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Visum et Repertum as Evidence in Sexual Violence Prosecutions : A Criminal Law Literature Review

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Abstract: *Sexual violence is a global problem that must be investigated and prosecuted. Visum et Repertum is a written statement made by a doctor at the official written request of an investigator regarding a medical examination of a human being, whether living or dead or a part of the human body, in the form of findings and their interpretation, under oath and for the benefit of justice. In Indonesia, Visum et Repertum is one of the valid pieces of evidence as written in Article 184 of the KUHP, including in cases of sexual violence. This study aims to examine the position and legal basis of visum et repertum as a means of evidence in cases of sexual violence in Indonesia. This study includes the normative juridical approach and case studies. The sexual violence case study shows that the use of visum et repertum as evidence in sexual violence cases has its role in the prosecution process. The use of visum et repertum in cases of sexual violence is important in providing evidence to support the victim's testimony. Although crucial, visum et repertum has limited legal force and the need for additional evidence to reach material truth in the case. Overall, the findings of this study indicate that the use of visum et repertum as evidence in cases of sexual violence in Indonesia needs to be accompanied by other evidences to ensure justice for victims.*

Keywords : *Visum et Repertum; Medical Record; Sexual Violence; Indonesia*

INTRODUCTION

Law enforcement personnel are authorized to conduct thorough investigations to obtain as much relevant evidence and information as possible in order to resolve criminal

cases¹. Evidences refers to any information or materials that pertain to a criminal act and are presented during trial to persuade the judge of the view of the alleged violation. Article 184 paragraph (1) of the Kitab Undang-Undang Acara Hukum Pidana or KUHP (Indonesia Criminal Procedure Code) regulates the types of admissible legal evidence that is allowable in court². When faced with challenges that exceed their expertise and abilities, law enforcement officials should seek the aid of experts to acquire the most accurate and conclusive evidence possible³. As in article 133 of the KUHP mandates the involvement of a medical or judicial expert when handling cases involving injured, poisoned, or deceased victims in which a crime is suspected⁴.

VeR is a forensic medical term that combines the Latin words 'visa' and 'repertum', referring to the observation and reporting of findings by a physician during an official medical examination for legal purposes⁵. Although not explicitly defined in Indonesian criminal procedure laws, VeR is mentioned in Staatsblad 350 of 1937, and is a powerful tool in cases involving abuse, rape, and murder, particularly in substantiating cases of sexual violence⁶. While VeR alone cannot establish a defendant's guilt, it plays a crucial role when complemented with other evidence to bridge medical and legal sciences⁷.

Sexual violence is an issue that continues to be discussed in society⁸. Based on Komisi Nasional Anti Kekerasan Terhadap Perempuan's or Komnas Perempuan (The National Commission on Violence Against Women) annual records for 2012-2021, it was recorded that at least 49,762 cases of sexual violence had been reported. As classified in the KUHP, sexual violence encompasses acts of adultery, intercourse, obscenity, and pornography, as further defined in Chapter XVI Book II of the KUHP (Articles 281-299), which regulates crimes of decency⁹. The crime of rape, as regulated in Article 285 of the KUHP, is also addressed in Republic of Indonesia Laws (UU RI) Number 35 of 2014 concerning Amendments to UU RI Number 23 of 2002 concerning Child Protection and UU RI Number 23 of 2004 concerning the Elimination of Domestic Violence¹⁰. Despite these legal provisions, a significant challenge

¹ Zahrah Putri Arum Nabilah Pratami, "Peran Visum Et Repertum Dalam Proses Penyidikan Tindak Pidana Perkosaan," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 8, no. 6 (2021): 1388–1399.

² S H Dilla Haryanti, "Peranan Visum Et Refertum Sebagai Salah Satu Alat Bukti Di Persidangan Dalam Tindak Pidana Perkosaan," *Constitutum* 13, no. 1 (2013).

³ Pratami, "Peran Visum Et Repertum Dalam Proses Penyidikan Tindak Pidana Perkosaan."

⁴ Dedi Afandi, "Tata Laksana Dan Teknik Pembuatan Visum et Repertum," *Fakultas Kedokteran Universitas Riau* (2017).

⁵ Dilla Haryanti, "Peranan Visum Et Refertum Sebagai Salah Satu Alat Bukti Di Persidangan Dalam Tindak Pidana Perkosaan."

⁶ Afandi, "Tata Laksana Dan Teknik Pembuatan Visum et Repertum."

⁷ Ardhya Fauzah Fardhyanti and Puti Priyana, "Visum Et Repertum Dalam Proses Pembuktian Perkara Pidana Pemerksaan," *Widya Yuridika: Jurnal Hukum* 5, no. 2 (2022): 389–400.

⁸ Rosania Paradias and Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61–72.

⁹ Ibid.

¹⁰ Ramiyanto Ramiyanto and Waliadin Waliadin, "Upaya Penanggulangan Tindak Pidana Perkosaan Dengan Sarana Penal Dalam Rangka Melindungi Perempuan," *Jurnal Legislasi Indonesia* 15, no. 4 (2019): 321–329.

persists in that many victims do not promptly report sexual violence to authorities, resulting in the loss of crucial evidence¹¹. In addition, investigations in proving cases of sexual violence must be strengthened. Strengthening investigations to prove cases of sexual violence is essential. However, proving such cases can be challenging as typically only the perpetrators and victims are aware of the events, and no other witnesses are present¹². One approach to establish sexual intercourse and violent acts involving threats and coercion is through medical examination and visum et repertum¹³. However, it doesn't explain if visum et repertum is enough to be the only evidence of any sexual violence events.

