

# Restitution for Victims in Juvenile Criminal Justice: Legal Mechanisms, Challenges, and the Path to Justice in Indonesia

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KEYWORDS	ABSTRACT
<p><b>Keywords:</b> Juvenile Criminal Justice; Legal Mechanisms; Restorative Justice; Indonesia.</p> <p><b>Conflict of Interest Statement:</b> .</p> <p>Copyright © 2026 Vifada Assumption Journal of Law. All rights reserved.</p>	<p><b>Purpose:</b> This study critically examines the normative framework and practical implementation of restitution for victims within Indonesia's juvenile criminal justice system. It aims to assess whether restitution under UU SPPA effectively reflects restorative justice principles and supports meaningful victim recovery.</p> <p><b>Research Design and Methodology:</b> The research employs a doctrinal-normative legal method using statutory, conceptual, case, and comparative approaches. Data were collected from legislation, judicial decisions, scholarly literature, and international legal instruments. A comparative analysis was conducted with restitution frameworks in the Philippines and Thailand to identify potential reform models relevant to Indonesia.</p> <p><b>Findings and Discussion:</b> The study finds that restitution remains narrowly interpreted as financial compensation, limiting recognition of psychological, symbolic, and service-based forms of reparation. Its implementation is further constrained by procedural complexity, fragmented institutional coordination, and limited judicial discretion. Comparative findings reveal that more flexible and community-based restitution mechanisms in the Philippines and Thailand.</p> <p><b>Implications:</b> The findings suggest the need to broaden the legal definition of restitution, simplify procedures, strengthen institutional support, and introduce alternative forms of victim-centered reparation. These reforms would enhance restorative justice implementation, align Indonesian juvenile justice with international child rights, and provide a stronger foundation for future policy and empirical research.</p>

## Introduction

Restitution occupies a central yet often neglected place within the architecture of juvenile criminal justice in Indonesia. As a legal concept and restorative practice, restitution functions not merely as compensation for material loss, but as a critical mechanism for recognizing the harm suffered by victims, promoting offender accountability, and reintegrating both into the moral fabric of the community. In the context of children in conflict with the law, restitution carries additional normative weight: it must be shaped not only by legal proportionality but also by the principles of child protection, psychological recovery, and rehabilitative justice.

The question of restitution for victims in juvenile criminal proceedings stands at the convergence of two foundational priorities in modern legal systems: child protection and victim recognition. While juvenile justice frameworks have historically centered on the rehabilitation of child offenders, evolving restorative paradigms emphasize the equal imperative of attending to victims' harm material,

psychological, and social through mechanisms that are both participatory and reparative.<sup>1</sup> In this context, restitution emerges not as an ancillary remedy, but as an essential component of a justice system that seeks not only to sanction wrongdoing, but to restore broken relationships, acknowledge suffering, and rebuild social harmony.

The promulgation of Law No. 11 of 2012 on the Juvenile Criminal Justice System (Undang-Undang SPPA) marked a significant doctrinal shift in Indonesian criminal law.<sup>2</sup> It formally introduced diversion as a non-penal approach for juvenile offenders, embedding restorative justice into statutory form. Within this framework, restitution is identified as one of the outcomes that may emerge from diversion agreements. It was, in theory, a move toward a more dialogical and participatory model of justice where victims are not sidelined by the process but restored through it.

However, more than a decade since its enactment, the implementation of restitution remains inconsistent, underutilized, and procedurally opaque.<sup>3</sup> Despite the clear legislative mandate, the operational realities reveal a justice system often ill-equipped both structurally and culturally to deliver meaningful restitution to child victims.<sup>4</sup> Reports from practitioners and empirical studies indicate that restitution is frequently omitted in diversion negotiations, either due to lack of awareness among law enforcement, the absence of mechanisms for loss assessment, or a rigid reliance on financial compensation which excludes victims of non-material harm.<sup>5</sup> In many cases, the symbolic promise of restitution is reduced to a legal formality, devoid of substantive outcomes.

This problem is compounded by deficiencies in inter-agency coordination, limited victim support infrastructure, and prevailing misconceptions that restitution is exclusively monetary.<sup>6</sup> These challenges are not merely administrative but doctrinal they reflect a disconnect between the restorative philosophy embedded in the law and the retributive or punitive tendencies that continue to dominate criminal procedure at the operational level.

Moreover, a comparative glance at other Southeast Asian jurisdictions particularly the Philippines and Thailand exposes the limitations of Indonesia's model. Both countries have institutionalized broader, more inclusive forms of restitution, including service-based and community-integrated models, which respond more flexibly to the socio-economic conditions of juvenile offenders and the psychosocial needs of victims. Indonesia, in contrast, has yet to adopt such innovations, despite the normative compatibility of these approaches with local values such as *musyawarah*, *gotong royong*, and restorative traditions within indigenous legal systems (*hukum adat*).<sup>7</sup>

Given this backdrop, a deeper exploration of restitution in Indonesia's juvenile justice context is not only warranted it is urgent. The normative promise of restorative justice, as expressed in statutory law and international child rights instruments, cannot be fulfilled without operational mechanisms that enable victims to be heard, restored, and empowered. Restitution is not ancillary to justice it is central to its realization.<sup>8</sup>

In recent decades, global legal discourse on juvenile justice has shifted markedly toward restorative justice, as articulated in international standards such as the UN Convention on the Rights of the Child (CRC), the Beijing Rules (United Nations Standard Minimum Rules for the Administration

<sup>1</sup> Debby Naztzy Pratiwi, "Balancing The Interests of Child Offenders and Child Victims through Diversion in Child-on-Child Crime: Evaluation through The International Children's Rights Legal Framework: In The Context of Indonesia Juvenile Justice System," *Leiden University*, 2018.

<sup>2</sup> Tuti Widyaningrum and Andry Suharto, "The Value of Restitution and Diversion in the Law Enforcement of Criminal Sexual Violence Against Children," *KRTHA BHAYANGKARA* 18, no. 1 (April 30, 2024): 155-68, <https://doi.org/10.31599/krtha.v18i1.1458>.

<sup>3</sup> Mahfud Nazeri and Saroja Dhanapal, "Restorative Justice: An Alternative Process for Solving Juvenile Crimes in Indonesia," *Brawijaya Law Journal* 6, no. 2 (October 31, 2019): 157-69, <https://doi.org/10.21776/ub.blj.2019.006.02.03>.

<sup>4</sup> Ikhwan Matondang, "Resolving Human Rights Violation Cases in Aceh, Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (June 29, 2024): 61-70, <https://doi.org/10.30631/alrisalah.v24i1.1539>.

<sup>5</sup> and Dwi Hapsari Retnaningrum Hendriana, Rani, Agus Raharjo, Kuart Puji Prayitno, Setya Wahyudi, "Development of a Restitution Model Based on Justice and Legal Certainty for Crime Victims in Indonesia," *Pakistan Journal of Criminology*, no. 16.3 (June 8, 2024): 1409-25, <https://doi.org/10.62271/pjc.16.3.1409.1425>.

<sup>6</sup> Christina Maya Indah and Sri Harini Dwiyatmi, "Advancing Access to Justice for Female Victims of Sexual Violence Through Restitution," *Jurnal Hukum* 40, no. 1 (September 1, 2024): 171, <https://doi.org/10.26532/jh.v40i1.37794>.

