JOIN: JOURNAL OF SOCIAL SCIENCE

https://ejournal.mellbaou.com/index.php/join/index

Open Access

Cite this article: Prada Mukti, 2024. The Existence of Visum Et Repertum Is Made Based on Medical Records as Evidence in The Negatief Wettelijk Bewijsstelsel System. Join: Journal of Social Science Vol.1(6) page 396-421

Keywords:
Visum et Repertum, Medical Records, Evidence and Evidence

Author for correspondence:
Prana Mukti
e-mail: pranamukti94@gmail.com

Published by:

GLOBAL SOCIETY PUBLISHING

The Existence of Visum Et Repertum Is Made Based on Medical Records as Evidence In The Negatief Wettelijk Bewijsstelsel System

Prana Mukti, I Wayan Gde Wiryawan, Yogi Yasa Wedha

Universitas Mahasaraswati Denpasar, Indonesia

Visum et repertum (VeR) can be made not on the basis of a direct examination of the victim's condition, but takes information data derived from medical records. This circumstance will certainly cause a prejudice against the accuracy of the published *VeR* and will ultimately determine the value of the evidentiary strength of the *VeR*. It is very possible that there are indications of misuse of functions and games behind the creation of *VeR*, considering that in its creation there may be manipulation of the data made. Misappropriation of *VeR* can occur because there are many interested parties so that in its application it does not place the *VeR* in its function as accurate evidence. The focus of the study discussed in this study is how the existence of *VeR* made based on medical records as a valid evidence in the judicial process? and Is *visum et repertum* sourced from medical records acceptable as evidence in the negatief wettelijk bewijsstelsel system? This research is a normative legal research, using a legislative approach and a conceptual approach. Emphasis is placed on literature studies and analyzed using the theory of legal certainty and bewijstheorie. The results of the study show that *VeR* made based on medical records has the same existence as other evidence and the regulation regarding evidence in the Criminal Code does not show the existence of a hierarchy of evidence. Proof in the negatief wettelijk bewijsstelsel system requires a balance between the existence of evidence and the judge's conviction. In order for *VeR* to be valid evidence and have an existence, the process of making it must follow applicable legal rules.

1. Introduction

Health is a part of human rights which is manifested in the form of facilitation of health efforts to the community, carried out through the implementation of quality and affordable health development. Considering that health is a human right, the consequence is that every activity and effort to improve the highest degree of public health must be carried out based on the principles of prudence, non-discrimination, participation, protection and sustainability (Sinamo, 2021). That the relationship between the patient and the doctor and/or dentist and the hospital is a *therapeutic* relationship, namely not promising a cure but seeking a cure that is carried out on the basis of expertise/professionalism carried out according to *the standard operational procedure (SOP)* that has been set. The degree of public health has urgency in the context of shaping the quality of human resources, increasing resilience and ultimately leading to an improvement in community welfare achieved through national development. For this reason, the state has the authority to draft and implement regulations on health (*health law*) as a general guideline in providing health services to the community (Noviriska & Atmoko, 2021).

The basis of the relationship between doctors and patients in medical practice is preceded by an agreement of effort which of course is related to the professionalism of doctors in carrying out their profession, therefore every action of doctors should not be carried out rashly, but must go through a standard mechanism (procedure) regulated in laws and regulations. As a *therapeutic* relationship, the effort realized in the form of an alliance is based on the maximum effort of a doctor to achieve the patient's recovery, not promising a cure but promising and making maximum efforts for healing, because the action taken is not necessarily successful. The relationship is called *inspannings verbintenis* which is not seen from the results but is more emphasized on efforts made based

on professionalism, expertise and actions based on standard operating procedures that have been outlined, of course, in contrast to the *verbintennis resultaats* relationship, which is judged by the results achieved and does not matter the efforts made. *Visum et Repertum (VeR)* is implicitly regulated in Article 61 of Law No. 36 of 2014 concerning Health Workers (Law, 2014).

As an agreement born from the relationship between the doctor and the patient, a *therapeutic transaction* is a legal relationship that gives birth to rights and obligations for both parties, therapeutic transactions have special properties and characteristics that lie in the way of handling where the object of the agreement is the right effort for the patient's recovery. As an agreement, of course, it is bound by Chapter III of the Civil Code, that an agreement becomes valid if the parties to the agreement meet four elements as conveyed by the Subekti, namely (Sinamo, 2021)

1. There is an agreement of those who bind themselves to each other "*toesteming van degenen die zuch verbinden*";
2. The existence of the ability to make an alliance an "*the ability to enter into a commitment*";
3. Regarding a particular thing "*a certain subject*"; and
4. A permissible cause

The first and second elements are referred to as subjective conditions, and the third and fourth elements are referred to as objective conditions. Each of these conditions, if violated, has different legal consequences.

