

LEGAL POLICY FOR VISUM ET REPERTUM TEST IN EVIDENCE OF RAPE CRIME: PERSPECTIVE OF THE STATE COURT IN INDONESIA

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ABSTRACT

Rape is a sexual crime and carries a maximum of 12 years in prison for the perpetrator under Indonesian law, but in practice it is rarely carried out and enforced. The judges' considerations contained in the decision of the case need to be questioned in relation to the protection of victims, as well as the tendency of judges to fulfill juridical, philosophical and sociological aspects in legal considerations as the basis for their sentences. Proof of the crime of rape is carried out by the forensic test method, namely visum et repertum. The result of the Visum et Repertum (VeR) is one of the valid evidences and is accepted by the District Court in Indonesia in handling cases of rape. VeR is carried out by doctors who have forensic expertise and the VeR test is a judge's consideration in deciding.

Key words: Forensic, Test, Visum, Court, Rape

INTRODUCTION

In Indonesia sexual violence is associated with crimes that tend to be more violent and brutal, as stated by Wahid and Irfan (Wahid et al., 2001). The latest data from the National Commission on Human Rights in 2018 states that domestic sexual violence reached 1.071 cases in a year while sexual violence in the community reached 1.750 cases. There are many possibilities which influence the increasing amount of violence against women, such as the increasing reports due to the increasing insight on women's rights the better understanding from the law enforcement agency on violence against women or the legal ineffectiveness in providing protection for women as violence victim, as stated by Irianto and Cahyadi (Irianto & Cahyadi, 2008), (Khalaf AB, 1997).

The judges' considerations contained in the decision of the case need to be questioned in relation to the protection of victims, as well as the tendency of judges to fulfill juridical, philosophical and sociological aspects in legal considerations as the basis for their sentences.

Based on the results of research and discussion, it was concluded that District Court judges tended to base their legal considerations on juridical aspects.

The neglect of the sociological and philosophical aspects in the consideration as the basis for the decision caused the judge to be unable to touch the local wisdom that exists in the East Archipelago regarding the culture of *belis* which is identified with the value of a woman (the higher the status of a woman, the higher the value of the *belis* in marriage). unable to capture what is the will of the national and international world in CEDAW, the Law on Human Rights and various other provisions.

At the end of the 20th century, sexual violence against women was recognized globally as a violation of human rights. Until now, Indonesia still tends to reject sexual violence against women. The main reason is that victims of sexual violence rarely appear, so that victims of rape, for example, cannot be proven as regulated in Article 285 of the Criminal Code. The current Criminal Code does not provide protection for women as victims of sexual violence.

This fact has raised the concerns of the UN Special Rapporteur on Anti Violence against women who came to Indonesia in November 1998, to collect direct information on various acts of violence against Indonesian women in various conflict areas, including also recommending that Indonesia abandon a 'culture of denial' attitude towards various areas of conflict. violence experienced by Indonesian women (Abdullah I & Et.all, 2002).

Patriarchy or masculinity views men as always in a dominant position over women in every rape case. Patriarchal culture not only makes it appear weak when women vis a vis men, but the dominant position of strong men makes women always exist in a state of oppression. This oppression got a strong foothold in a patriarchal culture and was later established in the legal system. This conclusion is in line with the Berberick Study (2010) which later quoted Swami, that in a patriarchal society, the rights and roles of inferior women are largely determined by the superior male power. The tendency of the patriarchal society's attitude greatly determines the relationship between the patriarchal regime and the ideal concept of beauty (Berberick, 2010).

Indonesia as a country affected by Patriarchal traditions (Sarwono, 2012), it is already familiar with the incidence of rape. The post-Reformation era, which was marked by the disclosure of information regarding reports of rape, looks apprehensive. In the Human Rights Commission notes sheet in 2016, 5,002 cases (31%) occurred in the community domain, in 2015 the same as 2014 the highest violence was sexual violence (61%), type of sexual violence in the community, the highest was rape (1,657 cases), then sexual harassment (1,064 cases), sexual

harassment (268 cases), sexual violence (130 cases), running away girls (49 cases) and attempted rape (60 cases) (Komnas Perempuan, 2016).

