

## The Evidential Strength of Psychiatric Visum et Repertum in Proving the Criminal Act of Molestery Against Children (Study of Ambon District Court Decision Number: 40/Pid.Sus/2019/PN Amb)

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**Abstract.** Evidence is an important stage in a trial. With evidence, it can be known whether a defendant can be sentenced because he is proven guilty or acquitted. This study aims to determine, analyze, and provide an overview of the legal force of one of the evidences regulated in Article 184 of the Criminal Procedure Code, namely Visum et Repertum Psychiatry which is associated with the Study of the Ambon District Court Decision Number: 40 / Pid.Sus / 2019 / PN Amb. The research method used by the author in this research is Juridical.Normative, namely research that uses an approach method to problems by studying the law based on applicable laws and regulations as positive provisions, legal theories, legal concepts, legal principles or can be said by researching and studying library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the study show that considering the provisions of Article 183 of the Criminal Procedure Code, the important points are valid evidence and the judge's conviction and at least 2 (two) pieces of evidence are needed, then in the study of the Ambon District Court decision Number: 40 / Pid.Sus / 2019 / PN Amb regarding the crime of child molestation, Visum Et Repertum Psychiatricum is considered necessary to be carried out as evidence and is considered capable of creating a conviction in the judge in his decision, although in practice several obstacles are often encountered. The Public Prosecutor needs to be careful and competent in handling a similar case where if there is no or minimal evidence available, then in the future, Visum et Repertum Psychiatry can be used as evidence that is expected to convince the judge in making a decision.

**Keywords:** Evidence; Molestation; Psychiatry; Visum.

### 1. Introduction

Crime is part of social life, life, and inseparable from everyday human activities. Robbery, molestation, rape, fraud, mugging, and various forms of similar behavior, show social dynamics, a normal form of social life.<sup>1</sup>The examination of a criminal case in a judicial process is essentially aimed at finding the material truth (materiile waarheid) regarding the case.

The process of finding material truth about a criminal event through certain stages, namely, starting from the investigation, inquiry, prosecution and examination in court to further

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<sup>1</sup>Rukmini, Mien. (2006). Aspects of Criminal Law and Criminology (An Anthology). Bandung: Alumni. p. 81.

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determine the criminal decision to be taken. The criminal decision by the judge itself is based on the existence of appropriate material truth and applies according to the provisions of the law, in this case criminal procedure law. The discovery of material truth cannot be separated from the problem of proof, namely about concrete and real events. Proving something according to criminal law means showing things that can be captured by the five senses, expressing these things logically.<sup>2</sup>

In a criminal case resolution process, law enforcement is required to try to collect evidence and facts regarding the criminal case being handled as completely as possible, to clarify the criminal event and later be able to give rise to the judge's conviction. Regarding the valid evidence as referred to above and which has been determined according to statutory provisions, it is as regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) in Article 184 paragraph (1).<sup>3</sup>

In criminal cases such as murder, molestation, assault and rape are examples of cases where investigators need the assistance of experts such as forensic doctors or psychiatrists and other specialist doctors to provide medical information about the victim's condition which will then have a significant influence on the actions of investigators and public prosecutors in further revealing the case. The expert information referred to is information from a doctor who can help investigators and public prosecutors in providing evidence. This evidence is in the form of valid and accountable medical information regarding the victim's condition, especially related to proving signs of physical or psychological violence. The doctor's information referred to is stated in writing in the form of a medical examination result letter called a *visum et repertum*. Based on the provisions of Article 187 of the Criminal Procedure Code, it explains the letter as referred to in Article 184 paragraph (1) letter c.

*Visum and repertum* in revealing a case, shows a fairly important role for the actions of the public prosecutor in the trial. In the application of *visum et repertum* is adjusted based on the type and form. Proof of the elements of a crime from the results of the examination contained in the *visum et repertum*, determines the steps taken by the public prosecutor in investigating a case.

One of the cases raised in this study is the Ambon District Court Decision Number: 40/Pid.Sus/2019/PN Amb which has the following case position:

That the defendant Siahaya Marthin alias Ateng on Wednesday, October 10, 2018 at around 12.30 WIT or at least at a time that was still in October 2018 at SMPN 01 Saparua, Saparua District, Central Maluku Regency, precisely in the Library Room or at least at a time that was still included in the jurisdiction of the Ambon District Court which has the authority to examine and try him, committed indecent acts against a child which resulted in psychological trauma to the child victim witness Meylin Kezia Lesilolo alias Melinda

That on Wednesday, October 10, 2018 at approximately 12.30 WIT, after the last lesson, the defendant Siahaya Marthin alias Ateng called the child victim witness Meylin Kezia Lesilolo alias Melinda to the Library room of SMPN 01 Saparua, Saparua District, Central Maluku Regency, then the defendant went to the library room first and vice versa, the child victim

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<sup>2</sup>YA Triana Ohoiwutun. (2006). *The Medical Profession and Visum et Repertum (Law Enforcement and Its Problems)*. Malang: Dioma. p. 10.

