also truly legitimate according to Indonesian law, ethics, and national interests. Article 1337 of the Civil Code is the main instrument in this agenda, and the state's task today is to activate and optimize all the protections provided by this article without sacrificing the convenience gained from Indonesia's entry into the Apostille Convention. Thus, only through innovative policies and careful system design can Indonesia productively combine the demands of global efficiency with the fundamental need to maintain the supremacy and dignity of national law in the tide of international agreement globalization.

Suspended Sovereignty and the Challenge of Protecting National Norms

The concept of suspended sovereignty in the practice of international agreements is a contemporary legal phenomenon that has emerged as a result of increasingly intensive integration of laws between countries without being accompanied by mechanisms that are truly capable of maintaining the substantive authority of the destination country (R Maño, 2023). Suspended sovereignty refers to a situation in which the sovereignty of a country, particularly in conducting substantive screening of foreign documents, is delayed, reduced, or even deviated from due to multilateral legal mechanisms such as the Apostille Convention. In practice, the apostille mechanism works based on the principle of administrative trust, allowing public documents that have been certified by their country of origin to be recognized in all member countries without requiring additional examination by the destination country. On the one hand, this reveals the spirit of mutual recognition in international law, which aims to increase the efficiency, speed, and certainty of the flow of public documents⁷⁴. However, from the perspective of sovereignty and the protection of internal norms, this mechanism raises a series of problems, especially when Indonesia must

accept foreign public documents without first screening their substance and legal quality according to the national legal system.

The phenomenon of suspended sovereignty cannot be separated from the development of the literature on sovereignty theory in international law, in which state sovereignty, which, since the era of Jean Bodin, has been known as the highest and undivided power, has undergone adaptation in global relations⁷⁵. Modern sovereignty theory emphasizes the need for states to open up in the context of international cooperation, both in the name of common interests and the demands of globalization. However, this adaptation should not be interpreted as a total abandonment of the state's absolute right to maintain the integrity, values, and norms that have become the identity of national law (Budi Prasetyo et al., 2025). Suspended sovereignty serves as a critical warning that sovereignty needs to be revitalized in its form and penetration, especially when destination countries such as Indonesia are faced with the difficult choice between opening access to cross-border public documents or sacrificing substantive filtering mechanisms that are fundamental to the protection of local norms (Samantha Besson, 2011). In the Indonesian context, the acceptance of international treaty documents resulting from apostille is often not accompanied by specific accompanying regulations that guarantee a mechanism for material testing of the substance of the treaty. In fact, the need for accompanying norms is increasingly urgent amid the globalization of legal documents through the apostille system, especially considering that the main architecture of treaty law in Indonesia still depends on the enforcement of Article 1337 of the Civil Code. Without legal instruments or administrative practices capable of balancing speed of service and selection of substantive values, Indonesia risks becoming a recipient of documents containing values that conflict with national legal principles. Suspended sovereignty has transformed from a mere theoretical issue into a practical problem that demands courage and innovation in legal policy.

The testing of Article 1337 of the Civil Code confirms that this article is the main bulwark that ensures that every agreement that is valid or executed in Indonesia is based on a lawful cause. Normatively, Article 1337 stipulates that an agreement is only valid if its causa is not prohibited by law, does not violate public order, and does not violate morality (Andrew Salainti, 2021). With this formulation, Indonesian national law emphasizes the supremacy of substantial filtering, so that every foreign document, including those that have received international recognition, must comply with these parameters before obtaining binding force.

However, in practice, after the ratification of the Apostille Convention, the substance of testing the cause of an agreement is no longer an obligation at the initial administrative stage. As a result, foreign documents that substantively violate Article 1337 of the Civil Code can still be accepted and processed in the Indonesian legal system, and may even be used in disputes or court proceedings, before their substance is actually examined and found to be contrary to the national interest⁷⁹. The absence of a system for examining substance at the initial stage—as a result of high confidence in the formal validity of the apostille—becomes a crucial point in the suspension of sovereignty. The state, which should be the first guardian of incoming public documents, has lost its initial authority and can only act after the document is questioned. This situation not only reduces the preventive power of national law but also creates space for the emergence of legal system dysfunction in international agreements.

