

# The Visum Et Repertum Forensic Examination as Evidence of a Rape Crime in the Trial Process of Kupang District Court

Siti Syahida Nurani<sup>1</sup>, Absori Absori<sup>2</sup>, Khudzaifah Dimiyati<sup>3</sup>, Kelik Wardiono<sup>4</sup>, Zainur Wula<sup>5</sup>, Arief Budiono<sup>6</sup>, Heru Santoso Wahito Nugroho<sup>7</sup>

<sup>1</sup>Lecturer, Muhammadiyah University of Kupang, <sup>2</sup>Professor, Muhammadiyah University of Surakarta, <sup>3</sup>Professor, Muhammadiyah University of Surakarta, <sup>4</sup>Associate Professor, Muhammadiyah University of Surakarta, <sup>5</sup>Associate Professor, Muhammadiyah University of Kupang, <sup>6</sup>Lecturer, Muhammadiyah University of Ponorogo, <sup>7</sup>Associate Professor, Health Polytechnic of Surabaya

## Abstract

This research aims to prove visum et repertum as an evidence of a rape crime in the trial process at Kupang District Court (PN Kupang), so as to know how the judge assembly accommodate all evidences in the court as a basis to make a verdict, regarding the weight of the punishment which will be given the rape crime perpetrator. This is a juridical- empirical descriptive research, as it uses primary and secondary data in the form of the judges' verdict at the rape crime trial which is absolute and also interviews conducted to subjects who are involved in the research. The health aspect in proving the rape case is evidenced in the visum et repertum papers and expert information from the doctors who examined the victim.

**Keywords:** *Forensic examination, Visum et repertum, Rape crime, Judge's verdict*

## Introduction

The Post-Reformation era in Indonesia is marked by the transparency of information and news. Reports show devastating information on rape crime. The data displayed in the *Trauma, Violence, & Abuse* journal suggest that rape victims are often children. It is said that between 8% until 13% of girls had experienced sexual violence. Meanwhile, the percentage showed 3% until 13% of boys are victims of sexual abuse.<sup>1</sup> The Annual National Commission of Women 2018 report said that there were 619 cases of rape in private space (families and relatives). Meanwhile, in the public/communal space, there were 669 cases. Such cases in public spaces usually happen at school, in public transportations, or even during deviating religious or spiritual rituals<sup>2</sup>.

Anastasi Reni Widyastuti said that, "There are various possibilities which affect the high rate of reports

on violence towards women. This may be because of the women's awareness regarding their rights, their higher understanding, the law enforcement for women, or that the law is not effective enough in giving protection for women who are victims"<sup>3</sup> According to Reni, the various regulations which exist today only reflect the power of the patriarchic values. There are still discrimination and exploitation of justice-seekers and the common society in the enforcement of public regulations.<sup>3</sup>

Results of the crime court system has brought disappointing empirical data. *Harian Kompas* newspaper survey showed that 72,7% of the people has not received just treatments. 45,2% of the public suggest that the judges' verdicts are based on the consideration of money, and 30,5% of the respondents suggest that the verdicts are based on political considerations. Only 9,3% of the respondents believe that the Indonesian court verdicts are based on the consideration of law.<sup>4</sup>

Thus, there needs to be a reformation of law and policies, especially in the law enforcement system which is just to all genders.<sup>4</sup> Usually, in the solving of crime cases, the law seems to emphasize the rights of the perpetrators, meanwhile the rights of the victims are ignored.<sup>5</sup>

## Corresponding Author:

**Siti Syahida Nurani**

E-mail: nuranisyahida05@gmail.com

Address: Muhammadiyah University of Kupang, Jl. K.H. Ahmad Dahlan, Kayu Putih, Oebobo, Kupang, Indonesia

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 evidences: 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.

