

LICS 2026

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

The Urgency of Binding Restitution Enforcement within the Framework of the Child Protection Law

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Abstract. *Protection of children who become victims of criminal acts is a constitutional mandate requiring the state to restore all physical, psychological, and material losses suffered by victims. Restitution serves as an instrument of restorative justice that guarantees victims the right to receive direct compensation from offenders. However, within the framework of the Child Protection Law and the criminal justice system in Indonesia, the enforcement of restitution often reaches a dead end due to weak normative construction, particularly the existence of substitute imprisonment clauses (subsidiary punishment). This study aims to examine in depth the urgency of implementing binding and coercive restitution enforcement for perpetrators of crimes against children. This research use normative legal research methods with statutory and conceptual approaches, this study finds that restitution is currently still reduced to an additional punishment that can be exchanged for imprisonment, thereby providing financial impunity for offenders. The research recommends legal reconstruction through the absolute abolition of substitute imprisonment provisions for restitution, the mandatory implementation of asset tracing from the investigation stage, and the application of presumptive proof regarding children's losses. This transformation toward binding enforcement is an imperative in realizing substantive justice, breaking the chain of victimization, and guaranteeing the dignified future of child victims of crime.*

Keywords: *Binding Enforcement; Child Protection; Restitution; Restorative Justice; Substitute Imprisonment.*

LICS 2026

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

1. Introduction

The Unitary State of the Republic of Indonesia was founded upon a highly fundamental constitutional mandate, namely the obligation to protect the entire Indonesian nation and all of Indonesia's territory, as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. This sacred mandate carries the legal consequence that the state, through all of its institutions and powers, must position itself as the primary protector of every citizen. Within the landscape of human rights protection, this obligation becomes absolute and multiplied when directed toward the most vulnerable members of society who lack the capacity for self-defense. Children, as the buds, potential, and future generation that will continue the nation's ideals, occupy the highest position among vulnerable groups whose survival, growth, development, and protection from all forms of violence and discrimination must be guaranteed.

Amidst these grand constitutional guarantees, the sociological reality and dynamics of criminality in Indonesia present a deeply concerning picture regarding the high incidence of crimes targeting children. Children are frequently trapped in networks of exploitation, sexual violence, human trafficking (TPPO), and physical abuse perpetrated by adults, whether by outsiders or by those closest to them within their own families. Children's physical vulnerability, mental innocence, and economic and emotional dependence are systematically exploited by offenders to satisfy deviant desires or obtain material gain. Crimes against children are not ordinary crimes; they constitute a total denial of human dignity and a direct theft of a nation's civilizational future.

The destructive impact of crimes against children possesses highly complex and holistic dimensions, often leaving residual suffering that is permanent in nature. Physically, child victims suffer injuries, disabilities, and communicable diseases that destroy their quality of life. Psychologically, their sovereignty over their bodies and minds is brutally violated, giving rise to acute trauma, mental dissociation, loss of self-confidence, and tendencies toward depression that may culminate in self-harming behavior. Economically, these children lose their right to pursue education in peace, while their families often fall into poverty due to escalating medical treatment costs, psychiatric therapy expenses, and litigation costs throughout the judicial process.

LICS 2026

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

In response to the complexity of victims' suffering, the modern criminal justice system has undergone a fundamental paradigm shift from Retributive Justice toward Restorative Justice. The retributive approach inherited from colonial law traditionally measured the success of law enforcement solely by the length of time an offender was imprisoned, while the fate of victims was completely ignored and reduced to mere evidentiary tools in court proceedings. In contrast, restorative justice places victim recovery at the epicenter of law enforcement. Under this paradigm, the law must not focus exclusively on the state's retaliation against offenders, but rather on repairing harm, healing victims, and restoring them to their original condition.

The most concrete and essential instrument for manifesting restorative justice within the judicial system is the fulfillment of the right to restitution. Doctrinally, restitution is compensation imposed upon and required to be paid by offenders or responsible third parties directly to victims. For child victims of crime, restitution is not merely cash compensation or an act of charity; it is an absolute human right intended to finance medical care, psychological rehabilitation, and the restoration of their future. Restitution embodies the moral and material accountability of offenders, making them realize that crime carries a price that must be fully paid not only through the loss of liberty but also through the surrender of their assets and wealth.

