



Proof of Marital Status Not Recorded on Family Card

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Abstract:

The Family Card is an authentic deed whose evidentiary power is binding and perfect. The family card should be perfectly crafted, and there are no errors or doubts of the data in it. If there are changes in data should be immediately reported and corrected to the authorized agencies. Making family cards and birth certificates without attaching a marriage certificate citation according to the latest regulations has degraded the correctness of the data in the family card. In proving the status of marriage in the family card basically must still attach a marriage certificate citation because the marriage certificate quote is the only evidence that proves the validity of marriage for Muslims in Indonesia. Even if the manufacture of Family Card is allowed with a Statement Of Absolute Responsibility and 2 (two) witnesses, it should still be examined conditions harmoniously. There is no violation of the prohibition of marriage to prove the validity of the wedding because based on the fact of the marriage will bring up the name of the father in the column of parents of the child. The purpose of this study is so that policymakers and product users do not misinterpret or interpret the description "undocumented marriage" on the family card. The research methodology of this journal is a descriptive normative approach that is qualitatively analyzed based on research on legislation and books and periodicals on marriage and marriage recording.

Keywords: Family Card; Marriage; Proof.

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Introduction

A family Card is a family identity card that contains data about the name, arrangement, and relationships in the family and the identity of family members (Article 1 Chapter I of presidential Regulation No. 96 of 2016). Nowadays, the process of making Family Cards is made more accessible. If the manufacture of a Family Card in the past must attach a marriage certificate quote, then for a couple of men and women who are married but do not have a marriage certificate, currently can still make a family card. (Rizwan, 2016) If you used to make a Family Card must come to the office Population Service Office, but now family cards can be created and printed independently online. (Regulation of the Minister of Home Affairs No. 7 of 2019) Thanks to the sophistication of information technology, Family Cards that are already digitally formatted and electronically signed no longer need to be legalized to show the authenticity of family cards. (Regulation of the Minister of Home Affairs No. 104 of 2019).

Several material things in the family card require the correctness of the data, including name, address, arrangement and relationship in the family, marital status, and identity of family members. For the validity of the data, it takes the activeness of all parties in reporting the latest data (Presidential Regulation No. 96 of 2018). In writing, marriage status should also be clear between the quality of marriage, unmarried, or widower. Currently, there is a description of the marriage recorded in the family card, and the union has not been registered. Suppose a man or woman claims to be married but cannot show a marriage certificate, then in the latest format. In that case, the family card is written as "undocumented marriage" status. At the



same time, for people who can show their marriage certificate on the family card, the quality of "registered marriage" will be written. (Al Jarofi 2019, 302)

The marriage status is the most critical information in the family card because the family card is based on the marriage between a man and a woman. Inclusion of marital status will have implications for family relationships and some other legal consequences, such as husband and wife's rights and obligations, child origin, inheritance, and so on. (Ghafur, Fauzan; Kanggas, Fazari Zul Hasmi, Lahuri, Setiawan Bin. 2020, 219)

The main requirement to create a new family card is a marriage certificate citation or divorce certificate citation to prove the marital status of the family cardholder. (Article 11 Presidential Regulation No. 96 of 2018) The quotation of the Marriage Certificate serves to determine the level of marriage in the family card is recorded marriage, undocumented marriage, widower, widower, or unmarried. In other rules, residents who are married but do not have a marriage certificate/marriage certificate citation or divorce certificate citation can still make a family card with the condition of attaching a Statement of Absolute Responsibility and 2 (two) witnesses. (Article 79 presidential regulation No. 96 of 2018).

The family card includes an authentic deed that has binding and perfect evidentiary powers. (Harun, Ibrahim Ahmad 2013, 98). To make an original deed of proof-force binding and perfect, ideally made strictly especially concerning the validity of the marriage. Marriage is valid if it fulfills conditions, harmony, and no violation of the prohibition of marriage. (Basyir 2019, 25-36)



Problem Statement

The validity of marriage will affect the validity of the child in or as a result of the wedding so that the child has the right to include his father's name on the family card. The manufacture of a family card should still attach a marriage certificate citation because the marriage certificate quote is the only valid or invalid evidence to establish marriage (Article 7 Compilation of Islamic Law). With the issuance of Regulation of the Minister of Home Affairs and Presidential Regulation above, male and female couples can still make family cards and birth certificates by attaching a Statement of Absolute Responsibility and 2 (two) witnesses ¹ (Article 79 of Presidential Regulation 96 of 2018).