Meanwhile, the writer will use objects as an empirical study material to test the assumption regarding the verdict on the rape crime case at PN Kupang, as there is a high rate of sexual violence towards women. There are 153 cases between 2013 until 2017 which were inspected and decided upon by the PN Kupang. There are 2.573 gender-based cases which happen in East Nusa Tenggara. These numbers are accompaniment data from Kupang Women's House or RPK from year 2000 until 2014 within the city/regency area.<sup>6</sup> Meanwhile, there has been 144 cases between 2015 and 2017.<sup>7</sup>

Physically, the victims experience fear, anger, disappointment, disgust to herself, and they blame themselves regarding the sexual violence they experienced. They will cry easily. Other consequences include insomnia, stress, aggressivity, social avoidance

towards the family and the environment. According to Khudzifah Dimiyati, there are various impacts which happens to rape victims, "Rape victim suffer losses, mental breakdown and/or suffering financially, physically, psychologically and socially, among many losses psychologically or mental, although rape victim suffers financially, physically, psychologically and socially, their position in the criminal justice system has been neglected."<sup>8</sup>

### Method

This was non doctrinal research. Data were taken from State Court of Kupang, East Nusa Tenggara Indonesia, from 2013 until 2017, then analyzed descriptively. The analysis results were presented in the form of tables and narations.

### Findings and Discussion

#### Case Verdict of Rape Crime in PN Kupang

There are 153 numbers of cases investigated and decided upon by the PN Kupang from 2013 until 2017. If viewed from the groupings of the crimes' maximum punishment, the punishments are very light; light (1-2 years); medium (2-4 years); severe (4-7 years); very severe (over 7 years)<sup>9</sup>, with further explanation as follows:

**Table 1. The Case Verdict of Rape Crime in PN Kupang**

Year	Case			Total	Verdict Category			
	Rape	Inter-course	Molest-ation		Light	Medium	Severe	Very Severe
2013	1	28	12	41	8	17	15	1
2014	1	16	5	22	-	12	7	3
2015	1	22	3	26	2	9	6	9
2016	2	21	9	32	1	11	11	9
2017	4	23	11	38	1	17	11	4

From the table above, we can see that the Defendants' punishments, or the judges' verdict at the PN Kupang are mostly in the categories of *severe* or *very severe*. It can also be seen that out of 55% of the sexual violene cases taken to the court, the punishment for the perpetrators usually falls under 6 years of enprisonment.

In the victims' and the victims' families' point of views According Watty Bangang In a conversation with Watty Bangang as a Coordinator of the Accompaniment and Victim Division of RPK, East Nusa Tenggara, "The punishment given to the perpetrators are not equal with what they must go through after the sexual violence. The sexual violence experienced is not fully healed in a wider sense, and the healing process is not provided by the government".

### **The Process of Proving Rape Crime by the PN Kupang**

Munir Fuady defined the proving of law as a process in a civil court procedure, a criminal court procedure, or other courtly procedures. It uses the judge's power procedure to consider facts and statements disputed in court to prove its truth.<sup>10</sup> Then, according to M. Yahya Harahap, evidencing is also a procedure to manage evidences which are valid according to the constitution, which may be used by the judges to prove the accused's guiltiness.<sup>11</sup>

Proving is based on positive law in considering the evidences' strength of value is based on the constitution. In this case, if a criminal action is proven based on the evidences required in the Constitutional regulation (article 184 of KUHAP), which are the forensic proof as visum et repertum or others include the expert information, the defendant's letters, evidences, and information."

The change of the judges' views on rape crime is crucial. They must not perceive rape as a normal crime, but they should view it as a violation of human rights. This is parallel with Moerti Hadi Soeroso's opinion, who said that, "The forms of rape towards women, including rape within marriage, may be categorized as gender-based violation."<sup>12</sup> Violence crime is categorized as an action which violates the women's rights as human beings.<sup>13</sup>

Other evidences, such as those from the forensic aspect, like in the form of visum et repertum, may be difficult to be proven as victims seldom report the case right after having experienced rape. This is usually because the rape victims felt scared and ashamed. They will usually clean themselves or take a bath as a manifestation of disgust towards the perpetrators' actions and disgust towards herself. Thus, bodily evidences such as bruises, and fragments of the perpetrators' bodies such as hair, sperm, or skin which stick to the victim's body

may not be obtained during the forensic examination. Meanwhile, if the victim is pregnant because of the perpetrator, the only way to determine the father of the fetus is through a DNA test. Yet, the DNA test is rather expensive, thus it may be hard for the victim, the family, to access.

