

A COMPARATIVE STUDY OF THE REGULATION OF CONCURRENT NOTARIAL POSITIONS IN INDONESIA AND GERMANY

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Abstract:

This study examines the regulation of concurrent notarial positions in Indonesia and Germany and assesses the relevance of their differences for Indonesian notarial law. It employs doctrinal legal research with a comparative legal approach, using common parameters including the legal status of notaries, forms of prohibition and exception, restrictions on professional roles, supervisory mechanisms, and legal consequences. The findings show that both jurisdictions protect notarial independence and impartiality through different regulatory constructions. Indonesian law primarily relies on categorical prohibitions under Article 17 of the Notary Office Law, supported by supervision and administrative sanctions. German law combines occupational incompatibilities with the *Anwaltsnotar* model, matter-specific participation prohibitions, judicial-administrative supervision, and differentiated legal consequences. The comparison shows that incompatibility operates at two levels: status-based incompatibility arising from holding another office or profession, and matter-specific incompatibility arising from involvement in a particular legal matter. Indonesian practice also indicates variation in supervisory reasoning, while German law more clearly separates professional restrictions from consequences affecting particular legal relationships. Accordingly, Indonesia's principal regulatory challenge is not the absence of prohibitions, but the need for greater coherence in classifying incompatible roles, linking violations to appropriate legal consequences, and promoting more consistent supervisory reasoning. The German framework is therefore relevant as a comparative reference for regulatory differentiation rather than as a model for direct transplantation into the Indonesian notarial system under its existing structure.

Keywords: Concurrent Notarial Positions; Comparative Notarial Law; Indonesia and Germany

INTRODUCTION

Holding concurrent positions constitutes an important issue in the exercise of the notarial office because it may create a conflict between a notary's obligations as a public official and the interests attached to another office or profession simultaneously undertaken.¹ As a public official authorized to draw up authentic deeds, a notary is required to perform the office

¹ Wanis Aisyah Oktavia, Anita Afriana, and Tien Norman Lubis, "Kedudukan Akta dan Akibat Hukum terhadap Notaris yang Melakukan Rangkap Jabatan", *ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan* 3, no. 1 (2019): 28, <https://doi.org/10.24198/acta.v3i1.269>.

faithfully, honestly, carefully, independently, impartially, and with due regard to the interests of the parties involved in a legal act.² Consistent with these obligations, Law Number 30 of 2004 concerning the Office of Notary, as amended by Law Number 2 of 2014, establishes a number of prohibitions on concurrent positions for notaries.³ Accordingly, restrictions on concurrent positions form part of the legal framework governing the notarial office to prevent conflicts of interest and to preserve independence and impartiality in exercising the public authority conferred by law upon notaries in drawing up authentic deeds and providing legal services to the public.⁴

Under Indonesian law, the prohibition on concurrent positions held by notaries is expressly stipulated in Article 17 paragraph (1) of the Notary Office Law. The provision prohibits notaries from concurrently serving as civil servants, state officials, advocates, directors or employees of state-owned enterprises, regional government-owned enterprises, or private business entities, as well as from serving as Land Deed Officials or Class II Auction Officials outside the territorial jurisdiction of their notarial office, and from holding other positions prohibited by laws and regulations.⁵ Violation of these prohibitions may result in administrative sanctions consisting of a written warning, temporary suspension, honorable dismissal, or dishonorable dismissal.⁶ This construction demonstrates that Indonesian law establishes incompatibilities with certain offices and professions as limitations on the exercise of the notarial office. Thus, the issue of concurrent positions in Indonesia concerns not only the categories of prohibited offices but also the legal consequences of their violation.⁷ This framework provides the basis for examining the different regulatory model applied within the German notarial system.

In contrast to Indonesia, German notarial law does not regulate concurrent positions through a single model. The BNotO recognizes notaries as independent holders of public office and provides for two forms of notarial practice, namely the *hauptberuflicher Notar* and the *Anwaltsnotar*, the latter referring to a lawyer who is also appointed as a notary in certain jurisdictions.⁸ The existence of the *Anwaltsnotar* does not mean that German law permits notaries to pursue other professions without limitation. Section 8 BNotO generally restricts the pursuit of other professions, subject to the exception for *Anwaltsnotare* under section 3(2), while section 14 requires notaries to serve the parties independently and impartially.⁹ The *Bundesnotarkammer* further explains that potential conflicts between the lawyer's role in representing a client's interests and the notary's impartial role are controlled through prohibitions on involvement in the same matter.¹⁰ This configuration makes Germany a relevant comparator for Indonesia in regulating concurrent notarial positions.

