

Medicolegal Aspects of Visum Et Repertum in Sexual Violence Criminal Cases

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Abstract

One important component in disclosing the cases of criminal acts of sexual violence case is Visum et Repertum (VeR). Based on article 133 of the Criminal Procedure Code. VeR clarifies cases, especially in the context of proving someone's guilt relating to the body or parts of the human body. The purpose of this research is to analyze the medicolegal aspect in handling TPKS victims, especially victims of rape or sexual intercourse. By using normative research methods and using statutory and conceptual approaches. TPKS arrangements are regulated in Law Number 12 of 2022 concerning Crimes of Sexual Violence. Handling of TPKS victims is regulated through Minister of Health Decree number 1226/Menkes/SK/XII/2009 concerning Guidelines for the Management of Integrated Services for Victims of Violence Against Women and Children in Hospitals. Indonesian Medical Council regulation number 66 of 2021 concerning forensic and medicolegal medical education standards regulates clinical authority in handling TPKS victims. There are two regulations related to medical services for legal purposes, Minister of Health Regulation Number 38 of 2022 concerning Medical Services for Legal Purposes, and Minister of Health Regulation Number 77 of 2015 concerning Guidelines for Mental Health Examination for the Interests of Law Enforcement.

Keywords: Legal Protection, Health Insurance Administering Agencies, Heart Disease, Drug Restrictions, Hospitals

INTRODUCTION

In criminal cases where the evidence or *corpus delicti* is an inanimate object, for example sharp weapons, wood, firearms, etc., in general, it can always be presented before a court hearing as evidence, in contrast to evidence regarding criminal acts relating to the body, life, and human health as outlined in the Post-visum et repertum Reporting section and containing detailed examination results made by the examining doctor. It is hoped that the results of the examination will support the judge's confidence in deciding the case appropriately and fairly¹. The basis for requesting and making a post mortem et repertum is regulated in the Criminal Procedure Code (KUHAP).

The term Visum et repertum can be found in the State Gazette number 350 of 1937 (*Het Staatsblad van Indonesia*), namely: A forensic medical report by a doctor on the basis of an oath of office regarding the examination of medical evidence (living/dead) or other evidence, biological (hair, sperm, blood), non-biological (bullets, casings) upon written request by the investigator intended for justice (pro justitia). Visum comes from Latin, where the word visual means to see and repertum means to report. Visum et Repertum is a written report from a doctor (expert) made based on an oath regarding what was seen and found on living evidence, corpses or physical or other evidence, then an examination is carried out based on the best possible knowledge.

According to Ahmad Yudianto, a forensic medicine expert from Airlangga University, Visum et Repertum is a written report from a doctor who has been sworn in regarding what was seen and found in the evidence he examined and also contains the conclusions of the examination for the purposes of the court. The visum et repertum is in exchange for evidence, because the evidence being examined cannot possibly be presented in court in the circumstances it is. This is possible because evidence that is related to the human body (for example: wounds, corpses or other body parts) will soon turn into healed or rotted.².

Recently, cases of sexual violence have become increasingly common in society and continue to grow. Sexual violence itself is a general or universal crime, which means it can be committed and experienced by all groups regardless of age, gender or ethnicity. According to the World Health Organization (WHO), sexual violence is all forms of acts carried out to obtain sexual acts or other acts that lead to a person's sexuality using coercion regardless of the relationship status with the victim.³. According to data from the Ministry of Women's Empowerment and Child Protection through SIMFONI PPA (Online Information System for the Protection of Women and Children), the number of cases of sexual violence is increasing in various provinces of Indonesia, in 2019 the number of child victims of sexual violence reached 6,454, then increased to 6,980 in 2020. Furthermore from 2020 to 2021 there was an increase of 25.07 percent to 8,730, in the first trimester of 2023 the number reached 2,553 cases, the victims were both women and men, the average age of the victims was 13-17 years old, the highest level of school education Upper Middle Level, second is First Level School Education, and third is Elementary School Education, most of the perpetrators are close friends.⁴. According to the Center for Disease Control and Prevention (CDC), 1 in 3 women and about 1 in 9 men experience sexual harassment in public places. Research in the United

