

CRIMINAL LAW POLICY IN THE JUVENILE CRIMINAL JUSTICE SYSTEM FOR RECIDIVIST OFFENDERS IN INDONESIA

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ABSTRACT

Indonesia is a nation that regards human rights as a core principle. Ensuring the protection of human rights is a crucial responsibility of the Indonesian government, including extending this protection to juvenile offenders. Despite having a structured legal framework within the juvenile justice system, issues persist, particularly concerning juvenile recidivism in Batam City. Although Batam has been recognized as a Child-Friendly City, the problem of juvenile recidivism remains unresolved. This study aims to evaluate the fulfillment of criminal law policies for juvenile recidivists and the challenges they face within the legal system. The method employed is empirical legal research analyzing juvenile recidivism data from the Batam District Court for 2021–2023. The legal theories used to analyze this study include Lawrence M. Friedman’s Legal System Theory and the Dignified Justice Theory. The findings indicate that current criminal law policies regarding juvenile recidivism in Batam City are not fully effective, with challenges arising from legal loopholes and limitations in diversion programs for repeat offenders.

Keywords: Juvenile criminal justice, Recidivism, Legal Policy

Introduction

As individuals with the inherent right to live, grow, and develop with dignity, every child must be protected from all forms of violence and discrimination. This principle is clearly stated in Article 28B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Child protection aims to ensure that children’s lives,

development, and participation are maximized in accordance with humanitarian values, shielding them from the threat of violence and discrimination. This provision is further emphasized in Law No. 35 of 2014 on Child Protection. To secure these rights, children are also entitled to special protection, particularly

within the judicial process. Indonesia has enacted Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Article 1, paragraph (1) of this law stipulates that the Juvenile Criminal Justice System encompasses all stages of the legal process involving children, from investigation through to post-sentencing guidance.

The treatment and protection of juvenile offenders within the criminal justice system have long been a focal point in law. However, this attention has yet to encompass juvenile recidivists (repeat offenders).¹ Recidivism refers to the tendency of an individual or group to repeat wrongful actions despite having previously received punishment for similar offenses.² Juvenile recidivism occurs when a young individual who has previously committed a crime, received a legal sentence, and served the penalty subsequently commits another crime, either similar or different. After completing their sentence and returning to society, these individuals often re-offend.³

In Indonesia, the issue of juvenile recidivism remains unresolved. This behavior demands special attention, particularly within the juvenile justice system.⁴ The enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) represents a significant breakthrough in Indonesia's juvenile criminal law reform, replacing Law No. 3 of 1997 on Juvenile Courts. This law introduces a restorative justice approach focused on recovery, emphasizing diversion at each stage of the legal process to prevent minors from being drawn into the formal judicial system.⁵ However, this policy faces numerous challenges in its application, particularly for juveniles classified as recidivists.

The Juvenile Criminal Justice System Law (Law No. 11 of 2012) has yet to fully address the sanctions and rights applicable to juvenile recidivists. The provisions related to repeat juvenile offenders remain limited. Article 7, paragraph (2) of the law stipulates that

¹ Muhammad, Rusli. (2011). *Sistem Peradilan Pidana Anak Indonesia*. Yogyakarta: Pustaka Yustisia.

² "Arti kata residivisme - Kamus Besar Bahasa Indonesia (KBBI) Online". *kbbi.web.id*. Diakses tanggal 28 April 2024.

³ Said Lutfhi Nuh, Bruce Anzward, and Galuh Prahara Rizqia, "Legal Enforcement of Child Recidivists in Motorcycle" 1, no. September (2019): 1–17.

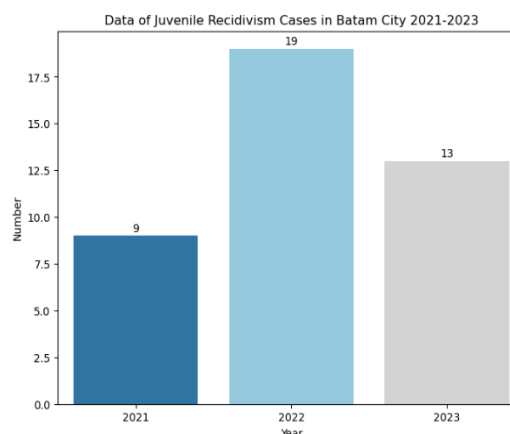
⁴ Berniko Dwiantoro and Mitro Subroto, "Implementasi Upaya Penurunan Resiko

Residivisme Anak Binaan Masyarakat Melalui Model Pembinaan Di LPKA," *INNOVATIVE: Journal Of Social Science Research* 3, no. 5 (2023): 5514–24, <http://j-innovative.org/index.php/Innovative/article/view/5358>.