However, this noble concept of recovery through restitution often collapses when confronted with the empirical realities of law enforcement under Indonesia's Child Protection Law. Although statutory provisions recognize the existence of restitution rights, the wording of these provisions is more declarative than operationally imperative. Judges may impose restitution orders amounting to hundreds of millions of rupiah, yet such decisions frequently become paper tigers. The criminal procedural system fails to provide coercive and binding enforcement mechanisms capable of compelling offenders to surrender their assets, rendering restitution an illusory victory that never reaches child victims who urgently need funds for medical treatment.

LICS 2026

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

The most fatal weakness causing the ineffectiveness of restitution enforcement lies in the existence of the “substitute imprisonment” (subsidiary punishment) norm within positive law regulations. Legislators, still constrained by outdated criminal fine logic, have provided offenders with an avenue to replace restitution obligations with additional imprisonment, often lasting only six months. This norm grants an absurd privilege to child predators and exploitation syndicates, allowing them to effectively “purchase” victims' recovery rights at a very low cost. Rationally, they can conceal their assets, claim inability to pay in court, and willingly choose a slightly longer prison stay rather than finance the future of the children whose lives they have destroyed.

This systemic failure of the Child Protection Law to ensure restitution enforcement effectively legalizes secondary victimization. Through its judicial system, the state forces child victims to endure exhausting legal proceedings, relive their trauma in court to prove material losses, and ultimately allows them to leave empty-handed. These children, whose lives have already been shattered, feel betrayed by a state that fails to seize offenders' assets. The law's inability to compel offenders to pay their debt to justice reflects the moral bankruptcy of a judicial system that protects criminal assets more vigorously than it restores the lives and futures of the nation's next generation.

Given this doctrinal and empirical deadlock, allowing restitution to remain optional and substitutable by imprisonment constitutes a betrayal of Dignified Justice. Therefore, the urgency of reconstructing and establishing restitution enforcement that is binding, absolute, and coercive can no longer be negotiated. The state must adopt mechanisms for compulsory civil asset confiscation, sever the connection between compensation and imprisonment, and ensure that no offender who commits crimes against children can continue to enjoy their wealth while the tears and suffering of child victims remain unpaid. This transformation of the enforcement paradigm is an absolute prerequisite for the supremacy of humanitarian law.

Based on this series of systemic and philosophical urgencies, this scholarly article is prepared to critically dissect the anatomy of weaknesses within positive law regarding restitution enforcement for child victims of crime. Furthermore, it aims to formulate theoretical foundations and legal reconstruction proposals to establish binding and non-substitutable restitution enforcement within the framework of the Child Protection Law. Through this comprehensive study, it is hoped that Indonesia's criminal justice system can transform into a genuine instrument of protection that not only physically punishes offenders but also truly repairs harm and restores the human dignity of child victims of crime.

LICS 2026

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

2. Research Methods

This study was designed using the normative legal research method, or what is universally identified as doctrinal legal research. This method focuses all of its analytical instruments on an in-depth examination of legal principles, theological-juridical doctrines of justice, and the synchronization of legislation operating within Indonesia's positive legal system. To comprehensively analyze the research problem, this study applies 2 (two) main approaches, namely: Used to examine regulatory instruments and the hierarchy of applicable laws and regulations. The legal instruments analyzed include:

- a) The 1945 Constitution of the Republic of Indonesia;
- b) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection;
- c) Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims; and
- d) Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts.

Conceptual Approach

Used to synthesize doctrines and expert opinions in legal science, particularly regarding the concepts of Restorative Justice, the theory of Dignified Justice, and Asset Recovery mechanisms. This research relies entirely on secondary data (primary, secondary, and tertiary legal materials). All data sources were collected through comprehensive library research, namely by tracing, reading, recording, and inventorying literature, statutory documents, jurisprudence, and scientific journals relevant to the focus of the study. All collected legal materials were then processed, categorized, and analyzed using a qualitative-deductive method. This analysis proceeds from general premises (legal norms and theories) toward specific conclusions to answer the research questions. The results of this analysis are intended to produce prescriptive conclusions, namely providing arguments and solutions oriented toward reconstructing law enforcement in relation to the restoration of victims' rights.