<sup>3</sup>Waluyadi. (1999). *Basic knowledge of criminal procedure law*. Bandung: Mandar Maju. p. 100

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witness followed and then walked to the room and was accompanied by her friend, the child witness Desy Pattipeilohy. That after the child victim witness was with the child witness Desy Pattipeilohy in front of the library room, the child victim witness Meylin Kezia Lesilolo alias Melinda had time to invite the child witness Desy Pattipeilohy to come in with the child victim witness but the child witness refused to come in and just waited outside the room, then the child victim witness entered the library room where the defendant was already inside, then the defendant approached the child victim witness in a face-to-face position, the defendant said "if you want to check the test questions later, sir, where does the teacher (defendant) have a house" and the child victim witness asked the defendant "Where does the teacher have a house?" the defendant answered "no sir, just kidding". Then the defendant immediately held the back of the child victim witness's head with both hands then pushed the child victim witness's head closer to the defendant and immediately kissed the left and right cheeks and forehead of the child victim witness, then the defendant hugged the child victim witness and squeezed the child victim witness's right breast using the defendant's right hand.

That the Defendant's actions against the child victim witness caused the victim witness to experience: psychological trauma with symptoms of anxiety disorders and depression disorders in accordance with the results of the psychiatric certificate (visum et repertum psychiatry) No: 445/232 dated January 21, 2019 which was made and signed by the examining doctor, Dr. Adelin Saulinggi, Sp.Kj (K) with the conclusion that the examinee tends to be restless, the anxiety disorder and depression disorder are due to the traumatic incident in the form of sexual harassment experienced. In this case, the judge gave a verdict that The defendant was found guilty of violating Article 82 Paragraph (2) of the Republic of Indonesia Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 01 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning criminal acts involving violence or threats of violence, forcing, carrying out trickery, a series of lies, or persuading children to carry out or allow indecent acts to be carried out.

Based on the description above, this study aims to examine and analyze how strong one of the evidence in the form of a Psychiatric Visum Et Repertum is in proving a criminal case of indecent acts, especially against children, and how the obstacles for public prosecutors in carrying out such proof and how strong the evidence of a Psychiatric Visum Et Repertum will be in the future.

## **2. Research Methods**

This study uses a Normative Juridical approach method with research specifications in the form of analytical descriptive. The method used in data collection in this study is a literature study which is then analyzed qualitatively.

## **3. Results and Discussion**

### **3.1. The Probative Strength of Psychiatric Visum Et Repertum Evidence in Proving Criminal Acts of Child Molestation in the Study of Ambon District Court Decision Number: 40/Pid.Sus/2019/Pn Amb**

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R. Subekti is of the opinion that what is meant by proving is convincing the judge of the truth of the arguments or arguments put forward in a dispute.<sup>4</sup>Based on Article 184 Paragraph 1 of the Criminal Procedure Code, valid evidence is as follows:

- a. Witness Statement
- b. Expert Statement
- c. Letter
- d. Instruction
- e. Defendant's statement

Based on the provisions contained in Article 184 paragraph (1) of the Criminal Procedure Code, *Visum et Repertum* is a valid evidence. *Visum et Repertum* can be categorized as evidence in the form of a letter made by an expert statement. The types of letters that can be accepted as valid written evidence are further explained in Article 187 of the Criminal Procedure Code, where each letter is made under an oath of office or strengthened by an oath. *Visum et Repertum* is a written statement made by a doctor at the written request (official) of an investigator regarding a medical examination of a human being, whether alive or dead, or part of the human body, in the form of findings and interpretations, under oath and for the benefit of the courts.<sup>5</sup>

In an effort to obtain the evidence needed for the purposes of examining a criminal case, law enforcers often require the assistance of an expert in resolving it in order to find the most complete material truth, and use written evidence. Regarding requests for expert assistance, this is regulated in the Criminal Procedure Code, namely Article 120 paragraph (1), which states:

"If the investigator deems it necessary, he can ask for the opinion of an expert or someone with special expertise."

The doctor's statement in question is stated in writing as the result of a medical examination known as *Visum et Repertum*.