In addition to the proof in the manufacture of family cards, proof of family cards is also required in the trial at the Religious Court. The Family Card includes an authentic deed whose evidentiary power is binding and perfect in civil procedural law. In practice, it is sometimes revealed that the information on the family card is different from the confession of the family cardholder or the testimony of the witnesses in the trial that shows the facts. The owner of the family card sometimes admits to data errors, especially marital status in the authentic deed, so the Judge must be careful in punishing the quality of a marriage or family relationship in the family card.

¹ The witness in the Statement of Absolute Responsibility is the person who sees or knows the signing of the Statement of Absolute Responsibility.



Method

In Islam, marriage includes sacred acts of worship in which some conditions and pillars must be fulfilled. The validity of marriage should be the primary requirement in the manufacture of family cards. From such a valid marriage, it will result in a relationship in the family. A family Card is an authentic deed that should contain accurate data that there is no doubt in it. With the status of "undocumented marriage" on the family card of policy officials and the public, in general, should not misinterpret the information, both in the evidentiary process of making it and in the

proof when using the family card as a means of evidence in the trial, especially on marital status. To analyze the statement, the author conducts qualitative research with a descriptive normative approach sourced from the legislation and literature analysis in books and journals related to the creation of family cards and proof of marital status in the family card.

Discussion 1. Marriage according to Islamic Law and Positive Law in Indonesia

Marriage is an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family or home based on the One True God. (Article 1 of Law No. 1 of 1974) According to Islamic law, marriage aims to continue human history because legitimate and reasonable descendants must go through a valid marriage. (Muthiah 2017, 50) The purpose of marriage in the Compilation of Islamic Law is to realize a home life that is *sakinah*, *mawaddah*, and *rahmah*. According to



Islamic law, if you look at these understandings and objectives, marriage is an agreement for intercourse and to realize eternal happiness between husband and wife. (Syahuri 2015, 20) With marriage, there will be legal consequences, namely the rights and obligations as husband and wife. The validity of a marriage is principal because it is closely related to the effects of marriage, both concerning children and property. (Anshari 2015, 12)

Marriage is valid if it is done according to the law of each religion and its beliefs (Article 2 Paragraph 1 of Law No. 1 of 1974). The recording of marriage is the *ijtihad* of the scholars in the framework of *mashallah al mursalah*. (Millah 2019, 17) In marriage, some pillars and conditions are fulfilled. The posts and conditions of determining an act determine the validity of the law. The pillars of marriage in Islam are prospective brides and grooms, guardians of the bride who will marry, two witnesses, and *ijab qabul*. (Syarifudin 2014, 61) The complete legality of the terms and harmony of marriage has been explained in the Compilation of Islamic Law Article 14 to Article 29.

In addition to the four pillars of marriage above, there are some rules on the prohibition of women to marry as described in Surah an-Nisa Verses 22-24 as illustrated in Articles 39 to 44 of the KHI that also governs the prohibition of marriage, among the bans of marriage arranged, is a man is prohibited from marrying because of the *nasab* relationship, and one nursing, because women are still tied to other weddings, because of religious differences between the bride and groom and several different reasons.



2. Marriage Registration of Muslims in Indonesia

Every marriage performed by a Muslim person must be recorded according to the prevailing laws and regulations, namely under the supervision of the Registrar of Marriage. (Article 2 Paragraph 2 of Law No. 1 of 1974) While the recording of the marriage of those who carry out their wedding according to their religion and beliefs that are in addition to Islam, carried out by the Registrar of Marriage at the civil registry office. (Government Regulation No. 9 of 1975) The purpose of recording marriage is to ensure the order of marriage for the Islamic community. Every union of Muslims in Indonesia should be registered. The wedding recording is done by the Registrar of Marriage Officers (Article 5 Compilation of Islamic Law).

