



## **The Evidentiary Role of *Visum Et Repertum* As *Qarīnah* in Child Rape Cases Under Aceh's Jinayah Law**

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### **Abstract**

*A person cannot be proven to have committed rape if one of the conditions of proof is not met. This paper aims to reveal the confusion over the non-fulfilment of a primary charge filed by the Public Prosecutor against the defendant in decision No. 17/JN/2016/MS.Mbo at the Meulaboh Syar'iyah Court, and what the scope and proof must certainly be met. This research uses a qualitative method with a type of case study research. Based on the results of this study, it shows interesting facts where a judge rejected the primary charges of the public prosecutor because the evidence could not support the defendant had committed jarimah (offenses against the law) rape. The evidence is in addition to the testimony of witnesses who did not directly see the incident as well as written reports in the form of visum et repertum results in Islamic criminal law referred to as qarīnah. In this paper, it will be discovered that the post-mortem or qarīnah is part of the judge's ijtihad (effort), and its existence has been recognized by sharia.*

**Keywords:** *child rape; visum et repertum; qarīnah; proof.*

### **Abstrak**

Tidak bisa terbuktinya seseorang telah melakukan perkosaan ialah apabila salah satu dari syarat pada pembuktian tidak terpenuhi. Tulisan ini tak lain bertujuan untuk mengungkapkan kebingungan atas tidak terpenuhinya suatu dakwaan primer yang diajukan Penuntut Umum terhadap terdakwa pada putusan Nomor 17/JN/2016/MS.Mbo di Pengadilan Mahkamah Syar'iyah Meulaboh, dan apa saja cakupannya serta pembuktian yang tentunya harus terpenuhi. Penelitian ini menggunakan metode kualitatif dengan jenis penelitian studi kasus (*case studies*). Berdasarkan hasil penelitian ini menunjukkan fakta menarik di mana seorang Hakim menolak dakwaan primer dari Jaksa Penuntut Umum dikarenakan alat bukti yang tidak bisa mendukung terdakwa telah melakukan jarimah perkosaan. Alat bukti tersebut selain keterangan para saksi yang tidak melihat secara langsung kejadian juga laporan tertulis berupa hasil visum et repertum dalam hukum pidana Islam disebut sebagai qarīnah. Pada tulisan ini akan ditemukan kajian bahwa visum atau qarīnah merupakan bagian dari wujud ijtihad Hakim, oleh syariah sudah diakui eksistensinya.

**Kata Kunci:** *perkosaan anak; visum et repertum; qarīnah; pembuktian.*

### **Intoduction**

The act of rape clearly violates moral, ethical and immoral values and even the rules of life. The act becomes so frightening and threatens the order that exists in society. The act of rape in Indonesia has been juridically

regulated based on written rules in the Criminal Code Article 285 with a maximum imprisonment of 12 years. Meanwhile, the crime of rape against children is not regulated in the Criminal Code, but is included in the Child Protection Law, precisely in Article 81 paragraph (7) of the 2016 Child Protection Law. The law shows that the Law on Child Protection is different from the sanctions in the Criminal Code, which in the Child Protection Law is more severe; a maximum imprisonment of 15 years against the perpetrator of child rape (Inrianto, 2016).

For Indonesian citizens, exactly the people of Nanggroe Aceh Darussalam (NAD) Province which organizes special autonomy based on Law Number 44 of 1999 covering of 4 (four) fields; Islamic shari'a, *adat* (custom), education and the role of *ulama* (scholars) in the government structure (Zaki, 2016). Mostly highlighted in the field of Islamic law, one of which is the establishment of Aceh Regional Regulations (Perda) or called Qanun which discusses criminal law (*jinayat*), each of which is regulated materially and formally. Materially, it is contained in Qanun Aceh Number 6 of 2014 concerning *Jinayat Law* and formally regulated in Qanun Aceh Number 7 of 2013 concerning *Jinayat Procedure*. There are at least 10 prohibited acts (*jarimah*) in the Aceh Qanun. These are *khalwat* (close proximity), *zina* (adultery), *qadzaf* (accusing adultery), *liwath* (homosexual), lesbian, *ikhtilat* (gender intermingling), sexual harassment, rape, gambling and *maisir* (speculation).

