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**Topic:** *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

## **Reconstruction of Child Protection Law Norms for the Optimization of Restitution for Victims of the Crime of Human Trafficking**

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**Abstract.** *Children are the most vulnerable entity to become victims of the Crime of Human Trafficking (TPPO), an extraordinary crime that deprives freedom and destroys the future. Although national legal instruments have accommodated the right to restitution for victims, its implementation often ends in empirical failure due to normative defects in the Child Protection Law. This study aims to analyze these systemic weaknesses and formulate ideas for reconstructing legal norms to optimize the fulfillment of restitution. This research using a normative legal research method with statutory and conceptual approaches, this study finds that the paradigm of retributive justice that still dominates positive law has created a loophole of financial impunity for perpetrators through substitute imprisonment (subsidiary punishment). By injecting the theories of Dignified Justice and Restorative Justice, the proposed reconstruction includes the absolute abolition of substitute imprisonment provisions, institutionalization of asset tracing from the initial stage of investigation modeled on the effectiveness of asset confiscation in various jurisdictions, and the application of the reversal of the burden of proof. This normative reconstruction is a necessity to ensure that the law does not merely punish perpetrators but genuinely repairs losses, restores human dignity, and guarantees the future of child victims of exploitation.*

**Keywords:** *Dignified; Justice; Legal; Protection; Reconstruction.*

### **1. Introduction**

The Unitary State of the Republic of Indonesia was built upon a constitutional foundation that places the protection of human rights as the highest pillar of supremacy in national and state life. The noble mandate contained in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia explicitly obliges state administrators to protect the entire Indonesian nation and all of Indonesia's territory. The manifestation of this absolute obligation requires the state to position itself as the primary protector (*parens patriae*) for every

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citizen, especially vulnerable groups who lack the capacity and means to defend themselves. Within the anatomy of the social structure, children constitute the most vulnerable group in society, whose future directly represents the existence and continuity of the nation's civilization.

Although constitutional guarantees have been constructed in such a noble manner, empirical reality within sociological dynamics presents a grim picture regarding child protection. The development of globalization and structural economic inequality has triggered the escalation of organized transnational crimes, one of which is Human Trafficking (TPPO). In this crime, children from marginalized groups are often reduced in their human value to mere commercial commodities traded for massive financial gain. Children's physical helplessness, mental innocence, and dependence on adults are systematically exploited by criminal syndicates operating beyond national jurisdictional boundaries.

The forms of exploitation suffered by children within the vortex of human trafficking are highly diverse and reach the lowest point of moral degradation of humanity. These children are recruited through various forms of social engineering, fraud, and even kidnapping, only to be forced into labor exploitation, commercial sexual exploitation, involvement in the pornography industry, and even organ trafficking. In today's era of digital disruption, the scope of these crimes has mutated into cybercrime (online child exploitation), where recruitment and exploitation are carried out under the cloak of internet anonymity. Cyberspace provides facilities for predators to manipulate children without face-to-face interaction, turning them into modern slaves before technology screens.

The destructive impact caused by this crime of human trafficking on children is multidimensional, holistic, and often leaves permanent traumatic residues. Physically, child victims of exploitation suffer due to inhumane working conditions, torture, contagious diseases, and lifelong disabilities. Psychologically, their honor and bodily autonomy are brutally taken away, resulting in acute depression, mental dissociation, and a loss of trust in humanity. From an economic perspective, their right to education and normal development is forcibly stolen, severing their chain of hope to escape poverty and build independence in adulthood.

In facing the complexity of victims' suffering, the architecture of the traditional criminal justice system is often trapped in a rigid positivistic character that prioritizes a retributive justice approach. This retributive approach measures the success of law enforcement solely by how severely perpetrators are sentenced to imprisonment. The state, through its law enforcement apparatus, often assumes that justice has been fully served once the perpetrator is incarcerated. In reality, imprisonment contributes nothing tangible to restoring a child's psychological trauma, reimbursing medical expenses, or replacing a lost future.

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Recognizing the paralysis of this retributive paradigm, the discourse on criminal law reform demands a radical shift in orientation toward Restorative Justice, intertwined with the values of Dignified Justice. Dignified Justice views law not merely as a dead text but as a living instrument that humanizes individuals and protects their dignity. Within this framework, law enforcement in child trafficking cases must not stop at imposing suffering upon perpetrators but must focus on repairing losses, restoring social relationships, and returning victims to their original condition.

