

Legal Consequences of Difference in The Results of Two *Visum Et Repertum* in Proving Criminal Case in Indonesia

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Abstract

In criminal cases, visual evidence is used to reveal the cause and effect of a criminal act. If there are two different visual outcomes in Brigadier Joshua's case, then the question arises as to which choice of visum will be recognized as valid evidence by the judge in considering his decision. The formulation of the problem in this study is how the legal consequences of the difference in the results of two visum et repertum in the evidence system in Indonesia. This study aims to examine the legal consequences of the difference in the results of the two visum et repertum in proving criminal cases in Indonesia. This study used normative legal research. The approach used in this study is to use a statutory approach and a conceptual approach. The results of this study showed that the case of the visual results in Brigadier Josua had 2 different results. Therefore, the principle of Indonesian criminal procedural law, finding material truth is very important in proof in the criminal justice process. What is meant by "in criminalibus probationes bedent esse luce clariores" is that evidence in a criminal case must be brighter than clear. There will be legal confusion in determining which law enforcement officials will be used as a benchmark in assessing valid evidence according to the rules of the Criminal Procedure Code if there are differences in the results of visum et repertum in a criminal case. The procedures outlined in the Instruction of the Chief of Police Number: INS/E/20/IX/75 concerning procedures for making visum et repertum and its revocation must be followed in making visum et repertum. To find out the cause and effect of a criminal act that occurs, as well as to collect information and seek the objective truth of a criminal act related to the relationship between the act and the consequences it causes.

1. Introduction

Law and humans are inseparable, so the legal system will always coexist with social life. Although there are already laws that regulate the goods in a community group, it does not rule out the possibility that various problems will arise, and crime is still rampant in Indonesia. Perpetrators who are found guilty of their crimes will always face sanctions criminal sanctions may be applied if the court issues a decision that has long-term legal consequences.¹ The legal facts become clear before trial, allowing for choices. The facts revealed in court are legal facts. The sworn statements of defendants and witnesses are considered valid evidence. However, the use of witness and defendant testimony is still problematic in cases involving crimes due to the potential for falsification of testimony. Thus, evidence *visum et repertum* can be used to support the evidentiary process in court.

¹ Suyoko Suyoko, "Literatur Review Kualitas Visum et Repertum Dalam Mendukung Penegakan Hukum Di Indonesia," *Indonesian of Health Information Management Journal (INOHIM)* 10, no. 2 (December 30, 2022): 73–84, <https://doi.org/10.47007/inohim.v10i2.391>.

Formil criminal law is a set of rules governing how to defend the rights of suspects or defendants against violations of material criminal law committed by suspects.² One of the most important elements in formil criminal law or more commonly referred to as criminal procedure law is the law of evidence. This legislation is important for the criminal procedural law process. Because the material truth (*waarheid materil*) is what is sought in criminal proceedings, the judge must be actively involved in the case. This is in contrast to the civil procedure system where the judge is passive and the formil truth (*formele waarheid*) is the goal.³ Therefore, judges in civil cases are only limited by the facts presented by the parties to the dispute. However, if we take into account that Indonesia faces more legal problems, namely the increase in crime, then these crimes are covered by the provisions of the Code Penal (KUHP) contained in the second book of the Criminal Code.⁴ The purpose of criminal procedure law (formal) is to reveal the truth in a criminal offense, but the discovery of the truth depends on evidence that describes an event that concretely establishes something in accordance with criminal law, namely showing things that can be perceived by criminal procedure law. According to Article 184 of the Penal Procedure Code (KUHP) which stipulates that there must be sufficient evidence to support proof in the criminal process, proof in criminal cases is required.

As stated in Article 6 paragraph (2) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (hereinafter referred to in Law No.48/2009), no one shall be convicted unless the court is convinced that the person being tried is guilty based on evidence acceptable under the law of committing the offense charged against him. With the existence of the aforementioned laws and regulations, law enforcers are expected to use all reasonable means based on the applicable laws to comprehensively collect facts and information regarding the criminal case they are handling in order to resolve criminal cases.⁵ According to Article 184 paragraph (1) of KUHP, evidence witness statements, expert statements, letters, instructions, defendants statements. Such is the valid evidence that has been listed in Article 184 of the KUHP and chosen in accordance with the law. Law enforcement officers often encounter problems or issues that they cannot handle on their own because they are beyond their ability or expertise when trying to gather the evidence needed to examine a criminal case. In order to give law enforcement the whole material truth in these situations, the assistance of an expert is essential.