Based on the description above, the act of rape against children is also highlighted in the Aceh Qanun, which is regulated in Article 50 of Aceh Qanun Number 6 of 2014 concerning *Jinayat Law*. According to Qanun Aceh, an act can be said to be a *jarimah* (offenses against the law) of rape against a child if there is reporting and strong enough evidence to prove that the act is an act of rape. Launching data from InfoPublik, there were 155 cases of sexual violence and rape against children that occurred in Aceh Besar District from January to August 2022. So why there are still so many cases of sexual violence against children in Aceh Province in particular, even though it has implemented Qanun Aceh with penalties that are not only imprisonment but also flogging.

A few cases charged with rape lead to the Judge's decision to be sexual harassment only (Halim & Firmansyah, 2024). It is not without reason, based on the Judge's consideration that he acquitted the defendant from the main charge (rape) because there were no witnesses who saw directly. Here it can be seen that the regulatory focus is only on the perpetrator and does not provide rights to the victim, by annulling the rights of the child because there are no witnesses who saw directly (Wodon, 2015). However, based on the Aceh Qanun, the judge is also obliged to follow, explore and interpret the legal values and sense of justice that exist in the life of the community. It is necessary to explore further about a case

that the Judge faces, because it is the mastermind of a case to arrive at the desired justice together for both the defendant and the victim. The judge's decision is also an illustration of the attitude of responsibility, reasoning, morality and how the judge actually carries out his duties and functions (Erick & Rizal, 2021).

In 2016, the Meulaboh Syar'iyah Court decided a case with a primary charge of rape of a child into a secondary charge with a final verdict of sexual harassment of a child. Regarding Syafrudin's sexual harassment, as quoted by Mulia, sexual harassment is nothing but part of sexual violence (Mulia, 2018). Departing from that, if the author concludes that sexual harassment is part of the dominant sexual violence that occurs with victims mostly women and children. Indeed, there is not much difference between rape and harassment, both of which lack the will of the victim and the element of coercion. There is one difference that stands out and that is used by the judge to categorize whether it is an act of rape or harassment, which lies in the act of inserting the defendant's genitals into the victim. Of course, with proof that is not easy either.

In case Number 17/JN/2016/MS.Mbo, the judge considered that there were insufficient witnesses and evidence. Meanwhile, in the same case and still in the same area of sharia law, in case Number 4/JN/2021/MS.Cag (Directory of Decisions of the Supreme Court of the Republic of Indonesia Stipulation of Supreme Court Number, "4/JN/2021/MS.Cag," 2021). The judge reached a final decision that the defendant was guilty and was still sentenced on the primary charge that the public prosecutor had charged. Because in the case of the decision there was strong evidence even though there were no witnesses who directly saw the incident and the defendant also admitted that he had committed the crime of rape of a child. The evidence that will be the focus of analysis in this paper is in the form of *visum et repertum* evidence, which in this decision cannot be proven (Siadari et al., 2016). What is the cause and what are the reasons for the evidence in the form of a post mortem that cannot be accounted for. Of course it will not be separated from the consideration of the judge.

A *visum et repertum* which is the result of an examination and written report from a forensic department will have several consequences when used in proving a case. The existence of a *visum et repertum* as evidence must also be proven first. It does not mean that it is a weight against the defendant, but it can be the opposite when the post mortem is not proven, it will also have an impact on the course of a case. Through the *visum et repertum*, it can also be clearly concluded whether there has been a criminal act on a person, because through the results of the post mortem it will provide guidance to the Judge on the reality of the facts of several evidences of all the circumstances as stated in the statement so that the Judge can make the right decision based on reality and facts (Siadari & Rochaeti, 2016).

Islamic Criminal Law, which positions the *visum et repertum* as a *qarīnah* (clue), although it is used as evidence, it does not mean that *qarīnah* is always accepted as evidence. Sometimes, even though *qarīnah* is considered as strong evidence, but if it turns out that there is ambiguity in it, then the evidence in the *qarīnah* evidence cannot be accepted, so that it can cause the dismissal of charges against someone. This is similar to the position of the *visum et repertum* in case No 17/JN/2016/MS.Mbo, where the result of the forensic report could not explain clearly in such a way that an act of rape had occurred against the victim. This caused the defendant to be acquitted from the primary charges of the Public Prosecutor (Sundari & Retnowati, 2021).

