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# Comparison of Notary Deed in Indonesia, Netherlands, and Belgium During the COVID-19 Pandemic

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**Abstract**---This study aims to compare the making of a notary deed during the COVID-19 period in Indonesia, the Netherlands, and Belgium. Normative juridical law research is the method employed in this research. Analytical descriptive was further also utilized, while the data collection technique used is literature study. The results of the study indicated the importance of changes to Law Number 30 of 2004 concerning Notary Positions as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions ("Notary Position Law") in connection with by making an authentic deed which is carried out without physical presence, which facilitates Notaries to carry out their positions in times of emergency such as the current COVID-19 as the Netherlands and Belgium have fulfilled the element of legal expediency by enacting the COVID-19 Temporary Law ("Dutch COVID-19 Temporary Act") in the Netherlands. The Netherlands COVID-19 Temporary Act makes it possible to make a notarial deed without a physical presence or to do it virtually. Meanwhile, in Belgium, a digital power of attorney has been implemented by The Royal Federation of Belgian Notaries and the Minister of Justice.

**Keywords**---Belgium, COVID-19, juridical law, Netherland, notary deed.

## Introduction

In the current situation, the world faces a variety of health problems that are getting bigger and more complex, one of which is Corona Virus Disease or commonly said as COVID-19. Since March 2020, the Indonesian government has issued several policies to tackle the spread of the virus, including the

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implementation of Government Regulation Number 21 the Year 2020 concerning Large-Scale Social Restrictions in the context of accelerating the handling of COVID-19 (Pascarella et al., 2020). The regulation states that only critical and essential sectors can work in the office or Work from Office (WFO) while others must Work From Home (WFH).

However, not all sectors can carry out WFH. One sector that is not possible to implement WFH is the notary profession (Marpaung et al., 2021). In the WFH implementation, notaries are advised to temporarily close notary offices and work from home in order to support the government in reducing COVID-19 cases. This is the opposite of the legal protection law for notaries Number 30 Year 2004 concerning Notary Positions as amended by Law Number 2 Year 2014 concerning Notary Positions. This law still regulates, that the notary in making deed as the implementation of the authority, must have a physical or direct meeting between the notary and the client or interested parties; in this case, it is still carried out with the conventional system so that the use of information technology is minimal for notaries. Therefore, the notary sector should be included in the essential sector as a supporting profession for banking and capital market activities (Maharani et al., 2019).

The government policy of every country related to the notary position in making notary deeds during the COVID-19 pandemic is different so that it is important to know how other country determines the policy. This activity is carried out with aim of comparing one country to another so that the responsible government can take the newest policy that is more suitable to be applied, especially in terms of notary positions in making deeds during the COVID-19 pandemic. The two countries that have a totally different policy for notary positions during covid-19 are Netherland and Belgium. The theory used related to regulations that exist to regulate the making of a notary deed during the COVID-19 period as in the Netherlands and Belgium is the theory of legal expediency. According to this theory, the existence of law aims to create security and order and ensure the welfare of society and also regulate the relationship between humans (Pazdan & Zachariasiewicz, 2021).

This is proven by a fact that Netherland has COVID-19 Temporary Legal Protection called Dutch COVID-19 Temporary Act which has passed through parliament quickly. The bill of legal protection was submitted on April 8, 2020, approved by the House of Representatives on April 16, 2020, and followed by the Senate on April 21, 2020 (Pei & Yau, 2021). It makes the Netherlands implement a rule that the making of a deed can be done using a two-way audiovisual communication facility to prevent COVID-19. In the other side, in response to COVID-19, The Royal Federation of Belgian Notaries and Koen Geens, as the Minister of Justice, announced in a press release on April 10, 2020, about the concept of a digital power of attorney, which allows notary carrying out a notary deed without physical presence at the Notary's office and ease parties to use the services of a notary (Van der Schueren, 2020).

However, no research has conducted a comparison of the notary policy in making notary deeds during the COVID-19 pandemic applied in Indonesia, Netherlands, and Belgium. Therefore, the researchers are interested in determining how the

legal policy of notary position in making notary deeds during the COVID-19 pandemic in Indonesia compared to Netherlands and Belgium policy applied is (Noailly & Nahuis, 2010; Kotzé & Kim, 2019; Zegarra, 2017; Sutrisni, 2018). It also aims to examine the urgency of making emergency regulations related to the expansion of the meaning of dealing in the Notary Position Act. In conducting this research, it is hoped that this research can be utilized as the basic tool to update the notary policy in making deeds during the COVID-19 pandemic by using the data policy of other up-to-date countries even though it has limited on the Netherland and Belgium only.

