

RESTITUTION FOR CHILD VICTIMS OF CRIME IN ACCORDANCE WITH THE PRINCIPLES OF PROPORTIONALITY AND THE BEST INTERESTS OF THE CHILD

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Received : 18 March 2025

Published : 26 May 2025

Revised : 29 March 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i3.2956>

Accepted : 16 April 2025

Publish link : <https://radjapublika.com/index.php/IJERLAS>

Abstract

Children, as a vulnerable group, are frequently victims of crimes that may result in serious physical, psychological, and social impacts. One recognized recovery mechanism in Indonesian law is restitution. However, its implementation has not met ideal expectations. Using a socio-legal approach, this study aims to analyze the effectiveness of restitution for child victims, emphasizing the importance of the principles of proportionality and restorative justice. Two case studies reveal inconsistencies for example, a child involved in petty theft was sentenced to prison without adequate rehabilitative measures, while a victim of sexual violence received no restitution despite the perpetrator receiving a severe sentence. These findings reflect the reality that restitution remains a marginalized component of victim recovery, both structurally and normatively. Therefore, reforms in the juvenile criminal justice system are urgently needed, including simplifying procedures, strengthening relevant institutions, and establishing a compensation fund for victims. All these efforts aim to ensure that restitution is proportional, just, and genuinely aligned with the best interests of the child.

Keywords: *Restitution, Child, Crime Victim, Principle of Proportionality, Best Interests of the Child*

INTRODUCTION

Children, as a vulnerable group in society are often victims of various forms of crime, such as physical violence, sexual abuse, economic exploitation, and other violations of their rights. As a result of these acts, children suffer not only physically and psychologically, but also experience the loss of fundamental rights that should be protected by the state. Therefore, the Indonesian legal system, which is based on child protection principles, must ensure that the rights of children as victims of crime are restored through various mechanisms, one of which is the provision of restitution. Restitution, as a form of recovery or compensation to the victim, holds significant meaning in the context of child victims. It not only serves to compensate for material losses resulting from the crime, but also supports their psychological recovery. Although this compensation cannot restore the child's condition to its original state, it at least offers an opportunity for the child to continue their life in a better way.

However, the process of providing restitution does not always proceed smoothly. There are numerous challenges that must be addressed to ensure that children truly receive their rights, ranging from difficulties in filing restitution claims to the offender's inability to pay. One of the guiding principles in providing restitution is the principle of proportionality. This principle emphasizes that the compensation must be commensurate with the harm suffered by the victim. In other words, restitution should reflect the magnitude of the impact the crime has had on the child's life, physically, psychologically, and socially. For instance, if a child experiences severe trauma due to sexual violence, then the restitution should include not only financial compensation but also the costs of medical and psychological treatment in accordance with their needs. In addition to the principle of proportionality, it is also essential to uphold the principle of the best interests of the child. This principle mandates that every action or decision involving children must always consider what is most beneficial for them. In the context of restitution, this means that compensation must be based on the child's holistic needs, including physical and mental recovery, as well as protection from further harm. The state, through child protection institutions and the criminal justice system, must

ensure that restitution is not merely a legal obligation but a concrete step toward restoring and protecting the rights of child victims. In Indonesia, various regulations, such as Law Number 35 of 2014 on Child Protection and Law Number 31 of 2014 on the Protection of Witnesses and Victims, have provided a legal basis for granting restitution to children. However, in reality, many children still do not receive adequate restitution. This is due to several factors, such as the lack of public awareness about restitution rights, complicated legal procedures, and the limited financial capacity of offenders. Victims and their families are often unaware of their right to restitution, leading to many children being deprived of compensation they are entitled to. The process of submitting a restitution claim is generally conducted through the Witness and Victim Protection Agency (LPSK) or through the criminal justice system. However, many children face significant barriers in accessing these legal processes, whether due to a lack of legal understanding, difficulties with legal terminology, or challenges in documenting their losses. Therefore, the state must provide adequate facilitation and assistance to ensure that child victims of crime can obtain the justice they deserve.