A judge's rejection of a primary charge in decision 17/JN/2016/MS.Mbo must have prepared considerations involving evidence and witness testimony. So that the Judge can decide what article is violated and how the defendant should be treated according to his actions. Looking at Errick's previous research (2021) entitled "Consideration of Judges in Imposing Uqubat Against Jarimah Sexual Harassment" he concluded that the Judge in determining a decision considers complaints, evidence, evidence, the law that is used as an indictment and the good factor for the defendant. Given that the true punishment of *ta'zir* is educational in nature (Erick & Rizal, 2021).

So far, the study of a case of rape against a child with various charges filed by the Public Prosecutor and the execution of a decision by the Judge whether the primary charges are actually proven or otherwise has never been studied. The reasons for how the primary charges can be fulfilled and the causes of the primary charges not being proven, which of course cannot be separated from various aspects of the elements, have also never been found in previous research on this matter. Therefore, through this paper, the author will focus on decision 17/JN/2016/MS.Mbo and examine the causes of the non-fulfilment of the elements of evidence used in the proof so that the judge decides on the secondary charges.

## Research Method

The method that the author uses in this research is a qualitative method with a type of case study research. This research method contains a concise explanation of how the Judge's consideration in the case of rape of a child and how an act can be said to be a *jarimah* of rape against a child and how important the involvement of witnesses and evidence is in Decision Number 17/JN/2016/MS.Mbo, this research also uses a type of research that is juridical normative by using a statutory approach with conceptual approach as a source of reference data using literature.

Data collection is carried out by looking at various sources such as books, journals, articles and other scientific writings related to the reasons why the Judge did not grant the Prosecutor's *primair indictment* and how important the *visum et repertum* evidence is in being one of the evidence used by the Judge as a guide to solving the case at hand, so that the author in this study can get various accurate information. Then the author also complements it by comparing the case of the analysed decision with the same case in different decisions and the results of different Judges' decisions, so that this writing will provide a clear view of why a *primair indictment* cannot be granted.

The source of data used is the decision of the Meulaboh Shari'iyah Court Number 17/JN/2016/MS.Mbo and the decision of the Calang Shari'iyah Court Number 4/JN/2021/MS.Cag. as well as Aceh Regional Regulations (Perda); Aceh Qanun Number 7 of 2014 concerning *jinayat* (Islamic criminal law) law and Aceh Qanun Number 6 of 2013 concerning *jinayat* procedural law by classifying and categorizing *jarimah* sexual crimes against children. Although the focal point of this research gives little definition of rape and sexual abuse of children according to *jinayah*, it also gives space to the Judge's consideration and the role of evidence in proving the case at the Meulaboh Syar'iyah Court.

## Results and Discussion

### Categorization of Sexual Crimes against Children According to Qanun Jinayat

Although Islamic criminal law does not provide an explanation of the specific definition of sexual crimes in the Qur'an or sunnah, several fiqh scholars have explained and provided a definition of one of the categorizations of sexual crimes, *jarimah* rape from an Islamic point of view. According to Sayid Sabiq quoted by Fitri Wahyuni, it is explained that rape is sexual intercourse by force (Wahyuni, 2016). Forcing someone to do with his power and efforts, sometimes even coercing using physical violence (Luczak, 2018). It can be concluded that rape is an act of sexual violence by forcing someone who does not want to commit adultery, under pressure from someone who invites him or who wants to rape him.

Referring to the Qanun Jinayat regulation, not all actions that lead to sexuality crimes against children can be categorized as acts of rape. There are several conditions that must meet if an act can be said to be a *jarimah* rape against a child. Some of the conditions include a complaint offense, sufficient evidence and witnesses to prove an indictment. The offense of complaint based on Article 52 of the Qanun of Jinayat Law is not a reporting due to the imposition of obligations in including preliminary evidence and requests for follow-up to a case by the victim, whereas in the case of

reporting the victim only reports it, there is no intention for further action from the authorities (Siah & Nursiti, 2017). Meanwhile, the complaint offense is carried out to request the authorities to follow up based on the applicable law against someone who is considered to have committed a criminal act.

