



## CHAPTER I

### INTRODUCTION

#### A. Background of The Research

The development of *sirri* marriage phenomenon does not only happen in Indonesia, but also in onother countries which causes many debates, in terms of the process, factors and impact. *Sirri* marriage in Islamic countries, which are known as *urfī* and *misyar* marriage. The Government of Egypt and Saudia Arabia, for example, will sentence actor *urfī* and *misyar* marriage, and not have the right to obtain Egyption citizenship for children born from woman who practice *urfī* marriage. In the context of Indonesian people right now, *sirri* marriage is performed by a guardian or mirror guardian and watched by the witnesses, but it is

not done in the presence of the Clerk's Marriage as official government apparatus or marriage is not registered in the Office of religious affairs (KUA) for Muslim or in the Registry Office for those who are not Muslim, so that it does not marriage certificate from the government. For the society, this type of marriage is considered as *sirri* marriage or marriage under the hand (*nikah dibawah tangan*).<sup>1</sup>

A term of *sirri* marriage or marriage that kept secret is already known among the islamic scholar (*ulama*). Difference understanding between meaning of *sirri* marriage in the past and at this time, formerly referred *sirri* marriage is a marriage in accordance with the pillars of marriages and virtues of according to syari'at, a witness asked to did not disclose the occurrence of that wedding, to his multitude to the people and by there was not "walimah al-ursy".<sup>2</sup> While, understanding *sirri* marriage at the moment has misinterpretation for doing polygamy, to able marriage again, but it is not registered in the office of religious affairs (KUA) for a second, and third marriage. The kind of this *sirri* marriage is usually held between male and female guardian, without the presence of witnesses or it is guardian without witnesses, then they mutually to conceal that wedding.

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<sup>1</sup> Thriwaty Aarsal, "Nikah Siri dalam Tinjauan Demografi," Departemen Sains Komunikasi dan Pengembangan Masyarakat, Fakultas Ekologi Manusia, Institut Pertanian Bogor, *Jurnal Sosiologi Peesaan*, 2 (11 September 2012), p. 164.

*Sirri* marriage is definition from Fiqh perspective, but marriage under the hand (*nikah dibawah tangan*) is definition from law. *Sirri* marriage legal besad on religion, complited by pillars and requirement of marriage, but not publish (walimah Al-ursy), but marriage under the hand in *bahasa Indonesia* is marriage that kept secreat, in the law context legal besad on religion (complited by pillars and requirement of marriage) but no have law strenght (unregistered). See... Miftahul Rohmah, "Perkawinan di Bawah Tangan dan Solusi Hukumnya di Indonesia dan Malaysia," *Skripsi*, (Jakarta: Universitas Negeri Syarif Hidayatullah, 2011), p. 35.

Ahmad Izzuddin, *wawancara* (Malang, 26 Maret 2014).

<sup>2</sup> DR. H. M. Quzwini, "Perkawinan Siri dalam Perspektif Hukum Islam dan UU Nomor 1 Tahun 1974 tentang Perkawinan," *Jurnal Penelitian*, p. 1.

This type of marriage is wrong (not legitimate), because it is not qualified, such as guardian and witnesses.<sup>3</sup>

There are many researches about *sirri* marriage in Indonesia that can conclude that *sirri* marriage have become the phenomenon for the Indonesian people. A study by <sup>4</sup>Sukaryanto about the culture of *sirri* marriage in Rembang, in some cases, show that *sirri* marriage become one of the spirit or the virus of N.AC. (*need for achievement*)<sup>5</sup> for some women in Rembang to portray themselves in the domain of the public. In short, marriage *sirri* may be regarded as one gold bridge for some women to reach success (especially in the fields of social and economics). The government even makes the draft Law on Legal Affairs Marriage Material Religious Courts in the list of National Legislation Program (Prolegnas) of 2010. It contains criminal provisions (section 143-153), particularly related to *sirri* marriage, *Mut'ah* marriage, second, third, fourth marriage, and the divorce without a trial conducted in court, committing adultery and refused to take responsibility, and marry or become a guardian of marriage. The threat of punishment for that crime varied, ranging from 6 months to three (3) years and fines ranging from 6 million to 12 million.<sup>6</sup>

<sup>3</sup> Thriwati Arsal, *Nikah Siri*, p. 163.

<sup>4</sup> Sukaryanto, "Budaya Nikah Siri di Rembang dalam Perspektif Gender", *Jurnal Penelitian*, (Departemen Ilmu Sejarah Fakultas Ilmu Budaya Universitas Airlangga Jalan Airlangga 4-6 Surabaya), p. 13

<sup>5</sup> *Mentality Virus is desire to get the high achievement in the life. This Theory developing by David Mc. Clelland...*

See... Mohammad Sobary, Virus N-ACH, Jawa Pos, 25 Februari<sup>th</sup> 2014.

<sup>6</sup> Nikah Siri? Awaz Dipenjara!" Kompas, Friday, 12 Februari<sup>th</sup> 2010, p. 1.

