

# Visum Et Repertum As Evidence In The Crime Of Marital Rape

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## Abstract

This study aims to examine the strength of visum et repertum as evidence in the crime of marital rape and the basis for the judge's consideration in sentencing the perpetrator of marital rape. This research is a normative research using a statutory approach and case approach. The research was carried out through literature study for the collection of secondary data sources. The primary data source came from court decisions. The results showed that visum et repertum which was presented as evidence in cases of marital rape was used to fulfill the minimum principle of evidence in criminal law so that the perpetrators could be detained. Visum et repertum used as a documentary evidence in marital rape has absolute proving value if it is in agreement with other evidence. The juridical considerations used by the judge in imposing a sentence to the perpetrator of marital rape are in accordance with the provisions of the Criminal Procedure Code (KUHP), namely based on evidence of witness testimony and a letter of visum et repertum. However, on the sociological considerations, the Judge has not addressed all broader aspects.

**Keywords:** Evidence, Visum et Repertum, Marital Rape

## Introduction

Currently cases of sexual violence do not only occur in the public sphere such as the work environment, hospitals, schools, and other public places. But it has also happened in the personal or household sphere where the perpetrators come from the sphere of the closest people.

Based on data from Komnas Perempuan's Annual Records (CATAHU) published on March 5, 2021, entitled Women in the Hump of a Pandemic; The spike in Sexual Violence, Cyber Violence, Child Marriage, and Limited Handling in the midst of Covid-19 stated that 76% of cases of violence against women were Personal Domain Violence (RP) or commonly known as Domestic Cases (KDRT). The forms of violence include physical violence as much as 31% or 2,025 cases, which is the most cases of violence that occur in households, then followed by sexual violence, namely 30% or 1,938 cases, then psychological violence which reaches 28% or 1792 cases and finally economic violence which reaches 10% or 680 cases [1]. The pattern that occurs is the same as the pattern in the previous year, where sexual violence is consistently the second most reported and shows that home and personal relationships are not yet a safe place for women.

One form of sexual violence that occurs in the household is the Marital Rape case. The victim in the marital rape case is the wife of the perpetrator who has a special relationship. In this connection,

the victim belongs to the group of mentally, physically and socially weak who cannot or do not have the courage to give resistance as an adequate retaliation which is used by the perpetrator who feels himself stronger and more powerful than the victim. So that the perpetrator uses the victim to fulfill his interests and desires [2]. Ellie Nur Hasbianto defines marital rape as sexual violence against the wife in the form of coercion to have intercourse, coercion in sexual appetite, and sexual coercion without regard to the satisfaction of the wife/woman [3]. Provisions regarding marital rape can be seen in the Law on the Elimination of Domestic Violence [4]. The number of reported cases related to Marital Rape in 2019 was 100 cases and in 2020 there were 57 reported cases. The decrease in the number of cases reported at Komnas Perempuan was due to the ineffectiveness of services at Komnas Perempuan during the pandemic.

In general, rape or forced sexual intercourse by a husband against his wife may feel unethical, especially serving a husband is not only the wife's duty but also an absolute obligation that must be carried out by a wife. This is also the initial question that may bother some people to ask. Sex in marriage should be a blessing that can be accessed and enjoyed by both husband and wife. However, once again, the power factor (surplus power) on one side has hindered its fair and equitable distribution [5]. Especially if this sexual violence will also have an impact on a woman's

psychology, and also if the act is carried out by shouting, swearing, threatening, humiliating, controlling, stalking and other actions that cause fear [6].

One of the instruments needed to prove the occurrence of marital rape is to ask for expert help. The expert assistance is in the form of expert doctors in the form of *visum et repertum* to assist the interests of the judiciary. The role of evidence in the examination report in the form of *visum et repertum* is very helpful in the trial by the judge, especially if in the case only very minimal evidence is found. The Marital Rape case is one of the cases that is found with very minimal evidence, this is because the crime occurred in the private sphere.

Article 21 Paragraph (1) letter b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence clearly stipulates that in providing health services to victims, health workers must make a written report on the results of the examination of the victim and *visum et repertum* at the request of the police investigator or a medical certificate which has the same legal force as evidence [7].

