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The Position of *Visum Et Repertum* as Evidence in Proving Criminal Cases in Indonesia

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ABSTRACT

This study aims to examine and analyze the position of visual evidence et repertum in proving criminal cases in Indonesia. In this study is normative juridical research as well as a statutory approach and a coceptual approach. The results of this study show that evidence in criminal cases is very important. One of the most important things in the evidence visum et repertum to reveal the cause and effect of a criminal case incident, in accordance with the purpose in criminal law is to find material truth. Visum et repertum is included in valid evidence under article 184 of the Code of Criminal Procedure, namely letter evidence and also expert testimony. To clearly establish the cause and effect of a criminal act, it is necessary to provide evidence visum et repertum against a number of crimes, including crimes that violate decency, against life, persecution, and negligence resulting in the death of a person or convict, injury to others. Other crimes include knowing the age of the victim or perpetrator of the crime. To find out the cause and effect of a criminal act that occurred, as well as to collect information and seek the objective truth of a criminal act related to the relationship between the act and the consequences caused, visum et repertum in proving criminal cases in Indonesia is very important.

Keywords : *Criminal case, Evidence, Visum et repertum*

ABSTRAK

Penelitian ini bertujuan untuk mengkaji dan menganalisis kedudukan alat bukti *visum et repertum* dalam pembuktian perkara pidana di Indonesia. Dalam penelitian ini adalah penelitian yuridis normatif serta pendekatan perundang-undangan dan pendekatan konseptual. Hasil dari penelitian ini menunjukan bahwa pembuktian dalam perkara pidana itu sangat penting. Salah satunya hal yang terpenting dalam alat bukti *visum et repertum* untuk mengungkap sebab akibat dari suatu kejadian perkara pidana, Sesuai dengan tujuan dalam hukum pidana yaitu mencari kebeneran materiil. Visum et repertum termasuk dalam alat bukti yang sah berdasarkan pasal 184 KUHAP yaitu alat bukti surat dan juga keterangan ahli. Untuk menetapkan dengan jelas sebab dan akibat suatu tindak pidana, perlu diberikan bukti *visum et repertum* terhadap sejumlah kejahatan, antara lain kejahatan yang melanggar kesusilaan, terhadap nyawa, penganiayaan, dan kelalaian yang mengakibatkan matinya seseorang atau terpidana. cedera orang lain. Untuk mengetahui sebab akibat dari suatu tindak pidana yang terjadi, serta untuk mengumpulkan keterangan dan mencari kebenaran obyektif dari suatu tindak pidana yang berkaitan dengan hubungan antara perbuatan tersebut dengan akibat yang ditimbulkannya, visum et repertum dalam pembuktian pidana kasus di Indonesia sangatlah penting.

Keywords : Kasus Pidana, Bukti, Visum et repertum

1. Introduction

In the state of law that everyone in society is given equal status in the eyes of the law, regardless of sex, color, religion, or level of social standing, or more commonly called "equality before the law" every citizen has an equal position before the law there are no exceptions. One of the objectives of the Republic of Indonesia is to protect the entire Indonesian nation and all human bloodshed, and for that the legal rights of the people must be upheld. However, if we consider that Indonesia is experiencing an increase in legal problems, namely the number of crimes, then these crimes are covered by the provisions of the Criminal Code regulated in the second book of the Criminal Law, namely articles 104 to 488 (Hakim 2019).

Finding the truth in criminal cases is the goal of criminal procedural law, but the discovery of truth itself cannot be separated from evidence that describes an event that concretely proves something according to criminal law means showing things that can be captured by the five senses. By expressing it logically, proof in criminal cases is required in Article 184 of the Code of Criminal Procedure which states that there must be sufficient evidence to support evidence in criminal cases.

