CHAPTER IV

FINDINGS AND DISCUSSION

A. Findings Data

1. The Factors to Perform Sirri Marriage for Indonesian Migrant Workers (TKI) in Selangor State of Malaysia

Sirri in term is something confidential or closed. However, along with the development of the era, the definition of the term also developed, it has two assumptive meanings. First, sirri is a marriage with the absence of witnesses or wali (i.e. male relative legally responsible for a bride, e.g. her father). Thus, this kind of marriage is forbidden in Islam, because it can lead to the possibility of
some deviations, e.g. the unprotected parties involved in a marriage, like husband, wife and the children born of the marriage.\textsuperscript{1} \textit{Second, sirri} is a marriage between a man and a woman without involving the registration of marriage, or officer, or a marriage without being recorded by the register as defined in the Article 2, paragraph 2 of Law No. 1 of 1974 on Marriage, Article 22 of Regulation 9 of the 1975 on the Regulation of UUP Implementation, and Article 8 of the Law No.23 of 2006 on Population Administration. Actually, this kind of marriage has been appropriated the requisite and the pillars of marriage, except the marriage is not registered by the Registrar of Marriage Employees (PPN) or KUA (Kantor Urusan Agama/ Office of Religious Affairs).\textsuperscript{2}

\textit{Sirri} marriage practice of migrant workers in Malaysia is a phenomenon which performed by some factors; quick and easy process, \textit{ustadz} facilities who marriage, business of fake marriage certificate avoiding the operation of Position of Islam in Selangor (JAIS). Hence, this research is attempting to investigate such kind of interesting phenomenon of \textit{sirri} marriage. Further, this research was carried out on couples of \textit{sirri} marriages practice in some regions in Malaysia: i.e. Selangor, Penang, Pahang, Negeri Sembilan and Kuala Lumpur. Some of the respondents, however, refuse to give the researcher information. And some of the respondents agree to give the researcher information but they refuse to give a complete description. The explanation given is very short which further impresses that they do not want people to know that their marriage is a \textit{sirri} marriage.


\textsuperscript{2} Quzwini, \textit{Perkawinan Siri}, p. 4.
Therefore, to cope this problem, the research applies cultural approach in order to obtain the information needed.

From interview with Indonesian Migrant Workers (TKI) that perform *sirri* marriage practice in the Selangor state of Malaysia researcher get the data that *sirri* marriage performed by some factors:

a. Most of the practitioner of *sirri* marriage are illegal migrants (TKI) escaping from their employer while the employer still hold their documents. This case is experienced by Hastari, Nur Afifah, and Fauzi.

Interview explanations are as follow:

Explanation from Hastari:

Aku nikah dengan Abdullah tanggal 10 Januari 2006, pasal susah kalau nikah secara resmi, aku nikah dengan lain negara, aku tak ada permit kerja, permit aku dibawa sama majikan aku dulu.

Additional information from Nur Afifah:

Aku kerja pembantu rumah tangga di Malaysia, aku melayu teko majikan, permit sayaaku ditahan majikan, terus aku tinggal karo kakak angkat aku, terus nikah karo Farhan, dia ngekos di rumah kakak angkat aku.

Another respondent added is Fauzi:

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3 The problems of workers who work as house maids (PRT) is not being able to be determined to abusive treatment of their employers, and their salary is not in accordance with the initial agreement, even migrants do not receive any salary from the employer, so they choose to run away from them.

4 Indonesian Citizens, from Sempu, Banyuwangi, in Malaysia at Pulau Pinang.

5 Myanmar citizen, stayed in Pulau Pinang Malaysia.

6 Hastari, interview (Sempu, 13\textsuperscript{th} of Februari 2014).

7 Indonesian citizens from Jambi wangi, Krajan, RW/RT 07/01 Sempu, Banyuwangi, come in Malaysia on 1993, labor as housmaid. Lived in Malaysia in Kuantan, Pahang Malaysia. Have not permit job (illegal).

8 Nur Afifah, interview (Sempu, 13\textsuperscript{th} of Februari 2014).

9 Indonesian Citizens, from Kluwut, Pasuruhan, in Malaysia at Ampang Kuala Lumpur.
Istri aku ke Malaysia tahun 2008, kerjone teng pabrik swasta, tapi sebelum kerja dek Salon, tapi terus lari teko majikan (seng duwe salon) soale gak seneng karo kerjaane, terus dokumen-dokumene ditahan karo majikan, soale bojo aku kerja ke Malaysia melok karo agen TKI awale. Terus aku nikah sirri karo bojo aku.\(^{10}\)

b. Indonesian Migrants Workers (TKI) are married with other citizens. An interview with spouses (Mr. Abdulllah and Mrs. Hstari, Mr. Ali and Mrs. Wati), they summarized:

Aku nikah iku tanggal 10 Januari 2006, ya susah lah kalau nikah resmi disana, pasal kita menikah dengan beda negara, bojo aku warga negara Myanmar.\(^{11}\) (Ibu Hastari)

Wati\(^{12}\) was marriage with Ali. An interview on 11\(^{th}\) of November with Umar\(^{13}\) Toke\(^{14}\) (contractor), he summarized:

Dia nak nikah betul-betul si wati ma orang Nepal itu, aku bawa ke hospital terus sunat, baca syahadat, terus nikah lah. Itu istri aku yang carikan yang nikahkan, dia banayk saudara lah yang usatadz-usatadz yang nikahkan itu. Aku lah yang jadi saksi nikahnya.\(^{15}\) (Bapak Umar)

Additional information from Yuli\(^{16}\) who is marriade with Mr. Daniel Sho\(^{17}\),

Bapak Daniel Shoe itu warga negara Malaysia, menikahnya di Indonesia dan posisinya bapak sudah punya istri dan anak di Malaysia, saya tidak ingin proses yag susah.\(^{18}\)

\(^{10}\) Fauzi, interview (Kluwut, 27\(^{th}\) of February 2014).

\(^{11}\) Hastari, interview (Sempu, 13\(^{th}\) of February 2014).

\(^{12}\) Umar’s Employee from Madura.

\(^{13}\) Indonesian Citizen from Madura.

\(^{14}\) Toke; contractor building projects (housing, shops, factories, etc.) and residential buildings called partnership migrant workers who often moved around the place, when the construction project is complete already.

\(^{15}\) Umar, interview (Bangi, 11\(^{th}\) of November 2013).

\(^{16}\) Indonesian citizens from Banyuwangi.

\(^{17}\) Malaysia citizens (IC Blue), Cina descent, work as an Entrepreneur.