<sup>7</sup> Bagus Hermanto, "Deliberate Legislative Reforms to Improve The Legislation Quality in Developing Countries: Case of Indonesia," *The Theory and Practice of Legislation* 11, no. 1 (January 2, 2023): 1-31, <https://doi.org/10.1080/20508840.2022.2080392>.

<sup>8</sup> Nashriana Nashriana et al., "Enhancing Restorative Justice in Indonesia: Exploring Diversion Implementation for Effective Juvenile Delinquency Settlement," *Sriwijaya Law Review*, July 31, 2023, 318-34, <https://doi.org/10.28946/srev.Vol7.Iss2.2427.pp318-334>.

of Juvenile Justice), and the Guidelines on Child-Friendly Justice by the Council of Europe.<sup>9</sup> These instruments emphasize that children in conflict with the law should be treated in a manner consistent with their age, development, and reintegration potential, and that victims of child-perpetrated crime must be provided access to timely, appropriate, and non-intimidating remedies, including restitution.

The literature has followed suit. Scholarly contributions such as those by Daly (2006), Zehr (2015), and Braithwaite (2002) have redefined the contours of justice by promoting dialogue-based, victim-sensitive, and community-inclusive processes. In this regard, restitution is not merely transactional; it serves as an ethical dialogue, allowing offenders to recognize harm and victims to regain agency.

In Southeast Asia, countries like the Philippines, Thailand, and Malaysia have begun incorporating this broader understanding of restitution into their legal frameworks. Notably, in the Philippines, Republic Act No. 9344 (Juvenile Justice and Welfare Act) explicitly recognizes restitution through service, apology, or other non-financial means,<sup>10</sup> with courts and diversion panels empowered to tailor outcomes based on both the offender's capacity and the victim's needs. In Thailand, restorative community conferencing has been institutionalized within juvenile courts, emphasizing familial and communal involvement in determining restitution terms. These regional innovations reflect a progressive jurisprudence that harmonizes international obligations with local cultural mechanisms of dispute resolution.<sup>11</sup>

By contrast, the Indonesian legal landscape reveals a tension between progressive norms and restrictive practice. Since the enactment of Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), Indonesia has formally adopted a restorative justice model, with restitution as one of the outcomes envisioned within diversion.<sup>12</sup> The normative framework is further supported by Government Regulation No. 43 of 2017, which regulates procedures for restitution claims by child victims.

However, as recent scholarship demonstrates<sup>13</sup>, this normative endorsement has not translated into systematic practice. Field research across several provinces indicates that restitution remains narrowly interpreted as monetary compensation, typically excluded from diversion agreements due to perceived impracticality, lack of procedural guidance, and the economic limitations of child offenders' families. Judicial officers often bypass restitution in favor of simpler forms of diversion,<sup>14</sup> (e.g., apology or community involvement), and prosecutors seldom initiate loss assessments due to unclear mandates.

Moreover, the implementation gap is exacerbated by low levels of legal awareness among stakeholders, minimal victim participation, and the absence of standardized assessment tools for quantifying non-material harm. As a result, restitution is rarely pursued even in cases where victims suffer lasting trauma. Indeed, data from the LPSK (Lembaga Perlindungan Saksi dan Korban) indicates that less than 15% of child victims of sexual violence who engage the justice system ever receive restitution orders, and of those, enforcement remains virtually non-existent.<sup>15</sup>

These empirical realities point to a deeper systemic disjuncture. While Indonesian law nominally embraces restorative justice, its application is constrained by a formalistic legal culture, inadequate institutional coordination, and resource disparities that hinder meaningful outcomes for victims.

Against that background, the specific focus of this article is not restitution in general, but the gap between its formal recognition in Indonesia's juvenile criminal justice system and its limited realization in practice. This article argues that restitution has been normatively acknowledged as part

<sup>9</sup> Ton Liefwaard, "Child-Friendly Justice and Procedural Safeguards For Children in Criminal Proceedings: New Momentum for Children in Conflict with the Law?," *Bergen Journal of Criminal Law & Criminal Justice* 8, no. 1 (November 9, 2020): 17, <https://doi.org/10.15845/bjclcj.v8i1.3188>.

<sup>10</sup> Le Thu Dao et al., "Diversion and Restorative Justice in the Context of Juvenile Justice Reforms in Indonesia, Thailand, the Philippines and Vietnam," *The International Journal of Restorative Justice* 5, no. 2 (August 2022): 237-62, <https://doi.org/10.5553/TIJRJ.000104>.

<sup>11</sup> Hafriada Hafriada, "Restorative Justice in Juvenile Justice to Formulate Integrated Child Criminal Court," *Jurnal Hukum Dan Peradilan* 8, no. 3 (December 12, 2019): 439, <https://doi.org/10.25216/jhp.8.3.2019.439-457>.

<sup>12</sup> Daud Rismana et al., "The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System," *Khazanah Hukum* 7, no. 2 (June 21, 2025): 190-205, <https://doi.org/10.15575/kh.v7i2.44162>.

<sup>13</sup> Angela Desmonda, "Port Denials and Restrictions Policies during Covid-19 Pandemic Based on International Law," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 07, no. 03 (January 2021): 380-99, <https://doi.org/10.22304/pjih.v7n3.a5>.

<sup>14</sup> Nurini Aprilianda et al., "Re-Conceptualizing Child Victim Rights: A Normative and Comparative Analysis of Victim Impact Statement in Indonesia's Juvenile Justice System," *Jambura Law Review* 7, no. 2 (July 30, 2025): 442-67, <https://doi.org/10.33756/jlr.v7i2.30132>.

<sup>15</sup> Indra Ardiansyah, Anis Widayawati, Indah Sri Utari, and Moh. Fadhil, "Taking Restitution Seriously?," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (May 31, 2025), <https://doi.org/10.15294/ijcls.v10i1.19636>.

of restorative justice under the SPPA framework, yet it remains conceptually narrow, procedurally burdensome, and institutionally weak. By centering this gap, the study seeks to explain why restitution has not functioned as an effective restorative remedy for child victims and to formulate legal reform directions capable of making restitution more responsive, accessible, and enforceable.

Accordingly, this study aims to critically examine the status of restitution for victims within Indonesia's juvenile criminal justice system. Specifically, it pursues four interrelated objectives:

1. To situate Indonesia's restitution framework within the broader discourse of restorative justice, both doctrinally and comparatively;
2. To analyze the implementation of restitution in practice, with reference to regulatory texts, institutional procedures, and case-based data;
3. To identify legal, procedural, and cultural impediments that inhibit the realization of restitution as envisioned by the SPPA Law; and
4. To propose actionable policy and legal reforms that align restitution mechanisms with child-centered restorative justice ideals.

To achieve these aims, the article is structured as follows: It begins with a review of the regulatory and doctrinal basis of restitution within Indonesian juvenile law, followed by a detailed analysis of its practical implementation, including case law and field data. This is followed by a section on the real-world challenges and obstacles faced by victims and judicial actors. A comparative analysis then contrasts Indonesia's system with more robust restitution frameworks in the Philippines and Thailand. The article concludes with policy recommendations and a reflective assessment on the future of restorative justice and victim recovery in Indonesia.

