

## Functional Problems of Visum et Repertum in Proving the Crime of Rape

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**Abstract.** *The aim of this study is to identify and analyze the problems that occur in optimizing the proof of rape crimes through Visum et Repertum. In this paper, the author uses a normative juridical method with descriptive analysis as the research specification. Rape cases are cases with a fairly complex level of resolution in the judicial process. The level of difficulty in terms of proof in rape cases is due to the rape being committed without any eyewitnesses who saw the incident. Uncovering a rape case during the investigation stage, a series of actions will be carried out by investigators to obtain evidence related to the crime that occurred. The process of evidence in rape cases greatly affects the psychological state of the victim, the victim must provide detailed information during the evidentiary process related to the incident that has occurred. Weak and lack of evidence in rape crimes cause many perpetrators to escape the clutches of the law. The complexity of the problems of investigators' efforts to obtain authentic evidence through the Visum et Repertum examination cannot be denied as an obstacle to achieving just law enforcement and legal certainty for rape victims.*

**Keywords:** *Achieving; Greatly; Occurred; Uncoverin.*

### 1. Introduction

The position of the Republic of Indonesia in terms of constitutional legitimacy is explicitly based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the Republic of Indonesia is a state based on law.<sup>1</sup>The philosophical ideal formulated by the founding fathers of the nation in the concept of "Indonesia is a state of law" implies that in the relationship between law and power, power is subject to law as the key to political stability in society. In a state of law, law is the main pillar in driving the foundations of social, national, and state life.

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<sup>1</sup>Lilik Eko Sukaryono, Amin Purnawan. (2020), The Role of Visum Et Repertum as a Provision Effort on Criminal Financing, Jurnal Daulat Hukum, 3 (1) March. p. 131

One of the main characteristics of a state based on the rule of law lies in the tendency to assess actions taken by society on the basis of legal regulations. Discussions about law are always related to the issue of law enforcement (*law enforcement*) in a broad sense also means upholding justice. More concretely, it would be directed at law enforcement officers, namely those directly involved in fighting for law enforcement and justice.

The examination of a criminal case in a judicial process essentially has the aim of seeking material truth (*material welfare*), namely seeking the true and complete truth of a criminal case by applying the provisions of criminal procedure law honestly and precisely with the aim of finding out who the perpetrator is who can be accused of committing a legal violation.<sup>2</sup>

Criminal cases such as murder, assault, and rape are examples of cases where investigators require the assistance of experts, such as forensic doctors or other specialists, to provide medical information regarding the victim's condition, which can then influence the investigation's actions in further unraveling the case. One method that can be used to provide evidence in criminal cases is to seek the assistance of a doctor as an expert. A doctor can act as an expert witness and can also prepare a certificate called an expert witness. *visum et repertum*.<sup>3</sup>

One of the crimes that in the investigation process requires an expert certificate in the form of *Visum et Repertum* Rape is a crime. Rape is a heinous, immoral, reprehensible, and norm-violating crime, predominantly involving women. This is extremely detrimental to women, as their dignity and honor are at stake.

Role *Visum et Repertum* in revealing a rape case is very important and has a crucial role as evidence, in rape cases where the report to the police was only made after the rape had taken place for a long time so that no signs of violence were found on the victim in the examination results listed in the *Visum et Repertum* can be different from the results of the examination carried out immediately after the crime of rape occurred.

The problem becomes even more complex when examined from a cultural perspective in Indonesian society, where the impression formed by most people in our society is that issues related to morality are still highly taboo to discuss in public, especially rape. Even though society strongly condemns such acts, this

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<sup>2</sup>Tobias Gula Aran. (2017). Analysis of the Decision of the Surabaya District Court Number: 3094/Pid.B/2013 Concerning Evidence by the Judge in Article 114 Paragraph (2) in conjunction with Article 132 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, Jurnal Akta Yudisia, 2 (2). p 2

<sup>3</sup>H. Siadari, N. Rochaeti & BD Baskoro, (2016). The Importance of *Visum et Repertum* as Evidence in Handling Rape Crimes. Diponegoro Law Journal, 5 (3). p 1-18.

societal view can shape rape victims' attitudes, making them reluctant to report the incident to the police, let alone testify as victims in court.<sup>4</sup>

The researcher determines a theme and forms a title to be continued in conducting a scientific study in the form of systematic and fundamental research with the aim of the research, namely to find out and analyze the problems that occur in optimizing the proof of the crime of rape through Visum et Repertum.