Then in the context of proving *jarimah* rape according to the Aceh Jinayat Procedure Law based on Article 181 paragraph (1) Qanun Acara jinayat, proof must consist of elements that must be complete starting from witness testimony, expert testimony, letters, evidence, electronic evidence, confessions of the defendant and the defendant's testimony (Imran, 2020). Of the several elements of evidence, witness testimony is the most important evidence, followed by expert testimony which is usually made by experts in the form of reports in the form of letters or *visum et repertum*. If some of the elements of proof cannot be proven, it can result in a defendant escaping some of the charges and some are even completely released from *uqubah* (punishment) responsibility. There are several things that the judge must consider. Especially in cases of rape with evidence that is so complicated. Because in Islamic Criminal law there is one principle; it is better to release someone who is guilty, rather than punishing someone who is innocent (Prabasini, 2021).

Before looking at the evidentiary process in Decision No. 17/JN/2016/MS.Mbo the author will first outline some of the facts from the decision, that in this case there were no witnesses who saw directly, there was no strong evidence in the form of post mortem results and the defendant did not know that he had committed the act of raping a child as charged in the primary indictment. Based on the facts revealed during the trial, the judge made several legal conclusions that the defendant was acquitted from the primary charge of the public prosecutor that he had committed rape against a child, and convicted the defendant on the secondary charge of sexual abuse of a child. Based on the author's analysis, if there is insufficient evidence, the defendant can be acquitted of the charges (Funda Gümüş, Mesude Duman, 2024). Considering that the defendant in the child rape case at the Meulaboh Syar'iyah Court did not admit to having committed the *jarimah* rape and had taken an oath.

This is a reference for the Judge in considering the *uqubah* decision later, because the Judge is ordered to decide the case for people who have evidence that leads to honesty, both as the accuser and the accused, because the oath according to Qanun Jinayat is as an evidence for the accused and is very important in a case settlement (Siah & Nursiti, 2017). In addition to the confession and oath of the defendant, the judge rejected the primary charges of the Public Prosecutor; the letter or expert report, the *visum et repertum*, which could not explain clearly that rape had occurred against the victim because there were no specific signs of injury to the victim's genitals.

It should be noted that the Judge's consideration by looking at the evidentiary process is a way for the Judge to categorize and place a *jarimah* in its place. Then how a person's actions later deserve to be punished with a specific article. Based on the juridical basis that refers to Article 180 of Aceh Qanun Number 7 of 2013 regulates the Jinayat Procedure Law that "Judges are prohibited from imposing *uqubat* on a person, before the Judge gets a conviction of at least 2 (two) valid evidence, which shows that a *jarimah* has occurred and the person is guilty of committing it, except for the *jarimah zina*".

### **Judges' Legal Considerations in Decision Number: 17/JN/2016/MS.MBO**

Referring to the Regional Regulation (Perda) of Aceh Province has authorized the establishment of the Syar'iyah Court as a judicial body with the aim of upholding and implementing Islamic sharia. Of course, in order to be the organizer of special autonomy and a form of privilege to live in Islamic sharia. According to Laica Marzuki, which the author quotes from the journal with the title "The Authority of Shari'at Aceh Province in Relation to the existing Judicial System in Indonesia". The Islamic Shari'a Court of Aceh Province is a special court within the scope of Religious Courts conducted by a Syar'iyah Court, by taking care of cases that are still under the authority of religious courts, as well as being a special court in the general court as long as it still concerns the authority of the general court (Yusrizal, 1945). Based on this, it is appropriate when the Syar'iyah Court Judge makes a decision on the case he faces must always be full of caution and must go through several considerations to reach the true justice that is desired together.

Especially when dealing with rape cases, it is clear that the judge must obtain at least two clear and valid pieces of evidence to prove that someone has committed the crime (Rochaeti et al., 2023). When the judge does not obtain the truth through evidence, it could be that someone can be released from the trap of *uqubah*. In contrast to the evidentiary system in rape cases that belong into the category of *jarimah hirabah* (violent crime), the proof is not equated with *jarimah zina* but the standard used is the standard of proof of *jarimah hirabah* itself (Khasan, 2021). Discussing about child rape must certainly go through proof, the Public Prosecutor must also prove the charges brought against the defendant. Basically, an indictment can also be null and void if it does not meet the material and formal requirements of an indictment, namely if it cannot contain a careful and clear description of the criminal act that a person has committed. If there is not enough evidence then a person must be free from accusations. So based on this, the judge must consider through evidence and must present and show the evidence either from the accuser, if he cannot present it then the

accused takes an oath that he did not do this, then according to Islamic law the person is freed from the accusation directed at him (Savitri, 2020).

