

The Position of Risk Assessment in Correctional Policy as a Basis for Granting Parole for Narcotics Crime Prisoners

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Abstract

This study examines the position of risk assessment in correctional policy as the basis for granting conditional rights for inmates of narcotics crimes. This study is motivated by the increasing use of conditional rights in response to the problem of overcapacity in correctional institutions, which requires a rational, accountable, and risk-based decision-making mechanism. This research uses normative legal research methods with a statutory approach and a conceptual approach, through an analysis of Law Number 22 of 2022 concerning Corrections, related implementing regulations, as well as the political doctrine of criminal law and correctional theory. The results of the study show that risk assessment has been normatively placed as an integral part of correctional policies, especially in the process of granting parole. In the political framework of criminal law, risk assessment functions as an instrument to control state discretion so that the granting of conditional rights is carried out proportionately and in line with the interests of community protection. However, the existing regulatory framework has not fully provided detailed normative standards related to assessment indicators, inter-agency coordination mechanisms, and legal accountability for assessment results. This condition has the potential to reduce risk assessment to a purely procedural requirement. Therefore, this study emphasizes that strengthening the normative regulation of risk assessment is an urgent need, so that the policy of granting parole does not only function as an administrative mechanism, but truly becomes a risk-based, accountable, and balance-oriented correctional policy instrument between community protection and the fulfillment of prisoners' rights.

Keywords: *Risk Assessment; Correctional Policy; Conditional Rights; Political Criminal Law; Narcotics Crime*

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2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era
<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

Introduction

Correctional policy is an integral part of the criminal law system that functions to regulate the implementation of prison sentences after a court decision with permanent legal force. In the modern legal system, penitentiary is no longer understood solely as a means of carrying out crimes, but as an instrument of the state to manage the risk of crime through the mechanism of fostering and social reintegration of prisoners. Therefore, any correctional policy, including the granting of conditional rights, must have a clear legal basis and strong normative legitimacy so as not to conflict with the principles of legal certainty and community protection. The granting of conditional rights such as Parole, Conditional Leave, and Leave Ahead of Release is a form of state discretion in the post-sentencing policy. The discretion is not only related to the fulfillment of prisoners' rights, but also concerns the public interest in preventing the recurrence of criminal acts. In the context of narcotics crimes, the granting of parole has a high level of sensitivity due to the characteristics of narcotics crimes related to organized networks, the potential for recidivism, and broad social impacts.

Law Number 22 of 2022 concerning Corrections has normatively introduced risk assessment as part of the correctional coaching and service system. Risk assessments are intended to assess the level of danger, potential for repetition of criminal acts, and the readiness of inmates to return to society. However, the regulation of risk assessment in laws and regulations still raises juridical questions regarding its position in the correctional policy structure. Does risk assessment have the power as a basis for policy decision-making, or does it only function as an administrative support instrument in the process of granting conditional rights. From the perspective of criminal law politics, the position of a policy instrument is largely determined by the extent to which the instrument is normatively institutionalized in the legal system. The politics of criminal law speaks not only about the purpose of punishment, but also about how the state designs and uses legal instruments to control crime rationally and oriented towards the protection of society. In this framework, risk assessments should be positioned as a binding policy instrument and as a basis for substantive considerations in granting conditional rights, rather than merely a procedural complement.

However, in normative practice, the position of risk assessment is still in the gray area between legal policy and administrative policy. Some provisions of the implementing regulations tend to place risk assessment as one of the formal requirements, without expressly affirming the legal consequences for the decision to grant conditional rights. This condition has the potential to weaken the function of risk assessment as an instrument for crime risk control and open up space for inconsistencies in correctional policies. Based on this description, a study of the position of risk assessment in correctional policy is important to be carried out. This research focuses on normative analysis of risk assessment as the basis for granting parole rights for prisoners of narcotics crimes according to applicable laws and regulations. By examining the legal construction of risk assessment in the correctional system, this study is expected to provide conceptual clarity regarding the position of risk assessment as a policy instrument, as well as strengthen the legitimacy of the parole policy within the political framework of Indonesian criminal law.

