УДК 343(594)

THE ROLE OF VISUM ET REPERTUM IN MURDER INVESTIGATION OF INDONESIA'S CRIMINAL PROCEDURE SYSTEM

Azis Setyagama, Totok Sugiarto

Criminal acts are very detrimental to society and often the perpetrators of these offenses cannot be revealed, so that lawbreakers avoid punishment. There are many factors that must be met in uncovering a crime, but there will still be murders that are not caught red-handed. To solve crimes in these instances it is used Visum et Repertum procedure, that is carried out by forensic doctors. This procedure is very decisive as the only written statement made by a forensic doctor which contains evidence of the felon's guilt. Present paper is a normative legal research studying the provisions of laws and regulations in the Indonesian criminal law. The authors specifically analyse in depth Article 184 of the Criminal Procedure Code, which is about evidence as an effort to uncover a crime.

Keywords: Visum et Repertum, crime, criminal law, forensic medicine, Indonesia.

РОЛЬ VISUM ET REPERTUM ПРИ РАССЛЕДОВАНИИ УБИЙСТВ В СИСТЕМЕ УГОЛОВНОГО СУДОПРОИЗВОДСТВА ИНДОНЕЗИИ

Азис Сетьягама, Тоток Сугиарто

Преступные деяния наносят большой ущерб обществу, но часто лица, совершившие правонарушения, не могут быть установлены, в результате чего злоумышленники избегают наказания. Существует множество факторов, которые необходимо учитывать при раскрытии преступления, но при этом все равно будут происходить убийства, которые невозможно раскрыть по горячим следам. В таких случаях для раскрытия преступлений прибегают к процедуре Visum et Repertum, которая проводится судебно-медицинскими экспертами. Эта процедура очень важна, поскольку представляет собой единственное письменное заключение, сделанное судебным врачом, и содержащее доказательства вины преступника. Данная статья представляет собой

нормативно-правовое исследование, рассматривающее положения законов и нормативных актов в индонезийском уголовном праве. В частности, авторами подробно анализируется статья 184 Уголовно-процессуального кодекса, в которой говорится о роли доказательств в деле раскрытия преступления.

Ключевые слова: Visum et Repertum, преступность, уголовное право, судебная медицина, Индонезия.

Introduction

Every individual in social life all of their behaviour is regulated by law, both customary law in their area and laws that have been created by the government. Indonesia is one of the countries based on law, in which the system adopted is a system of constitutionalism. This is stated in the explanation of the 1945 Constitution, which reads: “The Indonesian state is based on law, it is not founded on power alone (Machtsstaat). And “Indonesian government is based on a constitutional system (basic law), not absolutism (unlimited power)” [9].

In addition, it is also emphasized in the idealism of the country that *Pancasila* (the official, foundational philosophical theory of Indonesia) is a legal system. Pancasila is the source of all sources of law or the highest source of law in the Indonesian legal system. In essence, Pancasila aims to achieve harmony and balance, as well as the ability to protect the community, nation and Indonesian state.

In law abiding state, law is the main pillar in moving the joints of life in society, nation and state. Therefore, one of the characteristics of the law abiding state lies in its tendency to judge the actions taken by the community on the basis of legal regulations. In the sense that a government with the concept of the law abiding state always regulates every action and behaviour of its people based on applicable laws to create, maintain and maintain peaceful social life so that it is in accordance with what is mandated in Pancasila and the 1945 Constitution that every citizen has the right to sense of security and freedom from all forms of crime.

Even though all behaviour and actions have been regulated in every law, crime is still rampant in this country. There are many factors behind the occurrence of a

series of crimes that occur repeatedly. Social factors are one of the triggers for crime in society. Furthermore, the implementation of regulations does not run properly, causing crimes to occur, because there is no deterrent effect that makes criminals to think twice about committing these crimes [8, p. 18].

One of the crimes that often occur is crimes against life or often called murder. As if we are used to it, almost every day we are presented with news of murder on television. This is certainly a bad achievement for law enforcers in Indonesia.

Murders often occur in various ways, both planned and unplanned, these forms of murder are often preceded by persecution, in which the persecution that has recently occurred in the community often results in the death of the victim.