Looking at the description of the facts and evidence in Decision Number 17/JN/2016/MS.Mbo, indeed the Judge has rejected the primary charge of the Public Prosecutor with the charge of committing rape against a child. It is not without reason, because based on proof that at least the Judge must find at least two valid pieces of evidence; in this case the Judge used consideration through the results of the *visum et repertum* which according to him these results could not show in reality that rape had occurred, according to the author's analysis, the Judge was of the opinion that the results of the *visum* in this case could not be accounted for. It should be noted that the existence of a post mortem is very important to support the Judge's consideration to obtain objective truth. When the *visum et repertum* is used as evidence, it is very unlikely to be fabricated, therefore to resolve a case related to injury, health or consequences that occur to the body due to a criminal offense, the *visum et repertum* should indeed be the basis for the judge's consideration in dealing with a case (Guidea, 2013).

The benefits of using *visum et repertum* as evidence in the crime of rape are first, it becomes an important instrument with a position as evidence, although in the reality of evidence in the trial of rape cases *visum et repertum* is only limited to complementing and instructing the judge (Putri & Rustamaji, 2024). Second, in the case above, the consequences arose when the victim presented a *visum et repertum* which was unable to clearly illustrate that rape had occurred against the victim, balanced with the testimony given by the defendant through his sworn confession that the defendant had not committed the act, then the charges against the defendant could be dropped.

As the author has described above, it is clear that the position of the *visum et repertum* is very influential on the consideration of the judge's decision in the case of child rape, *visum et repertum* on immoral victims must be able to prove if there really was a rape case, at least from the results of the *visum* (forensic report) through examination there must be signs of intercourse on the victim's body such as the presence of sperm cells or seminal fluid, the condition of the vagina that is not intact and there are specific signs on the victim's body that rape has occurred to (Mahanantiyo, 2018). Based on this, it is one of the reasons and considerations of the Meulaboh Syar'iyah Court Judge that the defendant was not proven to have committed *jarimah* rape but only sexual harassment, this is because the position of the post mortem as evidence in this case cannot be accounted for.

The consequences of using evidence in the form of a *visum et repertum* in decision No. 17/JN/2016/MS.Mbo when the results of the *visum* could not prove that a case of rape had occurred against the victim, then based on

the Judge's consideration the charges in the form of rape by the victim against the defendant were declared void, because according to the Judge the *visum et repertum* evidence did not pass in the evidentiary process. This resulted in the defendant being acquitted from the primary charges of the Public Prosecutor. So with the decision that the defendant was only proven to have committed sexual harassment, the role of the *visum et repertum* is very objective when used as one of the evidence in the world of Islamic criminal law (Alnuaimi & Alkrisheh, 2024).

### **The Position of *Visum et Repertum* in the Decision of Meulaboh Syar'iyah Court in the Perspective of Islamic Criminal Law**

The evidentiary stage is one of the most important stages in the trial. The Public Prosecution must be able to prove something that is alleged to the defendant. The evidentiary system in Indonesian criminal procedure law adheres to the principle of due process of law, or the minimum principle of proof. This principle serves to assess whether or not a piece of evidence is used to prove someone has done wrong or not. Article 183 of the Criminal Procedure Code explains that the judge may not impose a sentence on a person unless at least two valid evidences are obtained that a criminal offense has actually occurred and that the defendant has committed the guilty act (Savitri, 2020).

The position of the *visum et repertum* in the trial examination depends on the evidentiary system itself adopted by the applicable criminal legislation and applied. The negative evidentiary system is not very supportive of the *visum et repertum* which is used as one of the evidence that finds an enlightenment or will reveal a criminal act. So that the *visum et repertum* is only a clue to the existence of an act of rape which basically according to the material rules of truth needs to be proven by the judge in the examination during the trial (Putri & Rustamaji, 2024). Therefore, it is not necessarily the case that if the victim presents a post mortem, it does not mean that it is an aggravating factor for the defendant, because it is clear that the position of the *visum et repertum* is only limited to instructions for the judge to impose the *uqubah* for the defendant.