Marriage registration aims to provide certainty and legal protection for the parties which carry out the marriage. The recording of weddings by the Registrar of Marriage Officers will give the power of authentic evidence that has occurred a valid marriage. The parties can maintain the marriage to anyone before the law. (Witanto 2012) Not recording the wedding will cause harm to the wife, husband, and children born from the marriage, and ultimately damage outweighs the benefits. (Islami 217, 84)

Value Added Tax examines the completeness of the marriage's terms and pillars of validity to prove the marriage is valid or not. On the contrary, by not recording the wedding by Value Added Tax, the wedding held by the parties has no legal force. A valid marriage can only be proven by a Marriage Certificate made by the Registrar of Marriage Officers. (Article 6 Paragraph 2 and Article 7 Paragraph 1 Islamic law Compilation).



The existence of marriage records is an effort to prevent the occurrence of harm from undocumented marriages. Among the harms of undocumented marriages are that they have no legal power, and the interests of husbands and wives cannot be protected. They are unprotected, and they are unprotected. (Islami 217, 84-86) With undocumented marriage, women and children cannot claim their rights and their children's rights due to their mother's marriage, who has no legal force. In the event of legal problems, the legal problems of mother and child cannot be resolved at the court table because the marriage is not legal.

3. Proof of Marriage in The Making of Family Cards

A Family Card is a family identity card that contains data about the name, arrangement, and relationships in the family and the identity of family members. The Family Card is created after a couple, and a woman builds a family or builds a family. Suppose it refers to the requirements that must be attached in the manufacture of family cards. In that case, several conditions must be linked as described in Article 11 of Presidential Regulation No. 96 of 2018.²

Based on the above regulations, the legal norm in creating a new Family Card, the main requirement that must be present in the manufacture of a family card is a marriage certificate citation. The marriage certificate quote is authentic evidence that proves that a person is married. Ideally, it should be based on a marriage certificate citation to bring up the marital status on the Family Card. The quotation of a marriage certificate is an authentic deed issued by the Office of Religious Affairs. Its manufacture has been researched the terms and pillars of marriage and the absence



of violations of the prohibition of marriage. The recording of the union of a Muslim person must be under the supervision and carried out by a competent

² Article 11 Presidential Regulation of Indonesia number 96 of 2018, Issuance of new kk for Indonesian citizens must meet the requirements:

- a. marriage certificate/marriage certificate citation or divorce deed citation;
- b. certificate of transfer / certificate of transfer comes for residents who move within the territory of the Unitary State of the Republic of Indonesia;
- c. certificate of overseas transfer issued by the Population Service Office of District, City for Indonesian citizens who come from outside the territory of the Unitary State of the Republic of Indonesia because of the move;
- d. certificate of replacement of identity marks for vulnerable Residents of the Population Administration; and
- e. Excerpts of presidential decrees on citizenship and news of oath-making events or statements of pledge of allegiance for Indonesian citizens who were originally foreign nationals or excerpts of the Decree of the Minister who conducts government affairs in the field of law on changes in citizenship status.

marriage registrar. (Law No. 22 of 1946).

With Permendagri No. 9 of 2016, the public was given many conveniences in making birth certificate citations. Suppose children born to parents who do not have a marriage certificate cannot make a birth certificate citation in the past, then with the regulation. In that case, the public is given ease without attaching a marriage certificate citation, but it is enough only to connect Statement of Absolute Responsibility 2 (two) witnesses.

Based on Article 79 Paragraph 1-2 of Presidential Regulation No. 96 of 2018 also mentioned that the Family Card due to changes in data both marriage and divorce that have not been recorded before the presidential regulation above applies then the status of the husband and wife relationship in the family card can be



determined with the condition of attaching Statement Of Absolute Responsibility and two witnesses or in other words if the couple is married but does not have a marriage certificate citation then can connect Statement Of Absolute Responsibility and two witnesses and still can make a family card. Still, later, in the family card, a description of the marriage and divorce is not recorded.