The most concrete instrument for manifesting restorative and dignified justice is through the fulfillment of the right to restitution. Restitution is compensation imposed upon and required to be paid by perpetrators of crimes (or involved third parties) directly to victims. For child victims of trafficking, restitution is not merely monetary compensation but an absolute human right that serves as a means to finance medical rehabilitation, psychological counseling, and the opportunity to return to school. The fulfillment of restitution is empirical proof that the state is present as a protective instrument ensuring that crimes committed by syndicates are paid for not only with the perpetrators' freedom but also with all of their assets.

However, these philosophical ideals regarding restitution often collapse when confronted with the reality of norms contained in the Child Protection Law and the Human Trafficking Law itself. There is an inherent defect in the construction of positive legal norms that creates a loophole of financial impunity through the accommodation of "substitute imprisonment" (subsidiary punishment). This norm grants perpetrators the privilege of choosing not to pay restitution worth hundreds of millions or even billions of rupiah and instead serving a relatively short additional prison term. This normative weakness openly legalizes a practice whereby perpetrators can effectively "purchase" victims' recovery rights by spending only a few extra months in prison.

In addition to the issue of subsidiary imprisonment, the deadlock in restitution is further aggravated by systemic weaknesses in regulations concerning asset tracing and asset recovery. Indonesian law enforcement agencies often begin tracing perpetrators' assets only after court proceedings have concluded, rather than from the initial stages of investigating the predicate crime. Consequently, by the time a restitution order is issued by the judges, the assets derived from exploitation have already been transferred, laundered through complex banking instruments, or hidden under fictitious corporate names. Compared to the success of integrated asset confiscation mechanisms in several developed jurisdictions, Indonesia's legal instruments remain far behind in impoverishing child exploitation syndicates.

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Based on this series of philosophical and normative problems, the weaknesses of the Child Protection Law in facilitating restitution can no longer be addressed through mere partial amendments but require a fundamental reconstruction. Therefore, this article is prepared to critically examine the anatomy of the weaknesses in the execution of restitution for child victims of trafficking in Indonesia. More than that, this study aims to formulate and offer a comprehensive model of normative reconstruction to ensure that the architecture of justice is no longer trapped in retribution but is capable of guaranteeing children's financial recovery in a dignified manner and with legal certainty.

## **2. Research Methods**

This study is designed as normative or doctrinal legal research, which positions law as a coherent system of norms. The focus of the study is directed toward analyzing legal principles, justice doctrines, and the synchronization of legislation governing child protection and restitution for crime victims in Indonesia. The primary approach used is the statutory approach, specifically examining the norms contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection, Law Number 21 of 2007 on the Eradication of Human Trafficking, and Law Number 31 of 2014 on the Protection of Witnesses and Victims. In addition, a conceptual approach is employed to analyze the theories of Dignified Justice and Restorative Justice as philosophical analytical tools. Data were collected through in-depth library research, including primary legal materials, secondary academic literature, and contemporary legal doctrines, which were then systematized and analyzed using deductive logic to produce prescriptive ideas for legal reconstruction.

## **3. Results and Discussion**

### **3.1. The Philosophy of Restoring the Rights of Child Victims of Human Trafficking in the Perspective of Restorative Justice and Dignified Justice**

The discourse on punishment and law enforcement throughout the history of human civilization has always been marked by a dialectic between imposing a deterrent effect on offenders and restoring justice for crime victims. In the classical criminal law tradition inherited from the colonial system, the epicenter of justice was always focused on the retributive aspect, whereby the state took over the conflict and punished offenders as a form of public retribution. In this rigid system, victims of crime including children subjected to exploitation were positioned merely as passive objects, as evidence in court proceedings, or as reporting witnesses whose role ended once the judge's gavel fell. The suffering, trauma, and material losses experienced

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by victims were regarded as incidental consequences lying beyond the primary responsibility of criminal law.

The development of legal sociology and victimology in the modern era strongly rejected this reduction of humanity and triggered a monumental paradigm shift toward Restorative Justice. This paradigm offers the view that crime is not merely a violation of statutory texts or the state but rather an act that damages human relationships, injures individuals, and destroys social cohesion. Therefore, the primary objective of law enforcement can no longer be limited to imposing imprisonment but must be expanded to include the obligation to repair the harm that has occurred. In the context of child victims of human trafficking, a restorative approach demands that the justice system provide broad space for the fulfillment of children's recovery rights, making them the primary subjects whose futures must be repaired.

