



The Role of Visum et Repertum in Proving Obscene Acts Against Children

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Received: 16/11/2023

Revised: 30/12/2023

Accepted: 11/02/2024

Abstract

Visum et Repertum is a form of document in the form of examination results which can be used as documentary evidence. In the process of proving criminal cases, post mortem et repertum is often used to prove a medical indication. This research aims to determine the strength of the Visum Et Repertum evidence in criminal acts of violence committed to commit obscene acts against children and also the appropriateness of the judge's considerations in handing down decisions based on the Visum Et Repertum evidence in accordance with Article 183 jo. Article 193 paragraph (1) KUHAP. This research is normative with a case approach. Data collection techniques use library research. The results of the research show that the strength of the Visum Et Repertum evidence in proving criminal acts of violence for committing obscene acts against children in Decision Number 83/Pid.Sus/2021/PN Smn is an important piece of evidence. The considerations of the Sleman District Court Judge in deciding the case of violence to commit obscene acts in decision Number 83/Pid.Sus/2021/PN Smn are in accordance with the provisions of Article 183 in conjunction with Article 183 paragraph (1).

Keywords

visum et repertum; evidence; obscene act

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1. INTRODUCTION

Evidence is an important thing in the process of examining cases in court. Evidence in trials is one of the bases for making decisions for judges. According to Martiman Prodjohamidjojo, proving or evidence contains the intention and effort to declare to prove or proof contains the intention and effort to state the truth of an event, so that it can be accepted by reason regarding the truth of the event (Pandiangan, 2017).

Requests for expert assistance are regulated in the Criminal Procedure Code. The expert assistance referred to is a doctor who issues a medical record letter referred to as Visum Et Repertum. With this, the meaning of Visum Et Repertum is defined as a written report for the benefit of justice (pro justisia)



at the request of an authorized person, made by a doctor, regarding everything seen and found during the examination of evidence, based on an oath when accepting office, and based on his knowledge to the best of his ability (Itok Dwi Kurniawan, 2023).

Visum et repertum is needed to ensure that a crime of violence has occurred to commit an obscene act. This can be a consideration for the judge when making a decision. The purpose of the Visum et Repertum is basically to provide the judge with the reality or facts of the evidence regarding all the circumstances as stated in the reporting section so that the judge can make an appropriate decision based on the existing reality or facts (**Suryantha Tarigan, Perdana, & Fauzi, 2022**).

In Sleman, on December 23 2019 at approximately 14.00 WIB, a criminal act occurred by the Defendant Bagong who committed violence to commit obscene acts against the Child Victim at the RT Meeting Hall. 006/RW. 002, Jl. Mujair, Minomartani, Ngaglik, Sleman. As a result of the Defendant's actions, the Victim's Child experienced depression as per the results of the Visum Et Repertum from the Sleman Regional General Hospital, Number: 440/074/RM/2020 dated 06 February 2020 which was signed by Dr. M.G. Rini Arianti, S.p.KJ. This case has been examined and decided by the Sleman District Court as stated in Decision Number 83/Pid.Sus/2021/PN Smn.

Based on the description above, the author is interested in conducting research regarding the strength of the post-mortem evidence and the judge's considerations in deciding on criminal acts of violence for committing obscene acts against children (Decision Study Number 83/Pid.Sus/2021/PN Smn).

2. METHODS

The type of research used in this research is normative legal research with a case approach. Types and Sources of law in research. This uses primary legal sources and secondary legal sources (Sulaiman, 2018). The technique for collecting legal materials in this research is using a literature study method.