¹ Arsyadi, Function and Position of Visum Et Repertum in Criminal Cases, *Journal of Legal Studies Legal Opinion*, Ed.2, Vo.4, 2014.h.2-4

² Yudianto A., *Forensic Medicine*. Scopindo Media Pustaka, Surabaya, 2020.p.11

³ Sexual violence (2012) World Health Organization. Available at: https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf?sequence=1 accessed on: 04 June 2023 at 19.00 WIB

⁴ SIMFONI PPA data (Online Information System for the Protection of Women and Children). <https://kekerasan.kemenpppa.go.id/ringkasan> Accessed from March 25 2023, at 20.08 WIB

States in 2006 (National Violence against Women Survey/NVAWS) reported that 17.6% of female respondents and 3% of male respondents had experienced sexual violence.⁵

One of the human rights of citizens stated in the 1945 Constitution that must be fulfilled by the State is the right to obtain a fair resolution of cases. In Criminal Law, the resolution of a case must comply with the due process of law, through a court that is free from any influence from anyone. To be able to achieve due process of law properly, one thing that is needed is to carry out a good evidentiary process, Article 183 of the Criminal Procedure Code uses a negative legal proof system.⁶, this means that research must be carried out in evidence, in this case the post mortem et repertum as evidence in criminal cases of sexual violence. Based on the description above, the aim of writing this article is to analyze the medicolegal aspects related to sexual violence criminal cases and to analyze the Visum et Repertum in helping resolve sexual violence criminal cases.

RESEARCH METHODS

This research was prepared using a normative juridical research type, namely research that focuses on examining the application of rules or norms in positive law. Normative juridical research is research conducted based on primary legal materials by examining theories, concepts, legal principles and statutory regulations related to this research. This research is also known as library research, namely by studying books, statutory regulations and other documents related to research. This research uses a statutory approach and a conceptual approach. The statutory approach is usually used to examine statutory regulations whose norms still contain deficiencies or even foster irregular practices either at the technical level or in their implementation in the field. This approach is carried out by examining all statutory regulations related to the problem (legal issue) being faced. For example, this legislative approach is carried out by studying the consistency/compatibility between the Constitution and the Laws, or between one Law and another Law.

RESULT AND DISCUSSION

Legal Protection for BPJS Patients with Heart Disease Who Experience Drug Restrictions in Hospitals

Legal protection consists of two words, namely protection and law. Protection is a series of activities to guarantee and protect a person, while law is the totality of regulations that must be obeyed by everyone and those who violate them are subject to sanctions. Legal protection is an activity to guarantee someone which is carried out through legal procedures or based on law.⁷ In general, legal protection is a guarantee given by the state to all parties to be able to exercise the legal rights and interests they have in their capacity as legal subjects.⁸

Legal protection is all efforts to protect and fulfill the rights and sense of security for witnesses and/or patient victims. Forms of legal protection can be provided in the form of providing restitution, compensation, medical services and legal assistance⁹. The basis for legal protection in Indonesia, as written in the Preamble to the 1945 Constitution, is: "to protect the entire Indonesian nation and all of Indonesia's blood."

⁵Ningsih, ESB and Henyati, S. Sexual violence against children in Karawang Regency - Neliti.) (2018)

⁶M. Yahya Harahap. Discussion of Problems and Application of the Criminal Procedure Code in Court Trial Examinations, Appeals, Cassation and Judicial Review: Second Edition, Jakarta: Sinar Graphics, 2006. p.319

⁷M Nurdin, Legal Protection for Patients Victims of Medical Malpractice, Samudra Perempuan Law Journal, No. 1 Volume 10, 2015, p. 93-94.