This idea of restorative justice finds a profound and precise philosophical foundation when integrated with the theory of Dignified Justice. Dignified Justice is a legal postulate that believes law is fundamentally created to *honor* human beings, not to restrain or degrade human dignity. Law must return to its original purpose as a protector of noble humanitarian values. Exploiting children for economic or sexual purposes represents the peak of an assault on human dignity. Therefore, responding to such crimes through a justice system incapable of restoring the economic and psychological rights of child victims constitutes a form of injustice that violates the principle of dignified law.

In the synthesis between restorative justice and dignified justice, children are no longer placed at the margins of the justice system but become the epicenter of all legal proceedings. The best interest of the child must serve as the grundnorm or fundamental norm animating every article, every investigative policy, and every judicial decision. Restoring a child's dignity cannot be achieved solely through counseling or an offender's apology; it requires a strong material foundation to ensure that the child possesses sufficient resources to rebuild the fragments of a life destroyed by human trafficking syndicates.

Restitution, within this framework, is not merely understood as a mechanistic civil accounting calculation of material and immaterial damages. More than that, restitution is the physical manifestation of restorative justice itself. The obligation of offenders to pay restitution is a form of moral accountability that compels them to recognize the destructive impact of their crimes. Restitution funds seized from offenders and transferred to child victims symbolize the state's and the law's acknowledgment that the child's suffering is real, recognized, and deserving of dignified compensation. Without restitution, restorative justice remains nothing more than an empty academic slogan without implementation.

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From a psychological perspective, the fulfillment of restitution possesses crucial healing power for the mental resilience of child victims of human trafficking. Children subjected to exploitation are often overwhelmed by feelings of helplessness, humiliation, and loss of autonomy. When the justice system successfully compels offenders to surrender their assets as compensation, it sends a powerful psychological message that the child has prevailed against their predator. Restitution restores psychological sovereignty, removes the perception of being the defeated party, and validates that the state stands on their side to protect and restore their dignity.

Furthermore, through the lens of Dignified Justice, the state bears a non-negotiable moral responsibility to ensure that obtaining restitution does not impose additional suffering upon victims. Legal proceedings must not create secondary victimization, whereby child victims are forced to confront intimidating, rigid, and slow judicial bureaucracy. The state must design proactive procedural mechanisms in which state apparatuses fight on the front lines to trace and seize offenders' assets, while child victims remain in a safe and protected environment until restitution is fully delivered.

As a conclusion to this philosophical review, the reconstruction of child protection norms and restitution fulfillment must be inspired by the awareness that imprisoning human traffickers without impoverishing them and restoring child victims constitutes a failure of legal civilization. To achieve a civilized legal order, Indonesia's criminal justice system must completely abandon the remnants of a purely retributive paradigm and fully embrace the principles of Dignified Justice. Only through a victim-centered paradigm can the Child Protection Law truly function as a shield of humanity that guarantees the sovereignty, future, and noble dignity of Indonesian children.

### **3.2. Critical Analysis of the Normative Weaknesses of the Child Protection Law in the Execution of Restitution**

Although restitution has conceptually been recognized as a fundamental right of victims, the normative framework of Indonesia's positive law still contains contradictions and inherent defects that undermine its implementation. Law Number 35 of 2014 concerning Child Protection, along with other related *\*lex specialis\** legislation, contains provisions obligating offenders to compensate victims. However, these provisions are more declarative than operationally imperative. The law recognizes the existence of restitution rights, yet criminal procedure does not provide adequate coercive infrastructure to ensure that restitution can actually be executed from the offender's assets and transferred to victims.

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The first and most fatal systemic weakness lies in the adoption of the concept of “substitute imprisonment” in regulations concerning restitution. Following the outdated logic of the colonial Criminal Code regarding fines, legislators carelessly equated restitution with criminal fines. If offenders are declared unable or unwilling to pay restitution, the law allows them to substitute payment with a few additional months of imprisonment. This normative defect directly degrades victims’ human rights because it suggests that the lifelong suffering endured by child victims of exploitation can legitimately be exchanged for a relatively brief period of incarceration.