3. FINDINGS AND DISCUSSION

On December 23 2019 at around 14.00 WIB in the RT 06/02 hall, Jalan Mujair, Minomartani, Ngaglik, Sleman, Yogyakarta, the victim's child Annabela Ralia Putri and the witness' child Talitha Daris Nirwasita were chatting while eating snacks. Then the Defendant Bagong came to the victim's child and witness Talitha Daris Nirwasita's child. Witness Talitha Daris Nirwasita's child also asked the victim's child to go home and then witness Talitha Daris Nirwasita's child went home in the opposite direction of the victim's child. The victim's child then walked past the Defendant Bagong sideways from the Defendant, the Defendant pulled the belt loop of the trousers worn by the Victim's Child, then the Defendant pulled the Victim's Child's hand which made the Victim's Child sit down then the Defendant

pinned the Victim's Child's body with both of the Defendant's legs then the Victim's Child was pinned down with both feet of the defendant and the defendant, using his hands, the defendant squeezed the victim's child's buttocks and the defendant's right hand entered through the victim's child's thigh and the defendant pressed the victim's child's genitals using the defendant's fingertips, causing the victim's child to feel pain in his genitals, then the defendant groped him. The victim's child's buttocks again so that the victim's child struggled and wanted to run, but the defendant's hand embraced the victim's child's body from behind, then the defendant's right hand squeezed the victim's child's left breast. then the child of the victim Antik rebelled and was able to get away from the defendant and then the child of the victim Antik went home and the defendant followed him halfway and then the child of the victim Antik told the incident to the witness Cicila Dyah Budiati and finally the witness Cicilia Dyah Budiati reported the incident to the Resort police office Sleman on January 23 2020, and then the defendant and his evidence in the form of: 1 (one) red short-sleeved t-shirt, 1 (one) black knee-length jeans, 1 (one) brown short-sleeved t-shirt, 1 (one) white knee-length shorts were successfully secured and taken to the Sleman Resort Police Office and as a result of the defendant's actions against the victim's child, Annabela Ralia Putri, based on:

Visum Et Repertum from the Sleman Regional General Hospital, Number: 440/074/RM/2020 dated 06 February 2020, signed by Dr. M.G. Rini Arianti, S.p.KJ., that on January 23 2020, dr. M.G. Rini Arianti S.p.KJ, has carried out an examination of Annabela Ralia Putri, with the results of the examination, namely:

- a. came to the hospital for a post-mortem, the patient admitted that he was the victim of an obscene act committed by someone. The incident occurred around the Christmas holiday in December 2019, the patient felt afraid, was lazy about activities, had no appetite and had difficulty sleeping.
- b. examination of the general condition is good, blood pressure is one hundred and five per seventy millimeters of mercury, pulse rate is seventy six times per minute, respiratory rate is twenty times per minute, body temperature is afebrile (no fever). Psychiatric Examination: The patient was in good condition when examined: Dysphoric (sad), remming (speech slowly), insomnia (difficulty sleeping), somatization (many non-objective bodily complaints), anxiety (worry). Psychological examination: very high anxiety, moderate stress, moderate depression. Conclusion: a female victim of obscene acts was examined with a moderate depressive episode with somatic symptoms.

Examination of a criminal case essentially means seeking the material truth, namely the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely with the aim of finding out who the perpetrator is in a criminal case. The discovery of material truth cannot be separated from the problem of proof (Boyoh, 2011). Evidence is provisions that contain outlines and guidelines regarding methods permitted by law to prove the guilt of the accused. Evidence

is also a provision that regulates evidence that is permitted by law and may be used by a judge to prove the guilt of the accused (Agen Nia Dara, 2017). Evidence in criminal cases aims to provide an accurate view of the facts of an incident, then a truth that can be reasonably accepted can be concluded from the event (Siadari, Rochaeti, & Baskoro, 2016).

Evidence is anything that is related to an act, where with these pieces of evidence, it can be used as evidentiary material to raise the judge's confidence in the truth of the existence of a criminal act that has been committed by the defendant.(Rozi, 2019). In this case, the object of the crime was a 14 year old child, therefore examining the evidence as to whether a crime had actually occurred against him needed to examine the conditions experienced by the victim after the incident. Moreover, in cases where the victim is a child, because children are not as competent as adults, when something happens to them, sometimes children find it difficult to explain the circumstances of what has happened to them (Manalu, 2021).

In this case the judge needs expert assistance to examine it. Based on the evidence submitted or examinations carried out by experts, judicial doctors can assist in preparing a report on the examination (Azis & Hamsir, 2022). In this case, the doctor's assistance is provided in writing in the form of a Visum Et Repertum.