## **Research Method**

This study uses a normative juridical approach. Normative juridical research is a process to find the rule of law, legal principles, and legal doctrines that aim to answer the legal issues faced so that new arguments, theories, or concepts are obtained as prescriptions in solving problems. The use of this research method helps answer and resolve problems in research based on existing legal principles and positive law governing problems in research, as well as several other supporting theories. This form of normative juridical research is intended to identify the making of a Notary deed during the COVID-19 period in Indonesia, the Netherlands, and Belgium (Budianto et al., 2020).

The type of data used in this paper is secondary data. What is meant by secondary data is data obtained from the literature (Harris et al., 2016). This secondary data is obtained through document studies conducted by searching the library and the internet to obtain various library materials consisting of textbooks, thesis/dissertation journal articles, or other published materials that can be used as research sources to analyze and compare the making of deeds— notaries in Indonesia, the Netherlands, and Belgium.

There are 2 (two) legal materials used in this paper, namely primary legal materials and secondary legal materials. The primary legal material used by the author in this study is the Law on Notary Positions, Law Number 40 Year 2007 concerning Limited Liability Companies (Limited Company Law), Information and Electronic Transactions Law, Government Regulation No. 21 of 2020, Regulation of the Financial Services Authority Number 16/POJK.04/2020 concerning the Implementation of the General Meeting of Shareholders of Public Listed Companies Electronically (POJK No. 16/POJK.04/2020) and Instruction of the Minister of Home Affairs No. 15 the Year 2021. Next, the secondary legal materials used in this paper consisted of books, journal articles, scientific works, and research results related to the making of notary deeds in Indonesia, the Netherlands, and Belgium. The data analysis method used in this paper is a qualitative approach. The qualitative approach aims to describe the provisions regarding making a Notary deed in Indonesia and compare it with the making of a Notary deed in the Netherlands and Belgium during the COVID-19 period (Riva et al., 2001; Ruotsalainen & Manning, 2007; Indahyati & Sintaasih, 2019).

## Result

### Indonesia's regulations toward notary positions in making notary deed

In Indonesia, physical meetings are carried out by the parties and the notary, from the beginning of the making of the deed to the final stage of reading and signing the deed by the appearers and witnesses of the notary. It is confirmed as a notary's mandatory that must be fulfilled as stated in Article 16 paragraph (1) letter m, Article 16 paragraph (7), and Article 40 paragraph (1) of the Law on Notary Positions. By these provisions, the information technology system has not been accepted for the series of deed making. If the notary deed is done with the application of an information technology system, the formal aspects of making a deed containing the truth of the deed are not fulfilled. Legally, in addition to not fulfilling the mandates of a Notary, the form of a Notary deed is also precisely not following the provisions of Article 38 of the Law on Notary Positions. The Notary cannot fulfill the requirements that require the appeared to be known by the Notary following the provisions as stipulated in Article 39 of the Law on Notary Positions ([Makarim, 2011](#)). Therefore, when the government asked the notaries to work from home due to the spread of COVID-19, they do not have the legal policy to do deed making using technology.

Because of this problem, Indonesia Notary Association (INI) published an official form letter Number 67/35-III/PP-INI/2020 which gives alternatives to the notary of what can be done during COVID-19, defined in the following ([Gultom et al., 2020](#)).

- Rescheduling the signing of the deed with the parties until conditions allow for the signing of the deed;
- Recommending other notary partners whose conditions allow them to carry out their positions to the parties;
- Include "will be made/restated in the Authentic Deed immediately after the COVID-19 emergency is revoked by the Government" for agreements, actions, or meetings which, according to the laws and regulations, the documents can be made privately.

Even though the development of an increasingly rapid era, especially developments in technology, should be an effort to increase the use of technology and electronic systems in notarial field services, the absence of laws and regulations governing this matter will cause problems ([Kalolo, 2019](#)). This increasingly rapid development will undoubtedly bring changes to the implementation of the duties and authority of a Notary as a public official if the renewal is carried out optimally. The making of contracts, agreements, or other deeds that are not related to land can be shifted from the conventional system, namely through face-to-face with the parties, based on information technology systems through cyberspace. Notary legal protection in Indonesia has not regulated that notary services can be carried out by implementing and utilizing information technology systems ([Sihtar, 2017](#)).

The use of technological developments has been disclosed in Article 15 of the Law for Notary Positions, that all of the notary's powers that have been described

previously in the Notary Authority section, which in Article 15 paragraph 3 of the Notary Position Law states that, in addition to the authority as stated in paragraph 1 and 2 of Article 15 above, a Notary has other authorities regulated in the legislation ([Agustan et al., 2021](#); [Hoang, 2019](#); [Suryasa et al., 2021](#)). This other authority is explained in the explanation of the Notary Position Act that the other authority in question is the authority to certify transactions conducted electronically (cyber Notary)—making a deed of pledge, waqf, and aircraft mortgage.