Previous scholarship shows that comparative research on notarial law has developed across various issues, although it has not centered on concurrent notarial positions in Indonesia and Germany. Renaldi and Allagan compared the regulation of publicity and self-promotion by notaries in Indonesia and the Netherlands and identified differences in the ethical limits

² Republic of Indonesia, *Law No. 30 of 2004 on the Office of Notary*, as amended by *Law No. 2 of 2014* [Notary Office Law], arts. 1(1), 16(1)(a).

³ Notary Office Law, art. 17(1).

⁴ Oktavia, Afriana, and Lubis, "Kedudukan Akta dan Akibat Hukum," 28.

⁵ Notary Office Law, art. 17(1).

⁶ Notary Office Law, art. 17(2).

⁷ Oktavia, Afriana, and Lubis, "Kedudukan Akta dan Akibat Hukum," 28–29.

⁸ Federal Republic of Germany, *Federal Code for Notaries (Bundesnotarordnung)* [BNotO], as last amended by art. 3 of the Act of July 16, 2026, BGBl. 2026 I No. 212, §§ 1, 3(1)–(2).

⁹ BNotO, §§ 8(2), 14(1).

¹⁰ Bundesnotarkammer, "Der Anwaltsnotar," *Notar.de*, accessed September 19, 2026, <https://www.notar.de/der-notar/notariatsformen/anwaltsnotare>.

governing the promotion of notarial services.¹¹ Meanwhile, Nurliyantika et al. compared the duties and powers of notaries in Indonesia and Malaysia, treating differences in legal systems as one of the factors shaping the regulatory characteristics of the notarial office in each jurisdiction.¹² These studies demonstrate the value of comparative analysis in explaining variations in the regulation of the notarial office across jurisdictions in a more structured manner. However, their objects of analysis remain within the areas of professional publicity and the duties and powers of notaries. These developments therefore leave academic space for concurrent positions to be examined as a more specific object of comparison.

Studies on concurrent notarial positions in Indonesia have also developed around several specific issues. Amalia, as well as Rusyan and Yahanan, examined notaries concurrently serving as advocates, including the prohibitions and supervisory aspects involved, while Lestari, Kasih, and Sumardika addressed the need for clearer regulation concerning notaries who serve as regional officials.¹³ ¹⁴ ¹⁵ Wahyudi and Handoko analyzed the legal consequences of notaries concurrently serving as heads of higher education institutions, whereas Venturini and Putra examined the position of notaries who also perform functions as educators.¹⁶ ¹⁷ This body of literature indicates that the discussion of concurrent positions remains predominantly sectoral and oriented toward national law. Meanwhile, the identified comparative studies between Indonesia and Germany address other aspects of notarial law.¹⁸ On this basis, there remains no apparent study that systematically compares the overall legal construction governing concurrent notarial positions in the two countries in an integrated manner.

Based on this gap, this study focuses on comparing the regulation of concurrent notarial positions in Indonesia and Germany. The comparison applies common parameters, namely the legal status of notaries, forms of prohibition and exception, restrictions on professional roles, supervisory mechanisms, and the legal consequences of violations.¹⁹ The use of common parameters is necessary to ensure that the analysis does not merely juxtapose statutory provisions, but instead identifies similarities and differences in the legal constructions operating in the two jurisdictions.²⁰ The analysis of Indonesia relies primarily on the Notary Office Law,

¹¹ Ferdinand Renaldi and Tiurma M. Pitta Allagan, “Perbandingan Publikasi dan Promosi Diri oleh Notaris di Indonesia dan di Belanda”, *UNES Journal of Swara Justisia* 8, no. 1 (2024): 52–68, <https://doi.org/10.31933/ujsj.v8i1.478>.

¹² Rizka Nurliyantika, Ros Amira bt Mohd Ruslan, Iza Rumesten, Muhammad Syahri Ramadhan, and Neisa Angrum Adisti, “Studi Komparasi Tugas dan Wewenang Notaris di Indonesia dan Malaysia”, *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 2 (2022): 196–207, <https://doi.org/10.28946/rpt.v11i2.2471>.

¹³ Martina Indah Amalia, “Kajian Yuridis terhadap Notaris yang Merangkap Jabatan Menjadi Advokat Dikaitkan dengan Undang-Undang Jabatan Notaris”, *Fiat Iustitia: Jurnal Hukum* 3, no. 1 (2022): 65–78, <https://doi.org/10.54367/fiat.v3i1.2130>.

¹⁴ Fazhar Eprye Rusyan and Annalisa Yahanan, “Tindakan Majelis Pengawas Notaris Daerah terhadap Notaris yang Melakukan Pelanggaran Rangkap Jabatan sebagai Advokat”, *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 13, no. 2 (2024), <https://doi.org/10.28946/rpt.v13i2.3646>.