LICS 2026

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

3. Results and Discussion

3.1. The Philosophy of Restitution as a Constitutional Right and Child Recovery

The discourse on the criminal justice system in Indonesia has in fact begun to move away from the shadow of the purely retributive classical criminal law tradition inherited from the colonial era. Under the old paradigm, the epicenter of justice was always focused on the rationality of public revenge, where the state took over conflicts and punished offenders solely to inflict physical suffering behind bars. Within this rigid construction, crime victims especially vulnerable children were positioned merely as passive objects, serving only as instruments of proof for public prosecutors, whose role effectively ended once a verdict was handed down. This paradigm clearly ignored the sociological reality that imprisoning offenders does not provide healing, improvement, or material recovery for the wounds, trauma, and future that have been taken away from children.

Correcting the failure of this retributive paradigm, Restorative Justice emerged as a legal philosophy that revolutionizes the way the state views crime and recovery. Crimes against children are no longer seen merely as violations of statutory provisions enacted by the state but are recognized as destructive acts that damage human relationships, injure individual dignity, and destroy the sovereignty of the victim's future. Therefore, the essential purpose of criminal law must not be limited to imposing imprisonment but must be expanded into an absolute obligation to repair such damage. Within this framework, the Child Protection Law must place victim recovery as the centerpiece of the entire judicial process.

The most tangible and crucial manifestation of restorative justice is the fulfillment of the right to restitution. Restitution must be understood not merely as an additional punishment of a facultative nature or an act of compassion, but rather as a constitutional and human right that is absolute for child victims of crime. This right is consistent with the protection of property rights and the right to a decent life. For children who become victims of sexual violence, torture, or human trafficking exploitation, the fulfillment of restitution serves as the material foundation enabling them to access expensive post-trauma medical services, reconstructive surgery, and long-term psychiatric therapy that are not fully covered by state health insurance.

From a psychological perspective, the execution of restitution possesses healing power that is vital to the mental resilience of child victims. Children who become victims of crime are often overwhelmed by feelings of helplessness, humiliation, and loss of autonomy in the face of offenders who are physically and socially more

LICS 2026

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

powerful. When the justice system successfully seizes the offender's assets and transfers them to the victim, this action sends a powerful psychological message that the child has won the struggle against their predator. Restitution restores the child's cognitive sovereignty, removes the sense of being oppressed, and provides validation that the state truly stands with its full strength on their side.

Furthermore, the urgency of restitution is reinforced by the reality that compensation mechanisms are often unreliable due to fiscal limitations and complex bureaucracy. Making a child's recovery dependent on state social assistance funds when the offender actually possesses substantial assets is an unjust and misguided policy. Dignified Justice requires that the financial burden of recovery be placed entirely upon the party that created the suffering. The law must compel offenders to take responsibility for their actions by surrendering all their assets, leaving no room for the state to subsidize criminals' wrongdoing using taxpayers' money.

Normatively, the Child Protection Law has accommodated this philosophy through provisions guaranteeing the right of child victims of crime to seek compensation. However, recognition of this right has not been accompanied by the provision of effective "teeth" or sharp enforcement instruments. The philosophy of protection demands that rights granted without mechanisms to compel their implementation are merely legal illusions. Child recovery requires certainty that the restitution amount stated in a judicial decision will automatically materialize as cash in the victim's guardianship account immediately after the verdict is delivered. Without certainty of execution, the dignity of restorative justice collapses.

From the perspective of deterrence theory, binding restitution execution that seizes all of an offender's assets constitutes a crime prevention method far more effective than imprisonment alone. Most crimes involving child exploitation and trafficking are driven by economic motives and the rational pursuit of capital accumulation. By making restitution an unavoidable instrument of forced impoverishment, the law sends a warning signal to criminal syndicates that exploiting children is an investment that will inevitably end in total financial ruin. Destroying offenders' profit motives is the most strategic step in preventing new victims in the future.