Based on the provisions of the article, *visum et repertum* has an important role and function in marital rape cases. This means that if a marital rape case is not equipped with a *visum et repertum* then the case will not be followed up to the investigation stage or investigation by police investigators, and it is certain that the case will not reach the examination process in court. Thus, it can be seen that specifically in a case of marital rape, the victim's witness alone is not strong enough to prove that the rape has occurred without the *visa* itself.

## Methods

This study uses normative legal research using a statute approach and a case approach. The data used include secondary data and primary data. Secondary data comes from literature and legislation, while primary data comes from court decisions.

## Results and Discussion

### The Evidentiary Power of *Visum et Repertum* on Marital Rape Crimes

The process of proving cases of violence that occur in the household does not have its own procedural law, therefore the settlement is still subject to the Criminal Procedure Code (KUHAP), although in fact there are special provisions that regulate the evidence used in cases of violence. that occurred in the household, which is regulated in Article 55 of

the Law on the Elimination of Domestic Violence which explains that the testimony of the victim's witness alone is strong enough to prove the defendant guilty accompanied by other legal evidence. However, the explanation in Article 55 provides limitations regarding other legal evidence, namely "Other valid evidence in sexual violence committed other than husband and wife is the defendant's confession" [8]. This means that the Law on the Elimination of Domestic Violence (PKDRT) only recognizes the defendant's confession as other evidence, in addition to the evidence of victim witnesses.

Marital rape is a crime related to the body or human life. Examination of criminal cases relating to the body or life requires expert assistance in the form of *visum et repertum*. The presence of *visum et repertum* in the criminal act of Marital Rape is used as one of the evidences, namely as documentary evidence to fulfill the minimum principle of proof in criminal law so that the perpetrator can be detained. The conditions for detention in criminal law based on Article 21 of the Criminal Procedure Code are [9]: (1). There must be a warrant; (2). There must be sufficient evidence; (3) Must meet the requirements;

In the book Didik Endro Purwoleksono explained that the requirements referred to in Article 21 of the Criminal Procedure Code are [10]:

### Objective Terms

The objective conditions of detention concern the interests under the law based on Article 21 paragraph (4) of the Criminal Procedure Code, namely; (1) A criminal offense carries a penalty of 5 years or more; (2) The crime is threatened with less than 5 years, but is referred to in a limitative manner in Article 21 paragraph (4) letter b.

### Subjective Terms

The subjective condition of detention is that it concerns interests according to the needs stipulated in Article 21 paragraph (1). The subjective requirement in question relates to concerns from law enforcement officials that; (1) The suspect or defendant fled; (2) The suspect or defendant repeats the crime; and (3) The suspect or defendant tampers with or removes evidence.

Based on the conditions of detention, according to the author, the detention carried out in the Marital Rape case was carried out as a form of legal protection for the victim. Article 4 of Law number 13 of 2006 jo. Law number 31 of 2014 confirms that the purpose of witness and victim protection is to provide a sense of security to witnesses and or victims in providing information in every judicial process [11]. The sense of security in question is

defined as being free from threats or intimidation that may be carried out by the perpetrator against the victim or from his family. Article 1 point 4 of Law number 13 of 2006 jo. Law number 31 of 2014 provides a definition of threats as any form of action that has a direct result or the victim feels afraid and/or is forced to do or not do something related to giving his testimony in a criminal justice process [11]. The forms of threats that can be obtained by victims from the perpetrators of the Marital Rape crime are not only physical, but psychological and economic factors are also included in it.

Visum et repertum examination on the crime of forced sexual intercourse in marriage (marital rape) is different from the visum et repertum examination on rape victims. In the case of rape, the post-mortem examination is usually aimed at the presence of penetration in the intimate organs. This is based on the definition of rape as regulated in Article 285 of the Criminal Code which is interpreted as being classified as narrow. Rape according to the article is an act of sexual intercourse committed by violence or threats made to a woman who is not his wife. This means that according to Article 285 of the Criminal Code, rape is only limited to the act of forcing the penetration of the penis into the vaginal opening by a man to a woman, apart from that, the act is not considered as rape [12]. Similar to the opinion expressed by Asni Damanik (Coordinator of the Substantive Team for the RUU PKS) in the public discussion "Problematics of Handling Cases of Sexual Harassment and Violence in Indonesia" on Saturday, September 18, 2021. In the opinion that the Criminal Code does not yet have a perspective on victims of sexual violence, for example in Rape Article. Rape is only considered to occur in unmarried women, then there must be threats or violence, as well as acts of penetration. Such penetration must be proven by the existence of a visa which proves that penetration has occurred. However, if the post-mortem results conclude that there was no penetration in the act, then it is not considered rape but an act of obscenity [13].