The death of Brigadier J or Nofriansyah Yoshua Hutabarat became public attention. This incident began when Brigadier J was shot dead at the official house of Irjen Ferdy Sambo, the inactive Head of the National Police Propam Division. The initial autopsy was conducted by the Forensic Medicine Team at Bhayangkara R Said Sukanto Hospital in East Jakarta, but many, including the family, doubted its integrity and called it an attempt to fabricate the case. Although the first autopsy recorded one shot, the family found a number of wounds when

² Gustilawati Sahali, Fenty U. Puluhalawa, and Avelia Rahmah Y. Mantali, "Visum et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Pembunuhan Berencana," *Jurnal Ilmu Sosial, Humaniora Dan Seni* 1, no. 2 (January 2023).

³ Yuke N. Langie, Djemi Tomuka, and Erwin G. Kristanto, "Peran Visum et Repertum Dalam Penegakan Hukum Pidana Pada Kasus Kematian Tidak Wajar Di Kota Manado," *Jurnal Biomedik (JBM)* 7, no. 1 (March 19, 2015), <https://doi.org/10.35790/jbm.7.1.2015.7292>.

⁴ Lilik Eko Sukaryono and Amin Purnawan, "The Role Of Visum Et Repertum As A Provision Effort On Criminal Financing," *Jurnal Daulat Hukum* 3, no. 1 (April 21, 2020): 131, <https://doi.org/10.30659/jdh.v3i1.8408>.

⁵ Zahrotunnisa Nuralinda and M. Rusli Arafat, "Pertanggungjawaban Hukum Pidana Terhadap Pelaku Pemalsuan Alat Bukti Visum Et Repertum," *Jatiswara* 37, no. 2 (July 29, 2022): 205-11, <https://doi.org/10.29303/jtsw.v37i2.409>.

opening the body. The National Police, despite insisting that the first autopsy was carried out according to procedure and without ethical violations by forensic doctors at the Kramat Jati Police Hospital, East Jakarta, still received the spotlight. The question then is whether a second autopsy can uncover more facts related to the victim's death, given the condition of the corpse that has undergone changes, such as stitches and gluing. The importance of the second autopsy in revealing the facts of death is crucial, especially because of the controversial statement from the Chief of Police stating the absence of gunfire. Whether the second forensic result will be the key to turning the investigation significantly and uncovering the criminal act of the murder of Brigadier Nofriansyah Yosua Hutabarat. Therefore, the role of autopsies in uncovering murder crimes needs to be considered, as well as the accountability of forensic doctors involved. In criminal cases involving murder, assault or persecution, and rape, investigators often require information from judicial experts such as forensic doctors or medical specialists regarding the cause and effect of the victim's condition. This knowledge then has a significant influence on the investigator's behavior in continuing to investigate the case. Authorized officials can better understand a criminal case with this assistance, combining valid evidence should take into account the expertise in the field to provide clarity regarding the causal events in the process of the occurrence of criminal acts, and ultimately assist the court in making the best decision regarding the case under consideration.

In the formal process of criminal procedure at the stage of examination of a criminal offense, from the preliminary examination by the investigator to the further examination at trial, the assistance of experts is both helpful and important.⁶ This support helps law enforcement explain a criminal case, gather evidence that requires specialized knowledge, provide more precise instructions regarding the perpetrator, and ultimately assist judges in drawing the correct conclusions about the case they are examining. It is not limited to determining the cause of death because the *visum et repertum* in the KUHAP also requires expert testimony.⁷ Investigators can carry out their duties, including explaining a criminal case, so the information provided by the doctor to the investigator must be contained in the *visum et repertum*. The situation or other factors assessed by the appropriate doctor will determine this.

Visum et repertum evidence is classified as expert testimony evidence based on Article 186 of the KUHAP which regulates expert testimony, and Article 187 letter c which both explain "expert testimony evidence" including "*visum et repertum*", What is meant by "*visum et repertum*" evidence is when a medical expert or forensic expert testifies in court. Even if used as evidence at trial, the *visum et repertum* must be read aloud. If the phrase "*visum et repertum*" is not spoken in court, therefore the trial cannot include it as evidence, it must still be taken into account and decided.⁸ It is usually difficult for a court to challenge the findings of an examination after an expert doctor has expressed the truth about what he or she saw and found on the victim, whether alive or dead. However, since this decision is largely based on subjective observations, the judge may disagree with the doctor's assessment.

In the process of criminal cases, what is firmly held is "*in criminalibus probantiones bedent esse luce clariores*" A criminal case that is most preferred is evidence that is more bright and convincing than just light. Therefore, in a criminal case, it is better for the judge not to punish a guilty person than an innocent person. Philosophically, if a judge sentences a guilty person, the judge will not be spared from suffering in the afterlife, however, if a judge sentences an

⁶ Revi Astuti, "Visum et Repertum Sebagai Alat Bukti Konkrit Ddalam Mencari Kebenaran Materiil Pada Pembuktian Tindak Pidana," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (October 29, 2021), <https://doi.org/10.35308/jic.v5i2.3434>.