As a conclusion of this philosophical review, the urgency of binding restitution execution is an inevitability arising from the combination of Restorative Justice and Dignified Justice. Restitution is the lifeblood of child recovery; it is a constitutional right that cannot be negotiated. The state's failure to ensure fulfillment of this financial right is equivalent to abandoning child victims in an

LICS 2026

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

endless field of suffering. Therefore, positive law must dismantle all formalistic obstacles and dedicate all coercive instruments to ensuring that offenders' assets are seized without compromise to finance the return of smiles, hope, and the future of children who have been deprived of them.

3.2. Anatomy of the Weaknesses of Positive Law in the Execution of Child Restitution

Although restitution has conceptually been recognized as the heart of victim recovery, the normative structure within Indonesia's positive legal system still contains inherent defects and contradictions that undermine its practical implementation. The Child Protection Law and other **lex specialis** regulations indeed contain provisions requiring offenders to pay compensation. However, these provisions are trapped in a regulatory illusion whereby the law declares victims' rights but fails to design procedural law or adequate enforcement infrastructure to seize offenders' assets. As a result, court-ordered restitution often ends up as a meaningless piece of paper that cannot be realized in practice.

The first and most fundamental systemic weakness lies in the mistaken conceptual assimilation between restitution (the victim's civil right) and criminal fines (the state's right). Following the outdated logic of the colonial-era Criminal Code (KUHP), lawmakers fatally incorporated provisions concerning "substitute imprisonment" into restitution regulations. This rule legitimizes offenders including sexual predators and child trafficking syndicates to replace restitution obligations worth billions of rupiah with relatively short additional imprisonment, commonly no more than six months. This normative defect effectively degrades the value of victims' human rights into something inexpensive and easily exchanged for time in prison.

The economic calculations of offenders clearly exploit this normative loophole. Organized exploitation perpetrators generally possess substantial financial assets derived from their crimes. When judges impose restitution obligations amounting to hundreds of millions of rupiah to cover the recovery costs of abused children, these offenders, acting on criminal business rationality, will choose to conceal their wealth. Through various banking and accounting manipulations, they will claim inability to pay restitution and deliberately opt to serve additional imprisonment. The state appears to submit to these criminal tactics by allowing crime-derived assets to remain intact and enjoyed by offenders' families, while child victims return home without receiving even a single cent.

LICS 2026

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

In addition to the issue of substitute imprisonment, another fundamental weakness lies in the burden of proving losses, which is placed upon child victims and their supporters. Under the current criminal procedure system, judges often require formal material evidence according to rigid civil law standards, such as hospital payment receipts, salary slips in labor exploitation cases, and mathematically precise calculations of immaterial damages. Imposing such rigid evidentiary standards on child victims is an illusion of law enforcement. Offenders systematically destroy or conceal physical documents, so forcing traumatized victims to argue over receipts in court constitutes an extraordinarily painful form of injustice.

The ineffectiveness of restitution execution is further aggravated by the absence of integration between the investigation of crimes against persons and the tracing of offenders' assets. At the upstream stage of law enforcement, police investigators culturally tend to focus on quickly detaining suspects and seizing operational evidence, while often neglecting the principle of "follow the money." Cooperation with financial intelligence institutions such as the Financial Transaction Reports and Analysis Center (PPATK) is rarely initiated from the outset. Consequently, there is a critical time lag during which offenders have ample opportunity to launder, transfer, or conceal their assets in anonymous accounts or digital crypto-assets long before prosecutors begin considering restitution confiscation.

Furthermore, disharmony among institutions within the criminal justice system also contributes to execution failures. There is often a lack of synchronization among the Witness and Victim Protection Agency (LPSK), which calculates restitution; the Public Prosecutor (JPU), who formulates charges; and the panel of judges, who decide cases. LPSK may have calculated comprehensive restitution based on the child's long-term rehabilitation needs. However, prosecutors may fail to include these components in their demands, or judges lacking a child-protection perspective may unilaterally reduce restitution amounts on the grounds of the offender's inability to pay or the alleged inability to prove immaterial losses. This fragmentation of institutional interests causes child victims' recovery rights to evaporate.