\(^{18}\) Yuli, interview (Banyuwangi, 10\(^{th}\) of October 2013).
c. Indonesian Migrant Workers (TKI) chose easy and quick process. As cases of Toni and Hastari;

Toni\textsuperscript{19} and Rani\textsuperscript{20} explanation;

Saya nikah dengan istri saya tahun 2013 di Malaysia. Tak susah nikah disini, tinggal panggil ustadz saja. Pasalnya kan disini kita kerja pada sibuk lah, ya ada istilahnya waktu itu ung. Acara nikahnya itu singkat malam hari, pasalnya kalau pagi sampai siang orang disini pada sibuk kerja. Selesai akad langsung makan-makan acara nya (Selametan).\textsuperscript{21}

Another respondent added is Hastari;

Nikah disini mudah lah, tinggal panggil ustadz, nanti langsung dapat buku nikah dari ustadz itu lah, semua diurus sama ustadz itu, kita tinggal ngasih uang RM 200-300, saksi dari teman suami saya, trus makan-makan selesai akad itu. Nikahnya kayak di ustadz/ kiyai di Indonesia itu lah. (Mrs. Hastari)

d. Indonesia migrant workers (TKI) who fear of sin, they are choosing sirri marriage practice. Like the cases handled by Fadil, a student of University Kebangsaan Malaysia (UKM) who often asked for helping married workers.

Ada juga TKI yang datang ke saya untuk minta dinikahkan karena takut dosa, soalnya sudah 3 bulan tinggal bersama di tempat kos yang laki-laki, itu kasusnya Lukman TKI asal dari Padang bekerja sebagai pembuat tempe tinggalnya di Kajang Selangor, Malaysia. Lukman bertemu dengan Fitri di pasar malam (PM). Fitri lari dari majikan, permit ditahan dan selama 3 bulan itu tinggalnya sama Lukma di tempat kosnya (ruko tempat buat tempe milik majikannya).\textsuperscript{22} (Mr. Fadil)

\textsuperscript{19} Indonesian citizens from Jakarta, Malaysia stayed in Apartment Meranty b 9-01, Subang USJ 1 Taman Subang Mewah, Subang Jaya, Selangor Malaysia. Working at the car spa sierra glow.
\textsuperscript{20} Indonesian citizen, the origin of Palembang, in Malaysia stayed in Apartment Meranty b 9-01, Subang USJ 1 Taman Subang Mewah, Subang Jaya, Selangor Malaysia. Once worked in factories beauty but when pregnant Rani stopped working.
\textsuperscript{21} Toni dan Rani, \textit{interview} (Selangor, 16\textsuperscript{th} of Nopember 2013).
\textsuperscript{22} Fadil, \textit{interview} (Bangi, 11\textsuperscript{th} of Nopember 2013).
e. Indonesia Migrant Workers (TKI) who want to be the second wife (polygamy).

Sebenarnya saya tau kalau bapak Daniel Sho sudah punya isteri dan anak di Malaysia, wong saya ingin hidup saya ini lebih baik dari segi ekonomi, soalnya dari kecil hidup saya sudah susah, bapak Daniel juga punya niatan baik membantu saya biar saya tidak harus kerja jualan nasi di warung tante saya di Bali.  

(Mr. Yuli)

Another respondent added is Nur Afifah;

Aku iki awale nikah sirri dek Malaysia, tapi pas muleh dek Indonesia aku sahne pernikahan iku, dicatatan dek KUA Sempu, terus pas bojo aku balik nang Malaysia soale onok urusan kerja, soale bojo aku kan kerjone nang Petronas iku kan seng duwe kerajaan Malaysia. Terus mari ngono gak balek belas nang Indonesia, malah aku krungu-krungu nikah maneh karo warga negara Malaysia asli Kelantan, padahal aku gak ngekei ijin nikah meneh. Wong jenenge wes duwe duwet akhu, dadi sak karepe dewe.

f. To be legitimated in religion and avoiding operation from the Position of Islam in Selangor (JAIS)

Aku nikah karo Abdullah tanggal 10 Januari 2006, pasal susah kalau nikah resmi, soale aku nikah karo lain negoro, aku yo ra duwe permit kerjo, permit aku digowo karo majikan aku disek. Bojo aku warga negara Myanmar, yang penting sah nikahnya secoro agamo terus iso hindari teko Jabatan Agama Islam (JAIS). (Hastari)

Another respondent added is Yati;

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23 Yuli, interview (Banyuwangi, 10th of October 2013).
24 Nur Afifah, interview (Sempu, 13th of February 2014).
25 Position Islam (JAIS) and every region in Malaysia called by Islamic Position Region (JAWI) have the duty to provide facilities for the Muslim community in Malaysia. Each state in Malaysia has an authority on religious matters. Facilities provided in the wide of marriage, infaq, sodaqoh, worship, Madrasah-madras, halal food, and attention to the mu'allaf in Malaysia. Facilities in the marriage wide is register a marriage, divorce, Ruju 'marriage and affairs. Position of Islam in Selangor (JAIS) contained unit Family Law (UUK) in this unit tasked to take care of the registration of marriage, divorce, reconciliation and counseling when the couple want a divorce (Mediation). JAIS only marriage registration, divorce and reconciliation and other case given to Syaria Court in proceedings for divorce. JAIS also perform the corresponding operations on gambling, drinking alcohol, do not respect the month of Ramadan, the prince illegal, couples who fornicate and rogue elements within sindiket marriage.
One respondent added is travel agency owner Mr. Dwi;

Nakah sirri disana iku gak digawe sah berdasarkan agama, tapi ben gak ditangkap karo JAIS, ben mereka aman.

2. The Sirri Marriage Process for Indonesian Migrant Workers (TKI) in Selangor State of Malaysia

a. Easy and Quick Process

Sirri marriage process of Indonesia migrants workers in Malaysia is easy and quick process. They do not have to complete the required document when an Indonesian citizen wanted to get married in Malaysia. Such as letter from the head office of village / village heads applicant's residence (N1: Certificate of Status, N2: Certificate of Origin, N4: Certificate of Origin of the parents), recommendation letter from KUA District of residence of the applicant, for Women, attach a letter stamped Marriage Mayor and signed by the Head of the District KUA. Sirri marriage practice by migrant workers in Malaysia are mostly performed by illegal workers, so they choose to perform sirri marriage practice, and they just copy and print passport and photos for the process of

26 Applicant status Widow / Widower Death comes with N6, namely the death certificate from the Head of the village / death certificate from the Department of Civil Registration and Marriage Books applicant. Applicant status Widow / Widower Divorced, equipped with Divorce Certificate of Religious Court. The applicant with the status of Polygamy, polygamy ruling from the Religious Court, Petitioner holders IC (identification card), complete with Indonesian Passport and condition same as Malaysian citizen. The applicant must come with the original document and Photocopy. See ... Website Embassy of the Republic of Indonesia (Embassy); http://www.kbrikualalumpur.org/ Published: Wednesday, 19th June 2013. Access on 26th March 2014.
making a fake marriage certificate. Like case of Toni, Hastari, Fauzi, and Yuli, Nur Afifah, Yati and Anton, Wati, and Lukman.