In cases of sexual violence, evidence of intercourse can still be established despite a significant time gap between the incident and the reporting of the crime. However, the same cannot be said for violent cases, as the examination results may not show signs of violence that disappeared over time. As crucial legal evidence, visum et repertum serves as a judge's consideration in forming confidence when imposing criminal decisions on defendants¹⁴. Hence, this study aims to determine the level of priority of visum et repertum as evidence and examine its implementation as evidence in Indonesian courts.

RESEARCH METHODS

This research employs a deductive method to combine empirical and normative juridical research, examining the provisions governing visum et repertum in proving sexual violence crimes through a statutory and contextual approach. The study uses a case study of sexual violence crimes in Indonesia from the past five years and analyzes published decisions. It highlights the importance of case studies in problem-solving through research. The research compares the use of visum et repertum in several cases of sexual violence in Indonesia, collecting data through literature studies and case publications. Qualitative data is processed and analyzed in stages, summarized, systematically arranged, and presented in a chart or narrative to provide meaningful information.

DISCUSSION

Sexual Violence in The Context of A Crime in Indonesia

Criminal acts are behaviors that violate legal requirements and carry the potential for punishment, with culpability attributed to individuals capable of bearing legal responsibility. They can be formal or material, with the former involving the breach of specific legal codes and the latter resulting in undesirable consequences. Sexual violence is a criminal offense

¹¹ Bagus Dwi Wahyudi and Emmilia Rusdiana, "Penggunaan 'Bujuk Rayu' sebagai Perluasan Makna Pasal 285 Kitab Undang-Undang Hukum Pidana Dalam Tindak Pidana Perkosaan (Studi Putusan Mahkamah Agung Nomor 786 K/PID/2015)," *NOVUM: Jurnal Hukum* 9, no. 2 (2022): 61–70.

¹² Paradias and Sopyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual."

¹³ Wahyuningsih Wahyuningsih, Hambali Thalib, and Azwad Rachmat Hambali, "Kekuatan Pembuktian Visum Et Repertium Dalam Tindak Pidana Perkosaan," *Journal of Lex Generalis (JLG)* 2, no. 3 (2021): 1279–1290.

¹⁴ Ibid.

that violates an individual's human rights, causing significant physical and mental trauma to victims regardless of their gender, age, socio-economic status, or place of residence.

The definition of sexual violence as a criminal act in Indonesia is clearly outlined in the country's legal system. Specifically, UU Number 12 of 2022 about Sexual Violence Crimes, Article 1 paragraph 1, Article 4 and Article 5 provides a description of the behaviours that constitute sexual violence and the corresponding legal penalties. In these articles state that:

1. Article 1 paragraph 1, UU Number 12 of 2022:
"Sexual Violence Crimes are all acts which fulfil the elements of criminal acts as regulated in this Law and other acts of sexual violence as regulated in the Law as long as they are determined in this Law."
2. Article 4 Point 1, UU Number 12 of 2022:
"Sexual Violence Crimes consist of:
 - a. non-physical sexual harassment;
 - b. physical sexual abuse;
 - c. forced contraception;
 - d. forced sterilization;
 - e. forced marriage;
 - f. sexual abuse;
 - g. sexual exploitation;
 - h. sexual slavery; And
 - i. electronic based sexual violence."
3. Article 4 Point 2, UU Number 12 of 2022:
"Apart from the Crime of Sexual Violence as referred to in paragraph (1), Criminal Act Sexual Violence also includes:
 - a. rape;
 - b. obscenity;
 - c. intercourse with a child, obscenity against children, and/or sexual exploitation against children;
 - d. acts that violate decency contrary to the will of the victim;
 - e. pornography involving children or pornography which explicitly contains violence and sexual exploitation;
 - f. forced prostitution;
 - g. intended crime of trafficking in persons for sexual exploitation;
 - h. sexual violence within the household;
 - i. money laundering crime origin is a violent crime sexual; and
 - j. other criminal acts that are expressly stated as a crime of sexual violence as stipulated in the regulatory provisions legislation."

Meanwhile, the reason why the number of reported cases of sexual violence is far less than what happened is because of the need for a forensic test as valid evidence, even though there is sufficient evidence¹⁵. This legal evidence is in the form of a VeR. VeR comes from the

¹⁵ Arief Budiono, "Legal Policy For Visum Et Repertum Test In Evidence Of Rape Crime: Perspective Of

Latin *visa* which means testimony has seen something and *reperta* which means report, which can be found in the *Staatsblad* (State Gazette) of 1937 Number 350¹⁶. Thus, *visa reperta* means a report on testimony or sight about something. Based on this understanding, the VeR already fulfils two of the five pieces of evidence needed to make a decision, in which case the VeR is considered a letter and expert statement¹⁷.

VeR can be classified as expert testimony, namely what is given by an expert, in this case, a doctor appointed by the court in accordance with his competence to prove a crime as outlined in the form of a document. VeR is classified as evidence of a letter written by a doctor on a piece of paper. The *Staatsblad* states that a VeR is made for the benefit of justice (*pro justitia*) at the request of the authorities made by all doctors for what was seen and found during the examination of evidence, based on an oath at the time of accepting the position, and based on their best knowledge. The VeR made can explain, legally, the cause of the condition of the victim of persecution, rape or murder¹⁸. One of the practical uses of VeR, as evidence in the investigation of the crime of rape, is regulated in Article 133 paragraph 1 of the KUHAP in conjunction with Article 1 point 28 of the KUHAP which regulates requests for expert information assistance requested by investigators for medical examination of rape victims in written statement form¹⁹.