The inability of prosecutors and enforcement authorities (the Prosecutor's Office) to carry out compulsory confiscation is also caused by the absence of civil execution instruments accommodated within Indonesian criminal procedure law. When a judicial decision has become final and binding (*inkracht*) but the offender refuses to pay restitution and conceals assets, prosecutors do not possess sufficiently strong immediate authority to trace, seal, and auction the

LICS 2026

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

offender's personal property unrelated to evidence directly connected to the crime. The complexity of auction procedures and the need to search for assets beyond confiscated evidence make restitution execution an almost impossible task to complete efficiently for limited prosecutorial resources.

The accumulation of these normative weaknesses, substitute imprisonment loopholes, rigid evidentiary requirements, and institutional disharmony leads to a grim reality: the justice system has effectively legalized financial impunity for perpetrators of crimes against children. The Child Protection Law, which should serve as a protective instrument, instead places child victims in an oppressive procedural labyrinth. As long as these weak norms remain entrenched, the law will continue to produce formalistic justice that is blind to the cries of child victims. This openly demonstrates that partial revisions are no longer sufficient; the system requires radical reconstruction that removes offenders' ability to hide behind prison bars to evade their obligation to restore the lives and property they have destroyed.

3.3. Legal Reconstruction Toward Binding and Coercive Restitution Enforcement

Faced with the empirical paralysis and systemic defects of the current positive law, a patchwork approach to restitution regulation will not be able to address the root causes of the problem. A radical, holistic, and comprehensive legal reconstruction is required one that directly dismantles the old punishment paradigm and replaces it with an enforcement infrastructure that is binding, coercive, and oriented toward the best interests of the child. This reconstruction must be imbued with the philosophy of Dignified Justice, which places victim recovery above all the human rights claims of criminal offenders. The primary objective of this reconstruction is to ensure that there is not a single loophole through which child offenders can save their wealth before their debt of suffering to the victim has been fully repaid.

The first and most fundamental reconstruction step is the Absolute Elimination of Substitute Imprisonment (Subsidiary Sentences) for Restitution. The norms contained in the Child Protection Law, the Anti-Human Trafficking Law, and the Draft Criminal Procedure Code must explicitly state that restitution is an absolute civil debt. This debt cannot be exchanged, nullified, or converted into imprisonment. If the offender refuses or claims inability to pay voluntarily, the state, through the executing prosecutor, must be granted unlimited coercive authority to forcibly seize all of the offender's assets including houses, vehicles, shares, and digital wallet balances and auction them to fulfill the child's rights. If assets are proven to have been concealed, the restitution debt remains binding

LICS 2026

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

for life and becomes a civil obligation that can continue to be collected from the estate.

To ensure the availability of an offender's assets when a restitution judgment is issued, reconstruction at the investigative stage must institutionalize an Early Asset Tracing and Freezing mechanism. Procedural law must require police investigators, in close coordination with the Financial Transaction Reports and Analysis Center (PPATK), to immediately freeze all bank accounts, electronic wallets, and other financial instruments associated with a suspect at the very moment suspect status is assigned. This day-one integration approach constitutes an emergency preventive measure to stop the "bleeding" of assets so that they cannot be transferred abroad or moved to family members during lengthy court proceedings.

To overcome the rigidity of proving losses in court, which often burdens child victims, the justice system must adopt the doctrine of Shifting the Burden of Proof. Since child victims do not possess the capacity to gather formal evidence, judges must be legally required to accept calculations of material and immaterial losses professionally prepared by the Witness and Victim Protection Agency (LPSK) and psychologists as valid presumptive evidence. The burden of proof should instead be imposed on the offender. The offender must prove in court, using authentic documents, that they never detained, exploited, or deprived the child victim of their rights. If the offender fails to do so, the restitution assessment prepared by the LPSK should be granted in full.