A study by <sup>7</sup>Siti Ummu Adillah who explained that the negative consequences of *sirri* marriage by women ( wife ) and son *sirri* marriage whose husband is irresponsible, while the fundamental factor of *sirri* marriage is; economic factors, lacking of age marriage, the difficulty rules polygamous, labor relationship, still educated (school or college) . People think that *sirri* marriage is legal based on religion, while registered of marriage is only administrative issues, lack of understanding people for recording the importance of marriage. The appearance of *sirri* marriage phenomenon which happen frequently, by some reasons are without a women guardian, even sometimes also without witness and without knowing by women parents. This Marriage is unauthorized in religion and judicially.<sup>8</sup>

The rise of the *sirri* marriage in Indonesia at this point more the *sirri* marriage as an alternative to committing polygamy, the number of officials who conducted the *sirri* marriage, such as the figure of the Regent Garut is Aceng Fikri, who *sirri* marriage with girl and divorced her in just four days, the divorce done by short message service (SMS).<sup>9</sup> Among all these religious leader there is the Syekh Pujiono Cahyo Widiyanto with a maiden who is under the age named Lutfiana Ulfa.<sup>10</sup> Among these artist is Angel Ielga who reportedly do *sirri* marriage for the third time. The first with king of dangdut Rhoma Irama, with the

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<sup>7</sup> Siti Ummu Adillah, "*Analisis Hukum terhadap Faktor-faktor yang Melatarbelakangi terjadinya nikah sirri dan Dampaknya terhadap Perempuan dan Anak*," (Semarang: Universitas Islam Sultan Agung), p. 1.

<sup>8</sup> Thriwaty Arsal, *Nikah Siri* , p. 161.

<sup>9</sup> Muhamad Isna Wahyudi , "Nikah Siri Tidak Lagi Syar'i," 4 (Monday, 04 Februari<sup>th</sup> 2013 ), p. 1.

<sup>10</sup> Brahmana Mahardika, *Nikah Sirri dalam Konstelasi Hukum Keluarga di Indonesia (Studi Kasus Perkawinan Sirri Syekh Pujiono Cahyo Widiyanto dengan Lutfiana Ulfa)*, Skripsi S-1 (Yogyakarta: Universitas Islam Negeri Sunan Kalijaga, 2010), p. 21.

Entrepreneurs flight is HM Rusli, and third with Entrepreneur coal, is Abdul Rahma unregistered marriage which is caused by conflict, and that raises a problem which is lawful wife who was the first wife of HM Rusli and Abdul Rahma demanded Angel Lelga with adultery.<sup>11</sup>

In Malaysia, there are phenomena of Sindiket marriage which is person who provide things that are needed in the process of marriage as the *penghulu* and witness marriage for couples who have problem to perform marriage without following the procedure. The rule performed by these sindikets facilitate couples getting married contact only certain parties in the Malaysia-Thailand region.<sup>12</sup> In Akta of The Islamic Family Law (Persekutuan region) of 1984 must be registered marriage in Mahkamah Syariah of Malaysia. Nonetheless, *sirri* marriage and sindiket marriage have different definition and process.

Discussing about Malaysia, migrant workers from Indonesia practiced a lot of *sirri* marriage in Malaysia. Supervisory Team of the data Protection of Indonesian Workers Abroad (TP2TKILN) House of Representatives (DPR RI) the number of migrant workers in Malaysia at the moment is five (5) million Indonesian citizens. However, data from the Ministry of Foreign Affairs, the number of migrant workers in Malaysia who has recently recorded around 2.5 million,<sup>13</sup> and the rest of them are illegal. The phenomenon of *sirri* marriage in Malaysia, influenced by several factors are ; migrant workers want a quick and

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<sup>11</sup> Siti Ummu Adillah, “*Analisis Hukum*”, p. 1.

<sup>12</sup> Hamidah binti Harun, *Perkahwinan Tanpa Kebenaran Di Mahkamah Syariah Wilayah Persekutuan Kuala Lumpur, Disertasi* (Bangi, Universitas Kebangsaan Malaysia, 2013), p. 58.

<sup>13</sup> Amnesti berakhir, Masih ada Ratusan Ribu Tki Ilegal di Malaysia”, *Gresnews.com*, Thursday, 20 Februari 2014, p. 1.

easy process, because there they were busy with existing work, avoid controlled Position of Islam (JAIS) in Malaysia from adultery, migrant workers who already have a husband or wife in Indonesia and marriage again in Malaysia,<sup>14</sup> get married with other citizens such as Malaysia, Nepal, Bangladesh and Myanmar citizen. Malaysia is a country of various ethnic and many tourists, which considered migrant workers chose *sirri* marriage practice.