The economic analysis of law clearly shows how human trafficking syndicates exploit this loophole. Organized offenders, such as illegal labor recruiters or corporations employing children under coercive conditions, often possess substantial financial assets obtained through criminal activities. When courts impose restitution orders amounting to billions of rupiah for dozens of exploited children, these offenders rationally choose to conceal their wealth. Through accounting manipulation, they may claim insolvency or inability to pay and willingly serve an additional six months in prison. The state effectively submits to this strategy by allowing criminal assets to remain intact while child victims receive nothing.

Another fundamental weakness concerns the burden of proving damages, which is placed on child victims and their advocates. Under a rigid evidentiary system, judges frequently demand formal material evidence, such as medical receipts, proof of unpaid wages, and detailed calculations of immaterial losses. Imposing civil-law standards of proof on child victims of trafficking is a procedural illusion. Criminal syndicates systematically confiscate, destroy, or conceal physical documents. Forcing traumatized victims to argue over receipts in court constitutes procedural injustice and ignores the realities of exploitation.

Disharmony among legal instruments also weakens restitution enforcement. There is often a lack of synchronization among police investigators, public prosecutors, judges, and the Witness and Victim Protection Agency (LPSK). Frequently, LPSK has worked diligently to calculate restitution based on rehabilitation needs, but prosecutors fail to include such claims in indictments on time. Even when included, judges lacking a child-protection perspective often arbitrarily reduce restitution amounts without clear justification or reject them on the grounds that immaterial losses are difficult to prove. This fragmentation leaves victims trapped in bureaucratic uncertainty.

At the upstream level of law enforcement, an urgent normative weakness is the absence of a strict legal obligation for investigators to conduct asset tracing from the first day of a trafficking investigation. Indonesian law enforcement culture remains heavily focused on proving the

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bodily elements of crime in order to detain offenders and seize operational evidence such as passports or electronic devices. Authorities often neglect the principle of “following the money.” Consequently, by the time restitution execution is addressed, offenders’ assets have already been laundered or transferred abroad. The lack of integrated financial investigations renders court decisions ineffective.

The absence of layered corporate liability mechanisms also weakens restitution efforts. Child exploitation syndicates frequently involve third parties such as transportation companies, hotels, or online platforms that negligently allow their services to facilitate exploitation. However, the Child Protection Law does not clearly regulate vicarious liability for such facilitating corporations. Because liability targets only individual offenders often low-level workers the pool of assets available for seizure remains limited, making restitution grossly disproportionate to victims’ losses.

The accumulation of these normative defects, inter-agency disharmony, and procedural rigidity leads to a heartbreaking conclusion: the legal system has subjected child victims of exploitation to secondary victimization. Laws intended as protective shields have become procedural labyrinths that exhaust victims and betray their expectations. Unless these norms are dismantled and reconstructed, the state’s promises of recovery contained in the Constitution will remain merely attractive narratives that never deliver genuine justice to children whose lives have been devastated.

### **3.3. Proposed Reconstruction of Child Protection Law Norms to Guarantee Restitution Enforcement**

Considering the systemic deadlock and fatal weaknesses embedded within the Child Protection Law and related regulations, a patchwork approach through partial revisions is no longer sufficient. A radical and holistic reconstruction of legal norms is required to dismantle the old paradigm and replace it with a legal infrastructure oriented toward restoring victims’ absolute rights. This reconstruction must be inspired by the philosophy of Dignified Justice, with the primary objective of ensuring that every rupiah of loss suffered by child victims can be recovered through uncompromising asset seizure and confiscation from criminal syndicates.

The first and most fundamental proposal is the complete abolition of substitute imprisonment for unpaid restitution. The Child Protection Law and the Anti-Trafficking Law should be amended explicitly to affirm that restitution is a civil debt arising from crime that cannot be exchanged, extinguished, or accumulated through imprisonment. If offenders fail to pay voluntarily, the state, through prosecutorial authorities, should possess unlimited coercive powers to seize all

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assets, whether movable, immovable, or digital. If offenders are proven to conceal assets, this should constitute a new money laundering offense carrying additional imprisonment, while restitution obligations remain attached for life.