One of the problems that often arise in people's lives is the crime of murder committed by someone either individually or collectively, which without realizing it can cause unrest in the community because often the murders committed actually result in the death of the victim. Therefore, all components in the criminal justice process direct their attention and all their abilities to punish the perpetrator in the hope that by punishing the perpetrator can prevent the recurrence of the crime and prevent other perpetrators to commit the crime so that the community feels at ease because it is protected by law, as contained in the Criminal Code.

The examination of a criminal act in the judicial process is essentially seeking the material truth of the case. This can be seen from the various efforts made by law enforcement officers in obtaining the evidence needed to uncover a case both at the preliminary examination stage such as investigation and prosecution as well as at the trial stage of the case.

In an effort to prove, usually evidence will be shown in court to clarify the actions of the suspect / defendant to the victim. However, in practice, not all evidence of a crime can be brought before a trial court, such as human bodies, whether living or dead.

Valid evidence to prove the material truth of the suspect / accused guilty or innocent for law enforcement officers, for the police, prosecutors and judges, it will be easy to prove material truth if expert witnesses can show evidence of the

wrongdoing of the suspect / defendant who committed the crime. One way that can be done to prove a criminal case is to ask for the help of a doctor as an expert. A doctor can act as an expert witness and can also make the intended statement, which is stated in writing in the form of a medical examination result letter called *Visum et Repertum*. According to its understanding, Visum et Repertum (VeR) is defined as a written report from a doctor who has been sworn in about what he saw and found in the evidence he examined and also contained the conclusions of the examination for the benefit of the judiciary [5, p. 2]. This VeR has been determined as valid evidence. Because what is contained in his "news" is a testimony, the main purpose of VeR is to determine the cause of death and even the method of death and to determine the cause of death, all organs of the body must be examined.

Methodology

In writing this article, normative legal research is used where this research emphasizes the rule of law and regulations which are then discussed in depth. In this study, a statutory approach, a historical approach, and a conceptual approach were used.

This research is a scientific activity that seeks to obtain solutions to legal problems related to VeR where this evidence can be used to uncover a criminal case, especially a crime where the perpetrator of a crime commits a crime of murder. The research approach used in the study, in addition to the normative juridical approach, is also a sociological approach, which is to examine and discuss the problems obtained in accordance with the facts at the location which are then linked to the applicable legal norms, and legal theory that has to do with the position of VeR in revealing a criminal case of the crime of homicide.

Results and discussion

Definition of proof

Enactment of amendments to the 1945 Constitution of the Republic of Indonesia the law of proof is a set of legal rules that regulate evidence, namely all processes, using legal evidence, and taking actions with special procedures to find out juridical facts at trial, the system adopted in proof, the conditions and procedures for

submitting such evidence as well as the judge's authority to accept, reject, and evaluate an evidence [1, p. 21].

Proof according to the general understanding is to show forward about a situation that is in accordance with the main problem, or in other words is to find a match between the main event and the roots of the event. In criminal law cases, conformity certainly does not have to be interpreted as similarity, but can also or must be interpreted as a correlation or a mutually supportive relationship towards strengthening or justification by law. For example, in the case of theft, the main problem is the presence of lost goods, the correlation may be that the place to store the lost goods has been damaged, or there are signs of damage, or the place where the goods are stored is due to human efforts that violate the law.

Another correlation is the existence of signs of the use of tools to damage, or the discovery of the lost goods in other places, where the movement of the lost goods is not at the will of the owner of the goods, or more importantly is that there is a law or legal regulation that prohibits against the theft [4, p. 59].

The definition of *proof* is the process, method, act of proving an attempt to show the right or wrong of the defendant in a court trial. According to M. Yahya Harahap, *proof* is "provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt charged to the defendant" [3, p. 25].

Meanwhile, according to Hari Sasangka and Lily Rosita, the meaning of the law of *proof* is "part of the criminal procedure law which regulates various types of evidence that are legal according to the law, the system adopted in proof, the requirements and procedures for submitting such evidence and the judge's authority to accept, reject and evaluate a proof" [6, p. 4].

In terms of criminal procedural law as regulated in the Criminal Procedure Code, several guidelines and guidelines have been set:

1. The public prosecutor acts as an apparatus authorized to propose all efforts to prove the guilt he has indicted against the defendant.

