



EVIDENCE OF VISUM ET REPERTUM AS A BASIS FOR PROSECUTION OF SERIOUS VIOLENCE CASES

Kristiyadi¹, Suyatno²

Universitas Sebelas Maret ^{1,2}
christiadisutirta@gmail.com¹, suyatno_sasda@staff.uns.ac.id²

Info Artikel :

Diterima : 5 Agustus 2022

Disetujui : 16 September 2022

Dipublikasikan : 25 Oktober 2022

ABSTRAK

Kata Kunci :
Penganiayaan Berat;
Tuntutan Pidana; Visum et Repertum

Tujuan penelitian ini adalah untuk menganalisis bentuk persamaan Visum et Repertum menjadi suatu alat bukti yang sah dalam tindak pidana penganiayaan berat serta untuk mengkaji kekuatan pembuktian visum sebagai alat bukti dalam menentukan tuntutan terhadap kasus penganiayaan berat. Visum et Repertum merupakan salah satu alat bukti yang penting dalam kasus penganiayaan berat karena dapat membantu hakim dalam pertimbangan mengambil keputusan. Penelitian ini menggunakan metode hukum normatif yang mana mempergunakan pendekatan perundang-undangan, konseptual, dan penalaran logika deduktif induktif. Sumber bahan hukum penelitian ini bersumber dari bahan hukum primer yang berisikan KUHP, KUHPA, UU tentang Pokok Kekuasaan Hakim, UU tentang Kejaksaan RI, UU tentang Kepolisian Negara RI. Bahan hukum sekunder yang terdiri dari: literasi cetak maupun elektronik yang relevan dengan kajian ini. Teknik pengumpulan data menggunakan: teknik kepustakaan dan teknik mencatat, data yang terkumpul kemudian dianalisis secara sistematis melalui argumentasi yang dibentuk dari logika hukum. Penelitian ini menemukan bahwasannya Visum et Repertum tidak dijelaskan langsung dalam KUHPA, tetapi alat bukti dari pemeriksaan yang berkaitan dengan tubuh atau nyawa ini dianggap sah dan dapat menjadi pertimbangan bagi hakim dalam memutuskan suatu perkara dengan adanya alat bukti yang sah

ABSTRACT

Keywords :
Serious Persecution;
Criminal Prosecution;
Visum et Repertum

The purpose of this study was to analyze the form of the Visum et Repertum equation as a valid evidence in the crime of serious maltreatment and to examine the strength of the proof of the post-mortem as evidence in determining the prosecution for cases of severe maltreatment. Visum et Repertum is one of the most important pieces of evidence in cases of severe abuse because it can assist judges in making decisions. This study uses a normative legal method which uses a statutory, conceptual, and inductive logical reasoning approach. The sources of the legal materials for this research are primary legal materials which contain the Criminal Code, the Criminal Procedure Code, the Law on the Principal Powers of Judges, the Law on the Indonesian Attorney General's Office, and the Law on the Indonesian National Police. Secondary legal materials consisting of: print and electronic literacy relevant to this study. Data collection techniques used: library techniques and note-taking techniques, the data collected was then analyzed systematically through arguments formed

from legal logic. This study finds that Visum et Repertum is not directly explained in the Criminal Procedure Code, but evidence from examinations relating to the body or life is considered valid and can be considered by judges in deciding a case with valid evidence.

INTRODUCTION

The legal system will always exist side by side with social life because the law will never be separated from life. However, it is not uncommon for various problems to occur even though there are laws that have regulated matters contained in a community group, but crimes are still rampant in this country, such as criminal acts of persecution. Persecution is a behavior that causes pain or injury to another person's body on purpose (Risnayani, 2013). Persecution also has several types, one of which is severe abuse in which the persecution causes serious injuries.

Sanctions will always be used to punish crimes that have been proven guilty to the perpetrators of the crime. Decisions issued by judges with permanent legal force can indicate that criminal sanctions have taken effect. A decision can occur because of the emergence of legal facts before the trial. The disclosure of a fact in the trial is a legal fact. The testimony of the defendant and witnesses under oath is part of the legal facts. However, in a criminal act of persecution, the use of witness testimony and the defendant still has Kendal because of the possibility of false information or difficulties caused by witnesses who are not willing to attend. Therefore, evidence, one of which is Visum et Repertum, can be a reinforcement in a trial.

