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Visum Et Repertum in the Evidencing Process of Rape in Indonesia

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Abstract

Rape is part of sexual crime in which its evidencing process is rather complicated if the victims do not directly report the case, or if the law-enforcing apparatus are not quick in handling it. *Visum et repertum* is a medical-aspect report from the doctor after a written demand from the law-enforcing apparatus of authority for the sake of the case investigation and examination in court. Thus, from this definition, *visum et repertum* can only be proposed by the law enforcers or the authorities such as the police department, the lawyers, or the judges in court to the special doctors who are in charge of that field. The lawyers and the judges may ask for the *visum* through the police department. This research uses a normative doctrinal method. The research results show that the evidencing process of rape as a criminal act of sexual crime has some different difficulties compared to other general criminal acts. This is because there needs to be *visum et repertum* which will uncover the perpetrator and the time of occurrence, which will ease the process of searching for and finding the perpetrator. The obstacle of *visum et repertum* is that its evidencing process is the same as a letter of evidence in the aspect of power.

Keywords: *visum et repertum*; evidencing; rape; Indonesia

Introduction

In obtaining adequate evidences of a criminal case, the law enforcers are often faced with complicated cases, which require special skills. They might not even have the skills as they are not in their expertise. Thus, there needs to be other elements in the law enforcement to make a criminal case clear. This is the importance of the experts' role to find a complete material truth to complete the evidencing process of a case file, so that it may be judged and decided upon by the judge, as said by Soesilo.⁽¹⁾

Rape is a criminal action which is very different from other crimes. This is because the evidencing process

require a special aspect, which is only understood by medical forensic experts. Rape is an action of violence and a crime of decency which attacks someone's dignity. It is done by coercing someone to undergo sexual intercourse using violence or threat of violence. Because this intercourse must be proven on when it happened, and who did it, there needs to be information from experts of medical forensics to be expert witnesses in that case. They also need to make a report called *visum et repertum*. The expert witnesses will also be present in court if the case is under trial.

The aim of the expert information's presence is to assist the law enforcers in the levels of investigation, lawsuit, and trial to give valid evidences and medical information which can be trusted regarding the victim's condition, especially regarding evidences of sexual violence which comes with intercourse, both physical violence on the victim's body and the threats of violence which precede it.

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Visum et repertum is used to uncover rape cases as criminal cases with the aim to achieve truth. This will bring justice to the victims, as the *visum et repertum* is crucial in the medical forensics for evidence. This is the importance of *visum et repertum* for obtaining evidences.

The function of criminal law procedures according to JM. Van Bemmelen in Soedjono⁽²⁾ are as follows:

1. To find truth of the accusation in the criminal code violation through the state instruments;
2. The effort to find the perpetrators who violated those regulations/to find the perpetrators of the action;
3. The effort so that the perpetrator of that action is caught, and if needed, they should be imprisoned;
4. The collection of evidences or *bewijsmateriaal* which have been obtained to uncover the truth, to be given to the judges, and to bring the defendant to the face of the judges;

The view of the criminal law procedures is carried out to obtain a material truth, which is according to the aim of the criminal law, which is to find the material truth of a case. This is different from the civil law, which only looks for a formal truth. In the other hand, the evidences are taken from the body of the victim, such as traces of saliva, sperm in the victim's vagina, and evidences of violence such as wounds, bruises, etc. Such things are usually invisible to the eye. Only medical forensics can translate those evidences as well as to find them as carefully as possible, as opined by Idris and Tjiptomartono.⁽³⁾

There is a tendency in the Indonesian culture that the rape victims are considered as unclean and polluted creatures. This makes the victim, the family, the friends, and the acquaintances hesitate from reporting as they are ashamed. They are scared that the society will view them negatively. Thus, the report which is supposedly done as soon as possible is postponed. They may not even report until months or years. Thus, the evidences of rape are gone. This will make the evidencing process of that case difficult.