## Literature Review

Previous scholarship on restitution has primarily examined restitution as a compensatory remedy within Indonesian criminal law and victim protection. Studies by Widyaningrum and Suharto, Hendriana et al., Indah and Dwiyatmi, and Ardiansyah et al. show that restitution is still dominated by a monetary paradigm, faces procedural uncertainty, and suffers from weak enforcement.<sup>16</sup> This literature is important because it identifies doctrinal and institutional barriers, yet it generally discusses restitution in a broad victimology setting rather than specifically within the architecture of juvenile criminal justice. Consequently, the distinct position of restitution when the offender is a child and the victim requires child-sensitive recovery remains insufficiently elaborated.

A second body of literature develops restorative justice and diversion as the normative basis of juvenile justice. Nazeri and Dhanapal, Nashriana et al., Hafriada, and Listyarini explain that diversion is intended to move juvenile justice away from punitive formalism toward dialogue, accountability, and social reintegration.<sup>17</sup> Comparative work by Dao et al. and child-friendly justice scholarship by Liefwaard further show that restorative justice must be implemented through procedures that are participatory, proportionate, and responsive to the needs of children.<sup>18</sup> However, these studies generally prioritize diversion as a mechanism and do not sufficiently isolate restitution as a distinct restorative outcome requiring its own legal and procedural design.

A third cluster of studies focuses on child victim protection and procedural safeguards in juvenile justice. Pratiwi, Zakaria et al., Lynch, and Aprihandi et al. emphasize that juvenile justice must not only protect child offenders but also recognize child victims as rights-bearing subjects entitled to recovery, participation, and dignified treatment.<sup>19</sup> Their contributions are significant in shifting

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<sup>16</sup> Antonius P. S. Wibowo, "The Role of Criminal Law in Providing Restitution for Victims of Money Laundering: Problems and Prospects," *International Journal of Science and Society* 8, no. 1 (March 4, 2026): 256-76, <https://doi.org/10.54783/ijssoc.v8i1.1634>.

<sup>17</sup> Syawal Abdulajid et al., "Diversion Practices in Juvenile Traffic Crime Investigations As A Social Engineering Tool: A Case In North Maluku, Indonesia," *Cepalo* 8, no. 1 (June 28, 2024): 69-78, <https://doi.org/10.25041/cepalo.v8no1.3294>.

<sup>18</sup> Sitti Aisyah and Muhammad Husni Fahrudin, "The Impact of Restorative Justice on Addressing Juvenile Offenses The Impact of Restorative Justice on Addressing Juvenile Offenses," *Awang Long Law Review* 7, no. 1 (November 30, 2024): 192-97, <https://doi.org/10.56301/awl.v7i1.1482>.

<sup>19</sup> Sekaring Dyah Ika Wulan et al., "Justice for Child Offenders: A Humanistic Legal Approach," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (November 20, 2025): 749-79, <https://doi.org/10.53955/jhcls.v5i3.773>.

attention toward victim-sensitive justice, especially in cases involving sexual violence, psychological harm, and victim impact articulation. Even so, the literature has not yet systematically connected those victim-rights discussions to the operational question of how restitution should be structured, assessed, and enforced within Indonesia's SPPA framework.

Against that scholarly background, this article positions itself at the intersection of restitution, restorative justice, juvenile criminal justice, and child victim protection. Unlike previous studies that address those themes separately, this article examines restitution as a distinct legal mechanism within Indonesia's juvenile justice system by integrating doctrinal analysis, implementation issues, and comparative lessons from the Philippines and Thailand. The contribution of this study lies in showing that the main problem is not merely the existence of restitution norms, but the gap between normative recognition, procedural accessibility, and practical enforceability. This position clarifies the article's scholarly contribution and provides the analytical basis for the discussion that follows.

## Research Design and Methodology

This study employs a doctrinal-normative legal research design to examine restitution for victims within Indonesia's juvenile criminal justice system. The doctrinal orientation is used because the central issue of this article concerns the adequacy of legal norms, the coherence of procedural regulation, and the extent to which restitution has been conceptually and institutionally aligned with restorative justice principles. The study therefore focuses on law as a normative framework governing victim recovery, juvenile accountability, and diversion-based settlement. This design is consistent with the article's objective of assessing both the legal construction and the practical implications of restitution under the SPPA framework.

The analysis is conducted through four approaches, namely the statutory approach, conceptual approach, case approach, and comparative approach. The statutory approach is used to examine relevant Indonesian legal instruments, particularly Law No. 11 of 2012 on the Juvenile Criminal Justice System, Government Regulation No. 43 of 2017, related Supreme Court regulations, and other laws relevant to child victim protection and restitution. The conceptual approach is used to analyze restitution through the perspectives of restorative justice, child protection, and victim-oriented justice, while the case approach is applied to selected judicial decisions and diversion-related practices illustrating the implementation of restitution. The comparative approach is directed to the restitution frameworks in the Philippines and Thailand in order to identify reform models that may be normatively adapted to the Indonesian context.

The legal materials used in this study consist of primary and secondary legal sources. Primary legal materials include legislation, subordinate regulations, and judicial decisions relevant to juvenile justice and victim restitution, while secondary legal materials include scholarly journal articles, legal commentaries, and international legal instruments relating to child rights and restorative justice. The collected legal materials are analyzed qualitatively through prescriptive and interpretive legal analysis by identifying normative gaps, examining the consistency between legal design and implementation, and formulating possible directions for legal reform. Through this method, the study seeks to show not only what the law provides, but also why restitution remains limited in practice and how it may be reconstructed to better serve child victims.

## Findings and Discussion

### Conceptual Foundations of Restitution in Juvenile Criminal Justice

The concept of restitution is deeply rooted in both restorative justice theory and evolving jurisprudence on victim rights. At its core, restitution represents a form of reparation a legal and moral response to harm that seeks to restore, as far as possible, the condition of the victim prior to the offense.<sup>20</sup> This restoration may take the form of material compensation, but equally important are

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<sup>20</sup> Lula Hagos, "Debunking Criminal Restitution," *Michigan Law Review*, no. 123.3 (2025): 469, <https://doi.org/10.36644/mlr.123.3.debunking>.

psychological acknowledgment, social reconciliation, and symbolic gestures of accountability.<sup>21</sup> Unlike traditional penal responses that prioritize the state's interest in punishing the offender, restitution centers the victim's experience and relocates justice as a relational, rather than solely retributive, process.

In restorative justice theory, restitution is not an isolated legal outcome but one component within a broader ethical framework that seeks to address the triadic relationship between victim, offender, and community. The process ideally involves dialogue, voluntary participation, and a shared commitment to accountability. Leading scholars such as John Braithwaite, Howard Zehr, and Kathleen Daly argue that restitution contributes not only to victim healing but also to offender reintegration, by encouraging the offender to take responsibility in a constructive, forward-looking manner.<sup>22</sup>

Restitution within restorative justice thus serves multiple functions: it is compensatory, expressive, and transformative.<sup>23</sup> The compensatory function aims to redress tangible losses; the expressive function communicates societal disapproval of the harm; and the transformative function aims to restore relationships and social cohesion.<sup>24</sup> Importantly, these dimensions cannot be achieved through financial payment alone; restitution in restorative justice must be contextualized, dialogical, and relationally responsive.