What Does Visum et Repertum Say?

Article 184 paragraph (1) of the KUHAP defines valid evidence as witness testimony, expert testimony, letters, hints, and statements made by the accused.

The expert statement referred to is a medical statement made by a doctor who has taken an oath based on the Government Regulation (PP) Number 26 of 1960 regarding the Pronunciation of Doctor's Oaths. This statement includes medical information on the victim's condition and is admissible as legal evidence. This written statement by a doctor is known as VeR. However, the concept of expert testimony in the KUHP presents a dualism.

Firstly, VeR can serve as evidence for expert testimony, as outlined in Article 186 of the KUHP, which states, "Expert testimony is the statement that an expert makes in court". Secondly, VeR can serve as proof of documents, as specified in Article 187 letter c of the KUHP. The judge has the discretion to categorize this assessment as a letter of evidence or a witness statement, with the power of proof that is both free and non-binding (*vrij bewijskracht*). VeR is admissible in court when the existing evidence is insufficient to provide

The State Court In Indonesia," *JHR (Jurnal Hukum Replik)* 9, no. 2 (2021): 186–192.

¹⁶ M Yusuf, M Said Karim, and Baharuddin Badaru, "Kedudukan Visum Et Repertum Sebagai Alat Bukti Dalam Dakwaan Penuntut Umum Terhadap Tindak Pidana Penganiayaan Berat," *Journal of Lex Generalis (JLG)* 1, no. 2 (2020): 166–182.

¹⁷ *Ibid.*

¹⁸ Henny Saida Flora, "The Role Of Visum Et Repertum In Disclosure Of Criminal Action" (n.d.).

¹⁹ Athaya Novita Andryanto Putri and Ahmad Sholikhin Ruslie, "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Kekerasan Dalam Rumah Tangga," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (2023): 1433–1447.

an explanation of the substance of a criminal incident. Although not clearly stated in the KUHP, VeR is included in staablaad 350 of 1937 article 1 which reads.

"Visum et repertum from a doctor who has taken a special oath under Article 2 upon completing medical studies in the Netherlands or Indonesia. Such a report is admissible as evidence in criminal cases if it contains information about what the doctor observed during the examination of the relevant objects."

What Does Visum et Repertum Speak To?

Law enforcers may seek expert assistance if they encounter difficulties beyond their capacity and expertise in obtaining evidence. Article 120 of the KUHP states that:

1. "In case an investigator deems it necessary, he may ask for the opinion of an expert or a person with special expertise."
2. "The expert takes an oath or makes a promise before the investigator that he will provide information to the best of his knowledge. However, if his dignity, job, or position obliges him to keep secrets, he may refuse to provide the requested information."

The Authority to Give Expert Testimony

When evidence takes the form of a human body, but presenting it in court is impractical, VeR, a written document considered valid in court, can serve as a replacement. This document is produced by a doctor and cannot be delegated to any other party, as stated in Article 133 paragraphs (1) and (2) of the KUHP. The doctor's obligation to provide the requested information is further outlined in Article 179 of the KUHP:

1. "Any person who is asked for their opinion as a medical expert of the judiciary or as a doctor or other expert is obligated to provide expert testimony for the sake of justice."
2. "All the provisions mentioned above for witnesses also apply to those who provide expert testimony, provided they take an oath or promise to provide the best and true information according to their knowledge in their field of expertise."

The Authorized Party To Make Expert Statements

The party authorized to request expert testimony according to Article 133 of the KUHP is the investigator. According to Article 133 of the KUHP paragraph (1) and (2):

1. "The investigator, for the sake of justice, has the authority to request expert information from a medical expert of the judiciary, a doctor, or other expert when handling a victim who is injured, poisoned, or dead, and the event is suspected to be a criminal act."
2. "The request for expert testimony, as mentioned in paragraph (1), must be made in writing and must specify the purpose of the examination, such as examining wounds, corpses, or performing visum et repertum."

Regarding the investigators who are authorized to request expert testimony, in this case, the investigators and assistant investigators who have the authority to bring in necessary experts are described in Article 7(1) point h and Article 11, respectively:

"Investigators as defined in Article 6 paragraph (1) letter a have the authority, due to their obligations... (h) to bring in necessary experts in connection with the examination of cases"

"Auxiliary investigators have the authority as stated in Article 7 paragraph (1), except regarding detention which must be granted with the delegation of authority from the investigator."

The investigator in question is authorized by Article 6(1)(a) as an official of the state police of the Republic of Indonesia. VeR refers to expert statements on human mental health, and civil servant investigators are not empowered to request visum et repertum. The rank required for a visum et repertum request is set out in PP No. 27 of 1983, which provides:

1. Article 2 paragraph 1 point a

"An investigator is a specific State Police Officer of the Republic of Indonesia who holds at least the rank of Assistant Police Lieutenant Second."

2. Article 2 paragraph 3

"If there is no investigator official as referred to in paragraph (1)(a) in a police sector, the Police Sector Commander will act as an investigator, provided that he holds the rank of non-commissioned officer under Assistant Second Lieutenant of the Police."

3. Article 3 paragraph 1 point a

"Auxiliary investigators are certain State Police officers of the Republic of Indonesia who hold at least the rank of Second Police Sergeant."

What Does Visum et Repertum Speak For?

VeR plays a crucial role in upholding justice for both the victim and the accused. In Indonesia, the legal system follows the principle of proving negative *wettelijk* criminal procedural law. This means that a judge may only declare a defendant guilty after the evidence specified in the law, plus the judge's conviction, is fulfilled.