The explanation from Toni:

Susah lah nak nikah resmi disini, apalagi kita warga negara asing, sibuk kerja, tak ada waktu untuk mengurus surat-surat nikah tu, ibratnya disini tu waktu adalah uang, tak da waktu harus bolak-balik ke Embassy. Tinggal photocopy paspor dan nyerahkan foto untuk buat buku nikahnya tu. ²⁷

Another respondent added is Hastari:

Nikah disini tak susah lah, tinggal panggil ustaz langsung lah dapat buku nikah. Kita cuman ngurus photocopy paspor dan nyerain foto. (Mrs. Hatari)

b. Penghulu profession: i.e. Indonesian workers in Malaysia who are asked to wed Indonesian workers couples

Beside the existence of fake marriage certificate sales, there is also Penghulu profession: i.e. Indonesian workers in Malaysia who are asked to wed Indonesian workers couples because they are considered to be more pious and have ever studied in Islamic Boarding School. Most of the Penghulu come from Madura and Aceh. Besides having Penghulu profession, they also have another occupation: such as security and chicken noodle seller. University students are also often asked to wed Indonesian workers couples. Below is the explanation of a university student who also acts as Penghulu.

²⁷ Toni dan Rani, interview (Selangor, 16th of November 2013).
Below is Fadil’s explanation about the process of *sirri* marriage practice in Malaysia:

Mereka (TKI) itu melakukan nikah sirri itu karena banyak faktor; TKI ilegal yang lari dari majikannya dan mereka mencari perlindungan kemudian bertemu dengan sesama TKI, kemudian menikah, untuk kebutuhan seksual yaitu banyak fenomena TKI yang sudah punya istri atau suami di Indonesia, kemudian mereka juga menikah lagi di Malaysia, dengan nikah sirri juga menjadikan alternatif untuk melakukan gonta-ganti pasangan, yaitu jika sudah tidak cocok dengan pasangan sirrinya mereka langsung pisah (cerai) dan berganti pasangan dengan nikah sirri lagi. TKI yang sadar agama akan memilih untuk nikah sirri, tapi TKI yang tidak sadar agama artinya kurang pengetahuan tentang agama akan memilih untuk hidu bersama dengan pasangan (kumpul kebo).

TKI yang pernah saya nikahkan yaitu; Anton TKI asal dari Padang bekerja sebagai pembuat tempe yang bertempat tinggal di Kajang Selangor, Malaysia. Lukman bertemu dengan Fitri di pasar malam (PM). Yanti adalah TKI yang berasal dari nganjuk yang bekerja sebagai pembantu rumah tangga dan memiliki dokumen permit kerja di Malaysia (legal). Yanti yang mempunyai konflik dengan majikan melarikan diri dan pergi ke tempat Anton yang bertempat tinggal di ruko tempat pembuatan tempe milik majikannya Anton di Kajang, Selangor. Anton dan Yanti tinggal bersama selama 1 bulan tanpa ikatan perkawinan, dan Anton meminta bantuan saya untuk menikahkan dengan Yanti karena takut dosa karena berzina jika terus tinggal satu kamar tanpa adanya ikatan perkawinan sehingga pada bulan Agustus tahun 2010 mereka menikah. saya menikahkan mereka dengan memperhatikan rukun dan syarat nikah, saya menanyakan status kedua pasangan, Anton yang masih bujang dan Yanti yang sudah janda. Saya menelpon orang tua kedua belah pihak untuk menanyakan status kedua belah pihak. Pada waktu perkawinan ayah Yanti sudah meninggal sehingga ketika saya menelpon kakak laki-laki Yanti mentaukil wali kepada saya, disaksikan oleh majikan Anton yaitu orang asli Malaysia. Saya juga pernah dimintai tolong untuk menikahkan wanita (TKI) dari Indonesia yang ingin menikah dengan warga negara Malaysia, tapi saya menolak karena laki-laki yang orang Malaysia itu sudah mempunyai istri, karena tujuan menikahnya sudah tidak baik, maka saya memilih untuk menolak.29

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28 Students at Universiti Kebangsaan Malaysia.
29 Fadil, *interview* (Bangi, 11th of November 2013).
In addition from Sigit\textsuperscript{30} who had often wedded workers in Malaysia;

Sudah banyak saya nikahkan TKI di Malaysia sampai tidak bisa dihitung, kebanyakan orang yang nikah sirri di Malaysia, kemudian dia pulang ke Indonesia mereka ini nikah lagi di Indonesia ke penghulu dan berdaftar ngambil surat nikah. Biasanya dapat uang itu sekitar RM 300 samapi RM 500. Kalau cara menikahkan itu ya biasa, masalah wali nikah ngak susah, misalnya, kalau yang perempuan orang Madura, disini kalau orang madura itu kebanyakan semua keluarganya di Malaysia, ya kalau soal wali gak susah kan. Kalau perempuan itu tak ada wali/ keluarga di Malaysia, dan semua yang mau menikah lagi denger perempuan itu telepon ke kampungnya di Indonesia ke orang tuanya minta persetujuan, kalau dah ok, pernikahan dilangsungkan, tapi di handphone itu dikuatkan suaranya biar si wali atau orang tua perempuan tu juga dengar.\textsuperscript{31}

Explaination strengthened by Yanti;

Aku nikah tahun 2009 itu perkawinan seng kedua. Ustadz seng nikahne orang Aceh kerjo dodolan mie ayam, sering juga di minta tolong untuk menikahkan TKI.

Ustadz yang dulu menikahkan saya itu securuty di Apartement b5-6 Taman Subang Permai, usj 1, 47500 Subang Jaya, Selangor Malaysia namanya Pak Sigit, dia sering dimintai tolong untuk menikahkan TKI disini. Dia orang Madura sudah tua, punya penyakit di mata seperti katarak, pendengarannya juga kurang baik, dan ketika menikahkan juga membaca tulisan arab Jawi yang ditulis di kertas. (Toni dan Rani)

c. Guardian Marriage

Mostly migrant workers used a \textit{taukil} guardian. \textit{Taukil} guardian with the consent of a guardian for permission to marry by phone in Indonesia. \textit{Taukil} can be perform by family, brother, or friend who are also in Malaysia. \textit{Taukil} contract process is performed by phone in the presence of a wedding invitation that came in their wedding, and using the louder of the volume on the phone speaker. After

\textsuperscript{30} Sigit (54 years old) migrant workers as security in regency banglo grenvell di Selangor, was workes in Malaysia for 20 years from Pamekasan Madura.