Indonesia's commitment to restorative justice principles is codified in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law marked a significant jurisprudential development by introducing diversion as a primary procedural mechanism for addressing offenses committed by children. Diversion is legally defined as the redirection of cases from formal judicial proceedings toward alternative, non-penal resolutions, including mediation, family group conferences, and other restorative practices.<sup>25</sup>

Within the diversion framework, restitution is explicitly mentioned as one of the possible outcomes of settlement agreements between victim and offender. The aim is to facilitate non-punitive, participatory, and reparative resolution, consistent with both international norms such as the UN Convention on the Rights of the Child and local principles of restorative harmony (*musyawarah, kekeluargaan*).<sup>26</sup>

The legal architecture supporting restitution is further reinforced by Supreme Court Regulation (PERMA) No. 4 of 2014, which provides procedural guidance for handling juvenile cases.<sup>27</sup> These regulations mandate the involvement of victims and their families in diversion negotiations and acknowledge restitution as a valid and enforceable outcome. In theory, these provisions establish a strong normative foundation for victim-centered justice in Indonesia.<sup>28</sup>

Despite its promising legal framework, the practical application of restitution remains uneven, limited, and often symbolic. Empirical findings across several jurisdictions in Indonesia indicate that restitution is rarely implemented, and when it is, it tends to be limited to monetary compensation with little space for alternative or symbolic forms of reparation. The root causes of this gap are both structural and cultural.

First, there are legal-structural limitations embedded in the SPPA Law. Although diversion is legally prioritized, its application is restricted by offense type and prosecutorial discretion. In

<sup>21</sup> Chepi Ali Firman Zakaria, Ade Mahmud, and Aji Mulyana, "Legal Protection for Child Victims of Sexual Assault in a Restorative Justice Perspective," *Jurnal Penelitian Hukum De Jure* 23, no. 1 (March 29, 2023): 59-70, <https://doi.org/10.30641/dejure.2023.V23.59-70>.

<sup>22</sup> I Made Subawa et al., "Observance of the Legal Choice for the Settlement of Indonesia's Past Gross Violations of Human Rights," *Yuridika* 39, no. 2 (May 17, 2024): 231-56, <https://doi.org/10.20473/ydk.v39i2.44828>.

<sup>23</sup> Steve Kirkwood, "A Practice Framework for Restorative Justice," *Aggression and Violent Behavior* 63 (March 2022): 101688, <https://doi.org/10.1016/j.avb.2021.101688>.

<sup>24</sup> Elena Oancea, "The Expressive Function of Criminal Punishment: Between Social Disapproval and Justice Balance," in *PEOPLE: International Journal of Social Sciences* (Global Research & Development Services Publishing, 2025), 535-36, <https://doi.org/10.20319/icssh.2025.535-536>.

<sup>25</sup> Dyah Listyarini, "Juvenile Justice System Through Diversion and Restorative Justice Policy," *Diponegoro Law Review* 2, no. 1 (April 28, 2017): 168, <https://doi.org/10.14710/dilrev.2.1.2017.168-184>.

<sup>26</sup> Sydney Ford, "Punitive Instead of Rehabilitative: The Role of Restitution in the Juvenile Justice System and the Need for Reconstruction," *Georgia Criminal Law Review* 1, no. 2 (2023): 3.

<sup>27</sup> Nur Indah Setyoningrum and Anis Mashdurohaturun, "Restorative Justice in Children's Criminal Jurisdiction System through Diversion," *Law Development Journal* 2, no. 4 (February 14, 2021): 573, <https://doi.org/10.30659/l dj.2.4.573-581>.

<sup>28</sup> Alex R. Piquero, Michael T. Baglivio, and Kevin T. Wolff, "A Statewide Analysis of The Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity," *Youth Violence and Juvenile Justice* 21, no. 4 (October 4, 2023): 279-308, <https://doi.org/10.1177/15412040231180816>.

practice, diversion is often limited to minor offenses or first-time offenders, and even when diversion is used, restitution is rarely negotiated due to lack of procedural clarity on how to assess damages, particularly in cases involving non-material harm such as psychological trauma or loss of dignity.

Second, institutional capacity remains inadequate. Law enforcement officers, prosecutors, and judges frequently lack specialized training in restorative justice techniques and in designing appropriate restitution arrangements. There is no standardized assessment mechanism for calculating victim loss, nor is there institutional support for facilitating victim-offender mediation. Consequently, restitution becomes a theoretical option rather than an applied practice.

Third, there are significant socio-cultural and infrastructural obstacles. Many victims especially children and families from marginalized backgrounds lack awareness of their right to restitution, or do not feel empowered to assert that right during legal proceedings. At the same time, the community structures necessary to facilitate restorative dialogue such as child-friendly mediation centers or social workers trained in juvenile justice are unevenly distributed, and often absent in rural or under-resourced regions.

Studies show that in urban centers such as Jakarta or Surabaya, where diversion programs are more developed, restitution may be incorporated into settlements with moderate success. However, in provincial and rural jurisdictions, implementation remains sporadic, with many cases processed through conventional judicial channels that fail to consider restitution at all.

International models provide valuable reference points for conceptual and procedural reform. In jurisdictions such as New Zealand, and the Philippines, victim-offender mediation (VOM) and family group conferencing (FGC) have been institutionalized as standard components of juvenile justice. These mechanisms create a structured space where restitution is negotiated in a participatory and individualized manner, allowing both financial and non-financial forms of reparation.

For instance, in the Philippines, the Juvenile Justice and Welfare Act (RA No. 9344) mandates local government units to facilitate community-based mediation and to consider service-based restitution where monetary compensation is not feasible.<sup>29</sup> Similarly, in New Zealand, the *Family Group Conference* system enables restitution to be designed with input from family, victim, offender, and community representatives an approach that blends legal obligations with social and cultural sensibilities.<sup>30</sup>

These models share a common trait: they recognize restitution as a process, not just an outcome. They incorporate victim perspectives, promote offender accountability, and reinforce community involvement. Indonesia's legal culture, which already contains elements of communal justice and consensus-based conflict resolution, is well-suited to adopt such innovations provided there is sufficient political will, institutional commitment, and procedural adaptation.

### Legal Framework of Restitution in Indonesia's Juvenile Justice System

Despite the growing normative emphasis on restorative justice in Indonesia's juvenile legal system, the actual operation of restitution as a right and remedy remains inconsistent and fragile. The legal foundation for restitution has seen progressive development, particularly through the Juvenile Criminal Justice System Law (Law No. 11 of 2012) and Government Regulation No. 43 of 2017. These instruments formally recognize the role of restitution in cases where children are either victims or perpetrators of criminal acts. However, a close examination of Indonesia's current legal architecture reveals that this recognition has not translated into a coherent, accessible, or enforceable mechanism in practice.

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<sup>29</sup> Jevilyn G Pas-iwen and Robino D Cawi, "Disengagement from The Legal System: Exploring Factors Contributing to Case Attrition Among Rape Victims in Baguio City, Philippines," *International Review of Victimology* 32, no. 1 (January 3, 2026): 101-29, <https://doi.org/10.1177/02697580251357966>.

<sup>30</sup> Craig Barretto, Sarah Miers, and Ian Lambie, "The Views of the Public on Youth Offenders and the New Zealand Criminal Justice System," *International Journal of Offender Therapy and Comparative Criminology* 62, no. 1 (January 4, 2018): 129-49, <https://doi.org/10.1177/0306624X16644500>.