Restitution also plays a crucial role in supporting the recovery of children from trauma. The compensation received can help children access essential rehabilitation services, such as psychological therapy, education, and other social services. Without restitution, these children may face difficulties in returning to a normal life and functioning in society. Restitution must be viewed as part of a broader recovery process, not merely as material compensation. To ensure that restitution provides maximum benefit, several aspects must be considered. One of them is the appropriateness between the amount of restitution awarded and the losses suffered by the child. For example, in cases of child trafficking, the amount of restitution awarded may be insufficient to cover the necessary rehabilitation costs or may not be proportionate to the psychological harm suffered by the victim. Therefore, it is important to periodically evaluate the implementation of restitution and the mechanisms for determining the amount of compensation to ensure fairness. To improve the efficiency of restitution, the state must strengthen its legal system by simplifying the procedures for claiming restitution, educating the public about victims' rights, and ensuring a transparent and accountable restitution process. One concrete step that can be taken is the establishment of a special compensation fund for victims who are unable to obtain restitution from the perpetrator. In this way, child victims can still receive adequate compensation, even if the offender is unable to pay. Furthermore, synergy among the government, law enforcement officials, child protection agencies, and the community is needed to support a more effective restitution system. Strong collaboration among all parties will ensure that the provision of restitution runs smoothly and has a positive impact on the recovery of child victims. Without such collaboration, restitution efforts may be hindered and fail to achieve their intended goals.

In comparison, some European countries have adopted more advanced restitution models in which the government provides funds to compensate victims who do not receive restitution from offenders. This model can serve as a reference for Indonesia in enhancing its restitution system in the future, helping child victims of crime to obtain their rights without being hindered by the limitations of the perpetrators. Overall, the provision of restitution for child victims of crime is a responsibility shared by the state and society in protecting and fulfilling children's rights. Through restitution that is proportional and aligned with the best interests of the child, we not only uphold justice but also offer renewed hope for children who have been victims of injustice. This effort represents a concrete step in building a more just and compassionate society that cares about the future of its children, as the next generation of the nation. The underlying principle stresses the importance of proportionality between the amount of restitution provided and the level of harm or suffering experienced by the victim. Proportional restitution is not only a reflection of the offender's accountability but also a recognition by the state and legal system of the victim's right to fair and adequate recovery. It is crucial to remember that restitution should not be uniform or symbolic; rather, it must be based on a thorough consideration of the physical, psychological, social, and economic suffering endured by the victim. Therefore, the implementation of restitution for children who are victims of crime should not be seen merely as a legal obligation, but as a vital instrument for realizing restorative justice that prioritizes the child's best interests.

Unfortunately, in practice, restitution is often overlooked and has yet to fully reflect the fair principle of proportionality. The debate continues over the extent to which the law can accurately measure the harm experienced by children, especially in light of the inconsistencies found in the juvenile justice system. For example, there are cases in which a child who commits minor theft is sentenced to imprisonment without due consideration of rehabilitation—an aspect that should be the main focus of juvenile justice. On the other hand, in cases of sexual violence against children, although perpetrators may receive heavy sentences, concrete efforts to restore the victims through appropriate restitution remain minimal. Such disparities indicate that the principle of proportionality has not yet been applied consistently or fairly. Therefore, the legal system must be evaluated to become more responsive, empathetic, and recovery-oriented—focusing not only on punishment but on the healing of the child. Proportional

restitution must serve as a tangible recognition by the state of the suffering endured by child victims and as an integral part of a restorative justice system that upholds the child's best interests.

LITERATURE REVIEW

The discourse on restitution for child victims of crime has evolved significantly in recent years, particularly with the growing global emphasis on restorative justice and child rights. Scholarly contributions have consistently highlighted the need for restitution to serve not merely as a financial mechanism but as a critical tool for comprehensive recovery—addressing the physical, psychological, and social harms experienced by children (Braithwaite, 2002; Zehr, 2005). In the Indonesian context, legal frameworks such as Law No. 31 of 2014 on the Protection of Witnesses and Victims and Law No. 35 of 2014 on Child Protection formally recognize the right of victims, including children, to restitution. However, as examined by Nurhidayah (2021), these normative frameworks often encounter practical implementation gaps due to procedural complexity and institutional limitations. This aligns with the findings of international studies that emphasize the importance of effective mechanisms to enforce restitution orders, especially when perpetrators lack the financial means to compensate victims (Van Dijk et al., 2007). Previous research shows that restitution has yet to become a priority in the enforcement of juvenile criminal law. According to Seto Mulyadi (Indonesian Child Protection Commission - KPAI), the low awareness among law enforcement officers and the public about the rights of child victims is one of the main causes for the marginalization of restitution mechanisms. This is reinforced by findings from the Witness and Victim Protection Agency (LPSK), which recorded that most child victims do not file restitution claims due to lack of knowledge of their rights and the perceived complexity of legal procedures.