It is different from the case of marital rape, where penetration does not always occur, therefore the post-mortem examination of victims of marital rape depends on how the sexual violence was carried out. This can be seen from the visum et repertum examination contained in the decision 899/Pid.Sus/2014/PN Dps concerning the criminal act of forcing sexual intercourse in marriage in which the results of the post-mortem examination concluded that [14]:

On the lower right chest, five centimeters from the front midline, thirty centimeters below the apex of the right shoulder there is a purplish-red bruise, measuring as light as a centimeter by five centimeters. (1) At the confluence between the large lips and the small lips of the pubic, there were abrasions in the direction of five, six, and seven o'clock.

The conclusion from the post-mortem examination was that the female victim, aged approximately fifty-seven years, had bruises and abrasions due to blunt force that did not cause disease or impediment in carrying out her work or occupation. Blisters at the meeting of the big lips of the back of the pubic due to blunt penetration. Swelling of the heart and pulmonary congestion are abnormalities that occur because violence occurs.

Sexual violence that occurred in the decision of Decision Number 126 of 2015 PN Purbalingga was carried out by the perpetrator by strangling the victim's neck with his left hand after which he put his left hand into the witness' mouth while his right hand was moved inside the victim's vagina. Thus, in the results of the visa examination, it was found that [15]:

There is a wound on the lower lip, reddish in color, with a wound size of approximately one time one centimeter; (1) There is bleeding in the vagina, bleeding may come from a wound on the wall of the left vaginal edge. This type of wound is a torn wound with a size of one time one centimeter.

Different coercion also occurred in decision number 150 of 2017 Bangkalan District Court in which sexual violence was perpetrated by the perpetrator, namely by inserting the perpetrator's genitals into the victim's mouth but the victim refused until the perpetrator inserted eggplant into the victim's genitals so that the results of the post-mortem examination concluded it was found that there were signs of violence in the coitus that were not obtained from penetration [16].

Based on the visum et repertum, it was found that penetration does not always occur in the case of marital rape, this depends on how coercion was used by the perpetrator to have sexual intercourse. So that the results of the conclusion that the wound marks used as corpus delicti will provide an overview of the incident regarding the coercion that was carried out first so that the perpetrator can fulfill his desire to have sexual relations with the victim.

To measure the value of the strength of the proof of visum et repertum which is used as documentary evidence, several things must be seen. Article 184 paragraph (1) of the Criminal Procedure Code has a correlation with Article 187 letter c of the Criminal Procedure Code which explains the types of letters that can be used as evidence, namely letters made by an expert containing opinions regarding certain matters in accordance with their field of a criminal case. Other requirements to have a valid evidentiary value are [17]:

Qualified formil and materil visum et repertum; (1) Formil Terms: (a) Given in writing; (b) By oath or promise or by oath remembering the oath or promise.

Material requirements; (1) The content of the information corresponds to the reality of the object being examined; (2) Does not contradict the theory of medicine that has been tested for truth; (3) Filed by the investigator; (4) The results are easy to understand for people who are not doctors; (5) The content of visum et repertum is relevant to what is requested.

Visum et repertum when combined with other evidence, it becomes an objective report so that the possibility of engineering the visa is very small. Termination of a case that is carried out objectively has consequences in relation to cases related to an injury, disruption of health or death of a person as a result of a crime, making visum et repertum must be part of the judge's consideration in deciding the case. The existence of a visum et repertum which is used as evidence is neither binding nor coercive for judges. The judge's attachment to the visum et repertum can be set aside if in a criminal case he does not present the visum et repertum as evidence.

Based on this explanation, it can be seen that the visum et repertum submitted by the Public Prosecutor as evidence in the criminal act of Marital Rape (marital rape) has the same high proving power as compared to other evidence submitted. In addition, the reason why the existence of visum et repertum is neither binding nor coercive for judges is because visum et repertum is an elaboration of legal evidence based on the law.