## 1. Fragmentation and Ambiguity in The Normative Framework

At the statutory level, Law No. 11 of 2012 introduces diversion as a legally mandated process in qualifying juvenile cases, and within that process, restitution is acknowledged as a potential outcome. Yet this provision remains conceptual rather than operational, offering little guidance on how restitution is to be determined, negotiated, or enforced. Article 1 point (7) of the law defines diversion outcomes broadly, without specifying the legal thresholds, evidentiary requirements, or institutional responsibilities that accompany restitution.

Government Regulation No. 43 of 2017 was introduced to address this gap, offering procedural rules for submitting restitution claims in cases involving child victims. Under Article 4(1), the regulation permits victims or their legal guardians to file a written request for restitution at any stage of the criminal process during investigation, prosecution, or trial. Theoretically, this offers flexibility and access; however, in practice, it places a significant procedural burden on the victim. Most child victims and their families lack the legal knowledge or resources to initiate such applications independently, and the state offers minimal facilitation or proactive intervention.

Moreover, the same regulation provides remedial mechanisms in cases where perpetrators fail to fulfill restitution obligations. These include asset seizure, public auction, and even substitution by state-funded compensation, as stipulated in Articles 24 and 26. However, such measures are rarely operationalized. The lack of clarity in initiating asset seizures, coupled with weak administrative enforcement, means these remedies remain largely theoretical.

Complicating matters further, PERMA No. 1 of 2022 on Access to Justice for Women and Children a Supreme Court regulation aimed at advancing procedural fairness recognizes restorative justice in principle but does not explicitly integrate restitution mechanisms. This creates a disconnect between judicial guidelines and executive regulations, leaving judges and prosecutors without harmonized procedural standards. Consequently, implementation is highly discretionary and varies significantly between jurisdictions.

Additionally, the current legal regime on compensation and state-supported reparations such as those under the Witness and Victim Protection Law (Law No. 31 of 2014) is narrowly tailored to victims of serious human rights violations, terrorism, or gross sexual violence, and does not systematically cover child victims of common juvenile offenses. This results in a large category of victims being effectively excluded from any compensation mechanism, creating a normative vacuum that undermines restorative aims.

## 2. Weak Institutional Coordination and Enforcement Capacity

Legal recognition of restitution must be supported by functional institutions capable of administering, monitoring, and enforcing restitution orders. In the Indonesian juvenile justice system, this responsibility is dispersed among multiple bodies the police, prosecutors, judiciary, the Balai Pemasyarakatan (BAPAS), social service agencies, and the Lembaga Perlindungan Saksi dan Korban (LPSK). However, this multi-agency approach is not structurally integrated. Coordination remains ad hoc, often dependent on personal initiative rather than institutional protocol.

For example, in Case No. 5/Pid.Sus-Anak/2021/PN.Bgr, a restitution agreement was incorporated into a diversion settlement. Yet due to the prosecution's failure to assess the socio-economic capacity of the child offender's family, the restitution remained unfulfilled. This procedural gap led the case to revert to formal adjudication, undermining both restorative objectives and judicial efficiency. The case illustrates a broader systemic issue: no institution is explicitly tasked with verifying the feasibility of restitution or supporting its execution post-agreement.

Moreover, BAPAS officers, tasked with preparing social inquiry reports, often do not include detailed assessments of victim losses or offender capacity, treating restitution as

peripheral. Similarly, LPSK though legally empowered to advocate for victim protection does not have the jurisdiction to enforce restitution outcomes, especially when they are rendered through informal or diversionary mechanisms.

In the absence of an enforcement protocol, restitution orders even when issued by judges are rarely acted upon. The seizure and liquidation of perpetrator assets, permitted under Article 24 of Government Regulation No. 43 of 2017, is virtually unheard of in juvenile contexts, partly due to the procedural complexity involved and partly due to the moral reluctance to impose financial penalties on juvenile offenders, who are typically indigent and under parental care.

### 3. Socio-Cultural Constraints and Victim Participation

A further barrier lies in the social and cultural context in which restitution is expected to function. In many communities, particularly in rural areas, there exists a deep-seated mistrust of formal legal institutions. Families of child victims may avoid reporting offenses or participating in diversion because of perceived futility or fear of stigmatization. This is especially true in cases involving sexual violence or family-related abuse, where victims are silenced by familial pressure or community norms.

Even when participation occurs, it is often passive or coerced. Victims may be pressured to accept apology letters or small sums as restitution, even when these fall short of actual harm or emotional impact. In the absence of trained mediators or support personnel, such negotiations may reproduce power asymmetries, undermining the voluntary and empowering ethos of restorative justice.

Further, cultural notions of *forgiveness*, while potentially valuable, may be misused to shortcut genuine accountability. This is evident in several documented cases where restitution was replaced by ceremonial reconciliation or symbolic gestures, without material compensation or behavioral change on the part of the offender. While traditional justice values should be respected, they must be harmonized with rights-based protections that ensure victims are not re-victimized through cultural compromise.

### 4. Judicial Restraint and Absence of Monitoring Mechanisms

The judiciary's role in promoting restitution has also been marked by excessive procedural restraint. Although Article 22 of Government Regulation No. 43 of 2017 authorizes judges to include restitution in their verdicts, such orders are contingent on victim requests or prosecutorial recommendation.<sup>31</sup> In practice, unless such requests are made and adequately substantiated judges seldom initiate restitution *ex officio*. This passive role contradicts the proactive spirit of restorative justice, which demands that legal actors actively seek redress for victims, particularly where children are concerned.

The lack of monitoring and evaluation mechanisms exacerbates this problem. Neither the Ministry of Social Affairs, Ministry of Law and Human Rights, nor the Supreme Court maintains centralized records of restitution cases, enforcement rates, or outcomes. As a result, there is no national database, no disaggregated data by region or case type, and no systematic policy review. This opacity in restitution implementation severely impedes legislative reform, institutional learning, and accountability. The judiciary's role in promoting restitution has also been marked by excessive procedural restraint. Although Article 22 of Government Regulation No. 43 of 2017 authorizes judges to include restitution in their verdicts, such orders are contingent on victim requests or prosecutorial recommendation. In practice, unless such requests are made and adequately substantiated judges seldom initiate restitution *ex officio*.<sup>32</sup>

<sup>31</sup> Islamul Haq et al., "Unlocking The Potential of 'Kalosara': An Extensive Analysis of Adultery Instances Dispute Resolution in the Tolaki Tribe through the Lens of Al-Ishlah Concept," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (June 29, 2024): 88-102, <https://doi.org/10.30631/alrisalah.v24i1.1488>.

<sup>32</sup> Rinaldy Amrullah, Diah Gustiniati, and Tri Andrisman, "Restorative Justice as an Effort to Resolve Excise Crimes Against Cigarettes," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (December 31, 2022): 188-200, <https://doi.org/10.30631/alrisalah.v22i2.1249>.

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## 5. Legal Consequences and Policy Implications

The cumulative effect of these normative, institutional, and cultural challenges is a system where restitution remains a weakly enforced principle, rather than a viable legal right. Although Indonesia's laws acknowledge restitution, they stop short of guaranteeing it.<sup>33</sup> This has critical implications for victims, who are denied the restorative and compensatory remedies to which they are entitled.