Finding and Discussion

The science of medical forensics calls *visum et repertum* only as *visum*. *Visum* is the latin word for *visa*, which means *to see*. Terminologically, *visum* means a sign from an evidence from anything found, agreed upon

and validated. Meanwhile, *repertum* means to report. Thus, terminologically, it means whatever is found from the doctor's examination to the victim or what has been validated by that doctor, as opined by Ranoemihardja.⁽⁴⁾

The report of that doctor, which is called *visum*, must be in the form of a written report from a forensics doctor who have done a medical swear, so that it may become a valid evidence in the court trials while judging the perpetrator, as explained by Ranoemihardja.⁽⁴⁾ *Visum et repertum*, which is part of medicolegal has three kinds, in which according to Soeparmono⁽⁵⁾ are explained as follows:

1. *Visum et repertum* for living people

There are three kinds of this *visum*, which are:

- a. *Visum et repertum* for wounds/direct *visum et repertum*/ definitive *visum et repertum*

The qualification of the wound written by the doctor on the conclusion of the *visum et repertum* is wounds of the first degree and group C wounds. The doctor is not allowed to write light violence wound as this is a legal term.

- b. Temporary *visum et repertum*.

This *visum* needs further care and treatment, thus it may become an obstacle for the victim's work.

- c. Continued *visum et repertum*.

This *visum* is done when the victim's wound is considered as healed. Another reason is when the victim is moved to another hospital, or if he/she is treated by a different doctor, or he/she goes home before the assigned time.

2. *Visum et repertum* for dead bodies.

This *visum* is done if the victim is dead. Thus, the doctors undergo *visum et repertum* for dead bodies. The doctor writes the wound qualification in the conclusion of the *visum et repertum*.

3. *Expertise*

This *visum et repertum* is specially done to check the condition of an item or the victim's body part. For instance, this may be blood, sperm, saliva, body tissues, hair, bone, etc. There are parties who say that expertise is not part of *visum et repertum*.

In asking for a *visum et repertum* report to the doctors, especially if the victim is still alive, the authorities or the apparatus must take note of these things regarding the rape victim, as described by Soeparmono:⁽⁵⁾

1. The demand for *visum* must be done in a written form, as opposed to the oral form;
2. The demand for the *visum* must be done directly to the doctor, without any mediators, including the media of postal service, and/or through the victim or the family;
3. It is not a past phenomenon, as it is included in the confidential information of the doctor's position;
4. The reason of why there must be the *visum*, and why he/she must be taken to the doctor;
5. The victim's identity and the identity of the apparatus who asked for the *visum* and date of *visum*.
6. The victim must be directly accompanied by the police or the lawyer.

The main aim of investigation is to collect as much data as possible, regarding the matter, evidences, and correct facts regarding the phenomenon. Based on these facts, the investigators will try to reexplain and describe what had happened. The incomplete facts will be looked for to complete the imagery of the occurrence, so that it will be complete.

The process of a criminal case investigation by the investigators is then informed to the general plaintiff with the giving of the Notification Letter regarding the Start of an Investigation (SPDP) based on Article 109 paragraph (1) of the Criminal Code. After the evidences are collected, and the alleged perpetrator is found, then the investigator will assess the defendant carefully. The investigator will see if the evidences are enough, to be bestowed to the general plaintiff or maybe it is not a criminal act. If the investigators think that the occurrence is not a criminal action, thus the investigation is stopped for the sake of law.

Then, in Article 8 paragraph (3), if the investigation is finished, then the investigator will give the case files to the general plaintiff. The handover is carried out through two stages. *First*, in the first stage, the investigator will only handover the case files. *Second*, in the second stage, if the investigation is considered to be complete, the investigator will bestow the responsibility for the

defendant and the evidences to the general plaintiff.

Then, in Article 110 paragraph (4) of the Criminal Code, the investigation is regarded as finished if within a 14 (fourteen)-day period, the general plaintiff does not return the investigation result files. Or, if before the determined period has ended, there has been a notification regarding that case from the general plaintiff to the investigators. After the investigation is regarded as finished, thus the investigator will bestow the responsibility regarding the defendant and the evidences to the general plaintiff, as explained by Prodjudikoro.⁽⁶⁾

The aim of an investigation is to obtain a decision from the general plaintiff, whether there is enough evidence to sue the alleged perpetrator. The criminal case process is a part of an integrated action of the law enforcement implementation. Between the investigation and the prosecution there is a strong relation. Even, the success of the prosecution in court trials cannot be separated from the results of the investigation.