Agreements born from the relationship between doctors and patients give birth to rights and obligations, one of which is related to the recording of medical records, that every relationship carried out between doctors, hospitals and patients is outlined in a product, namely in the form of a document record containing the patient's condition in the form of a medical record. According to Law No. 29 of 2004 concerning medical

practice, article 47 which was later explained in Permenkes No. 269/MENKES/PER/III/2008, medical records are files that contain records and documents about the patient's identity, examination, treatment, actions and other services that have been provided to patients. Medical records are an obligation that must be made in order to carry out medical practice, where the contents of the medical record belong to the patient, in the form of a summary of the medical record can be given, recorded or copied by the patient or an authorized person or with the written consent of the patient or the patient's family who is entitled to it. Medical records apart from being a medical record, can also function as evidence in the law enforcement process (Syafief, 2013), explicitly regarding evidence is regulated in article 184 of the Criminal Procedure Code (KUHAP).

Doctors in carrying out their daily duties, in addition to conducting *diagnostic* examinations, providing treatment and treatment to patients, also have the task of conducting medical examinations in order to assist law enforcement, both for the living and the dead, among others, is the creation of *Visum et Repertum* (*VeR*) (Afandi, 2008). According to H. Nurbama Syarief, *Visum et Repertum* (*VeR*) is the result of a doctor's examination, about what he sees, what he finds, and what he hears, in relation to someone who is injured, someone whose health is disturbed, and someone who dies. Based on the examination, it is hoped that the causes of all of this will be revealed in relation to the possibility that a criminal act has occurred (Syafief, 2013). *Visum et Repertum* (*VeR*) is a written statement made by a doctor on written (official) request of the investigator for the medical examination of a human being whether alive or dead or any part of the human body, in the form of findings and interpretations, under oath and for the benefit of the judiciary.

Visum et Repertum (*VeR*) relates to the condition/circumstances of living evidence/corpses

(corpses) or physical evidence or other evidence that is examined according to reality (reality). The nature of Visum *et Repertum* (*VeR*) is related to the reality of the condition (reality) at that time, for example the state of the victim's body injuries, the condition of the victim's body at that time and so on. However, in practice, the basis for making *Visum et Repertum* (*VeR*) can also be carried out not on the basis of a direct examination of the victim's condition, but taking information data from medical records. This circumstance will certainly cause a prejudice against the accuracy of the published *Visum et Repertum* (*VeR*) and will ultimately determine the value of the evidentiary strength of the *Visum et Repertum* (*VeR*).

It is very possible that there is an indication of misuse of the function of the game behind the creation *of Visum et Repertum* (*VeR*), considering that in its creation it may manipulate the data created. Misappropriation of *Visum et Repertum* (*VeR*) can occur because there are many interested parties so that in its application it does not place the *Visum et Repertum* (*VeR*) *in its function as evidence of accuracy in the evidentiary process. That a good quality Visum et Repertum* (*VeR*) will help a lot in the judicial process and decision-making by judges (Afandi, 2008).

Proof in criminal cases is an important element to enforce the law fairly and objectively, the word evidence translated from Dutch "*bewijs*" is interpreted as something that states the truth of a fact/event. On the basis that evidence is something that states the truth of an event, making proof have a very important meaning, especially in criminal law, proof is the essence of a trial in a case (Hiariej, 2012). Given the importance of proof, evidence must meet the principle of legality; that is, evidence must be obtained in a lawful way in accordance with the law, the principle of validity; i.e. evidence must have valid and accurate evidentiary value; and the principle of relevance; That

is, the evidence must have a relationship with the case being tried.

The existence or strength of evidence in criminal cases has become a never-ending debate, because some experts state that the power of evidence has a hierarchy as stipulated in Article 184 of the Criminal Code (KUHP), but nevertheless there are different views regarding the arrangement of evidence which states that there is no hierarchy in determining the strength of evidence in Article 184, *bewisjskracht* as stated by Eddy O.S Hiariej in his book Theory and Law of Proof that although it can be interpreted as the evidentiary power of each piece of evidence in a series of assessments of the proven evidence of an indictment, the assessment is the authority of the Judge, including in assessing the suitability of evidence between each other. The power of proof essentially lies in the evidence submitted whether the evidence submitted is relevant to the case at hand.

Indonesia from the point of view of its legal history adheres to the tradition *of continental European law*, one of the characteristics that is clearly visible is the existence of codification such as the Criminal Code (KUHP), and the Criminal Procedure Code (KUHAP). Judges are bound and obliged to use and make it the basis for making decisions in criminal cases. The Criminal Procedure Code has firmly stipulated that to determine a person's fault or the occurrence of a criminal act, it must at least meet the minimum of evidence, and the judge's belief that the defendant is the one who committed the criminal act. The two provisions above, namely regarding the minimum legality and the judge's conviction, show that explicitly criminal offenses in Indonesia adhere to *the negatief wettelijk bewijsstelsel system.* The disadvantages of the negatief wettelijk bewijsstelsel system include dapat causing *disparities* in sentencing, legal uncertainty, bias in legal judgments and it is very possible that there is manipulation of evidence.