VeR serves two main purposes in criminal cases:

1. As evidence of the suspect's detention

According to Article 183 of the KUHAP,

"Judge may not impose a sentence on a person unless there are at least two valid pieces of evidence that confirm that a crime has occurred and that the defendant is guilty of committing it."

2. As a material for the judge's consideration

Although the conclusion of VeR is not binding on the judge, the news section of the VeR is considered as material evidence of the impact of a crime. This part of the news can be trusted as an alternative to evidence that has been examined and known by doctors. Therefore, it can be used as material for review by the judge who is trying the case.

Visum et Repertum as Evidence for Criminal Acts in Sexual Violence

VeR is instrumental in supporting investigators in uncovering criminal acts of sexual violence, estimating the time of occurrence, and serving as initial evidence for further action. VeR can be used to determine the patterns and motives of violence against victims and describe the degree of injury or quality of sexual violence as outlined in articles 90, 184, 351, and 352 of KUHP²⁰. It can prove the occurrence of violence, wound or bruise, the cause and size of the injury, and the causal relationship, which serves as material for judges' decision-making²¹. However, VeR has limitations due to physical changes in the victim during examination and after the crime. Hence, it needs to be complemented by other evidence to reach material truth in the case²².

The use of VeR to prove criminal acts of sexual violence, is a common practice. Article 184 paragraph (1) letter b and letter c of Undang-Undang number 8 of 1981 concerning the KUHAP establishes that VeR can serve as a substitute for evidence (*corpus delicti*) that provides the details of the time the incident occurred and the investigator's instructions regarding the incident. VeR can provide valuable information that can help convince judges in deciding a trial. However, the strength of VeR is not absolute, and additional evidence, such as statements from victims and witnesses, may be necessary to clarify the crimes of the perpetrators²³.

Research indicates that sexual violence cases are more likely to be terminated than other cases. In some US states, up to 40% of cases are dismissed from prosecution, while in Sweden, only one in ten cases reported to the police is prosecuted. Similarly, in New South Wales, Australia, only 15% of reported cases were charged and 8% were proven in court²⁴. The primary reason for high termination rates is the lack of adequate evidence to support the victim's testimony. Children's sexual abuse cases are often dismissed because victims are deemed not credible, while teenage victims of sexual abuse may not report due to victim blaming, including by their parents, leading public prosecutors to stop investigations due to low-quality evidence. In Indonesia, only 32% of cases of sexual violence were prosecuted, with factors including positive VeR results or a suspect's confession being the primary means for prosecution. However, VeR does not usually provide sufficient evidence to convict the accused, especially in cases where traces of violence are not visible. On the other hand, in

²⁰ Mohd Hadyan Wardhana et al., "Enhanced Degree of Injury Classification Model: Determination Critical Indicator and Criteria Degree of Injury from Visum et Repertum (Ver) in Pekanbaru, Indonesia," *Egyptian Journal of Forensic Sciences* 8 (2018): 1–10.

²¹ Jatmiko Raharjo, Syamsuddin Muchtar, and Audyna Mayasari Muin, "Visum et Repertum as Evidence for Criminal Acts in Domestic Violence," *Amsir Law Journal* 1, no. 2 (2020): 43–53.

²² Akhmad Amirul Pradana, "Fungsi Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Perkosaan" (Universitas Islam Kalimantan MAB, 2021).

²³ Martini Martini, "Assessment of Visum et Repertum Evidence on Victims of Women Violence in Household Conflict," *International Journal of Social Science Research and Review* 5, no. 8 (2022): 150–155.

²⁴ Ivan Dieb Miziara et al., "Physical Evidence of Rape against Children and Adolescents in Brazil: Analysis of 13,870 Reports of Sexual Assault in 2017," *SAGE open medicine* 10 (2022): 20503121221088680.

Sweden, the existence of forensic evidence, such as medical records, corroborating DNA evidence, and confessions from suspects, increases the likelihood of prosecution in sexual violence cases. In Brazil, evidence of sexual intercourse or other acts, including a torn hymen, sperm in the victim's vagina, or pregnancy, is required for prosecution, and forensic experts report such evidence through a digital system called GDL to the police²⁵.

Not all criminal acts can be proven with VeR as evidence due to its limited legal force. For instance, to prove a violation of Article 332 Paragraph (1) 2 of the KUHP related to domestic sexual violence, the analysis of hymen tears is not conclusive, as it is normal to find such tears in married individuals. Therefore, judges are not required to consider the results of VeR in all cases. Since VeR cannot always provide sufficient evidence, the victim's testimony is crucial in proving a criminal case, especially since 50-90% of sexual violence cases cannot be proven through this method. However, the victim's statement can be biased or misinterpreted due to a lack of credibility, misperceptions of violence in the immediate sphere, pressure during witness examination, and personal interpretation of the available evidence. These factors have led to violence remaining invisible and normalized in victims' daily lives²⁶.

Visum et Repertum in Court : Case Studies of Sexual Violence in Indonesia

Sexual violence is a prevalent issue in society, Article 285 of the KUHP stipulates that individuals who use force or threats of violence to coerce women into having sex outside of marriage will be charged with rape and face a maximum of twelve years imprisonment. In uncovering instances of sexual violence, a series of investigations are necessary to acquire material truth, which is evidence related to the criminal acts that occurred and an attempt to clarify the case. The decision to prosecute individuals for violating Article 285 of the KUHP is made by examining the fulfillment of the elements outlined in the article. These elements include:

1. The element of "whoever" - indicating that any individual, regardless of their relationship to the victim, can be charged with violating this article.
2. The element of force or threats of violence - indicating that the victim was coerced into sexual activity through the use of physical force or the threat of violence.
3. The element of forcing a woman to have intercourse with him outside of marriage - indicating that the victim was forced to engage in sexual activity outside the bounds of a legal marriage.