¹⁵ Ida Ayu Made Indah Lestari, Desak Putu Dewi Kasih, and I Nyoman Sumardika, “Revisi Undang-Undang Jabatan Notaris Terkait Larangan Rangkap Jabatan sebagai Pejabat Daerah”, *Kertha Semaya: Journal Ilmu Hukum* 13, no. 6 (2025): 1263–1273, <https://doi.org/10.24843/KS.2025.v13.i06.p16>.

¹⁶ Anis Rifdi Wahyudi and Widhi Handoko, “Akibat Hukum Rangkap Jabatan Notaris sebagai Pimpinan Perguruan Tinggi”, *Notarius* 16, no. 3 (2023): 1309–1320, <https://doi.org/10.14710/nts.v16i3.42424>.

¹⁷ I Gusti Agung Ayu Gayatri Kharisma Venturini and Made Aditya Pramana Putra, “Pertanggungjawaban Notaris terhadap Rangkap Jabatan sebagai Tenaga Pendidik”, *Acta Comitatus: Jurnal Hukum Kenotariatan* 11, no. 2 (2026): 389–403, <https://doi.org/10.24843/AC.2026.v11.i02.p10>.

¹⁸ Umi Handayani, Adi Sulistiyono, and Kukuh Tejomurti, “Implementation of Cyber Notary as a Notary Transformation in the Digital Economy Era”, *Jurnal Daulat Hukum* 8, no. 2 (2025): 202–218, <https://doi.org/10.30659/jdh.v8i2.45649>.

¹⁹ Notary Office Law; BNotO, §§ 1, 3, 8, 14, 50, 92–93.

²⁰ Mathias Siems, *Comparative Law*, 3rd ed. (Cambridge: Cambridge University Press, 2022), 15–49.

while the analysis of Germany uses the Bundesnotarordnung and related regulations as the principal legal materials.²¹ Within this framework, the study aims to explain the characteristics of the regulation of concurrent notarial positions in both countries and to assess the relevance of their differences for strengthening the regulation of the notarial office in Indonesia, while taking into account the distinct legal structures of each country and without assuming that the German model can be directly transplanted into Indonesia.

METHOD

This study employs doctrinal legal research to examine the legal rules and institutional arrangements governing concurrent notarial positions in Indonesia and Germany.²² The study adopts a comparative legal approach as its principal approach because the research question requires a systematic comparison of how two jurisdictions regulate the same legal problem.²³ The comparison is structured through common parameters comprising the legal status of notaries, forms of prohibition and exception, restrictions on professional roles, supervisory mechanisms, and the legal consequences of violations. These parameters are applied consistently to both jurisdictions so that the analysis does not merely place statutory provisions side by side, but identifies the similarities and differences in the legal construction of concurrent notarial positions within their respective regulatory contexts and explains the significance of those differences for the problem.

The legal materials consist primarily of the Indonesian Notary Office Law and the German Bundesnotarordnung, supplemented where relevant by the Bundesrechtsanwaltsordnung, the Beurkundungsgesetz, official decisions, and authoritative institutional materials concerning notarial practice.²⁴ Secondary materials include peer-reviewed journal articles and established comparative-law scholarship used to clarify doctrine, institutional context, and the operation of the relevant rules.²⁵ The materials are analyzed qualitatively through interpretation, classification, and comparison according to the predetermined parameters. Indonesian and German rules are first examined within their respective legal contexts and are then compared to identify functional similarities, regulatory differences, and their legal implications. This sequence is intended to preserve the internal logic of each jurisdiction while preventing conclusions based solely on textual similarity or difference between statutory provisions in the two legal systems.

ANALYSIS AND DISCUSSION

Legal Status and Regulation of Concurrent Notarial Positions in Indonesia and Germany

The legal status of notaries in Indonesia and Germany reveals an important point of convergence, although the juridical construction of the office is not identical. Indonesian law defines a notary as a public official authorized to draw up authentic deeds and to exercise other powers conferred by legislation.²⁶ This position places the notarial office within the exercise of public authority, particularly because Article 15 of the Notary Office Law confers authority to

²¹ BNotO; Notary Office Law.

²² Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119, <https://doi.org/10.21153/dlr2012vol17no1art70>.

²³ Siems, *Comparative Law*, 15–49.

²⁴ Notary Office Law; BNotO; Federal Republic of Germany, *Federal Lawyers' Act (Bundesrechtsanwaltsordnung)* [BRAO]; Federal Republic of Germany, *Notarisation Act (Beurkundungsgesetz)* [BeurkG].

²⁵ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd rev. ed., trans. Tony Weir (Oxford: Clarendon Press, 1998), 32–47.

