

Application of Legal Considerations for Judges with Visum Et Repertum Evidence in the Criminal Act of Preplanned Murder Analysis of Decision Number 1100/Pid.B/2024/Pn Mdn

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Visum Et Repertum is a written report from a doctor (expert) made under oath, regarding what was seen and found on living evidence, corpses or physical or other evidence then carried out an examination based on the best knowledge. This study aims to analyze the regulation of the position of visum et repertum as evidence in criminal cases in Indonesia, and the application of legal considerations for judges with visum et repertum evidence in premeditated murder crimes. The research method used is normative juridical with a case and legislation approach and uses various secondary data such as regulations, legislation, court decisions, legal theory doctrines and can also be in the form of opinions of scholars and analyzed qualitatively. The results of the study conclude that the regulation of the position of visum et repertum as evidence in criminal cases in Indonesia is not explicitly regulated in the Criminal Procedure Code. However, in Staatsblad 1937 Number 350 in article 1 it is stated that visum et repertum is a written statement made by a doctor under oath or promise about what is seen on the object being examined which has the power of evidence in criminal cases referring to article 184 paragraph (1) point c of the Criminal Procedure Code regarding written evidence. The application of legal considerations for judges with visum et repertum evidence in the crime of premeditated murder in decision Number 1100 / Pid.B / 2024 / PN Mdn, has applied legal considerations with visum et repertum evidence that has been issued by the Department of Forensic Medicine and Medicolegal Sciences, Bhayangkara Hospital TK II Medan Number: 19 / III / 2024 / RS. Bhayangkara dated March 24, 2024. The conclusion of the study confirms that judges in their decisions prioritize facts in court that are in accordance with the values of justice, certainty, and legal benefits.

Keywords: Evidence, Premeditated Murder, Judge's Considerations, Visum Et Repertum

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1. Introduction

Indonesia is a state based on law (rechstaat), not a state based on power (machtstaat), as stipulated in the 1945 Constitution, which affirms that the Republic of Indonesia is a state based on law. A state based on law and justice for its citizens. A good state is one governed by a constitution and the rule of law[1]. Article 340 of the Criminal Code states that: "Anyone who intentionally and with prior planning takes the life of another person, is threatened with premeditated murder (moord), with the death penalty or life imprisonment or for a certain period of time, a maximum of twenty years." Premeditated murder is intended by the legislators as a special form of murder that is aggravating, the formulation of which can be "murder carried out with prior planning is punished as premeditated murder" [2]. The examination of a criminal case in a judicial process is essentially aimed at finding the material truth (materiële waarheid) regarding the case. This can be seen from the various efforts made by law enforcement officers in obtaining the evidence needed to uncover a case both at the preliminary examination stage such as investigation and prosecution and at the trial stage, for example the use of visum et repertum evidence. Visum et Repertum is made based

on Article 133 of the Criminal Procedure Code, which states that "In the case of an investigator for the benefit of justice handling a victim whether injured, poisoned, or dead suspected of being due to an event that constitutes an act, he is authorized to submit a request for expert information to a forensic medicine expert or doctor and/or other expert." [3] Visum et Repertum is a written statement made by a doctor at the written request (official) of an investigator regarding a medical examination of a human being, whether alive or dead, or part of the human body, in the form of findings and interpretations, under oath and for the benefit of the court or a written report from a doctor (expert) based on an oath, regarding what was seen and found on living evidence, corpses or physical evidence or other evidence, then an examination was carried out based on the best possible knowledge. One of them is the application of visum et repertum evidence in the crime of premeditated murder in Decision Number 1100 / Pid.B / 2024 / PN Mdn, namely based on Article 184 paragraph (1) letter c of the Criminal Procedure Code, because the visum is authentic evidence made by a doctor, and also has a fairly large role in helping the judge to prove the truth of the elements of the article that are considered to have been violated by the defendant and plays a role in showing the facts of the evidence for all circumstances.