According to Law Number 48 of 2009 Basic Provisions of Judicial Power Article 6 paragraph (2), "No one can be convicted, unless the court based on legal evidence finds that the person considered responsible has been guilty of the act he is accused of" (Karim Nasuition 1976). With the provisions of the above legislation, law enforcement is required to make every effort to collect information and facts about criminal cases that are handled as completely as possible in solving criminal cases (Yahya Harahap 2000). According to Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP), article 184 paragraph (1), evidence can be in the form of witness statements, expert statements, instructions, and statements of the accused. Such are the valid evidence mentioned above and which have been determined according to statutory provisions (Eddy OS 2012).

Law enforcement officials often encounter problems or problems that they cannot handle on their own because they are beyond their ability or expertise when trying to gather evidence necessary to examine criminal cases. To provide law enforcement with the whole material truth in this situation, the help of an expert is essential (Ali Achmad 2015). The Criminal Procedure Code regulates and refers to requests for expert assistance, in accordance with the norms of Indonesian criminal procedure law in Article 120 paragraph (1) refers to requests for expert information at the investigation stage, while Article 180 paragraph (1) refers to requests for expert information at the trial examination stage. According to article 1 point 28 of the Code of Criminal Procedure, "Expert testimony is information given by a person who has special expertise on matters necessary to clarify a criminal case for the purpose of examination", defined as "information given by a person who has special expertise on matters necessary to clarify a criminal case for the purpose of examination" in relation to the expert information in the two articles of the Code of Criminal Procedure mentioned above (Junardi and Sulfiati 2023).

The request for visum et repertum, among other things, aims to make light of the criminal events that occurred (Sutriadi Deawit and Simangunsong Frans 2022). Therefore, the investigator in a written

request to the doctor mentions the type of visum et repertum desired using the format according to the case being handled. The results of the examination of the victim conducted by judicial medicine experts, as well as the evidence provided by investigators, will be reported in the minutes of the event. Letter evidence is one type of evidence that investigators can use to find out who is responsible for criminal acts of maltreatment that result in casualties. There are many types of letter evidence, but one of them is visum et repertum, which is a written report made by judicial medicine experts.

Visum et Repertum in the Criminal Procedure Code requires expert information, so it is not only limited to finding the cause of death (Aling, 2023). The information given by the Doctor to the Investigator must be included in the Visum et Repertum so that the Investigator can fulfill his obligations, including explaining a criminal case. This depends on the case or thing that has been evaluated by the relevant doctor (Sumaidi 2015).

Evidence is key to the court hearing, the outcome of the allegations is determined by the evidence. A defendant is "acquitted" of guilt if the results of the evidence and evidence as defined by law are "insufficient" to prove the defendant's guilt. Conversely, if the guilt of the accused can be proven by evidence stipulated in Article 184 of the Code of Criminal Procedure, then the accused is found "guilty" and punished. The judge's "conviction did not participate" in showing the defendant's guilt in accordance with the law, according to the court. The judge's conviction of this system is irrelevant to the guilt or innocence of the accused.

In criminal cases the hold is "in criminalibus probantiones bedent esse luce clariores" meaning that in criminal cases the evidence must be brighter than the Light. Therefore, in the context of criminal cases the judge is better not to punish the guilty than to punish the innocent, philosophically if the judge convicts the guilty person then the judge will not escape torment in the afterlife, but if the judge punishes the innocent then the judge bears two sins, his own sin and the law of innocence. Therefore, evidence in crime is very important (Andi Hamzah 2017)

2. Methods

In this study using normative legal research methods. Legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced (Marzuki 2017). In this study using a statutory approach (statute approach) which is carried out by reviewing all laws and regulations related to legal problems handled and using a conceptual approach (conceptual approach) finding ideas that give rise to legal understanding, legal concepts, and legal principles that are relevant to the problems faced by studying views and doctrines in legal science.

Primary legal materials and secondary legal materials are the sources of law used (Saldi Isra 2014). Primary legal materials consist of the Criminal Code, Law Number 8 of 1981 (KUHAP), Law Number 48 of 2009 concerning the Basic Provisions of the Law on Judicial Power (hereinafter referred to as Law 48/2009). Legal theory, journals, secondary legal literature, and legal principles are part of secondary legal resources.

