

Cumulation of Sentences in Concurrence of Criminal Offenses (Concursus) under the New Indonesian Criminal Code: Re-Actualization of the Principles of Proportionality and Individualization of Sentencing

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ABSTRACT

The enactment of Law No. 1 of 2023 on the Indonesian Criminal Code (KUHP Baru) marks a fundamental shift in the regulation of concurrence of criminal offenses (*concursum*), replacing the mixed cumulative-absorption system inherited from the colonial *Wetboek van Strafrecht*. This study examines the transformation of sentence cumulation in *concursum* and evaluates the extent to which the new regime re-actualizes proportionality and individualization in sentencing. Employing a normative juridical method with statutory, conceptual, and comparative approaches, the research analyses Articles 123–128 of the new KUHP alongside doctrinal developments and hypothetical case simulations. The findings reveal that the new KUHP explicitly abandons the pure cumulative *stelsel* in favor of an aggravated absorption system (*stelsel absorpsi yang dipertajam*), whereby the maximum penalty for multiple acts is set at the most severe principal threat plus one-third, and judicial discretion is bounded by overarching sentencing objectives that mandate proportionality and individual culpability. The discussion demonstrates that this structural change harmonizes Indonesian *concursum* law with modern sentencing theories, particularly limiting retributive excess and enabling individualized sanctions. However, residual ambiguity in the definition of “multiple acts” and the absence of operational guidelines for aggravation pose risks of disparity. The article concludes that the new KUHP constitutes a significant normative advancement toward proportionality and individualization, but its practical realization demands coherent implementing instruments and intensive judicial training.

Keywords: *Concursum*, Cumulation of Sentences, New Indonesian Criminal Code, Proportionality, Individualization

INTRODUCTION

The concurrence of criminal offenses, known in Indonesian doctrine as *perbarengan tindak pidana* or *concursum*, presents one of the most intricate problems in sentencing laws. When an offender commits several crimes, whether through a single act that violates multiple provisions, several separate acts, or a continued act, the legal system must decide how to compound, absorb, or cumulate punishments without violating the fundamental principles of justice. The architecture of *concursum* rules directly reflects a state’s philosophy of punishment and its commitment to proportionality and individualization. For over a century, Indonesia has regulated *concursum* through Articles 63 to 71 of the *Wetboek van Strafrecht* (KUHP Lama), a

legacy of Dutch colonial codification that blended a primary absorption principle (*concursum idealis*) with a limited cumulative principle (*concursum realis*) and a quasi-absorption approach for continued acts (*voortgezette handeling*). Under this regime, for multiple distinct acts, the judge could impose a total sentence that was the aggregate of the individual penalties, as long as the total did not exceed the maximum of the heaviest offense plus one-third. Although this hybrid system was intended to curb excessive accumulation, it has been criticized for its lack of conceptual clarity, potential for disproportionate outcomes, and failure to foreground the offender's personal culpability (Kusuma et al., 2026).

The promulgation of Law No. 1 of 2023 on the Indonesian Criminal Code (KUHP Baru) on January 2, 2023, and its scheduled entry into force in 2026 marks a watershed moment in Indonesian criminal law. The new Code comprehensively restructures *concursum* provisions in Articles 123 to 128, reportedly replacing the cumulative logic with an "aggravated absorption" system (*stelsel absorpsi yang dipertajam*). This shift responds to decades of doctrinal criticism that the old *concursum* regime fostered mechanistic sentence calculation and neglected the sentencing ideals of proportionality and individualization, which are now explicitly enshrined in Article 54 of the new KUHP as mandatory judicial considerations. The promise of the new *concursum* framework is a more rational, humane, and constitutionally sound method of handling multiple offenses—one that treats the offender as a whole person whose total sanction should reflect overall culpability, not the mathematical sum of isolated wrongs (Navrotsky, 2025).

Despite the prominence of *concursum* in criminal justice practice, scholarly analyses of the new KUHP's *concursum* regime remain nascent. Existing commentaries tend to describe textual changes without subjecting them to rigorous theoretical examination, especially concerning proportionality and individualization. Proportionality, in sentencing theory, demands a just relationship between the severity of the sanction and the gravity of the offense and the offender's blameworthiness. Individualization requires tailoring the sentence to the specific circumstances of the offender, including their personal background, motives, and potential for rehabilitation. A *concursum* system can either serve these principles or subvert them: an overly rigid cumulative system may produce a total sentence that exceeds the offender's overall blameworthiness, while a purely absorptive system may under-punish multiple wrongs and dilute deterrence. Thus, the re-actualization question is whether the new KUHP *concursum* formula strikes an optimal balance (Ardini et al., 2026).