Based on the description above, the author wishes to conduct a research with the title "The Existence of *Visum et Repertum* Made Based on Medical Records as Evidence in the *Negatief Wettelijk Bewijsstelsel System*" The focus of the study to be discussed is How is the existence of *Visum et repertum* made based on medical records as a valid evidence in the judicial process? and Whether *visum et repertum* sourced from medical records is acceptable as evidence in the negatief wettelijk bewijsstelsel system**?**

2. Research Method

It is normative legal research using objects in the form of legal norms carried out through the process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced (Marzuki, 2008). As normative *law research*, it uses a statute approach, and a conceptual approach (*conceptual approuach*) (Marzuki, 2008). Focusing on literature studies or also known as *library research,* the legal materials used in this study are in the form of primary legal materials, secondary legal materials and tertiary legal materials. The object of this research is Law Number 29 of 2004 concerning medical practice, Article 46 and Article 47 and the regulation of evidence as specified in article 184 of the Criminal Procedure Code (KUHAP) and as an analytical knife using *bewijstheorie, and* the theory of legal certainty.

3. Result and Discussion

According to the large dictionary of the Indonesian language (KBBI), the online version of Visum et Repertum (VeR) is a doctor's certificate about the death of a person and its causes (Wikipedia, n.d.). It is a written statement made by a forensic doctor at the request of the investigator as part of his authority. Etymologically, the word Visum comes from the Latin word Visum or Visa which means a sign of seeing or seeing, namely the signing of an evidence related to

everything that is found, approved, and legalized, while repertum means reporting on what has been obtained from the doctor's examination of the victim. Thus it can be said that Visum et Repertum is what was found/obtained from the examination of the victim.

Visum et Repertum (VeR) is used as evidence in proof. Proof can be interpreted as an event that is sufficient to show the truth about a thing/event. Proof is an act of proving. It has a very important role when the examination stage in the judicial hearing, the fate of the defendant will be determined by the success in proving whether he will be sentenced to a criminal sentence or acquitted. According to Yahya Harahap, Proof is a provision that contains guidelines on ways that are justified by law to prove the wrongdoing charged to the defendant. Proof is also a provision that regulates the evidence that is allowed by law and regulates the evidence that can be used by the judge to prove the guilt of the defendant. The court must not arbitrarily prove the guilt of the defendant (Harhap). The process of proof is basically an effort to find the material truth of an event and give confidence to the Judge about the event in question so that the Judge can give a verdict that is as fair as possible. The law of proof is part of the criminal procedure law that regulates the types of evidence that are valid according to the law, including the mechanism for its implementation.

Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) has provided limitations on the types of evidence that are valid according to the law and expressly states that the Judge is prohibited from imposing a criminal sentence on a person unless with at least two valid pieces of evidence and he has obtained confidence that a criminal act has actually occurred, and the defendant is guilty of committing it. Regarding legal evidence, it is strictly stated that there are 5 (five) types of evidence, namely:

1. Witness Statements;
2. Expert Testimony;

3. Letter;
4. Instructions; and
5. Defendant's Statement

Based on the five valid evidences as stated in Article 184 (1) of the Criminal Procedure Code, it is a question of where the position of Visum Et Repertum (hereinafter referred to as VeR); can it be a witness statement; expert testimony, as evidence of a letter or only as evidence of clues? The study of VeR is literally interpreted as what is seen and found that VeR is a written report from an expert doctor made based on oath regarding what is seen and found on living and inanimate objects or other evidence then an examination is carried out based on the best knowledge. Furthermore, a conclusion is taken which is stated as the opinion of an expert or expert testimony in writing as stated in the news/examination results section (Satya, 1989).

Regarding VeR, it can be said that in principle it is the full responsibility of the expert doctor who makes it. For necessary matters, the judge can call the creator of the VeR to come and give evidence in the trial. When the Expert is present at the trial to convey his opinion in the trial related to the VeR that is made, the information submitted by the expert in the trial has the position of "expert evidence evidence". In essence, expert testimony is information provided by a person who has special expertise about what is needed to shed light on a criminal case for the purpose of examination. Article 180 paragraph (1) of the Criminal Procedure Code also stipulates that, in the event that it is necessary to clarify the issue that arises in the court hearing, the presiding judge may ask for expert testimony and may also request that new materials be submitted by interested parties. Expert testimony as evidence for criminal proceedings in the trial means what an expert states at the Court hearing.

The issuance of VeR is carried out by a doctor who is not an expert doctor in the field of forensics, and the VeR made is not read/reviewed by an expert doctor, then the information submitted by the non-expert doctor in

the trial can still be used as evidence and is valid according to law as evidence of letters. That the non-expert doctor's testimony in the trial may be required by the judge in connection with the doctor having made and signed the VeR contained in the case file. So VeR made by non-expert doctors or expert doctors submitted in writing in the case file, the VeR remains valid according to the law as evidence of letters, which has been regulated in Article 133 paragraph 2 of the Criminal Code.

