

The Importance of Visum Et Repertum in the Crime of Serious Theft

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Abstrak

Permasalahan yang dibahas dalam penulisan artikel ini adalah pertimbangan hukum majelis hakim terhadap visum et repertum dalam tindak pidana pencurian dengan kekerasan yang menyebabkan kematian. Permasalahan tersebut dianalisis dengan metode penelitian hukum normative dengan pendekatan kasus terhadap Putusan Nomor: 208/Pid.B/2022/PN.Bdg. Teknik pengumpulan bahan hukum di dalam penulisan artikel ini menggunakan studi kepustakaan terhadap bahan hukum primer dan bahan hukum sekunder. Hasil penelitian ini adalah arti penting dari adanya visum et repertum ialah aparat penegak hukum terutama hakim tidak dibekali dengan ilmu mengenai kedokteran forensic, maka di dalam mencari kebenaran materiil hakim perlu mempertimbangkan keterangan ahli yang tertuang di dalam visum et repertum. Selain itu, visum et repertum dalam Putusan Nomor: 208/Pid.B/2022/PN.Bdg layak untuk dipertimbangkan dalam pembuktian oleh karena bersesuaian dengan keterangan saksi-saksi yang dihadirkan di depan persidangan.

Kata kunci: visum et repertum, pencurian dengan kekerasan, kematian

Abstract

The problem discussed in writing this article is the legal consideration of the panel of judges regarding post mortem et repertum in criminal acts of theft with violence that causes death. This problem was analyzed using normative legal research methods with a case approach to Decision Number: 208/Pid.B/2022/PN.Bdg. The technique for collecting legal materials in writing this article uses literature study of primary legal materials and secondary legal materials. The results of this research are that the importance of the existence of a post mortem et repertum is that law enforcement officers, especially judges, are not equipped with knowledge of forensic medicine, so in seeking material truth judges need to consider expert information contained in the visum et repertum. Apart from that, the post mortem et repertum in Decision Number: 208/Pid.B/2022/PN.Bdg is worthy of consideration in evidence because it is in accordance with the statements of the witnesses prese

Keywords: visum et repertum, theft with violence, death.

INTRODUCTION

Human existence cannot be separated from the laws that govern it, because law is a set of rules that regulate and limit human life. The affirmation of Indonesia as a state of law is regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely: The State of Indonesia is a state of law. This arrangement means that Indonesia is a country that upholds the law to be obeyed. Indonesia, as a country that was born in the 20th century, adopted the concept of a rule of law in accordance with the principles of constitutionalism. This can be seen from the agreement (consensus) of the Indonesian people since the 1945 Constitution was established as the constitution of the Indonesian state. In its development, this agreement has transformed into a common ideal which is also usually called a state philosophy or staatsidee (state ideals) which functions as a national philosophy and common platforms or sentence sawa among fellow citizens in the context of state life (Aisyah Fitri Kholifah, Miftach Rizcha Afifi, 2022).

Formal criminal law is better known as criminal procedural law, where this law regulates procedural procedures within the scope of criminal law. In criminal procedural law everything is about the process of examining criminal cases at all levels of examination by the Police, Prosecutor's Office and Court. The broader aim of criminal procedural law is the final goal which is the goal of all Indonesian legal order, in terms of achieving an orderly, peaceful, just and prosperous society (HANANTA, 2018). Criminal law is present in society as a means for society to eradicate crime, therefore the regulation of criminal law revolves around what actions are prohibited or required of citizens related to crimes such as theft, murder, rape, fraud and so on,

which in the middle society is seen as a disgraceful act. Imposing criminal penalties on law violators is the harshest form of sanction because it actually violates human rights, such as curbing freedom in prison, confiscating certain goods and sometimes even having to pay with one's life if sentenced to death (Kuswandi et al., 2020).

Meanwhile, according to Simons, a criminal act is a crime (action/deed) which is punishable by law, contrary to the law (onrechtmatig) carried out with a mistake (schuld) by someone who is capable of taking responsibility. Then Simons divided it into two groups of elements, namely objective elements in the form of actions that are prohibited from being required, as a result of certain problem conditions, and subjective elements in the form of mistakes (schuld) and the ability to take responsibility (toerekeningsvatbaar) of the perpetrator (Ismayawati, 2021).