⁸Andriyadi, Legal Protection of the Rights of BPJS Health Patients at Eka Hospital Pekanbaru, Thesis, Master of Law Study Program, Islamic University of Riau, Pekanbaru, 2022, p. 55.

⁹Tri putri Simamora et al., Legal Protection of Patients in Medical Services in General Hospitals, Al' Adl Legal Journal, No. 2 Volume 12, 2020, p. 272-273.

According to Satjipto Rahardjo, the presence of law in society has an important role, including integrating and coordinating interests that could collide with each other by law, by being integrated in such a way that these collisions can be reduced to a minimum. Organizing these interests is carried out by limiting and protecting these interests. The law protects a person by allocating force to him to act in that interest.¹⁰ According to Philipus Hadjon, legal protection takes two forms: first, preventive legal protection, which means that the people are given the opportunity to express their opinions before the government's decision takes a definitive form which aims to prevent disputes from occurring. Second, repressive legal protection which aims to resolve disputes.¹¹

Philosophically, the regulations for health services for the community in Indonesia come from Article 34 paragraph (1) of the 1945 Constitution which stipulates that health services are the responsibility of the state, and Article 28H paragraph (1) which stipulates the rights of citizens to obtain health services. This is an embodiment of the principles of just and civilized humanity and the principles of social justice for all Indonesian people. The provision of health services is related to values that uphold the dignity of Indonesian people, while the establishment of the right to receive health services is an embodiment of the principle of social justice which is realized by equality.¹²

Legal protection and health services cover several aspects, including: administrative aspects, criminal aspects and civil aspects. The administrative aspect is related to the type and quality of basic services to ensure patient safety in hospitals. The criminal aspect of protecting the public to obtain public health services is a repressive aspect, namely when malpractice occurs by hospital doctors. In reality, this aspect is often focused on doctors rather than hospitals. In fact, therapeutic transactions are a legal relationship between the hospital and the patient. So the legal action taken by the hospital doctor is due to the authority given by the hospital to the doctor concerned. The last aspect is the civil aspect, this aspect is also related to repressive protection, namely legal protection in the event of loss caused by the doctor's error/negligence.¹³ This legal protection includes health services for outpatients who experience heart medication restrictions in hospitals.

In health services, there is a legal relationship between the health service provider and the health recipient. The result of this relationship gives rise to a transaction known as a therapeutic transaction. Based on Law Number 29 of 2004 concerning Medical Practice and Law Number 44 of 2009 concerning Hospitals, therapeutic transactions give rise to rights and obligations between parties where this therapeutic transaction is the basis for granting approval for medical treatment (informed consent). Informed consent is a form of legal protection for patients.¹⁴

The state is also present to provide legal protection for patients in the form of statutory regulations, namely Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law No. 29 of 2004 concerning Medical Practice, Law Number 39 of 1999 concerning Human Rights, the Civil Code and Government Regulations. And the latest is Law Number 17 of 2023 concerning Health.

Legal protection for patients receives clear attention in Law Number 29 of 2004 concerning Medical Practice which explains that health development is aimed at increasing awareness, willingness and ability to live healthily for everyone in order to realize optimal

¹⁰M Nurdin, Loc. Cit.

¹¹Fauji Salim, Normative Juridical Review of Legal Protection for Patients as Consumers in Malpractice in Hospitals, *Lex Renaissance*, No.2 Volume 5, 2020, p. 395.

¹²*Ibid.*, h. 397.

¹³*Ibid.*, p. 398-399.

¹⁴Rielia Darma Bachriani and Putri Kusuma Wardhani, Juridical Study of Legal Protection for Patients Regarding Health Services in Hospitals, *Smart Law Journal*, No.1 Volume 1, 2022, p. 5.

health as an element of general welfare, as intended in the Preamble to the 1945 Constitution. Examples of legal protection in the Medical Practice Law are contained in Articles 27 and 28 which explain about medical and dental education and training carried out in accordance with professional standards, Article 51 concerning the obligations of doctors and dentists in carrying out medical practice, Article 66 concerning complaints from patients who feel disadvantaged by the actions of doctors and dentists, and Article 72 which explains the guidance and supervision of doctors and dentists to improve the quality of health services and provide legal certainty for the public, doctors and dentists.