²⁶ Notary Office Law, art. 1(1).

produce authentic instruments concerning legal acts, agreements, and determinations.²⁷ German law adopts a comparable public-office conception. Section 1 BNotO expressly characterizes notaries as independent holders of a public office appointed in the Länder to authenticate legal transactions and perform other functions within the preventive administration of justice.²⁸ Accordingly, both systems attach public authority to the notarial office, although its institutional organization and professional configuration differ between the two jurisdictions.²⁹

Despite this common public-office character, institutional organization differs between the two jurisdictions. In Indonesia, notaries are appointed and dismissed by the Minister, while the Notary Office Law does not establish an equivalent dual structure of full-time notaries and lawyer-notaries.³⁰ German law, by contrast, recognizes two forms. Section 3 BNotO provides for full-time notaries appointed for life and, in specified judicial districts, lawyers appointed as notaries for the duration of their membership in the competent bar association while continuing legal practice.³¹ This distinction preserves the public character of the German notarial office while creating different professional configurations for exercising notarial authority. The contrast is significant because German law separates public-office status from the professional form in which the office is performed, a distinction relevant to concurrent positions and professional incompatibilities.³²

The institutional differences identified above do not remove a shared substantive requirement: notarial authority in both systems must be exercised independently and impartially. Indonesian law requires notaries to act faithfully, honestly, carefully, independently, and without partiality while protecting the interests of parties involved in legal acts.³³ German law formulates a comparable requirement in section 14(1) BNotO, which prohibits notaries from representing one party and requires them to serve all participants independently and impartially.³⁴ Section 14(3) further requires notaries to avoid conduct creating even the appearance of dependence or partiality.³⁵ This convergence provides the normative basis for restrictions on offices and professional activities that may conflict with notarial duties. Thus, despite their different institutional configurations, both systems treat independence and impartiality as normative conditions governing the exercise of notarial public authority.³⁶

The first major divergence appears in the structure of incompatibilities. Indonesian law adopts a categorical model by expressly prohibiting notaries from concurrently serving as civil servants, state officials, advocates, directors or employees of business entities, and certain land or auction officials outside their territorial jurisdiction.³⁷ German law uses a more differentiated structure. Section 8 BNotO generally prohibits notaries from holding salaried offices and, in principle, from exercising another profession, while preserving the *Anwaltsnotar* model under section 3(2).³⁸ It also permits certain secondary activities without prior approval and subjects other remunerated or corporate activities to supervisory authorization where compatibility with

²⁷ Notary Office Law, art. 15(1).

²⁸ BNotO, § 1.

²⁹ Jens Bormann, "The German Enforceable Notarial Act in Cross-Border Cases," *LeXonomica* 14, no. 1 (2022): 49–72, <https://doi.org/10.18690/lexonomica.14.1.49-72.2022>.

³⁰ Notary Office Law, art. 2.

³¹ BNotO, § 3(1)–(2).

³² BNotO, §§ 1, 3(1)–(2).

³³ Notary Office Law, art. 16(1)(a).

³⁴ BNotO, § 14(1).

³⁵ BNotO, § 14(3).

³⁶ BNotO, §§ 8(3), 28.

³⁷ Notary Office Law, art. 17(1).

³⁸ BNotO, §§ 3(2), 8(1)–(2).

the public office and confidence in notarial independence and impartiality are assessed.³⁹ The contrast therefore lies not in whether restrictions exist, but in how each system structures incompatibilities and their exceptions.

The *Anwaltsnotar* model illustrates that the German exception operates at the institutional level but remains constrained at the level of individual matters. Section 3(2) BNotO permits lawyers in specified judicial districts to hold the notarial office concurrently with legal practice while retaining the public character of the notarial function.⁴⁰ Potential conflicts are controlled through participation prohibitions. Section 3(1)(7) BeurkG generally prevents a notary from acting where the notary or an associated professional has previously acted outside the notarial function in the same matter, unless that prior activity was undertaken on behalf of all persons participating in the notarisation.⁴¹ Section 45(1)(1)(c) BRAO correspondingly prohibits subsequent legal representation in the same matter following prior notarial involvement.⁴² German law therefore permits dual professional status while separating the exercise of the two functions in matters presenting conflicting professional roles.

The supervisory structure also differs in institutional design. In Indonesia, supervision over notaries is exercised by the Minister through the Notary Supervisory Council, whose membership combines representatives of government, the notarial profession, and academics; the system operates through regional, provincial, and central supervisory levels.⁴³ German law assigns supervisory authority directly to judicial and justice-administration institutions. Under section 92 BNotO, supervision is exercised by the presidents of the regional and higher regional courts and by the Land department of justice, while section 93 requires these authorities to regularly audit and monitor the performance of notarial official functions.^{44 45} The comparison therefore reveals different institutional arrangements: Indonesia employs collegial supervisory bodies with mixed membership, whereas Germany locates formal supervisory authority within the judicial-administrative hierarchy of the Länder.⁴⁶