The Criminal Act of Molestation is a material offense or material crime, which is an act that causes a certain consequence without formulating the form of the act. According to Arif Gosita, the description of obscene behavior is among others:<sup>6</sup>

1. The victim of sexual abuse is a woman, with no age limit (object). Meanwhile, there was also a man who was molested by a woman.
2. The victim must have experienced violence or the threat of violence. This means there was no consent from the victim regarding the perpetrator's intentions and actions.
3. Sexual abuse outside of marriage with the aim of committing violence or threats of violence against a particular woman.

In the examination report of the child victim witness in this case there is a little confusion, the child victim witness explained that the defendant in committing his criminal act to commit an

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<sup>4</sup>R. Subekti. (2005). *Law of Evidence*, 15th edition. Jakarta: Paradyna Paramitha. p. 1

<sup>5</sup>Budiyanto A, Widiatmaka W, Sudiono S. (1997). *Forensic Medicine*. Jakarta: Department of Forensic Medicine, Faculty of Medicine, University of Indonesia.

<sup>6</sup>Lamintang, PAF (1997). *Basics of Indonesian Criminal Law*. Bandung: Citra Aditya Bakti. p. 194

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indecent act there was no threat of violence or violence or trickery or coaxing to the child victim witness. Therefore, other evidence is needed to support the proof of this case. To prove and know the consequences of an act there must be a certain basis of information, where in the crime of indecent acts the basis of information stating the consequences of an act is the *Visum Et Repertum* which contains information about the cause and effect of an act of the crime. This is also considering the provisions in Article 183 of the Criminal Procedure Code which reads:

"A judge may not sentence a person to a penalty unless, with at least two valid pieces of evidence, he or she is convinced that a crime has actually occurred and that the defendant is guilty of committing it."

Based on the provisions in Article 183 of the Criminal Procedure Code, the important points are valid evidence and the judge's conviction. Although the use of a judge's conviction in a criminal case is not prohibited, a judge is not allowed to decide a criminal case based only on his conviction and ignore the formal evidence presented by the parties in court, meaning that the judge in making a decision must be sure of the decision based on valid evidence in court.

In the case of the crime of child molestation committed by the defendant Siahaya Marthen alias Ateng, it was finally implemented and deemed necessary to conduct a *Visum et Repertum Psychiatry* on the child victim witness carried out by a psychiatrist. This was done because every crime of molestation has an impact or consequence on the victim. Although no signs of violence or coercion were found, the impact on the victim can be seen from the disturbance in the victim's mental state. Mental disorders are diseases that, like other diseases, are not permanent, can change, become worse, lighter, or disappear. Thus, in order to know exactly whether someone's level of consciousness is disturbed or not in doing so, an examination must be carried out as early as possible.<sup>7</sup>

The results of the *Visum Et Repertum Psychiatry* Number: 445/232 explain that the impact that arose on the child victim witness was in the form of a significant decrease in self-esteem so that the patient did not dare to go to school, asked to change schools, was easily sad, often afraid and refused to play with his friends, it can be concluded that the patient showed symptoms of "Anxiety Disorders and Depressive Disorders".

*Visum et Repertum Psychiatry* in the Case of Marthin Siahaya alias Ateng which has been decided in the Decision of the Ambon District Court Number: 40 / Pid.Sus / 2019 / Pn Amb is categorized as a letter regulated in Article 187 of the Criminal Procedure Code where written evidence is perfect evidence. This is because the formal provisions have been fulfilled in making a letter containing official statements from forensic experts or doctors who have been sworn in, so in terms of formality that a letter made on the basis of Article 187 letters a, b and c of the Criminal Procedure Code is a perfect evidence.<sup>8</sup>The *Visum Et Repertum* evidence has the same evidentiary force as other evidence because it refers to Criminal Procedure Law.

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<sup>7</sup>Idris, Abdul Mun'im. (2011). *Application of Forensic Medicine in the Investigation Process*. Jakarta: CV. Sagung Seto. p. 266

<sup>8</sup>Trisnandi, Setyo. "Scope of *Visum et Repertum* as Evidence in Criminal Incidents Concerning the Human Body at Bhayangkara Hospital Semarang." *Medical Science Journal of Medicine and Health*, Faculty of Medicine, Volume 5, Number 2 (2013), p.123.

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The results of the Visum Et Repertum will be authentic evidence in court because the Visum Et Repertum evidence contains evidence of violence committed by the perpetrator against the victim.<sup>9</sup> According to Wirjono Prodjodikoro, an authentic deed used as evidence in a civil case is binding on the judge, unless there is evidence to the contrary, but this is different from criminal cases. In criminal cases, there is no evidence that binds the judge regarding the strength of the evidence. The criminal judge must always think about whether he is sure of the defendant's guilt. The point put forward by Prodjodikoro is continuous regarding evidence in criminal cases in Indonesia which adheres to free evidence. This means that the judge is free to believe or not believe the valid evidence. Although free, this free belief is still limited by reasonable or logical reasons.<sup>10</sup> So it can be interpreted that the value of the strength of the evidence is left to the assessment and belief of the panel of judges.