Visum Et Repertum is a doctor's statement about what was seen and found during an examination of an injured person or a corpse which is a written statement. (Prasetyo, Febriansyah, Indiantoro, Absori, & Praja, 2020) Results of Visum Et Repertum issued by the Sleman Regional General Hospital Number: 440074/RM/2020 dated 06 February 2020 by dr. M.G. Rini Arianti S.p.KJ with the results of the psychiatric examination, the patient at the time of examination was in a state of dysphoric (sadness), remming (speech slowly), insomnia (difficulty sleeping), somatization (many non-objective bodily complaints), anxiety (worry). On psychological examination: very high anxiety, moderate stress, moderate depression. So it was concluded that a woman who was a victim of obscene acts was examined with a moderate depressive episode with somatic symptoms. Having information from experts regarding the victim's psychological condition in the form of a Visum Et Repertum makes it easier for the judge to analyze what actually happened.

Through the Visum Et Repertum evidence, the element of committing violence to commit an obscene act is proven. This Visum Et Repertum proves that there has been a criminal act of violence for committing obscene acts which resulted in trauma and depression in the victim and requires the help of a psychologist to overcome the child's trauma and depression. This is also reinforced by the results of an antique psychological examination of victims of obscene acts from Rifka Annisa, Center for Resource Development for the Elimination of Violence Against Women Number: 01/01/L/RA/VI/2020 dated 02 June 2020 which was signed by the Head of the Psychologist Team of the Rifka Assistance

Division Annisa Yogyakarta Dra Hartanti Rahayu, that on January 23 2020 a psychological examination was carried out on Antik with the final conclusion that the victim was experiencing trauma and anxiety. Being young makes the recovery process easier. Support from extended families, school teachers and the community accelerates recovery. Thus, the Panel of Judges was of the opinion that the element of violence for committing obscene acts against children had been fulfilled. So it can be concluded that the strength of the Visum Et Repertum evidence in this case study is very important in the evidentiary process and makes it easier for the judge to decide the case.

The fulfillment of the elements of committing violence to commit obscene acts against children with the presence of a Visum Et Repertum constitutes an element of Article 82 paragraph (1) in conjunction with Article 76 E of the Law. R.I. No. 35 of 2014 as amended by Law. R.I. No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Laws. No. 1 of 2016 concerning the Second Amendment to the Law. No. 23 of 2002 concerning Child Protection has been fulfilled, then the Defendant must be declared to have been legally and convincingly proven to have committed the criminal act as charged in the single indictment.

Visum Et Repertum has important evidentiary power apart from other legal evidence and evidence provided by the public prosecutor. Moreover, in this case, the violent crime of committing an obscene act was committed in a quiet place and was carried out on a 14 year old child. So the testimony of the defendant and witnesses may not necessarily convince the judge. Therefore, the evidence of the Visum Et Repertum letter plays an important role and has strength because it was made by a doctor as an expert in his field in examining the impact of trauma experienced by the victim as a result of the criminal act committed by the defendant. However, of course other evidence is needed as regulated in Article 183 of the Criminal Procedure Code. Therefore, Visum Et Repertum is considered sufficient to prove a criminal act accompanied by other evidence.

Visum et Repertum is a form of documentary evidence that can be used as evidentiary material in trials and as material for the judge's consideration. The existence of Visum et Repertum is not binding and is not coercive for judges. The judge's binding on Visum et Repertum can be set aside if the possibility of making the statement is small. This means that if there is no Visum et Repertum, the criminal case examination process must continue (Asmadi, 2019). Even though the Visum et Repertum is not binding on the judge, what is contained in the Visum et Repertum is material evidence of the consequences of a criminal act and can be considered as a substitute for evidence that has been seen and found by a doctor. So it can be used as consideration for judges who are examining the case (Octo Iskandar, 2021). Even though the Visum et Repertum is in the form of an authentic deed, in criminal procedural law it cannot automatically be used as evidence before the trial and assist the judge in making a decision. In other words, even though it is in the form of an authentic deed, its evidentiary

power will be paralyzed if it is not supported by other evidence so that it can be obtained. the judge's confidence in handing down a verdict (Nauval, Devy, & Syuib, 2021).