One of the crimes that often occurs in society is theft. The crime of theft is regulated in Articles 362 to 367 of the Criminal Code. Article 362 of the Criminal Code states "anyone who takes something, which wholly or partly belongs to another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah." The provisions of Article 362 regulate the crime of ordinary theft which is limited to movable objects (roerende goeder). Immovable objects can only become objects of theft if they have been separated from the fixed object and become a movable object (Ramadhani, 2022). Meanwhile, Article 363 of the Criminal Code regulates the crime of theft with aggravation. Furthermore, the crime of light theft is regulated in Article 364 of the Criminal Code, the crime of violent theft is regulated in Article 365 of the Criminal Code, and regarding theft in the family the provisions are regulated in Article 367 theft in the family.

As is known, theft with violence is regulated in Article 365 of the Criminal Code. One case of criminal theft with violence resulting in death occurred in Bandung. Where in Decision no. 208/Pid.B/2022/PN Bdg explained that to impose a crime against the Defendant Muhammad Tegar Fauzan al. Enday bin. Dadang Kurnia was legally and convincingly proven guilty of committing the crime of "theft with violence resulting in the victim's death", as regulated and punishable by criminal charges in Article 365 paragraph (4) of the Criminal Code. The sentence imposed was imprisonment for 10 years. The crime began on Sunday 12 December 2021 at approximately 02.00 the defendant Muhammad Tegar Fauzan al. Enday bin. Dadang Kurnia together with Br. Saepul Anwar alias Deden Pule (DPO) located in front of PAV PIZZA Bandung City, Br. Saepul Anwar alias Deden Pule (DPO) seized the cellphone that the victim was playing with alone. The victim tried to fight back and tried to keep his cellphone until Mr. Saepul Anwar alias Deden Pule (DPO) shouted "Cicing Dog" and immediately took a sharp weapon similar to a knife that had been prepared and stabbed it into the victim's body, but the Defendant did not know what it was about, and the cellphone was snatched by Mr. Saepul Anwar alias Deden Pule (DPO) and the Defendant together with Mr. Saepul Anwar alias Deden Pule (DPO) immediately ran away, leaving the victim alone. There were 2 (two) witnesses who knew about the incident, namely witness Nono Subianto and witness Idi Rasidi. The two witnesses, who happened to be patrolling after the perpetrator left, immediately approached the victim who was sitting on the Pav Pizza terrace. Then witness Nono Subianto and witness Idi Rasidi called witness Ade Dedi, who then stopped witness Ade Dedi and informed the police who were passing by on patrol. After being checked, the victim was stiff and his pulse was no longer throbbing, and blood was flowing out of his body

In this decision it is known that the public prosecutor submitted a post mortem et repertum as one of the pieces of evidence (bewijsmiddelen). Article 184 paragraph (1) of the Criminal Procedure Code explains that there are 5 valid pieces of evidence, namely witness statements, expert statements, letters of instructions, and statements from the Defendant. The position of post mortem et repertum in the law of evidence according to the Criminal Procedure Law is included as evidence under Article 184 paragraph (1) letter c jo. Article 187 letter c of the Criminal Procedure Code which states that a statement from an expert contains an opinion based on his expertise regarding a matter or situation that has been officially requested from him (H Kara, 2014).

The meaning of *visum et repertum* comes from the words "visual" which is to see and "repertum" which is to report, meaning, "what is seen and found" so that *visum et repertum* is a written report from a doctor (expert) made based on an oath, regarding what which is seen and found on living evidence, then an examination is carried out based on the best possible knowledge. On this basis, a conclusion is then drawn, which is also the opinion of an expert or written (expert) testimony as stated in the reporting section (examination results). Therefore, the post mortem et repertum is only made so that a criminal case becomes clear and is only useful for the purposes of examination and for justice and is intended for the purposes of justice. This means that the post mortem et repertum is not made for other purposes (Siadari et al., 2016).

Based on the legal issues described above, the author is interested in studying further regarding the position of post mortem et repertum as a determining factor in proving charges in cases of theft with violence resulting in death in Bandung District Court Decision No. 208/Pid.B/2022/PN Bdg.

