

# Application of Visum Law In Proof of the Crime of Persecution

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**Abstract.** Cases of abuse that end in loss of life are currently common, and it is often deadlocked due to insufficient evidence. To increase the judge's confidence in making decisions, the role of expert testimony in concluding evidence in case files that support the authority of the court and examination in trials. This research was conducted at the Semarang Police. This research is empirical legal research carried out by collecting data from primary data or data obtained directly from research subjects, which is carried out either through observation or direct interviews. Even though it is not necessary to have a visum et repertum in proving criminal cases, to strengthen the judge's confidence, it is best to still have a visum et repertum, especially for criminal acts where the object is the human body because it can help the public prosecutor in his task of determining the direction of the indictment, and for the judge to find material truth in uncovering charges against the defendant in a case he is handling as an application of the provisions of criminal procedural law.

**Keywords:** Visum; Doctor; Persecution; Investigation

## 1 Background

The preliminary examination stage of an incident suspected of being a criminal act is quite an important stage and even determines the next stage of examination of the entire criminal justice process.[1] The purpose of investigative actions carried out by the police or other parties permitted by law to carry out investigations is to search for and collect information that can help uncover crimes committed and identify the perpetrators. A criminal case will then be processed at the prosecution and trial stage in court based on the results of the investigation findings.[2]

A case that can show that the Police as investigating officer needs expert information in the investigative actions they carry out, namely in uncovering cases of rape, murder, and abuse.[3] Cases of morality crimes that attack a person's honor where sexual acts are carried out in the form of sexual intercourse using threats of force or violence, require the assistance of expert information in the investigation.[4] The expert testimony discussed is testimony from medical personnel who can assist investigators by providing evidence in the form of accurate and reliable medical data regarding the victim's condition, especially showing indications that sexual activity was carried out under duress or threat of coercion.

To increase the judge's confidence in making decisions, the role of expert testimony in concluding evidence in case files that reinforce the court's authority and examination in trials is very useful.[5] If you look at criminal procedural law, expert information is required at every

stage of the examination process. Whether or not their involvement is necessary depends on whether or not they need to assist the duties of investigators, public prosecutors, and judges in a criminal case, as is often the case in criminal cases such as murder, assault, immorality, negligence, etc.[6]

Expert testimony is very necessary at every stage of the examination, whether at the investigation, prosecution, or examination stage in court.[7] Guaranteeing the accuracy of the results of the examination of the statements of experts or experts who are based on their knowledge and experience in their scientific field will be able to add to the words, facts, and opinions, which are used by the experts in weighing based on their legal considerations the expert's statements in deciding the case in case.[ 8] Of course, this needs to be seen in the context of the case currently being handled, namely the criminal act charged against the defendant in the Public Prosecutor's indictment submitted to the court. The phenomena related to *Visum et Repertum* do not only attract the interest of experts who work in the field of forensic medicine or other scientific fields such as criminalistics, forensic chemistry, forensic natural sciences, and existing forensic medicine such as forensic psychology, forensic psychiatry, and photography laboratories, but this is also ignored by legal experts.

*Visum et Repertum* is one aspect of the expert's role and/or is one aspect of expert testimony; then the relationship between the two cannot be separated.[9] Expert information contained in an examination report is an embodiment of the results made based on the best possible knowledge and experience of the expert.[10] The role of examination results in the form of a *Visum et Repertum* made by experts in judicial medicine or judicial psychiatry in many criminal cases is very helpful in the court trial process, especially if in the case only very minimal evidence is found (*minimum bewijs*).[ 11]

Because it requires supporting sciences such as forensic medicine, forensic chemistry, including toxicology, and forensic physics, it is sometimes found that the disclosure of criminal cases is hampered and cannot be resolved completely, or even impossible to resolve legally through legal channels. prosecution process in court. Although this rarely happens, it should be avoided, in practice there may be a mistake made against the person (wrongful detention), in particular a mistake made against the perpetrator of the crime (mistake), resulting in wrongful detention and misapplication of the law in court delegation.

For example, a case of abuse resulted in a vocational school student dying while receiving medical assistance at the hospital. The incident of abuse by a group of people occurred on the road connecting Ampel-Simo District, Boyolali Regency, precisely in Kaliwungu Village/District, Semarang Regency, Central Java. The victim of this abuse is AK (17), a resident of Jetis Village, Kaliwungu District, and is recorded as still sitting in class XII at one of the State Vocational Schools in Kaliwungu District, Semarang Regency.