The second proposal is the institutionalization of Mandatory Early Asset Tracing and Forfeiture. Special criminal procedures for child protection should require police investigators, in coordination with the Financial Transaction Reports and Analysis Center (PPATK), to immediately freeze all suspicious financial assets belonging to suspects including those of close family members upon designation as suspects. This approach may draw lessons from European jurisdictions such as Germany, where criminal asset forfeiture can be conducted in rem against the property itself without waiting for lengthy criminal proceedings, ensuring that assets do not disappear before restitution can be enforced.

The third proposal concerns courtroom evidentiary standards through the implementation of a limited burden-shifting mechanism. Because child trafficking victims often lack the ability to formally prove their losses, judges should be required to adopt victim-oriented presumptive evidentiary principles. Loss assessments prepared professionally by LPSK and clinical psychologists should be recognized as conclusive evidence of material truth. Conversely, offenders or corporate syndicates should bear the burden of proving that they did not deprive victims of liberty, confiscate wages, or cause harm. Failure to rebut these presumptions should result in the full granting of restitution claims.

The fourth proposal is the expansion of criminal liability through the integration of vicarious liability for corporations and digital platforms. The Child Protection Law should be broadened to hold electronic system providers, hotels, airlines, and similar entities accountable when their negligence facilitates child trafficking. Where systemic negligence is established, such entities should face substantial fines and be jointly liable for paying victim restitution. This expansion ensures that restitution does not depend solely on low-level offenders with limited assets.

The fifth proposal addresses situations where primary offenders genuinely lack assets. The law should reconstruct compensation doctrines through State Subrogation and a Victim Trust Fund. When courts award restitution but offenders have no assets, the state must not evade responsibility. Instead, it should immediately advance compensation to child victims through a Victim Trust Fund. Once victims receive dignified compensation, the restitution claim would transfer to the state through subrogation, allowing law enforcement authorities to pursue reimbursement from broader criminal networks later.

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To operationalize such a trust fund, the sixth proposal calls for synchronization and the enactment of comprehensive Asset Recovery legislation. Indonesia urgently requires a dedicated Asset Recovery Law with an integrative character. A portion of proceeds from auctions of assets seized in corruption, narcotics, and money laundering cases could be allocated to a special Victim Trust Fund for children. This cross-subsidization mechanism would provide sustainable liquidity independent of rigid state budget procedures when addressing child exploitation emergencies.

The seventh proposal concerns cultural transformation and institutional capacity building among law enforcement personnel. Amendments to legal texts will remain ineffective unless accompanied by mandatory child-protection perspective certification for judges, prosecutors, and police officers handling trafficking cases. Regulations should establish specialized criminal courts for child victims, utilizing child-friendly procedures, separating children from intimidating courtroom environments, and ensuring that questioning focuses on recovery needs rather than blaming victims for lacking evidence.

As a final synthesis, this series of normative reconstructions abolishing substitute imprisonment, mandating early asset tracing inspired by international practice, shifting the burden of proof, involving facilitating corporations, and operationalizing state subrogation constitutes more than a technical legislative project. It represents a legal revolution that buries outdated retributive paradigms and establishes a new foundation of Dignified Justice. Integrating these progressive norms into the Child Protection Law would ensure that law becomes a liberating space, an instrument for seizing criminal wealth and restoring it as a right to the future stolen from Indonesian children.

#### **4. Conclusion**

Human trafficking targeting children is a profoundly destructive crime against humanity that deprives children of their fundamental rights and destroys the future of the nation's next generation. Efforts to restore victims' financial and psychological well-being through restitution mechanisms mandated by existing legal instruments have proven to suffer from structural and empirical failures. Critical analysis demonstrates that the Child Protection Law and the Anti-Trafficking Law still contain loopholes of impunity through substitute imprisonment provisions, irrational burdens of proof imposed on victims, and the absence of mandatory early asset tracing. Therefore, a radical and comprehensive reconstruction of legal norms is a for realizing Dignified Justice and Restorative Justice. Urgent reconstruction measures include the complete abolition of substitute imprisonment provisions, the implementation of integrated compulsory asset forfeiture mechanisms from the investigation stage, the application of burden-shifting

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principles against criminal syndicates, the expansion of liability to facilitating corporations, and the institutionalization of state subrogation through the establishment of a Victim Trust Fund. This normative transformation will end the era in which offenders can preserve their assets by accepting minimal punishment. Through this reconstruction, Indonesia's positive law can emerge as a genuine protector that not only punishes offenders but also concretely repairs harm, humanizes victims, and guarantees the future rights of children in a comprehensive and dignified manner.

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