As for what is meant by the strength of evidence from the visum et repertum which is used as documentary evidence in proving the criminal act of Marital Rape (marital rape) are; (1) Visum et repertum is a piece of evidence that has absolute and important evidentiary power in proving a crime. Visum et repertum is categorized as evidence in the form of a letter contained in Article 187 of the Criminal Procedure Code according to

letters a, b and c which state that the letter is a perfect piece of evidence. This is because the visa is an authentic deed made officially in accordance with the provisions of the procedure established by law. Used as evidence in the trial, the letter does not have binding evidentiary power [18]; (2) Visum et repertum as evidence that cannot be used without being supported by other evidence, therefore visum et repertum is referred to as evidence that does not stand alone. The presence of a visum et repertum in the case of the criminal act of Marital Rape as a corpus delicti or a substitute for evidence that must be in accordance with other evidence such as testimony from victim witnesses. This is in accordance with the minimum principle of proof contained in Article 183 of the Criminal Procedure Code and also Article 55 of the PKDRT Law [19].

Based on the description above, the value of the strength of evidence for the visum et repertum which is used as evidence for the Marital Rape crime has an absolute strength of proof if there is a conformity with other evidence submitted, namely evidence of witness testimony.

The Basis for The Judge's Consideration in Imposing a Crime Against the Perpetrator of the Marital Rape Crime Based on The Evidence of Visum et Repertum and Other Evidence

### Juridical Considerations

Juridical considerations are defined as judges' considerations based on the facts revealed at the trial and by law stipulated as matters that must be included in the judge's decision. In deciding a case and considering whether or not the defendant is eligible for a sentence, it is based on the judge's belief, not only based on the available evidence [17]:

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**Table 1. Juridical Considerations on Marital Rape's Criminal Conviction**

No Verdict	Indictment	Evidence	
		Witness Statement	Letter
Decision Number 899 of 2014 Denpasar District Court	The first alternative charge violates Article 46 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence	<ul style="list-style-type: none"> <li>- Witness Sri Damayanti In essence explained that the perpetrator of the victim refused to have sex because at that time the victim was in an unwell condition with shortness of breath and heart disease. The witness also explained that the perpetrator had previously been reported with the same matter but the perpetrator promised not to repeat it.</li> <li>- Witness Novianti explained that she found the victim completely naked lying on the floor in front of the bedroom door, and the position of the</li> </ul>	<p>Visum et repertum letter number E.19/ryER/550/2014 made by dr. Ida Bagus Putu Alit, Sp.F, DFM at Sanglah Central General Hospital on October 12, 2014.</p> <p>The results of the post-mortem examination found that:</p> <ol style="list-style-type: none"> <li>1) On the lower right chest, five centimeters from the front midline, thirty centimeters below the crest of the right shoulder there is a red-purple bruise, measuring ten centimeters by five centimeters;</li> <li>2) At the junction between the big lips and the small lips of the genitals, there are blisters at five,</li> </ol>

		<p>defendant was on top of the victim's body sucking the victim's breast.</p> <ul style="list-style-type: none"> <li>- Witness Pak Rawan explained that the witness saw the victim in a state of helplessness on the floor in front of the victim's bedroom door with the defendant's position on top of the victim.</li> </ul>	<p>six, and seven o'clock.</p> <p>3) The conclusion from the post-mortem examination was that the female victim, aged approximately fifty-seven years, had bruises and abrasions due to blunt force that did not cause disease or impediment in carrying out her work or occupation. Blisters at the meeting of the big lips of the back of the pubic due to blunt penetration. Swelling of the heart and pulmonary congestion are abnormalities that occur because violence occurs.</p>
Decision Number 126 of 2015 PN Purbalingga	Alternative Charges The indictment that is considered proven is the first alternative charge of violating Article 46 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence.	<ul style="list-style-type: none"> <li>- Witness K Binti S, in his testimony explained that while the witness was taking a bath, suddenly the defendant entered and then strangled the victim's neck with his left hand after which he put his left hand into the witness' mouth while his right hand was moved inside the witness' vagina, as a result of the defendant's actions. The witness experienced bleeding in the victim's vagina. The witness also explained that prior to the incident, the defendant had entered the bathroom twice to ask him to have sex but the defendant had denied the witness 3 times, therefore the witness did not want to serve him. Another fact that was revealed based on the witness's testimony was that the defendant had left the witness for 13 months to Jakarta without saying goodbye.</li> <li>- Witness S Binti S in his testimony explained that when the witness was getting ready to perform the tied prayer, suddenly the witness heard a scream from witness K Binti S in the bathroom, then the witness went to the bathroom and found that witness K Binti S sitting on your back with a bloody vagina</li> <li>- Witness Hadriyanto bin Hadi Kuswoyo in his testimony basically explained that when he heard screams from the victim, witness K bint S, the</li> </ul>	<p>visum et repertum Number B-6/231/VER/RSUHIP/VII/2015 prepared and signed by dr. Farida Rahmi Ramadhani</p> <p>The conclusion from the post-mortem examination is:</p> <ol style="list-style-type: none"> <li>1) There is a wound on the lower lip, reddish in color with a wound size of approximately one centimeter</li> <li>2) There is bleeding in the vagina, bleeding may come from a wound on the left side of the vaginal wall. The type of wound is a torn wound with a size of stau times one centimeter.</li> </ol>