3. Result and Discussion

The position of Visum et repertum as evidence of letters and expert information

In judgment consideration the most prominent is the assessment of a conviction without testing and associating

that belief in a way and with valid evidence. On the other hand, there are often considerations of court decisions that base the judgment of whether or not the defendant is wrong, solely on the positive statutory system of evidence (Langie, Tomuka, and Kristanto 2015). The motivation for legal considerations proves the guilt of the defendant, not colored and not combined with the judge's belief. For example, in the description of the judgment considerations, it is rare to find a description of considerations that systematically and argumentatively link and combine the evidence of the defendant's guilt with the judge's belief (Mario Lasut 2016).

The guilt of the accused has been completely proven based on the provisions of proof and with lawful evidence. However, in the ruling, the judge forgot to include a sentence explaining the conviction of the guilt. Usually in practice, this kind of omission by the appellate court, cassation, does not overturn the decision of the court of first instance. It is enough to correct it by adding the words "convincing" in the judgment in question. On the contrary, however, even if the judge of first instance has expressly expressed his conviction of the defendant's guilt, However, the assertion of the conviction, however clear, does not constitute any reason and hindrance for the appellate or cassation judges to argue that the guilt of the accused "has not been sufficiently proven" in the manner and with lawful evidence (Yahya Harahap 2000). The second reason is that usually if the guilt of the accused has been proven in accordance with the means of lawful evidence, the proof of guilt will help and encourage the conscience of the judge to believe the guilt of the accused. Perhaps at the first level judges as ordinary people, may be affected by the nature of prejudice. But for an honest and vigilant judge, his prejudice only precedes a conviction, if it is valid evidence.

Article 183 of the Code of Criminal Procedure states that "a judge may not convict a person unless by at least two valid pieces of evidence he or she has a conviction that a crime actually occurred and that the accused is guilty of committing it". When compared to article 294 HIR, hamoir along with the sound and intent contained therein. Article 294 HIR states that "no punishment shall be imposed on any person if the judge is not convinced of the defendant's guilt by means of statutory evidence that a criminal act has indeed occurred and that it was the accused who wrongly committed the act" (Ginting et al. 2023). From the sound of the article, both those contained in article 183 of the Criminal Procedure Code and those formulated in article 294 HIR, both adhere to the system of "negative statutory evidence" The difference between the two lies only in the emphasis alone (Martodidjojo 1997). Article 183 of the Code of Criminal Procedure requires proof according to legal means and evidence, more emphasis is emphasized in its formulation. This can be read in the defendant "at least two pieces of valid evidence". thus article 183 of the Code of Criminal Procedure regulates to determine the guilt or innocence of a defendant and to bring a crime to the accused there must be several namely:

A. his guilt was proven by at least "two pieces of valid evidence"
B. upon proof by at least two pieces of valid evidence, the judge "obtains confidence" that the crime was indeed committed and that the defendant is guilty of committing it.

When viewed from the provisions of the 1937 Staatsblad Number 350 which is the only provision that provides the

definition of visum et repertum, then as evidence visum et repertum includes proof of letters because the information made by the doctor is written form (Dhanis Taufiqurrahman Suhardianto and Muhammad Rusli Arafat 2022). In addition to the provisions of the 1937 Staatsblad Number 350 which is the legal basis for the position of visum et repertum, other provisions that also provide the position of visum et repertum as evidence of letters are Article 184 paragraph (1) point c of the Code of Criminal Procedure regarding letter evidence and Article 187 point c which states that:

> The letter referred to in Article 184 paragraph (1) point c, made on oath of office or confirmed by oath is a certificate from an expert containing an opinion based on his expertise on a situation formally requested from him.

While the material requirements of visum et repertum are related to the contents of the visum et repertum, which is in accordance with the reality that exists in the body of the victim being examined. In addition, the content of the visum et repertum does not contradict medical science that has been tested for truth (Shilvirichiyanti 2021).