The principle of proportionality—rooted in Aristotelian corrective justice—is frequently discussed in academic legal theory as a foundation for fair and balanced restitution. Proportionality ensures that compensation corresponds to the harm suffered while remaining within the offender's capacity to pay (Ashworth, 2010). This principle has been increasingly incorporated into jurisprudence in various jurisdictions, though its practical application remains uneven. As noted by Muladi (2014), Indonesian courts have not yet standardized the proportionality assessment in awarding restitution, often neglecting non-material damages such as trauma and long-term psychological distress. And another the principle of proportionality in determining the amount of restitution is also inconsistently applied. Court decisions often fail to consider the non-material impacts experienced by children, such as psychological trauma and social developmental disruption. In a study by Sulastri (2022), restitution is frequently calculated solely based on direct economic losses, without taking into account immaterial damages, which are often more dominant in cases of child sexual abuse victims. Moreover, the execution mechanism for restitution remains a significant obstacle. Many perpetrators are financially incapable of paying restitution, while the state has yet to fully establish alternative mechanisms, such as a state compensation fund. As highlighted by Nurhayati (2021), the absence of guaranteed restitution payment mechanisms results in uncertainty for victims' rights, particularly for children from vulnerable groups. From a policy perspective, although Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) adopts a restorative justice approach and accommodates the concept of restitution, its implementation remains suboptimal. Diversion and penal mediation tend to focus more on offenders, while the rights of victims, especially regarding recovery and restitution, receive less attention.

International comparative studies offer insightful models for reform. For instance, Canada's Victim Impact Statement framework allows victims or their guardians to formally present the emotional and psychological effects of crimes, thereby directly influencing sentencing and restitution (R. v. D.B. [2008] 2 S.C.R. 3). Meanwhile, the Netherlands employs child impact assessments and integrated psychosocial services to ensure that restitution fulfills both material and emotional recovery needs (Van der Laan & Eichelsheim, 2013). Restorative justice theory provides the conceptual underpinning for these practices. Zehr (2005) argues that restorative justice shifts the focus from state-centered punishment to victim-centered healing, making restitution a moral obligation rather than a procedural formality. In line with this, Indonesia's juvenile justice law (Law No. 11 of 2012) encourages diversion and mediation, yet its potential to promote restitution remains underutilized in practice (Setyowati, 2020). Existing literature reveals an urgent need to develop more operational technical guidelines for restitution implementation, including comprehensive procedures for assessing child victims' losses. Strengthening the capacity of law enforcement officers, providing legal and psychosocial support services, and involving cross-sector collaboration are key elements to ensure restitution is not merely a legal norm but also effectively realized in practice, prioritizing the best interests of the child. The literature also underscores the critical role of interdisciplinary collaboration in

restitution processes. Psychological, legal, and social expertise are essential for evaluating the multidimensional impacts of crime on children. However, as noted by Arifin et al. (2022), Indonesia lacks standardized instruments to quantify psychological trauma in legal proceedings, resulting in underestimation of harm and insufficient restitution awards. In summary, the existing body of literature points to a significant normative commitment to child protection and restitution in Indonesia, but also reveals persistent practical and structural barriers. Comparative insights from jurisdictions with established restorative justice mechanisms highlight potential pathways for reform—particularly in institutionalizing proportionality and ensuring the best interests of the child are central to restitution policies.

METHOD

This research uses empiris juridical research methods through a case study of a decision by the Purbalingga District Court concerning restitution for child victims of crime. Data were collected through legal document analysis, interviews with law enforcement officials, and relevant literature review.