⁵ Siti Aisyah and Abdurrakhman Alhakim, "Morality : Jurnal Ilmu Hukum. Efektivitas Peran Kepolisian Dalam Penerapan Restorative Justice Terhadap Kasus Pelecehan Seksual Oleh Anak Di" 10, no. 1 (2024): 1–13.

juveniles who have already reoffended are ineligible for diversion. Diversion is a method of resolving juvenile criminal cases by redirecting the legal process from the formal judicial path to alternative, non-judicial solutions.⁶ Consequently, an in-depth review and legal reform are needed to ensure that Law No. 11 of 2012 can more effectively and humanely meet the needs of juvenile recidivists.

Batam, being the most populous city in the Riau Islands Province of Indonesia, has been acknowledged as a Child-Friendly City (KLA) by the Ministry of Women Empowerment and Child Protection (KPPA) for the years 2022 to 2023. It is the only one of the seven regencies/cities in the province to receive this recognition.⁷ However, Batam still faces challenges regarding juvenile recidivism cases. The following data reflects juvenile recidivist cases in Batam City recorded at the Batam District Court from 2021 to 2023:



Based on the data above, Batam City continues to face challenges associated with criminal activities involving minors. Juvenile recidivism cases, where minors reoffend after undergoing legal proceedings, remain frequent and are a concern for authorities. This situation underscores the need for more effective rehabilitation and supervision approaches. Amid the complexity of this issue, particularly concerning juvenile recidivists, efforts to reduce the number of juvenile recidivism cases in Batam City have become increasingly urgent. Existing legal provisions remain insufficient, allowing minors to reoffend.

This study differs from previous research conducted by (1) Rahmah et al. (2023), (2) Prabawa et al. (2020), and (3) Tabriah et al. (2021), which only briefly

⁶ Teguh Prasetyo, "Penerapan Diversi Terhadap Tindak Pidana Anak Dalam Sistem Peradilan Pidana Anak," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, no. 1 (2015): 1, <https://doi.org/10.24246/jrh.2015.v9.i1.p1-14>.

⁷ Mediacycenter. 2 Tahun Terakhir, Batam Berturut-turut Pertahankan Prestasi Kota Layak Anak. <https://mediacycenter.batam.go.id/2023/07/24/2-tahun-terakhir-batam-berturut-turut-perthankan-prestasi-kota-layak-anak/>. Diakses tanggal 19 Mei 2024.

addressed juvenile recidivism without incorporating extensive empirical data, such as recidivism statistics and information from juvenile correctional institutions. This limited approach resulted in less representative findings and insufficient solutions. In contrast, this study focuses on juvenile recidivists in Batam City, analyzing the implementation of Law No. 11 of 2012 with an emphasis on child-centered justice approaches. The study examines criminal law policies and assesses the effectiveness of justice approaches in preventing juvenile recidivism in Batam City, which was recognized as a Child-Friendly City for 2022–2023.

Based on the discussion above, this study addresses two main questions: (1) What are the criminal law regulations for juvenile recidivists within Indonesia's juvenile justice system? and (2) What are the obstacles in the juvenile justice process for repeat offenders in Batam City? To answer these questions, this research employs Lawrence M. Friedman's Legal System Theory and applies the Theory of Dignified Justice to emphasize the importance of humane justice, in line with

the spirit of the SPPA, which is based on restorative justice and child protection.

This study aims to reveal gaps in criminal law for juvenile recidivists and the obstacles they face within the judicial process, specifically in Batam City. It focuses on applying legal regulations for juveniles who re-offend and the challenges encountered in enforcing these laws. This study explores the effectiveness of the juvenile justice system and identifies areas that require improvement in addressing juvenile recidivism to achieve more effective recidivism prevention.