\textsuperscript{31} Sigit, interview (Bangi, 11\textsuperscript{th} of Nopember 2013).
the contract taukil between women, muwakil (people who represent / guardian) and representative (wakil) (the person who became the representative of the guardian) is complete, then the marriage ceremony can be performed (akad nikah). The following are explanation of migrant workers who perform the process of sirri marriage practice by guardian taukil in the process of their marriage;

Wali nikah kita kakak laiki-laki aku yang juga bekerja di Malaysia, dan saksinya teman-teman saya, Istri saya menelpon Bapak di Palembang untuk minta restu kalau ingin menikah. Karena bapak istri saya sudah tua tidak mungkin kalau datang ke Malaysia. (Toni)

Wali nikah adik laki-laki bapak seng onok dek Malaysia , tapi aku telepon bapak dek Indonesia sak gurunge nikah. Saksi nikah konco-konco aku karo bojo aku seng nang Malaysia pisan. (Yanti)


Wali nikahe bapake bojo aku, dadi waktu nikah bojo aku telepon bapak seng neng Indonesia, terus digantekne waline nang ustadz seng nikahne aku iku. Saksine konco-konco aku, seng teku iku wong 10. (Fauzi)

Saksi nikhan aku konco-koncone bojo aku: Ali, Rahman, Hakim, Amin, Lukman karoAbdul, terus mas kawin10 grams emas, wali nikahe mas’e bojo aku. (Mrs. Hastari)

d. Fake Marriage Certificate

Migrant workers as a aknum (person in a certain capacity, esp. with negative connotation) who business to sell a fake marriage certificate (fake
marriage certificate of Indonesia or Malaysia). They are usual an illegal travel agent that provide any requirement needed in the process of marriage such as the *ustadz* who married, witnesses, guardian marriage and a fake marriage certificate. They made this Indonesian fake marriage certificate in Borneo (kalimantan), and the printed marriage certificate will not appropriate the name of Minister of Religious Affairs, but it will appropriate the name Office of Religious Affairs (KUA) and the name of the *ustadz* who marry. This phenomenon happen because it will not be detected by the police and Islamic Position (JAIS) in Malaysia as the fake marriage certificate, and will not be checked by Indonesia about the authenticity of the marriage certificate. Therefore, the fake marriage certificate can be used in Malaysia only. While in Indonesia, they are not allowed to carry it, because it would endanger the individual (oknum) maker of fake marriage certificate. An explanation from a travel agent Mr. Dwi;

membuatkan iki yo seng gawe surat nikah palsu, gawe ne nang Kalimantan. Soale alat seng digawe surat palsu iku onoke nang Kalimantan.

Surat nikah palsu iku digawe ngelabui petugas JAIS seng sering operasi, misale, ketika kerjo dek perkebunan sawit (TKI) terus balik nang kota pas bengine waktune ngumpul karo bojone dek kos. Tapi, pas balik nang Indonesia surat nikah iku gak oleh digowo nang Indonesia soale pastine membahayakan kita ini sebagai calo-calone. Soale surat nikah palsu iku digawe sembarangan, gak sesuai jenenge Menteri Agama, asal ditulis jenenge iku, soale pegawai JAIS karo polisi Malaysia juga tidak akan tapasti gak kiro ngti Menteri Agama Indonesia seng asli, dan tidak mungkin dicek ke Indonesia. Jadi sangat berbahaya kalau surat nikah itu di bawa ke Indonesia bisa-bisa urusannya dengan polisi Indonesia dan kita bisa dipenjara, soalnya kita pejabat juga bukan, kok bisa membuat surat nikah, kalau polisi Malaysia masih bisa kita bayar (bayar pajak ke polisi Malaysia), tapi kalau polisi Indonesia susah.32

Discussion about illegal migrants and fake marriage certificate, Mrs. Fitri33

Alia explains about the business of selling fake marriage certificate. The description of Mrs. Alia Fitri is as following;

Disamping Kedutaan Besar Republik Indonesia (KBRI) ini ada tempat kumpulnya calo-calo yang menawarkan berbagai macam surat palsu yaitu; Kartu Keluarga (KK), Kartu Tanda Penduduk (KTP) dan surat nikah palsu. Kita bukannya tidak tau atau tidak mau tau, tetapi masalahnya itu adalah wewenangnya polisi setempat, kita sudah berkali-kali melaporkan ke kepala polisi supaya bisa memberantas calo-calo tersebut. Sudah beberapa kali dilakukan pembersihan tapi tidak bertahan lama hanya sebentar.

Mengenai TKI ilegal itu bisa dilihat dari dua sisi yaitu dari kacamat Indonesia dan Malaysia. Dari kacamat Malaysia, yaitu bisa saja mereka berangkat secara prosedural dari Indonesia, tetapi ketika mereka sudah sampai disini ada beberapa ketentuan yang mereka tidak penuhi, misalnya, mereka berganti majikan, tidak menginformasikan kepada Imigrasi, mereka lari dari majikan, permit tidak diperpanjang melalui Imigrasi, maka status mereka menjadi ilegal. Kalau dari kacamat Indonesia yaitu

32 Dwi, interview (Plampgrejo, 13th of Februari 2014).
33 Third Secretary (Consular Affairs) in Emmbasy Of The Republik Indonesia (KBRI) No. 233 Jalan Tun Razak 50400, Kuala Lumpur Malaysia.
TKI yang tidak berangkat melalui agen (PJTKI)\textsuperscript{34} yang sudah terdaftar yang berdasarkan pada\textsuperscript{35} UU 39 Tahun 2004.\textsuperscript{36}

e. IC (identification card)

Identity Card (IC) or in Malaysia called permanent residents divided into two, namely, Blue IC and Red IC. Blue IC is for natives or citizens of Malaysia, while the Red IC is for the IC of Indonesian migrants in Malaysia and has been stay in Malaysia for a long time. When the Indonesian people who came to Malaysia in 1980 Red IC plead in Government of Malaysia, and in 1990 Red IC petition is closed. Indonesian people who already have the Red IC can get the facility of the same as the natives of Malaysia (blue IC) from Malaysian government, such as ranging from health insurance, discounted rates when using public transport. But the children born from red IC and born in Malaysia will automatically be Malaysian citizens (blue IC).