In addition, this certification of transactions carried out electronically (cyber Notary) has not been explained in detail in the Law on Notary Positions, so it cannot be explained whether the certification in question is the making of a deed or only the ratification of a deed under the hand or other duties and authorities. Thus, its (cyber Notary) mentioning cannot be used as a legal basis for making a deed with a virtual meeting for its signing ([Coresy & Saleh, 2020](#)).

### **Netherland's regulations toward notary positions in making notary deed**

In Netherland, there is the Dutch COVID-19 Temporary Act which has passed through parliament quickly. The bill was submitted on April 8, 2020, approved by the House of Representatives on April 16, 2020, and followed by the Senate on April 21, 2020. A Royal Decree with an effective date of April 24, 2020. According to the explanation in Stb. 2020, 126, the reason for this retroactive effect is that it is necessary to prevent adverse effects from limiting as much as possible the announced and observed measures to prevent the risk of contamination from the date of entry into force. Article 26, paragraph 1 of the Dutch COVID-19 Temporary Act, contains provisions for the implementation of the deed before a notary, using audiovisual facilities: "If the parties in a deed and another person cannot appear before a civil notary and a personal power of attorney is not sufficient for the execution of the deed, a civil notary may, subject to subtract Article 4:102 The Dutch Civil Code, for Article 43 Paragraph 4 foreigners, draw up a deed using a two-way audiovisual communication facility. A civil law notary will state this in the deed ([Juleni & Sudarwanto, 2018](#)).

The Dutch COVID-19 Temporary Act allows the Notary to temporarily carry out the reading of the deed through an audiovisual connection, if a person, who is located in the Netherlands, is unable to appear before the Notary and the law does not allow the deed in question to be executed based on a power of attorney (non-notary), for example, the last will or mortgage deed. The Royal Notary Association (Koninklijke Notariële Beroepsorganisatie) has provided the possibility to identify clients via video conferencing (including FaceTime). During the video conference, the client shows his/her original identity documents, signs photocopies of the documents on camera, and other documents required for the transaction. The Notary will record the meeting or take screenshots of the video conference. The deed and other documents, if any, must be sent to the Notary by courier. In addition, a statement of no objection from the Dutch court is required. If a statement of no objection is required, for example, a merger or liquidation, consideration should be given to that a statement may be issued with a delay. Each court in the Netherlands handles COVID-19 measures differently but must

still provide essential services, including issuing a no-objection statement (Olujobi, 2021; Camfferman, 2012).

### **Belgium's regulations toward notary positions in making notary deed**

In Belgium, in response to COVID-19, the Royal Federation of Belgian Notaries and Koen Geens, as the Minister of Justice, has issued strict guidelines on how Belgian Notaries should deal with this COVID-19 situation in addition to generally accepted measures such as social distancing and wearing masks. To limit the spread of the virus, physical contact should be avoided as much as possible, and meetings at the Notary's office minimized. Therefore, Belgian Notaries have been instructed to limit the scope of their activities and to allow the execution of a Notary deed only for actions that are very urgent or if failure to carry out such actions will result in financial consequences that cause substantial losses (Ntsoane, 2018).

In response to this concern and in order to be able to continue carrying out their positions during this COVID-19 period, the Royal Federation of Belgian Notaries and Koen Geens, as the Minister of Justice, announced in a press release on April 10, 2020, about the concept of a digital power of attorney, which will allow carrying out a Notary deed without physical presence at the Notary's office. This digital solution requires the granting of a power of attorney via video conferencing, combined with a unique identification and signing method to a Notary employee or a trusted person to sign the Notary deed. This new virtual procedure is a welcome alternative to physical presence in a Notary's office, as it will allow non-urgent actions to be carried out without jeopardizing the health and safety of the parties involved. In practice, the Notary first notifies the parties when the video conference will take place (Monkkonen, 2016).

The authorizing party only needs an internet connection and a Belgian electronic identity card ("eID") with the associated pin and an eID reader or "itsme" application. In principle, a digital power of attorney can be granted from anywhere, including abroad. Before the digital power of attorney is signed electronically, the Notary will provide the necessary information to the parties regarding the power of attorney and the Notary deed provided. A digital power of attorney can be given to a notary employee or to a trusted person. Each party can ask questions via video conferencing (Horvat et al., 2021). Then, the parties sign a digital power of attorney with the eID or the itsme application. The use of a qualified electronic signature recognized in Belgium and the explanation provided by a Notary, A remotely generated power of attorney offers the same guarantees as a conventional power of attorney and leaves no room for discussion about its exact or evidentiary value. Furthermore, the granting of digital power of attorney through video conferencing is free of charge for the parties involved; there are no notary fees, costs, taxes, or other expenses. For Belgium, the positive side of the COVID-19 pandemic is that Belgium country has accelerated the digitization process in many public, financial, and other institutions, which will benefit companies in the future and contribute to a stable economic recovery (Boada Morales, 2018).