## 2. Research Methods

The normative legal research method uses an approach that involves studying legislation, theories, and concepts related to the problem being researched. Sampling is the process of selecting a representative portion of the entire population. This study does not use samples as research material but rather utilizes literature as a data source. Secondary data is used as raw data, while expert opinions are added as additional data, thus processing the research results.

## 3. Results and Discussion

### 1) Visum et Repertum Terminology

*Visum et Repertum* is a written statement made by a doctor at the written (official) request of an investigator regarding a medical examination of a human being, whether alive or dead, or part of the human body, in the form of findings and their interpretation, under oath and for the benefit of justice. The name Visum et Repertum was never mentioned in the Criminal Procedure Code or the previous criminal procedure law, namely RIB (the updated Indonesian Regulation). The name Visum et Repertum itself is only mentioned in Staatsblad 350 of 1937 Articles 1 and 2 which read:

1) *Visa reperta* from doctors, made on the basis of an oath of office sworn when completing medical studies in the Netherlands or in Indonesia, or on an oath of evidence in criminal cases, insofar as it contains information about what the doctor saw on the object being examined.

2) Doctors who do not take an oath of office in the Netherlands or in Indonesia, as referred to in Article 1, may take an oath (or promise).<sup>5</sup>

*Visum et repertum* included in the category of written evidence as regulated in Article 187 letter c of the Criminal Procedure Code, because Visum et repertum is a letter made by an expert (in this case a doctor) and made under oath of office based on the provisions of laws and regulations explaining his opinion based on

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<sup>4</sup>H. Arief & N. Ambarsari, (2018). Application of Restorative Justice Principles in the Criminal Justice System in Indonesia. Al-Adl: Jurnal Hukum, 10 (2). p 173-190

<sup>5</sup>Dedi Afandi, (2017). Visum et Repertum: Procedures and Production Techniques, Second Edition, Faculty of Medicine, University of Riau, p. 2

his expertise regarding a situation officially requested of him. *Visum et repertum* can be considered valid and accepted as written evidence if issued by an authorized official and *Visum et repertum* is not made/published for other purposes, only made so that a criminal case becomes clear and is only useful for examination and for justice and is intended for the interests of justice.<sup>6</sup>

In general, there are two types of *Visum et Repertum*, namely *Visum et Repertum* for living victims and a post-mortem examination for deceased victims. For living victims, this can include a post-mortem examination for injuries, a post-mortem examination for rape/sexual assault, a psychiatric post-mortem examination, and so on, depending on the condition of the subject being examined. For deceased victims, a post-mortem examination for the body will be prepared. In general, all doctors are considered competent to prepare a post-mortem examination in any form.<sup>7</sup>

## 2) Problems that Occur in Optimizing Evidence of Rape Crimes Through *Visum et Repertum*

One of the problems with the results of a post-mortem examination (*Visum et Repertum*) can also be influenced by a lack of physical evidence, particularly if the victim reports the incident late or the rape did not leave clear physical traces. In certain cases, rape may not leave visible physical injuries, making the post-mortem examination insufficient evidence to support the victim's testimony.<sup>8</sup> In some cases, rape victims report the incident late, either due to trauma, fear, or social pressure. This results in the inability to perform a proper post-mortem examination (*Visum et Repertum*), ultimately weakening the strength of evidence in court.