You can imagine the consequences if the results of the post-mortem et repertum turned out to be different from what was admitted by the defendant or what happened. A blameless defendant can be convicted due to differences in the results of the post-mortem et repertum with what happened. The grounds stated above have provided motivation and certain things to examine the position of *Visum et Repertum* in the criminal case process. To fulfil the evidence, a doctor who is an expert in the field of post-mortem is needed to carry out examinations of crime victims.

## 2 Method

This research is empirical legal research performed by collecting data from preliminary data or data obtained directly from research subjects, which is carried out either through observation or direct interviews. Normative juridical legal research is a type of analysis that focuses on studying the application of rules or norms in positive law.[12] Regularizing legitimate examination remembers research for lawful standards, research on lawful systematics, research fair and square of lawful synchronization, legitimate history exploration, and relative lawful examination.[13]

Legal research sources consist of secondary sources. Secondary data in this research can be classified into three legal materials, as follows:

- a. Primary lawful materials are legitimate materials, showing they have authority. In this examination, the essential legitimate materials are:
  - 1) Law Number 1 of 1946 concerning Criminal Regulation Guidelines for the Whole Domain of the Republic of Indonesia and Changing the Crook Code,
  - 2) Law Number 8 of 1981 concerning Criminal Methodology Regulation,
  - 3) Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, and
  - 4) Law of the Republic of Indonesia Number 48 of 2009 concerning Legal Power
- b. Secondary legal materials, namely legal materials whose function is to complement primary legal materials and are not binding in nature. For example, the results of legal research, official and unofficial published legal literature (scientific books), journals, mass media, and papers.
- c. Tertiary Legal Materials, namely legal materials that will complement primary and secondary legal materials. Examples are encyclopedias and legal dictionaries.

## 3 Results and Discussion

### 3.1 Function of *Visum Et Repertum* in Proving the Crime of Persecution

According to Munib, searching for suspects and collecting evidence are the two most crucial tasks of investigators in the investigation process. From this evidence, it will become increasingly clear that the Public Prosecutor will accept it as reliable evidence. Therefore, the evidence collected by investigators must be reliable. If the investigator experiences problems in the examination because the case has unique characteristics, such as the need to prove the element of abuse in a criminal case of abuse, then the investigator can ask a specialist doctor to carry out a *post-mortem et repertum* to help identify the elements.

In cases of abuse, investigators will need evidence in the form of a *post-mortem et repertum* immediately after receiving the complaint. The investigator then makes a Police Report based on the complaint received, namely a written statement from a National Police official regarding a notification given by someone because of their legal rights or obligations that a criminal offense has occurred or is occurring. Following up on the submission of a police report, a *post-mortem et repertum* effort was carried out

which aimed to ascertain the condition of the victim, especially concerning determining the element of violence in the criminal act of abuse.

To ensure that the victim's health does not change significantly and that they can be identified as soon as possible after the crime of abuse occurs, a *post-mortem et repertum* examination must be carried out as soon as a complaint regarding the crime of abuse is received. Investigators take additional actions in response to complaints or allegations of criminal harassment, including steps to search for and collect data that will help them understand the crimes that occurred and identify the perpetrators.

The arrangements of Article 133 passage (1) of the Criminal System Code related to Article 1 section 28 of the Criminal Methodology Code, regulate requests for expert information assistance which can be requested by investigators to clarify a criminal case for this purpose. A medical examination makes it possible to determine the presence of a *post-mortem et repertum*, which is always used as evidence in the investigation of criminal acts of abuse.

In the procedure for obtaining a *post mortem et repertum* for a victim of abuse, as per the existing provisions the investigator makes a Request Letter for a *visum et repertum* (then abbreviated as SPVR) for a Victim of Persecution which is administratively addressed to the Head of the Hospital where the medical examination of the victim was carried out. The letter contained the following information regarding the victim (Administrative Instruction Book Concerning Procedures for Carrying out Administrative Investigations, 2001:408):

- 1) Name, date of birth/age, nationality, occupation, religion and address;
- 2) Place and time where the abuse occurred;
- 3) Date and time of complaint or report to the police or discovered by the police;
- 4) Who was brought/came to the police station, the date and time, or was found by the police;
- 5) The evidence included must be stated completely and clearly.