## Discussion

The differences between Indonesia and other countries such as the Netherlands and Belgium in terms of notary positions in making deeds are the technology used. In Indonesia, the notaries still do the conventional system which requires the making of a notary deed by means of the parties dealing directly with the notary without any use of virtual meetings (Corluy et al., 2011). However, Netherlands has previously implemented a rule that the making of a deed can be done using a two-way audiovisual communication facility for the prevention of COVID-19 while Belgium has implemented a digital power of attorney to make it easier for parties to use the services of a notary (Beuker et al., 2019).

The development of virtual meeting technology is currently unusable in the mechanism of meeting the appearers in the framework of making the deed because of the provisions that require the Notary to be able to read the deed before the appearers and witnesses physically. In a virtual meeting, although virtually the form can be identified, the explanation regarding physical presence prevents the use of existing virtual meeting services. However, the development of virtual meeting technology can be used in the context of efficiency and reduce the intensity of meetings during a COVID-19 pandemic (Di Carlo et al., 2021). Virtual meetings have often been applied in the field of work, even in educational institutions; the interviewees argued that a Notary could implement this virtual meeting without violating the laws and regulations (Obrenovic et al., 2020).

This utilization is carried out using virtual meeting technology which is carried out only in the context of discussing the contents of the deed and greatly assisting the preparation of the deed during the pandemic COVID-19. By only using virtual meetings in the context of discussing the first phase of the agreement draft until the last meeting to sign the deed, this can be done to reduce physical contact between the appearers, witnesses, and the Notary and can increase efficiency in the deed-making process (Horvat et al., 2021).

Other than that, Indonesia has not had the regulations in regulating the use of technology such as virtual meetings to allow notaries do the online activities in making deeds. In contrast, Netherlands and Belgium have fulfilled the element of legal expediency by stipulating the Dutch COVID-19 Temporary Act in Netherlands while the concept of a digital power of attorney issued by the Royal Federation of Belgian Notaries and Koen Geens, as the Minister of Justice, (Tarakanov et al., 2019).

They have provided the possibility to identify clients via video conferencing (including FaceTime); in which, during the video conference, the client shows his/her original identity documents, signs photocopies of the documents on camera, and other documents required for the transaction. The Notary will record the meeting or take screenshots of the video conference. The deed and other documents, if any, must be sent to the Notary by courier. In addition, this digital solution requires granting a power of attorney via video conferencing, combined with a unique identification and signing method to a Notary employee or a trusted person to sign the notary deed (Jang-Jaccard et al., 2016).

These technologies will allow Indonesian notaries to limit price, time, and will also have the contribution in preventing the spread of COVID-19 during a pandemic, as well as supporting the government program of WFH if Indonesia is able to develop and utilize an online application or program. Of course, this change should be supported and regulated by a legal policy that will protect the rights and obligations of notaries and parties ([Hoffman et al., 2015](#); [Monkkonen, 2013](#); [Suwija et al., 2019](#)).

## **Conclusion**

Based on the description and analysis above, the authors conclude that in Indonesia, the law on notary positions does not yet recognize virtual meetings but requires the making of a notary deed by means of the parties dealing directly with the notary; while Netherland has previously implemented a rule that the making of a deed can be done using a two-way audiovisual communication facility for the prevention of COVID-19 and Belgium has implemented a digital power of attorney to make it easier for parties to use the services of a notary ([Anderson et al., 2007](#); [Schwarz et al., 2020](#); [Djalante et al., 2020](#)).

In connection with the condition of the COVID-19 pandemic, there is a need for urgency to make changes to the Law on Notary Positions, one of which is regarding the expansion of the meaning of "confronting". With advances in technology, the phrase "deal" can be interpreted as a Notary can deal virtually through a unique application made by the Government to read and sign the deed before the parties, in which the application is designed with technological advances, namely being able to find out when the deed was read, and the time the deed was signed and can find out the location of the deed signing.

Other than that, the position of a notary in making dees is also not explicitly stated whether notary is included in the essential sector or not, but only forces Notaries to work from home. However, Netherland and Belgium have fulfilled the element of legal expediency by stipulating the Dutch COVID-19 Temporary Act in Netherland while the concept of a digital power of attorney was issued by the Royal Federation of Belgian Notaries and Koen Geens, as the Minister of Justice, in Belgium.

Thus, Indonesia needs to change the law on notary positions, which accommodates notaries to carry out their positions in times of emergency such as the current COVID-19 condition. The changes and policy in Belgium and Netherland can be determined as inspirations so that Indonesia can be developed in terms of notary position in making deeds during the COVID-19 pandemic. However, the policy of the Netherland and Belgium cannot be directly implemented in Indonesia; it needs to be adjusted to other regulations and other aspects that Indonesia has.

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