The legal consequences of violating incompatibility rules also reveal different regulatory techniques. In Indonesia, Article 17(2) of the Notary Office Law expressly provides administrative sanctions for prohibited concurrent positions, ranging from a written warning and temporary suspension to honorable or dishonorable dismissal.⁴⁷ The provision itself does not state that every violation automatically invalidates an authentic deed or reduces its evidentiary status; such consequences must therefore be assessed under the provisions specifically governing notarial deeds.⁴⁸ German law connects certain incompatibility violations directly to removal from office. Section 50(1)(5) BNotO requires removal where a notary conducts another professional activity contrary to section 8(2), while sections 97 and 98 separately regulate disciplinary measures and their imposition.^{49 50} The two systems therefore differ not only in prohibited activities but also in the legal mechanisms attached to their violation.

Taken together, the comparison shows that Indonesia and Germany pursue a similar normative objective while employing different regulatory techniques. Both systems attach

³⁹ BNotO, § 8(3)–(4).

⁴⁰ BNotO, § 3(2).

⁴¹ BeurkG, § 3(1)(7).

⁴² BRAO, § 45(1)(1)(c).

⁴³ Notary Office Law, arts. 67–68.

⁴⁴ BNotO, § 92.

⁴⁵ BNotO, § 93(1)–(2).

⁴⁶ Notary Office Law, arts. 67–68; BNotO, §§ 92–93.

⁴⁷ Notary Office Law, art. 17(2).

⁴⁸ Notary Office Law, arts. 16(9), 41, 44(5), 48(3), 49(4), 50(5), 51(4).

⁴⁹ BNotO, § 50(1)(5).

⁵⁰ BNotO, §§ 97–98.

independence and impartiality to the notarial office, yet Indonesia primarily protects those requirements through categorical incompatibilities and administrative sanctions, whereas Germany combines professional incompatibilities with an institutionalized *Anwaltsnotar* model, matter-specific participation prohibitions, supervisory controls, and differentiated legal consequences.⁵¹ The German arrangement therefore should not be understood simply as permitting concurrent professional practice, just as the Indonesian regime should not be characterized as prohibiting every form of activity outside the notarial office.⁵² The relevant distinction lies in how each legal system identifies incompatible roles and regulates risks arising from concurrent professional functions. This distinction provides the analytical basis for assessing the relevance of particular elements of the German regulatory structure to Indonesian notarial regulation.

Application and Legal Consequences of Concurrent Notarial Positions in Indonesia and Germany

The practical significance of concurrent-position rules becomes clearer when their application is examined through disciplinary and judicial decisions. In Indonesia, the case involving Notary HS demonstrates that concurrent practice as a notary and advocate may produce consequences across more than one professional regime. The Central Notary Supervisory Council, through Decision No. 15/B/MPPN/XII/2017, imposed consequences relating to the violation of the prohibition on concurrent practice, while the same individual was also sanctioned within the advocate profession.⁵³ Separate criminal proceedings concerned fraudulent conduct committed in connection with his activities as an advocate and were adjudicated through Supreme Court proceedings.⁵⁴ The case therefore illustrates that concurrent-office violations may intersect with notarial discipline, professional ethics, and criminal liability, although each consequence must remain analytically distinguished according to its own legal basis.

A second Indonesian case demonstrates a more complex overlap of professional and corporate roles. Notary CA was found to have simultaneously acted as a notary, a director of PT Bumi Madu Mandiri, and a provider of legal services associated with the company.⁵⁵ The proceeding identified conduct inconsistent with the obligation to act honestly and impartially, as well as with statutory restrictions on holding managerial positions in private business entities while serving as a notary.⁵⁶ The Central Notary Supervisory Council consequently imposed a six-month temporary suspension from the notarial office.⁵⁷ This case illustrates that concurrent-position violations may arise through overlapping corporate and professional relationships, making the identification of the capacity in which a notary acts essential for assessing incompatibility, professional responsibility, and potential conflicts of interest.

Taken together, the Indonesian cases show that the enforcement of concurrent-position rules is mediated through supervisory assessment of the specific role and conduct attributed to the notary. The HS case concerned an overlap between notarial and advocacy functions,

⁵¹ Notary Office Law, arts. 16(1)(a), 17, 67–68; BNotO, §§ 3, 8, 14, 50, 92–98; BeurkG, § 3(1)(7); BRAO, § 45(1)(1)(c).

⁵² Notary Office Law, art. 17(1); BNotO, §§ 3(2), 8(2)–(4).

⁵³ Laura Justitia Sandimin, *Notaris Merangkap Jabatan Sebagai Advokat dan Melakukan Penipuan terhadap Kliennya: Studi Putusan Majelis Pengawas Pusat Notaris Nomor 15/B/MPPN/XII/2017 dan Putusan Mahkamah Agung Republik Indonesia Nomor 619 K/Pid/2016* (Master's thesis, Faculty of Law, Universitas Indonesia, 2019); Amalia, "Kajian Yuridis terhadap Notaris," 65–78.