Law Number 36 of 2009 concerning Health also provides guarantees for patient protection, especially Articles 56 to 58. These three articles explain that patients have the right to accept and reject some or all of the assistance measures that will be given to them after receiving and understanding information regarding these actions in full, has the right to keep his personal health condition confidential and to claim compensation due to negligence of health services. Article 2 of Law Number 44 of 2009 concerning Hospitals guarantees patient protection and safety. This article explains the meaning of the value of patient protection and safety, namely that hospital administration must not only provide health services, but must be able to provide an increase in health status while still paying attention to patient protection and safety.

Legal protection for patients is also guaranteed in Law Number 17 of 2023 concerning Health which has been passed. Chapter II in these regulations is about the rights and obligations in Article 4. Every person has the right to receive safe, quality and affordable health services and to obtain health services that comply with health service standards. Article 189 states the obligation of every hospital to respect and protect the rights of patients. The latest Health Law in Part Three concerning the procurement of medical personnel and health workers in Article 219 also regulates that students who provide health services have an obligation to respect, protect and fulfill the rights of patients. Medical personnel and health workers in carrying out practice are also regulated in Article 274 which requires them to provide health services in accordance with professional standards, professional service standards, standard operational procedures and professional ethics as well as patient health needs. Based on this, heart patients participating in BPJS who experience restrictions on prescribing medication, if the medication is considered by a heart specialist referring to existing therapy guidelines, must still be given to the patient in order to obtain the appropriate and best therapy for their disease.

Legal protection for patients is also regulated in the Civil Code Article 1365 which states "Every act that violates the law and causes loss to another person, requires the person who caused the loss through his fault to compensate for the loss." Based on the sound of this article, the following elements of unlawful acts can be drawn:

1. There is an act that violates the law
2. There are losses
3. There is a mistake
4. There is a causal relationship between the loss and the action

The legal relationship between a doctor and a patient is a legal relationship in the civil sector which in the Civil Code is discussed in Book III concerning engagement. Legal obligations can arise from law or from agreements. What is meant by the parties agreeing in health services is the agreement of the doctor to carry out medical procedures and the consent of the patient for medical procedures to be carried out on him. So the informed consent given by the patient is a requirement for the agreement to provide medical services to be valid according to law and gives the doctor the right to carry out medical procedures.¹⁵ This is in

¹⁵ Andriyadi, Op. Cit., p. 65-66.

accordance with Article 1320 of the Civil Code, namely that an agreement is said to be valid if it meets four conditions:

1. They agreed to bind themselves
2. The ability to create an engagement
3. A certain thing
4. A legitimate cause

Informed consent Specifically regulated in the Regulation of the Minister of Health of the Republic of Indonesia No.290/Menkes/Per/III/ 2008 concerning Approval of Medical Procedures Article 2 paragraph (1) all medical procedures to be carried out on patients must receive approval. In the process of implementing informed consent, the patient gives consent and the doctor provides medical treatment, so that in the relationship between the patient and the doctor, no one will be harmed so that the patient can obtain the rights to obtain proper health.¹⁶

Hospital Responsibilities and Obligations in Health Services Related to Collaboration with BPJS

The relationship between the patient and the hospital is a therapeutic relationship, as a result of this relationship gives rise to rights and obligations for each party. The engagement that occurs between the recipient of health services and the provider of health services is an effort engagement (inspanning verbintenis). As a result of this engagement, there are legal consequences where the hospital is not burdened with the obligation to produce results (in the form of healing) but is only burdened with the obligation to make efforts according to standards (standards of care), namely a level of quality of medical services that reflects the application of knowledge, skills, consideration and proper attention as is done by doctors in general when dealing with similar situations and conditions.¹⁷