Statement Of Absolute Responsibility and 2 (two) witnesses must make a family card intended so that married couples who do not have a marriage certificate quote give factual information and accurate. In the Statement of Absolute Responsibility footnote, there is a statement that if the concerned provide incorrect details or lies, they are ready to receive punishment, and documents published as a result of this statement become invalid. In this case, if the concerned gives incorrect information, then the sanction for the person who provides false information as contained in the footnotes of the marriage truth Statement Of Absolute Responsibility is threatened with a maximum of eight years criminal if done against the authentic deed. (Article 264 Paragraph 1 of the Penal Code).

Based on some of the above regulations and legal consequences, creating a family card and a birth certificate citation is based solely on the confession of a couple of men and women who are not yet clear whether or not their marital status is valid. Based on this fact, the family card cannot be used as a guideline for the actual marital status, let alone the creation of birth certificates and family cards in the Population Service Office carried out by administrative officers who do not necessarily have competence in ensuring the validity or absence of marriage. As a result, the marital status in this family card is not yet known for sure the position of the marriage is



valid or not, resulting in the mixing of valid and invalid marital status in the scope of the description "undocumented marriage" on the family card.

The family card containing this undocumented information in the child column can give rise to the father and mother's name when the child's name must be based on a valid marriage, not just from the existence of marriage alone. If it cannot show a good marriage, then the child's status is also invalid in bringing up the father's name so that it can only appear the mother's name in the description of the family card.

If this policy continues, the author provides a solution that undocumented marriage can be raised after fulfilling the validity of marriage that contains the conditions, harmony, and whether or not the violation of marriage is further recommended to convert in the Court of Religion. If the needs and pillars of marriage are not met, then force cannot make a family card. A family card can only be made based on a valid marriage, even if not recorded. Suppose the invalid marriage is still allowed to make a family card due to an unfulfilled validity checklist. In that case, the information that arises from the description of the family card is no longer "undocumented marriage" but "invalid marriage." It is intended to not mix the legal and invalid marital status in the description "undocumented marriage." In addition, it aims to build public awareness to keep the marriage record according to the prevailing laws and regulations. It is still encouraged to file a marriage license or renew their marriage at the Office of Religious Affairs for married couples who are not legally married. Do not cut the rules but cause new problems in the community.



4. Proof of Family Card in Court

Evidentiary is one of the crucial stages in the trial. In civil litigation in the Court of Religion, whoever has a right or a condition to strengthen his right person must prove it. In establishing the evidence of his application, one can submit evidence, either in the form of written evidence, witness evidence, suspicion, confession, or oath. (Harun, Ibrahim Ahmad 2013, 98)

A family card is one form of an authentic deed. An authentic deed is a deed made by an authorized official who records what is required to be contained by the interested. An original act must meet formal requirements and material requirements. (Harun, Ibrahim Ahmad 2013, 99)

The requirement formal authentic deed, i.e., an original act must be partynatured made before the authorized public official. It contains the date, day, and year of manufacture and is signed by the official who made it. Meanwhile, the material requirements of the authentic deed, namely the content contained in the original act, are directly related to what is disputed in the Court, the content of the authentic deed must not be contrary to law, religion, decency, and public order, and the making is deliberately made to be used as evidence. (Harun, Ibrahim Ahmad 2013, 98-100) The power of authentic deed proof is worth perfect and binding confirmation. The opposing evidence can only disable an original deed. The value of proof falls into the initial evidence. To achieve a minimum of proof must be supplemented by at least one other evidence tool. (Harun, Ibrahim Ahmad 2013, 100)

The Judge and the litigants shall consider the authentic deed as an Authentic Deed until the opposing party can prove that the deed submitted by the Plaintiff, not



an original deed because the opposing party can prove there is a legal defect caused by the official who made it unauthorized, the signature of the official in it is false. The content has changed, either in the form of subtraction or the addition of sentences. (Harahap 2018, 566) A deed cannot be applied as an authentic deed because of the inauthenticity or inability of the deed official or a defect in its form. Still, the deed has evidence as a deed under the hand if signed by an interested party. (Syahlani 2007, 49)