The fourth reconstruction requires the immediate integration of civil enforcement mechanisms into the criminal law sphere. If a restitution judgment has become final and binding and the offender attempts to evade payment, the executing prosecutor should no longer need to file a separate civil lawsuit that may take years. A criminal judgment containing restitution should possess executorial force equivalent to a Grosse Deed. This would grant prosecutors, together with court bailiffs, full authority to directly execute collateral objects or the offender's personal assets wherever they may be located, bypassing complex civil procedures in order to liquidate funds for the child victim within weeks.

But what if, in practice, the offender is genuinely a low-level actor who is empirically proven to be impoverished and possesses no assets at all? Here, legal reconstruction demands the implementation of a State Subrogation mechanism through a Victim Trust Fund. When a court orders restitution but the offender's assets are zero, the state must not abandon its responsibility. Through a Victim Trust Fund financed by corporate fines, confiscated assets from narcotics crimes,

LICS 2026

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

and the auction of seized evidence, the state must directly provide advance compensation to the child victim. Once the child's rights have been fully satisfied, the right to collect restitution transfers (is subrogated) to the state. Let the instruments of the state pursue the debt from criminal syndicates, freeing child victims from the suffering of waiting.

The sixth reconstruction is the expansion of restitution enforcement targets through the Integration of Vicarious Liability for Corporations. Crimes against children, especially sexual exploitation and human trafficking, often involve corporate entities such as hotels, airlines, remittance service providers, or social media platforms that neglect content moderation. Child Protection regulations should be expanded to include these negligent corporations as jointly liable third parties. The imposition of restitution obligations on these large corporations would ensure the availability of substantial funding sources, resolving the financial deadlock frequently complained of by law enforcement officers when only targeting low-level individual offenders.

Seventh, the success of this entire normative infrastructure depends heavily on the institutional capacity of its implementers. Reconstruction must mandate the establishment of a permanent Child-Centric Asset Recovery Task Force. This task force should consist of specialized child and women protection investigators, PPATK financial intelligence personnel, executing prosecutors, and the LPSK, all operating under a unified coordination framework. This interdisciplinary collaboration would eliminate sectoral ego, ensuring that asset recovery, victim protection, and criminal prosecution move in the same direction, respond swiftly to money laundering maneuvers by criminal syndicates, and leave no financial breathing room whatsoever for offenders.

As a final conclusion, this series of legal reconstructions the elimination of subsidiary sentences, early asset tracing, burden-shifting, coercive civil enforcement, and the institutionalization of state subrogation is not merely a technical legislative reform project. It represents a revolution in legal civilization that decisively buries the retributive paradigm and establishes the foundation of Dignified Justice. Transforming restitution into a binding and coercive enforcement mechanism would ensure that the law truly becomes a shield for life. The law would not only destroy the freedom of child predators behind prison bars, but also strip them of all illicit wealth and transform it into a guarantee for the future of Indonesian children whose happiness has been taken away.

LICS 2026

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

4. Conclusion

Criminal offenses against children, whether in the form of exploitation, sexual violence, or human trafficking, are crimes that deprive children of their dignity and destroy the future of the nation's next generation. To repair this multidimensional harm, the fulfillment of restitution rights for child victims is an imperative of Restorative Justice that cannot be compromised. However, the current legal framework under the Child Protection Law has suffered systemic failure due to the existence of substitute imprisonment (subsidiary sentence) clauses that legitimize financial impunity for offenders, as well as the rigidity of proving losses in court. Therefore, the urgency of implementing binding and coercive restitution enforcement is absolute in order to achieve Dignified Justice. This requires radical reconstruction through the absolute elimination of substitute imprisonment options, the institutionalization of early asset tracing and freezing mechanisms, the application of presumptive evidence, and the activation of the doctrine of state subrogation through a Victim Trust Fund when offenders possess no assets. Only by making restitution an indisputable instrument of forced impoverishment can Indonesia's criminal justice system demonstrate its true commitment: protecting victims comprehensively and confiscating every fragment of a predator's wealth to heal wounds and rebuild the future of children who have been deprived of it.

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