This article aims to provide a comprehensive analysis of the transformation of sentence cumulation in *concursum* under the new KUHP, critically assessing the extent to which the new provisions re-actualize the principles of proportionality and individualization in sentencing. The research is motivated by three central questions: (i) How have the normative foundations of *concursum* cumulation shifted from the old KUHP to the new one? (ii) In what manner do the new *concursum* rules embody the ideals of proportionality and individualization? (iii) What challenges remain in the judicial implementation of consistently proportionate and individualized sentences for multiple offenses? These questions are addressed through a normative juridical study employing statutory, conceptual, and comparative approaches, supplemented by hypothetical case simulations to illustrate the practical implications of these new rules.

The significance of this research lies in its dual theoretical and practical contributions. Theoretically, it situates the new *concursum* rules within the global discourse on proportionate sentencing for multiple offenses, an area where many jurisdictions struggle between cumulative, concurrent, and blended models (Ryberg, 2005; Lippke, 2011). Practically, it offers guidance for judges, prosecutors, and defence lawyers who must navigate the new normative landscape once the KUHP Baru takes effect. The findings are expected to clarify the operational logic of aggravated absorption and highlight interpretative issues that require further elaboration by the Supreme Court or the legislator.

The remainder of this article is structured as follows. Section 2 presents a literature review on *concursum* theories, proportionality, and individualization, and traces the evolution of Indonesian *concursum* doctrine. Section 3 explains the research methods. Section 4 presents the results, including comparative tables of the old and new rules, a chart of sentencing simulations, and a systematic normative analysis of the KUHP Baru provisions. Section 5 provides an in-depth discussion of the re-actualization of proportionality and individualization, identifying doctrinal advancements and persistent risks. Finally, Section 6 concludes with a summary of the findings and recommendations.

METHOD

This study employs a normative juridical research method, which is the standard approach in Indonesian legal scholarship for analyzing legislative norms, doctrinal concepts and legal principles (Ghina Praska Levi et al., 2026). This research is designed as a qualitative, analytical-descriptive study that systematically investigates the transformation of concursus sentencing rules under the new KUHP, focusing on the re-actualization of proportionality and individualization.

Three complementary approaches are utilized:

Statutory approach (pendekatan perundang-undangan): The primary legal materials examined are Law No. 1 of 2023 on the Criminal Code, the old Criminal Code (*Wetboek van Strafrecht* as adopted by Law No. 1 of 1946 and its successive amendments), Law No. 8 of 1981 on Criminal Procedure, and Law No. 48 of 2009 on Judicial Power, which contains the principle that judges must consider the sense of justice in the community. The analysis compares the textual formulation, structure, and operative mechanisms of concursus provisions in the old and new codes.

Conceptual approach (pendekatan konseptual): This study draws on criminal law theories concerning the concurrence of offenses, sentencing proportionality, individualization, and punishment philosophy. Key concepts include the distinction between concursus idealis, concursus realis, and continued acts; the typology of cumulation systems; the “bulk discount” versus “cumulative culpability” debate; and the principle of *ultimum remedium*.

Comparative approach (pendekatan perbandingan): Selected foreign legal systems (Germany, the Netherlands) are referenced to contextualize the Indonesian choice of the aggravated absorption system and illustrate how proportionality safeguards are operationalized in comparable civil law jurisdictions.

As a normative legal study, this research relies entirely on secondary data consisting of:

- Primary legal materials: Indonesian KUHP Baru (Law No. 1/2023), KUHP Lama, and relevant regulations.
- Secondary legal materials: Academic textbooks, journal articles, dissertations, working papers of the National Law Development Agency (BPHN), and academic papers on the KUHP Bill.
- Tertiary legal materials: Legal dictionaries, encyclopedias, and news items related to judicial practices on concursus.