METHOD

The writing in this legal research uses a type of normative legal research that is prescriptive and applied. According to Peter Mahmud Marzuki, normative legal research is research based on primary and secondary legal materials which can later produce theoretical arguments and new concepts as solutions to the problems faced. The approach that will be used in writing this law uses a case approach. The technique for collecting legal materials that the author uses in this research is library research. The types and sources of legal materials include primary and secondary legal materials that support this research. The technical analysis of legal materials used is deductive syllogism, namely a thinking process that originates from major premises and minor premises which are then connected to draw conclusions.

RESULT AND DISCUSSION

An important stage in examining a case at a court hearing is evidence. Evidence is the public prosecutor's attempt to prove his charges using valid evidence. Here, the panel of judges must act wisely, consciously, and carefully evaluate and consider the evidence found or presented during the trial examination. Several experts provide their views regarding the meaning of the term evidentiary system. Subekti is of the view that proving is an effort to convince the judge of the truth of the argument or arguments put forward in a dispute (Jaya & Rahaditya, 2021). In the theory of evidence, evidence can be proven by witness testimony, expert testimony, letters, instructions and the defendant's statement. These rules are regulated in the Criminal Procedure Code or KUHAP in Article 184 paragraph (1).

And the evidence must be in accordance with what is alleged by the Public Prosecutor. In this case the Public Prosecutor presented several pieces of evidence, such as witness statements, defendant statements and letters. It is known that the role of evidence in a criminal case regarding the judge's decision is reviewed from the Criminal Procedure Code, namely: the error is proven with at least two valid pieces of evidence and the judge "obtains confidence" that the criminal act actually occurred and that the defendant is guilty of committing it. Article 184 paragraph 1 of the Criminal Procedure Code has determined "limitatively" the evidence that is valid according to law because there are 5 types of valid evidence in Article 184 paragraph 1, apart from this evidence, it is not permitted to be used to prove the defendant's guilt. So in the legal process of a criminal act, the problem of proof is a very principle problem to find out whether the defendant really committed a criminal act or not (Suryantha Tarigan et al., 2022).

One of the pieces of evidence presented by the public prosecutor in the case of theft with violence resulting in death in Decision no. 208/Pid.B/2022/PN Bdg, namely in the form of a *Visum et Repertum*. The *Visum et Repertum* is made on the basis of the results of an examination carried out by a doctor who has taken the oath of office, so the *Visum et Repertum* must be made with the actual results because they are considered to have authentic value. *Visum Et Repertum* can also be a substitute for *Corpus Delicti*, because what the doctor (expert) has seen and found is done as objectively as possible, as a substitute for the circumstances that occurred and a substitute for

evidence that has been examined according to his beliefs or facts, so that it is based on the best possible knowledge and basic expertise, appropriate and accurate conclusions can be drawn.

Even though in the Criminal Procedure Code, there is no obligation for investigators to submit a request for a Visum Et Repertum to an expert doctor in Judicial Medicine or another doctor (expert), however, for the purposes of examining the case and to make the case clearer, it is important to submit a request for a Visum Et Repertum (Varesa et al., 2022). Apart from that, Visum et Repertum is also useful for recording the victim's current condition after the crime occurred. Because the condition of the human body can change, it is feared that by the time the case is examined at court, the condition of the victim's body will have changed. This can make the examination not objective.

The Criminal Procedure Code does not specifically regulate Visum et Repertum. In particular, Article 184 of the Criminal Procedure Code which contains legal evidence at trial does not provide specific information regarding Visum et Repertum. However, Article 179 paragraph (1) of the Criminal Procedure Code explains that "any person whose opinion is asked for as a judicial medical expert or doctor or other expert is obliged to provide expert information by law." So from this article it is known that a medical expert is obliged to provide expert testimony by law and his position is very important in court.

The position of Visum et Repertum in the law of evidence in the criminal procedural process is included as documentary evidence as intended by article 184 paragraph 1 letter c jo. article 187 letter c KUHAP. Where the article reads "The letter as stated in Article 184 paragraph (1) letter c, made on an oath of office or confirmed by oath, is:

1. minutes and other letters in official form made by an authorized public official or made in his presence, containing information about events or conditions heard, seen or personally experienced, accompanied by clear and unequivocal reasons for the statement;'
2. a letter made in accordance with the provisions of statutory regulations or a letter made by an official identifying matters included in the administration for which he is responsible and which is intended to prove something or a situation;
3. a statement from an expert containing an opinion based on his expertise regarding a matter or situation that has been officially requested by him; d. other letters which can only be valid if they are related to the contents of other evidence."