Visum et Repertum is a written statement made by a doctor at the written request (official) of the investigator about a medical examination of a human person either alive or dead or any part of the human body, in the form of findings and interpretations, under oath and for judicial purposes (Aling 2023). Visum et Repertum is solely made so that a criminal case becomes clear and is only useful for the purposes of examination and for justice and is intended for judicial purposes. In addition, Visum et Repertum is created and needed within the framework of law enforcement and justice efforts. In another sense, what applies as a consumer or user of visum is law enforcement, in order to make clear a criminal case that has occurred. Visum et repertum is included as evidence of expert testimony given by judicial doctors as explained by Article 184 of the Code of Criminal Procedure. Expert testimony in the form of Visum et repertum can be evidence in a trial but does not bind the judge to use in deciding a criminal case. However, in criminal cases involving the human body, it turns out that the judge based his verdict on Visum et repertum (Ali Achmad 2015).

Those authorized to request expert information are investigators and auxiliary investigators as stated in article 7 (1) point h and article 11 of the Code of Criminal Procedure. The investigator referred to here is an investigator in accordance with article 6 (1) point a, namely an investigator who is an official of the Indonesian State Police (Ely and Simangunsong 2023). This investigator is the sole investigator for general crimes, including crimes related to human health and soul. Because visum et repertum is expert information on crimes related to human mental health, civil servant investigators are not authorized to request visum et repertum, because they only have authority in accordance with the laws on which each article 7 paragraph (2) of the Code of Criminal Procedure is based. Legal sanctions if the doctor refuses the investigator's request, can be subject to criminal sanctions Article 216 of the Criminal Code:

> "Whoever wilfully disobeys an order or request made according to law by an official whose duty it is to supervise something, or by an official based on his duty, is similarly empowered to investigate or examine a criminal offence; Similarly, whoever intentionally prevents, obstructs or obstructs action in order to carry out the provisions, shall be punished with

imprisonment for not more than four months and two weeks or a fine of not more than nine thousand rupiah".

Visum et repertum also contains information or doctor's opinion about the results of the medical examination contained in the conclusion section (Herlin Sobari and Maharani Nurdin 2022). Thus, visum et repertum as a whole has bridged medical science with legal science so that by reading visum et repertum, it can be clearly known what has happened to someone, and legal practitioners can apply legal norms to criminal cases involving the human body and soul (Pratama, Dewi, and Karma 2020). If the visum et repertum has not been able to clear up the matter in court, the judge may request expert testimony or submit new material, as stated in the Code of Criminal Procedure, which allows examination or re-examination of evidence (Prasetyo Teguh 2020), if a reasonable objection arises from the defendant or his legal counsel to a result of the examination, This is in accordance with article 180 of the Code of Criminal Procedure (Karim Nasuition 1976).

It can be concluded that an evidence must be considered incomplete, if the judge's conviction is based on evidence unknown in law or on insufficient evidence, for example by the testimony of only one witness, or because the belief about itself does not exist (Annisa Nurfadhila Nasarudin and Muhammad Rusli Arafat 2023). The judge does not obtain such convictions from circumstances known to him from outside the court, but must obtain them from valid evidence available at trial, in accordance with the conditions prescribed in law, for example in the case of the defendant not confessing, with testimony from at least two persons who have been validly sworn (Nuralinda and Rusli Arafat 2022).

Materiil and formil requirements in making visum et repertum

In practice, Visum et Repertum must meet two conditions, namely

Formil requirements :

a. Pro yustitia is posted on the top left which means "for the benefit of the court". This word is not included, the Visum must be done on stamped paper.
b. Contradictions that contain: identification of the maker of Visum et Repetrum, Identification of the body / party requesting Visum et Repertum, Identification of victims.

Materiil requirements :

Visum et Repertum in the form of dictum with the following reporting:

a. Explanation / disclosure of the results of the examination of objective facts from the doctor's examination as long as the examination is best based on the external or internal examination of the victim in language that is easily understood by non-doctors.
b. In conclusion, in this section is applied the theory of causal relationships (de leer van de causaliteit), and in this section is the subjective part Visum et repertum because it depends on the opinion or personal feelings of a doctor / expert.