		<p>witness then went to his house and found witness K bint S sitting on his back with his vagina bleeding profusely.</p> <ul style="list-style-type: none"> <li>- Witness Ilyatul Laiyin bint Ilyas in his statement basically explained that the witness came to provide help at the request of witness Siti Aminah, and found witness K bint S in the bathroom naked sitting on his back with a cloth that covered his body with a vaginal discharge. blood then the witness suggested that witness K binti s be taken to the hospital</li> </ul>	
<p>Decision Number 150 of 2017 Bangkalan District Court</p>	<p>Single indictment, namely Article 46 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence</p>	<ul style="list-style-type: none"> <li>- Witness Ainiyah in her testimony basically explained that the witness was told by Mrs. Tisa that the victim's witness named Mutimmah was treated unpleasantly by her husband, namely the defendant put eggplant into his genitals until his stomach was in pain.</li> <li>- Witness Syaiful Alam, in his testimony which basically explained that the witness was informed by Mrs. Tisa that the victim witness named Mutimmah was treated unpleasantly by her husband, namely the defendant by inserting eggplant into his genitals until his stomach was in pain.</li> <li>- Witness Mutimmah, who is deaf, was given the assistance of an interpreter named Syaiful Huda, in essence the victim's witness explained that the victim witness received unpleasant actions from the defendant who is her husband, namely the defendant inserted eggplant into the victim's intimate organ until the victim felt pain. The chronology explained by the victim's witness is that that night he was at the defendant's house and the door was closed by the defendant then he was pushed to his back, and his clothes were removed, then his hands</li> </ul>	<p>Visum et Repertum No. 358/407/433,208/2017 Syarifah Ambami Rato ebu Bangkalan Hospital on 01 March 2017 drawn up and signed by dr. Muliadi Amanullah, SpOg</p> <p>The results of the conclusion of the visa examination are:</p> <ol style="list-style-type: none"> <li>1. Currently found a woman with a woman's blood membranes who have had sex with a negative pregnancy test with vaginal wet preparations, no sperm cells were found</li> <li>2. There are signs of violence in the intercourse hole</li> </ol>

		were tied then the defendant pointed his genitals into the victim's mouth but the victim did not want to. Then the defendant put the eggplant into the victim's witness' genitals.	
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Referring to the legal facts revealed above, there are variations of the charges used by the Public Prosecutor, namely alternative charges and single charges. Doubts that arise, of course, felt by the

Public Prosecutor in dealing with the Marital Rape criminal case. As revealed in the legal facts above, that the defendant's actions are always preceded by physical violence, so it is very natural for the Public Prosecutor to use alternative charges. It is different from the decision number 150/Pid.Sus/2017 PN Bkl where the Public Prosecutor uses a single charge against the defendant. The author sees that the use of a single indictment by the Public Prosecutor because the defendant's actions were carried out in unusual ways, namely by forcing the victim to insert his genitals into the victim's mouth after rejection by the victim, there was physical violence committed by the defendant. The crime of marital rape is a complaint offense according to Article 53 of the PKDRT Law. Complaint offenses are defined as being divided into two, namely absolute complaint offenses and absolute complaint offenses. The absolute complaint offense has the characteristic that the complaint is not limited to a few people, but is also addressed to those who committed the crime. Meanwhile, a relative complaint offense is an offense whose complaint is made by the victim [20].