Making the SPVR for casualties of misuse is by the execution of the arrangements of Article 133 section (2) of the Criminal Method Code with respect to the type of a solicitation for master data by specialists where it is expressed that "Solicitation for master data as planned in passage (1) is completed recorded as a hard copy, which in the letter is expressed unequivocally for assessment of wounds, or posthumous assessment".

The results of the *post-mortem et repertum* can be known by investigators no later than one month after examining the victim, by the methods above used by investigators to obtain a *post-mortem et repertum*. This is because many laboratory examinations of various items found on the victim during the examination were also carried out in the context of *post-mortem et repertum*.

*Visum et repertum* which is made based on the results of medical examinations of victims of abuse has a very important function for investigators, especially to determine whether there are elements of violence that occurred in the victim. Considering that investigators do not have the ability and expertise to prove that there were signs of violence on the victim. The examination carried out by investigators on victims of abuse was limited to external physical examination and it was impossible to detect signs of violence on the inside of the victim's body.

*Visum et repertum* which contains the results of a medical examination regarding the victim's condition carried out by an authorized doctor is a critical piece of evidence

for investigators to carry out further investigations, such as carrying out searches, confiscation, detention, or other actions.

As previously mentioned, the role of post-mortem et report is very important and can provide input to investigators in finding a case of criminal abuse. The search for the most complete material truth in the investigation of criminal acts of abuse is very dependent on the completeness of the results of the post-mortem and repertum examination of victims of abuse as stated in the results of the examination, as well as the abilities and skills of investigators in reading and applying exam results.

According to Kresnawan, the Semarang Police Criminal Investigation Unit Visum et repertum in the investigation stage of criminal acts of abuse helps investigators in searching for and collecting sufficient evidence in addition to other evidence such as victim statements, witness statements, suspect statements, and examination of other evidence. With the results of a post-mortem et repertum on someone who is suspected of being the victim of a crime of abuse, an investigator will gain confidence that the crime in question occurred and vice versa.

If there is a match between the findings of the post mortem et repertum examination which shows signs of violence on the victim and the complaints and reports of criminal acts, then this can help investigators to carry out further investigation processes so that they can be more in-depth. reveal criminal acts of abuse. Post-mortem et repertum examination findings can be sufficient initial evidence to support further investigation. if the existence of a criminal act can be suspected only based on preliminary evidence, which is sufficient only in the form of a police report and one other reliable piece of evidence.

Enforcement is any legal action taken against people or objects that are related to the crime that occurred, such as summoning suspects and witnesses, arresting, detaining, searching, and confiscating.

As per the Top of the Semarang Police Criminal Examination Unit, when examining criminal cases at the post-mortem hearing, post-mortem examinations are considered documentary evidence. Likewise with the kinds of legitimate proof referenced in Article 184 Passage 1 of the Criminal Methodology Code related to Article 187 of the Criminal System Code in regards to the clarification of what is implied by narrative proof, the posthumous et repertum meets the standards for this proof. Making a posthumous et repertum is done by an expert specialist and the request for making it is made by submitting a Request Letter for a Visum et Repertum for a victim of abuse, this fulfills the provisions regarding expert information assistance that can be requested by investigators as regulated in Article 133 paragraphs (1) and (2) Criminal Procedure Code.

Based on the role that can be given visum et repertum in the investigation stage of criminal acts of abuse as explained above, this causes the position of visum et repertum to become one of the most important pieces of evidence and must be present in every case examination up to the trial stage. Making a post-mortem et repertum at the investigation stage in criminal acts of abuse is an absolute thing and must be done.

### **3.2 Strength of Visum et Repertum Evidence in Investigation of Criminal Persecution**

Evidence is required to support the commission of a crime during a simple or premeditated murder investigation. Written expert testimony, in this case, Visum et Repertum, is one of the pieces of evidence mentioned and regulated in Law Number 8 of 1981. The written report of a doctor or other forensic expert called a visum et repertum

details what they found on the victim's body. However, Visum et Repertum often differs from what happened and from the defendant's previous statements.