By examining and fulfilling these elements, investigators can determine whether or not a case of sexual violence has occurred and proceed with the appropriate legal action.

²⁵ Nathanael Sumampouw, Henry Otgaar, and Corine De Ruiter, "The Relevance of Certain Case Characteristics in the Successful Prosecution of Child Sexual Abuse Cases in Indonesia," *Journal of child sexual abuse* 29, no. 8 (2020): 984–1003.

²⁶ Hasan Al-Hawari and Asmaa El-Banna, "A Medicolegal Study of Domestic Violence in South Region of Jordan," *Egyptian Journal of forensic sciences* 7 (2017): 1–11.

Efforts are necessary to establish the material truth in criminal cases by law enforcement to prevent errors in the imposition of criminal sanctions on an individual, as stipulated in Article 6 paragraph (2) of Law No. 38 of 2009 concerning the Judiciary, which states that

"No one shall be subject to criminal sanctions, except when the court, based on evidence that is valid under the law, is convinced that a person deemed responsible is guilty of the alleged offense."

Legal regulations require presenting thorough evidence and facts during criminal investigations, as stipulated in Article 184 of the KUHAP. Valid evidence, including witness statements, expert opinions, documents, material evidence, and the defendant's statements, must be presented. Criminal sanctions may be imposed under Article 183 of the KUHAP if two pieces of valid evidence can form the judge's conviction of the defendant's guilt. Human body evidence may be presented in court, but it is difficult; thus, a "substitute" in the form of documents, such as a VeR, is required. Experts may assist investigators in obtaining the material truth. Article 179 of the KUHAP obligates experts to provide testimony when requested by investigators.

Table 4.1 Case Studies.

Author	Decision Number	Case Summary	Evidence	Analysis
Fardhy anti & Priyana, 2022 ²⁷	31/Pid.B/2021/PN ATB	On December 7, 2020 at 6:00 PM WITA, the defendant, along with four other male passengers, was driving the victim to their parents' house in Village RB, District W, Malacca Regency. The defendant asked the backup driver to get off at the market branch B and persuaded and seduced the victim. When the victim refused,	<ul style="list-style-type: none"> • VeR Number RSUPP.331/VER/61/XII/2020 dated 10 December 2020 • Documentary evidence, namely excerpts from the Marriage Book at the Church No. 4113 of 2014 dated 11 November 2014 and a Marriage Letter Excerpting the Marriage Certificate Number 5371- 	<ul style="list-style-type: none"> • In the KUHAP, the authority to request expert opinions from doctors or other experts on victims of injuries, poisoning, or death resulting from criminal acts is regulated in Article 133. • The Decree of the Minister of Justice No.M04.UM.01.06 of 1983, specifically Article 10, states that the results of forensic medical examinations are referred to as Visum et Repertum (VeR). • According to Article 184 of the KUHAP regarding evidence, VeR is admissible as evidence in court. • VeR can confirm the presence of intercourse by

²⁷ Fardhyanti and Priyana, "Visum Et Repertum Dalam Proses Pembuktian Perkara Pidana Pemerkosaan."

<p>the defendant punched and raped the victim.</p>	<p>KW-16042015-0004 dated 16 April 2015 which stated that the victim was a woman and is legally married and has no marital relationship with the defendant alias F.</p> <ul style="list-style-type: none"> • Testimony of witness victim • The identity stated in the indictment stated that the defendant was in good health both physically and spiritually, and from the facts obtained during the examination based on the statements of the witnesses, the Panel of Judges decided that the defendant was legally competent and could be held accountable. • Facts revealed at trial that it was true that the defendant 	<p>detecting seminal fluid in the vagina, primarily in the posterior fornix, and can also indicate the absence of physical injuries such as abrasions on the inner lips of the genitals or fresh lacerations on the hymen.</p> <ul style="list-style-type: none"> • VeR evidence is not the sole determining factor in criminal cases; other evidence and facts presented during the trial are equally important in establishing the defendant's guilt or innocence. In cases where the defendant is charged with violating Article 285 of the KUHAP, all the elements of the article must be met, along with supporting evidence and other facts presented during the trial
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			<p>punched the witness-victim repeatedly to the point of hitting the mouth and back, threatened to kill the witness-victim using a knife if the witness-victim screamed, and forced the victim to have intercourse, but the witness-victim continued to fight back</p>	
<p>Kusmir a, 2016²⁸</p>	<p>92/Pid.Sus /2015/ PN.Skt.</p>	<p>Saturday, 28 March 2015 the defendant and the victim met at a certain place, because of the heavy rain the victim could not go home, and the defendant persuaded her to have sexual intercourse by promising to take her home. The defendant and the victim are not in a marital relationship. The victim confessed to her parents,</p>	<ul style="list-style-type: none"> • VeR Number: SFK-09/VER/IV/2015 /URKES • Statement of the accused • Witness testimony 	<ul style="list-style-type: none"> • VeR is a valid primary evidence tool in this case in accordance with Article 184 paragraph (1) of the KUHAP. • The findings of the VeR examination in the present case indicate the presence of long-standing tears on the hymen due to blunt force trauma, which is classified as a minor injury. The evidence meets the standard requirements set by both medical criteria and criminal law aspects. The validity of the evidence is not only based on the expertise of the examiner but also on the fact that the examination was conducted in accordance with established legal procedures.

