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Visum Et Repertum and Forensic Examination of a Rape Case as a Sexual Crime Towards an Indonesian Migrant Worker in Taiwan

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Abstract

This research aims to describe the forensic examination in the handling of the sexual crime which happened to an Indonesian migrant worker in Taiwan. It is well known that the level of human rights protection in Taiwan is quite good compared that of the other destination countries for migrant workers. Yet, is the good level of human rights protection balanced also with medical treatment or medical forensic examination of the Indonesian migrant worker sexual crime victim who worked in that country. This research uses a non-doctrinal method. This is because the law is not only a normative theory. Yet, it also views the sociological aspects which happen in the society. The research results show that Taiwan is a country with a worrying rate of sexual crime. Yet, it has underwent good procedures in forensic examination, including in visum et repertum and other examinations for sexual assaults which happened to migrant worker victims. The visum et repertum preliminary examination which applies in Taiwan is done through a special unit which is provided for sexual assault victims. The results are acknowledged as evidences of sexual crime. It will be directly coordinated with the Taiwan special unit of justice for sexual crime.

Keywords: *Forensic, Sexual Crime, Migrant Worker*

Introduction

Sexual crime is a serious crime which causes prolonged physical or psychological trauma if it is not handled properly, not only for the victims but the effect can also befall upon the victims' family.⁽¹⁾

The number of sexual crimes in Taiwan is considered high and the rate tends to increase every year. In 2017, the number of sexual crimes reported to the Taiwan women's protection bureau was 14.217 cases, and it increased 50 cases to 14.267 cases in 2018. Although in 2018, a special movement for the protection of sexual crimes victims has been formed with the "me too" movement, which is the slogan of a global movement

in the protection of sexual crimes victims, in which the Taiwanese government has actively participated in this global campaign, but it seems unable to reduce the reported number of sexual crimes cases in Taiwan.⁽²⁾

Sexual violence which occurs to Indonesian migrant workers in Taiwan each year is no less than 100 cases, which is usually carried out by the employers, the employer's close relatives and their own employment brokers. During the last 6 years since 2012 – 2018, there are 633 cases of sexual violence which have befallen to Indonesian migrant workers.⁽³⁾

Sexual violence or crime is indeed the crime that has been the highly reported, but the number of cases that are successfully handled and processed until tried and sentenced is tiny, especially if the case happened to Indonesian women migrant workers in Taiwan (4). The moral factor that they still believe is that people who become victims of sexual violence are so shameful

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and dirty hence they are afraid and very embarrassed to report it⁽⁵⁾.

Forensic visum et repertum examination has an effective time span of 72 hours so that if the crime is not handled as soon as possible, namely in the golden time where the time span is 72 hours after the rape, it will be arduous to find the evidences needed⁽⁶⁾. Since these female migrant workers usually report the assault weeks or years after it happened, hence the perpetrators rarely get caught in the law, except for one phenomenal case that has been recorded to successfully enter the court and the perpetrator was severely sentenced to 7 years and 10 months of imprisonment⁽⁷⁾.

The perpetrator is a member of the city council in Hualien, Taiwan. He committed a violence against an Indonesian migrant worker who was employed as a nurse at his house. Even though the case was appealed to the Taiwanese Supreme Court by the perpetrator, the court of appeal and the Taiwanese Supreme Court still rejected it.⁽⁸⁾

Most of the sexual crime's perpetrators escaped the law due to the lack of knowledge from the victims and the response from law enforcement officials themselves. Most perpetrators will try to eliminate the evidences by threatening the victims not to report or order them to bathe in order to remove the traces of sexual intercourse on the victim's body, thus making it difficult for the law enforcers to carry out visum et repertum as a forensic effort, furthermore the victims who do not want to report immediately, will make the evidences disappear after 72 hours.⁽⁹⁾

Forensic medical science is a solution for the verification difficulty in ensnaring the sexual crimes perpetrators⁽¹⁰⁾. With forensic medical science, the law that was still in the dark in finding or ensnaring the perpetrators can find a bright spot in allowing the perpetrators to be ensnared by the law.⁽¹⁾