The Panel of Judges was of the opinion that there was a series of actions by the Defendant who had pulled the victim's child's hand until he fell sitting on the Defendant's lap, then the Defendant put the Defendant's legs under his arm and when the victim's child struggled to stand up with the intention of getting away from the Defendant, then the Defendant embraced the victim's child's body from behind, and then At that time the Defendant knew that the victim's child was not yet 18, which of course the victim's child's energy was not comparable to the defendant's energy, so it was clear that the Defendant's intention was to carry out acts that made the victim's child helpless to escape the Defendant's actions, then the Defendant's actions were Using the Defendant's hands to squeeze the buttocks, then squeezing the breasts and pressing the victim's child's genitals using the Defendant's fingertips, this act should not be carried out, especially against children who are physically and mentally helpless, so their vital organ areas must be guarded and protected, especially since the victim is a girl. Of course, this situation creates trauma for the child victim, this trauma can be clearly seen from the attitude and statements of the child victim during the trial and the results of the psychological examination of the child victim of the Obscene Act Case from Rifka Annisa Center for Resource Development for the Elimination of Violence Against Women Number: 01 /01/L/RA/VI/2020 dated 02 June 2020 and the results of the Visum Et Repertum from the Sleman Regional General Hospital, Number: 440/074/RM/2020 dated 06 February 2020, it is clear that there is trauma and depression as a result of the Defendant's actions so that requires a psychologist to overcome the trauma and depression of the child victim, then the series of actions of the Defendant have been categorized as acts of violence against children and are acts which have violated decency (decency) which is included in obscene acts, thus the element of intentionally committing violence or threatening violence, forcing , committing deception, committing a series of lies, or persuading a child to commit or allow an obscene act to be committed has been fulfilled.

In this case, the judge was of the opinion that the defendant's actions disturbed society, the defendant's actions had a negative impact on the victim's mental development and the defendant's actions brought disgrace to the victim's family. This opinion is a burdensome reason. Meanwhile, the mitigating reasons are that the Defendant has openly admitted his actions and is sorry for the Defendant's actions, the Defendant is elderly and the Defendant has never been convicted.

Defendant Bagong's guilt has been legally proven and convinced the judge because he influenced the judge through the evidence of witness statements, defendant statements and letters. Documentary evidence in the form of a Visum et Repertum is not binding even though it has the power of proof. In the case of the crime of violence for committing obscene acts against children which was

decided by the Sleman District Court Number 83/Pid.Sus/2021/PN Smn, the judge used the Visum et Repertum submitted by the public prosecutor as a consideration in handing down the decision. The judge assessed that there was a connection between the results of the examination and the criminal act committed by the defendant. Evidence has sufficient evidentiary value and must be supported by other evidence. 15 The judge decides that the decision is based on at least two valid pieces of evidence, namely witness statements, letters and the defendant's statement. So, there is conformity with the judge's considerations with Article 183 Jo. Article 193 paragraph (1) KUHAP.

4. CONCLUSION

The strength of the Visum et Repertum evidence in proving criminal acts of violence for committing obscene acts against children committed by Bagong is an important piece of evidence. This is because the criminal act committed by the defendant had an impact on the victim's psychology, so expert assistance was needed to explain the psychological condition experienced by the victim. The judge's considerations in deciding the case were in accordance with the provisions of Article 183 in conjunction with Article 183 paragraph (1), because the judge decided the decision based on a minimum of two valid pieces of evidence, namely witness statements, letters and the defendant's statement, so that the judge had confidence in deciding this case. The defendant's actions as alleged by the Public Prosecutor in the indictment have been legally proven and convinced by the judge to have violated Article 82 paragraph (1) in conjunction with Article 76 E of the Law. R.I. No. 35 of 2014 as amended by Law. R.I. No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Laws. No. 1 of 2016 concerning the Second Amendment to the Law. No. 23 of 2002 concerning Child Protection Becomes Law. So the defendant must be sentenced according to the verdict, namely imprisonment for 5 (five) years and 6 (six) months and a fine of Rp. 50,000,000.00 (fifty million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 6 (six) months.