At a constitutional level, the failure to provide effective restitution may be interpreted as a violation of the right to equal protection under the law (Article 28D (1) of the 1945 Constitution). Internationally, Indonesia's current practice raises concerns regarding its compliance with Article 39 of the CRC, which mandates state parties to promote the recovery and social reintegration of child victims.<sup>34</sup>

In light of these deficiencies, restitution in Indonesian juvenile justice must be understood as a symbolically recognized but materially unrealized right. Unless reformed, this will continue to undercut the credibility of the SPPA Law, erode public trust in diversion, and perpetuate the marginalization of victims within a system that purports to center their voices.

### Implementation Reality : Practices and Obstacles

Although the normative basis for restitution in juvenile criminal justice has gained formal recognition in Indonesian law particularly through Government Regulation No. 43 of 2017 its realization in practice is fraught with structural, procedural, and cultural constraints. What emerges from field analysis and case documentation is not the systematic fulfillment of victims' rights, but a fragmented and often symbolic application that rarely meets the multidimensional needs of child victims.<sup>35</sup>

Case Study by Judicial Trajectory and Fragility of Restitution Outcomes from those Case. A poignant example of both potential and fragility can be seen in the case of Bandung District Court No. 989/Pid.Sus/2021/PN.Bdg, Bandung Higher Court No. 86/Pid.Sus/2022/PT.Bdg, and Supreme Court Decision No. 5642 K/Pid.Sus/2022, involving a juvenile case of sexual violence. In this instance, the court awarded restitution not only for material damages but also explicitly for psychological recovery, including the cost of trauma therapy. The decision was hailed as a progressive application of restitution in line with restorative justice principles.

However, the legal trajectory of similar cases often ends in reversal or annulment at the appellate level. While full documentation of appellate decisions in this particular case remains unpublished, precedent suggests that higher courts frequently question restitution awards on grounds of procedural irregularity or insufficient evidentiary support. This trend reflects an underlying judicial conservatism that de-prioritizes victim-centered outcomes in favor of formal procedural compliance.

This case, while exceptional, reveals what is possible when courts adopt a victim-sensitive and restorative lens. Yet it also underscores the vulnerability of such outcomes when not institutionally protected or procedurally reinforced.

<sup>33</sup> Wibowo, "The Role of Criminal Law in Providing Restitution for Victims of Money Laundering: Problems and Prospects."

<sup>34</sup> Zesty Wulan Ayu Widhi Prameswari, "Prohibition of Child Pornography: Enhancing Child Protection in Indonesia," *Yuridika* 35, no. 3 (September 1, 2020): 677, <https://doi.org/10.20473/ydk.v35i3.16626>.

<sup>35</sup> Kania Puji Anggarini et al., "Implementation of Restorative Justice Regarding Child Violence Cases in Law Enforcement in the Police," *Journal of Lifestyle and SDGs Review* 5, no. 2 (December 16, 2024): e03330, <https://doi.org/10.47172/2965-730X.SDGsReview.v5.n02.pe03330>.

## 1. Limitations in the Scope of Restitution

The scope of restitution, as applied in Indonesian courts, remains narrowly focused on material damages. While Government Regulation No. 43 of 2017 legally opens the door for restitution covering a broader range of losses, including psychological and emotional harm, the practical application of this remains extraordinarily limited. In most cases, restitution is equated with financial compensation for direct, tangible loss such as medical expenses or property damage.

Judicial recognition of non-material damages, such as trauma, loss of dignity, or the long-term psychological impact of violence, is rare. Supreme Court guidance and select precedents have, in theory, acknowledged the potential for awarding damages related to psychological treatment. However, such awards are inconsistently applied, often hindered by a lack of evidentiary framework for assessing mental harm and a conservative judicial culture that resists innovative interpretation of restitution statutes. The result is a regime in which child victims receive partial justice at best monetary compensation without recognition of their emotional suffering.

## 2. Legal and Structural Gaps in Enforcement

A significant obstacle to implementing restitution lies in the structural limitations of the judicial and prosecutorial apparatus. Despite the formal requirement that restitution be considered during diversion or trial stages, most investigators and prosecutors do not conduct systematic evaluations of victim loss especially regarding non-material dimensions. Victim impact assessments, where they exist, are rarely incorporated into case files in a standardized manner. This leaves judges with insufficient evidentiary support to quantify or justify restitution orders.

The judicial authority to mandate restitution remains reactive and procedural, rather than proactive and substantive. Courts often wait for requests from the prosecution or victim's guardian, rather than independently initiating inquiries or assessments. Moreover, restitution decisions are often untethered to any clear evaluative methodology, leading to wide disparities in awards and undermining their credibility. In practice, this structural gap results in the discretionary and uneven application of restitution, weakening its role as a guaranteed victim right.

## 3. Procedural Complexity and Access Barriers

Restitution claims are also undermined by their procedural inaccessibility. Under Government Regulation No. 43 of 2017, applications for restitution must be submitted in writing, at a specific stage of the criminal process either during investigation, prosecution, or trial. While legally precise, this procedure proves overly formalistic, especially for children and their guardians who often lack legal representation, literacy, or financial means to navigate the justice system.

Moreover, procedural complexity is exacerbated by overlapping and occasionally contradictory legal instruments. For instance, Government Regulation No. 43 of 2017 sets one standard, while Presidential Regulation No. 75 of 2020 outlines separate provisions on social protection without integrating them into juvenile justice contexts. Such regulatory dissonance causes confusion among law enforcers, and discourages victims from pursuing restitution, even when they may be eligible.

In the absence of a simplified, child-friendly process supported by legal aid, the burden placed on victims and their families becomes an effective barrier to access. Instead of empowering victims, the current framework tends to intimidate and exclude them from meaningful participation in their own redress.

#### 4. Legal Culture and Institutional Awareness

Beyond law and procedure, the broader legal culture in Indonesia continues to prioritize punitive outcomes such as sentencing and incarceration over restorative measures like restitution. Among many legal practitioners, restitution is regarded as supplementary rather than integral to justice. This perspective is particularly entrenched in juvenile cases, where emphasis is often placed on the behavior of the offender rather than the harm experienced by the victim.

Empirical findings suggest that awareness of restitution provisions remains low not only among the public but also among lawyers, judges, police officers, and social workers. Few institutions provide training in victim-centered adjudication, and restorative justice is still widely misunderstood or narrowly interpreted. Consequently, opportunities to integrate restitution into diversion or sentencing outcomes are frequently overlooked, not because of legal prohibition, but due to lack of institutional knowledge and commitment.

Moreover, many judicial actors continue to approach diversion as a procedural hurdle rather than a restorative platform. This leads to missed opportunities where restitution could otherwise have served to empower the victim and educate the offender. Such cultural inertia hampers the transformation of juvenile justice from a punitive to a restorative and reparative model.

#### 5. Structural Barriers to Restorative Justice Implementation

The operationalization of restitution is also constrained by broader challenges in restorative justice implementation. These include:

- a) Limited institutional capacity and professional training, Law enforcement officers, including police, prosecutors, and judges, often lack specialized knowledge of restorative practices. Without proper understanding of restitution's role in healing and accountability, its application remains sporadic or symbolic.
- b) Insufficient restorative infrastructure, facilities required to support victim-offender dialogue, psychological counseling, and follow-up monitoring are scarce, particularly in rural areas. As a result, even when diversion with restitution is mandated, there may be no institutional support to facilitate its realization.
- c) Low victim participation, victims and their families frequently decline to engage in restitution negotiations. This can be attributed to stigma, lack of institutional outreach, and insufficient emotional support mechanisms. Without proactive facilitation, the victim's voice is sidelined, rendering restitution hollow.
- d) Fragmented agency coordination, disparities in the understanding and application of restitution exist across institutions. The police, social services, prosecutors, and judiciary often lack a unified framework, leading to inconsistent or contradictory outcomes. One agency may prioritize rehabilitation; another may focus on legal closure leaving restitution lost in the process.