*Sirri* marriage case even nearly 90% in Sarawak most of them are in oil palm plantations which far away from the city center, and avoided controlled Position of Islam (JAIS) in Malaysia. Unregistered marriage phenomenon does not only happen in Sarawak, but also in some regions in Malaysia i.e Selangor, Kuala Lumpur, Pahang and Penang. Migrant workers work on a building project (*kongsi TKI*), market as a seller of vegetables or fruit, and domestic worker (Maid household) or illegal factories who run away from their employers.<sup>15</sup>

Based on this phenomenon, researcher would like to discuss deeper the phenomenon of *sirri* marriage of migrant workers in Malaysia. The discussion is expected to get an overview of the factors, process and impact of *sirri* marriage migrant workers in Malaysia entitled "**The Practice of *Sirri* Marriage in Malaysia (Case Study of Indonesian Migrant Workers (*TKI*) in Selangor State of Malaysia).**

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<sup>14</sup> Dwi, Interview (Plampngrejo, 13<sup>th</sup> Februari 2014).

<sup>15</sup> Dwi, Interview (Plampngrejo, 13<sup>th</sup> Februari 2014).

## B. Scope and Limitation

Limitation of the material that will be discussed by researcher only focus on the factors, process and impact behind the practice of *sirri* marriage of Indonesian migrant workers in Selangor state of Malaysia, and additional information in several regions in Malaysia i.e Selangor, Pulau Pinang, Pahang, and Kuala Lumpur.

## C. Problem of the Study

Statement of the problem starts from the background and scope of the problems mentioned above, the issues to be discussed in this thesis are: <sup>16</sup>

1. What are the factors of *sirri* marriage practiced by migrant workers in Selangor state of Malaysia?
2. What is process of *sirri* marriage practiced by migrant workers in Selangor state Malaysia?
3. What is the impact of *sirri* marriage practiced by migrant workers in The Law on Marriage No. 1 of 1974 and The Islamic Family Law Enactments, Selangor 1984 perspective?

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<sup>16</sup> Liza Wahyuninto, *Problematika Pemenuhan Hak-Hak Istri Dalam Masa Iddah (Studi Kasus Di Pengadilan Agama Kota Malang)*, Skripsi (Malang: Universitas Islam Negeri Malang, 2010), p. 7.

#### **D. Objective of Research**

The objective of this research is:

1. To find the factors of *sirri* marriage practiced by migrant workres in Selangor state of Malaysia.
2. To find the process of *sirri* marriage practiced by migrant workres in Selangor state of Malaysia.
3. To find the impact of *sirri* marriage practiced in The Law on Marriage No. 1 of 1974 and The Islamic Family Law Enactments, Selangor 1984 perspective.

#### **E. Benefits of Research**

This study is expected to provide substantial benefit and contribution in theoretical and practical. The anticipated benefits of this research are:

1. Theoretical Benefits
  - a. This research is expected to contribute positively in the fields of law, especially Islamic law relating to the research discussion of *sirri* marriage.
  - b. This study is expected to provide information and understanding for Indonesian migrant workers in Malaysia, especially the importance of registration of marriage to get legality of law, and to avoid the problems that arise as a result of *sirri* marriage.

## 2. Practical Benefits

- a. For the government, must make the rule to pressure *sirri* marriage practice of migrant workers in Malaysia, and the Embassy of the Republic of Indonesia in Kuala Lumpur can be used as reference material to create a new rule to pressure *sirri* marriage practice of migrant workers in some regions in Malaysia. The Embassy is more selective for the fake marriage certificate. About marriage confirmation (*isbat nikah*) performed by Consulate General of the Republic of Indonesia (KJRI) in Kuching and Sarawak only. Never been done in Kuala Lumpur, Pinang, Selangor, Pahang and some regions in Malaysia.

## F. Structure of Discussion

To facilitate the reader to understand the content of this research, the writer arrange systematics as follows:

CHAPTER I: A discussion about the problem as the focus of the study as well as the argument relating to the main ideas of this research is presented in chapter one.

CHAPTER II: Provides the existing works regarding the *sirri* marriage as the general overview of the subject of the study. Described also on an overview of the definition of marriage, pillars and requirements of marriage, registration of marriage and the laws that govern it. *Sirri* marriage in positive law (The Law on

Marriage No. 1 of 1974), Islamic law perspective. The last is about sindiket marriage in Malaysia and The Islamic Family Law Enactments, Selangor 1984.

CHAPTER III: This chapter will be presented about the research methods used in this study, namely: the type of research, research approach, data sources, data collecting methods, and methods of data analysis. This chapter more focused on the methodology which are used by the researcher in order to this research has well structured and correctly.

CHAPTER IV: Results and Discussion, in this chapter presented on the analysis of data, that is the answer to the formulation of the problem, namely the process of *sirri* marriage practice in some regions in Malaysia, the factors of *sirri* marriage practice in some regions in Malaysia, and the problem that arise as a result of *sirri* marriage in some regions in Malaysia. The impact of *sirri* marriage practice in The Law on Marriage No.1 of 1974 and The Islamic Family Law Enactments, Selangor 1984 perspective.

CHAPTER V: Finally, the conclusion and result of the study, as well as some suggestions for further studies is presented in the last chapter.