

Legal Gap In The Determination of Moderate Wound By Forensic Doctors On Visum Et Repertum In Criminal Case

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ABSTRACT

The present research is about “Legal Gap in Determination of Moderate Wounds by forensic pathologists on Visum Et Repertum in Criminal Court”. There is a problem that legal concept of moderate wound on visum et repertum and legal gap for determining the state of moderate wounds by forensic pathologists at Visum et Repertum. This is a normative research with conceptual approach, statute approach, and case approach. Legal experts acknowledge moderate wound, which is a kind of wound or injury in between a minor and severe conditions. A legal gap created by the absence of moderate wound in law which is a familiar term criminal court. Regarding forensic pathologists competencies, they determine moderate injuries victims whose have economic impaired without physical disturbance.

Keywords: Legal gap, Moderate wound, Visum et Repertum

1. INTRODUCTION

For the purposes of the judiciary, in dealing with a victim, whether injured, poisoned or dead which is suspected to be due to an event which constitutes a criminal act, the investigator is authorized to submit a request for expert information from an expert in judicial medicine or a doctor or other expert. This article explains that the medical profession - especially forensic doctor has an important role as an expert witness in examining victims of criminal acts as requested by investigators.

For investigators (police/military police) Visum et Repertum (VeR) is useful for revealing cases. For public prosecutor information is useful for determining the articles to be accused. Meanwhile, for judges as formal evidence to impose a sentence or release someone from legal prosecution (Rudianto & Roesli, 2019). Forensic doctors can determine whether a person's injuries, unhealthy conditions and death are caused by a criminal act. Forensic doctors can provide assistance in the judicial process by: 1) Examination at crime scenes; 2) Examination of living victims; 3) Examination of dead victims; 4) Examination of the suspect; 5.) Excavation of the corpse and 6) Examination of evidence originating from or suspected of being a human body. In making VeR, the forensic doctor can also determine the type of wound of the victim. This is required for the legal process of the perpetrator who gave injury to the victim in terms of the degree of the wound. Types of wounds written by forensic doctors are: 1) minor injuries; 2) moderate injuries; 3) serious injury.

There is no legal basis for determining moderate injury. However, forensic doctors often write this in the *visum et repertum*. For the investigation process, the forensic doctor's statement when writing the VeR is very important because it is needed in the judicial process. This information can be used as a reference for judges to decide cases of the severity of the sentence for the convicted person. Determination of moderate injuries on *post mortem et repertum* is a legal gap found in the field and requires legal politics for its resolution.

2. RESEARCH METHODS

This is a normative study with a conceptual approach, statute approach and case approach. Normative legal research is legal research that is carried out by examining library materials or secondary data. This research is also called doctrinal legal research, library research, or documentary studies.

Conceptual approach is an approach that departs from the views and doctrines developed in the science of law. By studying the views and doctrines in the science of law, the researchers can find ideas that form legal notions, legal concepts, and legal principles that have relevance to the issues at hand.

Statute approach is an approach used to study and analyze all laws and regulations that are related to the legal issues that are being addressed. For example, if one studies about Law Number 48 of 2009 on Judicial Power, then what is studied in this law, covers the basics of law and its synchronization, i.e Law Number 48 of 2009 on Judicial Power with the Constitution of 1945.

The case approach can be done by conducting a study of cases related to the issues at hand that have become court decisions that have permanent legal force. The main object of study in the case approach is the *ratio decidendi* or reasoning, namely the court's consideration to arrive at a decision. In the approach, there are several cases that are reviewed for reference to a legal issue, while a case study is a study of a particular case from various legal aspects.

3. RESULTS AND DISCUSSION

Visum et Repertum (VeR) is an investigation conducted by a doctor at the request of the police as the investigator regarding injuries to the human body. In the judicial process, *Visum et Repertum* is useful as evidence that meets various matters of judicial requirements with medical record writing standards. The term VeR is not found in the Criminal Procedure Code (KUHP) and RIB (the revised Indonesian Reglemen), but only in *Staatsblad* No. 350 of 1937 concerning *Reperta Visa*. *Visa Reperta* is Latin, *Visa* means testimony or acknowledgment of seeing something; and *Reperta* means report.

Based on the type of crime, Visum et Repertum is divided into 4 (four) forms:

a. Injury VeR (including poisoning)

The purpose of forensic medical examination of a living victim is to determine the cause of the injury/illness and the severity of the injury or illness. This is intended to fulfill the formulation of offenses in the Criminal Code.

b. Sexual Crime VeR

In general, victims of sexual crimes whose VeR is requested from the doctor are cases of suspected sexual intercourse which are threatened by the Criminal Code. Intercourse which is punishable by the Criminal Code includes rape, sexual intercourse with a defenseless woman and sexual intercourse with a woman who is underage. For the purposes of the judiciary, the doctor is obliged to prove the existence of intercourse, the existence of violence (including the administration of poison/drugs/substances to make one helpless and the age of the victim. In addition, doctors are also expected to check for sexually transmitted diseases, pregnancy, and psychiatric/psychiatric disorders as a result of these crimes.

c. Corpse VeR

Forensic examination of the corpse includes examining the outside of the body without taking any action to destroy the integrity of the body's tissue. The examination is carried out in a thorough and systematic manner and was recorded in detail which was found all over the outside. A thorough post-mortem examination is performed by opening the skull, neck, chest, abdomen and pelvis. This is sometimes done with the necessary investigations, for example histopathology, toxicology, and serology.

d. Psychiatry VeR

This is intended for the suspect or accused as the perpetrator of a criminal act, not for the victim like other VeRs. In addition, VeR psychiatry describes the human psyche, not the physical or the human body.