The article that is proven is Article 46 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The proven elements are:

a. Everyone's Element

The element of each person in question is anyone who is a legal subject as a supporter of rights and obligations for which his actions can be held accountable according to criminal science and the purpose of including the element of each person in this article is also to avoid mistakes about people who are submitted to trial (error in persona). This element can be proven based on the testimony of the witnesses presented.

b. Committing sexual violence Article 8 letter (a) The definition of sexual violence as referred to in Article 8 letter (a) includes: coercion of sexual intercourse carried out against people who live within the scope of the household.

This element can be proven based on statements from witnesses who explained that this sexual

violence occurred because the defendant forced to have sexual intercourse and was supported by evidence of visum et repertum which acted as corpus delicti.

Based on the existing legal facts, the writer finds that, to prove whether sexual violence occurs in marriage, this refers to all forms of sexual activity that can be in the form of assault. Assault in this case is defined as an act that causes injury or physical injury to the victim. If we look at the results of the post-mortem which are revealed in the legal facts above, then the physical injuries obtained by the victim are in the form of wounds on the lips, shoulders and breasts in this case indicating that the defendant was attacked beforehand so that his desire to have sexual intercourse can be fulfilled. So that this form of attack then proves that it is true that there is coercion to have sexual relations between the perpetrator and the victim, so the Marital Rape element is fulfilled.

In accordance with Article 183 of the Criminal Procedure Code which states that a judge may not impose a sentence on a person unless at least valid evidence, he gains the belief that a criminal act has actually occurred and if the defendant is guilty of committing it. Two valid pieces of evidence aim to build the judge's confidence in considering all decisions that will be made. Legal evidence is in the form of witness statements, expert statements, letters, instructions, and statements from the defendant. Article 184 of the Criminal Procedure Code).

So in this case the judge sentenced him by using two pieces of evidence, namely the statements of the witnesses, and the documentary evidence in the form of visum et repertum. So the author concludes that the judge has considered the visum et repertum in deciding the case based on the correspondence between the witness statements, and the conclusions of the visum et repertum so as to provide guidance to the judge in making a decision.

### Sociological Considerations

Sociological considerations are also commonly referred to as non-juridical considerations. According to M. Solly Lubis, sociological considerations reflect the demands or needs of the community which require settlement as a means to ensure benefits [21].



As for the things that are the judge's sociological considerations in the decision on the Marital Rape

Crime, namely:

**Table 2. Sociological Considerations in the Decision on the Marital Crime of Rape**

<b>Verdict Number</b>	<b>Incriminating Things</b>	<b>Mitigating Things</b>
Verdict No. 899 of 2014 PN Denpasar	<ul style="list-style-type: none"> <li>- the defendant's actions have hurt and injured the victim's witness Siti Fatimah who is the wife of the accused</li> <li>- the defendant did not feel guilty of his actions</li> </ul>	<ul style="list-style-type: none"> <li>- The defendant has never been convicted</li> <li>- elderly defendant</li> </ul>
Verdict No. 126 of 2015 PN Purbalingga	<ul style="list-style-type: none"> <li>- The defendant's actions have resulted in his wife K BINTI S sustaining her divagina wounds</li> </ul>	<ul style="list-style-type: none"> <li>- The defendant admitted frankly his actions so as not to complicate the course of the trial</li> <li>- The defendant was courteous at trial</li> <li>- There has been peace between the victims and the families of the victims</li> </ul>
Verdict No. 150 of 2017 PN Bangkalan	<ul style="list-style-type: none"> <li>- The defendant as a husband should have provided protection to the wife, but instead hurt her</li> </ul>	<ul style="list-style-type: none"> <li>- The defendant has never been convicted</li> <li>- The defendant behaved politely and frankly admitted his deeds</li> <li>- The defendant felt remorse and promised not to do his deeds again</li> </ul>

Referring to the three decisions, the author argues, an important thing that must be considered by the judge sociologically is the emergence of a sense of remorse by the defendant, but in fact of the three decisions there is only one decision which states that there is a sense of remorse from the defendant as stated in decision number 150 /Pid.Sus/2017/PNBkl. This means that the defendant of the Marital Rape crime whose status as a husband considers that the act of sexual violence committed against his wife is not a crime but a normal thing that occurs in a marriage. However, the consequences of the defendant's actions caused psychological injuries to the victim in the form of trauma, discomfort, stress and so on [22].