²⁸ Narulita Putri Kusmira, "Kekuatan Pembuktian Dan Penilaian Alat Bukti Visum Et Repertum Dalam Tindak Pidana Persetubuhan Terhadap Anak," *Jurnal Verstek Vol 4*, no. 3 (2016).

		then the victim's parents reported the case to court.		<ul style="list-style-type: none"> • Judges have the discretion to evaluate the strength and validity of the evidence presented in court. This evaluation is based on various factors such as the reliability of the evidence, the expertise of the examiner, and the adherence to legal procedures during the collection and examination of the evidence. The validity of the VeR evidence presented in the present case is indisputable, and its use as primary legal evidence is in accordance with Article 184 Paragraph (1) of KUHAP.
Savitri, 2020 ²⁹	159/Pid.Su s/ 2014/PN.K pg	The defendant, a police officer, rented a house that is close to the victim. The defendant saw the victim and showed lust, so he pulled and forced the victim into the house, and had sexual intercourse with a minor (12 years) neighbor who resulted in pregnancy. Intercourse is done twice. There is no kinship or	<ul style="list-style-type: none"> •VeR •Witness testimony •Testimony of victim witnesses •Doctor's expert statement •Evidence indicating acts, events or circumstances, which because of their correspondence, both between one and the other, as well as with the crime itself, indicate that a crime has occurred and 	<ul style="list-style-type: none"> •Under Articles 183 and 184 of the KUHAP, a judge in a criminal trial must have a conviction based on at least two valid pieces of evidence. •The Limitations of Witness Testimony in Proving Guilt in Criminal Trials Article 185 Paragraph (2) of the KUHAP states that "the testimony of a single witness is insufficient to prove the guilt of the defendant". •The Limitations of Witness Testimony in Proving Guilt in Criminal Trials Article 185 Paragraph (2) of the KUHAP states that the testimony of a single witness is insufficient to prove the guilt of the defendant.

²⁹ Niken Savitri, "Pembuktian Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak," *Jurnal Bina Mulia Hukum* 4, no. 2 (2020): 276–293.

		<p>living in the same house. Occurrence in a closed room so that no other witnesses saw the incident directly. VeR is also made after pregnancy so that it no longer shows any indication that the act was carried out under coercion or violence from the perpetrator.</p>	<p>who the perpetrator is.</p> <ul style="list-style-type: none"> •Guidance evidence in the form of information provided by the accused. 	<ul style="list-style-type: none"> • Article 24 Paragraph (1) of Undang-Undang Dasar 1945 guarantees the freedom of judges in deciding cases. •The Basis for the Judge's Decision in the Present Case The judge's decision to convict the defendant of violating Article 81 Paragraph (1) of Law No. 23 of 2002 concerning Child Protection is based on the evidence presented in court. The evidence includes the testimony of witnesses and the report of a doctor who examined the victim during her pregnancy and issued a VeR. The judge's decision is based on a careful assessment of the evidence presented and is in accordance with the applicable law.
Muntari & Rusdiana, 2022 ³⁰	168K/PIDS /2016	<p>The victim went to Fitness Center, took the elevator with one other member, suddenly the defendant came in and forced the victim to go with the defendant by holding the victim's right hand tightly. The</p>	<ul style="list-style-type: none"> •VeR Number 17/IV/PKT/01/2015 •Book of marriage certificate No. 46/46/I/2001 dated 12 January 2001 •Witness testimony •CCTV footage 	<ul style="list-style-type: none"> •Consideration of the District Court judge's decision No. 835/Pid.B/2015/PN.Jkt.Ut. the elements charged by the Public Prosecutor did not gain confidence that the defendant was proven to have committed the crime as charged, namely Article 332 paragraph (1) of the 2nd KUHAP or Article 333 paragraph (1) of the KUHAP or Article 285 of the KUHAP

³⁰ Laedy Septi Muntari and Emmilia Rusdiana, "Pertimbangan Hakim Terhadap Visum Et Repertum Atas Tindak Pidana Perkosaan Pada Putusan Mahkamah Agung Nomor 168 K/Pids/2016," *Novum: Jurnal Hukum* (2022): 171–180.

defendant threatened that if he did not want to go with him then the witness would be killed and the witness' child would be kidnapped. The defendant threatened the witness with a black plastic handle knife. The defendant took the victim-witness on a motorbike to Apartments GN, then changed cars to Hotel COCP. The victim was forced to have sexual intercourse. The threat is in the form of an electric shock device. hang the body of the witness-victim and then cut the body of the witness-victim and throw the body of the witness-victim into the sea, while the head of the witness-victim will be given to the husband of the witness-victim.

or Article 335 paragraph (1)) 1st KUHAP/ All the evidence does not explain that the witness-victim experienced violence or threats of violence or coercion, so the judge decided to acquit the defendant.

- The Judex Facti decision was made by the Supreme Court considering that even though the Defendant and the victim-witness had been close friends since 2008 and so far they had an affair with each other. However, the victim witness is the legal wife of the witness AZH.

- The Defendant's actions have fulfilled all the elements of the crime of Article 332 Paragraph (1) 2 of the KUHAP in the first alternative indictment, taking into account only witness testimony and having fulfilled the elements in that article.

- The results of the VeR concluded that it was true that there had been new intercourse, but the facts at the trial at the first court level stated that there was no coercion or violence. It can be concluded that the reason the panel of judges did not consider Article 285 of the KUHAP so that they decided on the Defendant with Article 332 Paragraph (1) 2nd of the KUHAP was that the basis for

Wahyu
ningsih
et al.,
2021³¹

410/Pid.
B/2014/PN
. Bgl.

The defendant persuaded and seduced the defendant with the mode of romance or courtship sweet promises when in fact this was a lie to trick the victim S.M.