RESULTS AND DISCUSSION

Restitution for child victims as a marginalized instrument of restorative justice

Restitution, as part of the recovery mechanism for crime victims, especially children, holds a crucial position within the framework of restorative justice. Restorative justice fundamentally aims to repair the harm caused by criminal acts through a process of dialogue and active participation among the offender, the victim, and the community. It represents an alternative paradigm in the criminal justice system that emphasizes restoring the losses caused by criminal acts through active involvement of all parties. This concept views crime not merely as a violation against the state, but also as a breach of social relations between individuals, causing suffering, especially to the victim. Within the restorative justice framework, restitution occupies a central role as a compensation or reparation mechanism provided by the offender to the victim. Restitution is understood not only as material compensation but also as a form of moral and social responsibility for the wrongdoing committed. For child victims of crime, restitution carries a deeper protective dimension because it involves the restoration of their physical, psychological, and social condition, given their vulnerable status.

In the context of children as victims, restitution should be the primary instrument to ensure that their rights are fulfilled—morally, psychologically, and materially. However, in practice, the implementation of restitution still faces various structural and cultural obstacles, causing this instrument to remain marginalized. Normatively, restitution has been recognized in several national regulations, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Child Victims of Crime. Nevertheless, despite the availability of this legal framework, the implementation of restitution in cases involving child victims remains far from ideal. Several factors contribute to this gap, including the limited understanding of law enforcement officers regarding the concept of restitution within restorative justice, the absence of effective execution mechanisms for restitution orders, and the lack of preparedness of state institutions to support restitution funding when perpetrators are unable to pay.

Indonesia's justice system still largely follows a retributive approach focused on punishing offenders, which tends to neglect the recovery aspect for victims, particularly children. This tendency results in suboptimal protection of the rights of child victims, who are inherently vulnerable and require special approaches. Empirical studies frequently show that child victims often do not receive adequate justice and may even suffer revictimization due to judicial processes that do not favor them. Restitution, which should serve as a concrete form of recovery, is often not effectively implemented because it is perceived as an additional burden in legal proceedings. Indonesia has adopted various legal instruments regulating the rights of child victims to recovery, including restitution. Key regulations include Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), which recognizes the principle of restorative justice in handling juvenile cases; Law No. 31 of 2014 on the Protection of Witnesses and Victims, which explicitly regulates victims' rights to restitution and compensation; and Government Regulation No. 43 of 2017, which governs the procedures for providing restitution to child victims of crime.

Legally, these provisions should provide a strong basis for enforcing restitution in every case involving child victims. However, in practice, a significant gap remains between normative regulations and their implementation on the ground. One of the main obstacles is the low awareness and understanding among law enforcement officers—such as investigators, prosecutors, and judges—about restorative justice concepts and the importance of restitution as part of victim recovery. Consequently, restitution is often overlooked in prosecution processes and court verdicts. Moreover, restitution execution mechanisms are ineffective, particularly when perpetrators lack the financial capacity to pay, while the state has not yet established subsidy mechanisms or compensation institutions to bear this burden. This situation causes child victims to suffer further disadvantages, even

after judicial processes. Another issue is the lack of legal and psychosocial assistance for child victims; many are not supported by legal counsel or parties knowledgeable about restitution rights, leading to inadequate advocacy for these rights. Furthermore, the prevailing retributive orientation of Indonesia's criminal justice system worsens the situation. The focus remains on punishing offenders rather than recovering victims, causing restorative justice instruments—including penal mediation, victim-offender dialogue, and restitution—to receive insufficient attention in practice.

When the restitution rights of child victims are ignored, the consequences extend beyond unmet material rights to prolonging the psychological trauma endured. Child victims feel the legal system is not on their side, rendering justice abstract and ineffective. Over time, this can erode trust in legal institutions and hinder the social reintegration of child victims. In addition, failure to implement restitution underscores that the justice system has yet to fully embrace the principle of the best interests of the child as mandated in the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990. To prevent restitution mechanisms from remaining marginal, comprehensive and sustainable systemic measures are necessary. First, legal and institutional reforms are urgent, including drafting more operational implementing regulations and establishing a Victim Compensation Fund or a state restitution fund specifically for child victims. The state must assume ultimate responsibility when perpetrators cannot pay restitution. Second, capacity building for law enforcement and related institutions should be intensified through education and training on restorative justice and restitution procedures. Cross-sector collaboration among judicial institutions, child protection agencies, and social services must also be strengthened. Third, public awareness of restorative justice values should be promoted through education, media campaigns, and engagement with community leaders to foster understanding of restitution as an essential part of justice. Finally, strengthening the roles of the Witness and Victim Protection Agency (LPSK) and child legal aid organizations must be prioritized in terms of authority, budget, and networking, enabling them to actively advocate for and ensure the fulfillment of restitution rights in every case involving child victims.