The application of criminal sanctions given by the judge when referring to the three decisions, the author finds that there is a disparity in sentencing. This can be seen from the three existing decisions, the Judge in Decision Number 899/Pid.Sus/2014/PN Dps imposed a prison sentence of 5 months, this decision is a decision that provides the lowest application of criminal sanctions compared to other decisions, even though when viewed from aggravating and mitigating matters, the defendant in the decision does not admit and does not regret his actions. Of

course this is inversely proportional to the decision number 150/Pid.Sus/2017/PNBkl which in mitigating matters stated that the defendant regretted his actions but the application of the sanctions given by the judge was even greater, namely 1 year in prison. Meanwhile, the sentence given to the defendant in decision number 150/Pid.Sus/2017/PNBkl is 7 months in prison even though in the existing legal facts it is known that there has been peace between the defendant and the victim.

Harkristuti Harkisnowo mentions criminal disparity as a universal issue, this is often found in various criminal justice systems. Sentencing disparities will be encountered when comparing the imposition of criminal sanctions between one Judge's decision and another's decision [23].

The ideal decision according to H. A. Mukti Arto in his book is a decision that can see and resolve a case holistically, in this case unanimously and completely as a form of totality, both quantitatively, qualitatively, and comprehensively, both from a theoretical point of view and from a practical point of view [24]. If interpreted in its entirety, then theoretically the decision can be justified. Meanwhile, practically, the decision has reached the expected target.

Based on this view, it can be understood that a court decision should consider all broader aspects. So that the decision is not only a jurisprudence, but also beneficial for the community. Both in terms of law enforcement, legal certainty and justice.

The purpose of the sentence imposed by the Panel of Judges adheres to the relative sentencing objective, namely that sentencing is not a means of revenge but the essence of sentencing is to educate and foster the accused to become better before returning to society. It's just that the author sees that the purpose of punishment that should be applied to perpetrators of criminal acts of marital rape is the purpose of combined punishment, also known as integrative punishment. This sentencing objective is known as a combination of absolute and relative sentencing purposes. This combined theory prioritizes protection and the rule of law in that it provides justice for victims of crime in order to protect their rights and to provide a deterrent effect so that they do not repeat their actions [25]. Retaliation against the perpetrator for the criminal act of marital rape as a retaliation for his actions that did not carry out what was mandated to him to protect his wife as stated in Article 34 of Law Number 1 of 1974 which reads that "The husband is obliged to protect his wife and provide all the necessities of life. married according to his ability. In addition, in the case of marital rape, not all perpetrators admit and regret their actions, therefore it is necessary to provide education, guidance and counseling to improve the thinking of the perpetrators that the action is a crime so that when the perpetrator returns to the community it will provide a sense of security, and peaceful not to repeat his actions, especially for his own family.

Referring to the explanation above, the writer is of the opinion that the judge in giving the application of criminal sanctions to the defendant did not pay attention to all existing aspects such as the repetition of the actions committed by the defendant in the decision number 899/Pid.Sus/2014/PN DPs. The judge in the decision did not make it a criminal offense. Likewise, the Judge in the three decisions did not pay attention to the psychological wounds that were deeply felt by the victim. So according to the author, the application of criminal sanctions imposed by the judge to the defendant does not provide a sense of justice to the victim. The suffering felt by the victim should receive special attention, because the impact is also so broad. The effects of the Marital Rape are [26]; (1) Physical suffering felt by the wife; (2) The onset of the inner suffering felt by the Wife; (3) Feeling alien from society, for assuming that her husband's actions resulted from his guilt; (4) Gives rise to

protracted conflicts that often end in divorce [5]. Because of the frequent harsh treatment from the husband, thus encouraging the wife to rebel and oppose which can cause great trouble and end up in divorce.

## Conclusion

Visum et repertum presented as evidence in the Marital Rape criminal case is used to make it easier to investigate in fulfilling the minimum principle of proof in criminal law so that detention can be made to the perpetrator. Visum et repertum used as evidence for letters in marital rape crimes have absolute evidentiary power value if there is a conformity with other evidence, namely witness testimony evidence.

Juridical considerations used by the Judge in deciding criminal cases of forced sexual relations in marriage based on the testimony of witnesses, and letters of visum et repertum, which have an attachment between one evidence and another. Meanwhile, in his sociological considerations, the judge has not paid attention to all aspects that exist such as the repetition of the acts committed by the defendant.