The National Commission on Violence Against Women reported that rape was the most reported form of sexual violence. As many as 34% of the nine media reported cases of rape between January and June 2015. The news became more prevalent after Yuyun (YY) which was tragic raped and killed by 14 men in Bengkulu. The case against YY received a response from President Joko Widodo. Directly, Jokowi passed PERPU No.1 of 2016 concerning additional penalties, namely castration of perpetrators of sexual crimes (Rizka et al., 2020).

The judge poses a core role in the case-solving process, especially in rape crime cases. Regarding whether or not the defendant really did the action accused is the most important part in the criminal procedure law. Yet, what is not less important is the evidence given by the victim regarding the accused's actions. There aspects of evidence: Evidences in the aspect of forensic based on Article 184 of the KUHP regulations which is includes visum et repertum, expert forensic information, and DNA test for victims.

METHODS

This research method uses empirical juridical research (Izziyana et al., 2019) which bases papa legal research in a philosophical way that seeks to find the true truth of every juridical phenomenon that exists to be reconstructed in order to reveal truths that are beneficial to life (Huijbers, n.d.). This research is a descriptive study that describes something to be achieved (Absori et al., 2020). The choice of this type of research is based on the premise that basically this research intends to discuss the VeR forensic test as evidence of cases of rape in Indonesia from the perspective of the district court

RESULTS AND DISCUSSIONS

Moerti Hadi Soeroso defines rape against women, including marriage as a form of crime that can be categorized as violent violence (Soeroso, 2011). Violence crime is categorized as a form of action that violates the human rights of women (Wahid et al., 2001).

Susetiawan pointed out that first, in the vision of sexual relations rape is a form of sexual deviance committed by force of coercion, second, rape can also be interpreted as deprivation of human rights. Although Susetiawan argues that rape in the macro vision is deprivation of human rights, rape in the vision of sexual coercion can also be interpreted as a form of deprivation of rights, such as the right to virginity, the right to be free from suffering, the right to be free from

fear, and inhuman treatment. With the existence of rape, the victim has felt the consequences of the abuse of human rights (Soeroso, 2011)

Abdul Wahid and Muhammad Irfan, Actions classified as crimes against humanity (crime againsts humanity) or violating human rights are rape. Rape is a major crime for the perpetrator, especially if it is legally proven, then the rapist can be sentenced to death (Soeroso, 2011). If we agree that the criminal act of rape is a heinous act that violates human rights, then the attention and concern for the victims of J of the act in article 285 of the Criminal Code or article 81 and article 82 of the Child Protection Act. Thus it is expected that every judge's consideration that will be used as a basis for imposing the severity of the criminal verdict against the perpetrator of the crime of rape must have a logical thinking or fulfill juridical, sociological and philosophical aspects.

The injustice against victims of sexual crimes causes a weak position for women, which makes women vulnerable to violence, because the standard for imposing criminal sanctions does not provide a deterrent effect. Sulistyowati Irianto, said that more judges only confirm between the prosecutor's indictment and the articles in the statutory law, many judges in handling cases and choosing the law that will be used in resolving cases really depend on the "choice of law" used by the prosecutor (Irianto, 2006). It is not surprising that Rahardjo said that "the implementation of criminal justice based on the Criminal Procedure Code is still not running smoothly and there are still many weaknesses. Due Process Model is still far from expectations, even the accusator approach still dominates (Rahardjo, 2011).

In terms of proving cases, district court judges are in line with the author's research on district court judges in Yogyakarta and several regions. Their anonymous district court judges have a positive view and support the use of the VeR forensic test by forensic doctors as valid evidence in handling cases of rape.