In the Case of Marthin Siahaya alias Ateng which has been decided in the Ambon District Court Decision Number: 40/Pid.Sus/2019/Pn Amb, Visum et Repertum Psychiatry Number: 445/232 acts as valid evidence and consideration material for the judge where the visum was carried out by a psychiatrist on the victim who experienced mental disorders in the form of "Anxiety Disorders and Depressive Disorders". In this case, the Visum Et Repertum evidence can convince the judge to decide that the Suspect is proven guilty of violating Article 82 Paragraph (2) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 01 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning criminal acts in violence or threats of violence, forcing, committing trickery, a series of lies, or persuading children to commit or allow indecent acts to be committed.

### **3.2. Obstacles in Using Psychiatric Visum Et Repertum Evidence to Prove Child Molestation Crimes in Court**

Implementation of Evidence in practice is not easy, the Public Prosecutor has his own challenges in proving a criminal act in a case to provide valid evidence which can then give rise to confidence in the judge in making a decision.

Using psychiatric visum et repertum evidence in child molestation cases in court generally faces several obstacles and challenges as follows:<sup>11</sup>

#### **1. Validity and Credibility**

The results of a psychiatric visum et repertum are sometimes considered subjective, so their validity and credibility can be questioned by the defense. Psychiatrists' opinions can differ, which can cause confusion in court.

#### **2. Judge's Belief**

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<sup>9</sup>Mr. Dhanis Taufiqurrahman Suhardianto, Muhammad Rusli Arafat. "The Power of Evidence of Visum Et Repertum in the Criminal Trial Process Reviewed from Criminal Procedure Law" POSITUM Law Journal Vol.7, No.1 June (2022), p.87

<sup>10</sup>Ibid p.91

<sup>11</sup>Lubis, Muhammad Salim Fauzi. "The Role of Visum et Repertum in the Investigation Stage Conducted by the Asahan Police in Rape Criminal Cases According to the Criminal Procedure Code". Jurnal Pionir Vol.2, No.3 (2017), p.2

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To be able to instill confidence in judges in making decisions requires a great deal of effort by providing detailed and accurate data that is guaranteed in terms of validity and credibility.

### 3. Complexity of Diagnosis

Mental illness or psychological trauma in child victims is often difficult to diagnose accurately. This can hinder proper assessment of the impact of the abuse experienced.

### 4. Victim Awareness

Children may not be able to clearly express their feelings or experiences. This can make it difficult for psychiatrists to provide a comprehensive analysis.

### 5. Social Stigma

There is a stigma attached to victims of sexual violence, especially children. This can affect the desire of victims and their families to continue the legal process, including the submission of visum et repertum evidence.

### 6. Time Limitation

The legal process often takes a long time, while the child's psychological condition can change. The results of the post-mortem examination may no longer be relevant when the case goes to court.

### 7. Difficulty in Interpretation

It is possible that the results of the psychiatric visum et repertum were not interpreted correctly by the judge or other parties in court, which could lead to erroneous conclusions regarding the facts of the case.

### 8. Lack of Legal Education on Psychiatry

Many legal practitioners may not have a thorough understanding of the psychiatric aspects, which can result in misunderstandings about how this evidence should be used.

### 9. Limited Facilities for Psychiatric Testing

Although this psychiatric test can be a strong evidence, it is not necessarily applicable in all regions, this is due to the limitations of facilities that are not the same and inadequate. The logistical and human resource conditions in one region with another are different, which causes the evidence of the psychiatric visum et repertum not to be used by all regions in Indonesia.

Overcoming these barriers requires close collaboration between psychiatrists, law enforcement, and the courts to ensure that the evidence presented can be properly understood and considered in the judicial process.

## **3.3. The Probative Power of Evidence of Psychiatric Visum Et Repertum in the Future of Indonesian Positive Law**

The case of indecency in the positive law of Indonesia in the future will be accommodated in several articles, especially in Articles 414 to 423 of Law Number 1 of 2023. In relation to the fact that someone has committed a crime, it is necessary to provide evidence. Furthermore, Article 184 of the Criminal Procedure Code stipulates that there must be at least two pieces of evidence. The difficulty of providing evidence in cases of indecency or sexual violence is the lack of evidence. Public Prosecutors need to be thorough and competent in handling a

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case where there is no or minimal evidence. Therefore, it can be dissected one by one which evidence can be used as evidence in a case. In cases of criminal acts of indecency, one of them can be used as evidence of the *Visum Et Repertum* Psychiatry.