REFERENCES

- Agen Nia Dara. (2017). Penjadapan Sebagai Alat Bukti Pasca Putusan Mahkamah Konstitusi. In *Tesis*.
- Asmadi, E. (2019). Ilmu Kedokteran Kehakiman. In *Journal of Chemical Information and Modeling* (Vol. 53).
- Azis, I. W., & Hamsir. (2022). Peranan Visum Et Repertum Sebagai Alat Bukti Terhadap Tindak Pidana Penganiayaan Berat. *Alauddin Law Development Journal*, 4(1). <https://doi.org/10.24252/aldev.v4i1.15999>
- Boyoh, M. (2011). INDEPENDENSI HAKIM DALAM MEMUTUS PERKARA PIDANA BERDASARKAN KEBENARAN MATERIIL. *Lex Crimen*, IV(4).
- Itok Dwi Kurniawan. (2023). Eksistensi Keterangan Ahli dalam Pembuktian Tindak Pidana Korupsi. *Gudang Jurnal Multidisiplin Ilmu*, 1(1). <https://doi.org/10.59435/gjmi.v1i1.2>

- Manalu, S. (2021). TINJAUAN YURIDIS PEMBUKTIAN TINDAK PIDANA PERSETUBAHAN TERHADAP ANAK. *Fiat Iustitia : Jurnal Hukum*. <https://doi.org/10.54367/fiat.v1i2.1155>
- Nauval, M., Devy, S., & Syuib, M. (2021). PERTIMBANGAN HUKUM HAKIM DALAM PENYELESAIAN PERKARA PIDANA KEKERASAN DALAM RUMAH TANGGA (Analisis Putusan Nomor 99/Pid.Sus/2018/PN Bna.). *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum*, 9(2). <https://doi.org/10.22373/legitimasi.v9i2.8517>
- Octo Iskandar. (2021). Peranan Ilmu Forensik Dalam Pengungkapan Tindak Pidana Kekerasan Fisik Dalam Lingkup Rumah Tangga Yang Dilakukan Istri Terhadap Suami. *KRTHA BHAYANGKARA*, 15(1). <https://doi.org/10.31599/krtha.v15i1.509>
- Pandiangan, H. J. (2017). PERBEDAAN HUKUM PEMBUKTIAN DALAM PERSPEKTIF HUKUM ACARA PIDANA DAN PERDATA. *To-Ra*, 3(2). <https://doi.org/10.33541/tora.v3i2.1154>
- Prasetyo, Y., Febriansyah, F. I., Indiantoro, Absori, & Praja, C. B. E. (2020). Forensic medicine in indonesia: The application of visum et repertum in case resolution. *Indian Journal of Forensic Medicine and Toxicology*, 14(4). <https://doi.org/10.37506/ijfmt.v14i4.12283>
- Rozi, F. (2019). SISTEM PEMBUKTIAN DALAM PROSES PERSIDANGAN PADA PERKARA TINDAK PIDANA. *JURNAL YURIDIS UNAJA*, 1(2). <https://doi.org/10.35141/jyu.v1i2.486>
- Siadari, H., Rochaeti, N., & Baskoro, D. B. (2016). Arti Penting Visum Et Repertum Sebagai Alat Bukti Dalam Penanganan Tindak Pidana Perkosaan. *Diponegoro Law Journal*, 5(3).
- Sulaiman, S. (2018). Paradigma dalam Penelitian Hukum. *Kanun Jurnal Ilmu Hukum*, 20(2). <https://doi.org/10.24815/kanun.v20i2.10076>
- Suryantha Tarigan, E., Perdana, S., & Fauzi, A. (2022). Peran Visum Et Repertum Sebagai Alat Bukti Surat Dalam Tindak Pidana Kekerasan. *Legalitas: Jurnal Hukum*, 14(1). <https://doi.org/10.33087/legalitas.v14i1.277>