Literature Review

- A. Criminal Law Policy *Theory* is used to analyze how the state formulates and implements criminal policies in order to tackle crime, including narcotics crimes. Criminal law policy includes not only the determination of the convicted act and the type of sanction, but also post-sentencing policies, including the correctional system and the granting of conditional rights for prisoners. According to Barda Nawawi Arief, criminal law policy is part of social policy that aims to protect the community through rational and planned crime prevention efforts. In the context of corrections, criminal law policy is reflected in the arrangements

regarding prisoner development, prisoners' rights, and social integration mechanisms such as parole, parole, and leave before release. This theory is relevant to assess the position of risk assessment as a correctional policy instrument, namely whether risk assessment has been placed as a substantive basis in making decisions to grant parole or is still purely administrative.

- B. Penological Theory and the Correctional System is a branch of criminal law that studies the purpose, function, and implementation of criminal justice, including the correctional system. In the modern correctional paradigm, punishment does not solely aim to provide suffering, but is directed at fostering and rehabilitating inmates so that they can return to society as responsible citizens. The penitentiary system in Indonesia places inmates as subjects of coaching who have rights and obligations. This is affirmed in Law Number 22 of 2022 concerning Corrections which emphasizes rehabilitative and reintegrative approaches. Within this framework, the granting of parole is part of a gradual coaching process that must be based on an objective assessment of the prisoner's behavior, risk, and readiness. Penological theory is used in this study to analyze the extent to which risk assessments are aligned with the goals of correctional facilities and serve as a tool to balance the interests of inmate development and community protection.
- C. *Criminal Risk Assessment Theory* Criminal risk management theory emphasizes the importance of identifying, assessing, and managing risks in the criminal justice system. Risk assessments are used to assess the likelihood of recidivism, the level of danger of the perpetrator, and the criminogenic factors inherent in the individual. In the context of corrections, risk assessments serve as the basis for decision-making related to the granting of conditional rights, inmate placement, and appropriate coaching programs. For inmates of narcotics crimes, risk assessment has a strategic role because of the characteristics of narcotics crimes that are often related to organized networks and relatively high recidivism rates. This theory is used to assess whether the implementation of risk assessments at the Class IIA Binjai Correctional Institution has reflected a *risk-based approach* or is still formalistic

Research Methodology

This study uses normative legal research with a prescriptive-analytical nature. Normative legal research was chosen because the study focused on the analysis of legal norms and correctional policies that regulate the position of risk assessment as the basis for granting parole rights for prisoners of narcotics crimes. The research approaches used include a statutory approach and a *conceptual approach*. The legislative approach is carried out by examining the provisions of Law Number 22 of 2022 concerning Correctional Services and the implementing regulations that regulate the granting of conditional rights and risk assessments. Meanwhile, a conceptual approach is used to examine the concept of risk assessment, correctional policy, and criminal law politics based on the doctrine and views of experts.

The source of legal materials consists of primary legal materials, in the form of laws and regulations related to corrections; secondary legal materials, in the form of books, scientific journals, and relevant research results; and tertiary legal materials as supporting materials. The collection of legal materials is carried out through literature studies, both from print and electronic literature. The analysis of legal materials is carried out in a normative qualitative manner by interpreting legal norms systematically and teleologically to assess the position of risk assessment in correctional policy as the basis for granting conditional rights. The results of the analysis were used to formulate legal arguments regarding strengthening the risk assessment function to be in line with the goals of correctional and criminal law politics.