Based on these articles, it can be concluded that Visum et Repertum is a valid form of evidence. Visum et Repertum, which is also a complete replacement for the evidence (Corpus Delicti) that is examined, strengthens that Visum et Repertum is a valid piece of evidence. Visum et Repertum includes documentary evidence which is made on an oath of office, namely as a doctor, so that the letter has authenticity (Pratama, 2020).

Visum et Repertum can have absolute power but must be balanced with other evidence so that it is sufficient to prove that the suspect has committed a criminal act or not, this is in accordance with the contents of the Criminal Procedure Code Article 183 (Ohoiwutun, 2016) Visum et Repertum is a powerful piece of evidence which is absolute and very important to use in proving the existence of an act criminal. This is because the letter is an authentic deed made officially based on procedures established by law. As evidence in a trial, a letter does not have binding evidentiary power. Visum et Repertum is evidence that cannot be used without being supported by a tool other evidence, so that the Visum et Repertum cannot be said to be standing evidence alone (Tarigan Indri Novita, 2019). This is in accordance with the minimum proof principle stated in article 183 KUHAP. The provisions in Article 183 of the Criminal Procedure Code are closely related to article 185 paragraph (2) of the Criminal Procedure Code which states that there is a single witness in the trial was not sufficient to prove the defendant's guilt.

Visum et Repertum can be determined by its strength in revealing an act crime, namely by matching it with the witness's statement. This results in a conclusion which is taken into consideration by the judge determine whether the defendant has committed a criminal act or vice versa. Dropping the severity/lightness of the sentence can also be influenced by the Visum et Repertum submitted public prosecutor at trial.

In Decision Number 208/Pid.B/2022/PN Bdg it is known that based on the Visum Letter et Repertum number R/VeR/122/X/2021/Dokpol dated 13 December 2021 which is marked handled by Dr. Nurul Aida Fathya, Sp.FM, M.Sc Forensic and Specialist Doctor Medicolegal at Bhayangkara TK II Sartika Asih Bandung Hospital which has been carried out a post-mortem examination of the victim's body on behalf of Han Erwin Sumarwan. Visa et This report is used by the public prosecutor to strengthen his accusations, as well the judge considers it as evidence in the judge's consideration.

As is known, Visum et Repertum is evidence that cannot be obtained used without being supported by other evidence. Based on the judge's considerations. It is known that the judge linked the Visum et Repertum with the witness's statement. Where the witnesses explained that the victim Han Erwin died after stabbed by Saepul Anwar alias Deden Pule for trying to defend himself cellphone taken by Saepul Anwar alias Deden Pule. Meanwhile in Visum et Repertum explained that the wound was caused by a sharp, single-edged weapon with a wide blade weapons about two centimeters. The wound penetrated the chest cavity and cut the heart, so the cause of death was due to sharp violence to the left side of the chest causes heart rhythm disturbances and bleeding.

Based on the judge's considerations, it can be concluded that Visum et Repertum. The statement in Decision Number 208/Pid.B/2022/PN Bdg has the power of proof. This is because it is to determine the strength of the Visum et Repertum reveal a criminal act, namely by matching the Visum et Repertum with witness statements. The results of the matching are used as conclusions for the judge which can be taken into consideration in determining whether a criminal act has occurred or no and determine the defendant's guilt at trial.

CONCLUSION

Visum et Repertum is a written report from a doctor (expert) made based on an oath, regarding what was seen and found on living evidence, then an examination is carried out based on the best possible knowledge. On this basis, conclusions are then drawn, which are also the opinion of an expert or written (expert) testimony as stated in the reporting section (examination results). Visum et Repertum is only made so that a criminal case becomes clear and is only useful for examination purposes and for justice and is intended for the interests of justice. Visum et Repertum can have absolute power but must be balanced with other evidence so that it is sufficient to prove that the suspect has committed a criminal act or not, this is in accordance with the contents of the Criminal Procedure Code Article 183. Visum et Repertum in Decision Number 208/Pid. B/2022/PN Bdg has the power of proof. This is because to determine the strength of the Visum et Repertum in uncovering a criminal act, namely by matching the Visum et Repertum with witness statements. The results of the matching are used as conclusions for the judge which can be taken into consideration in determining whether a crime has occurred or not and determining the defendant's guilt at trial.

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