Visum et Repertum (hereinafter referred to as Visum) is used in the trial by parties who have the authority such as investigators which are evidence of written reports. The Visum contains a statement by a medical expert based on an agreement between the Indonesian Judges Association (IKAHI) and the Indonesian Doctors Association (IDI) in 1986 in Jakarta which is used to differentiate the Visum and other certificates (Idries, 2009). Visum itself has a role in being an assistant tool for prosecutors to consider charges that will be imposed on the defendant and the judge's decision on a criminal case will be assisted by material truth proof. This can happen because in the examination of criminal cases where a medical science is needed in examining the human body, the knowledge of doctors is needed because the prosecutor does not study anatomy.

The need for a doctor of justice in examining injuries or health problems and even the loss of human life is very necessary in the investigation of criminal cases. From this, a doctor of justice is needed to assist in the investigation process. Based on the evidence submitted or the examination carried out by expert doctors of the judiciary can assist in making a report on the examination. However, what is still happening to most people in Indonesia is that there is still no confidence in the results of the Visum from the examination of the wounds or corpses caused by the persecution and the importance of the Visum in these cases. As an example in online news regarding cases of sexual violence (rape) experienced by UGM students, the Special Region of Yogyakarta who was allegedly raped during KKN in 2017 refused to do a post-mortem, thus hampering the ongoing investigation process.

Every time there are reports of alleged acts of abuse or rape and sexual abuse, the victim should also go directly to the doctor or hospital for a Visum. Therefore, Judicial Medicine is very much needed by law enforcers in determining the causal relationship of an action that produces a result. It is on the basis of the use of medical science in court that it is called Judicial Medicine (Waluyadi, 2005). Therefore, this study aims to analyze

the form of the *Visum et Repertum* equation as a valid evidence in the Crime of Serious Persecution and to examine the strength of *Visum's* evidence as evidence in determining prosecutions for cases of severe persecution. The most important thing in the judicial process, this process is to seek material truth, namely the complete truth of a criminal case (Nisa & Krisnan, 2015).

RESEARCH METHOD

In this study, normative legal methods are used which can assist in the assessment obtained from literature studies on the basis of legal materials. In addition, solving it requires a conceptual approach, legislation, and deductive or inductive reasoning in order to obtain objective truth. In this study, the sources of legal materials are classified into three namely primary, and secondary which contains the Criminal Code, the Criminal Procedure Code, the Law on the Principal Powers of Judges, the Law on the Indonesian Attorney General's Office, the Law on the Indonesian National Police, print and electronic literacy related to the topic. The data collected in this study comes from reading literature and from documented regulations with related topics which will later be identified and classified through file recording. Once collected, the data will be analyzed by normative analysis which can be interpreted and then analyzed systematically through arguments formed from legal logic with a deductive/inductive basis presented descriptively in the research.

RESULT AND DISCUSSION

Visum is closely related to Legal Medicine or also known as Forensic Medicine. Objectivity is expected to be present in decision making in a court on the basis of using judicial medical science from reports on what actually happened. In general studies, evidence arises from the word "evidence" which means that an event can bring out the truth (Soedirjo, 1985). The law of evidence is a legal system that regulates evidence which uses legal evidence. An effort to collect evidence functions in an investigation which provides assistance to investigators.

Visum is a substitute for *Corpus Delicti* which is an objective discovery made by an expert doctor in a tool to prove the truth of a situation or event that occurred based on an examination on the basis of the existing facts. Through the analysis of the expert with the expertise of the expert, it is hoped that this means of proof will become the right conclusion. *Visum* is basically a medical science, where the *visa* itself has many types. The types of *visas* are for living people and corpses. In the *Visa* for living people are classified as instantaneous, temporary, and advanced. As for the bodies, they are divided into *Visum* of the Place of Case (TKP), exhumation of bodies, psychiatry, and evidence.

It is necessary to fulfill two conditions so that the *Visum* is valid to be considered evidence, namely the formal requirements in making the *Visa* based on the instructions of the National Police Chief No. Pol: Ins/E/20/IX/75 and the material requirements for making a *Visum* which contains the results of the *Visum* that are in accordance with the conditions of the examination on the body being examined and have been verified through medical science. Meanwhile, in the making there are several parties who can apply for a *visa*, namely investigators or police with the lowest rank, namely *Ipda* or *Bripda*, criminal judges, civil judges, and religious judges. Meanwhile, for parties who can make a *Visum* which is regulated in accordance with Article 133 of the Criminal Procedure Code, namely Judicial Medical Experts or Doctors who study clinical forensics and forensic pathology in learning and take an oath of office.

Through the previous explanation, the Visum does not have to be made by a forensic specialist, but in accordance with Article 133 of the Criminal Procedure Code which explains that the Visum made by a non-forensic doctor is only referred to within the guidelines, while the legal one is called an expert statement, namely the Visum issued by a forensic specialist. This is also reinforced by the decision of the Minister of Justice on No. M.01.PW.07.03 of 1982 which explains that the making of statements by non-expert doctors is evidence of instructions. Visum in proving the Crime of Serious Persecution is domiciled as legal evidence according to Article 184 paragraph (1) letter b and letter c of Law no. 8 of 1981 KUHAP.