Decision Number 1100 / Pid.B / 2024 / PN Mdn has sentenced the defendant Anwar Tarigan to 12 years in prison because it was legally and convincingly proven that he committed the crime of premeditated murder against Jemtaras Tarigan as in the first alternative indictment of the Public Prosecutor with the judge's consideration of the laboratory results of the Visum Et Repertum evidence from the Department of Forensic Medicine and Medicolegal Sciences, Bhayangkara Hospital TK II Medan Number: 19 / III / 2024 / RS. Bhayangkara dated March 24, 2024, it was proven that the death of the victim Jemtaras Tarigan was due to heavy bleeding in the chest cavity in the heart sac due to a sharp object stab wound to the chest that penetrated the lower lungs and heart so that the victim died. From the decision of the panel of judges, it is clear that the position of the visum et repertum as a valid evidence in the trial.

2. Literature Review and Problem Statement

A judge is a judicial organ that is considered to understand the law, on whose shoulders the obligation and responsibility have been placed to ensure that the law and justice are upheld, whether based on written or unwritten law (judging a case submitted on the pretext that the law is unclear or unclear), and there must not be anything that contradicts the principles and foundations of the judiciary [4]. Legal considerations are defined as a stage in which the panel of judges considers the facts revealed during the trial, starting from the indictment, demands, and exceptions from the defendant, which are connected to evidence that meets formal and material requirements, which are presented in the evidence and plea. The legal considerations also include articles of the legal regulations that are used as the basis for the decision [5].

Evidence is any act, where the evidence can be used as proof to give the judge confidence in the truth of a criminal act that has been committed by the defendant [6]. Visum et Repertum is a written statement made by a doctor at the written request (official) of an investigator regarding a medical examination of a human being, whether alive or dead, or part of the human body, in the form of findings and interpretations, under oath and for the benefit of the court or a written report from a doctor (expert) based on an oath, regarding what was seen and found on living evidence, corpses or physical or other evidence, then an examination was carried out based on the best possible knowledge. Visum et Repertum is made on the basis of Article 133 of the Criminal Procedure Code, which states that "In the case of an investigator for the benefit of the court handling a victim, whether injured, poisoned, or dead, suspected of being due to an event that constitutes an act, he is authorized to submit a request for expert information to a forensic medical expert or doctor and/or other expert" [3].

3. Method

This study uses a qualitative research approach, a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. Qualitative research involves the researcher as a key instrument in collecting and interpreting data. Data collection tools typically include direct observation, interviews, and document studies[7]. The type of research used in this thesis research is the normative juridical research method. According to Soerjono Soekanto and Sri Mamudji, normative legal research or library research includes five objects, namely: research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, research on comparative law, and research on legal history. Normative juridical research is research conducted that examines law based on primary legal materials by examining theories, concepts, legal principles and statutory regulations. Normative legal research is conducted through library studies to obtain legal principles and systematics of statutory regulations related to the problem. Normative legal research functions to provide competent juridical arguments in a legal issue, namely when there is a normative vacuum, normative ambiguity or normative conflict.

4. Results and Discussion

Regulation of the Status of *Visum Et Repertum* as Evidence in Criminal Cases in Indonesia

The crime of murder is any act committed intentionally to eliminate or take the life of another person which is done in an unlawful manner. The Criminal Code (KUHP) criminal provisions regarding crimes directed against the life of another person are regulated in book II chapter XIX, which consists of 13 articles, namely Articles 338 to 350. The form of the crime of taking the life of another person can be intentional (*dolus*) and unintentional (*alpa*). Intentional (*dolus*) is an act that can occur with or without planning in advance.

The crime of premeditated murder is regulated in Article 340 of the Criminal Code which states "Anyone who intentionally and with prior planning takes the life of another person, is threatened with premeditated murder, with the death penalty or life imprisonment or imprisonment for a certain period of time of up to twenty years." The elements of premeditated murder according to Article 340 of the Criminal Code are as follows:

1. Subjective element, namely it was done intentionally and planned in advance.
2. Objective element, namely taking another person's life.