⁷ Nany Suryawati, *Bunga Rampai Pengantar Ilmu Hukum* (Purbalingga: Eureka Media Aksara, 2022).

⁸ Sudikno Mertokusumo, *Hukum Pembuktian Dalam Acara Pidana* (Bandung : Alumni, 2017).

innocent person, the judge is responsible. His personal sin and the sin of an innocent person according to the law are two sins. Therefore, evidence is very important in criminal proceedings.

Problems that occur if investigators, prosecutors and judges request a *visum et repertum* and the results are different at each stage. Then the results of the difference in the results of the *visum et repertum* conducted by expert doctors, there is confusion about which results are the benchmark or become valid evidence in proving law enforcers in court considering that forensic science has similarities. Then carried out using the same test equipment, the results should also be the same on the same object. Therefore, there is a need for rules governing the limitation of *visum et repertum* applications in criminal cases. In order to avoid mistakes in proving criminal cases in Indonesia.

This research was conducted using 3 (three) previous studies with the intention of enriching the scientific treasures that discuss studies related to the legal consequences of differences in the results of two *visum et repertum* in proving criminal cases in Indonesia. The first research was conducted by Yuni Priskila Ginting with the title "Proof of *Visum Et Repertum* in The Crime of Rape" has similarities related to discussing the proof of *visum* in criminal cases.⁹ The difference with this research is that it only focuses on the *visum et repertum* in the crime of rape. The formulation of the problem in this study is related to the importance of proving *visum* in not criminal rape. The results of this study show that *visum et repertum* is very important in rape cases because these cases often involve living victims. The injuries and injuries contained in the victim are strong physical evidence of the criminal act that occurred. The second research conducted by Karunia Mirakel with the title "The Role of *Visum Et Repertum* in Proving Criminal Acts" has similarities to the discussion that discusses the burden of proof of *visum et repertum* on criminal acts.¹⁰ The difference with this study describes in general the role of *visum et repertum* in proving criminal acts. The formulation of the problem in this study is first, how to prove a crime according to the KUHP? second how is the role of *visum et repertum* in proving a crime according to the KUHP. The results of this study show that the role of *visum et repertum* in proving criminal acts is as valid evidence, this is as mentioned in Article 184 paragraph (1) jo. Article 187 letter c of the KUHP. Also as evidence of the detention of suspects and as a consideration for judges in examining and deciding cases. The third research conducted by Ismail Ali with the title "*Visum et repertum* as Evidence in The Crime of Persecution" has in common the importance of *visum et repertum* evidence in criminal cases.¹¹ The difference with this research is the focus on the crime of persecution. The formulation of the problem in this study How *visum et repertum* proved its strength as a criminal evidence of persecution?. Then the result of this study is that *visum et repertum* has a strong enough evidentiary power, because *visum et repertum* is one of the letter evidence as stipulated in Article 184 paragraph (1) letter c Jo. Article 187 letter c of the KUHP. The Public Prosecution charges were made in a very concerning regard to the evidence of the role of *visum et repertum*. The charge is because in this case the truth of this evidence is revealed the second and fourth elements in Article 351 paragraph (1) of the KUHP concerning the criminal act of persecution.

⁹ Yuni Priskila Ginting et al., "Pembuktian *Visum Et Repertum* Dalam Tindak Pidana Pemerkosaan" 02, no. 09 (2023): 782-97.

¹⁰ Karunia Mirakel, Daniel F. Aling, and Eske Worang, "Peranan *Visum et Repertum* Dalam Pembuktian Tindak Pidana," *Jurnal Fakultas Hukum Universitas Sam Ratulangi* XII, no. 2 (2023).

¹¹ Ismail Ali Junardi and Andi Sulfiati, "*Visum Et Repertum* Sebagai Alat Bukti Dalam Tindak Pidana Penganiayaan," *LEGAL: Journal of Law* 2, no. 1 (2023): 43.