With the application of the Criminal Procedure Code, various kinds of valid evidence related to evidence and examination in courts which include expert information in the form of evidence make it more complete. Visum is not explained or regulated directly in the Criminal Procedure Code, but the mention of expert testimony and documentary evidence in Article 184 in which the Visum is also part of the evidence from a specialist doctor who has been sworn in.

In addition to the Criminal Procedure Code, Visum is also explained through the following legal bases, namely Staatsblad (State Gazette) No. 350 of 1937, Rechts Reglement Buitengewesten Article 397 (3) in conjunction with Article 492 paragraph (4), and the Supreme Court Decision dated November 15, 1959 No. 10 K/Cr/1959. Not only as a certificate from an expert, but the Visum can turn into evidence when the Visum examiner is presented in court to provide an explanation for the information made.

In accordance with what is written in the KBBI, the word "role" means that it is part of the task that must be carried out. Through this understanding, Visa can also be a task that must be carried out. The presence of a Visum which contains information from an examination by a specialist doctor of evidence in a criminal case makes it a valid evidence, evidence of detention of a suspect, and material for judge's consideration.

In connection with the above, it is necessary to search for the material truth in the examination of criminal cases, in which every matter that has a connection with a criminal case must be clearly searched for the truth, which also applies to the Visum itself. Visum appears to explain the existing case from evidence and real facts in order to provide assistance in the examination and prove that the defendant has violated and committed a crime.

On the basis of the existing legal system, Visum appears to assist law enforcement officers in resolving criminal cases. This function is in accordance with what has been described in the Criminal Procedure Code in the role of facilitating and clarifying the disclosure of a criminal case. Investigators also use the Visum in the news of the examination of criminal cases and as a complement which will later be transferred to the public prosecutor in a series of demands.

In Article 13 of the Criminal Procedure Code, it is regulated that the existence of a public prosecutor is the duty of the prosecutor which is strengthened by article 137. The authority possessed by the public prosecutor is to send charges against someone who is accused of committing a crime to the competent authorities. Article 14 of the Criminal Procedure Code also explains that prosecution is indeed one of the duties of the public prosecutor by providing the defendant's case file in the District Court so that the judge can make a decision on the indictment. In accordance with Law no. 6 of 2004 article 1 paragraph 1 which states that the Indonesian Prosecutor's Office is a state instrument that has the authority to become a public prosecutor because of its position as law enforcement.

Visum can also be considered as a substitute evidence for prosecutors because the evidence is related to the human body. As already explained, the tool in achieving a reality on various facts from the evidence that has been collected is a function of the Visum. This is also a material consideration for making appropriate decisions on the basis of facts which can be used to support the judge's statement (Soeparmono, 2016).

Prosecutors as public prosecutors and police as investigators who have cooperation as law enforcement officers. In resolving a criminal case on the basis as determined by the Criminal Procedure Code for the process, the prosecutor finds obstacles in the form of cases that have not yet been sentenced, where the majority of these problems originate from the number of cases that have stopped in pre-prosecution (Gesi Radja et al., 2022) . Incomplete examination reports from investigators make the public prosecutor experience obstacles in which the news must be completed again by investigators.

The indictment is indeed difficult to make because the prosecutor must have thoroughness in order to avoid mistakes in his demands. When in a case of persecution that can cause death, the Visum will definitely be used by the prosecutor in his prosecution. Visum indeed will not have any influence on the burden that will be given in the sentence that is decided, but Visum is able to provide strength in the indictment by explaining the condition of the injuries suffered by the victim. When facing a case of persecution that results in loss of life, the prosecutor will not really need the Visum results found, but the articles used will change from persecution to murder cases. So the things that will be considered by the prosecutor are usually in the form of whether there is a desire for the defendant for the wrong he has done, the desire to apologize or compensation to the victim's family, or how the attitude of the defendant will affect the course of the trial or not.

The focus of the prosecutor will shift from how the victim was mistreated to the consequences of the defendant's mistreatment. As explained above, the prosecution could have filed a murder charge, judging by the circumstances such as whether the defendant met/made the victim die carrying a sharp weapon because from the prosecutor's analysis it could be arrested as a murder intent. In addition, things will change again if the victim is a child or a rape victim where the strength of the Visum is sufficient to make the defendant proven to have committed a crime.