Evidence in Islamic criminal law is commonly referred to as *al-bayyinah*, which means explaining. Based on his opinion from Ibn Qayyim al-Jauziah in his book *al-Thuruq al-Hukmiyah* quoted by the journal with the title "criminal evidence system for adultery in the view of positive law and Islamic law", it is explained that *al-bayyinah* is anything that can reveal and explain something (Siregar, 2020). In other terms, *al-bayyinah* is also used to explain and reveal the truth. *Al-bayyinah* itself in the view of Islamic criminal law which is seen as evidence is divided into several categories,

such as *Iqrar* (confession), *Shahadah* (witness), *Al-Qasamah* (oath), *Qari nah* (visible indication).

The position of the *visum et repertum* in Islamic criminal law is the same as the term *qari nah* (indication), as evidence that is used as a reference or evidence with indications that can reveal a clue. In other words, *visum et repertum* is an actualization of *ijtihad* from a judge to decide a case by leading to justice and real truth, so solving a case through consideration of *visum et repertum* evidence is allowed by sharia because it is part of the manifestation of Islamic sharia (Lestari, Diah Ayu, Aris, 2022). Indeed, the instructions in a criminal case such as rape of a child that is lacking in evidence, *visum et repertum* is needed even though its role is only as a clue, but through this way the judge can draw a conclusion.

*Qari nah* as evidence in Islamic criminal law is understood as a sign or things that have a close relationship to an event or incident, so that it can provide a logical consequence in the form of clues. With these clues, a limit of confidence can be reached to decide an event or (Saepullah et al., 2016). It can also be concluded that *qari nah* has two elements: first, there is a situation that is clear and can be known properly to be used as a basis or guide, and second, there is a relationship that shows that there is a connection between a very clear situation and the opposite (vague).

The role of the *qari nah* has existed since the time of the Prophet, which today with the development of technology is referred to as *visum et repertum*. The role of the *qari nah* as well as the results of the post-mortem in Islam itself is considered to have a very important role, because basically the *visum et repertum* is a complementary evidence and becomes the basis of the judge's verdict (Salenda, 2021). It can be said that the *visum et repertum* will find the light of a case, determine the direction of the investigation, and as a substitute for other evidence. So the position and existence of the *visum et repertum* in Islamic Criminal Law has indeed been recognized and even applied in the judicial process. Fiqh scholars are of the opinion that in a case, the victim must present evidence in front of the panel of judges to support the charges, and a judge can also ask for evidence from the victim so that the judge can examine and determine the law fairly through evidence that is used as a guide so that it creates confidence in the judge. If an indictment is not accompanied by evidence that can be used as a clue, it can be said that the claims of the victim cannot be accepted. Therefore, the *visum et repertum* as a *qari nah* must be able to guide the judge in deciding a case (Anastasia, 2017).

The case of decision No. 17/JN/2016/MS.Mbo which at the time of proof one of the evidence used a *visum et repertum* is very clear if the judge makes considerations through evidence, so as to find the final result in the case. Through the post mortem, the judge can also perform *ijtihad* as based on the provisions in Islamic sharia. The post-mortem, which is actually

equated with *qarī nah*, is a type of evidence that the judge can use as an evidentiary reference so that it can lead to the judge's belief in the truth of whether a person has committed a criminal offense or release a person from punishment because it is indicated that he is not proven guilty of committing a criminal offense (Guidea, 2013).

### **The Existence of *Visum et Repertum* as Evidence in the Decision of the Meulaboh Syar'iyah Court Number: 17/JN/2016/MS.**

Indeed, the process of proof in Islamic criminal law is very essential, where all doubts in finding the truth will be proven in the process. Because the evidentiary process is where there is an effort to prove everything that has been charged by the Public Prosecutor to the defendant, whether what is alleged by the Public Prosecutor is true or vice versa, so that in this evidentiary process it will be expected to obtain the fairest truth possible (Nuriskandar, 2021). Because in Islamic Criminal Law has the principle that it is better to free the guilty person than to punish an innocent person.