The absence of regulations regarding the maximum limit of application/preparation of *visum et repertum* evidence, this will create a legal vacuum resulting in legal uncertainty. In the instruction of the National Police Number: INS/E/20/IX/75 concerning procedures for applying and revoking *visum et repertum* (hereinafter referred to Instruction Polri No: INS/E/20/IX/75) only regulates procedural procedures for making *visum et repertum* (*formil*), does not clearly regulate the maximum limit in the application for *visum* evidence. In this case the difference in the results of the two *visum et repertum* also violates the principle in criminal law namely "*in criminalibus probantiones bedent esse luce clariores*" in criminal cases that are firmly held that evidence must be brighter than light. Two results of *visum et repertum* will create uncertainty in evidence, considering which results will be used in the evidentiary process at trial. Based on this issue, it is necessary to find and analyze the absence of regulations regarding the maximum limit of application of *visum et repertum*. It is expected that regulations related to the maximum limit of *visum et repertum* applications are in accordance with the principles of proof in the KUHAP, as well as knowing the urgency of limiting the making of *visum et repertum* for law enforcement officials. So that there will no longer be ambiguous and uncertain evidence in criminal law in Indonesia. This study was conducted with the aim of gaining an understanding of the legal consequences of difference in the results of the two *visum et repertum* in proving criminal cases in Indonesia. The formulation of the problem in this study is what is the legal effect of the difference in the results of two *visum et repertum* in the evidence system in Indonesia?

2. Methods

This research uses normative legal research methods. Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand.¹² In this study using a statutory approach which is carried out by reviewing all laws and regulations relating to the legal issues handled and using a conceptual approach to find ideas that give rise to legal understanding, legal concepts, and legal principles relevant to the problem at hand by studying views and doctrines in legal science.¹³ Primary legal materials and secondary legal materials are the sources of law used. The primary legal material consists of KUHP, KUHAP, Law of Republic Indonesia Number 48 of 2009 concerning the Basic Provisions of the Law on Judicial Power (hereinafter referred to as Law No.48/2009). Secondary legal materials comprising legal theory, journals, legal literature, and legal principles constitute sources of information.¹⁴

3. Results and Discussion

3.1 The Position of *Visum Et Repertum* in Letter Evidence and Expert Testimony

There is no single article in the KUHAP that regulates the *visum et repertum*. Staatsblad (State Gazette) Number 350 of 1937 is one of the rules that expressly mentions *the visum et repertum*, which reads as follows:

Article 1: The *visum et repertum* of a doctor, whether appointed by taking an oath of office after completing his studies in the Netherlands or in Indonesia, is admissible as evidence in a criminal case as long as the *visum* record describes the details of what the examiner saw and felt when the object was examined.

Article 2 paragraph (1): Based on the provisions of Article 1 above, Doctors may swear (promise) that to the best of their knowledge, they will make any oral or written

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2017).

¹³ Soerjono Soekanto, *Metode Penelitian Hukum* (Jakarta : Rajawali Pers, 2014).

¹⁴ Jonaedi Efendi and Johny Ibrahim, *Metode Penelitian Hukum Normatif & Empiris* (Depok: Prenadamedia Group, 2018).

statement required by law even if they have never taken an oath of office in the Netherlands or Indonesia. I pray for physical and mental strength from God, the Most Compassionate and Merciful.

Given that the doctor's statement is in writing and the *visum et repertum* is solely regulated in Staatsblad 1937 Number 350, the evidence supporting these requirements is therefore admissible.¹⁵ The written statement issued in accordance with the doctor's oath of office functions as a *visum et repertum*, which proves the truth of the letter as evidence. Article 184 paragraph (1) letter c of the KUHP regulates what is meant by permissible evidence, and Article 187 letter c states that every letter made under the intent of the paragraph must be made on oath. position or confirmed by oath, is a statement made by an expert containing an opinion on a matter based on his competence. Two articles of the KUHP have established the status of *visum et repertum* as evidence in criminal investigations. Staatsblad 1937 Number 350 is the foundation of the *visum et repertum* concept. The following is the procedure in providing expert testimony in the form of a *visum et repertum* evidence report¹⁶:

1. Clearly state the reason for the examination to be carried out.
2. The investigator submits a request in writing (not oral).
3. The expert submits a report as requested by the investigator
4. The investigator must show the victim, suspect, and/or evidence along with the request for *visum et repertum* to the medical expert.
5. If the expert accepts his position, his report is proven to be true under oath.

In certain criminal offenses, a *visum et repertum* is required for a number of criminal offenses that include human victims, both living and deceased, as well as objects that can be considered part of the human body. According to the KUHP, the following criminal offenses require a *visum et repertum*:

- a. Criminal offenders who have mental illness, especially those listed in Article 44 of the KUHP;
- b. Knowing the age of the victim or perpetrator;
- c. Criminal acts against decency contained in Article 290 concerning child molestation, 292 concerning child molestation committed by adults against minors, 294 of the KUHP concerning child molestation of minors;
- d. Articles 338 to 348 of the KUHP regulate the criminal act of persecution with different qualifications.
- e. Articles 351 to 355 of the KUHP regulate crimes of maltreatment.
- f. Articles 359 and 360 of the KUHP are related to negligence or negligence that results in the death of a person.