The discourse on proportionality: Has the law fairly measured the harm suffered by children

In the realm of law enforcement oriented towards substantive justice, the principle of proportionality plays a crucial role in ensuring that legal responses to violations are commensurate with the severity and impact caused. When a child becomes a victim of a crime, the complexity of assessing the damage increases significantly. This is because the harm experienced by the child is not only physical but also includes psychological, emotional, and social aspects that may have long-term effects on their development. Therefore, a critical question arises: has our legal system been able to measure and respond to children's harm fairly and proportionally? Theoretically, the principle of proportionality in criminal and civil law demands a balance between the unlawful act and the sanctions or compensation imposed. In the context of child victims, assessing the harm suffered cannot rely solely on physical evidence. Psychological trauma, emotional disturbances, and other social impacts must be primary considerations in determining the form and severity of sanctions or compensation amounts. A holistic approach that integrates perspectives from child psychology, sociology, and human rights is essential in achieving fair law enforcement.

However, in judicial practice in Indonesia, this approach has not been fully implemented. Case studies from the Purbalingga District Court provide concrete examples regarding the application of proportionality principles in handling cases involving children as both victims and offenders. In one such case from 2014, the court sentenced three children to 2.5 months imprisonment for stealing three ducks from a neighbor. This case drew criticism from the Indonesian Child Protection Commission (KPAI), which argued that the punishment was inappropriate and failed to consider the restorative justice principles mandated by Law No. 11 of 2012 on the Juvenile Criminal Justice System. KPAI contended that given the relatively minor material loss and the young age of the offenders, mediation and rehabilitation should have been prioritized over imprisonment. This indicates that the principle of proportionality was not optimally applied, as it did not thoroughly consider factors surrounding the offense and the offenders' conditions. Conversely, in another case in 2024 handled by the same court, a stepfather was sentenced to 16 years imprisonment and fined 50 million rupiahs for sexually abusing his 16-year-old stepdaughter under the pretext of a ritual. This verdict reflects a severe sanction in line with efforts to deter sexual crimes against children and protect the victims' rights. However, questions remain about how comprehensively the sentence contributes to the victim's recovery, considering the psychological and social consequences experienced. Does the justice system provide rehabilitation and psychosocial support mechanisms to ensure optimal recovery? From these two cases, inconsistencies in the application of the proportionality principle within the juvenile criminal justice system become apparent. The first case reveals a lack of restorative justice and rehabilitative consideration in dealing with minor theft by children. In contrast, although a harsh sentence was imposed in the second case involving sexual abuse, questions about victim recovery remain unresolved.

Law No. 35 of 2014 on Child Protection emphasizes the importance of special protection for children who are victims of crime, including rehabilitation both inside and outside institutions. Nevertheless, implementing this provision faces various challenges, such as limited resources and inadequate rehabilitation facilities. Conceptually, the principle of proportionality in both criminal and civil law requires a balance between unlawful acts and the sanctions or compensation imposed. In the context of child victims, harm cannot be solely measured by medical reports or quantitative assessments. Children's injuries are multidimensional, manifesting as long-term trauma, loss of security, damaged social relationships, and hindered healthy development. Therefore, legal accountability must transform from a formalistic approach to a holistic one that integrates child psychology and human rights perspectives. Yet, in practice, many criminal and civil justice systems, including Indonesia's, still rely heavily on rigid retributive approaches. Damage calculations tend to focus on measurable physical injuries and actual medical expenses, while immaterial losses—such as chronic fear, loss of potential, or broken trust—are not central components in sentencing or compensation. This disparity between the harm experienced by children and legal responses indicates that the proportionality principle is not fully realized. The limitation also stems from the absence of standardized, interdisciplinary assessment instruments. There is no legally recognized parameter to comprehensively measure children's psychological trauma accepted by judges as a basis for decision-making. This underscores the urgency of legal policy reform. Child protection laws and sentencing provisions must adopt a more proactive approach to restorative justice that genuinely addresses the needs and interests of child victims, rather than serving as mere symbolic gestures. Thus, the discourse on proportionality concerning children's harm involves not only the narrow calculation of losses but also a redefinition of justice itself. The law is required to shift from merely punishing offenders toward fully restoring victims. The question of whether the law has fairly measured children's harm should be answered through critical introspection of the entire legal system—from norm formulation and evidentiary mechanisms to judicial practice. Without this, justice for children will remain a normative promise disconnected from concrete reality.