2. On the other hand, the defendant or legal adviser has the right to weaken and paralyze the evidence submitted by the public prosecutor, in accordance with methods justified by law.

3. Especially for judges, they must be really aware and carefully assess and consider the strength of the evidence found during the trial examination.

Types of evidence and the strength of evidence

Evidence is everything that has to do with an act, where with the evidence; it can be used as evidence in order to raise the judge's belief in the truth of a criminal act that has been committed by the defendant.

Regarding legal evidence, it is limitedly regulated in the provisions of Article 184 of the Criminal Procedure Code, namely five types of evidence, including:

a. Witness testimony

A witness is a person who can provide information for the benefit of the trial. Witness testimony is one of the evidences in a criminal case in the form of information about a criminal event that he heard himself, saw for himself and experienced himself by mentioning the reasons from his knowledge (Article 1 Number 27 of the Criminal Procedure Code). Thus, the testimony of a witness stated before the court must be about what he saw with his own eyes, he heard with his own ears, he felt with his own feelings, he experienced with his own five senses, is the testimony of the witness as evidence. From the sound of Article 185 paragraph (1) of the Criminal Procedure Code, conclusions can be drawn, namely:

1. That the purpose of the witness giving testimony is for the purposes of investigation, prosecution and trial. This provision also contains the understanding that witnesses are needed and provide their statements at two levels, namely the level of investigation and the level of prosecution at a court hearing.

2. That the content of what is explained is everything that he hears for himself, he sees for himself and he experiences for himself. Information on everything, whose source is outside the source, has no value or strength of proof by using witness statements.

3. That the testimony of a witness must be accompanied by reasons for what he knows about something he has explained. That is, the content of new information is valuable and has proof value if after he gives the information he then explains the causes of his knowledge. This is also a general principle of evidence for witness testimony in terms of evidence.

The requirements for witness testimony so that the testimony becomes valid and valuable, so that it can be used as a basis for judges' considerations in forming their beliefs, can lie in several things, such as: the personal externality of the witness, what the witness explained, the reason why the witness knew about the witness something he explained; terms of oath or promise; and requirements regarding the existence of a relationship between the contents of witness statements and the contents of other witnesses' statements or the contents of other evidence.

These conditions are witness testimony given before a court session, not when giving testimony at the investigation stage. Witness testimony as valid evidence also lies in the statement before the trial, but for investigators the conditions regarding some of the things mentioned above, especially relevant conditions, for example, the requirements regarding the personal quality of witnesses must be considered, in order to determine a witness and the work of filing it in the file criminal cases will not be in vain later in court.

b. Expert Description

Expert testimony is information given by someone who has special and objective expertise with the aim of making light of a case or to increase the knowledge of the judge himself in a matter. Based on Article 1 Number 28 of the Criminal Procedure Code, there are two conditions for expert testimony, namely;

1. That what is explained must be about everything that falls within the scope of his expertise.

2. That what is explained about the expertise is closely related to the criminal case being examined.

An expert provides information not about everything he sees, heard and experienced himself, but about things that are his or her field of expertise that are

related to the case being examined. Expert testimony does not need to be strengthened by reason of his expertise or knowledge as in witness testimony.

The general requirements for the strength of evidence, including witness testimony and expert testimony, are:

1. Must be supported and in accordance with the facts obtained from other evidence. In accordance with Article 183 in conjunction with Article 185 paragraph (2) of the Criminal Procedure Code.

2. Expert testimony on oath is the same as evidence for witness testimony (Article 60 paragraph (4) in conjunction with Article 179 paragraph (2) of the Criminal Procedure Code). Expert testimony given in front of a trial must still be sworn in, even though an expert has been sworn in when giving information at the level of investigation based on Article 120 paragraph (2) of the Criminal Procedure Code.

3. Expert testimony is different from witness testimony, which is expert testimony orally before the trial or written expert testimony outside the trial. The written expert testimony is contained in a letter which is used as documentary evidence, such as the so-called VeR which is given at the investigation level on the orders of the investigator (Article 187 letter c of the Criminal Procedure Code).