Visum et repertum must comply with the requirements of formal and material standards to be declared as valid evidence. with the existence of material and formal requirements, Instruction Polri No: INS/E/20/IX/75 *Visum et repertum* is used or revoked in the following ways:

- a. In accordance with Article 133 paragraph (2) of the KUHP, a *visum et repertum* must be requested in writing;
- b. The body is examined through surgery, if the victim's family objects, the police or examiner then explains the importance of conducting a *visum et repertum*;

Visum et repertum must comply with formal and material requirements. Procedures must be followed, as stipulated in Instruction Polri No: INS/E/20/IX/75, which is one example of a formal requirement. A *visum et repertum* is used or revoked in the following ways:

¹⁵ Hamdani Njowito, *Ilmu Kedokteran Kehakiman* (Jakarta: Gramedia Pustaka Tama, 1992).

¹⁶ Soetedjo Martodidjojo, *Ilmu Kedokteran Kehakiman* (Jakarta: Ghalia Indonesia, 1997).

- a. Based on Article 133 paragraph (2) of the KUHP that the request for medical expert testimony or experts who have expertise in their fields must be made in writing;
- b. If the victim's family has given their consent for the body to be dissected for examination, the police or examiner shall explain the importance of the dissection to the victim's family.
- c. Recently committed crimes may be requested for *visum et repertum*, requests for crimes from the past are not allowed.
- d. The police have the duty to supervise and oversee the *visum*.
- e. The police have the duty to maintain the security of the place where the *visum* is conducted so that nothing bad happens.

Meanwhile, the material requirements of the *visum et repertum* are related to its content, namely considering the actual body of the victim as found during the examination.¹⁷ In addition, the contents of the *visum et repertum* are in line with the medical understanding received. According to J.M. Van Bemmelen,¹⁸ a letter is any form of written communication that is punctuated and intended to express the thoughts and substance of the author. The validity of a letter is determined by the following standards:

1. From a formal point of view, the contents of the letter can only be supported by additional evidence.
2. No written evidence, as referred to in Article 187, shall constitute conclusive evidence from a material point of view.

Letter evidence has the same value as other evidence, namely the strength of evidence in terms of its evidentiary power. An attestation letter with an oath of office or confirmation under oath is an absolute requirement to qualify as admissible evidence.¹⁹ In terms of expert testimony evidence, a person who has special knowledge in his field who wants to reveal a criminal case for the benefit of the investigation can submit expert testimony. Oral testimony from an expert can be given, as well as testimony given under oath or promise. Based on Article 242 paragraph (1) "Whoever, in a case which according to the law requires any testimony by oath or if it brings effect to the law, knowingly gives false information, borne by oath, either orally or in writing, or by himself or his special agent appointed therefor, shall be punished with imprisonment for not more than seven (7) years" When we hear someone giving false information then first of all as a result is offended feelings. The reaction to this offending feeling is not the same for different societies. Just as the old German Law viewed it as a grave crime, Church Law viewed it as a sin, and so on. So if someone gives testimony on oath or is corroborated by oath, then the function of the oath here is as a guarantee that what is explained is the real and nothing more than the truth. Therefore, if someone gives false information above or is corroborated by oath, it means that the perpetrator has damaged the assurance given and at the same time damaged people's trust. From the description above, according to the author, it can be said that false information on oath is information that is partially or wholly untrue given orally or in writing given by himself or by his attorney or representative accompanied by an oath pronounced before or after giving information, according to their respective religions. Deliberately giving false information above expressly in Article 242 of the KUHP, because in the examination of a criminal case in a court hearing cannot be separated from the examination of witnesses to provide information about what witnesses saw themselves or experienced for themselves

¹⁷ Asri Wijayanti et al., "Existence of Visum Et Repertum on the Occurrence of Persecution as Evidence of Work Termination," *Jurnal Cita Hukum* 9, no. 3 (December 23, 2021): 449–60, <https://doi.org/10.15408/jch.v9i3.22868>.

¹⁸ Anwar C, *Teori Dan Hukum Konstitusi* (Malang: Intrans Publishing, 2011).

¹⁹ R Soeparno, *Keterangan Ahli Dan Visum Et Repertum Dalam Aspek Hukum Acara Pidana* (Bandung: Mandar Maju, 2016).