The examination of a criminal case in a judicial process essentially aims to determine the material truth (*materiële waarheid*) regarding the case. One of the most important aspects of formal criminal law, or better known as "criminal procedural law," is the law of evidence, which plays a crucial role in the criminal procedural process. Therefore, in criminal procedural law, the search for material truth (*materiële waarheid*) requires the active participation of the judge. This is certainly different from the civil procedural process, which emphasizes formal truth (*formele waarheid*) and the judge's passive nature. Therefore, the judge in a civil case is only bound by the events presented by the disputing parties (*secundam iudicare*).

Visum Et Repertum sees and *Repertum* means to report, meaning what is seen and found, so that *Visum Et Repertum* is a written report from a doctor (expert) made based on an oath, regarding what is seen and found on living evidence, corpses or physical or other evidence then carried out an examination based on the best knowledge. *Visum Et Repertum* is made by a doctor according to what is seen and found in the examination of evidence, based on a medical oath, and based on his knowledge. Efforts made to find the material truth of a criminal case are intended to avoid errors in sentencing a person, this is as stipulated in Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, that the court, due to valid evidence according to law, has the conviction that a person who is considered responsible is guilty[8].

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Given the aforementioned legal provisions, in the process of resolving criminal cases, law enforcement officers are required to gather as much evidence and facts as possible regarding the criminal case being handled. In their efforts to obtain the necessary evidence for the purposes of examining a criminal case, law enforcement officers are often faced with certain problems or matters that cannot be resolved alone because the problem is beyond their capabilities or expertise[9].

Visum et Repertum is a term known in Forensic Medicine, usually known as visum. Visum comes from Latin, the singular form is visa. Viewed from the etymological or grammatical meaning, the word visum or visa means a sign of seeing or seeing which means signing of evidence about everything that is found, approved, and authorized, while Repertum means reporting which means what has been obtained from the doctor's examination of the victim. Etymologically, Visum et Repertum is what is seen and found. Meanwhile, according to Subekti and Tjitrosudibio, Visum Et Repertum is a doctor's statement containing the conclusion of an examination that has been carried out, for example on a person's corpse to determine the cause of death and so on, which information is needed by the judge in a case.

The Visum et Repertum must include information provided by the doctor to the investigator, so that the investigator can carry out his/her duties, namely clarifying a criminal case. In this case, the information or clarification that must be provided by the doctor, not only to the judge but also to the investigator, is:

1. Determine the victim's identity
2. Estimate the time of death
3. Determine the cause of death
4. Determine or estimate the manner of death

In addition to the provisions of the Staatsblad (State Gazette) of 1937 Number 350 concerning the legislation governing the Visum et Repertum which is the legal basis for the position of the visum et revertum as written evidence, namely Article 184 paragraph (1) point c of the Criminal Procedure Code concerning written evidence and Article 187 point c which states that: "The letter as referred to in Article 184 paragraph (1) point c, made on oath of office or carried out with an oath, is a statement from an expert containing an opinion based on expertise regarding a situation officially requested from him, Thus, based on the legal understanding of the visum et revertum given by the Staatsblad of 1937 Number 350, the two articles of the Criminal Procedure Code have provided the position of the visum et revertum as written evidence in the examination of criminal cases. The making of a visum et repertum is required for several criminal acts involving human victims, both alive and dead, and objects suspected of being part of the human body.