In principle, Visum Et Repertum (VeR) has strong evidentiary power, because VeR is one of the evidence tools as stipulated in Article 184 paragraph (1), which can be evidence of letters, evidence of testimony and can also function as evidence of witness statements. VeR is used as a substitute for evidence that functions to explain events that occurred at a certain time, and its statement can help investigators to determine whether a criminal act has occurred as well as provide instructions to investigators in conducting investigations, VeR provides instructions in determining what charges will be submitted to the judge against the defendant so that it can form a judge's confidence in the trial (Gagundali).

L

egal certainty must be achieved through the strict and logical application of the law. Utrecht put forward two important aspects of legal certainty, the first is the clarity of the rules; The existence of clear and general rules allows individuals to understand what is and is not allowed The second is legal security: such clear rules protect individuals from government arbitrariness. Individuals know the limits of the state's authority in acting and what can be imposed on them. That the Visum Et Repertum (VeR) used as evidence must have accurate information and the results of the examination must be scientific and objective, so that it can help the judge in obtaining a clear picture of the facts that occurred. The data presented is really the result of a reference from the legal facts of a

person's condition, both in a living and dead state, which is presented in the form of a letter and/or expert explanation in the trial. VesumEt Repertum (VeR) has a close relationship with certainty because VeR provides scientific and objective evidence, contributing to the achievement of legal certainty.

Medical Records as Evidence

Medical records have a broad meaning not only as a recording activity. However, it is a system for managing medical records. In the explanation of Article 46 paragraph (1) of the Medical Practice Law, what is meant by medical records is a file that contains records and documents about the patient's identity, examination, treatment, actions and other services that have been provided to the patient. Regulation of the Minister of Health Number 749a/Menkes/Per/XII/1989 concerning Medical Records explains that medical records are files that contain records and documents about the patient's identity, examination, treatment, actions and other services to patients in health service facilities. The legal basis for the regulation of medical records is specifically regulated in several laws and regulations, namely:

1. Law No. 29 of 2004 concerning Medical Practice, namely Paragraph 3 of Article 46 and Article 47 and the sanctions are regulated in Article 79 letter b.
2. Law No. 36 of 2009 concerning Health, namely the second paragraph of patient protection, Article 56 and Article 57 and the sanctions are regulated in Article 79 letter b.
3. Law No. 44 of 2009 concerning Hospitals, namely Article 29 letter h and Regulations on patient rights in Article 32.
4. Law No. 36 of 2014 concerning Health Workers, namely Articles 70 to 72.
5. Government Regulation Number 10 of 1966 concerning mandatory medical secrets

6. Regulation of the Minister of Health Number 269/MENKES/PER/III/2008 concerning Medical Records

When associated with confidentiality, it is declared confidential because the medical record contains and explains a special relationship between the patient and the doctor which must be protected from leakage in accordance with the medical code of ethics and applicable laws and regulations. Negligence in the leakage of substance secrets from medical records will be subject to sanctions as stipulated in Article 322 of the Criminal Code (KUHP).

The implementation of medical records is a series of activities that begin when a patient is admitted to the hospital, activities are carried out through recording patient medical data as long as the patient receives medical services at the hospital. Furthermore, the handling of medical record files includes the implementation of storage procedures and the issuance of files from the storage place.

Doctors and dentists are required to make medical records in carrying out medical practice. After providing medical practice services to patients, doctors and dentists immediately complete the medical records by filling in or writing all the medical practice services that they have performed, and the person responsible for the possession and utilization of medical records is the director of the hospital, the director is responsible for the loss, damage, or falsification of them, including their use by unauthorized bodies or persons. The contents of medical records are owned by patients who must be kept confidential, especially by health workers who are on duty in the room during the patient's treatment, no one is allowed to quote part or all of the contents of a hospital's medical records for the benefit of other parties or individuals, except as determined by applicable laws and regulations.

Legal sanctions can be imposed on hospitals or health workers who neglect to fill out medical records. Article

79 of the Medical Practice Law expressly stipulates that any doctor or dentist who deliberately fails to make a medical record can be sentenced to imprisonment for a maximum of 1 (one) year or a maximum fine of Rp 50,000,000 (fifty million rupiah). In addition to criminal liability, doctors and dentists who do not make medical records can be subject to civil sanctions, as well as disciplinary and ethical sanctions in accordance with the Medical Practice Law, KKI Regulations, the Indonesian Medical Code of Ethics (KODEKI) and the Indonesian Dental Code of Ethics (KODEKGI).

When examining the content of medical records, there are two data groups, namely the medical data group and the general data group. Medical data is produced as an obligation of medical service providers, paramedics and other health experts such as nursing paramedics and non-nurses. They will document all the results of the patient's examination and treatment using a specific recording device, either manually or electronically. The type of record is called a medical record. Medical records can be used as one of the written evidence in court. Every doctor or dentist in carrying out medical practice is required to keep confidentiality related to the patient's disease history contained in the medical record. The medical secret can be disclosed only for the benefit of the patient to fulfill the request of law enforcement officials including the panel of judges, the patient's own request or based on the provisions of the applicable law, this provision is regulated in the Criminal Code. (Criminal Code).