Yahya Harahap argues that, from a legal perspective, the phrase "statement" is slightly broader than the term "confession".²⁰ There is both confession and denial in the phrase testimony. Confession, on the other hand, only refers to the confessional statement itself and does not include the idea of denial. Therefore, the defendant's statement can be used as evidence whether the defendant confesses or denies the accusation.²¹ The distinction of these phrases is only theoretical, because it is the judge who determines which is an admission and which is a denial of the facts given by the defendant.

According to Yahya Harahap, so that expert testimony can be used as valid evidence and can also be accounted for, it should fulfill the following conditions:

1. The statement must have knowledge of a matter relating to a criminal offense in the investigation process.
2. Expert testimony from someone who does not have a special understanding of an issue related to the disputed criminal case cannot be accepted as evidence. The use of expert testimony as evidence, in theory, has no legal force. The strength of evidence submitted in expert testimony must be in accordance with the evidentiary standards set by the court examination in order to be considered valid according to the law and have value as evidence.

3.2 The Evidentiary Power of *Visum Et Repertum* in Judges' Consideration

In the examination of criminal cases, the search for material truth involves a lot of evidence. Indonesia follows the Continental European system, which relies on the judge's view to evaluate the evidence.²² The court must consider the interests of the defendant and the community in relation to the information. In order to create security, prosperity and stability in society, it is in the interest of society that anyone who breaks the law should be punished. Meanwhile, the interests of the defendant require that he be treated properly in accordance with the presumption of innocence. So that the punishment imposed on the defendant is in accordance with the level of guilt.

The purpose of the process is to establish the truth of an event so that reason can accept it as true. Evidence that proves the existence of a criminal offense, that the perpetrator is responsible for committing it, and that it should be punished. Evidence is a set of rules and principles that explain how to use permissible legal procedures to establish the guilt of the accused. A judge may use evidence authorized by law to establish the guilt of the accused. This is known as the "evidence" provision. One of the requirements of criminal procedure law is the law of evidence, which regulates the types of evidence that can be legally accepted, the system used in evidence, the requirements and processes for submitting evidence, as well as the ability of judges to accept, reject, and analyze evidence. KUHAP does not define what is meant by "evidence".²³ The system of evidence based on the Law is negative, as extracted from Article 183 of the KUHAP, at least 2 pieces of evidence and the conviction of the judge.²⁴

In the theory of proof based on negative legislation (*negative wettelijk*), the court can only impose punishment if there is valid evidence and the judge's belief in the existence of such

²⁰ Yahya Harahap, *Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2000).

²¹ Karim Nasution, *Masalah Hukum Pembuktian Dalam Proses Pidana*, jilid 1, 1976.

²² Eddy OS Hiariej, *Teori Dan Hukum Pembuktian* (Jakarta : Erlangga , 2012).

²³ Sumaidi, "Kekuatan Pembuktian Visum Et Repertum Bagi Hakim Mempertimbangkan Putusannya," *Jurnal Lex Specialis* , no. No 21 (2015).

²⁴ Nuralita Putri Kusmira, "Kekuatan Pembuktian Dan Penilaian Alat Bukti Visum Et Repertum Dalam Tindak Pidana Persetubuhan Terhadap Anak," *Jurnal Verstek Universitas Sebelas Maret* 4, no. 3 (2016).

evidence.²⁵ Based on Article 183 of the KUHAP "A judge may not convict a person unless by at least two pieces of valid evidence he or she has a reasonable belief that a crime actually occurred and that the defendant is guilty of committing it.", it can be concluded that the KUHAP uses a valid negative proof system based on the requirements of Article 183 of the KUHAP. Therefore, it is necessary to conduct research to find out whether the defendant has enough justification supported by the evidence required by the law at least two pieces of evidence. If this is the case, then the judge's conviction of the defendant's guilt must be determined. Negative statutory proof is the name for the theory of proof that adheres to negative law. Negatively, this means that even if there is enough evidence in a case to support a guilty verdict, the court cannot impose a sentence until a guilty verdict is obtained.

The minimum principles of proof are regulated by legislation in the negative statutory system of proof, and judges must comply with the rules when using them. Article 183 of the KUHAP states that the limited statutory system, sometimes called the negative statutory system, has the following characteristics:

- a. The resolution of a criminal case is the ultimate goal of proof, and if the burden of proof is met, a sentence can be imposed;
- b. There is a standard that controls the outcome of the evidence that results in criminal punishment.