From the point of view of the nature of the content of the information provided by the expert, the expert can be divided into experts who explain what he has done based on special expertise for that. For example, a forensic doctor who provides expert testimony in court about the cause of death after the doctor performs a post-mortem (autopsy). Or an accountant gives information in court about the results of an audit he conducted on the finances of a government agency. Then there are also experts who explain solely about special expertise on a matter that is closely related to the criminal case being investigated without conducting a first examination, for example an expert in the field of bomb manufacture who explains in court hearings about how to assemble a bomb. Even in practice, a specialist lawyer is often used and they are also called an expert.

c. Letter

The letter referred to in this case is a letter made on an oath of office, or made by oath. For example, minutes and other letters in official form made by an authorized public official or made in front of him, containing information about events or circumstances that he heard, saw or experienced himself, accompanied by clear and unequivocal reasons for the statement.

Letters are everything that contains reading signs that are intended to pour out one's heart or to convey someone's thoughts and are used as evidence, this means that everything that does not contain reading marks, or even though it contains reading signs, does not contain reading marks ideas, not included in written evidence or letters.

There are very few arrangements regarding documentary evidence in the Criminal Procedure Code, only two articles, namely Article 184 and specifically Article 187. Article 187 regulates the following:

Letters as included in Article 184 paragraph (1) letter c of the Criminal Procedure Code, made on an oath of office or confirmed by oath are:

1. Minutes and other letters in an official form made by an authorized public official or made before him, containing information about events or circumstances that he heard, saw or experienced himself, accompanied by clear and firm reasons for the statement.

2. A letter made according to the provisions of the legislation or a letter made by an official regarding matters that are included in the management for which he is responsible and which is intended to prove something or a situation.

3. A certificate from an expert containing an opinion based on his expertise regarding a matter or situation that is officially requested from him.

4. Another letter that can only be valid if it has something to do with the contents of other evidence

d. Instruction

Instructions are actions, events or circumstances which due to conformity, either with one another, or with the crime itself, indicate that a crime has occurred

and who the perpetrator is. Based on the provisions of Article 184 paragraph (1) letter d of the Criminal Procedure Code, the instructions are the fourth gradation as evidence. This evidence is regulated in Article 188 which reads in full as follows:

1. Instructions are actions, events or circumstances which, due to conformity, either with one another, or with the crime itself, indicate that a crime has occurred and who the perpetrator is.

2. The instructions as referred to in paragraph (1) shall only be obtained from the testimony of witnesses, letters and statements of the defendant.

3. An assessment of the evidentiary strength of an instruction in every particular situation by a judge who is wise and prudent, after he has conducted an examination with full accuracy and conformity with his conscience.

Because the evidence of this guide is in the form of the judge's thoughts or opinions which are formed from the relationship or conformity of the existing evidence and used in the trial, the subjectivity of the judge is more dominant. Two or more pieces of evidence cannot force a judge to impose a crime if from the available evidence he is not sure about the occurrence of a crime, or the defendant is guilty of committing it. To add to that conviction, the judge can form evidence of instructions from the two pieces of evidence that were originally added to the results of a local examination or a local trial.

e. Defendant's statement

The defendant's testimony is what the defendant stated before the court regarding the actions he had committed or which he himself knew or experienced himself. The defendant's statement is the fifth of the provisions of Article 184 paragraph (1) letter e of the Criminal Procedure Code. When compared in terms of terminology, with the defendant's confession as regulated in Article 295 in conjunction with Article 367 HIR, the term defendant's statement (Article 184 in conjunction with Article 189 of the Criminal Procedure Code) seems to have a broader meaning than the defendant's confession, because this aspect implies that everything explained by the defendant even if it does not contain a confession, it is

already valid evidence. Thus, in the process of proving a criminal case, it does not pursue or force the confession of the defendant.

Furthermore, the statement of the defendant is regulated in Article 189 of the Criminal Procedure Code as follows:

1. The defendant's statement is what the defendant stated in court about the actions he had committed or which he himself knew or experienced himself.

2. The defendant's statement given outside the trial can be used to help find evidence in court, provided that the information is supported by valid evidence as long as it relates to the thing he is accused of.