The wound classification in Visum et Repertum: Serious injuries are: 1) Falling sick or receiving injuries without the possibility of a complete recovery, or which pose a deadly danger; 2) Not being able to continuously carry out job duties or job search; 3) losing one of the five senses; 4) Has serious disabilities; 5) Suffering from paralysis; 6) Impaired thinking for more than 4 weeks; 7) Death of a woman's womb.

The elucidation chapter of article 229 paragraph (3) of Law states that "Minor injuries are injuries that cause the victim to suffer pain which does not require inpatient care in a hospital or other than those classified as serious injuries".

The Criminal Code does not mention the definition of a medium wound. One of the articles in the Criminal Code mentions such wounds and causes disease and obstruction, yet it does not mention in detail about medium wounds. "Anyone who causes injury to others in such a way as to cause illness or obstruction to carry out a job or search for a certain period of time, threatened with imprisonment for a maximum of six months or a maximum fine of three hundred rupiah".

A wound or injury that lies between a minor wound and a serious one can be considered a moderate wound. For this type of violence, avoid using the words "blunt object" or "sharp object". In law enforcers' perspective, there must always be physical "objects" such as wood, stone and so on (for blunt objects) or knives, razors and so on (for sharp objects). A wound is not always caused by an "object", for example a bruise can be caused by a hand hit. The above case is classified as a second degree (moderate) wound because it requires treatment, has a fracture and affects a vital organ, namely the head. In the conclusion, we should not write second degree as a classification of injuries, but instead write it according to the sentence in the Criminal Code so that it will make it easier for law enforcement officials to make charges. In contrast to the case of dead victims, in the case of living victims, doctors are expected to understand the injury based on the pathophysiology and biomechanics of trauma. The combination of anatomical and physiological injury measurements is the ideal measurement for determining wound classification. Examples of moderate injuries that have permanent legal force in Indonesia: Decision Number 484/Pid.B/2012/PN.SBG.

According to Visum Et Repertum Number: 0744/001/RSUD/III/2012 dated March 6, 2012 signed by dr. Yonatan Lukas, a doctor at Pandan Regional Hospital, a victim had an open fracture of the fourth finger of the second segment of the right leg, a torn wound on the fourth finger of the right leg and an abrasion on the ring finger of the left foot. The wound was thought to be due to blunt trauma.

Considering, that the defendant has been submitted to court with the following indictment: First: Primair: Violating Article 310 paragraph (3) of Law No. 22 of 2009 concerning Road Traffic and Transportation. Second: Subsidair: Violating Article 310 paragraph (2) of Law No. 22 of 2009 concerning Road Traffic and Transportation.or Second: Primair: Violating Article 360 paragraph (1) of the Criminal Code. Subsidair: Violating Article 360 paragraph (2) of the Criminal Code.

Considering, that with the fulfillment of all the elements of 310 paragraph (2) of the Republic of Indonesia Law No. 22 of 2009, the Assembly is of the opinion and concurs with the Public Prosecutor in their criminal charges that the Public Prosecutor's indictment on the one subsidair alternative charge has been legally and convincingly proven.

To declare that the defendant ROMASTI MANALU was proven and convincingly guilty of committing a criminal act "because his/her negligence resulted in a traffic accident in which the victim suffered minor injuries and damage to the vehicle".

1. Sentenced the defendant ROMASTI MANALU with imprisonment for 3 (three) months.
2. To stipulate that the defendant does not need to serve such imprisonment unless there is a judge's decision for that if the defendant commits a criminal offense which is punishable before probation for 6 (six) months.
3. Order the evidence in the form of:
 - a) 1 (one) unit of Honda Blade BB 5829 MM.
 - b) 1 (one) Yamaha Vega BB 3977 NH Motorcycle.
to be returned to the rightful owner.
4. To burden the defendant with the court fee of Rp. 1,000, - (one thousand rupiah).

Conclusion of Decision Number 484/Pid.B/2012/PN.SBG is charged under Article 310 paragraph (2) of Law No. 22 of 2009 because it fulfills the element of whoever is, negligence causes direct harm, results in minor injuries and damage to the vehicle and is tried with imprisonment for 3 (three) months.

Prior to imposing a sentence, the judge needs to consider incriminating matters and mitigating matters. The aspect that incriminated the defendant was an act that injured another person. Aspects that helped out the defendant include 1.) the defendant behaved politely in court; 2.) the defendant confessed the actions; 3.) the defendant has never been convicted. From these considerations, the judge has the right to determine the severity of the criminal verdict.

There is a gap in several cases in Indonesia that forensic doctors determine the condition of moderate wounds in a visum et repertum, while the Criminal Code does not regulate the criminal law.

4. CONCLUSION

There is a definition of moderate injury according to legal experts i.e "a wound or injury that lies between a minor injury and a serious injury can be considered moderate injury". There is a legal gap due to the absence definition of injury in the law yet it appears in criminal cases. Forensic doctors with competence determine the condition of moderate injuries to victims whose livelihoods are impaired and whose physical condition is not disturbed.

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