The negative proof system (*negative wettelijk*) refers to the requirement that the judge's conclusion that the defendant committed the criminal offense in question must be accompanied by the evidence and legal procedures used to support that conclusion. To reduce the possibility of misjudgment or incorrect application of the law, the conviction formed must be supported by facts learned from the evidence provided in the law. The *visum et repertum* is useful for digging up information and finding the real truth behind the criminal charges filed by the public prosecutor against the defendant. It can also be used in consideration to find the relationship between the act and the effect of the act.²⁶

The evidentiary power of evidence is the same as the evidentiary power of witness testimony, expert testimony, and letters, they can provide independent evidence. Since the judge is not obliged to accept their truth, he is free to assess the agreements made by these instructions and use them as evidence to support his stance. Articles 186 and 187 of the KUHAP, "*visum et repertum* is included in the expert testimony as evidence." When forensic or medical experts testify in court, the *visum et repertum* is evidence of their expertise. If submitted as written evidence, the *visum et repertum* must be read aloud in court.

Evidence issued by a forensic expert doctor must be read aloud in order for the case to be examined and decided, otherwise the *visum et repertum* results cannot be used as evidence at trial. Because the doctor precisely describes what he or she saw and found during the examination of the victim, whether alive or well, the results of the doctor's examination are usually not controversial in court.²⁷ Although the doctor's conclusions are based on subjective perception, the court may disagree. If the results of the *visum et repertum* have differences, there will certainly be uncertainty for law enforcement officials to determine which evidence will be

²⁵ Lukman Hakim, *Asas-Asas Hukum Pidana* (Yogyakarta: Penerbit Deepublish, 2019).

²⁶ Tri Astuti Handayani, "Peranan Visum et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Pengeroyokan," *Jurnal Justitiable Hukum Universitas Bojonegoro* 2, no. 2 (2020).

²⁷ Dhanis Taufiqurrahman Suhardianto and Muhammad Rusli Arafat, "Kekuatan Pembuktian Visum et Repertum Dalam Proses Persidangan Perkara Pidana Ditinjau Dari Hukum Acara Pidana," *Jurnal Hukum Positum* 7, no. 1 (June 2022): 83-94.

used in evidence in the trial.²⁸ The importance of procedures or mechanisms that must complete the formil requirements in terms of procedures and materiil requirements as stated in the Instruction Polri No: INS/E/20/IX/75.

4. Conclusions

Visum et repertum has significant evidentiary value because it is one of the types of written evidence included in Article 184 paragraph (1) letter c jo. Article 187 letter c KUHAP. The indictment filed by the public prosecutor was very concerned about the role of the *visum et Repertum* in the case. Letter evidence and expert witness evidence both contain the concept of *visum et repertum*. In criminal procedure law, the role of the *visum et repertum* is very important in proving a criminal case because it helps to find the material truth of the actual truth and use that truth to determine the court to decide the case. Therefore, it is strongly believed that in criminal trials, evidence must be "*incriminalibus probantiones bedent esse luce claiores*" in criminal cases the evidence must be brighter than light. The *visum et repertum* evidence can assist law enforcement in determining the reasons and consequences of a criminal offense. If the results of the *visum et repertum* do not match, it must be taken into consideration to determine which evidence is acceptable according to the KUHAP. According to the KUHAP, special steps need to be taken before the *visum et repertum* can be used as evidence.

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6. Reference

- Annisa Nurfadhila Nasarudin, and Muhammad Rusli Arafat. 'Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan'. *Jurnal Ilmiah Wahana Pendidikan* 9, no. 14 (July 2023): 131–42.
- Annisa Nurfadhila Nasarudin, and Muhammad Rusli Arafat. "Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan." *Jurnal Ilmiah Wahana Pendidikan* 9, no. 14 (July 2023): 131–42.
- Anwar C. *Teori Dan Hukum Konstitusi*. Malang: Intrans Publishing, 2011.
- Astuti, Revi. "Visum et Repertum Sebagai Alat Bukti Konkrit Ddalam Mencari Kebenaran Materiil Pada Pembuktian Tindak Pidana." *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (October 29, 2021). <https://doi.org/10.35308/jic.v5i2.3434>.
- Dhanis Taufiqurrahman Suhardianto, and Muhammad Rusli Arafat. "Kekuatan Pembuktian Visum et Repertum Dalam Proses Persidangan Perkara Pidana Ditinjau Dari Hukum Acara Pidana." *Jurnal Hukum Positum* 7, no. 1 (June 2022): 83–94.
- Ginting, Yuni Priskila, Aksel Stefan Wenur, Cindy Destiani, Michelle Clarisa, Candra Halim, Raden Ayu, Rani Mutiara, and Steffi Lauw. "Pembuktian Visum Et Repertum Dalam Tindak Pidana Pemerkosaan" 02, no. 09 (2023): 782–97.
- Gustilawati Sahali, Fenty U. Puluululawa, and Avelia Rahmah Y. Mantali. "Visum et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Pembunuhan Berencana." *Jurnal Ilmu Sosial, Humaniora Dan Seni* 1, no. 2 (January 2023).