The existence of Identity Card (IC) or permanent residents in Malaysia will reassure the Malaysians to take care of all the needs, such as to take care of sijil nikah (marriage certificate), sijil lahir (birth certificate) and other purposes. In this case, there are also some workers married with the blue IC. The case of Omar, Nur Afifah, and Yuli. This is the explanation of their stories:

\textsuperscript{34} The company of Implementation and Placement private migrant workers (PPTKIS before called by PJTKI) which registerd in DEPNAKER RI. See,. Website of Emmbasy Of The Republik Indonesia (KBRI), menjadi-tenaga-kerja-indonesia-di-malaysia.htm, Sunday 22\textsuperscript{th} of Juni 2013, Accesed on 21\textsuperscript{th} of Februari 2014.
\textsuperscript{35} See on Act NO. 39 of 2004 about Placement and Protection of Migrant Workers Aboard, Paragraphl 1, Article (3 ) and (5).
\textsuperscript{36} Alia Fitria, interview (Kuala Lumpur, 15\textsuperscript{th} of Nopember 2013).
Umar
 working in a construction company as a Toke (contractor) married to Fitri;


The second case is Nur Afifah married to Farhan, the explanation is as follow;

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37 Indonesian Citizen from Madura
38 Toke; contractor building projects (housing, shops, factories, etc.) and residential buildings called partnership migrant workers who often moved around the place, when the construction project is complete already.
39 Indonesian people of Madura, in Malaysia on 1989, and he get red Identity Card (IC) or permanent residents.
40 N1, N2 from RT/RW and village office in the residence from Indonesia. Brought Dad’s ID Card photocopy and letter permision to marriage in Malaysia from KUA, and the last ask official stamp (stempel) in KBRI.
41 Umar, wawancara (Bangi, 11 November 2013).
42 Indonesian citizens from Jambi wangri, Krajan, RW/RT 07/01 Sempu, Banyuwangi, come in Malaysia on 1993, labor as housmaid. In Malaysia lived in Kuantan, Pahang Malaysia. Have not permit job (illegal).
43 Indonesian Citizens from Lombok, labor in Petronas company, in Malaysia on 1985 and getting Red IC. In Malaysia lived in Kuantan, Pahang Malaysia.

The third case is Yuli and Daniel sho, this is Yuli explanation of the process of sirri marriage practice;

Aku ketemu bapak Daniel iku pas aku kerjo dek warung makan punya tante aku dek Bali, yang pada saat itu bapak Daniel ada kerja di Bali

44 SPLP only given to WNI who the passport was lost/broken and will return to Indonesia, the general requirments are: Fill passport form/splp*, Brought police report (for losting passport), brought old passport which was broken (possible), brought passport photocopy (to losting passport), brought the proof, minimal two documents as Indonesian citizen (ID Card, birth certificate, ijazah, family card), have family who can called in Indonesia, the cost: one person is RM 15, more than two persons is RM 18. WNI who was finished the punishment period: free. Note (*) : paspor/splp form available in KBRI Kuala Lumpur by free or can download on website. Documen photocopy and pas photo can do in KBRI without the cost (please not used white or yellow colour cloth/shirt, because the background of the pas photo is white). See... Website of Emmbasy Of The Republik Indonesia (KBRI) ; http://www.kbrikualalumpur.org/ Published: Wednesday, 19th of June 2013. Accesed on on 26th of Maret 2014.

45 Nur Afifah, interview (Sempu, 13th of Februari 2014).
46 Indonesian citizens from Banyuwangi.
47 Malaysia citizens (Blue IC), China ethnic Entreoreneur workers.


3. The Impact of Sirri Marriage Practice of Indonesia Migrant Workers (TKI) in Selangor State of Malaysia

a. The difficulty of Birth Certificate (Akta Kelahiran Anak/ Sijil Lahir) making

Migrant workers will have difficulty in making of child birth certificate, because registered marriage will get some legal protection in family issues.

48 Yuli, Interview (Banyuwangi, 10th of October 2013).
original marriage certificate is an authentic evidence in proving that the marriage was valid by the Government. But *Sirri* marriage is marriage that has no evidence to prove the validity of the marriage, and the child *nasab* status is attached to his mother only. Therefore, obtaining a birth certificate will be difficult because of unprovable validity of the marriage. It was experienced by Yuli, when she had returned to Indonesia and bring their children, she have difficulty to obtain the birth certificate for her son. The birth certificate she needs is to take care of child for school registration in Indonesia.


Making a birth certificate at the Embassy of the Republic of Indonesia will also have some difficulties. The Embassy itself would make the birth certificate for children who their parents are not married officially in Malaysia, the following is a description from Mrs. Alia Fitria:

b. The case about school of children was born of the *sirri* marriage practice

All children who born in Malaysia automatically get *sijil lahir* (birth certificate). Nevertheless their parents are not Malaysia citizen, the children are recognized as Malaysia citizens (getting blue IC). The requirements to make *sijil lahir* in Malaysia is blue IC or red IC which gave the identity card (IC) to government, beside another citizen must gave their passport, marriage certificate and work permission to the government. The problem is, when the migrant workers practice *sirri* marriage (there is no evidence of a marriage certificate of the marriage) in Malaysia and the child was born in Malaysia, the child will automatically get *sijil lahir* (birth certificate) from the Government of Malaysia. The *sijil lahir* only write that record of the child, or record his born in Malaysia, but the child not recognized as Malaysia citizens. Therefore, the child can not attend any kingdom school (government), but he just attends only private school to study. As cases experienced by Hastari, Nur Afifah and Yuli;

Aku bawa anak balek ke Indonesia, pasalnya kalau mau sekolah disini sangat susah lah, biasae sekolah di Swasta, tak bisa dek Kerajaan. Kalau di Indonesia kan senang, saya pakai Sijil Kelahiran teko Malaysia tak payah lah, telu anakku kabei entuk Sijil lahir (Akte Kelahiran) teko Mahkamah syariah karo entok Surat Keterangan Lahir (SKL) teko KBRI cuman bayar RM 30. Lek buat akte kelahiran dek Mahkamah Syariah karo KBRI carane ngumpulne paspor aku karo bojo aku, walaupun palsu surat nikahku, permit bojo aku, terus karo ngumpulne surat keterangan lahir teko hospital. Kabei anak-anakku onok dek Indonesia, kabei yo sekolah dek Indonesia, pas muleh dek Indonesia anak-anakku entok Surat Pengganti Pelaksanaan Paspor (SPLP) teko KBRI. (Hastari)

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49 Agus, *Interview* (Subang Jaya, 11<sup>th</sup> of November 2013).
Anak aku dapat Akte Kelahiran (sijil lahir daftar di Selangor) dari Malaysia yang menguruskan bapak Daniel, dan ketika aku kembali ke Indonesia aku buat Surat Pengganti Pelaksanaan Paspor (SPLP). (Yuli)

Aku kan duwe anak sitok teko nikah iki jenenge Ani Nur Amalia, ani yo wes entok IC biru, yo entok Akte kelahiran teko Malaysia yo seng ngurusne bojo aku iku seng IC merah, enak ngurus surat-surat iku soale bojo aku kan wong IC. Pas mari lahiran iku aku, bojo karo anakku muleh dek Indonesia, tapi ngurus Surat Pengganti Pelaksanaan Paspor (SPLP) dek KBRI. (Nur Afifah)

Another respondent added by Agus:50

Kalau di Malaysia sejak bayi baru lahir, misalnya aku lahir di Malaysia itu nanti sudah diuruskan Sijil Kelahirannya disini, tak payah mau buat Sijil Kelahiran, karena jika bayi sudah lahir di Malaysia dia sudah pegang Sijil lahir paten atau seumur hidup, jadi satu kali buatnya.