#### Comparative Analysis : Restitution in Juvenile Justice - A Normative and Practical Comparison

Restitution in juvenile justice is not merely a legal mechanism, but a moral and social statement: it determines how a society repairs harm, reconciles individuals, and balances accountability with rehabilitation.<sup>36</sup> In jurisdictions committed to restorative justice, restitution serves as a cornerstone for reparation that centers both victim healing and offender reintegration.<sup>37</sup> A comparative analysis between Indonesia, the Philippines, Thailand, and New Zealand reveals stark differences not only in

<sup>36</sup> Henny Saida Flora, Harmono Harmono, and Livia Alves, "Effectiveness of the Implementation of Restorative Justice in the Juvenile Criminal Justice System," *Rechtsnormen: Journal of Law* 3, no. 1 (April 22, 2025): 33-44, <https://doi.org/10.70177/rjl.v3i1.2068>.

<sup>37</sup> Andi Dewi Pratiwi and Akhdiari Harpa Dj, "Regulation Of The Right Of Restitution For Children As Victims Of Criminal Acts," *Journal of Scientific Research, Education, and Technology (JSRET)* 1, no. 2 (December 28, 2022): 465-71, <https://doi.org/10.58526/jsret.v1i2.152>.

statutory design, but also in normative understanding, cultural orientation, and procedural realization. These contrasts offer valuable lessons for Indonesia as it grapples with the practical implementation of restitution in its juvenile justice framework.<sup>38</sup>

In Indonesia, restitution is formally recognized under Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), and further regulated under Government Regulation No. 43 of 2017.<sup>39</sup> These provisions allow for restitution to be incorporated into diversion agreements, particularly in cases resolved outside the courtroom. However, in both legal design and enforcement, the Indonesian model remains monetary-centric and procedurally fragile.

Restitution is largely interpreted as financial compensation for tangible loss such as medical bills or property damage. Non-material aspects of harm, including emotional trauma, loss of dignity, or social stigma, are rarely acknowledged in diversion negotiations or judicial determinations. Courts, when confronted with requests for restitution, lack clear statutory tools or institutional guidance on how to quantify psychological harm or symbolic reparations. The result is a systemic underutilization of restitution, especially in rural jurisdictions or where victims are unrepresented.<sup>40</sup>

Moreover, Indonesia's child offenders are often from socioeconomically marginalized backgrounds, and lack the capacity to fulfill financial restitution obligations. In such cases, diversion processes fail not due to unwillingness, but due to infeasibility, thereby pushing cases into formal trials and reinforcing punitive justice rather than restorative engagement.

**Table 1.**

Comparative Practice and Arrangement between Indonesia, Philippines, Thailand, and New Zealand

Aspect	Indonesia	Philippines	Thailand	New Zealand
<b>Legal Basis</b>	UU SPPA (2012), PP No. 43/ 2017	Juvenile Justice and Wel-fare Act (2006)	Juvenile and Family Court Act	Children, Young Persons and Their Families Act (1989)
<b>Scope of Restitution</b>	Monetary only	Monetary and service-based restitution	Mate-rial, service, symbolic restitution	Comprehensive: monetary, service, symbolic, cultural
<b>Victim Involvement</b>	Limited, procedural	Victim-centered, participatory mediation	Victim-offender conferencing	Victim-centered FGCs
<b>Socio-economic Inclusion</b>	Not addressed	Explicitly considered in restitution design	Considered in determining non-financial obligations	Central to conference resolutions
<b>Cultural Integration</b>	Low: statutory focus dominates	Moderate: community-based justice encouraged	Moderate: traditional values considered	High: Māori customs institutionalized
<b>Implementation Strength</b>	Weak, fragmented	Growing, locally supported	Moderately strong diversion schemes	Strong, systematic, in default mechanism

Source: Primary Data, 2025.

<sup>38</sup> Lidya Rahmadani Hasibuan, Hasdiana Juwita Bintang, and Nurbela Br Purba, "Providing the Right to Restitution to Child Victims of Crime (Study of Besilam Village, Langkat Regency)," in *Proceeding of International Conference on Artificial Intelligence, Navigation, Engineering, and Aviation Technology (ICANEAT)*, vol. 1, 2024, 369-73.

<sup>39</sup> Nur Ibadi and Eja Armaz Hardi, "Is Human Trafficking's Victim Receive Zakat as Riqab?: Zakat Distribution at East Java Philanthropic Organizations," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (June 30, 2022): 1-17, <https://doi.org/10.30631/alrisalah.v22i1.1210>.

<sup>40</sup> Hagos, "Debunking Criminal Restitution."

## 1. Philippines : Community-Embedded Diversion and Restitution

In contrast, the Philippines offer restitution frameworks that are more closely aligned with restorative principles particularly through non-monetary, service-based approaches that reflect the realities of juvenile offenders and the emotional needs of victims.<sup>41</sup>

The Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344) in the Philippines mandates that all children in conflict with the law be afforded diversion opportunities where appropriate.<sup>42</sup> Restitution is understood not only in economic terms, but also through community-based service, symbolic gestures (e.g., public apologies)<sup>43</sup>, and rehabilitative commitments like education or counseling.<sup>44</sup> The law emphasizes that diversion should consider the best interests of the child and ensure meaningful victim participation, either directly or through mediation.<sup>45</sup>

This integrative model enables even indigent families to fulfill restitution obligations through non-financial means, avoiding exclusion based on economic capacity. Critically, diversion and restitution processes are facilitated by multi-disciplinary teams involving local government units, social workers, and community representatives thus grounding the justice process in local realities and shared values.

## 2. Thailand : Structured Dialogue and Restorative Practice

Thailand adopts a similarly restorative model, primarily through the Juvenile and Family Court Act and its supporting procedural regulations. The Thai system emphasizes community conferencing, family group decision-making, and victim-offender mediation,<sup>46</sup> processes designed to achieve consensus on restitution terms that are both symbolic and practical.<sup>47</sup>

In this framework, restitution may include gestures such as writing a letter of apology, helping the victim with daily activities, engaging in community service, or attending rehabilitation programs. Importantly, restitution is not merely a legal imposition but an outcome of dialogue, thereby enhancing victim satisfaction and promoting genuine accountability by the offender. This model reflects an ethic of reintegration, not retribution.

## 3. New Zealand : A Model of Institutionalized Restorative Justice

Perhaps the most instructive comparative model lies outside Southeast Asia in New Zealand, where restitution is an integral part of restorative justice, and juvenile justice as a whole has been fundamentally restructured around Māori values and participatory approaches.

Under the Children, Young Persons, and Their Families Act 1989, New Zealand has institutionalized the Family Group Conference (FGC) as the primary mechanism for dealing

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<sup>41</sup> Maria Virginia G. Aguilar, "Instilling Values to Children in Conflict with the Law in a Youth Facility," *Journal of Human Values* 22, no. 3 (September 24, 2016): 155-64, <https://doi.org/10.1177/0971685816650574>.