Forensic doctors' help to obtain legal evidences of rape cases are crucial. This is regulated in Article 133 paragraph (1) of KUHAP, which states that investigation for the sake of trial in treating victims of wounds, poisoning, or death, which are allegedly caused by criminal actions are allowed to be done based on expert information by medical experts or doctors from other expertises.

In a conversation with a pseudonym, Judge of PN Kupang on May 28<sup>th</sup>, 2018, the Judge said "The term rape is sometimes misused by the society to report the perpetrator. In this case, the society (or the victim's parents) use the constitution to report the perpetrator, because usually the punishments of imprisonment or fine is rather high. Thus, they use this gap to obtain profit. So the visum et repertum as forensic proof was urgent" Based on the judge's testimony above, thus the writer concludes that this visum et repertum may influence the judge's consideration towards the victims, thus the verdict given to the perpetrator may be light, medium or severy base on forensic process.

Thus, the proposal of a visum et repertum evidence is crucial to be present in a criminal trial as it becomes the judge's consideration in determining the severity of the criminal act's sanctions to the rape perpetrators.

In the case No. 33/Pid.B/2017/PN.KPG, the judges give consideration that the charge for the defendant is the first alternative charge, which is the violation of Article 285 KUHP, in which its principalities contain the following elements:

1. Whoever; fulfilled
2. With violence or threat of violence forces a woman who is not his wife to undergo sexual intercourse, strengthened with the evidence of Visum Et Repertum No. B/389/IX/2016/Kompartemen Dokpol Rumkit issued by dr. Chindy Tefa on the date of September 3<sup>rd</sup>, 2016 by the name of Adriana Paa, it is concluded that from the examination of the victim's genitals, it is found that there are new tears in the hymen until the basis, with the locations in the direction of one o'clock, three

o'clock, five o'clock, seven o'clock, eleven o'clock, and reddish bruises on the labia minora in the direction of nine o'clock and three o'clock, caused by contact of a blunt object.

### Judging:

States that the defendant has validly according to the visum et repertum and convincingly guilty of the crime of "rape"; and giving the verdict to the Defendant of imprisonment for 1 (one) year and 8 (eight) months;

### Analysis

Regarding the case above, it seems that as always, The judges making a verdict base on the forensic process (via visum et repertum) even the judges not give severe verdict. Physical harm doesn't become a point which makes the judge consider a severe punishment for the defendant, even though evidences has been shown through the visum et repertum report which stated that the victim experienced new wounds on the hymen on the directions of one o'clock, three o'clock, five o'clock, seven o'clock, eleven o'clock, and reddish bruises on the labia minora in the direction of nine o'clock and three o'clock, caused by contact of a blunt object. These evidences are in the form of valid and responsible medical information regarding the victim's condition, especially that whih regards proofs of violence.<sup>14</sup>

According to Susetiawan, rape in the macro vision is a form of ripping away human rights. Yet, rape in the sexual coercion vision may also be defined as ripping away rights, like the rights to be virgin, the rights to be free from suffering, the rights to be free from fear, and the rights to be free from inhumane actions. Because of the rape, the victim experienced impacts of the violation of human rights. The proving process of that case include the visum et repertum, should already be enough for the judge to give an equal punishment to the perpetrator, as it has been proven by the visum et repertum. Yet this is not accomodated.

According to the writer, in the case above, the judge assembly was not thoughtful enough in giving legal consideration as basis of the verdict, as there are some points ignored, such as: the victim's visum et repertum were not accommodated as considerations to make the punishments severe, thus it influences the punishment given to the defendant, which is imprisonment of 1 year and 8 months.

This case has fulfilled the requirements of two evidences, which are a forensic statement in the form of visum et repetum and the perpetrator's admittance, thus these evidences may become the basis in dropping a verdict to the perpetrator which is equal to his actions, which is 12 years of enprisonment as written in Article 285 of KUHP . Based on the Police Investigation Report, in this case of rape, the crime of rape is categorized as *Victim Precipta Rape* which places the victim as the originator<sup>(15)</sup>. This is done with the motive of coercion and threat.