The victim factor is crucial in proving optimal evidence through a post-mortem examination, which in this case is the victim who experienced the crime of rape committed by the perpetrator. Currently, many victims experience trauma or embarrassment in reporting the incident or information they have experienced because it is usually considered a disgrace and known to the public. The victim must present at least two witnesses in the case process. Generally, acts of indecent assault are carried out in a closed and limited environment, or if it is open, only a few people are willing to be witnesses to the incident. Therefore, rape cases often result in losses for the victim rather than the perpetrator, even often

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<sup>6</sup>Novaizin Ramadhani Putra Bastian, (2024). Review of *Visum Et Repertum* as Evidence in Proving Criminal Cases. *Pancasakti Law Journal (PLJ)*, 2 (1), June. p. 88

<sup>7</sup>Dedi Afandi, (2009). *Visum et Repertum* on Living Victims, *JIK (Journal of Medical Sciences)*. 3 (2). p 5

<sup>8</sup>Naura Putri Ramadhania. (2024). The Function of *Visum et Repertum* in Determining the Criminal Responsibility of Rape Perpetrators, *Journal of Law and Citizenship*, 8 (3). p. 8

due to certain pressures. However, from a justice perspective, the victim must receive legal justice for the actions committed by the perpetrator.<sup>9</sup>

Meanwhile, it is very difficult to prove all of this, especially if the victim does not immediately report the rape that she experienced. The results of the post-mortem examination will be unclear if the victim immediately cleaned herself after the rape, and if all of this evidence is not fulfilled, the victim has lost the formal procedure.

In general, the main factor in the success of investigations using the visum et repertum method in rape crimes is the stigmatization of a female rape victim which is undeniably has a negative sociological perspective which has implications for the mental strength of the victims, especially women, in bringing out the strength and drive to report the cases they experienced to law enforcement agencies. This is very important because proving rape through visum et repertum to get optimal results applies to the duration of time how quickly the rape victim reports to the authorities for immediate handling, which is called the problematic term of the social paradigm that affects the mentality of the victims (especially women and children).

In an analysis from a criminological, victimological, and sociological perspective on optimizing the proof of rape through a post-mortem examination, the perpetrator's position will also benefit if the victim is also blamed. Regarding the occurrence of rape, according to Gosita,<sup>10</sup> focuses more on the causal factors from the perspective of the victim, namely the woman. Women are considered to be very dominant in creating opportunities. The involvement of those who act as instigators of rape can be through behavior or physical appearance that arouses male lust. Furthermore, it is stated that in social interactions between men and women, there is often a tendency for the relationship to escalate toward sex. Sexual crimes occur in incidents like these because of misinterpretations of the act by both parties.

This perspective appears gender-biased due to at least two arguments. First, women are expected to behave modestly simply to prevent male sexual arousal, while even in the absence of stimulation, many men openly display their sexual desires and openly seek outlets for them. Prostitution and various pornography products are in high demand. Second, without adequate legal sanctions, the consequences of rape are borne solely by the female victim. This burden is enormous and lifelong. If a man controls his sexual desires due to stimulation from a woman's appearance or behavior, how much and how long will she have to endure it?

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<sup>9</sup>Wahyuningsih, et al. (2021). The Evidential Power of a Visum Et Repertium in Rape Crimes, *Journal of Lex Generalis (JLS)*, March 2 (3), p. 1287

<sup>10</sup>A. Gosita, *Problems of Crime Victims*, Jakarta: Akademika Pressindo, 1983

Several studies that intersect with the stigma against women who experience sexual violence, the dimensions of the perception of sexual violence against women, show that the public perception of sexual violence against women is still influenced by cultural values that are unfavorable to women. Her status as a victim of sexual violence (rape) is seen by those around her as her own fault due to her inability to maintain a woman's honor, such as the argument that formed as a woman is despicable, unable to maintain the main honor of women and families (a disgrace). The paradigm that is formed sociologically is that not only the perpetrators who enjoy but women also enjoy it equally.<sup>11</sup>

The stigma that is formed by society makes female rape victims experience certain psychological pressures, in the form of feelings of trauma, fear of things related to abuse including objects, smells, places and people who approach them, feelings of inferiority and sometimes feelings of wanting to end their lives.<sup>12</sup> and this is closely related to the courage of the victim to involve law enforcement agencies because there is no self-motivation or even encouragement from the environment around the victim which is very necessary for optimizing law enforcement is not obtained by the victim due to the social paradigm. This is the main problem in the involvement of the function of *visum et repertum* in rape cases where in a simple narrative, let alone analyzing the technicalities of *visum et repertum* so that it can function optimally, even rape victims do not involve themselves in the legal process by reporting to the Police, meaning that investigations, inquiries, *visum et repertum* can occur if there are reports from rape victims.