Method

This study utilizes an empirical juridical method, which combines normative legal analysis with empirical field observations to assess the practical application of law.⁸ The data in this research consists of primary data gathered through interviews and secondary data that includes primary, secondary, and tertiary legal sources.⁹ Interviews were conducted with Brigadier M. Chandra Gunawan Sitorus from the Batam Police Department and Public Prosecutor Karya So Imanuel Gort from the Batam District Attorney's

⁸ Daud Rismana and Hariyanto, "Legal System Theory Perspective in Vaccination Policy in the Middle of the Covid-19 Pandemic," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 3 (2021): 591–606, <https://doi.org/10.29303/ius.v9i3.951>.

⁹ Winsherly Tan and Dyah Putri Ramadhani, "Pemenuhan Hak Bekerja Bagi Penyandang Disabilitas Fisik Di Kota Batam," *Jurnal HAM* 11, no. 1 (2020): 27, <https://doi.org/10.30641/ham.2020.11.27-37>.

Office. This method was selected to examine the application of law within the juvenile criminal justice system, particularly concerning repeat juvenile offenders. This approach allows for a comprehensive review of relevant regulations and provides practical insights into the real-world implementation of laws. Through a qualitative approach, this study aims to gain an in-depth understanding and analysis of the phenomenon using interpretation and context.

The methods applied include document study and field observation. The document study involves analyzing reports and records related to recidivism in the juvenile justice system, while field research encompasses observations and interviews to gather empirical data. The data is presented and analyzed through a descriptive-qualitative approach to explore, understand, and evaluate the various aspects central to this study. The data analysis involves identifying legal issues, collecting data, conducting analyses, and drawing conclusions.¹⁰

¹⁰ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003).

¹¹ Rahayu, Sri. "Diversi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Dilakukan Anak Dalam Perspektif Sistem Peradilan Pidana Anak." *Jurnal Ilmu Hukum Jambi* 6, no. 1 (2015): 43317.

¹² Ani Triwati, Doddy Kridasaksana, and Tindak Pidana, "Pengulangan Tindak Pidana The

Results and Analysis

Criminal Law Regulations for Juvenile Recidivists in the Juvenile Criminal Justice System in Indonesia

Minors, as individuals requiring special protection, may still engage in deviant behaviors, including repeated criminal offenses (recidivism). Indonesia's criminal law system regulates explicitly the treatment of juvenile offenders through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which differs significantly from the general criminal justice system.¹¹ The law aims to safeguard children's rights and promote a more humane approach focused on rehabilitation and recovery, rather than mere punishment.¹²

Indonesia's juvenile criminal justice system is governed by Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). This law emphasizes the principles of child protection, restorative justice, and rehabilitation.¹³ Article 5, paragraph (1) states, "The Juvenile

Fundamental Necessity Of Diversion For Hak Anak Yang Dijamin Undang-Undang Dasar Negara Republik Indonesia Tahun," *Jurnal USM Law Review* 4, no. 2 (2021): 828–43.

¹³ Alhakim, A. (2022). Diversion As A Legal Concept That Is Equitable For Children In Indonesia. *Mizan: Jurnal Ilmu Hukum*, 11(2), 147-157. doi:10.32503/mizan.v11i2.3102

Criminal Justice System shall prioritize a Restorative Justice approach." This provision underscores the importance of focusing on rehabilitation for juveniles in conflict with the law. Furthermore, Article 5, paragraph (2), section (c) specifies that the process includes "guidance, supervision, counseling, and/or assistance during and after the execution of a sentence or other judicial measures."¹⁴

Law No. 11 of 2012 demonstrates a solid commitment to ensuring protection and justice for minors. However, gaps remain in addressing the needs of juvenile recidivists. Although the law emphasizes child protection, it lacks specific provisions regarding the rights and sanctions for minors who repeatedly commit offenses. This ambiguity poses challenges in handling juvenile recidivist cases in court. Article 7, paragraph (2) of the SPPA states that diversion does not apply to juvenile recidivists, highlighting the need for a more assertive approach to preventing repeat offenses. Nevertheless, without clear guidelines, handling juvenile recidivists remains suboptimal.