⁵⁴ Sandimin, *Notaris Merangkap Jabatan Sebagai Advokat*.

⁵⁵ Aprilia Lusiana Wijaya, "Tanggung Jawab Notaris yang Merangkap Jabatan sebagai Direktur dan Jasa Hukum Perseroan Terbatas (Studi Kasus Putusan Majelis Pemeriksa Pusat Notaris No. 06/B/MPPN/X/2018)", *Indonesian Notary* 2, no. 4 (2020), art. 3.

⁵⁶ Notary Office Law, arts. 16(1)(a), 17(1)(e)–(f); Wijaya, "Tanggung Jawab Notaris".

⁵⁷ Wijaya, "Tanggung Jawab Notaris".

whereas the CA case involved notarial office, corporate management, and legal-service activities.^{58 59} These differences matter because Article 17 does not operate in the abstract; its application depends on identifying the office or professional activity actually undertaken and the statutory duty implicated. Rusyan and Yahanan further demonstrate that legal considerations may differ across the regional, provincial, and central supervisory levels, even when sanctions are ultimately imposed for the same underlying type of violation.⁶⁰ Indonesian enforcement therefore appears case-specific in its reasoning, although it remains anchored in supervisory and administrative mechanisms.

The application of German participation restrictions is illustrated by the Schleswig Higher Regional Court's decision of 11 April 2025, case no. 7 W 4/25. The *Anwaltsnotar* had previously acted in a notarial capacity in connection with an adult-adoption matter and subsequently represented the same client as a lawyer in proceedings arising from the related legal dispute.⁶¹ The court held that the activities concerned the "same legal matter" within section 45(1)(1)(c) BRAO because they arose from an internally connected and unified factual relationship, notwithstanding the different procedural objectives involved.⁶² Consequently, the subsequent legal representation violated the statutory prohibition following prior notarial involvement. The decision demonstrates that German law assesses incompatibility functionally by examining the substantive connection between the activities rather than merely whether the proceedings formally concern identical claims.⁶³

The consequence of the prohibited dual involvement in case 7 W 4/25 extended beyond professional discipline to the lawyer's contractual entitlement to remuneration. The Schleswig Higher Regional Court treated the violation of section 45(1)(1)(c) BRAO as a statutory prohibition within the meaning of section 134 BGB, under which a legal transaction violating a statutory prohibition is void unless the statute provides otherwise.⁶⁴ Accordingly, the legal-services contract underlying the subsequent representation was considered void, and the lawyer could not claim contractual remuneration.⁶⁵ The court also rejected alternative claims based on management of another's affairs or unjust enrichment because allowing recovery through those routes would undermine the effectiveness of the statutory prohibition.⁶⁶ The decision therefore demonstrates that matter-specific incompatibility in Germany may produce direct private-law consequences in addition to professional regulatory restrictions.

Viewed comparatively, the principal difference concerns where each system locates the legal consequences of incompatibility. In the Indonesian cases examined here, the supervisory process primarily addressed whether the notary's conduct justified administrative consequences affecting professional status.⁶⁷ In Germany, case 7 W 4/25 shows that a matter-specific prohibition may operate beyond professional regulation by affecting the validity of the

⁵⁸ Amalia, "Kajian Yuridis terhadap Notaris," 65–78.

⁵⁹ Wijaya, "Tanggung Jawab Notaris," art. 3.

⁶⁰ Rusyan and Yahanan, "Tindakan Majelis Pengawas Notaris Daerah".

⁶¹ Schleswig-Holstein Higher Regional Court (*Oberlandesgericht Schleswig*), Order of April 11, 2025, 7 W 4/25, ECLI:DE:OLGSH:2025:0411.7W4.25.00; Bundesrechtsanwaltskammer, "Als Notar und Anwalt in derselben Sache? Kein Honorar!", August 21, 2025, Bundesrechtsanwaltskammer.

⁶² *Oberlandesgericht Schleswig*, 7 W 4/25; Bundesrechtsanwaltskammer, "Als Notar und Anwalt in derselben Sache?".

⁶³ BRAO, § 45(1)(1)(c); Bundesrechtsanwaltskammer, "Als Notar und Anwalt in derselben Sache?".

⁶⁴ Federal Republic of Germany, *German Civil Code (Bürgerliches Gesetzbuch)* [BGB], § 134.

⁶⁵ *Oberlandesgericht Schleswig*, 7 W 4/25; Bundesrechtsanwaltskammer, "Als Notar und Anwalt in derselben Sache?".