- Witness statement
- Expert statement
- Letter in the form of VeR number VER/04/IX/2014
- Defendant's statement
- 1 (one) purple

their considerations only considered the testimony of witnesses so that based on Article 185 Paragraph (4) of the KUHAP it was considered as evidence that lawful

- The VeR certificate indicates redness on the small lips of the inner genitalia, which could be the result of recent intercourse. However, this does not definitively confirm the defendant's involvement, as the victim is married and the signs could also be due to consensual intercourse. The victim's testimony during the trial also supports this interpretation.

- Therefore, this VeR letter has no strength as evidence, and cannot stand alone, there must be other corroborating evidence. However, in this case, no evidence can corroborate the documentary evidence in the form of a VeR letter.

- VeR more or less adds to the conviction of the judge to state whether rape occurred or not. The role of VeR determines whether coercion occurs in penetrating the penis into the vagina or not.
- VeR results showed a torn wound from the lower edge of the front vulva to the lower distal quarter, with a depth of

³¹ Wahyuningsih, Thalib, and Hambali, "Kekuatan Pembuktian Visum Et Repertium Dalam Tinak Pidana Perkosaan."

<p>into having sex and white and surrendering striped T-shirt the victim's with bloodstains virginity on the bottom;</p>	<ul style="list-style-type: none"> •1 (one) black Levi's trousers with blood spots. •1 (one) sheet of brown bra. •1 (one) sheet of brown underwear with blood spots. •2 (two) pads have blood spots. 	<p>+ 1 cm, active bleeding was seen, the hymen point was torn at five, six, seven o'clock with the conclusion that the hymen was not intact anymore and torn wounds in the lower vagina.</p> <p>•The judge's decision was guilty of committing the crime of rape, violating Article 285 of KUHP.</p>
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In the case of Decision Number: 31/Pid.B/2021/PN ATB, the results of the VeR and other evidence underpinned the conviction of the defendant on the first charge of violating Article 285 of the KUHP. Although the VeR did not find any injuries on the body, no abrasions were found on the inner lips of the genitals, and no new tears were found in the hymen, the panel of judges did not focus on these matters and still sentenced the defendant. This decision was taken on the basis that doctors are just ordinary people who may make mistakes, so judges are not required to follow the expert opinion if it does not conform to what they believe. It is therefore concluded that the panel of judges did not have to rely on the VeR, as the evidence was subject to judicial review. The VeR as evidence in criminal law in Indonesia is not specifically regulated³².

The victim who was examined by the doctor is classified as evidence and regulated by the legislation. As in case number 92/Pid.Sus/2015/PN.Skt., where the VeR was used as the main evidence in the trial. From an administrative point of view, the VeR is an authentic act drawn up by an official in accordance with their knowledge and sworn, thus automatically having a high evidentiary value. Unlike civil procedural law, which does not require the judge's conviction, in criminal procedural law, there must be a judge's conviction based on at least two valid pieces of evidence. In this case, VeR Number: SFK-09/VER/IV/2015/URKES submitted by the prosecutor, the defendant's testimony, along with other evidence, became the basis for the judge's decision to sentence the defendant. The VeR submitted by the prosecutor was said to meet the normative restrictive medical criteria standard. Based on this, the defendant was found guilty of committing the crime of sexual assault against a child

³² Raharjo, Muchtar, and Muin, "Visum et Repertum as Evidence for Criminal Acts in Domestic Violence."

and was subject to the threat of Article 81 paragraph (2) of Law Number 23 of 2002 jo. Law Number 35 of 2014 concerning Child Protection. The defendant was sentenced to five (5) years in prison and fined IDR 60,000,000.00 (sixty million rupiahs), which if the fine is not paid, will be replaced by one (1) month in prison³³.

One example of a case with forensic evidence indicating child sexual abuse that was used as evidence in a court of law is case file number BP/44/III/2015/Reskrim/Res. This case was deemed to fulfill the elements of a violation of Article 82 paragraph (1) of Law No. 35 of 2014 concerning child protection, namely the threat of violence and coercion of a child to commit indecent acts. The perpetrator lured the victim with promises of payment amounting to Rp 10,000.00 and Rp 15,000.00 to engage in indecent acts. The results of the examination conducted at RSUD Sleman with Ref. No. 440/064/RM/2015 dated February 2, 2015 provided evidence of red bruises and an intact hymen. The police report, Ref. No. LP/67/K/VII/2015/DIY/Polres Bantul/Sek. Jetis, along with the testimony of witnesses, physical evidence, the perpetrator's confession, and the medical report from RSUD Bantul conducted by Fitri Indah Handayani, served as evidence against the defendant. The defendant was found guilty of violating Article 76D in conjunction with Article 82 paragraphs (1) and (2) of Law No. 35 of 2014³⁴.

In the case file number 159/Pid.Sus/2014/PN.Kpg, which involved sexual intercourse with a minor, the judge applied an unconventional method of evidence gathering. Rather than relying on the principle of 'one witness is not a witness' as stipulated in the KUHAP, the judge employed a breakthrough method of evidence gathering found in the Law on the Elimination of Violence in the Household (PKDRT). This was done in a criminal case that fell outside the scope of the PKDRT, but was deemed difficult to prove, as is often the case with violence in the household. In this particular case, the sole witness who met the requirements of Article 1 paragraph 26 of KUHAP was the underage victim. However, according to Article 171 letter a of KUHAP, a witness who is under the age of fifteen and has never been married may give testimony without taking an oath. Article 55 of the PKDRT only requires the testimony of one victim witness to be sufficient evidence to prove the defendant guilty, if accompanied by other valid evidence. Therefore, the testimony of one victim witness was deemed sufficient to prove the case, if accompanied by other valid evidence such as a medical examination report (VeR) or corroborating evidence. In this case, the medical examination was conducted after the victim became pregnant, thus failing to indicate any signs of coercion or violence by the perpetrator. Consequently, the judge's decision was based solely on the testimony of the victim and corroborating evidence³⁵. The identification of the perpetrator's semen in the victim's vagina was used as evidence of rape. However, semen can only survive for a maximum of three days or 3x24 hours in the vaginal cavity. In a deceased state, semen can still be found in the vagina for up to seven days or 7x24 hours.