Additionally, this study constructed hypothetical case scenarios to simulate the application of the old and new concursus formulas. These scenarios are not empirical data but analytical tools to concretize normative differences and produce comparative sentencing tables and charts. The simulation involves three types of multiple-offense situations: (i) three distinct crimes against property with different maxima, (ii) a mixture of property and violent crimes, and (iii) a series of similar drug offenses, all designed to test the proportionality outcomes under each regime.

Data analysis was conducted using a qualitative prescriptive method. Legal materials are inventoried, classified according to concursus categories, and subjected to systematic grammatical and teleological interpretation. The old and new provisions were compared in a matrix format to identify shifts in normative logic. The simulation results are presented in tables and a bar chart to visualize the impact on maximum sentence lengths and space for judicial individualization. The discussion interprets these findings within the proportionality and individualization framework, evaluating their consistency with the overarching sentencing objectives of the new KUHP.

Internal validity was maintained by triangulating statutory text with the official Academic Paper (*Naskah Akademik*) and doctrinal literature, ensuring that interpretations were grounded in legislative intent and scholarly consensus. The study is limited to normative analysis; it does not include empirical research on judicial behavior because the new code has not yet been implemented. Thus, the conclusions regarding judicial practice are necessarily predictive and based on theoretical reasoning.

RESULT & DISCUSSION

Normative Reconstruction of Concursus under the New KUHP

The new KUHP consolidates concursus provisions in Chapter III, Part Three, Articles 123–128. The structure explicitly delineates three categories: (i) ideal concurrence (*concursus idealis*, Article 123), (ii) real

concurrence (*concurus realis*, Articles 124–126), and (iii) continued acts (Articles 127–128). The most significant transformation concerns real concurrence.

Article 124(1) states that if a person commits several separate acts that constitute different offenses, each threatening the principal punishment of the same type, the court shall impose a single sentence. The maximum sentence for such a single sentence shall be the maximum principal punishment of the most serious offense, which may be increased by one-third. Article 124(2) stipulates that the increased maximum must never exceed the sum of the individual maximum threats. This formulation fundamentally abandons the earlier Article 65 logic that allowed the judge to cumulate individual penalties up to the sum of the maxima. Under the new rule, the starting point is always the heaviest maximum threat; the one-third increase is an optional aggravation that the judge may apply after considering the totality of the conduct and the offender's culpability. Thus, the provision encodes a pure aggravated absorption system, with no room for full arithmetic cumulation. For offenses of a similar nature (Article 125), the rule is identical: a single sentence with a maximum of the heaviest maximum plus one-third of the heaviest maximum.

For cases where several offenses carry threats of different types of principal punishment (e.g., imprisonment and fines, or imprisonment and capital punishment), Article 126 provides special rules that preserve the option to impose the various types concurrently, but the sentence of imprisonment is still subject to the absorption-aggravation ceiling. The continued act is regulated in Article 127, which deems a series of interconnected acts as one offense, punishable under the provision that carries the heaviest maximum threat, with continuity serving as an aggravating consideration.

A crucial systematic innovation is the linkage between *concurus* rules and Article 54, which for the first time articulates the purposes of sentencing: (a) to prevent crime, (b) to protect society, (c) to resolve conflict, (d) to restore balance, (e) to foster remorse and reintegration, and (f) to maintain legal order. Article 54(2) mandates that the judge, in imposing a sentence, must consider (a) the gravity of the offense, (b) the circumstances of the act, (c) the situation and condition of the offender, (d) the offender's motive, and (e) the effect of the punishment on the offender and their family. This individualized assessment obligation directly governs the judge's decision on whether to exercise the one-third aggravation and how much aggravation to apply.

Comparative Table: Old vs. New *Concurus Realis* Rules

To illustrate this normative shift, Table 1 presents a comparative matrix of the key elements.

Table 1. Comparison of *Concurus Realis* Sentencing Mechanisms

Aspect	Old KUHP (Art. 65)	New KUHP (Art. 124–125)
System type	Mixed cumulative-absorption with one-third cap	Pure aggravated absorption
Starting point for total sentence	Sum of individual sentences (subject to ceiling)	Heaviest single maximum threat
Ceiling	Maximum of the heaviest	Heaviest maximum + 1/3; must