Article 184 of the Criminal Procedure Code (KUHP) states that there are 5 (five) pieces of evidence in criminal cases, namely:

1. Witness Statements;
2. Expert Statements;
3. Letters;
4. Instructions;
5. Defendant's Statements

The post-mortem examination (Visum et Repertum) plays a role in the process of proving a criminal case involving human health and life. The post-mortem examination describes all the results of the medical examination as stated in the report, which can therefore be considered evidence. The post-mortem examination also contains the doctor's statement or opinion regarding the results of the medical examination, which is stated in the conclusion. Thus, the post-mortem examination has completely bridged medical science with legal science. By reading the post- mortem examination, it can be clearly understood

what has happened to a person, and legal practitioners can apply legal norms to criminal cases involving the human body/soul.

The main task of a doctor in assisting in the investigation of crimes against human health and life is to make a visum et repertum so that his work must be objective by collecting facts and connecting them logically to each other to then draw conclusions. Therefore, when giving a report on the visum et repertum, it must be as truthful and objective as possible about what was seen and found during the examination. Thus, the visum et repertum is a written testimony[11].

Visum et repertum as a substitute for the events that occurred and must be able to completely replace the evidence that has been examined by containing all the facts so that finally a correct conclusion can be drawn. In addition, the visum et repertum may also be used as a document by which other doctors can be asked about the evidence that has been examined if the person concerned (prosecutor, judge) does not agree with the results of the examination, then the visum et repertum is an important thing in proof because it completely replaces the Corpus Delicti (Evidence). As is known in a criminal case involving the destruction of the body and health and destroying human life, the victim's body is the Corpus Delicti. Therefore, such Corpus Delicti cannot be provided or submitted at the court hearing and must absolutely be replaced by the Visum et repertum.

Article 184 paragraph (1) letter c of the Criminal Procedure Code states that one form of valid evidence is a letter. The written evidence as regulated in Article 187 of the Criminal Procedure Code, which reads: "A letter as referred to in Article 184 paragraph (1) C, made under oath of office or strengthened by oath, is:

1. Official minutes and other letters prepared by an authorized public official or prepared in his presence, containing information about events or circumstances heard, seen, or experienced, accompanied by clear and firm reasons for the statement.
2. Letters prepared in accordance with statutory provisions or letters prepared by officials regarding matters within the administrative procedures under their responsibility and intended to provide evidence of a matter or situation.
3. A statement from an expert containing an opinion based on their expertise regarding a matter or situation officially requested from them.
4. Other letters that are only valid if they are related to the contents of other evidentiary instruments.

Visum et repertum is included in the category of written evidence as regulated in Article 187 letter c of the Criminal Procedure Code, because Visum et repertum is a letter made by an expert (in this case a doctor) and made under oath of office based on the provisions of laws and regulations explaining his opinion based on his expertise regarding a situation officially requested of him. Visum et repertum can be considered valid and accepted as written evidence if issued by an authorized official and Visum et repertum is not made/published for other purposes, only made so that a criminal case becomes clear and is only useful for examination and for justice and is intended for the interests of justice.

The position of a doctor in handling a victim of premeditated murder by issuing a visum et repertum should be recognized and its neutrality guaranteed, because the assistance of the medical profession will greatly determine the truth. If the visum et repertum cannot clarify the issue in court, the judge can request expert testimony or submit new material as stated in the Criminal Procedure Code which provides the possibility of conducting an examination. Reviewed from Staatsblad 1937 Number 350 which provides the definition of Visum et repertum, then as evidence Visum et repertum is included in written evidence because the statement made by the doctor is stated in written form. In addition, in Article 184 paragraph (1) letter c of the Criminal Procedure Code regarding written evidence and Article 187 letter which states that the letter as referred to in Article 184 paragraph (1) letter c, made under oath of office or strengthened by oath, is: a

statement from an expert containing an opinion based on his expertise regarding something or a condition officially requested from him. From the explanation above, *Visum et repertum* can be interpreted as expert testimony or as a letter.