²⁸ Annisa Nurfadhila Nasarudin and Muhammad Rusli Arafat, "Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 14 (July 2023): 131–42.

- Hakim, Lukman. *Asas-Asas Hukum Pidana*. Yogyakarta: Penerbit Deepublish, 2019.
- Hamdani Njowito. *Ilmu Kedokteran Kehakiman*. Jakarta: Gramedia Pustaka Tama, 1992.
- Hiariej, Eddy OS. *Teori Dan Hukum Pembuktian*. Jakarta : Erlangga , 2012.
- Jonaedi Efendi, and Johny Ibrahim. *Metode Penelitian Hukum Normatif & Empiris*. Depok: Prenadamedia Group, 2018.
- Junardi, Ismail Ali, and Andi Sulfiati. "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Penganiayaan." *LEGAL: Journal of Law* 2, no. 1 (2023): 43.
- Karim Nasution. *Masalah Hukum Pembuktian Dalam Proses Pidana*. Jilid 1., 1976.
- Karunia Mirakel, Daniel F. Aling, and Eske Worang. "Peranan Visum et Repertum Dalam Pembuktian Tindak Pidana." *Jurnal Fakultas Hukum Universitas Sam Ratulangi XII*, no. 2 (2023).
- Langie, Yuke N., Djemi Tomuka, and Erwin G. Kristanto. "Peran Visum et Repertum Dalam Penegakan Hukum Pidana Pada Kasus Kematian Tidak Wajar Di Kota Manado." *Jurnal Biomedik (JBM)* 7, no. 1 (March 19, 2015). <https://doi.org/10.35790/jbm.7.1.2015.7292>.
- Martodidjojo, Soetedjo. *Ilmu Kedokteran Kehakiman*. Jakarta: Ghalia Indonesia, 1997.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana, 2017.
- Mertokusumo, Sudikno. *Hukum Pembuktian Dalam Acara Pidana*. Bandung : Alumni, 2017.
- Nany Suryawati. *Bunga Rampai Pengantar Ilmu Hukum*. Purbalingga: Eureka Media Aksara, 2022.
- Nuralinda, Zahrotunnisa, and M. Rusli Arafat. "Pertanggungjawaban Hukum Pidana Terhadap Pelaku Pemalsuan Alat Bukti Visum Et Repertum." *Jatiswara* 37, no. 2 (July 29, 2022): 205–11. <https://doi.org/10.29303/jtsw.v37i2.409>.
- Nuralita Putri Kusmira. "Kekuatan Pembuktian Dan Penilaian Alat Bukti Visum Et Repertum Dalam Tindak Pidana Persetubuhan Terhadap Anak." *Jurnal Verstek Universitas Sebelas Maret* 4, no. 3 (2016).
- Soeparno, R. *Keterangan Ahli Dan Visum Et Repertum Dalam Aspek Hukum Acara Pidana*. Bandung: Mandar Maju, 2016.
- Soerjono Soekanto. *Metode Penelitian Hukum*. Jakarta : Rajawali Pers, 2014.
- Sukaryono, Lilik Eko, and Amin Purnawan. "The Role Of Visum Et Repertum As A Provision Effort On Criminal Financing." *Jurnal Daulat Hukum* 3, no. 1 (April 21, 2020): 131. <https://doi.org/10.30659/jdh.v3i1.8408>.
- Sumaidi. "Kekuatan Pembuktian Visum Et Repertum Bagi Hakim Mempertimbangkan Putusannya." *Jurnal Lex Specialis* , no. No 21 (2015).
- Suyoko, Suyoko. "Literatur Review Kualitas Visum et Repertum Dalam Mendukung Penegakan Hukum Di Indonesia." *Indonesian of Health Information Management Journal (INOHIM)* 10, no. 2 (December 30, 2022): 73–84. <https://doi.org/10.47007/inohim.v10i2.-391>.
- Tri Astuti Handayani. "Peranan Visum et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Pengeroyokan." *Jurnal Justitiable Hukum Universitas Bojonegoro* 2, no. 2 (2020).
- Wijayanti, Asri, Achmad Hariri, Agus Supriyo, Basuki Babussalam, and Satria Unggul Wicaksana Perkasa. "Existence of Visum Et Repertum on the Occurrence of Persecution as Evidence of Work Termination." *Jurnal Cita Hukum* 9, no. 3 (December 23, 2021): 449–60. <https://doi.org/10.15408/jch.v9i3.22868>.
- Yahya Harahap. *Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2000.