The fact is that the usefulness of medical records can be reviewed from several aspects

1. Administrative Aspects
   A medical record file has administrative value, because its content concerns actions based on authority and responsibility as medical personnel and medical personnel in achieving health service goals.

2. Medical Aspects
   As a basis for planning the treatment or treatment that must be given to a patient.
3. Legal Aspects
   A medical record file has legal value, because its content concerns the issue of guaranteeing legal certainty on the basis of justice, in an effort to enforce the law and the provision of evidence to uphold justice.
4. Financial Aspects
   A medical record file has a monetary value, because its contents contain data / information that can be used as a financial aspect.
5. Research Aspects
   A medical record file has research value, because its content concerns data / information that can be used as an aspect of research and development of science in the health sector.
6. Educational Aspects
   A medical record file has educational value, because its content concerns data / information about the chronological development and activities of medical services provided to patients. This information can be used as material or teaching reference in the user's profession.
7. Documentation Aspects
   A medical record file has documentation value, because its content concerns the source of memory that must be documented and used as material for hospital accountability and reports.

The description above gives an overview that medical records have uses, including as written evidence of all service actions, disease developments and treatments during the patient's visit/treatment in the hospital and protect legal interests for patients, hospitals as well as doctors and health workers and others. Medical records can protect the legal interests of patients, hospitals, and doctors and hospital staff if all three parties complete their respective obligations to medical record files.

Regarding the use of Medical Records as evidence of letters, according to Munir Fuady; The law of proof is a set of legal rules that govern proof. According to the author, what is meant by proof in legal science is

a process, both in civil proceedings, criminal proceedings, and other cases, where by using valid evidence, actions are taken with special procedures, to find out whether a fact or statement, especially a fact or statement in dispute in court submitted and declared by one of the parties in the judicial process is true or not as stated. Based on this description, it is clear that the proof is carried out in the judicial process, where the evidence must be valid evidence according to the law to show the truth of a statement.

The system of proof in criminal procedure law is known as the negatief wettelijk bewijsstelsel system, which is a system of proof in front of the court, in order for a crime to be handed down by the judge, it must meet two conditions, namely the sufficiency of evidence and the judge's conviction. It has been regulated in Article 183 of the Criminal Code:

The judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he has obtained confidence that a criminal act actually occurred and that the defendant is guilty of committing it.

Meanwhile, the regulation regarding the types of evidence that are valid and recognized in the realm of criminal law is regulated in Article 184 Paragraph (1) of the Criminal Code. Regarding evidence, apart from being related to the position of evidence, what is important in proving is the relevance of the evidence to the facts proven, it will be relevant if the evidence has a sufficient relationship with the problem to be proven.

Analyzed based on the law of proof, medical records have a very important function and role, including in law enforcement efforts, especially in the context of proving the occurrence of medical malpractice. Medical records explicitly in criminal law have a position as documentary evidence, because the creation of medical records is based on the provisions of Article 187 of the Criminal Code, as well as Article 13 paragraph (1)

letter c of the Regulation of the Minister of Health No.269/MENKES/PER/III/2008 concerning medical records that the use of medical records can be used as evidence in the process of law enforcement of medical and dental disciplines as well as the ethics of enforcing medical and dental ethics. The legal force of medical records in proving cases of malpractice in the field of medicine is not explicitly regulated in the Criminal Code, therefore the existence of other evidence, namely expert testimony that can strengthen the position of medical records as evidence. Medical records based on the regulations in force to date based on experience in handling and resolving cases, cannot be confiscated, but can only be borrowed at the time of examination of the perpetrator/suspect. Because medical records are not confiscated as evidence in the examination by investigators, as a result of which the investigators have difficulties at the time of proof at the court hearing, due to the law medical records that are only shown in the investigation and in court, the legal force becomes weak, to provide a guarantee of legal certainty from the medical record, the contents of the medical record must be read by the expert and made a report of expert testimony and/or delivered by the expert in front of the trial.

The Law on Medical Practice, Article 52 states that the content of medical records is the patient's right. Furthermore, the Regulation of the Minister of Health Number 36 of 2012 concerning Medical Secrets Article 1 number 5 explains that medical records are files that contain records and documents about the patient's identity, examination, treatment, actions, and other services provided to patients, including in electronic form. However, still, in terms of disclosing the secrets or contents of medical records, it cannot be done arbitrarily because the contents of medical records belong to the patient, where the responsibility for the confidentiality of the contents of medical records has been expressly regulated in the Law on Health Personnel, and the Law on Medical Practice which requires doctors or dentists and leaders of health service facilities to

maintain confidentiality. The only way to be able to disclose medical secrets, in this case medical records, can only be done on the basis of a court order as stipulated in the Regulation of the Minister of Health Number 36 of 2012 concerning Medical Secrets Article 7 paragraph (4).

Based on the description of the implementation of medical records and the responsibility to protect information in medical records and the existence of restrictions on when the contents of medical records can be opened, the regulation of information protection in medical records is a form of effort to provide legal certainty for all parties, including law enforcers, so as not to take actions beyond their authority. The above description also provides legal certainty that basically medical records cannot be used as preliminary evidence during the investigation process. Medical records also cannot be used as evidence during examinations and investigations by investigators because the information contained in medical records can only be opened with the approval of the judge during the judicial process.

Legal Arrangement of Visum et Repertum as Evidence

According to R Soeparmono, Visum et Repertum (VeR) is arfiahically derived from the word Visual which means to see and repertum means to report. It can then be stated that Visum et Repertum (VER) is what is seen and discovered. Furthermore, it is stated that Visum et Repertum (VeR) is a written report from an expert doctor made on oath, about what is seen, found on living, corpse, or physical evidence or other evidence, which is then examined based on the best knowledge. Visum et Repertum (VeR) is a substitute for corpus delicti of an event/circumstance that occurred and a substitute for evidence that has been examined according to the facts or facts, so that based on the best knowledge on the basis of his expertise, an appropriate and accurate conclusion can be drawn about a criminal act.

VeR is not only used during the initial examination, but it also plays an important role in situations where physical evidence such as injuries from persecution have healed or the murder victim has died and his condition has changed (decayed or buried) before a court hearing. In this situation, VeR is important evidence to explain the condition of the injury or the victim's condition before the change occurs. VeR can document the shape, location, and severity of wounds before they heal, as well as the condition of the body before it is buried, aiding in the identification and autopsy process. Thus, the VeR becomes an important evidence tool to reconstruct the events and explain the conditions that cannot be observed directly in court. Based on the existing facts or facts, a conclusion is drawn, which is an opinion based on knowledge, expertise and experience, thus it is hoped that it can help uncover an event that occurred. VeR is a valid evidence tool that can be used as evidence of an expert's letter or testimony. In principle, the full responsibility of VeR lies with the expert doctor who makes it, for this reason, the judge, if necessary, can summon him to appear before the trial in order to fulfill the material truth (materiele waarheid) of a case and nevertheless, the value/appreciation of the strength of the evidence remains the authority of the judge's judgment and belief.

A doctor's opinion stated in a VeR is indispensable for a judge in making a decision in a trial. This VeR is not only a guide in terms of shedding light on a criminal case but also supports the prosecution and court process. Thus is the importance of the role of VeR as evidence in the judicial process so that every guilty person must be punished, while the innocent must not be rewarded with punishment. The Criminal Code does not explicitly regulate and provide the meaning of VeR. The only legal provision that provides an understanding of VeR is Staatsblad of 1937 Number 350. That: Visum et Repertum (VeR) is a written report for the benefit of the judiciary (pro juristicia) at the request of the authorized doctor, made by a doctor, of everything seen

and found on the examination of evidence, based on oath at the time of receiving office, and based on his best knowledge.

As a written statement which contains the results of an expert doctor's examination of evidence in a criminal case, Visum et Repertum has the following roles:

1. As valid evidence; As stipulated in the Criminal Procedure Code article 184 paragraph (1) jo. article 187 letter c.

2. As complementary evidence; To detain a suspected perpetrator of a criminal act, investigators must have evidence to support the act of detention.

As a matter of consideration by the judge; Although the conclusion of Visum Et Repertum (VeR) is not binding on the judge, Visum Et Repertum (VeR) is material evidence of a result of a criminal act, which can be used as a substitute for evidence.

Furthermore, related to the legal basis for doctors' actions in providing assistance based on their expertise explicitly, it is regulated in Article 179 paragraph (1) of the Criminal Code. The opinion of a doctor for the judicial process can be given orally regulated in Article 186 of the Criminal Procedure Code, it can also be regulated in writing in Article 187 of the Criminal Procedure Code. In principle, the actions of doctors in assisting the judicial process, both in the preparation of Visum et Repertum and in the form of providing expert testimony in front of the trial for the sake of handling criminal cases have the legitimacy of the legal basis in its implementation.

Proof Based on the Negatief Wettelijk Bewijsstelsel System

The essence of the evidentiary system is to determine the type of evidence that is valid, how to assess it, and its use in court. In addition, this system also explains how judges must be confident in the available evidence to make a decision. Proving a criminal case is

a very important element. Unlike civil cases, the purpose of examining criminal cases is to find out the material truth, about whether it is true that the defendant has committed a criminal act as charged by the prosecutor. For this reason, it is necessary to have a reason that underlies the judge in making a decision. Judges must be careful, careful and understanding in assessing and considering evidence.

According to Eddy O.S. Hiariej in his book Theory and Law of Proof, Bewijstheorie is a theory of proof used as a basis for proof by judges in court. There are four theories of proof:

1. Positive Legal Evidence Theory

   This theory binds the Judge positively to the evidence as stipulated in the law; It can be interpreted that if in his consideration the Judge states that it is proven that an act is in accordance with the evidence regulated in the law, then without confidence, the Judge can make a decision. This theory is used in civil law which requires a formal truth based on evidence alone as stipulated in the law.

2. Intimate convition This theory is based on the belief alone, that in sentencing the proof is only based on the judge's conviction. Thus, it is not bound by evidence but on the basis of beliefs based on the judge's conscience and the wisdom of a judge.

3. Conviction rasionee

   According to this theory, proof is based on the judge's conviction within certain limits, here the judge has the freedom to use the evidence accompanied by logical reasons. In judicial practice in Indonesia, conviction ratios are implemented in trials for minor crimes, traffic violations and criminal proceedings in expedited proceedings where the public prosecutor does not need to be present, authorized by the Police to present the defendant.

4. Negative Legal Evidence Theory

The basis of proof according to this theory is the judge's conviction that arises from the evidence in the law negatively. This theory is generally embraced in the criminal justice system, including in Indonesia.

The Criminal Procedure Code adheres to the system or theory of proof based on the Law negatively "negatief wettelijk bewijstheorie". It is implicitly regulated in Article 183 of the Criminal Procedure Code: "A judge shall not impose a criminal sentence on a person unless with at least two valid pieces of evidence he has obtained confidence that a criminal act actually occurred and that the defendant is guilty of committing it." Literally, Article 183 provides the understanding that the judge's belief has a more dominant function than the existence of evidence. Although two pieces of valid evidence are the minimum requirement for a judge in imposing a criminal sentence, the judge's belief has a more dominant role in determining the verdict. Actually, the judge's confidence can be obtained from a thorough assessment of all the evidence submitted, be it witness statements, expert statements, letters, instructions and/or defendant statements. The judge must consider all the evidence critically and objectively so that he has sufficient confidence about the occurrence of the crime, the involvement of the defendant and the elements of the article charged. The author argues that the issue of evidence in the evidentiary process is actually not in the dominance between the judge's conviction and the evidence submitted, but what is more important is the judge's ability/professionalism in considering between the existence of evidence and the judge's confidence obtained from the evidence and trial facts. That the use of valid evidence is an important basis because it has been expressly regulated in the Criminal Code, but the judge's confidence is obtained and is based on a thorough assessment of the evidence and the facts

revealed in the trial to be considered before making a decision.

Visum et repertum as evidence of letters is regulated in Article 187 of the Criminal Code. That the letter can be used as valid evidence if (a) the letter is made on the oath of office; (b) or a letter strengthened by oath. The authority of the maker of visumet repertum (VeR) has been regulated in laws and regulations, including Article 133 and Article 178 of the Criminal Code, Article 3 of Government Regulation No. 8 of 1981 concerning Procedures for Forensic Medical Examination and Article 2, Article 3, Article 4 of the Decree of the Minister of Health Number 347/Menkes/SK/VII/2010 concerning Guidelines for Making Visum et Repertum (VeR), the regulation of authority is related to the authority to conduct a physical examination of the victim, the authority to make a certificate of visum et repertum (VeR) which contains the results of the examination and the authority to provide expert testimony in front of the trial. Thus, the preparation of visum et repertum (VeR) as long as it does not violate the authority as well as existing laws and regulations, it can be used as evidence of valid letters or as evidence of expert testimony.

The author argues that Visum et Repertum (VeR) plays an important role as a tool of evidence in the Negatief Wettelijk Bewijsstelsel System, where judges have the freedom to assess any piece of evidence, including VeR. The importance of VeR as a means of letter evidence because VeR can document the physical condition of the victim in detail and objectively based on the expertise of a doctor professionally, VeR assists the judge in assessing the facts and improving the accuracy of the assessment as well as providing the judge's confidence in making a fair and appropriate decision

The Probative Power of Visum et Repertum Coming from Medical Records as Evidence

Visum et Repertum is a letter made by an official and made on the oath of office based on the provisions of

laws and regulations. Therefore, Visum et Repertum is included in the category of letter evidence, or it can also be evidence of witness testimony or expert testimony. Thus it is stated that Visum et Repertum has evidentiary value at trial. The value of evidentiary evidence as regulated in the Criminal Code has the power of proof inseparable from the authority of the official who issued or provided information as expert testimony. Authority is referred to as formal power derived from the power granted by law. Authority is an important concept in law that regulates the rights and abilities of individuals or institutions to perform certain actions with full responsibility. Within authority there is authority. Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but also includes authority in the context of carrying out duties, and granting authority and the distribution of authority is mainly stipulated in laws and regulations. Juridically, the definition of authority is the ability provided by laws and regulations to cause legal consequences.

The law of proof is a set of legal rules regulating proof, namely all processes using valid evidence and taking action with special procedures to find out the juridical facts at the trial, the system adopted in the proof, the conditions and procedures for submitting the evidence and the authority of the judge to accept, reject, and assess an evidence. Evidence plays a role in the examination process in court.