Health services carried out as an effort according to standards with such a level of quality are expected to be able to provide solutions to patient health problems. If in reality these hopes do not come true or even unexpected events arise (adverse events), medical risks, the patient does not recover or dies (terminal bed), then the doctor or hospital does not necessarily have to be blamed or cannot be sued legally for accountability. ¹⁸

Hospital obligations are regulated in Article 29 of Law Number 44 of 2009 concerning Hospitals. Hospital obligations are also stated in more detail in Minister of Health Regulation Number 4 of 2018 concerning Hospital Obligations and Patient Obligations. Every Hospital has the obligation to:

- a. provide correct information about Hospital services to the community;
- b. provide safe, quality, anti-discriminatory and effective health services by prioritizing the interests of patients in accordance with hospital service standards;
- c. provide emergency services to patients according to their service capabilities;
- d. play an active role in providing health services during disasters, according to their service capabilities;
- e. provide facilities and services for disadvantaged or poor people;
- f. carry out social functions, among others, by providing service facilities for indigent/poor patients, emergency services without down payment, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions;

¹⁶Indra Setyadi Rahim, Legal Protection for Patients in the Implementation of Informed Consent, *Lex et Societatis*, No. 4 Volume IV, 2016, p. 14.

¹⁷Rossi Suparman, Legal Protection and Hospital Responsibility for Doctors in Medical Disputes, *Syiar Hukum Journal of Legal Sciences*, No. 2 Volume 17, 2020, p. 189-191

¹⁸*Ibid.*

- g. create, implement and maintain quality standards for health services in hospitals as a reference in serving patients;
- h. maintain medical records;
- i. providing adequate public facilities and infrastructure, including prayer facilities, parking, waiting rooms, facilities for the disabled, breastfeeding women, children, the elderly;
- j. implementing a referral system;
- k. refuse the patient's wishes which are contrary to professional and ethical standards and statutory regulations;
- l. provide correct, clear and honest information regarding patient rights and obligations;
- m. respect and protect patient rights;
- n. implement Hospital ethics;
- o. have an accident prevention and disaster management system;
- p. implementing government programs in the health sector both regionally and nationally;
- q. make a list of medical personnel who practice medicine or dentistry and other health personnel;
- r. prepare and implement internal hospital regulations (hospital by laws);
- s. protect and provide legal assistance to all Hospital officers in carrying out their duties; And
- t. enforce the entire hospital environment as a smoke-free area.

A hospital is one of the public service delivery organizations that has public responsibility for every public service provided in the health sector. The public responsibility of hospitals is regulated in the provisions of Article 15 of Law Number 25 of 2009 concerning Public Services, namely

- 1. The realization of clear boundaries and relationships regarding the rights, responsibilities, obligations and authority of all parties related to public service providers.
- 2. The realization of a proper service delivery system in accordance with the general principles of good government and corporations
- 3. Fulfillment of the implementation of public services in accordance with statutory regulations.
- 4. The realization of legal protection and certainty for the community in the provision of public services¹⁹

Based on Article 46 of Law Number 44 of 2009 concerning Hospitals, it is stated that hospitals have legal responsibility for all losses incurred due to negligence committed by health workers in hospitals. A similar thing is also stated in Law Number 17 of 2023 Article 193 that hospitals are legally responsible for all losses incurred due to negligence committed by hospital health human resources.

Hospitals are one of the providers of health services or more accurately referred to as health facilities. Health services in hospitals and all supporting health facilities such as laboratories, pharmaceutical installations and pharmacies are health services guaranteed by BPJS Health.

All government and regional government hospitals that meet the requirements are required to collaborate with BPJS Health. Meanwhile, private health facilities that have met

¹⁹Ariawan Gunadi and Ida Nursida, Juridical Review of Hospital Accountability for Participation in the Health Social Security Administering Agency (BPJS) Program, Legal Era, No.1 Volume 17, 2019, p.37.

the requirements can collaborate with BPJS Health.²⁰ This is in accordance with Article 36 of Presidential Regulation Number 19 of 2016 concerning the Second Amendment to Presidential Regulation Number 12 of 2013 concerning Health Insurance. Collaboration between hospitals and BPJS is carried out by making a written agreement.