Rape is an act of violence which the sexual intercourse is not on the basis of mutual consent but it is forced. Rape is difficult to prove legally even though there may have been the evidences collection and examination, unless forensic test is carried out⁽¹¹⁾. In the Taiwanese Constitution which is the criminalization basis for rape, it is stated that "anyone who with violence or threat forces a woman without marriage relations to have sexual intercourse with him and because of his offense of rape, is sentenced with an imprisonment up

to 12 years".⁽¹²⁾

From here, the verification that the intercourse happened must be proven first thus to be called a rape. While to verify it, one of ways is by identifying the presence of the perpetrator's sperm in the victim's body through a forensic test conducted in a more specific area in her vagina. However, it needs to be understood that the sperm can only live in the vaginal cavity for a maximum of 3 days or 3x24 hours. While in a dead state, the sperm can still be found or remain in the vagina for a maximum of 7 days or 7x24 hours.⁽¹³⁾

It will be difficult to prove the rape if after a crime has been committed by the perpetrator, the victim then does not report it within a specific timeframe so that it becomes difficult in proving through visum et repertum⁽¹⁴⁾. Not to mention if after the rape, the perpetrator forces the victim to clean the body and all the traces of rape that had occurred⁽¹⁵⁾.

So in such rather complex occurrences, forensic science may help revealing the occurrence of sexual crimes and the perpetrator of said case.⁽¹⁶⁾ Forensic Medicine has techniques which are commonly used in serious crimes such as murder and rape, based on automatic fingerprint recognition or search technology and automatic DNA database search or *visum et repertum* examination or forensic post and *ante mortem* which result major changes altogether on forensic medical techniques in the resolution of criminal cases.⁽¹⁶⁾

The role of Forensic Sciences in obtaining clarity for the sake of proving that a rape crime has indeed occurred is to examine the victim thoroughly in order to obtain the evidence through the examination of special forensic expert doctors for rape victims who have died and obstetricians for examination of victims. The results of the examination were written in the form of *visum et repertum* which would later be used as evidence in the category of letter evidence to be used in court plus the statements of the expert or doctor concerned (who conducted the forensic/*visum et repertum* test) to be present if necessary for questioning as an expert before a court hearing.⁽¹⁶⁾

The accuracy of a forensic doctor or forensic laboratory in analyzing victims to obtain evidence will determine the fairness which will be obtained by the victims and also the perpetrators⁽¹⁷⁾. Because if there has been found any errors or misdiagnosis in the forensic laboratory analysis conducted by certain doctors or

specialists, it may result in fatal consequences such as the perpetrators may be in released or they may be arresting the wrong person who did not commit the said crime.

Method

This study is a legal normative study using literature study. It discusses the *visum et repertum* and forensic examination of a rape case as a sexual crime towards an Indonesian migrant worker in Taiwan.

Finding and Discussion

The steps required to find evidences of sexual crimes such as rape in Taiwan against Indonesian migrant workers is similar to the general procedures applied for the other citizens, thus there is no specific exception and discrimination in law enforcement treatment in Taiwan in this case. As rape and sexual crime cases in Taiwan has indeed become major issue which is of a serious concern of the Taiwan government itself.⁽⁹⁾

The stages to find evidence through a forensic examination (18) in supporting further forensic analysis of victims of sexual crimes such as rape which befall upon migrant workers are as follows:

1. Investigating the crime scene by officer (police) stage

- Check the victim's condition whether it requires first aid, identify the victim's age, and analysis of alleged sexual accident scheme

- Identify the victim's body condition to check whether there are signs of violence

- The process of securing evidence and the crime scene from unauthorized persons

- The process of collecting evidence properly such as victim's pants and shirts, blood stains, mucus, scattered strands of hair, spots on fabric, et cetera.

- Examine the victim's expression

- Examine the condition of the victim's clothing (torn, broken, and such)

- Sending the victim by providing the *visum et repertum* form to the nearest hospital and have them refrained in washing themselves, escorted by police thereby the results would be more precise.

- If required, the victim may be isolated for the purpose of forensic examination.