*Visum Et Repertum* not specifically regulated in the law, but the results of the *Visum Et Repertum* can be used by the judge as a basis for consideration in his decision. This is because the *Visum Et Repertum* is a statement in the form of a letter and is made by expert testimony.<sup>12</sup> Tjan Han Tjong is of the opinion that *Visum et Repertum* replaces *corpus delicti* (evidence) because what the doctor (expert) has seen and found is a substitute for the events/circumstances that occurred and a substitute for evidence that has been examined according to reality or facts, so that based on the best possible knowledge of his expertise, a precise and accurate conclusion can be drawn.<sup>13</sup>

In the first problem formulation, it has been concluded that the *Visum Et Repertum* Results will be an authentic evidence in the trial. *Visum Et Repertum* can contain evidence of violence committed by the perpetrator against the victim.<sup>14</sup> Prodjodikoro stated that the evidence in criminal cases in Indonesia adheres to free evidence. This means that the judge is free to believe or not believe the valid evidence. Although free, the free belief is still limited by reasonable or logical reasons.<sup>15</sup> So it can be interpreted that the value of the strength of the evidence is left to the assessment and belief of the panel of judges. According to Karim Nasution, if the judge based on valid evidence has been convinced that according to experience and circumstances it can be accepted that a crime has actually occurred and the defendant in that case is guilty, then there is perfect evidence, valid and convincing evidence.<sup>16</sup>

When in the trial process, then a judge experiences doubt or a feeling of doubt arises, then the judge can call the doctor who made the *Visum et Repertum*. This can be a tool of evidence of expert testimony in the field of medical science to clarify the issues that arise in the trial.

For the future, because the rules regarding psychiatric *Visum et Repertum* have not been clearly regulated in the laws and regulations, so the reference for the evidentiary strength for psychiatric *Visum et Repertum* evidence remains in the judge's belief who in his decision considers whether the evidence can be considered valid and convincing or not. Furthermore, psychiatric *Visum Et Repertum* evidence in the future can be used as evidence in cases of indecency. This is because the Ambon District Court Decision Number: 40 / Pid.Sus / 2019 / PN Amb has stated that *Visum Et Repertum* is evidence that can convince judges in making a decision, so that in this case it can be a guideline in similar cases which of course are still based on the judge's belief in making a decision.

#### 4. Conclusion

*Visum Et Repertum* Psychiatricum can be used in proving the crime of child molestation as a victim in the case study of the Ambon District Court Decision Number: 40 / Pid.Sus / 2019 / Pn Amb because there is confusion in other evidence in the form of Witness Statements. In

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<sup>12</sup>Trisnandi, Setyo, Location.

<sup>13</sup>Ranoemihardja, R. Atang. (1983). Forensic Medicine Second Edition. Bandung: Forensic Science, 1983). p.18

<sup>14</sup>Mr. Dhanis Taufiqurrahman Suhardianto, Muhammad Rusli Arafat, Loc.Cit

<sup>15</sup>Ibid p.89

<sup>16</sup>Nasution, Karim, Legal Problems of Evidence in Criminal Proceedings, Jakarta, 1975, p.71



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every crime of molestation, there is an impact or consequence on the victim, and the impact or consequence can occur on the victim's mental state. The results of the Psychiatric Visum Et Repertum Number: 445/232 explain that the impact that arises in the child victim witness is categorized as symptoms of mental disorders "Anxiety Disorders and Depressive Disorders". Based on Article 187 letters a, b and c of the Criminal Procedure Code, the Visum Et Repertum evidence is a perfect evidence and has the same evidentiary force as other evidence. So in this case the Visum Et Repertum evidence has perfect strength that can convince the judge to decide that the Suspect is proven guilty. There are obstacles found in proving especially in the evidence of Visum Et Repertum Psychiatry in general in the form of validity and credibility, judge's belief, complexity of diagnosis, victim awareness, social stigma, time constraints, difficulty in interpretation, lack of legal education about psychiatry, and limited facilities for psychiatric tests. Evidence of Visum Et Repertum Psychiatry in the future can be used as evidence in cases of molestation, but because the rules regarding Visum et Repertum Psychiatry have not been clearly regulated in the laws and regulations, so the reference for the strength of evidence for Visum et Repertum Psychiatry remains on the belief of the judge who in his decision considers whether the evidence can be considered valid and convincing or not.

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The 1945 Constitution of the Republic of Indonesia.