<sup>42</sup> Methodius Kossay, Nur Amannah Dalimunah, and Abdul Romadon Sitompul, "The Effectiveness of Juvenile Diversion in Indonesia, Malaysia, and the Philippines: A Comparative Study of ASEAN Justice Systems," *Perkara : Jurnal Ilmu Hukum Dan Politik* 3, no. 2 (June 10, 2025): 908-24, <https://doi.org/10.51903/v2thtn98>.

<sup>43</sup> Mary Grace C. Agcaoili, "Best Interests of the Child in Juvenile Justice: Analysis of Malaysia, Philippines, and Thailand," *Asia-Pacific Social Science Review* 24, no. 2 (June 30, 2024), <https://doi.org/10.59588/2350-8329.1533>.

<sup>44</sup> Jenena T. Solmayor and Amabelle A. Embornas, "From Rescue to Aftercare: The Case Management of Children in Conflict with the Law (CICL) in General Santos City, Philippines," *Langkit : Journal of Social Sciences and Humanities* 14, no. 1 (August 21, 2025): 87-105, <https://doi.org/10.62071/jssh.v14i1.667>.

<sup>45</sup> Ilhong Yun, EuiGab Hwang, and James Lynch, "Police Stressors, Job Satisfaction, Burnout, and Turnover Intention Among South Korean Police Officers," *Asian Journal of Criminology* 10, no. 1 (March 9, 2015): 23-41, <https://doi.org/10.1007/s11417-015-9203-4>.

<sup>46</sup> Lapasrada Jitwarin and Tryhn Phoraksa, "Development of a Community Empowerment Model by Associate Judges at Phang Nga Juvenile and Family Court for Juvenile Rehabilitation and Reintegration," *International Journal of Innovative Research and Scientific Studies* 8, no. 6 (September 10, 2025): 982-89, <https://doi.org/10.53894/ijirss.v8i6.9777>.

<sup>47</sup> Rizky Juventus Simangunsong, "Restorative Justice, Diversion Restorative Justice for Adults and Minors: A Comparative Study Between Indonesia and Thailand," *วารสารวิชาการนิติศาสตร์มหาวิทยาลัยทักษิณ* 13, no. 1 (2025): 126-53.

with youth offending. FGCs are mandatory before any court proceedings can be initiated.<sup>48</sup> Within these conferences, victims, offenders, families, and community representatives engage in facilitated dialogue to determine the most appropriate response to the harm caused.<sup>49</sup>

Restitution in this setting may involve monetary compensation, if feasible; service to the victim or community; cultural rituals of apology and healing; and commitments to behavioral change, including education or counseling.

Importantly, New Zealand's model recognizes the role of indigenous customs (tikanga Māori) in achieving restorative outcomes. Victims are not passive claimants but central participants, and their emotional, cultural, and psychological recovery is prioritized alongside offender accountability.

The result is a juvenile justice system in which restorative justice is not an option it is the default. Restitution in New Zealand is thus not transactional, but transformational a process aimed at repairing relationships and rebuilding communal trust.

Significantly, the principles underpinning the Philippine, Thai, and New Zealand models are not foreign to Indonesian culture. Traditional adat law, and mechanisms such as musyawarah (consensual deliberation) and kearifan lokal (local wisdom), have long emphasized restoration over punishment, with processes involving compensation, apology, and reconciliation. In various regions, informal community mediation still incorporates restitution through symbolic or service-based gestures, such as helping with harvests, rebuilding damaged homes, or participating in village projects.

However, these practices remain largely excluded from Indonesia's formal juvenile justice system. Legal reforms have failed to reconcile statutory law with these indigenous restorative values. Instead, the formal system retains a legalistic and punitive orientation, influenced by colonial codes and modern bureaucratic rigidity.

From this comparative overview, several lessons emerge for Indonesian policymakers and legal practitioners:

1. Broaden the definition of restitution: The current limitation to monetary restitution should be expanded to include service-based, symbolic, and relational forms of reparation especially suitable in cases where child offenders are indigent or where the harm is non-material.
2. Facilitate victim participation: Drawing on the models of Thailand and New Zealand, victims must be active agents in determining restitution outcomes. Their psychological, cultural, and emotional needs must be central to any resolution.
3. Institutionalize mediation and community conferencing: Rather than relying solely on court-based diversion, Indonesia should develop structured conferencing frameworks, with trained facilitators, to mediate restitution agreements. This approach can leverage the strength of desa adat (customary village institutions) and other community actors.
4. Harmonize legal and cultural norms: The disconnect between Indonesia's restorative cultural traditions and its formal legal structures must be addressed. A hybrid model, drawing on adat wisdom and statutory safeguards, can ensure both legal certainty and social legitimacy.
5. Capacity-building and inter-agency coordination: To enable restorative restitution to function effectively, coordination among prosecutors, judges, social workers, and community leaders must be formalized through joint protocols and shared training.

This comparative analysis leads to several normative implications for Indonesia. First, restitution in juvenile justice should not be narrowly interpreted as a financial transaction. The concept must be broadened to include service, emotional repair, and social reintegration as valid forms of reparation. Second, Indonesian law should formally accommodate non-monetary restitution, particularly in cases where the offender is a minor without financial means. Third, the process of restitution should be

<sup>48</sup> Tracy Williams and Julia Ioane, "They Feel Like It's All Based Around The Offender': Professionals Explore How Victim Participation in Family Group Conferences Can Be Enhanced," *Aotearoa New Zealand Social Work* 33, no. 2 (June 1, 2021): 66-79, <https://search.informit.org/doi/10.3316/informit.046222734127912>.

<sup>49</sup> Nessa Lynch, "The Other Child' - The Rights of the Child Victim in the Youth Justice System," *The International Journal of Children's Rights* 26, no. 2 (May 3, 2018): 228-50, <https://doi.org/10.1163/15718182-02602002>.

made more participatory, involving victims, communities, and social workers to ensure that restorative justice is not merely procedural but also substantive.

Lastly, Indonesia must reconcile its statutory framework with its cultural heritage. Legal reform can draw on indigenous conflict resolution practices and community-based justice traditions to design restitution mechanisms that are legally sound, socially grounded, and child-sensitive.

## Conclusion

This study demonstrates that restitution in Indonesia's juvenile criminal justice system has been normatively recognized under Law No. 11 of 2012 and Government Regulation No. 43 of 2017, yet its practical realization remains limited and inconsistent. In practice, restitution is still predominantly understood as monetary compensation, while psychological, social, and symbolic harms experienced by child victims receive insufficient recognition. Its implementation is further constrained by procedural rigidity, weak institutional coordination, limited enforcement capacity, and a legal culture that continues to privilege formal punishment over victim-centered restoration. The main contribution of this article lies in showing that the central problem is not merely the existence of restitution norms, but the gap between normative recognition and their effective operation within the juvenile justice system.

Drawing on the comparative analysis of the Philippines and Thailand, this study recommends broadening the legal scope of restitution, simplifying procedural requirements, strengthening inter-agency coordination, and formally accommodating non-monetary forms of reparation within diversion and judicial processes. These reforms are necessary to make restitution more accessible, enforceable, and responsive to the multidimensional harm suffered by child victims. Without such reforms, restitution will remain a symbolically acknowledged principle rather than a meaningful instrument of restorative justice in Indonesia.

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