The crime of rape means trying to coerce through violence, forcing with violence or overpowering. The definition of the criminal action of rape is wider than merely sexual intercourse. Yet, it may also happen in different forms, including the violation of another person's human rights, according to Van de Tas.⁽⁷⁾

According to Soetanjo, what is meant by rape is an effort to force a man's sexual desire to a woman, which violates the morals and law which apply. According to this definition, what is meant by rape on one side may be seen as an action of coercion to release one's sexual desire. And, on the other side, it can be seen as an action of violation towards the norms and the social order, said Soebroto.⁽⁸⁾

The definition of rape above shows that rape is a form of an action in which a man forces his sexual desires towards a woman. Both morally and legally, this action violates the norms of morality and decency in the society. Thus, it is clear and it is even an obligation to categorize rape as a type of criminal action.

The provisions which regulate the forms of action and imprisonment of rape is called *verkrachting*, which is regulated in Article 285 of the Criminal Code. It is written in that article that, "Whoever, with violence or threat of violence, forces a woman to undergo sexual intercourse with him outside of marital relations, is deemed to have underwent rape, with the sanction

of imprisonment for a maximum of twelve years,” as written by Moeljatno.⁽⁹⁾

In the material regarding the criminal act of rape in Article 285 of the Criminal Code, its elements, according to Chazawi⁽¹⁰⁾, may be described as follows:

1. The action: coercion
2. The manner, may be done through as follows:

With violence, with the threat of violence, with a woman who is not his wife, there is the action of intercourse

The action of coercion (*dwingen*) is an action which is done to another person by pressing the willingness of that person. This is so that the other person accepts the willingness of the enforcer. The point of coercion's definition is doing something outside of another person's willingness, which is against that person's desire.

Satochid Kartanegara states that this action of coercion should be interpreted as an action which creates fear withing another person. The action which makes a woman “coerced” to undergo a sexual relation, must be categorized into the definition of “coercing” a woman to undergo sexual relations, even if that person undresses her own clothes, according to Marpaung.⁽¹¹⁾

According to Soesilo, the definition of violence is “using big power and physical strength illegally”. Meanwhile, according to Kartanegara, violence is “every action which uses physical strength which is not light yet rather hard,” according to Marpaung.⁽¹¹⁾

The understanding through the definition of violence in Article 285 is as follows. Violence is a manner or an effort to undergo (something abstract) which is targeted to another person to create an action using physical strength, which makes another person physically powerless. As said by Chazawi⁽¹⁰⁾ it may be done using wood, hitting, stabbing, etc.

Tirtamidjaja opines that sexual relations or sexual intercourse is the internal contact of the man's and the woman's genitals which usually causes pregnancy, there is no need for the excretion of sperm in the woman's vagina, as said by Mapaung.⁽¹¹⁾ Then, Anwar⁽¹²⁾ defines intercourse as the action of a penis' penetration to the vagina. This penetration may be complete or incomplete, with or without ejaculation. Then, even though the action of intercourse happened in the past, it can still be seen by

the science of medical forensics, through careful *visum et repertum* according to Harahap⁽¹³⁾

The evidencing of the *visum et repertum* results have the same power as the evidence of letters. The judge has the authority to determine the strength of each. If the judge believes that the *visum* is truthful, thus the judge may give the verdict that the defendant is guilty. Thus, in the criminal case of rape, the accuracy of the doctor's analysis in producing the evidence of *visum et repertum* is crucial. This is the main point of the evidencing process, to ease the judge's belief so that he/she believes in that evidence.

Conclusion

Sexual violence in the form of rape is a criminal act. It does not only happen in developing countries, but it is also a disturbing problem in developed countries. It can be said that the evidencing process of this crime is rather different and more complicated compared to other crimes. Thus, there needs to be the involvement of different parties to handle this sexual violence case of rape. Usually, the law-enforcing apparatus involves the medicolegal element or medical forensics which has the special skills in uncovering the evidences of the rape case. Such evidences may then be used in the court trials. The police usually have trouble finding strong evidences. Another obstacle is the fact that the rape victims are usually reluctant to report their case. This is because in the local culture, such cases cause shame to the victim. That's why, there needs to be special skills from the medicolegal, through *visum et repertum* to obtain such evidences. The evidencing strength of the *visum et repertum* depends on the judge's belief. Thus, a weak *visum* may be a strong evidence if the judge believes that it is truthful.

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