Results

- A. The Position of Risk Assessment in Correctional Policy

In the Indonesian correctional law system, risk assessment has a normative position as a policy instrument that determines the direction of granting parole, not just an administrative tool. Law Number 22 of 2022 concerning Correctional Services places social development and integration as the main goal of corrections, the implementation of which requires an objective measurement of the risks and needs of inmates. Conditional rights—including Parole, Parole, and Leave Prior to Release are not legally absolute rights, but rather rights that depend on the outcome of a particular assessment. Within this framework, risk assessment serves as a rational basis for the state to exercise its discretion. This means that the granting of conditional rights must be based on legally and policyaccountable considerations, not mere administrative or quantitative considerations. In the context of narcotics crimes, the position of risk assessment has become increasingly strategic due to the characteristics of narcotics crimes that have a high level of recidivism, linkages with organized networks, and broad social impacts. Therefore, risk assessments should act as a policy filter that differentiates prisoners based on their level of danger and readiness for reintegration.

B. Risk Assessment as an Instrument of State Discretion

From the perspective of criminal law politics, correctional policy is part of the national criminal policy that does not stop at criminal imposition, but continues to the implementation and post-sentencing stages. At this stage, the granting of conditional rights is placed as a policy that has direct implications for public security. Risk assessment, within this framework, serves as a tool to control state discretion. The state cannot uniformly grant parole rights to all prisoners, as each prisoner has a different level of risk and coaching needs. Without a robust risk assessment, state discretion has the potential to turn into decisions that are subjective, pragmatic, or even counterproductive to the goals of the penalty. However, the results of the normative study show that existing regulations have not fully provided a firm substantive standard regarding risk assessment indicators, especially in the assessment of external factors such as risky social relations, involvement of narcotics networks, and post-release readiness. This regulatory vacuum opens up space for the simplification of risk assessment in practice, which ultimately weakens its position as an instrument of correctional policy.

C. Normative Implications for the Granting of Parole for Narcotics Prisoners

The absence of comprehensive risk assessment standards has direct implications for the quality of parole granting policies. In correctional practice, risk assessments tend to focus more on indicators that are easy to measure and internal, such as behavior and compliance during criminal service. Meanwhile, the external factors that determine the risk of recidivism after liberation often receive insufficient attention. From a correctional policy perspective, this condition has the potential to result in risk assessment bias, where inmates are considered worthy of parole based on behavior in a controlled environment, but are not necessarily ready to face social challenges in society. As a result, the goal of correctional facilities to prevent the recurrence of criminal acts and protect the community is not optimally achieved. Thus, the position of risk assessment as the basis for granting conditional rights is still normative-formal and has not fully functioned as a substantive policy instrument. This shows that there is a gap between the goals of penitentiary law and the reality of its implementation.

D. Critical Analysis: Risk Assessment and the Direction of Modern Corrections

Conceptually, modern penitentiary demands a balance between the rehabilitation of inmates and the protection of society. Risk assessment is at the intersection of the two objectives. When risk assessments are carried out comprehensively, conditional rights

policies can serve as a means of responsible reintegration. Conversely, when risk assessments are reduced to administrative formalities, conditional entitlement policies have the potential to weaken crime control functions. In this context, risk assessments should be understood as a strategic policy instrument, not just part of the correctional technical procedures. Strengthening the position of risk assessment is a prerequisite to ensure that correctional policies remain within the political corridor of criminal law that is rational, proportional, and based on community protection.

Conclusion

Based on the results of the discussion, it can be concluded that normative risk assessment has a position as an important instrument in correctional policy and is the basis for granting conditional rights for prisoners of narcotics crimes. Risk assessments are designed to direct state discretion so that the granting of conditional rights is carried out selectively, rationally, and based on risk considerations. However, existing legal arrangements have not fully provided a standard of comprehensive risk assessment substance, particularly in assessing external factors that affect the risk of recidivism. As a result, risk assessment still has the potential to be reduced to an administrative procedure, so that its position as a correctional policy instrument has not functioned optimally. Thus, risk assessments have not been fully able to ensure a balance between the goals of prisoner rehabilitation and community protection in the policy of granting parole to prisoners of narcotics crimes.

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