This lack of clarity also influences

judges' sentencing decisions. Without established guidelines on appropriate sanctions, judges may feel constrained in issuing verdicts that effectively deter reoffending among minors.¹⁵ Consequently, efforts to prevent recidivism are hampered. Addressing this issue requires a comprehensive evaluation and enhancement of existing laws. More detailed provisions regarding the rights and sanctions for juvenile recidivists should be included to ensure optimal protection for minors and improve the management of recidivism cases. In doing so, the law would provide more precise guidance for legal practitioners handling juvenile repeat offenders.

In accordance with Lawrence Friedman's theory of legal systems, the effectiveness of a law can be evaluated based on three key elements: legal framework, legal content, and legal norms. In Law No. 11 of 2012 on the Juvenile Criminal Justice System, analysis can be conducted from several perspectives. First, from a legal substance viewpoint, Law No. 11 of 2012 (SPPA) has yet to fully protect juvenile recidivists, particularly in its

¹⁴ Prabawa, I Made Aditya; Suardana, I Wayan. Pengaturan Pembinaan Narapidana Residivis Terhadap Anak Dibawah Umur. Kertha Wicara: *Journal Ilmu Hukum*, [S.l.], v. 8, n. 9, p. 1-17, feb. 2020. ISSN 2303-0550. Available at:

<https://jurnal.harianregional.com/kerthawicara/id-57720>. Date accessed: 08 Jul. 2024.

¹⁵ Putra, Maksun Hadi. "Sanksi pidana terhadap anak yang melakukan pengulangan tindak pidana (residive)." *Jurnal IUS Kajian Hukum Dan Keadilan* 4, no. 2 (2016).

restorative justice, child protection, and rehabilitation provisions. While the law aims to reduce juvenile offenses through rehabilitation and social reintegration, a legal gap is apparent in Article 7 of the SPPA, which limits access to diversion for juvenile recidivists. This restriction reduces flexibility in managing repeat offenders, who should ideally receive an approach distinct from first-time offenders.¹⁶ Ideally, legal substance should be more inclusive, offering rehabilitative solutions rather than focusing solely on punishment. Hence, legal reform is necessary to address regulatory gaps and provide more effective protection for juvenile recidivists.

The absence of legal provisions regarding juvenile recidivists within the Juvenile Criminal Justice System Law (UU SPPA) poses a significant challenge to legislation and policy in Indonesia. This issue demands serious attention from the government to promptly address existing regulatory gaps, particularly those related to children's rights. With clear regulations, law enforcement officials can ensure that judicial processes are conducted consistently and fairly. Consequently, the primary objectives of the juvenile justice

system rehabilitation and social reintegration become more challenging to achieve, leaving children involved in criminal activities without adequate protection.

This legal void also affects the effectiveness of juvenile correctional facilities (LPAK), which are meant to prepare children for reintegration into society. Ineffective rehabilitation programs that are not integrated with community life are among the key factors contributing to the high rates of juvenile recidivism. Therefore, the government must urgently revise existing regulations and simultaneously improve the quality of rehabilitation in LPAK. These reforms will ensure that rehabilitation processes are more effective, provide children with better opportunities to reform themselves and prevent future criminal behavior. Ultimately, such efforts will create a more just juvenile justice system that focuses on the recovery and well-being of children. Thus, legal reconstruction is necessary to address regulatory gaps and provide optimal protection for juvenile recidivists.

¹⁶ M R A Lubis et al., "Analisis Hukum Terhadap Penyelesaian Diluar Pengadilan (Diversi) Dalam Tindak Pidana Kekerasan Yang Dilakukan Oleh

Anak Di Wilayah Polresta Kota ...," *Usu Law ...* 7, no. 5 (2019): 152–74.

Obstacles in the Juvenile Justice Process for Recidivist Offenders in Criminal Acts in Batam City

Children represent the future generation who will continue the nation's development.¹⁷ However, in recent years, the phenomenon of juvenile recidivism has raised severe concerns in Batam City. The incidence of crimes involving minors as perpetrators has continued to rise, and many of these individuals are recidivists juveniles who re-offend after serving a previous sentence. Several factors can contribute to this trend, including peer influence, family conditions, education level, social environment, technology (such as gadget use), and psychological issues.¹⁸ This pattern indicates weaknesses in the juvenile justice system, which should ideally be retributive but also rehabilitative and restorative.¹⁹ The current justice system appears insufficient in preventing previously involved minors from repeating their mistakes.