Aspect	Old KUHP (Art. 65)	New KUHP (Art. 124–125)
	offense + 1/3; must not exceed sum of maxima	not exceed sum of maxima (redundant under absorption logic)
Judge's power to cumulate	Could impose aggregate up to sum of maxima (if below ceiling)	No power to cumulate; only can add up to 1/3 to the heaviest base
Offenses of similar nature	Special rule: maximum total = heaviest threat + 1/3, but each individual act considered	Same rule: heaviest max + 1/3
Explicit proportionality/individualization mandate	Absent	Present (Art. 54 integrated)
Treatment of minimum threats	Total minimum = sum of individual minima? (ambiguous)	Single sentence: minimum not specified; logic implies at least the highest individual minimum

Table 1 demonstrates that the new Code eliminates the cumulative “summation” step entirely. Under the old regime, in a case where an offender committed fraud (max. 4 years of imprisonment), embezzlement (max. 4 years), and light assault (max. 2 years, 8 months), the judge could theoretically impose a sentence of up to $4 + 4 + 2.8 = 10.8$ years, but capped at 4 (heaviest) $+ 1.33 = 5.33$ years. The judge could still select a point between, for example, 4 and 5.33 years. Under the new Code, the judge looks exclusively at the heaviest threat (4 years) and may increase it to 5.33 years. The optional range for aggravation is identical in terms of the upper limit, but the philosophy has changed: the sentence is no longer an accumulation of separate punishments but a single unified punishment for a unified criminal episode, aggravated by the commission of multiple distinct wrongs. This structural change carries profound significance for judicial reasoning, as it forces judges to articulate why the overall culpability warrants an increase from the base.

Hypothetical Case Simulations and Sentencing Outcomes

Three hypothetical scenarios were constructed to demonstrate the practical consequences. The maxima

used follow the KUHP Baru's penalty scales (assumed to be similar to the old Code for comparison). In all scenarios, the judge exercises full available aggravation for the illustration.

Scenario A: Offender commits three separate thefts, each punished by a maximum. 5 years (KUHP Baru Art. 472). Heaviest max = 5 years. One-third aggravation = 1.66 years. The new KUHP maximum is = 6.66 years (5 + 1.66). The old KUHP maximum would be the same (5 + 1/3, capped at sum 15 > 6.66). Thus, an identical ceiling, but an old judge could also impose 5 years without aggravation; a new judge can similarly impose a base of 5 years. The difference is conceptual: the old judge aggregated three thefts, while the new judge sees a single crime episode of repeated theft.

Scenario B: Offender commits robbery (maximum 9 years), fraud (max. 4 years) and destruction of property (max. 2 years 8 months). Heaviest max = 9 years. +1/3 = 12 years. The sum of maxima = 15.66 years. The old KUHP allowed judges to total sentences up to a sum of 15.66, but the ceiling was 12 years. Same maximum. The new KUHP maximum is 12 years. Again, an identical ceiling, but an old judge could, in theory, have imposed a total of less than nine years? No, because the minimum is not regulated; an old judge could, in principle, impose 9 years for robbery and a fraction for fraud, resulting in a total of less than 9 years? Under the old Article 65, the judge determines a single total punishment that cannot be less than the heaviest individual minimum. However, the minimum for robbery might be one year, so the total could be nine years or even less if the robbery sentence is less than 9. New rule similar. Therefore, the range is similar, but the system is conceptual.

To test a scenario where the cumulative logic could theoretically produce a higher total if there was no ceiling, but the ceiling always constrains. The cumulative nature of the old system manifests when the sum of maxima is less than the heaviest + 1/3. For this to happen, the other crimes must have very low maxima. For example, offense A max 10 years; offense B max 2 years; offense C max 2 years. Sum = 14, heaviest+1/3 = 13.33. Therefore, the sum is higher, but the old rule is capped at 13.33. No difference. If the sum is lower than the heaviest+1/3, for example, A max 5 years, B max 3 years, C max 3 years. Sum = 11, heaviest+1/3=6.66, so cap is 6.66. Old rule same. Therefore, the mathematical outcomes are often identical. However, the doctrinal shift lies in the fact that under the old system, the one-third cap was an outer limit on accumulation, whereas under the new system, the one-third is the maximum aggravation beyond the base, and no accumulation occurs. The difference emerges in the realm of principles and judicial cognition.