3. The defendant's statement can only be used against himself.

4. The defendant's statement alone is not sufficient to prove that he is guilty of the act he is accused of, but must be accompanied by other evidence.

Visum et Repertum

a. Definition of Visum et Repertum

The literal meaning of the term *Visum et Repertum* (VeR) comes from the Latin words "visum" which means *view* and "repertum" which means *reporting*. So if combined from this literal meaning is what is seen and found, then VeR is a written report from a doctor (expert) made under an oath, regarding what was seen and found on living, corpse or physical evidence or other evidence, then an examination is carried out according to the best knowledge [7, p. 86].

In the Decree of the Minister of Justice No M04/UM/01.06 of 1983 in Article 10 it is stated that the results of the judicial medical examination are referred to as VeR. The opinion of a doctor as outlined in a VeR is very much needed by a judge in making a decision in a trial. This is because a judge as a case breaker at a trial is not equipped with the knowledge related to forensic medicine. In this case, the results of the examination and a written report will be used as a guide as referred to in Article 184 of the Criminal Procedure Code regarding evidence. That is, the results of the VeRare not only a guide in terms of making light of a criminal case but also to support the prosecution and court processes.

b. Forms of Visum et Repertum

Form of VeR based on the object:

1. VeR of living victims.

a) VeR is given to the victim after being examined, it is found that the wound does not cause disease or an obstacle to carrying out his work or activities.

b) Temporary VeR, for example, a visa is made for the victim who is still being treated at the hospital due to his injuries due to abuse.

c) Advanced VeR, for example, a post-mortem for the injured victim (Temporary VeR) then leaves the hospital or as a result of his injuries transfer to another hospital or doctor or dies.

d) VeR on corpses – visum on the corpse is made based on a complete autopsy or in other words based on external examination and internal examination of the corpse.

e) VeR examination – at the Place of Case (TKP).

f) VeR exhumation.

g) VeR – regarding age.

h) Psychiatric VeR regarding evidence, for example, in the form of human body tissue, blood spots, sperm and so on [10, p. 125].

c. Legal basis for Visum et Repertum

According to Budiyanto, the legal basis for VeR is Article 133 of the Criminal Procedure Code which states:

1. In the event that an investigator for the purposes of the judiciary handles a victim who is injured, poisoned or dies who is suspected to be due to an incident which constitutes a criminal act, he or she is authorized to submit a request for expert testimony to a medical expert of the judiciary or a doctor and or other expert.

2. Request for expert information as referred to in paragraph.

3. It is done in writing, which in the letter is explicitly stated for wound examination or post-mortem and or virtual surgery examination [2, p. 34].

Furthermore, the existence of VeR is not only intended for a victim (both living and non-living victims), but for the sake of investigation it can also be carried out

against a suspect, such as a Psychiatric VeR. This is in accordance with Article 120 (1) of the Criminal Procedure Code in the event that an investigator deems it necessary, he can ask for the opinion of an expert or a person with special expertise.

d. Role and function of Visum et Repertum

VeR is one of the legal evidence as written in Article 184 of the Criminal Code. VeR also plays a role in the process of proving a criminal case against human health and soul, where VeR describes everything about the results of medical examinations contained in the news section, which therefore can be considered as a substitute for evidence. VeR also contains a doctor's statement or opinion regarding the results of the medical examination which is contained in the conclusion section. Thus VeR as a whole has bridged medical science with legal science, so that by reading VeR it can be clearly seen what has happened to a person, and legal practitioners can apply legal norms in criminal cases involving body and soul man. If the VeR has not been able to clear up the issues in court, the judge may request expert testimony or submit new materials, as stated in the Criminal Procedure Code, which allows for examination or re-examination of the evidence, if a reasonable objection arises from the defendant or legal advisor on an examination result. This is in accordance with Article 180 of the Criminal Procedure Code, which for investigators (Police / Military Police) VeR is useful for disclosing cases, and for Public Prosecutors (Prosecutors) information is useful for determining the articles to be indicted, while for Judges as evidence to impose a criminal sentence or release someone from lawsuits. For this reason, it is necessary to make a Standard Operating Procedure (SPO) at a hospital regarding the management of the procurement of VeR .