The material truth can be created by the public prosecutor if there are facts and evidence for the indictment. It takes several stages so that material truth can be created which contains processes such as investigations, investigations, prosecutions, and examinations in court to assist in deciding what claims should be made. This process must be carried out because the judge will make a decision on the basis of material truth that can be tested from the evidence submitted in accordance with current regulations.

Actually, if the evidence shown in the court is replaced from the principles of criminal procedural law, the position of the value it has is the same. Therefore, further assessment of the various evidences will be reviewed by the judge in court. Visum itself also has a strong value because it comes from expert testimony that has been bound by oath in the form of an authentic letter which can show that this evidence has a high value in proving it. However, unlike civil procedural law, its use in criminal procedural law is different.

The possibility of fabrication of the Visum results is quite small compared to other evidence when juxtaposed because of the objectivity of the report. Therefore, if the victim has an impact on injury, the emergence of health problems to the loss of life, the Visum

becomes the basis for judges' consideration in criminal justice. Even so, the Visa for judges is not something that is mandatory and binding. So if the Visum is not available in a trial or examination, then the process will still be continued by the judge (Setiady, 2009).

CONCLUSION

The normalization of Visum et Repertum becomes legal evidence in the Crime of Serious Persecution where Visum et Repertum is a statement in the form of a letter issued by a forensic doctor or other expert doctor to become a valid and quite clear evidence in Article 133 and Article 184 of the Criminal Procedure Code. which is the legal basis of the Visum et Repertum itself, only in these Articles it does not directly explain the Visum et Repertum. Visum et Repertum in the criminal process as a substitute for Corpus Delicti where the results of the doctor's examination as outlined in the Visum et Repertum are evidence or facts of a crime related to the body, life and health of humans. The strength of proof Visum et Repertum is a valid evidence in Article 184 paragraph (1) letter c no 187 letter c KUHAP is included in the category of documentary evidence and can be used as expert testimony, in addition to being legal evidence Visum et Repertum has a role as evidence detention of suspects and as material for judges' consideration. Visum can be a consideration for judges in deciding a case with the presence of valid evidence accompanied by a belief in determining the material truth that a crime has occurred and proving that the defendant is guilty of his actions.

Therefore, the Government is expected to be able to make new regulations governing the Visum et Repertum in particular, so that they can clearly know what the intent and purpose of Visum et Repertum are, for the community itself is expected to be able to understand more deeply the usefulness of the Visum where there are still many who sometimes do not want to agree or object when there are bodies that want an autopsy when he died. For victims of severe abuse, it is hoped that they will be able to expedite the trial by providing evidence in the form of a Visum because it can strengthen the charges and become a consideration for judges in deciding criminal cases.

REFERENCES

- Azis, I. W., & Hamsir. (2022). Peranan Visum Et Repertum Sebagai Alat Bukti Terhadap Tindak Pidana Penganiayaan Berat. *Alauddin Law Development Journal*, Vol.4(1).
Djambatan.
Idries, A. M. (2009). *Pedoman Praktis Ilmu Kedokteran Forensik; bagi praktisi hukum*. Sagung Seto.
Nisa, Y. K., & Krisnan, J. (2015). Kekuatan Visum Et Repertum sebagai Alat Bukti dalam Mengungkapkan Terjadinya Tindak Pidana. *Varia Justicia*, Vol.11(2).
Radja, L. M. A. G., Sugiarta, I. N. G., & Karma, N. M. S. (2022). Kewenangan Kejaksaan dalam Melakukan Penahanan terhadap Pelaku Tindak Pidana Ujaran Kebencian di Sosial Media. *Jurnal Konstruksi Hukum*, Vol.3(1), 65.
Risnayani. (2013). *Teknologi Informasi dan Komunikasi*. PGSD Fakultas Keguruan dan Ilmu Pendidikan.

- Setiady, T. (2009). *Pokok-Pokok Ilmu Kedokteran Kehakiman*. Alfabeta, Bandung.
- Soedirjo. (1985). *Jaksa dan hakim dalam proses pidana*. Jakarta: Akademika Pressindo.
- Soeparmono, R. (2016). *Keterangan Ahli dan visum et repertum dalam aspek hukum acara pidana*. Mandar Maju, Bandung.
- Universitas Tadulako.
- Waluyadi. (2005). *Ilmu kedokteran kehakiman : dalam perspektif peradilan dan aspek hukum praktik kedokteran*.
- Yusuf, M., Karim, M. S., & Badaru, B. (2020). Kedudukan Visum Et Repertum Sebagai Alat Bukti Dalam Dakwaan Penuntut Umum Terhadap Tindak Pidana Penganiayaan Berat. *Journal of Lex Generalis, Vol.1(2)*.