Based on the decision of the Medan District Court Number 1100 / Pid.B / 2024 / PN Mdn which has sentenced the defendant Anwar Tarigan to prison due to the defendant's actions in committing premeditated murder against the victim Jemtaras Tarigan accompanied by evidence of the results of the *Visum Et Repertum* of the Bhayangkara Hospital TK II Medan Number: 19 / III / 2024 / RS. Bhayangkara dated March 24, 2024 against the victim Jemtaras Tarigan which was carried out truthfully in accordance with the oath of office by Dr. H. Mistar Ritonga M.Hkes, Sp.F (K) as the examining doctor, during the examination it was found:

1. External examination revealed stab wounds on the right chest, right waist, cuts on the right lower arm, right upper leg, abrasions on the right upper arm, right lower arm, left knee, left lower leg, and the back of the foot.
2. Internal examination revealed blood seepage on the right chest, stab wounds on the right chest between the fifth and sixth ribs, and blood and blood clots in the chest cavity and heart sac.

From the results of external and internal examinations it was concluded:

1. The estimated time of death of the victim is twelve to twenty-four hours from the time of the examination;
2. The victim's death was unnatural;
3. The cause of death was asphyxiation due to extensive bleeding in the chest cavity within the heart sac due to a sharp object stab wound to the chest that penetrated the lower lung and heart. As a result of the defendant's actions, the victim, Jemtaras Tarigan, died.

Based on the results of the post-mortem examination, the author concludes that the results of the post-mortem examination of the Medan District Court decision Number 1100/Pid.B/2024/PN Mdn are evidence in the form of a letter made by a doctor and stated in written form and under oath of office.

Application of Legal Considerations for Judges Using *Visum Et Repertum* Evidence in Premeditated Murder Crimes

Based on the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), it regulates the system or theory of proof applied in Indonesia, namely by using the negative proof theory (negative wettelijk bewijstheorie) as in Article 183 of the Criminal Procedure Code. As in the power of proof regulated by Article 183 of the Criminal Procedure Code, which reads: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it."

Legal considerations are defined as a stage in which the panel of judges considers the facts revealed during the trial, starting from the indictment, demands, and exceptions from the defendant, which are connected to evidence that meets formal and material requirements, which are presented in the evidence and plea. The legal considerations also include articles of the legal regulations that are used as the basis for the decision.

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not careful, good, and careful, then the judge's decision derived from the judge's consideration will be annulled by the High Court/Supreme Court.

Judges in examining a case also require evidence, the results of which will be used as considerations in deciding the case. Evidence is the most crucial stage in a trial. Evidence aims to establish certainty that a presented event or fact actually occurred, in order to obtain a correct and fair verdict. A judge cannot render a verdict until it is clear to him that the event or fact actually occurred, that is, its truth has been proven, so that a legal relationship between the parties is evident.

A good judge's judgment is one that is based on the legal system and takes into account the value of justice. Justice is an essential value that must be present in the legal system of justice. Justice is the goal of all petitions filed by plaintiffs in court. They come to court with their disputes only to be decided who has and does not have the right to their disputes. Justice is the essence of law, bestowed by God Almighty, that every action must be based on justice[12].

In theory, a judge must be able to make a decision with three important considerations, namely from the aspects of justice (*gerechtigheit*), certainty (*rechsecherheit*), and benefit (*zwachmatigheit*). [13] The panel of judges in seeking the truth to be found in a criminal case, the truth must be found and realized in the examination of the criminal case is the true truth. Based on the basic provisions of Article 183 of the Criminal Procedure Code, there is an intention that in imposing a sentence on a defendant, the judge may only do so if the defendant's guilt has been proven by at least two valid pieces of evidence.

According to Rusli Muhammad, a judge's considerations can be divided into two categories: legal considerations and non-legal considerations. Legal considerations are those based on legal facts revealed during the trial and stipulated by law as matters that must be included in the decision, for example, the public prosecutor's indictment, criminal charges, the defendant's testimony, witness testimony, evidence, and articles in criminal law regulations. Non-legal considerations, on the other hand, can be seen from the background, the consequences of the defendant's actions, the defendant's condition, and the defendant's religion..

