

# The Probative Power of Visum et Repertum in the Examination of Assault Criminal Cases (Analysis of Supreme Court Decision Number: 129 K/Pid/2021)

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## ABSTRACT

This study aims to analyze the evidentiary strength of visum et repertum in the examination of criminal assault cases, with a focus on Cassation Decision Number 129 K/Pid/2021. Visum et repertum is one of the documentary evidence tools that holds a strategic position in the Indonesian criminal justice system, as regulated in Article 184 paragraph (1) letter c of the Criminal Procedure Code (KUHP). The type of research used is empirical legal research with a qualitative approach. Primary data were obtained through interviews with law enforcement officers and observations of the judicial process, while secondary data were obtained from literature studies on legislation, legal literature, scientific journals, and court decision documents. Research results indicate that a visum et repertum has legitimate evidentiary power as documentary evidence and can also function as expert testimony if the doctor who prepared the visum is present in court to provide an explanation. In the context of assault cases, the visum et repertum serves as an important basis for proving the existence of injuries or physical consequences arising from the defendant's actions. However, its evidentiary value is relative and does not stand alone, as it must still be correlated with other evidence, such as witness statements and the defendant's

testimony. In the case of Supreme Court Decision Number 129 K/Pid/2021, the results of the visum et repertum were considered inconsistent with the testimony of witnesses in court, particularly regarding the location and type of injuries suffered by the victim. These discrepancies caused the element of assault in the Public Prosecutor's charges to be unable to be proven legally and convincingly. Thus, the visum et repertum functions as support for the judge's conviction, not as the sole determinant in rendering a verdict. This study emphasizes the importance of closer coordination between investigators, forensic doctors, prosecutors, and judges in the evidentiary process of assault cases so that the results of the visum et repertum truly reflect the factual condition of the victim and have maximum probative value.

**Keywords:** Visum Et Repertum, Evidence, Abuse, Criminal Evidence, Cassation Decision, Legal Certainty.

## INTRODUCTION

Evidence is an important stage in the criminal justice process to uncover the material truth. In Indonesian criminal procedure law, visum et repertum is a form of evidence regulated in Article 184 of the Criminal Procedure Code, in the form of written statements from forensic medical experts made under oath for the purposes of

the court. In practice, visum et repertum serves to explain the relationship between physical injuries or death and the alleged criminal act.

However, in some cases, the results of visum et repertum are not always consistent with witness testimony in court, which can influence the judge's conviction in passing a verdict. One interesting case to examine is Cassation Decision Number 129 K/Pid/2021, in which the visum et repertum was the main piece of evidence in an assault case but was not strong enough to prove the elements of the crime.

Observing how the evidence system works in court, one case that presents problems with evidence is the criminal case of abuse that is the subject of this study. Based on the facts presented in court through sworn witness testimony, there were discrepancies between the location of the wounds described in the autopsy report and what was described by the victim and other witnesses during the trial. The testimony of witnesses at the trial and the results of the medical examination in the indictment by the Public Prosecutor (JPU) were not synchronized, which weakened the evidence in the JPU's indictment. With the elements in the indictment not proven, an acquittal (*vrijspraak*) could occur.

## **LITERATURE REVIEW**

A medical examination report is a written statement from an expert that is used as evidence in criminal cases. According to R. Atang Ranoemihardja, SH, the meaning contained in visum et repertum is "seen" and "found," so visum et repertum is a doctor's statement about what was seen and found when examining an injured person or a corpse. Therefore, it is written testimony.

According to Subekti Tjitrosudibyo, it is a doctor's statement containing the conclusions of an examination that he has conducted. Visum et Repertum is a term known in forensic medicine, commonly known as "visum," which comes from Latin, with the singular form being "visa." From an etymological or grammatical

perspective, the word "visum" or 'visa' means a sign of seeing, which refers to the signing of evidence regarding everything that has been found, approved, and validated, while "Repertum" means to report, which refers to what has been obtained from the doctor's examination of the victim. Etymologically, visum et repertum is what is seen and found. Law enforcement officials interpret visum et repertum as a written report made by a doctor under oath at the request of the authorities for the purposes of the court regarding everything that has been seen and found to the best of their knowledge.

Based on various criminal procedure law literatures (Harahap, 2009; Budiyanto, 2012), visum et repertum is defined as a written statement made by a doctor under oath upon the investigator's request for judicial purposes. The status of visum is regulated in Article 184 paragraph (1) letter c of the Criminal Procedure Code as a legitimate written evidence. In the context of the crime of assault, the presence of visum et repertum serves as scientific evidence indicating a causal relationship between the defendant's actions and the injuries suffered by the victim. However, its evidentiary nature is not absolute, as the assessment of the strength of the evidence remains at the discretion of the judge.

According to the theory of evidence proposed by M. Yahya Harahap and the theory of legal certainty by Jan Michiel Otto, evidence in criminal cases must prioritize the principle of balance between legal certainty and justice. The visum et repertum must be prepared based on an official request from the investigator, made by a competent medical expert, and explained in court if necessary. If these elements are not fulfilled, its evidentiary strength becomes weak before the law.