There are several obstacles in the juvenile justice process for recidivist offenders in Batam City. The first challenge lies in the lack of social support.²⁰ Lawrence M. Friedman's legal culture theory posits that a legal system is not static and is greatly influenced by external social factors. In this context, the attitudes, values, and perspectives of society that do not support the rehabilitation of juvenile recidivists become a primary obstacle to the effectiveness of juvenile criminal law. If society holds negative stigmas against recidivist juveniles and lacks confidence in the rehabilitation system, the legal goal of reintegrating these children into society becomes challenging to achieve. This situation reflects a gap between the progress of modern, rehabilitation-focused law and the prevailing social reality that has yet to align with it. Strengthening legal culture by increasing community support for rehabilitating juvenile offenders is crucial to overcoming these barriers.

¹⁷ Winshery Tan, "Pemenuhan Hak Pendidikan Anak Jalanan Di Kota Batam : Tantangan Dalam Mewujudkan Sustainable Development Goals (SDGs)," *Supremasi Hukum : Jurnal Penelitian Hukum* 29, no. 1 (2020): 46–59, <https://doi.org/10.33369/jsh.29.1.46-59>.

¹⁸ Wawancara bersama Brigadir Polisi Satu Banit VI, M. Chandra Gunawan S. SH. Pada tanggal 4 April 2024.

¹⁹ Siti Rahmah And Darmiwati, "Tinjauan Yuridis Terhadap Anak Pelaku Residivis

Berdasarkan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak: Tinjauan Yuridis Terhadap Anak Pelaku Residivis Berdasarkan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *Jurnal Hukum Das Sollen* 9, No. 1 Se-Articles (June 26, 2023): 657–71, <https://doi.org/10.32520/Das-Sollen.V9i1.2613>.

²⁰ Wawancara bersama Brigadir Polisi Satu Banit VI, M. Chandra Gunawan S. SH. Pada tanggal 4 April 2024.

The second challenge is the insufficient provision of rehabilitation and guidance programs within juvenile detention facilities in Batam City. This issue is related to Lawrence M. Friedman's theory of legal structure, which highlights that the structure of a legal system encompasses the institutions and law enforcement agencies that uphold the law. The lack of effective rehabilitation programs, particularly educational and psychological support, reveals structural deficiencies in the current legal system.²¹ Without the proper functioning of this structure, the goal of juvenile rehabilitation remains unachievable, which ultimately hinders compliance with the law and worsens the reintegration process for these minors. To tackle this issue, it is necessary to improve the facilities and rehabilitation programs within juvenile detention centers to ensure that the legal structure operates optimally in supporting the juvenile justice system for recidivist offenders.

The primary legal obstacle in the juvenile criminal justice process in Batam City is the regulation restricting diversion. In striving for justice as outlined in Article

7 of Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), which states that diversion cannot be applied to recidivist juveniles,²² this provision often disregards the wishes of the victim's family, who may support the use of diversion. This regulation directly contradicts the principle of justice that should underpin every legal process. Teguh Prasetyo's concept of dignified justice offers an essential perspective in this regard. This theory emphasizes that the legal system should serve to achieve humane justice, or "ngewongke wong," which implies utilizing every opportunity granted by God to assist others through humanizing actions.²³ Thus, this approach is highly relevant in recidivism cases, where the focus should be on rehabilitation and social reintegration rather than punishment alone.

The restriction on diversion for juvenile recidivists in Article 7 of Law No. 11 of 2012 contradicts the spirit of justice embedded in the law itself. This law should support a restorative justice approach aimed at recovery, not merely punishment.²⁴ Preventing diversion not

²¹ Wawancara bersama Jaksa Penuntut Umum Karya So Imanuel Gort, SH, MH. Pada tanggal 31 Mei 2024.

²² Wawancara bersama Brigadir Polisi Satu Banit VI, M.Chandra Gunawan S. SH. Pada tanggal 4 April 2024.