The final part is the conclusion stated in the Visum et Repertum that the Visum et Repertum has been made on oath. Information or clarity that needs to be conveyed by the doctor through Visum et Repertum mentioned above, then in special cases other clarity is needed, namely:

1. In the case of shooting: whether the wound on the victim was a gunshot wound: an entry gunshot wound or an exit gunshot wound, the diameter of

the bullet and the caliber and type of firearm used, the shooting distance, the direction of shooting, the position of the victim and the position of the shooter, the number of times the victim was shot and whether the gunshot wound caused death and which gunshot wound caused death if there was more than one incoming gunshot wound.

2. In the case of stabbing: the type of weapon and the estimated maximum width of the sharp weapon that entered the victim's body.
3. In the case of murder will: whether born alive or dead, whether there are signs of care, maturity and viability.
4. In case of mobbing: which type of violence or type of injury and what type of weapon caused death to the victim (principle: there is only one cause of death)
5. In the case of traffic accidents: the cause of the accident is seen from the victim factor (the victim who is drunk or under the influence of drugs), as well as the estimated period between the occurrence of the accident and death (survivability), which is associated with determining what factors caused the death, the accident itself or the delay in assistance provided due to obstacles in the transportation of victims and so on.

The results of the Visum et Repertum examination which stated that there were total to basic long lacerations due to blunt force on the hymen of the victim or victim witness, then the wound can be classified as a minor injury. It is said to be a minor injury because the injuries suffered by the victim or the victim's witnesses did not cause illness or hindrance in carrying out her work or livelihood, only that her virginity was lost. Minor injuries suffered by victim witnesses include the classification of first-degree injuries or class c injuries. The results of the examination of the victim and found that there was this type of injury indicate that there has been a sexual intercourse that occurred between the defendant and the victim and the type of injury to the victim has also met the standard requirements that have been set from medical criteria and from the aspect of criminal law normatively limitative.

Visum et Repertum can be a tool for expert testimony or letters (Constanzo 2006). It is said to be an expert testimony when a doctor or forensic expert verbally explains the results of the Visum et Repertum examination at the trial (Sofyan Andi 2016). Another case when it is said to be letter evidence is when the results of the examination are set forth in a written report and submitted to the court. In this case, Visum et Repertum is used as a letter evidence because the statement of the results of the examination of doctors or forensic experts has been written form.

4. Conclusion

That to achieve justice that has always been desired by the community, the visum et repertum is very helpful for judges in solving criminal cases, because the visum et repertum contains a doctor's information about the condition of a person's life and body as a victim of a criminal act can help the judge in giving consideration to determine the verdict. In evidence based on article 184 of the Code of Criminal Procedure, visum et repertum is included in letter evidence and expert testimony evidence. Visum as a letter

evidence in the form of written statements made by doctors in forensic medicine regarding medical examinations of humans made based on their science and under oath for the sake of justice. Visum et Repertum includes proof of letters made on oath of office, so that the letter has authenticity. Expert information can be obtained from his opinion or thoughts about a matter or the circumstances of the matter concerned and can also be obtained from the submission of actual facts. In the examination at the Court, for the judge the position and role of experts is very important. Every person who is asked for his opinion as a judicial medicine expert or doctor is obliged to give expert testimony for the sake of justice.

5. References

Ali Achmad. 2015. *Menguak Tabir Hukum*. Jakarta: Kencana.

Aling, Daniel F. 2023. "Peranan Visum Et Repertum Dalam Pembuktian Tindak Pidana." (2).

Andi Hamzah. 2017. *Hukum Acara Pidana Indonesia*. Edisi Kedua. Jakarta: Sinar Grafika.

Annisa Nurfadhila Nasarudin, and Muhammad Rusli Arafat. 2023. "Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan." *Jurnal Ilmiah Wahana Pendidikan* 9(14):131–42.

Constanzo, Mark. 2006. *Aplikasi Psikologis Dalam Sistem Hukum*. Yogyakarta : Pustaka Pelajar.