Scenario C: A mixed scenario with drug abuse (maximum). 4 years) and drug trafficking (max. 12 years). Heaviest max 12 + 1/3 = 16 years old. Old KUHP ceiling same. The new KUHP requires judges to see trafficking as the base, with abuse merely aggravating the sentence up to 16 years. This reframing may reduce the punitive appetite because the judge is not "adding" but "aggravating" from a base.

Re-actualization of Proportionality and Individualization in Normative Text

The statutory text of the new KUHP directly integrates proportionality and individualization through various mechanisms. First, the concursus ceiling itself (heaviest + one-third) imposes a proportionality check by preventing the total sentence from exceeding the maximum for the most severe crime by more than one-third, reflecting a legislative judgment that total culpability does not increase linearly with each additional offense. Second, Article 54(1)(a) and (c) require that sentencing serve to "restore balance" and "resolve conflict," which in concursus cases demands that the final sentence be commensurate with the total harm and the offender's overall desert. Third, Article 54(2) enumerates the individualized factors that must be weighed: the gravity of the act, the circumstances of the act, the offender's situation, motive, and the consequences of the sentence. In concursus, this means the judge must examine the relationship among the multiple acts—were they part of a single criminal episode, a pattern of behavior, or isolated incidents. The offender's personal background that might explain or mitigate the plurality of offenses. For example, an offender who commits multiple frauds to pay for a child's medical treatment may deserve a sentence closer to the base maximum, whereas a recidivist who commits diverse crimes for luxury may merit the full one-third increase.

The new Code also strengthens individualization by allowing judges to impose a single sentence for all acts. The unification of the sentence removes the artificial fragmentation of the offender into separate "criminal personae" for each act, enabling a holistic assessment of the person as a whole (see Naskah Akademik, 2019,

p. 367). This is a clear re-actualization of the individualization principle because the sanction is crafted for the individual as a moral agent who committed multiple wrongs, not for a mathematical sum of wrongs.

Table of Sentencing Factors for Concurus Cases

Based on Articles 54 and 124–128, the following table synthesizes the factors that judges must consider when determining the quantum of aggravation in *concurus realis*:

Table 2. Individualization Factors for Aggravation in *Concurus Realis* under the New KUHP

Factor	Description	Impact on Sentence
Temporal and spatial connection	Whether the acts occurred in close succession, as part of one course of conduct	Closeness reduces the need for full aggravation; treating as quasi-continued act
Similarity of protected legal interests	Multiple violations of the same interest (e.g., multiple property crimes) vs. diverse harms	Greater diversity of interests may justify higher aggravation
Offender's motive and purpose	Unified plan, impulsivity, or calculation	Unified plan may reduce separate culpability; disparate motives suggest higher culpability
Offender's personal circumstances	Economic necessity, psychological state, family responsibilities	Mitigate individual blameworthiness, pulling sentence toward base
Prior criminal record	Absence or presence of prior offenses	Recidivism may move aggravation toward the one-third maximum
Restitution and victim reconciliation	Efforts to compensate victims	Can reduce aggravation in line with restorative justice
Impact of sentence on offender	Disproportionate hardship (e.g., loss of employment, family breakdown)	May constrain aggravation to avoid excessive individual harm

Table 2 illustrates that the new framework provides a structured, albeit not yet judicially operationalized, pathway for individualized sentencing within a proportional ceiling. The one-third aggravation is not automatic; it is a zone of discretion that must be justified by reference to enumerated factors. This represents a significant departure from the old Code, which left the selection of the sentence within the cap almost entirely to the judge's intuition, without specific statutory guidance.

Discussion

The most fundamental normative change introduced by the new KUHP is the explicit abandonment of

the cumulative system for *concurus realis* and its replacement with an aggravated absorption system. While the arithmetic ceiling of the heaviest punishment plus one-third remains identical, the conceptual restructuring from “adding up” to “starting from the heaviest and aggravating” repositions proportionality at the center of the sentencing calculus. Under the old Article 65, the judge’s mental operation often began with the sum of individual sentences, and then checked the ceiling. Psychologically, this primed the judge toward a higher aggregate sentence, as the starting point was the full addition of punishments. The new rule deliberately disrupts this additive logic: the base is a single sentence that corresponds to the most serious crime, and any increase requires a distinct finding of aggravating circumstances. This procedural mechanism embodies the desert-based proportionality principle that multiple offenses do not automatically justify multiple punishments; additional pain must be earned by demonstrable additional culpability (Ahwan & Daulay, 2026).

The proportionality enhancement is not merely symbolic in nature. In jurisdictions that have made similar shifts, such as the Netherlands after its 1886 Code, judicial practice gradually internalized the aggravation requirement, leading to more moderate total sentences for multiple property offenses. The Indonesian new KUHP aligns with this tradition and the German *Gesamtstrafe* model, which mandates that the aggregate sentence be lower than the sum of individual sentences and be based on a holistic culpability assessment. By constitutionally anchoring the sentencing purpose of restoring balance (Article 54(1)(c)), the new KUHP provides a legal basis for appellate courts to correct judgments that mechanically apply the full one-third reduction without proportionate reasoning (Sukabdi & Heriansyah, 2024).

However, a proportionality risk remains: the one-third cap is a blunt instrument. It does not distinguish between an offender who commits two minor thefts and one who commits 50. If the heaviest offense carries a maximum of five years, the cap is 6.66 years, regardless of the number of additional offenses. A proportionality purist might argue that the fiftieth offense adds incremental blameworthiness that could justify a sentence beyond the cap (Lippke, 2011). The new KUHP implicitly rejects this argument by prioritizing the “bulk discount” model, presumably based on the legislative assumption that beyond a certain threshold, additional offenses reflect less independent culpability and more persistent criminal disposition, which should be addressed through rehabilitation rather than retributive accumulation. Recidivism aggravations under the new Code (Articles 130–131) may serve as a separate mechanism for career criminals, operating outside the *concurus* ceiling. Thus, overall proportionality can be maintained through the interaction of *concurus* limits and general recidivist aggravation. The challenge will be to ensure that judges do not circumvent the *concurus* ceiling by overly relying on recidivist provisions (Flora & Suhardin, 2023).

The integration of Article 54’s individualized sentencing factors into the *concurus* framework marks a decisive break from the old code’s formalism. Previously, a judge could, in principle, impose the maximum permitted cumulative sentence simply by declaring the acts proven without interrogating the offender’s overall moral position. The new Code demands that the sentence be “just and humane” (Article 51) and that the judge weigh the effect of the punishment on the offender. In *concurus*, this means the judge must evaluate whether the combined effect of a single sentence for multiple acts would disproportionately crush the offender’s life prospects. For instance, a young first-time offender who committed three embezzlements in a short period due to debt entrapment might receive a total sentence equal to the heaviest maximum (say, four years), with no aggravation, because a higher sentence would conflict with the rehabilitative goal under Article 54(1)(e). Conversely, a professional fraudster who meticulously planned separate schemes to maximize gains could justifiably receive the full one-third aggravation (Setiyowati et al., 2026).

The unified sentence also advances individualization by preventing the pernicious practice of “sentence stacking” which can result in an offender serving terms that far exceed the natural span of a human life for non-homicide crimes. Under the old system, while the ceiling existed, the psychological starting point of addition sometimes led judges to impose the maximum possible within the cap, especially in high-profile corruption cases, where multiple counts could theoretically attract a 20-year cap. The new approach, by requiring the judge to fix a single base and then justify any increment, invites a narrative of the offender as a whole person, which is the essence of individualization of punishment. The inclusion of factors such as the offender’s motive and post-offense conduct (restitution) allows a restorative dimension to enter *concurus* sentencing. This resonates with the Pancasila justice philosophy that punishment should not be purely

retaliatory but should reintegrate individuals into society (Heliany et al., 2023).

Nevertheless, the potential for individualization is contingent on the willingness and capacity of judges to develop a “concurus sentencing reasoning” that explicitly connects Article 54 factors to the quantum of aggravation. The present reality of Indonesian judicial practice, characterized by brief and formulaic judgments (Jeremia Hutagalung et al., 2025), suggests a steep learning curve. Without comprehensive training and the issuance of Supreme Court guidelines (Peraturan Mahkamah Agung), judges may continue to impose the maximum permissible total as a matter of routine, relying on the one-third addition as a new default rather than a reasoned aggravation.

A significant area of concern that affects both proportionality and individualization is the definitional boundary between real concurrence and continued action. Article 127 defines a continued act as several acts that are “so interrelated that they must be viewed as one continued act,” committed in execution of a single decision, violating the same or similar legal interests. This definition is substantially similar to that of the old Article 64. However, its practical application has always been highly contested. If a judge construes a series of separate frauds as a continued act, the penalty ceiling is simply the maximum for the most serious fraud, without any one-third aggravation. The normative choice between continued act and real concurrence thus determines whether the offender faces a maximum of, say, four years or 6.66 years. The new Code does not provide additional criteria to distinguish between the two categories. This ambiguity leaves open the door for prosecutorial overcharging and judicial inconsistency, which directly undermines proportionality: identical factual patterns could lead to wildly different ceilings depending on the characterization.

Moreover, the new Code’s concurus chapter does not address the relationship between concurus and the guidelines for minimum penalties for specific offenses. Some special criminal laws prescribe mandatory minimum sentences. In cases of multiple acts, each carrying a minimum, does the unified sentence absorb the minima, or must the total be at least the sum of the minima or the highest minimum? The old practice allowed the judge to impose a single sentence that, in theory, was not less than the highest individual minimum, but practice was inconsistent. The new Code’s silence on this issue could lead to either unduly harsh cumulative minima or, conversely, to a circumvention of mandatory minimums, provoking tension with the legislature’s punitive intent. Resolution requires an authoritative interpretation from the Supreme Court, ideally in the form of a Circular Letter.

The successful re-actualization of proportionality and individualization in concurus ultimately depends on judicial implementation. This study identifies three critical needs. First, the Supreme Court should issue guidelines (PERMA) on concurus sentencing that elaborates on the factors in Table 2 and establishes a structured decision-making process. For example, a step-by-step model could require judges to (a) determine the base sentence for the most serious offense as if it were a single crime; (b) identify the nature and number of additional offenses; (c) assess the degree of connection among them; (d) weigh the aggravating and mitigating circumstances; and (e) decide on the quantum of aggravation within the zero to one-third range with explicit reasons. Such a model, drawing on the German Gesamtstrafenbildung, would substantially reduce disparities.

Second, the new concurus regime must be supported by revising prosecutorial practices. Prosecutors’ indictments should clearly categorize the relationship among acts (ideal, real, continued) and present evidence of the offender’s overall culpability and personal circumstances, rather than merely multiplying charges. Third, legal education and continuous professional development for judges and prosecutors must emphasize the philosophical underpinnings of the aggravated absorption system, moving away from old arithmetic habits.

An additional layer of complexity arises from these transitional provisions. Because the new KUHP will only apply to offenses committed after its entry into force, for many years, the courts will simultaneously handle cases under the old and new concurus systems. Clear intertemporal rules are required to prevent confusion and safeguard equality before the law (Maskur et al., 2025).

Locating concurus reform within the larger architecture of the KUHP Baru’s sentencing framework is essential. The new Code introduces dual-track sanctions (punishment and measures), expands alternatives to imprisonment, and mandates that imprisonment be the last resort (*ultimum remedium*) for certain categories of offenders. The aggravated absorption ceiling, combined with these systemic features, creates a potent

proportionality mechanism: even for multiple offenses, the judge retains the option to impose a non-custodial or partially suspended sentence if the Article 54 factors so indicate. For example, an offender who commits several minor thefts out of economic necessity could be sentenced to a single term of probation with restitution conditions, which would have been difficult under the old cumulative mindset. This holistic flexibility is perhaps the most radical realization of individualization to date.

Nevertheless, the public and political demand for retribution, particularly in corruption and drug cases, may generate pressure to maximize punishment within the limit. Therefore, the principle of individualization must be defended by higher courts through robust reasoned decisions that model proportionate cumulation, thereby building a jurisprudence that educates the legal community and the public.

CONCLUSION

The enactment of the new Indonesian Criminal Code fundamentally recalibrates the law of concursus by replacing the mixed cumulative-absorption system with an aggravated absorption model that takes the most severe penalty as the base and permits a maximum increase of one-third. This structural change signifies a deliberate re-actualization of the principles of the proportionality and individualization of sentencing. Proportionality is enhanced because the new rule precludes the arithmetic addition of penalties, compelling judges to assess the total culpability holistically and to justify any increase as an aggravation. Individualization is strengthened through the integration of mandatory sentencing factors under Article 54, which demands that the judge consider the offender's motive, personal circumstances, and the impact of the combined sentence, and through the unification of multiple offenses into a single sentence that treats the offender as an indivisible moral subject.

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