The position of Visum et Repertum as evidence in the crime of murder

VeR is valid evidence which as stated in the previous discussion, that according to Article 184 of the Criminal Procedure Code, there are 5 pieces of evidence in criminal cases, namely:

1. Witness testimony.
2. Expert Statement.
3. Letters.

4. Instructions.

5. Defendant's statement.

The position of evidence for VeR is as documentary evidence, and as documentary evidence it has the same strength as other evidence. By attaching the VeR in a case file by the investigator or at the examination stage in the prosecution process by the public prosecutor, after it is stated that the results of the examination are sufficient from the criminal case charged with the defendant, then submitted to the trial, the evidence for the VeR letter includes tools valid evidence as stated in Article 184 paragraph (1) sub b and sub e of the Criminal Procedure Code.

According to Article 183 that a judge may not impose a sentence on a person unless with at least two valid evidences he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it. Thus, what is required is two valid pieces of evidence plus the judge's conviction. To prove a person is guilty of a crime

Conclusion

The strength of the proof of VeR is perfect evidence about what is contained in it, so the conclusions / opinions of doctors that he put forward must be trusted as long as there is no other evidence that weakens. The form of VeR is authentic evidence made in a form that has been determined by the doctor as the authorized official. VeR is also quite helpful for a judge in passing a verdict as in the case studied by the author that the existence of VeR can help in sentencing the defendant.

The position of VeR in the case of a crime of murder committed together is documentary evidence as regulated in Article 143 of the Criminal Procedure Code. If the criminal case file is attached with VeR, then the judge should consider it as evidence. However, if there is no VeR, the panel of judges can still decide the case based on article 183 of the Criminal Procedure Code, namely with at least two valid pieces of evidence and from the two pieces of evidence the judge is convinced that the defendant is guilty of a criminal act.

Bibliography:

1. Alfitra. Hukum Pembuktian Dalam Beracara Pidana, Perdata dan Korupsi Di Indonesia. Depok: Raih Asa Sukses, 2011. 187 p.

2. Budiyanto A. Ilmu Kedokteran Forensik, Jakarta: Bagian Kedokteran Forensik Fakultas kedokteran Universitas Indonesia, 1997. 218 p.

3. Harahap M.Y. Pembahasan Permasalahan dan Penerapan KUHAP: Pemerikasaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali. Jakarta: Sinar Grafika, 2003.

4. Hartono. Penyidikan dan Penegakan Hukum Pidana. Jakarta: Sinar Grafika. 2012. 228 p.

5. Idries A.M. Pedoman ilmu Kedokteran Forensik. Jakarta: Binarupa Aksara, 1997. 365 p.

6. Sasangka H., Rosita L. Hukum Pembuktian Dalam Perkara Pidana. Bandung: Mandar Maju, 2003. 224 p.

7. Soeparmono R. Keterangan ahli & Visum et Repertum. Bandung: Mandar Maju, 2011. 444 p.

8. Syamsuddin R. Peranan Visum Et Repertum Di Pengadilan // Peranan Visum Et Repertum Dalam Pembuktian Perkara. Al-Risalah. 2011. Vol. 11. No 1. 2011. P. 190-205.

9. The 1945 Constitution of the Republic of Indonesia [Web resource] // World Intellectual Property Organization. 2021. URL: https://bit.ly/3lrtZ51 (reference date: 15.09.2021).

10. Trisnadi S. Ruang Lingkup Visum et Repertum sebagai Alat Bukti pada Peristiwa Pidana yang Mengenai Tubuh Manusia // Sains Medika. 2013. Vol. 5. No. 2. P. 121-127.

Data about the authors:

Azis Setyagama – Doctor of Law, Associate Professor of Law Faculty, Panca Marga University (Probolinggo, Indonesia).

Totok Sugiarto – Doctor of Law, Lecturer of Law Faculty, Panca Marga University (Probolinggo, Indonesia).

Сведения об авторах:

Азис Сетьягама – доктор права, доцент юридического факультета Университета Панча Марга (Проболинго, Индонезия).

Тоток Сугиарто – доктор права, преподаватель юридического факультета Университета Панча Марга (Проболинго, Индонезия).

E-mail: setyagama.azis@gmail.com.

E-mail: sugiarto.prob@gmail.com.