⁶⁶ *Oberlandesgericht Schleswig*, 7 W 4/25; Bundesrechtsanwaltskammer, "Als Notar und Anwalt in derselben Sache?".

⁶⁷ Rusyan and Yahanan, "Tindakan Majelis Pengawas Notaris Daerah"; Notary Office Law, art. 17(2).

subsequent legal-services relationship itself.^{68 69} This does not establish that one system is stricter than the other; rather, it reveals different regulatory pathways for responding to overlapping professional roles. Indonesia relies principally on status-based prohibitions enforced through notarial supervision, whereas the German example combines professional regulation with transaction-level consequences when the same legal matter is involved. The comparison therefore clarifies the distinct juridical locations at which incompatibility is enforced in each system.

These comparative findings suggest that the relevance of the German model for Indonesia lies not in reproducing the *Anwaltsnotar* institution, but in clarifying how different forms of incompatibility are legally distinguished and enforced. Indonesian law already establishes categorical prohibitions under Article 17, yet the cases examined show that questions may still arise regarding the capacity in which a notary acts and the consequences attached to overlapping professional roles.⁷⁰ The German framework demonstrates a more explicit separation between institutional permission for dual professional status and matter-specific prohibitions designed to prevent role conflicts.⁷¹ For Indonesia, the comparative value therefore lies in refining the articulation of prohibited roles, matter-specific restrictions, and their legal consequences within the existing notarial framework, while preserving the institutional structure and policy choices of Indonesian notarial law.⁷²

Regulatory Implications of the German Model for Concurrent Notarial Positions in Indonesia

The comparative findings do not support the direct transplantation of the German *Anwaltsnotar* model into Indonesian notarial law. The two systems differ in the institutional configuration through which notarial public authority is exercised, and comparative law requires foreign solutions to be understood within their own legal and institutional contexts before their possible relevance is assessed.⁷³ The German framework is nevertheless useful because it demonstrates that incompatibility may be regulated through several distinct mechanisms, including general restrictions on secondary occupations, authorization requirements, and matter-specific participation prohibitions.⁷⁴ Indonesian law, by contrast, primarily formulates prohibited concurrent positions through Article 17 of the Notary Office Law.⁷⁵ The comparative significance therefore lies not in reproducing German professional structures, but in identifying regulatory techniques capable of sharpening the internal coherence of Indonesian rules on incompatible notarial roles.

A useful implication of the comparison is the need to distinguish status-based incompatibility from matter-specific incompatibility. Indonesian Article 17 primarily identifies offices and professional positions that may not be held concurrently with the notarial office, thereby regulating incompatibility at the level of professional status.⁷⁶ German law also contains status-based restrictions in section 8 BNotO, but supplements them with matter-specific prohibitions under section 3 BeurkG and section 45 BRAO.⁷⁷ This layered structure allows the legal system to address two different risks: structural incompatibility arising from holding another office or profession, and concrete conflict arising from participation in a

⁶⁸ *Oberlandesgericht Schleswig*, 7 W 4/25; BRAO, § 45(1)(1)(c).

⁶⁹ Bundesrechtsanwaltskammer, “Als Notar und Anwalt in derselben Sache?”; BGB, § 134.

⁷⁰ Notary Office Law, art. 17; Rusyan and Yahanan, “Tindakan Majelis Pengawas Notaris Daerah”.

⁷¹ BNotO, §§ 3(2), 8; BeurkG, § 3(1)(7); BRAO, § 45(1)(1)(c).

⁷² Siems, *Comparative Law*, 15–49; Zweigert and Kötz, *An Introduction to Comparative Law*, 32–47.

⁷³ Siems, *Comparative Law*, 15–49; Zweigert and Kötz, *An Introduction to Comparative Law*, 32–47.

⁷⁴ BNotO, § 8(1)–(4); BeurkG, § 3(1); BRAO, § 45(1)(1)(c).

⁷⁵ Notary Office Law, art. 17.

⁷⁶ Notary Office Law, art. 17.

⁷⁷ BNotO, § 8(1)–(4); BeurkG, § 3(1); BRAO, § 45(1)(1)(c).

particular legal matter.⁷⁸ For Indonesia, distinguishing these categories analytically could clarify whether a problem concerns the mere holding of another position or the notary's involvement in a specific transaction or representation.

The distinction between status-based and matter-specific incompatibility should be connected more explicitly to the underlying duty of independence and impartiality. Article 16(1)(a) of the Indonesian Notary Office Law requires notaries to act honestly, carefully, independently, impartially, and to safeguard the interests of the parties involved.⁷⁹ German law similarly treats independence and impartiality as continuing professional duties under section 14 BNotO and requires notaries to avoid even the appearance of dependence or partiality.⁸⁰ Section 28 BNotO further requires appropriate safeguards to secure compliance with participation prohibitions and other official duties.⁸¹ For Indonesia, this comparison suggests that concurrent-position rules should be understood not merely as a closed list of forbidden offices, but as instruments for protecting the substantive conditions under which notarial authority must be exercised in practice.