BPJS Health, Hospitals and BPJS Health Participants have a legal relationship relating to their respective rights and obligations. The implementation of relationships between doctors, hospitals and patients is always regulated by certain regulations to create harmony in carrying out the relationship. Such as BPJS Health with its legal basis is Law Number 40 of 2004 concerning the Social Security System and Law Number 24 of 2011 concerning the Social Security Administering Body which has the obligation to guarantee the health of all JKN participants who have joined as BPJS participants. BPJS Health has received its right, namely that participants are required to pay mandatory contributions as social security participants or their contributions are paid by the Government.²¹

According to Law Number 36 of 2009 concerning Health, hospitals also have obligations, including having minimum qualifications and having permission from the government to provide health services. Hospitals or health facilities are obliged to provide health services according to the provisions and provide service reports according to the agreement. It is the hospital's obligation to provide medicines, medical devices and consumable medical materials according to Fornas to BPJS participant health services. In addition, the Health Law stipulates that health workers must comply with a code of ethics, professional standards, rights of health service users, service standards and operational standards. Apart from obligations, hospitals also have the right to have their claims paid by BPJS in accordance with the health services they provide to national health insurance participants. Claim payment is no later than 15 working days after the complete claim documents are received. Another health facility's right is to obtain information about membership, service procedures, payments and the cooperation process with BPJS.²²

All health facilities that collaborate with BPJS Health in Presidential Regulation Number 19 of 2016 are not allowed to charge additional fees to BPJS participating patients as long as the participants use BPJS according to their rights. This is because all costs used during BPJS health services are borne by BPJS according to their rights.

CONCLUSION

Based on the research conducted, researchers can conclude that Medicolegal aspects in conducting examinations of TPKS victims must be served in an integrated and comprehensive manner in accordance with the Decree of the Minister of Health of the Republic of Indonesia number 1226/Menkes/SK/XII/2009 concerning Guidelines for the Management of Integrated Services for Victims of Violence against Women and Children in Hospitals, the aim of which is to obtain important findings or evidence as early as possible which is stated in the Visum et Repertum (VeR), the VeR is used as evidence at trial in the form of a letter as stated in article 184 and information in article 187 of the Criminal Procedure Code, the basis for requesting a Visum is article 133 of the Criminal Procedure Code.

Legally, the aspect of handling victims of criminal acts of sexual violence, especially rape, is handled in a multidisciplinary manner, in the medical field it is divided into physical and non-physical. Physical examinations by Forensic and Medicolegal Specialist Doctors are in accordance with Medical Council Regulation Number 66 of 2020 concerning Educational

²⁰Febri Murtiningtias, H. Zulkarnain Ibrahim, M. Ridwan, Cooperation Agreement Between the Social Security Administering Body and RSUP DR. Mohammad Hoesin in the Implementation of Health Services, Lex Lata, No. 1 Volume 3, 2021, p. 139

²¹*Ibid.*, h. 141

²²*Ibid.*, p. 142-143

Standards for Forensic and Medicolegal Specialist Doctors, reinforced by Regulation of the Minister of Health of the Republic of Indonesia Number 38 of 2022 concerning Medical Services for Legal Purposes, while mental examinations are carried out by Specialist Doctors Mental Health is in accordance with the Regulation of the Minister of Health of the Republic of Indonesia Number 77 of 2015 concerning Guidelines for Mental Health Examinations for Law Enforcement Purposes, the output of which is *Visum et Repertum Psychiatricum* (VeRP).

Apart from medical forensics specialist doctors and mental health specialist doctors, when dealing with criminal cases of sexual violence, you should be guided by article 14 of the Code of Medical Ethics (KODEKI) regarding the obligation to refer to doctors who have clinical expertise or authority that has been mandated by the Indonesian Medical Council.

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