## References

- [1] Catatan Tahunan (CATAHU) Komnas Perempuan. (2012). Perempuan dalam Himpitan Pandemi; Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, dan Keterbatasan Penanganan di tengah Covid-19.
- [2] M. Syukri Akub dan Sutiawati. (2018). *Keadilan Restoratif (Restoratif Justice) Perkembangan, Program Serta Prakteknya di Indonesia dan Beberapa Negara*. Yogyakarta: Linerta.
- [3] Samsudin, T. (2010). Marital Rape Sebagai Pelanggaran Hak Asasi Manusia. *Al-Ulum*, 10(2), 339-354.
- [4] Raka, I. G. A. I., & Resen, M. G. S. K. (2020). Urgensi Pengaturan Kriminalisasi Marital Rape Dalam Ruu KuHP Indonesia. *Kertha Wicara: Journal Ilmu Hukum*, 9(4), 1-12.
- [5] Marliah, M. (2007). *Marital Rape; Kekerasan Seksual terhadap Istri*. Pustaka Pesantren.
- [6] Sunarto. (2006). *Televisi, Kekerasan, dan Perempuan*. Yogyakarta: Media Pustaka.
- [7] Undang-undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga.

- [8] Penjelasan Pasal 55 Undang-undang Republik Indonesia tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [9] Undang-Undang Republik Indonesia Nomor 8 tahun 1981 tentang Hukum Acara Pidana.
- [10] Purwoleksono, D. E. (2019). *Hukum Acara Pidana*. Airlangga University Press.
- [11] Waluyo, B. (2020). *Penyelesaian Perkara Pidana*. Sinar Grafika.
- [12] Singh, S. K. A., Nasution, I. S., & Hayati, L. (2015). Angka Kejadian Korban Kecelakaan Lalu Lintas Berdasarkan Hasil Pemeriksaan Luar Visum Et Repertum di RSUP Dr. Mohammad Hoesin Palembang Tahun 2011-2013. *Majalah Kedokteran Sriwijaya*, 47(2), 105-109.
- [13] Williams, A. C., & Barry, B. W. (2012). Penetration enhancers. *Advanced drug delivery reviews*, 64, 128-137.
- [14] Universitas islam Indonesia, *Perlindungan Hukum Korban Kekerasan dan Pelecehan Seksual Minim*, Sumber: <https://www.uui.ac.id/perlindungan-hukum-korban-kekerasan-dan-pelecehan-seksual-minim/>.
- [15] Putusan Negeri Denpasar Nomor 899 tahun 2014
- [16] Putusan Pengadilan Negeri Purbalingga Nomor 126 tahun 2015.
- [17] Putusan Negeri Bangkalan Nomor 150 tahun 2017.
- [18] Kusmira, N. P. (2016). Kekuatan Pembuktian Dan Penilaian Alat Bukti Visum Et Repertum Dalam Tindak Pidana Persetubuhan Terhadap Anak. *Verstek*, 4(3).
- [19] Eddy, O. S. (2012). Hiariej, Teori dan Hukum Pembuktian. *Erlangga, Jakarta*.
- [20] Amir Ilyas, Haeranah, dkk. (2012). *Asas-asas Hukum Pidana*, Yogyakarta: Rangkang Education
- [21] Undang-undang Republik Indonesia Nomor 23 tahun 2004, *Penghapusan kekerasan Dalam Rumah Tangga*, Sinar Grafika, Jakarta, 2014, hal. 17.
- [22] Lubis, M. S. (1989). *Landasan dan Teknik Perundang-Undangan*. Mandar Maju.
- [23] Purbararas, E. D. (2018). Problema Traumatik: Kekerasan Seksual Pada Remaja. *IJTIMAIYA: Journal of Social Science Teaching*, 2(1).
- [24] Abdurrachman, H., Nugraha, R. A., & Majestya, N. (2020). *Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim dalam Tindak Pidana Korupsi*. Deepublish.
- [25] Adil Kasim, Muhammad Said Karim, dkk. (2022). *Peradilan Pidana Anak Yang Berkonflik Dengan Hukum di Indonesia Telaah Kritis Terhadap Undang-Undang Sistem Peradilan Pidana Anak*. Bandung: Mujahid Perss
- [26] Bennice, J. A., & Resick, P. A. (2003). Marital rape: History, research, and practice. *Trauma, Violence, & Abuse*, 4(3), 228-246.