The judges also revealed Forensic visum et repertum examination has an effective time span of 72 hours so that if the crime is not handled as soon as possible, namely in the golden time where the time span is 72 hours after the rape, it will be arduous to find the evidences needed. Since these female victims usually report the assault weeks or years after it happened, hence the perpetrators rarely get caught in the law, except for one phenomenal case that has been recorded to successfully enter the court and the perpetrator was severely sentenced to 7 years and 10 months of imprisonment (Philip, 2007).

Most of the sexual crime's perpetrators escaped the law due to the lack of knowledge from the victims and the response from law enforcement officials themselves. Most perpetrators will

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try to eliminate the evidences by threatening the victims not to report or order them to bathe in order to remove the traces of sexual intercourse on the victim's body, thus making it difficult for the law enforcers to carry out visum et repertum as a forensic effort, furthermore the victims who do not want to report immediately, will make the evidences disappear after 72 hours (Lonsway, 2010).

Forensic medical science is a solution for the verification difficulty in ensnaring the sexual crimes perpetrators. With forensic medical science, the law that was still in the dark in finding or ensnaring the perpetrators can find a bright spot in allowing the perpetrators to be ensnared by the law.

Rape is an act of violence which the sexual intercourse is not on the basis of mutual consent but it is forced. Rape is difficult to prove legally even though there may have been the evidences collection and examination, unless forensic test is carried out. From here, the verification that the intercourse happened must be proven first thus to be called a rape.

While to verify it, one of ways is by identifying the presence of the perpetrator's sperm in the victim's body through a forensic test conducted in a more specific area in her vagina. However, it needs to be understood that the sperm can only live in the vaginal cavity for a maximum of 3 days or 3x24 hours. While in a dead state, the sperm can still be found or remain in the vagina for a maximum of 7 days or 7x24 hours (Irianto, 2006). It will be difficult to prove the rape if after a crime has been committed by the perpetrator, the victim then does not report it within a specific timeframe so that it becomes difficult in proving through visum et repertum.

Not to mention if after the rape, the perpetrator forces the victim to clean the body and all the traces of rape that had occurred. So in such rather complex occurrences, forensic science may help revealing the occurrence of sexual crimes and the perpetrator of said case. Forensic Medicine has techniques which are commonly used in serious crimes such as murder and rape, based on automatic fingerprint recognition or search technology and automatic DNA database search or visum et repertum examination or forensic post and ante mortem which result major changes altogether on forensic medical techniques in the resolution of criminal cases.

The role of Forensic Sciences in obtaining clarity for the sake of proving that a rape crime has indeed occurred is to examine the victim thoroughly in order to obtain the evidence through the examination of special forensic expert doctors for rape victims who have died and obstetricians for examination of victims. The results of the examination were written in the form of visum et repertum which would later be used as evidence in the category of letter evidence to be used in court plus the statements of the expert or doctor concerned (who conducted the

forensic/visum et repertum test) to be present if necessary for questioning as an expert before a court hearing.

The accuracy of a forensic doctor or forensic laboratory in analyzing victims to obtain evidence will determine the fairness which will be obtained by the victims and also the perpetrators. Because if there has been found any errors or misdiagnosis in the forensic laboratory analysis conducted by certain doctors or specialists, it may result in fatal consequences such as the perpetrators may be in released or they may be arresting the wrong person who did not commit the said crime (Rizka et al., 2020).

CONCLUSION

The District Court through the ranks of judges understands the importance of the forensic test and Visum et Repertum examination in handling rape cases. Visum et Repertum is also a valid evidence tool used in proving cases of the crime of rape. High court judges decide a case based on existing laws and in the law there is information that Visum is valid evidence in addition to other evidence. Judges at the District Court in Indonesia understand that Visum Et Repertum has validity to be used in legal considerations. District Court judges are also aware that post mortem has a golden period (best validity) and after the period has passed, the validity is reduced or even lost so that the defendant can escape the law when the new victim reports for a long period of time

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