Most criminal cases require a post-mortem examination (*Visum et Repertum*). This can be used as a consideration by the judge in deciding a case. This is because, in criminal cases where the evidence is an inanimate object such as a sharp weapon, wood, firearm, and so on that is used by the perpetrator to commit a crime, goods resulting from theft, robbery or robbery, narcotics, counterfeit money, smuggled goods and others, can generally be submitted before the court as evidence. In the case of premeditated murder, the *Visum et Repertum* can clarify and explain in court only what happened in the *corpus delicti* such as the time of the incident, the possible location of the incident, and the *modus operandi* that was allegedly carried out by the perpetrator.

The *Visum et Repertum* serves as a vital source of information for the judge and is a vital piece of evidence, as it contains clues that can help the judge distinguish whether the murder committed by the defendant was a premeditated murder or a murder that was premeditated. One of the clues the *Visum et Repertum* can provide and be used by the judge is the signs of death or the cause of death.

Judges in handing down decisions against perpetrators of premeditated murder vary greatly. This is because judges look at it from the perspective of someone committing a premeditated murder crime as well as the strong evidence presented in court. The decision of the panel of judges Number 1100 / Pid.B / 2024 / PN Mdn sentenced the defendant Anwar Tarigan to 12 (twelve) years in prison. The consideration of the panel of judges in decision Number 1100 / Pid.B / 2024 / PN Mdn was that the Defendant had been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, by paying attention to the legal facts above, directly chose the first alternative charge as regulated in Article 340 of the Criminal Code: "Anyone who intentionally and with prior planning takes the life of another person, is threatened because

of premeditated murder, with the death penalty or life imprisonment or for a certain period, a maximum of twenty years." whose elements are as follows:

1. The element of "whoever"

Considering that what is meant by the element "Whoever" refers to anyone, every person as a legal subject who with all his/her identity is brought before the court by the public prosecutor because he/she is suspected of having committed the crime charged against him/her, in this case the person is none other than the defendant Anwar Tarigan, so that this element has been fulfilled;

2. The element "intentionally and with prior planning";

Considering that this second element is cumulative, however, the Tribunal will only focus its consideration on the "pre-planned" element, because each of these elements must necessarily also contain the "intentional" element, or in other words, if the "pre-planned" element has been proven, then *mutatis mutandis* the "intentional" element is also fulfilled.

3. The element "Eliminating other people's souls";

Considering that according to the facts described in the seventh point based on the results of the *Visum Et Repertum* from the Department of Forensic Medicine and Medicolegal Sciences, Bhayangkara Hospital TK II Medan Number: 19/III/2024/RS. Bhayangkara dated March 24, 2024, it is proven that the death of the victim Jemtaras Tarigan was due to heavy bleeding in the chest cavity in the heart sac due to a sharp object stab wound to the chest that penetrated the lower lungs and heart; Considering that as has been considered in the second element above, it is proven that the Defendant has stabbed the victim Jemtaras Tarigan right in the chest, so that the *a quo* wound in the opinion of the Panel is a result of the Defendant's actions;

Considering that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

Aggravating circumstances:

1. The Defendant's actions resulted in the loss of a loved one to the family of victim Jemtaras Tarigan;
2. The Defendant's actions disturbed the community;

Mitigating circumstances;

1. The defendant was polite and forthright, facilitating the smooth running of the trial;
2. The defendant admitted his guilt, regretted his actions, and promised not to repeat the unlawful act;
3. The defendant has no prior criminal record;

Considering that after considering the aggravating and mitigating circumstances of the sentence imposed on the Defendant, the Panel is of the opinion that the sentence imposed on the Defendant as determined in the verdict below, is considered fair and appropriate as punishment for his mistake;

Considering that because the Defendant was sentenced to a criminal penalty, he must also be burdened with paying court costs; Taking into account Article 340 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