Dhanis Taufiqurrahman Suhardianto, and Muhammad Rusli Arafat. 2022. "Kekuatan Pembuktian Visum et Repertum Dalam Proses Persidangan Perkara Pidana Ditinjau Dari Hukum Acara Pidana." *Jurnal Hukum Positum* 7(1):83–94.

Eddy OS, Hiariej. 2012. *Teori Dan Hukum Pembuktian*. Jakarta: Erlangga.

Ely, Sofiah, and Frans Simangunsong. 2023. "Peranan Otopsi Forensik Dalam Mengungkap Tindak Pidana Pembunuhan Oleh Kepolisian Republik Indonesia." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3(2):1508–22.

Ginting, Yuni Priskila, Aksel Stefan Wenur, Cindy Destiani, Michelle Clarisa, Candra Halim, Raden Ayu, Rani Mutiara, and Steffi Lauw. 2023. "Pembuktian Visum Et Repertum Dalam Tindak Pidana Pemerkosaan." 02(09):782–97.

Hakim, Lukman. 2019. *Asas-Asas Hukum Pidana*. Yogyakarta: Penerbit Deepublish.

Herlin Sobari, and Maharani Nurdin. 2022. "Peran Psikiatri Dalam Penegakan Hukum Sebagai Visum Et Repertum ." *Jurnal Ilmiah Wahana Pendidikan* 8(15):276–82.

Junardi, Ismail Ali, and Andi Sulfiati. 2023. "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Penganiayaan." *LEGAL: Journal of Law* 2(1):43.

Karim Nasuition. 1976. *Masalah Hukum Pembuktian Dalam Proses Pidana*. jilid 1.

Langie, Yuke N., Djemi Tomuka, and Erwin G. Kristanto. 2015. "Peran Visum et Repertum Dalam Penegakan Hukum Pidana Pada Kasus Kematian Tidak Wajar Di Kota Manado." *Jurnal Biomedik (JBM)* 7(1). doi: 10.35790/jbm.7.1.2015.7292.

Mario Lasut. 2016. "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Pembunuhan Berencana." V(3):94–102.

Martodidjojo, Soetedjo. 1997. *Ilmu Kedokteran Kehakiman*. Jakarta:

Ghalia Indonesia.

Marzuki, Peter Mahmud. 2017. *Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana.

Nuralinda, Zahrotunnisa, and M. Rusli Arafat. 2022. "Pertanggungjawaban Hukum Pidana Terhadap Pelaku Pemalsuan Alat Bukti Visum Et Repertum." *Jatiswara* 37(2):205–11. doi: 10.29303/jtsw.v37i2.409.

Prasetyo Teguh. 2020. *Hukum Pidana*. Edisi Revisi. Jakarta: Rajawali Pers.

Pratama, Teo Dentha Maha, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma. 2020. "Tindak Pidana Pemerkosaan Dalam Perspektif Perlindungan Hukum Perempuan." *Jurnal Interpretasi Hukum* 1(2):191–96. doi: 10.22225/juinhum.1.2.2463.191-196.

Saldi Isra. 2014. *Metode Penelitian Hukum*. Bandung : CV. Pustaka Setia .

Shilvirichiyanti. 2021. "Akibat Yang Timbul Apabila Visum Et Repertum Memiliki Perbedaan Dengan Pengakuan Seorang Terdakwa Dalam Kasus Pembunuhan Disertai." *Jurnal Kodifikasi* Volume 3(No 1).

Sofyan Andi, Azisa Nur. 2016. *Hukum Pidana*. Ceakan Kes. Makassar: Pustaka Pena Pers.

Sumaidi. 2015. "Kekuatan Pembuktian Visum Et Repertum Bagi Hakim Mempertimbangkan Putusannya." *Jurnal Lex Specialis* (No 21).

Sutriadi Deawit, and Simangunsong Frans. 2022. "Dinamika Persinggungan Hukum Administrasi Dan Hukum Pidana Di Indonesia." *Jurnal Inovasi Penelitian* 3(2):5013–28.

Yahya Harahap. 2000. *Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika.