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Legal Liability Towards The Abuse Of Doctor's Authority In Performing *Visum Et Repertum*

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Abstract

Visum et Repertum (VeR) is in the form of a written statement made by doctors who have to take an oath of office, based on things seen and discovered upon examination of the dead or wounded allegedly caused by a criminal act. KUHAP does not mention the term visum et repertum, but KUHAP is one of the legal bases in making VeR. VeR is not only needed in criminal case examination but also civil cases in some instances. The exact cause of a person's death can be related to events in criminal law as well as civil law as in the claim insurance or determination of heirs related to the distribution of inheritance rights. Given the urgency of VeR as one of the evidence used before court proceedings, in making VeR, there is a potential for abuse of power by doctors by



making VeR not based on actual examination results. Such abuse of authority by doctors has violated the moral and ethical aspects which override the values of truth and justice. Therefore, the problems in this article focus on what is the authority of doctors in administering Visum et Repertum and what is the legal responsibility for the abuse of doctor's authority in making Visum et Repertum. The results of the discussion indicated that: doctors have the authority to, among others: accept victims sent by investigators; request a letter requesting a statement of VeR; a specialist can only carry out medical examination of the victim; signing of the VeR statement following the applicable laws and regulations, and delivery of completed evidence may only be submitted to the investigator accompanied by an official report. Making VeR unlawfully is not clearly explained in the Criminal Procedure Code. However, the use of VeR against the law occurs when VeR becomes an instrument of action against the law as formulated in the norms of every criminal act. Therefore, it is a form of legal responsibility for doctors who abuse their authority regarding VeR can be pursued through 4 (four) types of sanctions, including administrative sanctions, civil sanctions, criminal sanctions, and medical discipline sanctions.

A. Introduction

1. Background

Visum et Repertum is a term that is familiar in the science of forensic doctors and generally known as "visum". Visum comes from the Latin language with a single form of "visa". In an etymology or grammatical perspective, "visum" or "visa" means a sign to see or view an evidence signature on its findings, approval, and legalization, whereas "repertum" means reporting facts that have been obtained from the doctor's examination towards the victim. Moreover, *Visum et Repertum* (VeR) etymologically means what is seen and found.¹ VeR is not only required in criminal cases' investigation but also in civil cases to prove certain cases that need VeR. These cases include application on alteration/adjustment of gender status legalization, insurance claims, proof of child status, and other relevant cases.² Besides that, the exact cause of death can be related to circumstances both in criminal and civil law. Deaths that are concerning civil law are insurance claims and decision of heir or rights of distribution in inheritance. Investigators decide the prejudice of someone's cause of death through a medical examination. Even though the circumstances are in correlation with civil law, however, the cause of death is also a crime against lives which indeed in the spectrum of criminal law.³

Following the argumentation above, almost all process of sexual assault crime investigation uses *medico-legal* action, which is a statement from a forensic expert doctor in the early stage of the investigation. *Medico-legal* is has a relational connection between the doctor and the victim. In this case, the victim is not always identical with the patient, but also roles a client. The connection between the doctor and investigator is that investigators are parties that request the examination towards the victim. In contrast, the evidence is a result of an examination that should be documented and made as VeR.⁴ The role of VeR established by forensic doctors has the authority to prove in a case, as long as it covers statements on what is viewed, experienced, and known based on scientific knowledge provided on the examined object. Thus it will be constructive and beneficial in the process of investigation, especially for judges in their attempts to solve a criminal case.⁵ Officials that have the authority to propose VeR are the police department. However, it usually causes different to contradiction interests such as conflicts that further becomes disharmony.⁶ Since the necessity of VeR is not only in criminal cases but also in civil cases, the consequence is an escalation of high VeR demand as the investigator's stage of proof attempt.

In numerous hospitals, the amounts of expert forensics are limited. Therefore, the practice of VeR service is mostly filled by doctors that do not possess adequate competence in the medico-legal field. Research on VeR quantity in 1999-2000, for example, shows that there are 977 VeR living victims in 38 hospitals in Jakarta. It seems that most VeR in numerous hospitals is still poorly. All of this VeR are stated by general practitioners that work in the Emergency

¹ H.M. Soedjatmiko, *Ilmu Kedokteran Forensik*, (Malang: Fakultas Kedokteran UINIBRAW Malang, 2001, hlm. 1.

² Y.A. Triyana Ohoiwutun, *Ilmu Kedokteran Forensik: Interaksi dan Dependensi Hukum pada Ilmu Kedokteran*(versi pdf), hlm. 21

³ *Ibid.*

⁴ Budi Sampurna, *Pengantar Mediko Legal*, Dokumentasi Arsip Repository UI, 2001, diakses pada 10 Juni 2020, Pukul 18.30.

⁵ Arsyadi, 2014, *Fungsi dan Kedudukan Visum Et Refertum dalam Perkara Pidana*, Jurnal Ilmu Hukum Legal Opinion, Edisi 2, Vol.2.

⁶ C.S.T. Kansil, 2002, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, hlm. 33.

Room.⁷ Regardless it is stated by general practitioners or expert forensics doctor. It can be said that the escalation of VeR demand by an investigator is aligned with the potential of authorization abuse by doctors in VeR.

Abuse of authorization by doctor represents the emergence of ethical neglect in performing their profession by ignoring truth and justice for an interest that can injure other people. This abuse is performed publishing a medical statement without the grounds of examination results that are known truthfully and adequately. This situation will create polemic and assumption in the society that fairness and justice in the medical sector could be bought, either by money or family ties.

Abuse of authorization by a doctor stating VeR that is not aligned with the truth has violated morality and ethical aspect of doctors' professionalism and also neglects the fairness and justice aspect in doctoral practice that regulated in laws of doctors ethical code. Therefore, this situation needs a legal liability towards the abuse of authorization by doctors either its administrative, civil, criminal, and health law. In its practice, VeR is needed as evidence in disclosure of cases to provide fairness and justice for the society, so it is not justified to insert one of the parties' elements of interest in providing VeR.

Based on the background's explanation, the author is interested in elaborating legal liability regarding abuse of doctor's authorization in VeR. This Article is aimed to answer on how is the authorization of doctors in providing VeR and how is the form of legal liability towards the doctor who abused their authorization in VeR. Problem identification how is the doctor's authorization regarding *Visum et Repertum*, how is the legal liability in doctor's regulation in *Visum et Repertum*.

B. Discussion

1. Doctor's Authorization in Providing Visum et Repertum

The efforts to realize discipline, safety, justice, and prosperity towards society are often faced with obstacle along with the pace of knowledge development which obligates the support from parties that are experts in the needed field in order to solve problems. As well as attempts of law enforcement and disclosure of a case or criminal action, it needs a good connection between law enforcers with medical science in disclosing a case to find the substance truth.⁸ Cooperation relation here is the necessity of an expert's statement that is transferred into a statement of *Visum et Repertum* (VeR). The need for a doctor's ethical professionalism is fulfilled in law enforcer's cooperation, especially in disclosing a crime by the police department that is taken through the act of *medico-legal*. *Medico-legal* is defined as integration between medical science and legal science that uses the management mechanisms and various aspects regarding health service for the law enforcer's interest.⁹

Besides implementing examination, maintenance, and treatment towards the patient, doctors also have responsibilities to undergo a medical examination in order to execute law enforcement that aims to provide VeR for specific individuals that are requested by the

⁷ Herkutanto, *Peningkatan Kualitas Pembuatan Visum Et Repertum (VeR) Kecelakaan Di Rumah Sakit Melalui Pelatihan Dokter Unit Gawat Darurat (UGD)*, JPMK Vol.08/No.03/September/2005, hlm. 164.

⁸ Pambudi dan Heri Purwanto, 2020, *Peran Bantuan Ahli Ilmu Kedokteran Forensik Dalam Pembuktian Perkara Tindak Pidana Pembunuhan Pada Tahap Penyidikan*, Universitas Muhammadiyah Yogyakarta, Volume 1 Nomor 2.

⁹ Winda Trijayanthi Utama, *Op.cit.*

investigator because the individual is presumed as victims of a crime. Whether it is traffic accidents, accidents and work, assault, sexual assault and victims who died in the early stages of the police department, these situations have prejudice on the possibility of a criminal act.¹⁰ Besides that, death is also related in civil law, for example in an insurance claim or heir determinant that is in relation with rights and property distribution where the investigator decides the prejudice towards an individual death through a medical examination. Even though the situation is in connection with the civil law, the death of the individual itself is a crime against lives that is a part of the criminal law.

2. Definition of *Visum et Repertum*

Visum et Repertum in the Indonesian Dictionary means a statement letter from a doctor on a medical examination.¹¹ The term *Visum et Repertum* comes from the term "visual" which means to view and "repertum" which means report. Therefore, it can be said that VeR means to view and found. VeR is a report stated by a doctor (expert) that is created based on oath, regarding what is viewed, found, and examine based on the best knowledge. VeR is used as a disclosure facility to replace a human's body that experienced abuse (*corpus delict*). Thus VeR is needed.¹² In other definition that is more or less the same, VeR is a written statement that is made by a doctor in an official statement from an authorized investigator on fact findings on medical examination and human opinion, either the living victim or deceased victim or a part that is assumed as a part of the human anatomy, based on its knowledge and under oath for the importance of justice.¹³

Based on these definitions, it merely said that VeR is a statement letter by a doctor based on a medical examination by the request of investigator, either before or after the examination for the interest of the justice.

3. Legal Grounds Regarding *Visum et Repertum*

In correlation with the definition above, the legal grounds regarding VeR is not explicitly regulated in the criminal procedure code. VeR was initially regulated in Staatsblad Year 1937 No. 350, the 22 May 1937 Ordinance, "*Visa Reperta Van Genesskundigen*". And then, the provision of Article 184 Paragraph (1) on the Criminal Procedure Code states, "*valid evidences are: a. Statement of witness, b. Statement of experts, c. letter, d. guidance, and e. Statement of the defendant*". Therefore, the evidence of VoR is categorized as letter evidence. This is also related to the provision on Article 187 on the Criminal of Procedure Law that stipulated:

"letters as states in Article 184 Paragraph (1) section c, are created by an official oath or strengthened by oath, are:

- a. *Official report and other letters in a legal form that is made by an authorized general official or made in front of an authorized official, that consist of a statement on a heard incident and situation, seen or experienced directly, and supported with a clear and firm reason on its statement.*

¹⁰ Arif Budiyanto, 1994, *Ilmu Kedokteran Forensik*, Jakarta: Bagian Kedokteran Forensik FKUI, hlm. 5

¹¹ Simorangkir, 1972, *Kamus Hukum*, Jakarta: Sinar Grafika, hlm. 5.

¹² Rohmat dan Prasasti Dyah Nugraheni, 2019, *Kajian Hukum Pidana Indonesia atas Penyalahgunaan Alat Bukti Visum Et Repertum sebagai Sarana Untuk Melakukan Tindak Pidana Pemerasan*, Semarang: Jurnal Lex Scientia Law Review, Volume 3 Nomor 2, hlm. 194.

¹³ Tim Penyusun Modul Diklat-Diktuk Kejaksaan RI, 2019, *Modul Kedokteran Forensik*, Jakarta: Badiklat Kejaksaan RI, hlm.7

- b. Letters that are created based on the regulation's provisions or letters that are made by officials on facts that are included in the governance, which became its responsibility and destined as a situation disclosure.
- c. Statement letter from an expert that consists of opinions based on its expertise regarding facts or situation asked officially from the individual.
- d. Other letters that are enforced only if it is correlated with the substance of other evidence".

From this description, it can be concluded that VeR is a letter created by officials and created on officials oath based on the regulation provision. Therefore, VeR is included in the letter evidence category. In other words, VeR has a value disclosure in court.

4. Doctors Authorization toward *Visum et Repertum*

In line with the VeR legal ground, a doctor must provide an expertise statement regulated in the Article 133 of Criminal Procedure Code; this expertise statement is made as legal evidence in front of the court as stipulated in Article 184 of the Criminal Procedure Code. The definition of an expertise statement is provided in Article 1 paragraph 28 of the Criminal Procedure Code, "the statement provided by an individual that has necessary specific expertise to solve a criminal case for the interest of examination". This expertise statement is available orally in front of the court based on the provision of Article 186 of the Criminal Procedure Code or also during the investigation process in the form investigators' report as explained in Article 186 of the Criminal Procedure Code or also provided in a written statement of a letter as mentioned in the Article 187 of the Criminal Procedure Code.

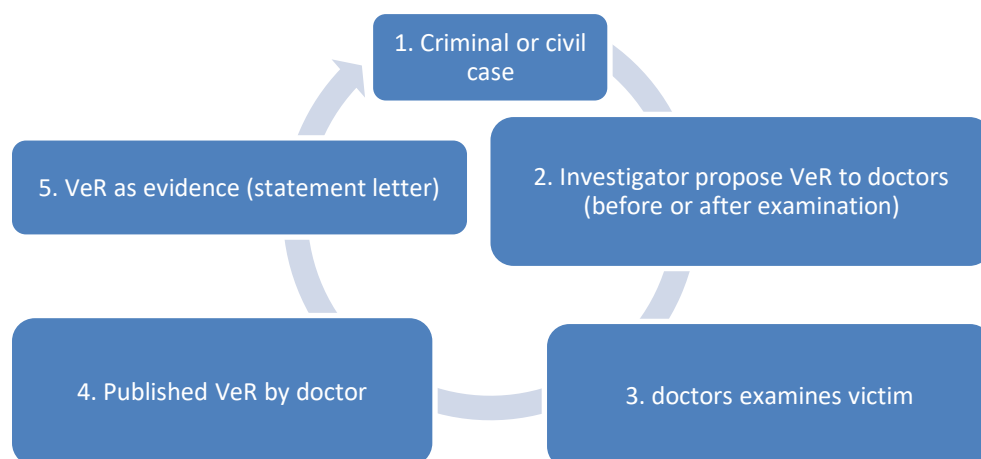
Regarding that matter, doctor's authorization is stipulated in Law No. 29/2004 on Medical Practice and Regulations of the Indonesian Medical Council as well as the Medical Code of Ethics. According to Article 35 Paragraph (1) of Medical Practice Law stated that doctors that have *Surat Tanda Registrasi* (STR) or Registration Letter have the authority to perform medical practice according to their education and competence, consisting of:

- a. Interviewing patients;
- b. Examining patients physics and mental health;
- c. Deciding supporting examination;
- d. Enforce diagnosis;
- e. Determine management and patient treatment;
- f. Perform medical action;
- g. Write a medical prescription and utilization;
- h. Publish a doctor's statement;
- i. Preserve medicine in a permitted type and amount;
- j. Process and deliver medicine to the patient that lives in a rural area with no accessible pharmacy.

Based on the medical practice authorization above, then the doctor is regarding VeR statement is stipulated in point b, f, and h which is:

- b. Examining the patient's physic and mental health.
- f. Performing medical action.
- h. Publish a doctor's statement.

Following the discussion above, Muhammad Arsyad opined that VeR must be based on the requested letter from the investigator that is accompanied with the police department as an investigator to avoid any conflict of interest from one of the part.¹⁴ If a doctor publishes a VeR without asking or checking if there is an official VeR application from the police department investigator or at least companion from the police investigator, then it will violate the doctor's authorization and is not aligned with the regulation's provisions regarding doctor's authorization in stating VeR.¹⁵ Nevertheless, according to the Minister of Health Regulation No. 68/2013 on Obligation of Health Care Providers to Provide Information based on Assumption towards Violence against Children, it is regulated that doctor could state a VeR based on a medical examination, either requested by the investigators before the examination as long as the time interval does not take too long. The process of VeR before and after it is letter evidence is as follows (**Graphic 1**):



(**Source:** Processed from Article 133, 184, 186, 187 Criminal Procedure Code and to the Minister of Health Regulation No. 68/2013 on Obligation of Health Care Providers to Provide Information based on Assumption towards Violence against Children)

Aligned with the description and graphic above, in operating their authority, doctors cannot be separated from medical ethical code which is a ground for doctors to not abuse their authorization in performing their primary responsibility and function. The same goes for stating VeR, and a doctor should stickle towards the medical ethic by publishing

¹⁴ Wawancara dengan M. Asryad, Kanit 1 Subdit III Krimum Polda Lampung, pada 26 Februari 2020.

¹⁵ Yosy Ardhiyan, 2016, *Kewenangan Penyidik Polisi Terhadap Pemeriksaan Hasil Visum Et Refertum Menurut KUHAP*, Unsrat, Volume 3 Nomor 10.

VeR in respect with the examination and observation without a particular party's intervention or interest so that justice is unfolding a criminal or civil crime can be realized.

Therefore, based on Article 187 of Criminal Procedure Code and Article 35 paragraph (1) of Medical Practice Law, the author viewed that doctors have authorization in providing expertise statement as in VeR from a medical examination. The investigator should request this examination before or after an examination is performed, as long as the time interval does not take long. If then the VeR is not made due to a medical examination, then the responsible doctor is legally liable on abusing their authorization on VeR.

5. Legal Liability towards the Abuse of Doctor's Authority in Performing *Visum Et Repertum*

In practice, considering that the urgency of VeR is evidence used in front of the court, then in formulating VeR opens a potential of authorization abuse by doctors through VeR without actual examination result.

Regarding this matter, the violation of ethical code included in authorization abuse of doctor's performance reflectively motivates defensive medical, which is exaggerated examination outside of the system in aims to strengthen clinical evidence as formal juridical proof to anticipate patient's claim.¹⁶ Besides that, other forms of doctor authorization abuse, according to M. Arsyad is a doctor who deviates from the standard medical profession, which is negligence and mistakes which are categorized in the malpractice element. In other words, if mistakes and negligence is *dolus* (deliberate) and causes severe and fatal impacts but must be proved by abuse of authorization's elements in its actions or negligence.¹⁷

Eddy Rifai adds on numerous factors that motivate the abuse of authorization by doctors. *Firstly*, the lack of precision and accuracy in stating VeR, which is needed conscientious in its observation towards victim or patients, VeR is not created without observation prior. *Secondly*, the factor that affects the authorization abuse by a doctor which include money. An individual's interest in money influences their performance and professionalism, which is the same for the doctor who is human and has desires towards money and valuable possessions. *Thirdly*, the influence of an individual's interests or intervention that is very significant to the doctor's objectivity in creating VeR.

Coordination between law enforcement and medical science in unfolding a case is to seek material truth. This coordination needs an expert statement that is delivered in the form of a letter of VeR. The coordination's outcome is not always positive, such as material truth stated above, but also could end up in chaos or the failure of justice in the case examination. This failure often happens in the coordination between law enforcement and medical science because it involves different interest or contradicting principles and oath of office.

¹⁶ Wawancara dengan Asep Sukohar, Ketua Ikatan Dokter Indonesia, 12 Januari 2020.

¹⁷ M. Arsyad, *Op.cit.*

Hans Kelsen stated that in his theory on legal liability if an individual is legally liable on a particular action or they hold a subject legal liability, it means that they are responsible for a sanction in a contradicting action. Moreover, Kelsen stated that:¹⁸

"The failure to undergo precautions obligated by the law is called negligence; and negligence is usually viewed as a type of mistake (culpa), even if it is not as significant as fulfilled mistakes because of anticipation, desire, with or negative intention and harmful impacts".

Hans Kelsen divides the category on liability that includes (1) individual liability which means violations that are executed alone; (2) Collective liability means violation by other people; (3) liability based on the mistake which is a violation by negligence with the potential of disadvantage; and (4) Absolute liability which means that a liable individual regarding their obligation based on negligence.¹⁹ Aligned with Kelsen's perspective, authorization abuse in VeR is not limited to a doctor. However, it could also be stated by law enforcers involved, starting from investigating or in this case, police investigator that stated a false VeR as evidence to arrest and determine suspects which allows a chance of blackmailing by investigator towards the suspect.²⁰

Consequently, a doctor's liability in criminal law especially authorization abuse is based on a miscarriage of the criminal law which is proved with professional action's error by creating a false doctor's statement and not under the accuracy of the court in its capacity as an expert.²¹ According to Eddy Rifai, attempts of law enforcement by the police department in abuse of doctor's authorization acts as a law enforcer that must execute provisions in the criminal crime that are set in regulation or the criminal code. The imposition of crime towards doctor in abuse of authorization regarding VeR is not aligned with the fact has entrenched, massive, and is annual.²² Besides the concept of law enforcement from the criminal code, attempt of law enforcement is also executed by the organization of medical discipline enforcer which is *Majelis Kehormatan Displin Kedokteran* (MKDKI) or Honorary Council of Indonesian Medical Disciplines.

Furthermore, Eddy Rifai explains that legal liability needs to be proved in detail weather the VeR has an element of abuse that causes the VeR result false from the truth or not. To prove so, a second opinion is required, which is by proposing the VeR request in the clinic or other hospital as a comparison with the previous result that is considered inadequate.²³ Attempt to ask for the second opinion, according to the author is a comparative effort regarding evidence proof in justice-seeking and law enforcement. Hence, it is necessary to understand law regulation regarding doctor's authorization abuse by VeR.

¹⁸ Hans Kelsen, 2007, *General Theory of Law and State (Terj)*, *Teori Umum Hukum dan Negara: Dasar – dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif*, Jakarta: Media Indonesia, hlm. 81.

¹⁹ Hans Kelsen, 2006, *Teori Hukum Murni*, Jakarta: Nuansa dan Nusa Media, hlm. 140.

²⁰ Muh. Endriyo Susila dan Dawan Suryo Sularto, 2016, *Implikasi Sosio Yuridis Tuntutan Pidana Terhadap Dokter Terkait Dugaan Malpraktik Medik*, *Jurnal Ilmiah Dunia Hukum* Volume 1 Nomor 1, PDIH FH UNTAG.

²¹ Erdiansyah, 2019, *Pertanggungjawaban Pidana Terhadap Dokter Atas Kesalahan dan Kelalaian dalam Memberikan Pelayanan Medis di Rumah Sakit*, Volume 3 Nomor 2, Riau: FH Unriau.

²² Wawancara dengan Eddi Rifa'i, Dosen Bagian Hukum Pidana Fakultas Hukum Universitas Lampung, 21 Februari 2020/

²³ *Ibid.*

6. Legal Liability Towards the Abuse of Doctor's Authority

Visum et Repertum (VeR) is a written statement made by a doctor based on an official request by an investigator on medical examination towards an individual either alive or deceased and whole or partial human anatomy. The result of findings or interpretation is sworn and dedicated to justice. According to Budiyanto, the legal base of VeR is as follows:²⁴

Article 133 of the Criminal Procedure Code stated:

- (1) *In terms of investigators prioritizing the judiciary's interest of handling a victim either injurer, poisoned, or deceased due to an assumed crime, has the authority of proposing expert statement request towards juridical, medical specialist or doctor or other experts.*
- (2) *The expert statement mentioned in paragraph (1) is written where in that statement is firmly mentioned the use of injury examination, cadaver autopsy, or post mortem examination.*

Investigators and assistant investigators are authorized to request expert information, as stated in Article 7 (1) point h and Article 11 of the Criminal Procedure Code. The investigator referred to here is an investigator following Article 6 (1) point a, namely an investigator who is an official of the Indonesian National Police. This investigator is the sole investigator for general crimes, including crimes related to human health and psychology.

Apart from that, the VeR is valid evidence as provided in Article 162 and Article 179 paragraph (2) and is confirmed in Article 187 point c of the Criminal Procedure Code (KUHAP). However, there could be a gap and weakness that this evidence can be misused and instead committed to committing a criminal act, one of which is the crime of extortion. Extortion is an act that violates the law which is carried out intentionally or unintentionally by someone whose actions can be accounted for and by law, it is declared an act that violates the law and can be punished.²⁵

The use of evidence against the law is not clearly explained, but the use of VeR becomes illegal if VeR becomes an instrument of an act against the law as formulated in the norms of every criminal act. It can be said that the power of the VeR evidence is only as a complementary instrument in the search for the truth. A person who deliberately uses VeR for his benefit illegally has become a victim of acts of persecution. However, in such a condition, he also has a different intention and intention of something that happened to him by taking advantage of the situation using VeR's evidence against the law.²⁶

Considering the VeR urgency as evidence in seeking the material truth, then the potential of authorization abuse in VeR can be executed by numerous parties:

- a. Forensic doctors or other doctors in authority to state VeR.
- b. An individual with a status of the victim or other individual that is aware of the crime towards the victim but abuses the VeR for other interests, for instance, extortion.
- c. Investigators from the police department both *dolus* and *kulva*.

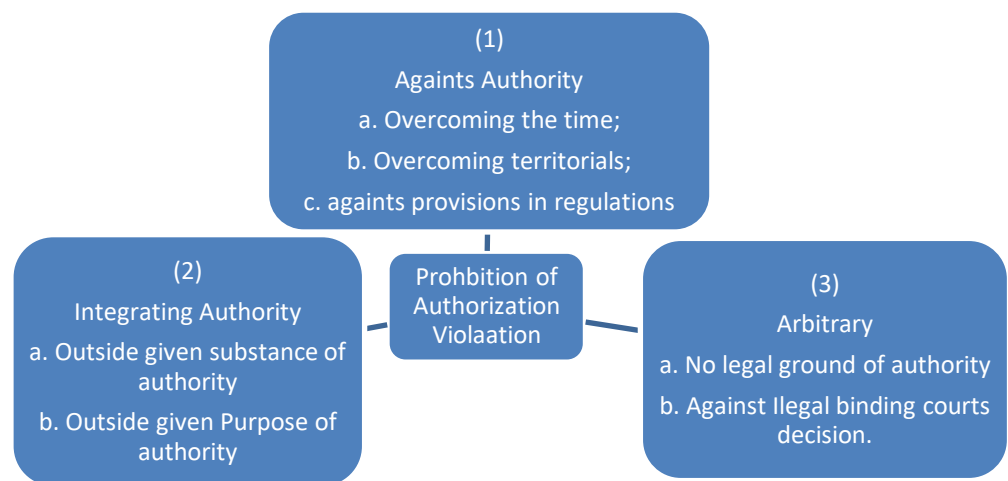
²⁴ Dedi Afandi, 2017, *Visum et Repertum: Tata Laksana dan Teknik Pembuatan*, Riau: Fakultas Kedokteran Universitas Riau, hlm.2.

²⁵ Rohmat, *Kajian Hukum Pidana Indonesia Atas Penyalahgunaan Alat Bukti Visum Et Repertum Sebagai Sarana Untuk Melakukan Tindak Pidana Pemerasan*, *Mimbar Keadilan* Vol 11 Nomor 1 Februari – Juli 2020, hlm.8.

²⁶ *Ibid.*, hlm.9.

However, this research only focuses on answering the abuse of doctor's authority regarding VeR as the problem formulation at the beginning of the paper. In this regard, the previous description discussed, the use of VeR against the law is not clearly explained. However, the use of VeR becomes illegal if the VeR itself becomes an instrument of action against the law as formulated in the norms of every criminal act. Since the research focuses on the abuse of doctor's authority, it is essential to know what form of legal regulation is related to legal liability for abuse of doctor's authority in making the VeR.

In the administrative law, prohibition towards authorization abuse is regulated in Article 17, 18, and 19 of Government Administration Law as described in Graphic 2.2:



Source: processed from Law No. 30/2014 on Government Administration

Concerning the prohibition of abuse of authority, based on the above design, the doctor's action in making a VeR that is not based on the results of a medical examination is an act that exceeds his authority because it is contrary to the provisions of the legislation, namely Article 187 KUHAP and Article 35 paragraph (1) Law 24 of 2009 concerning Medical Practice. Besides, making VeR which is not based on examination results for specific purposes and purposes is also an act of confusing authority because it is contrary to the objectives of the given authority. The authority of doctors related to VeR includes: (1) examining the patient's physical and mental health; (2) Taking medical action, and Issuing a doctor's certificate. Therefore, the existence of legal liability as an implication of authorization abuse is administration sanction. Administration Sanction.

Based on Law Number 30 of 2014 concerning Government Administration or *Undang-Undang Administrasi Pemerintahan* (UUAP), namely Article 80 paragraph (3), it is stated that doctors who abuse their authority are subject to severe administrative sanctions in the form of license revocation and permanent dismissal either obtaining or without obtaining financial rights and other facilities. The administrative sanctions are related to the prohibition on abuse of authority as stated in Article 17 paragraph (1) and (2) that government agencies and/or officials are prohibited from abusing authority, and the prohibition on abuse of authority as referred to in paragraph (1) covers the prohibition of exceeding authority, the prohibition of cofounding authorities, and/or refrain from acting arbitrarily.

Besides that, in Article 42 of UUAP is firmly stated:

- (1) Government officials have the potential of prohibited conflict of interest to establish and/or perform a decision and/or an action.
- (2) In regards of government official's conflict of interest as mentioned in paragraph (1), then the decision and/or action established and/or performed by superior official officials or other officials under the provision of regulation.
- (3) The superior officials as mentioned in paragraph (2) consist of President for the ministry/institution leader and head of districts; ministry/institutional leader for officials in their environment; head of the district for district officials, and direct superior for government officials.

The context of a Government Official is an element that carries out government functions, both within the government and other state, administrators as referred to in Article 1 paragraph (3) of UUAP. Therefore, doctors are one of the elements that carry out government functions in other categories of state administrators.

a. Civil Sanction

Civil legal liability to abuse of authority in the creation of the VeR is regulated in Article 1365 of the Civil Code. The Article stated that if it is proven that there is an act against the law that causes loss, and then it can be subject to compensation. The context lies in the losses suffered by the victim/patient resulting from the making of the VeR, which was not based on the condition of the victim/patient at the time of the medical examination.

b. Criminal Sanction

Towards doctor that fabricates Article 267 Criminal Code could ensnare statements:

- 1) *A doctor who deliberately publishes a fabricated statement regarding the presence or absence of an illness, weakness or disability, is threatened form imprisonment for a maximum of four years.*
- 2) *If the statement is given in aim to insert someone to a psychiatric hospital or to hold them there, is charged with imprisonment for a maximum of six months.*
- 3) *Threatened with the same crime to anyone who deliberately uses fabricated letters as if it represents the truth.*

c. Discipline Sanction

The Medical Practice Law in Article 69 states that doctors who abuse their authority will be subject to disciplinary sanctions, including giving written warnings, recommendations on revoking their practice licenses, and the obligation to attend education at a medical or dental institution.

Also, a doctor is only required to provide a certificate and opinion that has been validated for correctness. One of the scopes of Article 7 of the Indonesian Medical Code of Ethics or *Kode Etik Kedokteran Indonesia* (KODEKI) is to provide a medical/expert or expert certificate and expert opinion regardless of form and purpose. The doctor is obliged to base its contents on medical facts which he believes are correct by the responsibilities of his profession as a doctor.

In the Elucidation to Article 7 of KODEKI mentioned examples of doctor's certificates, among others are: (a). certificate of illness or health (physical and mental); (b) certificate of birth or death; (c) certificate of disability (disability); (d) a certificate of mental illness/dementia; (e) a certificate for life insurance, for marriage, travelling abroad, immunization; (f) a certificate of eligibility for an interview, trial, punishment (in connection with a criminal case); (g) a certificate of being infected (for rehabilitation) or free from narcotics/psychotropic substances; (h) *post mortem et repertum* (VeR).