Visum et repertum is a piece of evidence that has important legal force but is relative in nature, depending on its integration with other evidence such as witness and defendant statements. The synchronization between medical evidence and legal facts is

a determining factor for judges in reaching a verdict. Therefore, the results of the literature review emphasize the need for synergy between investigators, forensic doctors, and judicial institutions so that visum et repertum can function optimally as a scientific instrument of proof in upholding justice and legal certainty.

The judge's considerations are one of the most important aspects in determining the value of a court decision that contains justice (*ex aequo et bono*) and legal certainty, as well as benefits for the parties concerned, so that these considerations must be approached carefully, thoroughly, and meticulously. If the judge's considerations are not thorough, sound, and meticulous, then the court ruling based on those considerations will be overturned by the High Court/Supreme Court.

Judges in the examination of a case also require evidence, the results of which will be used as consideration in deciding the case. Evidence is the most important stage in a court hearing. The purpose of evidence is to obtain certainty that an event/fact that has been presented actually occurred, in order to obtain a correct and fair decision from the judge. Judges cannot make a decision before it is clear to them that the event/fact actually occurred, i.e., its truth has been proven, so that there is a clear legal relationship between the parties.

## **MATERIALS & METHODS**

This study uses an empirical legal approach with descriptive qualitative methods. The empirical approach was chosen because this study not only examines written legal norms, but also assesses their application in judicial practice, particularly in relation to the use of visum et repertum as evidence in criminal cases of abuse. The study was conducted to understand the extent to which the probative value of visum et repertum is recognized and considered by judges in passing sentences.

This research is descriptive in nature, describing and explaining legal phenomena based on empirical facts and normative

provisions. It focuses on the application of the theory of proof and the theory of legal certainty in the examination of criminal cases involving visum et repertum.

The data used consists of:

- Primary data, which is data obtained directly from the field through interviews with judges, prosecutors, and other parties involved in the judicial process of abuse cases.
- Secondary data, which is data obtained through literature reviews, books, legal journals, laws and regulations, and official documents such as Cassation Decision Number 129 K/Pid/2021.
- Tertiary Data, which is supporting material in the form of legal dictionaries, legal encyclopedias, and other sources that help explain the primary and secondary data.

The data was analyzed using qualitative analysis methods, which involve systematically processing and interpreting data to produce an objective picture of the relationship between theory and practice. The analysis was carried out in three stages:

- Data Reduction, which involves selecting and simplifying data relevant to the research focus.
- Data Presentation, which is the compilation of interview results, documents, and literature into a descriptive narrative form.
- Conclusion Drawing, carried out using the deductive-inductive method, which is drawing general conclusions from legal theory to assess its specific application in the case of Cassation Decision Number 129 K/Pid/2021.

## **RESULT**

### **The Use of Visum et Repertum in the Prosecution of Criminal Acts of Maltreatment**

The results of the study show that visum et repertum is legally recognized as documentary evidence in the Indonesian criminal procedural law system. Based on Article 184 paragraph (1) letter c of the Criminal Procedure Code and Article 187

letter c of the Criminal Procedure Code, visum et repertum is a written statement from a doctor made under oath and at the written request of an investigator for the purposes of the court. Its function is to scientifically explain the physical condition of the victim, whether alive or deceased, as material for the judge to consider in assessing the elements of the crime.

In practice, visum et repertum is divided into three forms, namely provisional visum, definitive visum, and follow-up visum. Each form has the same evidentiary value before the law as long as it is prepared in accordance with procedures and based on medical expertise. This study found that many law enforcement officials do not yet understand these procedural differences, so that during the trial process there are often debates regarding the validity of the visum. Based on interviews with law enforcement officials at the Gunungsitoli District Court, a medical examination report is considered valid if it fulfills formal requirements (*pro justitia*), is prepared by an authorized doctor, and is based on an objective physical examination. However, judges retain full authority to assess the extent to which a medical examination report can support their belief in the material truth of a case.

### **The Position and Strength of Visum Et Repertum Evidence**

From the analysis of Cassation Decision Number 129 K/Pid/2021, it was found that visum et repertum serves as supporting evidence, not primary evidence. In this case, there was a discrepancy between the results of the visum et repertum and the testimony of the victim and other witnesses at the trial. The difference lay in the location and type of injuries suffered by the victim. This inconsistency raised doubts in the judge's mind about the truth of the facts alleged by the Public Prosecutor, so that the element of criminal abuse could not be proven legally and convincingly.

The results of this study reinforce the views of legal experts (Harahap, 2009; Andi Hamzah, 2014) that the evidence system

adopted by the Criminal Procedure Code is a negative system according to the law (*negative wettelijke bewijstheorie*). This means that judges can only impose criminal penalties if there are at least two valid pieces of evidence accompanied by the judge's personal conviction regarding the material truth of the case. Thus, the medical examination report cannot be used as the sole basis for imposing a criminal sentence.