²³ Gurindro, Fajar. *Rekonstruksi Regulasi Diversi Dalam Sistem Peradilan Pidana Anak Yang Berbasis Keadilan Bermartabat*. Doctoral Thesis. (2022). Universitas Islam Sultan Agung.

²⁴ Alhakim, A., Febriani, E., & Febrian, A. J. *Kebijakan Restorative Justice Dalam Upaya*

only harms the child's well-being but also fails to reduce recidivism rates in Indonesia, particularly in Batam City. Recidivist juveniles have the right to appropriate rehabilitation through a more humane approach. The dignified justice approach calls for a revision of the rules that block diversion efforts for recidivist juveniles. This revision is essential to ensure that Indonesia's juvenile justice system is not only a punitive tool but also a platform offering a fair and humane second chance.²⁵ Such changes are critical to reducing recidivism rates and promoting the overall psychological development of these children. A more humane approach also aligns with the juvenile justice system's primary goal, which is to provide appropriate protection and rehabilitation for children who come into conflict with the law.

Furthermore, this obstacle not only disadvantages the child as an offender but also undermines the spirit of justice promoted by the juvenile justice system. As presented by Teguh Prasetyo, the concept of dignified justice underscores the

importance of respecting human dignity, even for children involved in repeat offenses.²⁶ In this context, the juvenile justice system should deliver justice that punishes, corrects, and guides children onto the right path, consistent with the spirit of the law. Therefore, identifying and analyzing the obstacles within the juvenile justice process for recidivist offenders in Batam City is crucial for finding effective and appropriate solutions.

The reconstruction of Article 7 of Law No. 11 of 2012 on the Juvenile Criminal Justice System is necessary to provide fairer opportunities for juvenile recidivists. A dignified criminal law approach should prioritize rehabilitation and social reintegration rather than punishment. Consequently, juveniles committing repeat offenses for the first time should still be allowed to be diverted, with the victim's consent. This approach aligns with the spirit of child protection in the SPPA, which aims to ensure that children who come into conflict with the law can undergo effective rehabilitation, avoid repeat offenses, and have a brighter

Penyelesaian Tindak Pidana Anak Di Berbagai Negara. *Hukum Responsif*. (2024). 15 (1), 17-31. <https://doi.org/10.33603/responsif.v15i1>

²⁵ Petra Alfian Wenno, "Anak Yang Berhadapan Dengan Hukum Dalam Perspektif Keadilan Bermartabat," *Jurnal Ilmu Hukum: ALETHEA* 6,

no. 2 (2024): 83–99, <https://doi.org/10.24246/alethea.vol6.no2.p83-99>.

²⁶ Munawar, A. (2019). *Rekonstruksi Sanksi Pidana Anak Dalam Perspektif Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Anak Yang Berbasis Nilai Keadilan* (Doctoral dissertation, Universitas Islam Sultan Agung).

future. By revising this article, the justice system can become more responsive to the specific needs of juvenile recidivists while maintaining justice for the victims.

Conclusion

This study emphasizes that although Indonesia's juvenile criminal justice system has shown commitment through enacting Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA), gaps remain in addressing juvenile recidivists. The lack of explicit provisions regarding the rights and sanctions for minors who re-offend presents a significant challenge in implementing effective child protection policies. Article 7 of the SPPA, which restricts the use of diversion for recidivist juveniles, poses a substantial obstacle, as diversion should serve as a crucial means to prevent repeat offenses. Therefore, a more comprehensive and inclusive legal reconstruction is needed to provide clear guidelines for law enforcement officials and to ensure optimal protection for juvenile recidivists.

Additionally, this study highlights other obstacles faced in the juvenile justice process for repeat offenders in Batam City, such as insufficient social support and weaknesses in rehabilitation programs within juvenile detention facilities. The justice system's ineffectiveness in

providing suitable solutions for juvenile recidivists calls for a change in approach. By applying the concept of dignified justice which emphasizes rehabilitation and social reintegration and revising Article 7 of the SPPA, it is hoped that Indonesia's juvenile criminal justice system, especially in Batam City, can become more responsive in safeguarding the rights of recidivist juveniles. These measures are essential to reduce recidivism rates, support the development of juveniles in conflict with the law, and ensure a justice system that is both fair and humane.

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