Accountability concerning medical discipline sanctions is carried out by the Medical Ethics Council or *Kehormatan Etik Kedokteran* (KEK) as the enforcer of Medical Professional Ethics in addition to the Indonesian Medical Discipline Honorary Council or *Majelis Kehormatan Disiplin Kedokteran Indonesia* (MKDKI) which has the authority to determine whether or not there are mistakes committed by doctors and also determine the sanctions listed in the regulations. Paragraph r of the Indonesian Medical Council or *Konsil Kedokteran Indonesia* (KKI) regulation stated: "a doctor makes medical information that is not based on the results of an examination which he/she knows properly and can be subject to disciplinary sanctions in Article 69 of the Medical Practice Law, such as giving written warnings, recommendations in terms of revocation of practice licenses".

Regarding the 4 (four) forms of legal responsibility, the author views that the illegal use of VeR evidence is not clearly explained in the Criminal Procedure Code. However, considering that VeR is valid evidence as stipulated in Article 162 and Article 179 paragraph (2) and confirmed in Article 187, paragraph c of the Criminal Procedure Code (KUHAP). The potential for abuse of authority, especially those done by a doctor can happen. The only place open to doctors regarding abuse of authority is to make VeRs not based on actual medical examinations, whether done in *dolus* for a particular purpose or *kulva* due to negligence.

C. Closing

Conclusion

Based on the Discussion, the Conclusion of legal liability towards the abuse of doctor's authority in *Visum et Repertum* is as follow:

1. Doctor Authorization in Stating VeR are:
 - a. Accepting victim that are sent by investigators by prioritizing the health treatment first; therefore, if the victim is healthy enough that the treatment should proceed to their medico-legal aspect.
 - b. Requesting application of VeR statement towards investigators because the doctor is responsible for the medico-legal examination that has the authority to research the VeR application according to the current provision.
 - c. A professional doctor can only do a medical examination.
 - d. The signing of VeR is following regulation which decided that the only party who could give signature in a VeR is a doctor.
 - e. Submission of processed evidence can only be handed towards investigators and is attached with a report.

2. legal liability towards the abuse of doctor's authority in *Visum et Repertum*
 - a. Administration liability based on Article 80 paragraph (3) of Government Administration Law including license revocation, permanent dismissal by obtaining or without obtaining financial rights and facilities;
 - b. Civil legal liability is contained in Article 1356 of the Criminal Code; if it is proven that there is an illegal act that causes loss, then it may be subjected to compensation.
 - c. Liability for criminal law under Article 267 of the Criminal Code, namely a false certificate regarding the presence or absence of illness, or disability, is punishable by a maximum imprisonment of four years and if the statement is intended to include or detain someone in a mental hospital, and deliberately use the letter. The false Information, as if the substance is based on the truth, is subject to a maximum imprisonment of eight years and six months.
 - d. Responsibility for disciplinary sanctions based on the Indonesian Medical Ethics Code or *Kode Etik Kedokteran Indonesia* (KODEKI) carried out by the Medical Ethics Council or *Kehormatan Etik Kedokteran* (KEK) as the enforcer of Medical Professional Ethics in addition to the Indonesian Medical Discipline Honorary Council or *Majelis Kehormatan Disiplin Kedokteran Indonesia* (MKDKI) which has the authority to determine whether or not there are errors committed by doctors and also stipulates the sanctions stated in paragraph r of the Indonesian Medical Council or *Konsil Kedokteran Indonesia* (KKI) regulation, "a doctor who makes medical information that is not based on the results of an examination that he knows correctly and can be subject to disciplinary sanctions Article 69 of the Medical Practice Law, such as giving written warnings and recommendations in the case of revocation of license to practice".

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C. Interview

- Interview with Asep Sukohar, Head of Indonesia's Doctor Alliance of Lampung Province on 12 January 2020.
- Interview with Eddy Rifai, Lecturer of the Civil Department of The Faculty of Law, Universitas Lampung on 21 February 2020.
- Interview with M. Asryad, Head of Unit 1 Sub-Directorate III Criminal Investigation Unit of Lampung Police Department on 26 February 2020.

D. Regulations

Civil Code

Criminal Code

Law No. 30/2014 on Government Administration Minister of Health Regulation No. 68/2013 on Obligation of Health Care Providers to Provide Information based on Assumption towards Violence against Children.

Law No. 29/2004 on Medical Practice

Regulation on Indonesian Medical Council No. 4/2011 on Discipline of Doctors and Dentist Professional.