Kalau misalnya dari kecil tidak punya sijil lahir atau akte, nanti kalau sudah dewasa tidak bisa ngurus IC atau KTP.

Kalau orang Indonesia yang nikah disini, tapi tak ada buku nikah, bisa anaknya dapat sijil lahir, tapi belum tentu diakui kewarganegaraannya dikarenakan dokumennya tidak lengkap. Kalau orang bukan warga negara (IC) ya kalau mau ngurus sijil lahir harus menyerahkan surat nikah, permit dan paspor. Tapi, kalau warga negara Malaysia tidak usah, cukup menyerahkan IC saja sudah cukup. (Agus)

c. The Children born from the Sirri Marriage Practice Do Not Get their Right

The children was born of sirri marriage practice only have a nasab to their mother because there is no authentic evidence that suggests the marriage valid. Nevertheless if it based on religion as valid and complete the basis and requirement of marriage, it did not registered on the Government. However, the Guardian are needed, when any girl want to get married, and if there is no father (because of dead could be replaced by paternal relatives), or if there is no lineage

50 Indonesia Citizens, was borned in Malaysia and get Blue IC.
from the dad, the one who will be her guardian is the guardian judge. As case happened to Nur Afifah;

Sesok iki seng te nikahne Ani, aku gawe wali hakim, soale kan bapake nang Malaysia yo wes rabi meneh, gak iso seng katene muleh nang Indonesia, jarang hubungi kene pisan. (Mrs. Nur Afifah)

d. Sirri Marriage as an Alternative to Polygamy Practice (being the second wife)

Sirri marriage is an alternative to polygamy practice. This caused by several factors, including; biological needs, the bonding work (civil servants), and the rules of polygamy is very difficult. This is one of case happened to migrant worker women (TKW) who willing to be a second wife. These are explanation from Yuli and Nur Afifah;

Aku tau kalau bapak Daniel sudah berstatus suami orang, tapi karena kebutuhan juga dan aku ingin hidup lebih baik dari segi ekonomi, maka aku mau menikah dengan bapak Daniel dan menjadi istri ke dua. Selama sebelas tahun aku di Malaysia dan akhirnya istri pertama bapak Daniel mengetahui kalau aku sebagai istri kedua yang akhirnya menimbulkan banyak masalah, dari perilaku istri pertama dan keluarga bapak Daniel, sehingga aku memutuskan untuk kembali ke Indonesia. (Yuli)

Farhan balek nang Malaysia soale pekerjaane wes terikat karo kerajaan Malaysia, sampek saiki Farhan gak tau muleh nang Indonesia, jarang ngekei nafkah nang aku karo anak aku nang Indonesia, sampek aku kruungu lek Farhan wes nikah karo wong Malaysia teko Klantan, masio wes ngekei kabar lek te nikah dek aku, tapi sebenere aku yo ra ikhlas terus yo gak ngekei ijin. Terus sampek saiki aku sek sah istrine Farhan teko segi Agama karo Negara.51 (Nur Afifah)

e. Sirri Marriage which Used by Husband to Conduct Domestic Violence

51 Nur Afifah, interview (Sempu, 13 Februari 14th 2014).
Sirri marriage did not have any authentic evidence of the validity of marriage. Therefore, it may allow the husband able to conduct some domestic violence, especially to his wife. Because, if there are no legal powers, there will be some violation or any invalid fulfillment between wife and husband in their married life which they can not claim these rights when it needed. It as happened on Wati’s cases;

Wati sering disiksa sama suaminya karena suaminya itu cemburu sekali. Dan sekarang Ali kembali ke Nepal karena permit sudah waktunya habis, belum memperpanjang permit dan visa belum dapat izin dari Kementerian Dalam Negeri (KDM), tapi Ali berencana untuk kembali lagi ke Malaysia dan memperpanjang permit kerjanya, kalau Wati sekarang bekerja di sini sebagai tukang cat, dua anak nya yang masih kecil dan belum bersekolah.\(^{52}\) (Mr. Umar)

B. Analaysis Data

1. The Factor to Perform Sirri Marriage for Indonesian Migrant Workers (TKI) in Selangor State of Malaysia

Even the background of the case is different, but in general it has a similar basis, the attempt to gain validity. From the case, migrant workers understood that sirri marriage practice is valid in religion. Besides, sirri marriage practice is also considered as a shortcut for couples, they want a wedding but they are not ready or there are other things that do not allow it legally binding.

As what experienced by Nur Afifah, Hastari, and Fauzan, because they have not any complete documents (illegal), as they run away from their employer, their document were hold by the employer, so they did not have any

\(^{52}\) Omar, Interview (Bangi, 11 November\(^{10}\) 2013).
work permits and they chose to perform *sirri* marriage practice. Discussion about documet, the process of marriage are needed documen. In the positive law, marriage must be the completeness of the marriage documents, like identity cards (KTP), birth certificates, identity that shows is a Indonesian citizen, and they (indonesian citizen) want to legitimate their marriage by the procedure is take care of the required letters to get married in Malaysia. If they did not have any document which proving their citizenship, it is difficult to get married legally. Married with other citizens according to Hastari is difficult, and needed long time, and Hastari prefers to perform *sirri* marriage practice with Abdullah, Myanmar citizen. As the case of Wati who married with Ali, Nepal citizen. Actually, the Embassy provide facilities to arrange marriage with another citizen, the requirements are; to another citizen, they must give the passport, visa, required letter (status of marriage/widower/widow). To Indonesian citizen, they have to give as same as the requirements of letters that needed in marriage procedure in Malaysia.

The goal of migrant workers in Malaysia mostly to work, it makes them busy and have not long time to arrange the marriage. Legally marriage which arranging the letters that needed to marriage need a long time and very difficult process. Migrant workers must go back to Indonesia and process the requirement to the Embassy to arrange the marriage document. The reason of Toni and Rani to perform *sirri* marriage practice, although eventually they recorded marriage in Indonesia. Another background is as an alternative to polygamy practice, the case of Daniel Sho and Farhan who are citizens and permanent residents in Malaysia.
(IC Blue and Red) perform *sirri* marriage practice to have polygamous marriage. Yuli prefer to marry with Daniel Sho and became the second wife, because of her wish to live better in economy. Migrant workers who already have wife or husband in Indonesia, with the need for their biological and economical, they choose to get another marriage again in Malaysia by *sirri* marriage practice. Another background is fear of sin as case experienced by Anton, he choose to perform *sirri* marriage practice.

From these cases, the factors that make migrant workers perform unregistered marriage as an alternative to marriage are:

1. *Sirri* marriage by illegal migrants (TKI) who did not have complete documents (as work permit and the letters that show as citizen Indonesia). They escape from their employer while the employer still hold their documents, so they can not get married legally. The reason can be seen in the case of Nur Afifah, Hastari, and Fauzan.