2. The stage of collecting the evidences at the crime scene by the police

- Materials which involves chemicals, drugs, and alcohol

- Physical materials which includes clothing and cloth used to bind or lock the victim

- Biological materials such as sperm, blood, hair and mucus/saliva

3. The early stage prior conducting *visum et repertum* upon the victim by a doctor

- Mandatory written request from Taiwan prosecutors or a particular police who has been mandated

- The victim came with special police assistance

- There is a victim's consent, if the victim is unconscious, the consent may be obtained from the victim's family

- To be examined as early as possible to avoid the destruction of evidence

4. The examination of the victim

This victim examination is divided into two parts which are general and special examination. The general examination is as follows:

- The face, hair, and emotions of the victim

- Signs of the victim was intoxicated, unconscious, and/or was exposed to narcotics

- Signs of violence by examining all parts of the victim's body thoroughly

- Evidences which might be attached to the body of the victim who is allegedly belongs to the perpetrator

- Identification of the perpetrator's age

- Identification of height and weight

- Further identification if required

- Special examination includes (19):

- Genital skin, to check whether there's rupture or other signs of violence

- Eritema vestibulum examination
- Vaginal bleeding
- Vaginal abnormalities which might result in infection
- Hymen examination
- For female victims who have had intercourse prior the incidence of rape/sexual crime, would then be sought whether there has been another rupture for the women who have never given birth
- Examination of the presence of sperm cells left in the vagina
- Anal examination under the allegation of anal rape possibility, rupture/scar might be visible
- Laboratory tests such as blood tests, sperm fluid, pregnancy tests, examination of other diseases such as the potential of contracting HIV, Gonorrhea, and hepatitis. Also an examination of body fluids or hair which might belong to the perpetrator.

5. History/interview to the victims
6. Victim's physical examination
7. Assessment

There are two traumas which become the result of the assessment after the alleged presence of sexual crime, which are as follows:

- Non-genital trauma
- Genital Trauma

The aspect of sexual crime victim's physical examination, based on the procedures practiced by medical forensic in Taiwan are as follows: ⁽²⁰⁾

Table 1. The aspect of sexual crime victim's physical examination

Type of Examination	Total
Examination of Vital Signs	100%
Top to toe examination	97%
Genital examination	80%

Result of Top to Toe examination: ⁽²¹⁾

Table 2. The Result of Top to Toe examination

Top to Toe Examination	Total
Sign of abnormality	7%
No sign of abnormality	93%
Rejection of Examination Procedures	3%

Results of Genital Examination:

Table 3. The Results of Genital Examination

Genital Examination	Total
Wound found on the victim's genital	85%
No wound found on the victim's genital	15%
The victim did not carry out internal examination due to pregnancy	12%
Rejection of Examination	5%
Examination cannot be carried out due to other factors	3%

Margareth Stark states that the doctor's description of sexual crime may become the main reference of law enforcers in examining the victim. The doctors them selves will become the reference when they are present in court as expert witnesses. ⁽²²⁾

What was practiced in medical forensics in the handling of sexual crime towards migrant worker are actually almost the same as that which happens in Indonesia ⁽²³⁾. It's just that the support of technology in medical forensics and in the examination process in Taiwan is more advanced as they are equipped with more updated technologies.

Conclusion

Sexual crime in Taiwan is a serious crime which attracts special attention from the government. This is because the rate of cases is high. It worries the society. Moreover, there is a tendency for the increasing rates of sexual crime, which makes it become a serious crime in that country.

Rape is a form of sexual crime, which is also a crime against the human rights. This is because it causes severe and serious effects for the victim and the family. The evidencing process is also complicated and difficult to handle. Yet, it can be done through detailed forensic

examination, supported by technological advancement in Taiwan. This eases the process of catching the perpetrators. The evidences obtained in the Taiwanese medical forensics are valid evidences in court in front of the judges from the district to the Supreme Court level. They are to decide whether the defendant is guilty or not. Forensics may show the identity of the perpetrator/defendant in a sexual crime, as well as the pattern and type, the time, the location, the modus operandi and the motives of that crime.

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