Visum et repertum contains the doctor's information or opinion regarding the results of the medical examination which is stated in the conclusion section. In this way, the visum et repertum as a whole has bridged medical science with legal science, so that by reading the visum et repertum you can know clearly what has happened to a person, and legal practitioners can apply legal norms to criminal cases involving the body and soul. man. If the visum et repertum cannot clear up the problem in court, the judge can ask for expert testimony or submit new material, as stated in the Criminal Procedure Code, which allows for re-examination or research of the evidence, if reasonable objections arise from the defendant or legal advisor regarding the results of an examination.

In the old Criminal Procedure Code, namely the RIB and the Criminal Procedure Code (KUHAP), there is not a single article that contains the words Visum et repertum. Visum et repertum is only contained in the 1973 State Gazette Number 350 Article 1 and Article 2 which states that visum et repertum is a written statement made by a doctor on an oath or promise regarding what is seen in the object he examines which has the power of evidence in the case.

If we look at the provisions of the Staatsblad of 1937 Number 350, which is the only provision that defines visum et repertum, then as evidence of visum et repertum it includes documentary evidence because the information made by the doctor is stated in written form. In addition to the provisions of the Staatsblad of 1937 Number 350 which is the legal basis for the position of post mortem et repertum, other provisions which also give the position of post mortem et repertum as documentary evidence are Article 184 passage (1) point (c) of the Criminal Method Code in regards to narrative proof, as well as Article 187 point (c) which expresses that "The letter as alluded to in Article 184 section (1) point (c), committed to on a vow of office or affirmed by pledge, is: c. An assertion from a specialist containing an assessment in light of his skill with respect to a circumstance that has been formally mentioned from him." Subsequently, in view of the juridical comprehension of visum et repertum given by the Staatsblad of 1937 Number 350, the two articles of the Criminal Technique Code have given the position and force of visum et repertum as narrative proof in the assessment of criminal cases.

The presence of a Visum et Repertum letter as evidence can show the truth of the abuse carried out by the victim in the investigation of criminal acts of abuse in the jurisdiction of the Semarang Police, supporting the third element of the indictment which resulted in the defendant injuring the victim. from such abuse. Therefore, the Public Prosecutor's ability to submit an indictment is greatly helped by having a Visum Et Repertum letter as evidence.

As per Article 184 of the Criminal Technique Code, there are 5 bits of proof in criminal cases, to be specific: Witness Articulations; Master Affirmations; Letters; Instructions; and Arguments of the Defendant. The position of post-mortem evidence is as documentary evidence, and as documentary evidence, it has the same strength as other evidence. By attaching a post mortem et repertum to a case file by the Investigator or at the examination stage in the prosecution process by the Public Prosecutor, after it is declared that the results of the examination of the criminal case indicted against the defendant are sufficient, then submitted to the trial, the proof of the post mortem et repertum letter is included as a tool. valid evidence as stated in Article 184 paragraph (1) sub b and sub e of the Criminal Procedure Code. Because visum et repertum is a valid

piece of evidence, if it is in the case file, it means that visum et repertum must also be mentioned and considered by the panel of judges in their decision.

Although a visum et repertum does not have to be present, in criminal acts where the object is the human body, for example, murder, abuse, or rape, it is best to be equipped with a visum et repertum. If several witnesses saw murder or abuse or even rape and this is supported by the defendant's statement and the judge is convinced of the defendant's guilt, then the defendant can be convicted even if it is not accompanied by a post mortem et repertum.

Article 183 of the Criminal Method Code expresses that an appointed authority may not force a wrongdoing on an individual except if, with something like two legitimate bits of proof, he is persuaded that a lawbreaker act has happened and that the respondent is at fault for perpetrating it. Accordingly, what is required is two legitimate bits of proof in addition to the adjudicator's conviction. To demonstrate somebody is at fault for carrying out a wrongdoing.

#### 4 Closing

The role of the visum et repertum as evidence in examining criminal acts of abuse helps investigations to reveal a criminal case and for a Public Prosecutor in making an indictment, as in the case study by the author, that having a visum et repertum can help in proving the truth of the third element: causing injury and fourth: damaging the health of others in the Public Prosecutor's demands, as well as in the indictment. The strength of post-mortem et repertum evidence in examining criminal acts of abuse is that this evidence is imperfect and independent. It is not yet perfect, meaning it still requires other evidence to support it, in order to find the material truth. Meanwhile, acquittal means that post-mortem et repertum as evidence is not binding on the judge. In other words, the judge can accept or reject it.

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