Stigma against female rape victims is a deep-rooted problem with long-term consequences for individuals and society as a whole. Recognizing the multiple dimensions of this stigma, its underlying causes, and its far-reaching impact is crucial to developing effective strategies to combat it. Through education, legal reform, supportive communities, and responsible media representation, we can strive to create a world where rape victims are no longer stigmatized, but instead supported, believed, and empowered in their journey toward healing and legal justice.<sup>13</sup>

In feminist legal theory, the patriarchal legal system often marginalizes women and ignores their experiences, which can influence the formation of social paradigms regarding women in litigation, especially in moral matters. Feminist legal theory emerged to critique the gender-biased legal system and encourage recognition of women's roles and needs in the law. Gender inequality in the application of law in Indonesia reflects structural challenges that affect justice for

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<sup>11</sup>Rukman, Yeni Huriani and Lily Suzana, (2023). Stigma against Female Victims of Sexual Violence, *Journal of Faith and Spirituality*, 3 (3). p 450-451

<sup>12</sup>Ibid, p. 451

<sup>13</sup>S. Chant, Women, (2016). *Girls and World Poverty: Empowerment, Equality or Essentialism?*. *International Development Planning Review*, 38(1)

women. The legal system in Indonesia is often still influenced by patriarchal social constructions, where women's perspectives are not fully accommodated. Some key aspects that highlight this inequality include the Lack of Gender Perspective in Law Enforcement, such as law enforcement officers often lacking adequate gender sensitivity. This results in cases involving women, especially as victims, often not receiving fair treatment. For example, female victims of rape, Discrimination in Legal Regulations in Indonesia, such as articles on adultery or rape, are often interpreted based on gender-biased moral standards.<sup>14</sup>

Placing cases in the category of "morality" actually obscures the fact that these cases are violations of women's human rights and dignity. The lack of affirmative action policies, despite the existence of several laws that support women, the implementation of affirmative action policies is not optimal. Laws often only reflect the dominance of certain actors without considering the needs of vulnerable groups, including women. The influence of power relations such as gender inequality is also caused by power relations in society that weaken women's positions. This is reflected in the legal process where women are often not considered equal legal subjects. Efforts to address this inequality require more inclusive and gender-sensitive legal reforms, including increasing the capacity of legal officials to understand gender perspectives, revising biased regulations, and implementing stronger affirmative action policies.<sup>15</sup> Feminist legal theory helps uncover and analyze gender bias in regulations, judicial processes, and law enforcement. Seemingly neutral laws often conceal patriarchal assumptions that disadvantage women.

#### **4. Conclusion**

The stigma formed by society makes women who are victims of rape experience certain psychological pressures, in the form of feelings of trauma, fear of things related to abuse including objects, smells, places and people who approach them, feelings of inferiority and sometimes feelings of wanting to end their lives and this is closely related to the courage of the victim to involve law enforcement agencies because there is no self-motivation even the encouragement of the environment around the victim which is very necessary for optimizing law enforcement is not obtained by the victim due to the social paradigm. This is the main problem in the involvement of the function of visum et repertum in rape cases where in a simple narrative, let alone analyzing the technicalities of visum et repertum so that it can function optimally, even rape victims do not involve themselves in the legal process by reporting to the Police, meaning that investigations, inquiries, visum et repertum can occur if there are reports from rape victims.

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<sup>14</sup>Yanika Helena Sitanggang, et al. (2024), *Feminist Legal Theory and Legal Protection for Women in Indonesia*, Judge: Jurnal Hukum, 05 (04), p. 11

<sup>15</sup>Ibid



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