³³ Kusmira, "Kekuatan Pembuktian Dan Penilaian Alat Bukti Visum Et Repertum Dalam Tindak Pidana Persetubuhan Terhadap Anak."

³⁴ Purwadi Wahyu Anggoro, "Korban Kekerasan Seksual: Studi Kasus Penyimpangan Seksual Terhadap Anak Di Kepolisian Daerah Istimewa Yogyakarta," *Jurnal Jurisprudence* 5, no. 1 (2017): 43–49.

³⁵ Savitri, "Pembuktian Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak."

Sexual violence cases are often difficult to prove due to victims not reporting the crime immediately, and as a result, it becomes challenging to gather evidence through a medical examination (VeR). Moreover, sexual violence cases are complicated to prove since the perpetrator forces the victim to clean their body and remove all traces of the rape³⁶.

The evidentiary value of VeR and examination is weak in cases of rape, as evidenced by Supreme Court Decision Number: 168K/PIDS/2016, which resulted in the defendant only being charged with Article 332 Paragraph (1) clause 2 of the KUHAP for the offense of abduction. In the District Court, all the evidence available failed to establish that the victim had experienced violence, threats, or coercion, leading to the judge's verdict of acquittal. However, the Supreme Court found that the *Judex Facti's* decision was incorrect and that the law had been misapplied. The forensic examination results indicated redness on the inner labia minora that could result from recent sexual intercourse, but the victim's statement indicated that there was no coercion and that she had consented to the defendant's advances. Consequently, the element of violence or threat of violence in Article 285 of the KUHAP was not fulfilled. The word "may" in the visum conclusion was interpreted as a possibility of sexual intercourse having occurred or not. Additionally, the visum did not establish that the defendant had engaged in sexual intercourse with the victim. Moreover, the victim was married, and her relationship with the defendant was that of close friends who had an affair. Thus, the VeR had no probative value on its own and needed to be corroborated with other evidence. However, in this case, no other evidence was available to strengthen the VeR³⁷. If VeR had been accompanied by other evidence, the objectivity and the possibility of tampering would have been minimized. As VeR is not binding and compulsory, the criminal trial can proceed even in the absence of such evidence³⁸.

In Case No. 410/Pid.B/2014/PN.Bgl, the forensic evidence in the form of a VeR Number: VER/04/IX/2014 concluded that the victim's hymen was no longer intact and there was a tear in the lower vagina. Based on the evidence, the judge sentenced the defendant, who was a member of the Indonesian National Police (POLRI) who should have been a protector of the community, to four years and six months in prison. The fact that the defendant had committed a sexual violence offense was considered as an aggravating circumstance by the Panel of Judges³⁹.

Based on the cases reported, VeR play a crucial role in revealing cases of sexual violence. The evidentiary value of VeR in proving the elements of a criminal offense can determine the course of action taken by the authorities in investigating the case. The time

³⁶ Budiono, "LEGAL POLICY FOR VISUM ET REPERTUM TEST IN EVIDENCE OF RAPE CRIME: PERSPECTIVE OF THE STATE COURT IN INDONESIA."

³⁷ Muntari and Rusdiana, "PERTIMBANGAN HAKIM TERHADAP VISUM ET REPERTUM ATAS TINDAK PIDANA PERKOSAAN PADA PUTUSAN MAHKAMAH AGUNG NOMOR 168 K/PIDS/2016."

³⁸ Ni Putu Mega Cahyani, I Nyoman Sujana, and Made Minggu Widianara, "Visum et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Penganiayaan," *Jurnal Analogi Hukum* 3, no. 1 (2021): 122–128.

³⁹ Jenny Roberts, "Mythical Divide between Collateral and Direct Consequences of Criminal Convictions: Involuntary Commitment of Sexually Violent Predators," *Minn. L. Rev.* 93 (2008): 670.

elapsed between the incident and the examination can produce different results in the victim's body, leading to variations in the findings. This can affect the strength of the VeR in court⁴⁰.

CONCLUSION

Sexual violence is a serious criminal offence that violates human rights and causes significant physical and mental trauma. The Indonesian legal system defines it as a criminal act and empowers victims to report their cases, but valid forensic evidence is needed for successful reporting. VeR is a crucial piece of evidence in the Indonesian legal system, with a doctor's report serving as essential evidence fulfilling two of the five pieces required for decision-making. However, VeR may not always show what happened, and additional evidence may be necessary, such as statements from witnesses and victims. To ensure a fair legal outcome, timely and accurate documentation of VeR is critical, as the timing of the examination can weaken the strength of the evidence presented in court. While VeR is an important substitute for evidence, a multi-faceted approach involving various types of evidence is needed to reach the material truth in sexual violence cases.

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⁴⁰ Sujadi Sujadi, "Visum Et Repertum Pada Tahap Penyidikan Dalammengungkap Tindak Pidana Pemerkosaan," *Jurnal Legalitas* 5, no. 01 (2012): 12542.

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