A further regulatory implication concerns the need to distinguish the consequences attached to different forms of incompatibility. Article 17(2) of the Indonesian Notary Office Law provides a common range of administrative sanctions for violations of Article 17(1), from written warning to dismissal, but does not itself determine consequences for every legal act performed during the violation.⁸² German law distributes consequences across different provisions: certain incompatible professional activities may result in removal from office under section 50(1)(5) BNotO, while disciplinary measures are separately regulated by sections 97 and 98.⁸³ Private-law consequences arise only where another applicable rule supplies that effect, as illustrated by section 134 BGB in case 7 W 4/25.⁸⁴ For Indonesia, greater normative precision would require linking the type of incompatibility to the appropriate professional, administrative, or transactional consequence.

Regulatory precision should also be supported by a more consistent supervisory framework. Indonesian law places notarial supervision under the Minister through regional, provincial, and central supervisory councils, while Article 67 requires supervision to encompass both notarial conduct and the performance of the office.⁸⁵ The study by Rusyan and Yahanan nevertheless shows that different supervisory levels may reach different decisions because each applies its own legal considerations to the same underlying violation.⁸⁶ German law offers a different institutional model: sections 92 and 93 BNotO assign supervision to judicial and justice-administration authorities and require regular audits and monitoring of notarial official functions.⁸⁷ For Indonesia, the relevant comparative insight is the importance of clearer evaluative criteria capable of promoting greater consistency and transparency in supervisory reasoning on incompatibility cases.

Taken together, the comparison indicates that the principal regulatory challenge for Indonesia is not the absence of prohibitions, but the need for greater coherence in their interpretation and application. Articles 16, 17, and 67–68 of the Notary Office Law already

⁷⁸ BNotO, § 8; BeurkG, § 3(1); BRAO, § 45(1)(1)(c). The distinction between “status-based incompatibility” and “matter-specific incompatibility” is an analytical classification derived from the different regulatory objects of these provisions rather than terminology expressly used by the statutes themselves.

⁷⁹ Notary Office Law, art. 16(1)(a).

⁸⁰ BNotO, § 14(1), (3).

⁸¹ BNotO, § 28.

⁸² Notary Office Law, art. 17(2).

⁸³ BNotO, §§ 50(1)(5), 97–98.

⁸⁴ *Oberlandesgericht Schleswig*, 7 W 4/25, ECLI:DE:OLGSH:2025:0411.7W4.25.00; BGB, § 134.

⁸⁵ Notary Office Law, arts. 67–68.

⁸⁶ Rusyan and Yahanan, “Tindakan Majelis Pengawas Notaris Daerah”.

⁸⁷ BNotO, §§ 92–93.

provide the basic framework of professional duties, prohibited positions, sanctions, and supervision.⁸⁸ The comparative analysis suggests that this framework could be clarified by distinguishing structural incompatibility from conflicts arising in particular matters, by connecting each category to its appropriate legal consequence, and by articulating more consistent supervisory criteria.⁸⁹ The German experience serves here as a comparative reference for differentiated regulatory design rather than as a template.⁹⁰ The objective is a more predictable application of Indonesian notarial law while preserving its existing public-office structure and institutional arrangements.

CONCLUSION

This study demonstrates that Indonesia and Germany pursue the same normative objective of preserving notarial independence and impartiality, but employ different regulatory constructions for concurrent positions. Indonesian law relies primarily on categorical prohibitions under Article 17 of the Notary Office Law, reinforced by supervisory mechanisms and administrative sanctions. German law, by contrast, combines occupational incompatibilities with the institutional *Anwaltsnotar* model, matter-specific participation prohibitions, judicial-administrative supervision, and legal consequences that may, in specific circumstances, extend to private-law relationships. The comparative analysis further shows that Indonesia's principal regulatory challenge is not the absence of prohibitions, but the need for greater coherence in distinguishing structural incompatibility from conflicts arising in particular matters, linking each type of violation to the appropriate legal consequence, and ensuring more consistent supervisory reasoning. Accordingly, the German framework is relevant as a comparative reference for regulatory differentiation, rather than as a model to be directly transplanted into Indonesian notarial law.

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⁸⁸ Notary Office Law, arts. 16(1)(a), 17, 67–68.

⁸⁹ Notary Office Law, arts. 16, 17, 67–68; Rusyan and Yahanan, "Tindakan Majelis Pengawas Notaris Daerah".

⁹⁰ BNotO, §§ 8, 14, 28, 50, 92–98; BeurkG, § 3(1); BRAO, § 45(1)(1)(c).

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