2. *Sirri* marriage between different citizenship. According to the majority of workers, the procedure is very difficult and need long time. The reason can be seen in the case of Hastari who married Andullah, Myanmar citizen, and Wati who married with Ali, Nepal citizen.

3. *Sirri* marriage because it’s easy and quick process. The reason can be seen in the case of Toni who choose to perform *sirri* marriage practice because his busy working and did not have time to process the letters from Indonesia.
4. *Sirri* marriage because it avoid the sin of adultery. This case experienced by Anton who married with Yanti. Yanti as illegal migrants who run away from their employers, living together with Anton to get protection from her employer.

5. *Sirri* marriages as an alternative to perform polygamy practice. As case experienced by spouses Mrs. Yuli and Mr. Daniel Sho, Mrs. Nur Afifah and Mr. Farhan. Both of the woman and the status of wife still not divorced by their husbands.

6. *Sirri* marriage because of their wish to live better in economy. This case experienced by Yuli who got married with Daniel Sho, the success entrepreneur (the Project), who have a wife and children in Malaysia.

2. The Process of *Sirri* Marriage Practice by Indonesia Migrant Workers (TKI) in Selangor State of Malaysia

Practicing *taukil* \(^{53}\) of marriage representative through telephone is viewed differently, some opinion permit it and another opinion do not. According to Islamic schools, Scholars from Hanafiyyah explained that *wakalah* is as same as when somebody occupying other status in terms of *tasarruf* (management). Malikiyah scholars argued that *al wakalah* is when someone substituting other status in terms of right and obligation, then he administratively replace that status. Hanabilah scholars said *al wakalah* is one requesting others for substitution to make a balance tasarruf, in which that practice employs the change of Alloh’s and

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\(^{53}\) The word of *taukil* is masdar, berasal dari katfrom the word *wakala yuwakkilu taukilan* the meaning is acceptance.
human’s right. Meanwhile, Syafi’iyyah scholars state that *al wakalah* means shifting one’s affairs to other in order to take the responsibility as long as the affair involved still lives. From these definition, it can be concluded that *al wakalah* is one hands over his affair to others as the temporal representative, then he occupies the status of *al muwakkil* (a person who gives his affairs to others) in terms of right and responsibility as long as the affair involved still lives.\(^\text{54}\)

Islamic marriage rules permit the practice of *wakalah*. Representation in marriage is the same as other agreement representation. If one or both of brides cannot attend the event of engagement, he/she orders other person to be his/her representative. A representative for female bride is known as *taukil*, in the meaning giving authority for others to be an eligible representative for female bride in a marriage process. This representative only functions as the spokes person in the name of *al muwakkil* (a person who gives his affairs to others). After the marriage process is done, the duty of this representative is also finished.\(^\text{55}\)

Basically, the process of *taukil* marriage representative is stated orally, but the writer prefer a written form one for anticipating some negative impacts. This bestowing authority has also been regulated in private laws, section 1792 BW\(^\text{56}\) and defined as “*A contract in the name of people to give others an authority to* ...


\(^\text{56}\) Kitab Undang-undang Hukum Perdata dalam pasal 1792 BW.
handle such an affair.” There are some rules and requirements for practicing taukil. The rules are as follows:  

a. Muwakkil (who gives authority to other (temporal) marriage representative): the one required is who have an authority to practice taukil. Then, the practice cannot be legalized if it done by mental disorder persons or children under control of their parents.

b. Representative: he should be able to practice the responsibility given by al muwakkil and he is a muslim, baligh, male, a just person, and has capability to practice religious rituals well. Such requirement is only for a representative of the major representative and not for a male representative.

Muwakkil fih (a represented affairs): the bestowing authority is done if the major representative cannot take his responsibility in marriage process. But to note, the act or the thing for taukil is owned by al muwakkil and is not something forbidden (mubah) as well as being known clearly. Muwakkil should precisely state the name of the temporal representative. It is not valid if a major representative (muwakkil) says: “I authorized you as a representative for one of my daughters’ marriage namely blablabla”, and he should clearly state the name.

c. Sigat (utterances) of al muwakkil: it should be stated by al muwakkil as the indication of his permission, for instance: “I authorized you or someone to

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take this matter”. The (temporal) representative does not need to say an approval statement, but is not allowed to reject the responsibility.

Some factors which enabling the practice of *taukil* are:\(^58\)

a) Someone cannot accomplish the duty within other matters since he is too busy.

b) The affairs is in long distance and cannot be done.

c) Someone does not understand the procedures and processes of such represented affairs.

d) Someone provides Islamic reasons such as being sick.

These factors deal with the *fiqhiyyah* principles: “A feasible activity cannot be neglected by an unfeasible one.” By this way, each application of Islamic rules should be done based on the capability of mukallaf. On the other words, what is considered as an utmost ability becomes an official law. The example is in the case of a marriage representative who cannot attend at the process, he may appoint others to be a temporal representative that eligible to it.

A (major) representative who is prevented from attending the marriage agreement due to factors above is still responsible for it, therefore as a solution, he assigns others to be a temporal representative for a marriage process by practicing

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The notion makes a deal with the guidance above: “If something cannot be accomplished wholly, it does not mean to abandon all.”

3. The Impact of Sirri Marriage Practice for migrant workers in the State of Selangor Malaysia

a. Law No. 1 of 1974 about Marital Law Perspective

According to the Marital Law (No. 1 of 1974) in Article 1 that; marriage is a bond between the inner and outer man with a woman as husband and wife with the intention of forming households (families) are happy and eternal based on God. Marriage under this Act not only as an ordinary civil contract, but also has a religious value, other than that a marriage is very closely related to the religious affiliation of a person, especially with the validity of the marriage. This can be seen in section 2 article (1) of Act No. 1 of 1974 states: “Marriage is legal if done according to the law of each religion and belief it.” Furthermore section 2 (1) says that: "Every marriage is recorded according to the laws in force."