International Comparison

In efforts to critique the extent to which Indonesian law has fairly measured and responded to children's harm, it is important to review and compare with legal systems in other countries. International comparisons enrich national legal perspectives and serve as benchmarks to evaluate how Indonesia's laws and practices align with global developments that recognize children as legal subjects with special protections. In the Netherlands, the principle of the "best interests of the child," as stated in Article 3 of the UN Convention on the Rights of the Child (CRC), is fundamental in all legal processes involving children. The Dutch criminal justice system employs a child impact assessment mechanism to measure the psychological and social consequences of every legal decision affecting children, both as offenders and victims. The country explicitly prioritizes victim recovery through restorative justice approaches, ensuring integrated psychosocial support within the justice system.

Meanwhile, in Canada, the Supreme Court in the case of *R. v. D.B.* [2008] 2 S.C.R. 3 progressively affirmed that sentencing for children in conflict with the law must differ fundamentally from that for adults, considering children's developmental characteristics and long-term rehabilitation potential. Canada also employs Victim Impact Statements as an integral part of the judicial process, allowing child victims or their representatives to express the psychological and emotional effects endured. Thus, the country not only punishes offenders fairly but also acknowledges and quantifies victims' harm as the basis for proportional sentencing. In contrast, despite adopting many international norms through Law No. 11 of 2012 on the Juvenile Criminal Justice System and the Child Protection Law, Indonesia still shows lagging implementation mechanisms. For example, in several cases at the Purbalingga District Court, attention to the psychological harm suffered by child victims remains formalistic, lacking concrete tools for assessment. Verdicts tend to focus solely on legal considerations rather than on long-term social and mental consequences for the child. Furthermore, judicial practices in Norway demonstrate that a multidisciplinary approach is key. Each case involving children is analyzed by a team consisting of legal experts, child psychologists, and social workers, producing decisions more responsive to victims' needs and not solely focused on punishment. Scandinavian countries even go beyond proportionality by applying the principle of restorative proportionality—comprehensive recovery balancing victims' harm and offenders' responsibility. From this comparison, it is evident that the principle of proportionality in international legal systems has evolved from an abstract balance principle to a value system oriented towards concrete recovery and holistic child rights protection. This shows that true proportionality does not stop at measuring sanctions against offenders but is gauged by the extent to which the legal system can restore the dignity and future of children deprived by violence or crime. Therefore, Indonesia must undergo a paradigm shift. This comparison highlights the urgency of establishing national technical guidelines based

on best international practices, including psychological harm assessments, standardized rehabilitation indicators, and cross-disciplinary involvement in judicial processes. Only then can proportionality concerning children be articulated fairly and transformatively, not merely formally and legally.

CONCLUSION

Proportional and child-centered restitution not only enforces justice but also provides hope for children who have suffered injustice. This reflects a genuine effort to build a society that prioritizes the future of its younger generation. Proportional restitution is not just about an offender's responsibility, but also represents the legal system's recognition of the child's right to a fair recovery. Restitution should not be symbolic or uniform but must reflect the real suffering of each child victim—physically, psychologically, socially, and economically. Unfortunately, restitution is often overlooked and inconsistently applied. Some children receive harsh punishment for minor offenses without rehabilitative support, while others who suffer serious abuse receive no restitution despite harsh sentences for perpetrators. These inconsistencies highlight the lack of commitment to proportionality in practice. Therefore, Indonesia's legal system must become more responsive, empathetic, and focused on recovery rather than punishment. Proportional restitution must become a tangible reflection of the state's acknowledgment of child victims' suffering and an integral part of restorative justice that upholds the best interests of the child.

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