The author argues that if there is a family card or birth certificate whose marital status is written "undocumented marriage," then in examining the civil case, the Judge should ask the parties to attach a marriage certificate citation to prove his marriage. If the party claims to have no marriage certificate, the Judge suggests that the case be filed for marriage. Marital status cannot be proven only by family card but must be verified by marriage certificate citation. (Article 7 paragraphs 1 and 2 of Government Regulation No. 9 of 1975)² The purpose of the regulation is to raise

awareness in the community in the recording of marriage in the presence of the Registrar of Marriage officers in the Office of Marriage Affairs because the status of marriage is valid and will not affect the legal consequences of marriage such as inheritance, wills, and divorce.

To measure the evidentiary power of an authentic deed in the form of family cards and birth certificates, the real strength of proof of the family card and the

² (1) Marriage can only be proven by a Marriage Certificate made by the Registrar of Marriage Officers.



quotation of the birth certificate is binding and perfect. Still, according to previous discussions, marriage can only be proven by a Marriage Certificate Citation made by the Registrar of Marriage. The family card cannot confirm marriage status. If in the trial, it turns out that recognized or based on the testimony of the witnesses found the fact that the marriage conducted by a couple of men and women some conditions or pillars are lacking or violation of the validity of marriage, then the Judge can consider the quality of the power of proof of the authentic deed.

Suppose a family card has a description of "unrecorded marriage," then. In that case, the marriage is done in series or secretly or not under Value Added Tax's supervision. The wedding has violated the provisions of Law No. 22 of 1946. With the information "undocumented marriage," which is based only on a statement of absolute responsibility and two witnesses, the validity of the marriage needs to be reexamined through the institution of marriage isbat. If the proof fulfills the conditions of marriage harmony, then it can be legalized marriage. On the contrary, if the evidence found that the party concerned gave incorrect information regarding the

(2) In the event that the marriage cannot be proven by Akata Nikah, it may be submitted itsbat nikahnya to the Court of Religion.

validity of marriage, then the concerned can be processed legally following the laws and regulations, and documents issued as a result of this statement become invalid.³

³ The footnote on SPTJM reads "Thus this statement letter I made in fact and when it later turned out that my statement is not true, then I am willing to be processed legally in accordance with the laws and regulations and documents issued as a result of this statement become invalid."

Marital status is the most critical information in the family card, so the way it is made must be done correctly and adequately. Similarly, the proof by the user of the family card product, especially the Religious Court and the Office of Religious Affairs, must also be correct in interpreting and interpreting the description "undocumented marriage." Indeed, the information means that there has been a marriage. However, it is not yet known whether the marriage is valid or not, so there needs to be a reexamination through the institution of marriage isbat, namely the examination related to the validity of marriage, especially concerning the terms, pillars, and whether things are violated in the union that has been carried out.

Conclusion

In proving marital status on the family card, it should still attach a marriage certificate citation. The marriage of Muslims in Indonesia can only be verified by a marriage certificate made by the Registrar of Marriage. If a marriage certificate cannot prove the wedding, it can be submitted itsbat nikah to the Court of Religion. To measure the strength of proof of family card and birth certificate in which there is a description of "undocumented marriage," the marriage is done in series or done not under the supervision of Value Added Tax. Indeed, the union has violated the provisions of Law No. 22 of 1946. With the description "undocumented marriage,"

which is based only on the confession in Statement of Absolute Responsibility and two witnesses, the validity of the marriage needs to be re-examined through the institution of marriage isbat.



Recommendation

The population service and civil records are authorized to issue Family Cards based on valid and correct data following the prevailing laws and regulations. A family card is an authentic deed that has the power of binding and perfect proof. The Court of Religion and the Office of Religious Affairs are institutions that use Population Service Office products. Using the product, especially in the evidence, should be done correctly because the marriage status is based only on recognizing that there has been a marriage between a man and a woman that has not been ascertained the validity of a marriage. The family card cannot be a guideline for legally establishing the marital status of men and women, but following the prevailing laws and regulations to protect a marital status is valid or does not have to be guided by the Marriage Certificate Citation.

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