The process of proving a case, in the investigation there are several ways to reveal it, for example by using evidence such as *visum et repertum*, which is actually the result of a written official report issued by an expert doctor. It can also be said that a *visum et repertum* is a written report issued by a forensic expert based on oath, regarding what has been found and what is seen from the evidence of a living person, corpse, or physical body which will then be examined which is certainly based on the best knowledge (Lestari, Diah Ayu, Aris, 2022). The *visum et repertum* will be an additional piece of evidence to convict the defendant or to acquit the defendant from an *uqubah*.

*Visum et repertum* is one of several valid evidence used by judges in rape cases as a consideration for the imposition of verdicts. Because in the rape *jarimah*, it will be difficult to prove even though it has conducted a complete examination and collection of data. Rape case is a case that when it has occurred and is true, there must be an immediate complaint so that the relevant parties can quickly process and find strong enough evidence. Because when the rape prejudice can no longer be proven, it is awkward and cannot be said to be a rape (Imran, 2020). Through the *visum et repertum*, conclusions will be drawn as a substitute for all evidence in the event of a criminal offense. It can be said that the *visum et repertum* here has an important role as a substitute for evidence and material for the judge's consideration.

Based on the results of interviews conducted by Ilmi Setya with Judges who have handled cases of rape against children, it turns out that when the Judge encounters evidence which can change, it will also lose its evidentiary nature and when the physical condition of the victim is not

found to have signs of an act of rape, the Judge will clearly decide the case based on the facts that have been disclosed in order to find the complete material truth in a case (Widodo, 2010). It is not uncommon for the handling of rape cases to be very complicated. For example, the author will analyze one case with the same charges, but the final verdict given by the judge was different.

Seeing the results of the post mortem in decision No. 17/JN/2016/MS.Mbo which was used through the *visum et repertum* No. 017/VER/RSUD-NR/2016 issued by the Nagan Raya Regional Hospital, the victim's genitalia based on the genital examination on the vaginal lips found redness on the skin which is suspected to have occurred as a result of forced rape. The post mortem results described in court did not provide a clear picture that the victim had indeed been raped. This is because there were no specific signs on the victim's body (Duan & Zhang, 2024), especially her genitals, that serious injuries were found. With this it can be said that the results of the *visum et repertum* fail to be a substitute for other evidence and through the proof of the results of the post mortem the judge can acquit the defendant from a charge or indictment. In contrast to the results of the post mortem Number 445/065/IV/RS/2021 dated April 10, 2021 signed by a doctor at Teuku Umara Hospital, which in Decision Number 4/JN/2021/MS.Cag clearly states that based on the post mortem, the facts can be found in the form of abrasions on the parineum and the hymen is no longer intact.

The results of the evidence on the *visum et repertum* of the Meulaboh Syar'iyah Court Judge have concluded that the *visum* does not have a strong existence to prove the case is a *jarimah* rape, because it is not certain that the reddish colour on the victim's vaginal lips is the result of an act of rape. This is also the reason why the judge rejected the primary charges of the public prosecutor. Post mortem evidence does play an important role in the imposition of punishment, but the judge must also be objective and impartial between the defendant and the victim in order to seek justice between the two. Indeed, in proving a case there is no evidence other than the belief of a judge, in other words, the judge's belief determines a decision and what a person will be punished for (Guidea, 2013).

## Conclusion

The decision of the Meulaboh Syar'iyah Number: 17/JN/2016/MS.MBO shows that the main charge against the defendant, rape of a child, could not be proven. Finally, he judge determined that the case was a *jarimah* of sexual harassment against a child. The judge's consideration from a juridical point of view did not prove that the defendant committed the crime of rape because the evidence used could not

prove that an act of rape had occurred on the victim. Indeed, in the crime of rape there must be at least two valid pieces of evidence to prove that a crime has been committed and occurred. The lack of proof of a rape *jarimah* against the child in the *jarimah* is related to *the visum et repertum*. Based on the *jinayat* perspective, *visum* type evidence is commonly referred to as *qarī nāh* which functions as a guide for the judge to decide a case. Based on the result of the author's genitals that rape has occurred to her, so that the *visum* cannot provide justification that the defendant has committed *jarimah* rape. The position of the *visum et repertum* as evidence can be considered flawed, because a defendant through the consideration of the Judge can be freed from the primary charges of the Public Prosecutor.

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