### **The Judge's Considerations in Cassation Decision Number 129 K/Pid/2021**

The Panel of Judges of the Supreme Court in case Number 129 K/Pid/2021 considered that the medical examination and report evidence submitted by the Public Prosecutor was not strong enough to prove the element of maltreatment as charged in Article 351 of the Criminal Code. The judges found inconsistencies between the description of the injuries in the medical examination and the witness testimony, which mentioned different locations and types of injuries.

In their considerations, the judges referred to the principle of *in dubio pro reo*, which states that if there is doubt regarding the proof of a criminal element, the decision must be in favor of the defendant. As a result, the Supreme Court upheld the previous court's decision to acquit the defendant.

This result confirms that although the medical report is an objective piece of scientific evidence, its assessment is still subject to the judge's discretion and must be supported by other evidence such as witness testimony, physical evidence, and the defendant's testimony. This finding is in line with the results of research by Arsyadi (2014) and Trisnandi (2013), which state that the strength of a medical examination report depends heavily on the integrity of the legal process and the ability of investigators and prosecutors to connect medical evidence with legal facts.

### **Legal Consequences and Practical Implications**

The legal consequences of the cassation decision indicate that a medical report cannot be used as the sole basis for proving criminal abuse if it is not supported by other consistent evidence. This has important implications for law enforcement officials, particularly investigators and prosecutors, to ensure that every medical report is complete, valid, and consistent with the facts of the case.

This study also highlights the importance of improving coordination between forensic doctors and law enforcement officials. Forensic doctors not only play a medical role, but also act as legal experts who help uncover the truth through scientific examination results. Therefore, every autopsy must be conducted with the principles of caution, objectivity, and professionalism so that the results can be accepted as strong evidence in court.

In practical terms, the results of this study emphasize that the evidence system in Indonesian criminal procedure law requires the integration of scientific and juridical evidence. Visum et repertum cannot stand alone without the support of witness testimony and other evidence, but it has a very important value in strengthening the judge's conviction if all elements of proof are fulfilled.

The results of this study confirm that the probative value of medical examination reports in criminal cases of abuse is relative and not independent. This probative value will only be maximized if the medical examination is conducted in accordance with legal procedures, reflects the actual condition of the victim, and is supported by other valid evidence. The Cassation Decision Number 129 K/Pid/2021 shows that discrepancies between the results of the medical examination and witness testimony can weaken the evidence, resulting in the defendant being acquitted. Therefore, it is necessary to improve the professionalism of law enforcement officials and forensic doctors so that the process of proving

through medical examination and report can truly guarantee justice and legal certainty.

### **DISCUSSION**

Research results indicate that the position of visum et repertum in the Indonesian criminal procedural law evidentiary system is important but not decisive. Although visum et repertum is legitimate scientific evidence under Article 184 paragraph (1) letter c of the Criminal Procedure Code, its evidential strength still depends on integration with other evidence as well as the judge's assessment based on conviction and courtroom facts. This reinforces the principle of a negative evidentiary system according to the law (negative wettelijke bewijstheorie), where a judge can only impose a sentence if there are two valid pieces of evidence accompanied by the belief that the defendant is indeed guilty.

Theoretically, this study confirms the relevance of the legal certainty theory proposed by Jan Michiel Otto, which states that legal certainty can only be realized if regulations and their implementation are carried out consistently and predictably. In this case, the weak correlation between the results of the visum et repertum and witness statements reflects a lack of consistency between the scientific and juridical aspects in criminal evidence. Therefore, the validity of the visum is not determined solely by the authenticity of the document, but also by its conformity with the facts examined in court. From the perspective of evidentiary theory, the visum et repertum is scientific evidence that provides an objective basis for judges to assess a criminal act. However, due to its technical and specific nature, judges need to understand the limitations of the medical report.

Furthermore, from a practical standpoint, the results of this study highlight the importance of synergy between law enforcement agencies and forensic medical personnel. In some cases, incomplete autopsy requests or delays in issuing examination results often hinder the investigation process and reduce the value

of evidence in court. This shows that there is a gap in coordination between investigators and forensic doctors that needs to be addressed. Therefore, technical guidelines and ongoing training for doctors and investigators are needed so that the autopsy and report process can meet professional and legal standards.

From a criminal law policy perspective, this discussion shows that although visum et repertum already has a strong legal basis, there is still a need to strengthen technical regulations governing the standards for its preparation and use in the judicial process. The development of a national Standard Operating Procedure (SOP) on forensic medical examination and the integration of forensic data with the electronic judicial system is a strategic step to ensure that the results of forensic medical examination can be used in a uniform, accurate, and verified manner. Thus, visum et repertum not only functions as medical evidence, but also as an instrument of justice that strengthens the enforcement of criminal law in Indonesia.

## CONCLUSION

Visum et repertum holds an important position as evidence in criminal cases, particularly in assault. However, its evidentiary strength is relative because it must be linked with other evidence and the judge's conviction. In Cassation Decision Number 129 K/Pid/2021, the discrepancy between the visum results and witness testimony led the judge to not be convinced of the defendant's guilt. Thus, evidence through visum et repertum must be conducted carefully and supported by other evidence to achieve the legal objectives of justice and certainty.

## Declaration by Authors

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