Concretely, if traced further through case simulations, suspended sovereignty is very easy to find in various forms of international contracts whose substance is lawful in the country of origin but not according to Article 1337 of the Civil Code. For example, online

gambling agreements legalized by the Dutch Government – a member state of the Apostille Convention are regulated by the Dutch Betting and Gaming Act (*Wet op de kansspelen*). Articles 1 and 27A of this law allow the operation of and agreements related to online gambling as long as a license is obtained from the state (Ian Macintyre, 2024). Thus, business contracts related to online gambling made by Dutch companies can be declared valid and legal because they do not violate Dutch law; in fact, they are an official sector that is regulated and supervised by the state. In this position, if the contract is to be executed or used in Indonesia, Dutch companies can easily obtain an apostille for the contract, because the document meets all the formal and administrative requirements in their country.

However, when the contract is brought into the Indonesian administrative system, its existence is, in principle, directly contrary to Article 1337 of the Civil Code. In Indonesia, regulations prohibiting gambling are found in Article 303 of the Criminal Code, Articles 2 and 5 of Law No. 7 of 1974 concerning the Control of Gambling, and are widely recognized as a violation of public order and morality (Ruddy R Watulingas and Roy R Lembong, 2020). Thus, agreements whose substance is gambling automatically become unlawful and null and void according to Article 1337 of the Civil Code. Although it can be processed administratively at an early stage – because it has obtained an apostille – the substance of the document is ultimately only tested in court after a conflict, complaint, or when national interests are harmed. This time gap shows that the state is in a position of suspended sovereignty, where substantive filtering efforts cannot be carried out immediately because the formal recognition of the apostille already binds the state.

Another relevant simulation that is often a current issue is agreements related to surrogacy. In Ukraine and several states in the United States, commercial surrogacy is not only permitted but also protected under domestic law, such as in California through the California Family Code Division 8 §7960-7962, which recognizes and regulates surrogacy contracts⁸². Consequently, surrogacy agreements between Indonesian citizens and surrogacy service providers in these legal countries can easily obtain apostille certificates. However, if these agreements are then incorporated and submitted within the Indonesian legal system, they substantially conflict with Indonesian social norms, religious norms, and national legal regulations, which so far do not recognize or even prohibit the practice of surrogacy. At this point, once again, the country's substantive filtering is delayed and can only be carried out after the actual impact or legal claims have arisen.

This phenomenon, when analyzed from the perspective of the gap between formal apostille administration and national legal protection, shows that simplifying cross-border administration is not always compatible with the substantive protection mechanisms that are the spirit of national law. The apostille system – which is very effective in preventing overlapping legalization, speeding up public services, and encouraging economic competition – has, in fact, weakened the capacity of states to exercise substantive control, which determines the validity of treaty documents in the eyes of domestic law⁸³. The establishment of formal requirements in the apostille without substantive testing is a concrete manifestation of global administration that is not yet fully synchronized with the need to filter and select the fundamental values of the nation.

In terms of the need for solutions, mitigation and harmonization measures are essential to restore substantive filtering authority without sacrificing the spirit of administrative efficiency promoted in the Apostille Convention (Margaretha Uly Pakpahan, 2024). One of the main strategies that can be pursued is the drafting of accompanying regulations that explicitly add material testing and substance filtering clauses before apostille-certified documents can be recognized and used in Indonesia, especially for types of agreements and cross-border businesses that are classified as sensitive or high risk

according to national law. Implementative derivative regulations must give authority to national authorities—such as the Ministry of Law and Human Rights, the Notary Authority, or even judicial institutions—to conduct a substantive review of documents before they obtain further administrative approval. This process can be designed with a two-stage system: the first stage is to accept the apostille for formal requirements, and the second stage is to immediately review the substance of contracts that contain potential risks to national norms.