Evidence in the criminal justice process is carried out since the police conduct an investigation and investigation, and at the examination stage in court, the judge will assess the facts and evidence presented in the trial to prove whether it is true that the accused person has committed a criminal act. The Criminal Procedure Code adheres to the legal theory of proof according to law negatively, Article 183 of the Criminal Procedure Code stipulates that "A judge shall not impose a criminal sentence on a person unless with

at least two valid pieces of evidence, he obtains confidence that a criminal act really occurred and that the defendant is guilty of committing it" The evidence must be obtained in a lawful way and in accordance with the law.

The criminal procedural law system in Indonesia stipulates that there is no single piece of evidence that is absolutely considered the strongest piece of evidence. This is in contrast to the "positive" system of proof where certain pieces of evidence, such as the defendant's confession, have perfect evidentiary power. The "negatief wettelijk" system adopted by Indonesia, criminal verdicts must be based on a minimum of two pieces of valid evidence, coupled with the judge's conviction. This shows that there is not a single piece of evidence that is sufficient. No matter how strong one piece of evidence is, it cannot be the sole basis for imposing a crime. A minimum of two pieces of valid evidence are required to strengthen the judge's conviction.

Basically, all valid evidence has the same status as other evidence. The strength of the proof is not determined by the type of evidence, but by its quality and relevance to the case being tried. The author argues that visum et repertum is a document evidence that materially takes its substance from the results of medical records, so as long as the medical record is made by a doctor or authorized officer, the recording of the medical record does not violate the applicable standard operating procedures (SOP), the data is relevant / consistent with the criminal case being investigated and the examination is carried out legally, then the visum et repertum (VeR) become valid evidence in criminal cases and have the same force as other evidence as stipulated in Article 184 of the Criminal Code.

That the existence of evidence in Article 184 of the Criminal Code is not a hierarchy, thus the judge is free to assess which evidence is stronger and which is weaker to gain his conviction. This statement was

corroborated in Supreme Court Jurisprudence Number 427 K/Pid/1982 which emphasized that evidence in criminal procedure law in Indonesia does not have a hierarchy, meaning that there is no one type of evidence that is automatically stronger than other types of evidence. In addition, the Supreme Court's jurisprudence decision states that the judge must consider all evidence objectively and comprehensively to reach his conviction, and must not hold on to only one piece of evidence.

4. Conclusion

Visum et Repertum (VeR) made based on medical records has the same existence as other evidence, The regulation of the type of evidence that is explicitly stated in Article 184 of the Criminal Code is not intended as a hierarchy of evidence, the judge is free to judge which evidence is stronger and which is weaker to gain his conviction. The Negatief Wettelijk Bewijsstelsel system adopted in the Criminal Procedure Code determines that it is necessary to balance the existence of evidence and the judge's confidence obtained based on the analysis of the entire evidence, including the facts revealed in the trial when the judge makes a decision.

Visum et repertum (VeR) can be a valid evidence in the judicial process in Indonesia if the requirements as stipulated in the laws and regulations have been met, including being made by a doctor who has a Registration Certificate (STR) and a Medical Practice License (SIP) and has authority based on the standard operating procedures (SOP) that have been set. In addition, the substance of Visum et repertum (VeR) must be appropriate and the data presented has accuracy and relevance between the results of the patient's examination and the criminal case being investigated / tried

5. References

Afandi, D. (2008). The Quality of Visum et Repertum of The Living Victims In Arafin Achmad General

Hospital During January 2004 - September 2007. *Journal of Medical Sciences*, 8.

Gagundali, D. N. (n.d.). Visum et Repertum as Evidence in Cases of Minor Persecution According to the Criminal Procedure Code. *Journal Lex Administratum*, 175.

Harhap, M. Y. (n.d.). Discussion of Problrms and Application of the Criminal Cade of Examination of Court Hearing, Appeals, Cassations, and Review. *Sinar Graphika Publisher*, 135.

Hiariej, E. O. (2012). Theory and Law of Proof. *Erlangga Publishers*, 6-7.

Law. (2014). In carrying out practice, health workers who provide direct services to health service recipients must carry out the best efforts for the benefit of health service recipients by not promising results. *Healt Workers*, 36.

Marzuki, P. M. (2008). Legal Research. *Prenada Media Group*, 35.

Noviriska, & Atmoko, D. (2021). Healt Law. *Nusantara Abadi Literacy*, 1.

Satya. (1989). Expert Testimony and Visum et Repertum in the Aspects of Criminal Procedure Law. *Satya Wacana Publisher*, 45.

Sinamo, N. (2021). Healtsh Lau and Medical Disoutes. *Jala Permata Aksara Publisher*, 1.

Syafief, H. N. (2013). In carrying out practice, health workers who provide direct services to health service recipients must carry out the best efforts for the benefit of health service recipients by not promising results. *Diktat Sains Sains Juris*, 125-126.

Wikipedia. (n.d.). *Visum et Repertum*. Retrieved from Arti Kata Visum et Repertum: wikipedia.com