Khudzaifah Dimiyati says "that the judge, as an enforcer of law, must be able to discover, to read, to interpret, and to implement the legal codes rightly and correctly as part of an effort to *encondent the world into what is legal and ilegal*".<sup>16</sup> In this context, the judge must look through all evidences in the court to achieve a wholistic consideration as the basis of his/her verdict, to determine the severeness of the punishments given to the perpetrator of the rape crime, and to achieve justice, certainty, and benefit.<sup>17</sup>

### Conclusion

The judge assembly of a rape crime in PN Kupang, case No. 33 / Pid.B / 2017 / PN.KPG has accept the evidences in the aspect of the victim's visum et repertum examination which is written in the visum et repertum letter by the doctors, which concluded that there has been new wounds in the victim's genitals. The forensic process via visum et repertum became evidence for the judges to made the verdict given to the Defendant by giving him a sentence in jail.

**Ethical Clearence:** Yes

**Conflict of Interest:** No

**Source of Funding:** Author

### References

1. Rumbel L, et al. Childhood Sexual Violence in Indonesia: A systematic review. *Trauma, Violence, & Abuse Journal*. 2013;20(10):1.
2. Commission of Women's Annual Fact Report and Key Points year 2018. *The Crushing of Women's Safe Space in Jakarta's populism political current*. Updated 2018 Mar 7; Cited 2018 Aug 16. Available from: [http://komnasperempuan.go.id/file/pdf\\_file/2018/SIARAN%20PERS%202018/](http://komnasperempuan.go.id/file/pdf_file/2018/SIARAN%20PERS%202018/)

- Lembar%20Fakta%20Catahu%207%20Maret%202018.pdf
3. Widyastuti AR. Protection Against Women from the Perspective of Working of Law in Society. *The International Journal of Humanities & Social Studies*. 2015;3(8):199.
  4. Risnawati SD. Legal Hermenutics: The Effort to Achieve the Sense of Textual Justice [a proposal of solutive alternative]. *Journal IHDM*. 2009;7(1):35-36.
  5. Hamzah A. *The Protection of Human Rights in Criminal Law Procedure Book of Constitution*. Bandung: Binacipta Publishers; 1986.
  6. House of Kupang Women. *Harmonic Family, Family of Dreams*. Kupang: Universitas Cendana Press; 2016.
  7. Nyong. Kupang City: The Rate of Sexual Violence Cases Towards Children Keeps on Increasing) [Internet]. [Cited 2017 Mar 28]. Available from : <http://www.moral-politik.com/2016/07/kota-kupang-angka-kasus-kekerasan-seksual-terhadap-anak-terus-meningkat/2/>
  8. Dimiyati K. Victimological Approaches to Crime of Rape in Indonesian Criminal Justice System. *Hasanuddin Law Review*. Dec 2018;3:375.
  9. Kholiq A, et al. Limited Enprisonment Verdict: an Idea and a Reorientation Towards the Type ff Criminal Law Sanction Formulation Policy in Indonesia. *Journal Law Reform*. 2015;11(1):233.
  10. Panggabean HP. *The Evidencing Law of Practical Theory and Jurisprudence in Indonesia*. Bandung: Alumni Books; 2012.
  11. Harahap MY. *The Discussion and Implementation Of KUHAP, The Inspection Of Appeal, Cassation, and Juridical Review Court Trial*. Second Edition. Jakarta: Sinar Grafika Publishers; 2000.
  12. Soeroso MH. *Domestic Violence in the Victimologic Juridical Perspective*. Sinar Grafika Publishers; 2011.18.
  13. Wahid A, Irfan M. *Protection for Sexual Violence Victims, Advocation for the Women's Human Rights*. Jakarta: Refika Aditama Press; 2001.
  14. Ranoemiharja RA. *Forensik Science*. Bandung: Toersito Press; 1991.
  15. Santoso T. *Sexuality and Crime*. Jakarta: In Hill Books; 1997.
  16. Dimiyati K. *Legal Thought: An Epistemological Construction In Value-Based Thinking In Legal Culture*. Proceeding at UMS Scientific Publication; 2010. 7-8p
  17. Absori. *Thought of Law in The Context Of The Law Science Development In Indonesia*. International Summit on Knowledge Advancements. Johar Bahru Malaysia; Jul 26-27<sup>th</sup> 2017. 15p.