JUDGING:

1. Declaring the defendant Anwar Tarigan, mentioned above, legally and convincingly proven guilty of committing premeditated murder as stated in the first alternative charge;
2. Sentencing the defendant to 12 (twelve) years' imprisonment;
3. Determining that the period of arrest and detention already served by the defendant be deducted in full from the sentence imposed;
4. Determining that the defendant remain in detention;
5. Determining that the following evidence be presented:

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- a. 1 (one) silver-colored dagger blade with a sharp tip, approximately 28 (twenty-eight) centimeters long, with a wooden handle and a light brown wooden casing and 1 (one) blue Redmi A1 brand cellphone with the cellphone number 082267434315, damaged to the point of being unusable;
- b. 1 (one) faded black t-shirt with a picture and writing of an old man, 1 (one) pair of black long jeans, Giano brand, 1 (one) black t-shirt with the words Boss and 1 (one) pair of black shorts, destroyed;
- c. Charge the Defendant with paying court costs in the amount of Rp. 5,000.00 (five thousand Rupiah);

From the description of the judge's considerations above, the role of the visum et repertum issued by the Department of Forensic Medicine and Medicolegal Sciences, Bhayangkara Hospital TK II Medan Number: 19/III/2024/RS. Bhayangkara dated March 24, 2024, proved that the death of the victim Jemtaras Tarigan was due to heavy bleeding in the chest cavity in the heart sac due to a sharp object stab wound to the chest that penetrated the lower lungs and heart so that the victim Jemtaras Tarigan died. From the results of this visum et repertum, it can be used as evidence in court to provide confidence to the panel of judges so that the panel of judges is convinced that the elements of premeditated murder have been fulfilled.

Based on all legal considerations from the panel of judges in handing down a verdict in aggravating and mitigating matters and based on the theory of punishment which states that punishment is not a form of retribution but rather a form of guidance for the accused who has committed a mistake. The author concludes that in essence the judge must examine and understand the concrete facts in the trial and see the sense of justice for the accused, then the judge must be able to provide considerations in accordance with the sense of justice. The legal value and sense of justice of the judge are much more prioritized when compared to legal certainty.

5. Conclusion

The regulation of the position of visum et repertum as evidence in criminal cases in Indonesia is not explicitly regulated in the Criminal Procedure Code. However, in Staatsblad 1937 Number 350 in article 1 it is stated that visum et revertum is a written statement made by a doctor under oath or promise about what is seen on the object being examined which has the power of evidence in criminal cases. From this understanding, Article 184 paragraph (1) point c of the Criminal Procedure Code regarding written evidence and Article 187 point c states that: "The letter as referred to in Article 184 paragraph (1) point c, made under oath of office or carried out with an oath, is a statement from an expert containing an opinion based on expertise regarding a condition officially requested from him, Thus, based on the legal understanding of visum et revertum given by Staatsblad 1937 Number 350, the two articles of the Criminal Procedure Code have provided the position of visum et revertum as written evidence in the examination of criminal cases.

The application of legal considerations for judges with post mortem evidence in the crime of premeditated murder in decision Number 1100 / Pid.B / 2024 / PN Mdn, has applied legal considerations with post mortem evidence issued by the Department of Forensic Medicine and Medicolegal Sciences, Bhayangkara Hospital TK II Medan Number: 19 / III / 2024 / RS. Bhayangkara dated March 24, 2024, proved that the death of the victim Jemtaras Tarigan was due to heavy bleeding in the chest cavity in the heart sac due to a sharp object stab wound to the chest that penetrated the lower lungs and heart so that the victim Jemtaras Tarigan died. From the results of this post mortem can be used as evidence in court to provide confidence to the panel of judges so that the panel of judges is convinced that the elements of premeditated murder

committed by the defendant Anwar Tarigan were legally and convincingly proven to have committed the crime of premeditated murder with a prison sentence of 12 (twelve) years.

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