A further mitigation effort is to optimize legal education for public officials and business actors on the urgency of screening *causa* and protecting national values as stipulated in Article 1337 of the Civil Code. With increased understanding, notaries and administrative officials will have strong legal arguments to delay or reject documents even if they meet the formal requirements for an apostille if there are indications of problematic substance. The state also needs to develop a risk database or substance checklist, which automatically flags contracts or agreements related to priority sectors—such as gambling, narcotics, surrogacy, and crypto—for in-depth review. In certain circumstances, a digital screening and rapid reporting application can be developed to detect agreement documents that are suspected of causing national legal problems.

Another equally important strategy is to establish a system of inter-agency coordination, both in administrative and law enforcement aspects, so that information exchange and engagement between authorities are not interrupted. In cases where an apostilled agreement document is strongly suspected of violating Article 1337 of the Civil Code, the state must be able to temporarily suspend recognition of the document until further substantive examination is conducted. This coordination is also important to ensure that when there is a dispute or court order regarding a problematic apostille document, the state can quickly and effectively withdraw recognition, refuse enforcement, and take further legal measures to protect national interests.

Ultimately, the need for harmonization between the national legal system and global administration via apostille is absolute and cannot be delayed any longer. This harmonization does not mean rejecting or opposing international conventions, but ensuring that every global instrument that is accepted and adopted maintains the sovereignty of the core values, norms, and principles of national law. Article 1337 of the Civil Code should remain the final reference

and determining instrument for the validity and eligibility of all agreement documents applicable in Indonesia. Complementary regulations, substantive review systems, and cross-sector coordination are realistic steps that must continue to be developed so that suspended sovereignty does not become a weak point in the national legal system in the era of globalization of public documents and international agreements.

Conclusion

Indonesia's ratification of the Apostille Convention, although it has succeeded in reforming the legalization of foreign public documents by bringing about increased efficiency, legal certainty, and administrative convenience, also poses a serious challenge to national legal sovereignty, particularly in the context of substantive justice for foreign agreement documents to be enforced in Indonesia. The apostille system, which relies on the verification of document formalities, has reduced, and even suspended, the active role of Indonesian authorities in checking the substance or *causa* of each foreign document at the initial administrative stage. As a result, when an agreement that is legally valid in its country of origin—even though its cause or purpose conflicts with Article 1337 of the Civil

Code as a pillar of Indonesia's normative legal filtration – enters Indonesian jurisdiction, the document can still be recognized and used until problems or disputes arise that can then be followed up by the courts. This phenomenon of suspended sovereignty creates a situation in which the state loses the opportunity to preventively filter and protect local norms, values, and interests from the penetration of foreign documents that are substantively potentially destructive to the national legal order.

On the one hand, the administrative advantages of the apostille system are widely recognized, both in terms of time and cost savings, and the acceleration of cross-border business transactions. However, on the other hand, the state faces a legal vacuum in the mechanism for testing the *causa halal*, leaving a loophole for the entry of contracts or documents with causes that are considered valid in the country of origin but clearly contradict positive law, public order, or morality according to Article 1337 of the Civil Code. Many examples have shown this loophole, such as online gambling or surrogacy agreements that are legal abroad but fundamentally unacceptable under the Indonesian legal system. In these circumstances, substantive filtering by the state is "delayed," and legal protection is only achieved after the administrative process is complete, with the risk that the documents will be used prematurely or even cause legal consequences and losses for the community.

Based on normative legal studies and previous research, there is a significant gap between the administrative advantages of the apostille convention and the urgency of protecting national legal substance. The majority of existing studies still focus on procedural aspects and have not paid sufficient attention to the formulation of a system for testing the substance of foreign agreement documents, mitigating the risk of suspended sovereignty, and proposing regulatory harmonization or a layered monitoring system. From this, it is clear that future solutions must be directed towards the development of supporting mechanisms in the form of derivative regulations, substance reviews, and public and apparatus education in order to maintain a balance between global efficiency and the protection of core national norms. Ultimately, only with a commitment to strengthening the system and affirming Article 1337 of the Civil Code as the primary filter can Indonesia ensure that the openness of international document administration does not lead to the erosion of national legal sovereignty and remain capable of maintaining the spirit of the law and the interests of the nation amid the globalization of public documents and international agreements.

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