If the marriage is performed only in religion, and are not listed on the competent authority is KUA district, then the husband can not deny the marriage. The section 2 article (1) and article (2) of Law No. 1 of 1974 is a unity that can not be separated as a condition of validity of a marriage. As has been described above that legal marriage would lead to children who are born into a legitimate child. In section 42 of Law No. 1 of 1974 specified that: "Children are the


legitimate children born in or as a result of a legal marriage." Further in Article 43 Law Marriage Law No. 1 of 1974 determined that: (1) Children born outside marriage has only a civil relationship with her mother and her mother's family. Paragraph (2) The position of the child in subsection (1) above will then be set out in Government Regulation.61

Explained that the origin of a child can only be proven by an authentic birth certificate, issued by the officials and the authorities. In section 55 article (1) The origin of a child can only be proven by an authentic birth certificate, issued by the competent authority, and (2) If the birth certificate under subsection (1) of this section does not exist, then the court may issued a determination of the origin of a child after a thorough examination held by the evidence are eligible. (3) On the basis of the provisions of the Court of paragraph (2) of this section, the registrar of births agencies in the respective territorial jurisdictions issuing birth certificates for the children concerned.62

Phenomenon of sirri marriage practice in Indonesia is still seen as legitimate (valid), but the agreement (akad) may result in impact or adverse legal consequences to the husband and the wife especially. The consequences include:63

1. There is no power of law that legalize the marriage, so when the rights of wife are violated by the husband, the wife can not claim these rights under the law;


62 Law no. 1 of 1974 About Marriage.

2. The agreement (akad) of sirri marriage is not provable legally. Husband and wife who perform sirri marriage can not prove that they are legal in the couples of Islamic law and the state.

3. Because there is no evidence of the marriage, the importance thing are needed in make of identity cards (KTP), Family Card (KK), Passport, Birth Certificate of the child, or else related to politics as right to vote can not be serviced.

4. The agreement (akad) of sirri marriage tends to make one of the spouse, especially husbands left his responsible, and used to conduct domestic violence.

5. The possibility of the spouse would fake the documents for the smooth administration.⁶⁴

Seeing the many impacts that arise from sirri marriage practice by migrant workers in Malaysia, those are not only the impact that having problems in Malaysia, but also in Indonesia. Ms. Alia Fitria as Third Secretary (Consular Affairs) at the Embassy of the Republic of Indonesia No. 233 Jalan Tun Razak 50400 Kuala Lumpur Malaysia explained that in Malaysia country, there are rules that do not allow by migrant workers, the Embassy can not provide the facilities when there are domestic workers who perform sirri marriage practice, and their position have not documents. Due to the positive law itself, a marriage must complete their documents e.g. ID card, birth certificate, identity showed a citizen, and registered document in the Civil Registry Office or KUA that required letters.

⁶⁴ Syukri Fathudin AW dan Vita Fitria, Problematika Nikah, p. 16.
from RT/RW in Indonesia. Migrant workers came to Malaysia as the guest who come to other people’s home must comply with all local rules, when the local state does not allow foreign nationals as a domestic and factory workers should not get married, then they have to comply these provisions. The Embassy does not have any basic to legalize *sirri* marriage practice performed by migrant workers, because they have violated the provisions of law in Malaysia.65

Moreover, about Children issues relating to the birth certificate, the Embassy has two types of birth certificates. First, the Introduction Birth Letter (SPL) forms such as birth certificates and certificates can be given when both parents did a formal marriage in Malaysia. Second, Birth Certificate (SKL) only can be used even if the marriage was not official, but for the child it can be proved that one or both parents are citizens of Indonesia. For illegal migrants and children of the *sirri* marriage practice who want to return to Indonesia, the Embassy will create a Substitute Letter of Implementation Passport (SPLP). Actually, the problems of *sirri* marriage practice by migrant workers because they are abandoned by their husband and they asked for protection to the Embassy. The only thing Embassy can do is to repatriate the migrant workers and provide a Certificate of Birth (SKL) to his son. Even The Consulate General of the Republic of Indonesia have perform *isbat* marriage in Sabah and Sarawak only, but other state of Malaysia such as Kuala Lumpur, Selangor, Penang, and Negeri Sembilan do not perform it yet. *Isbat* marriage in Malaysia is performed by attending officials of the Ministry of Religion (*Kementrian Agama*) and the Religious Court.

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from Jakarta, it held a mass marriage (*perkawinan masal*), and get a marriage certificate was created from Indonesia.  

*b. Enakmen Islamic Family Law, Selangor 1984 Perspective*

Marriages are made for everyone who lives in Malaysia and abroad, citizens or domiciled in Malaysia after decided of date on enactment must registered under section 25; “*The marriage was decided of date by enactment of Negeri Selangor state, and marriage was perform in abroad must registered and allowed this Enactment.*” Marriage law (family law) in Malaysia require to register the marriage, and the registration of marriages performed after the agreement (*akad*), it is based on section 27; *Become obligatory that the people must report of the marriage to the registrar, the marriage be valid if not registered that allowed this Enactment.*”

Specified in section 38, that if a person gives false information desired under this deed in order to obtain information marriage truth, they will got violation and punishable by imprisonment not exceeding (3) three years or a fine not more than (30) thirty ringgit or both. Section 38; *if the people want to marriage, and gives false information desired under this Enactment, expressly make fake statement, it is mean that the people are perform mistakes, and must*

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67 Miftahul Rohmah, “*Perkawinan di Bawah*, 45-46.
69 Miftahul Rohmah, “*Perkawinan di Bawah*, 47.
"got violation and punishable by imprisonment not exceeding (3) three years or a fine not more than (30) thirty ringgit or both."”

Discussing about agreement (akad) of marriage, DR. Zuliza explained;


The equal regulated between Act No. 1 of 1974 about marital law in Indonesia with Enakmen Islamic Family Law, Selangor in 1984. Both of them, which provisions of the registration of marriage, the difference on the penalties provided in Enakmen Islamic Family Law, Selangor in 1984 for violating the law. For example, when people desired giving false information under this deed in order to obtain information of marriage truth, they will got violation and punishable by imprisonment not exceeding three (3) years or a fine of not more than thirty (30) ringgit or both. The regulated also applies to Malaysian citizens who do contract which is not justified in Malaysian family law.

While, on Law No. 1 of 1974 about marital law there is no penalty provisions for violators who wore the legislation, only the existing provisions on

70 Enakmen Undang-Undang Keluarga Islam, Selangor 1984, Seksyen 38.

71 Lecture of Family Law Malaysia, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia.

72 DR. Zuliza, wawancara (Bangi, 8 November 2013).
penalties on Government Regulation No. 9 Year 1975 on the implementation of law no. 1 1974. In government regulation are explained in Chapter IX. Criminal provisions of section 45; (1) otherwise, specified in the legislation in force, then:73

a. Anyone who against that regulated in section 3, 10 articles (3), 40 of this Government role got punishment by a 7.500,- rupiah fine highest;

b. The employer of registration of marriage who against the regulated in sections 6, 7, 8, 9, 10, articles (1), 11, 13, 44 of this Government role by a 7.500,- rupiah fine at least.

(2) Criminal act that purpose in this article (1) above is the against of law.

The government of Indonesia make the draft Law on Legal Affairs about Marital Act of Religious Court in the marriage wide in the list of National Legislation Program (Prolegnas) of 2010. It contains criminal provisions (articles 143-153), particularly related to sirri marriage, mut’ah marriage, the second, third, and fourth marriage, and the divorce without registered in the court, committing adultery and refused to take responsibility, and marry or become a guardian of marriage, actually they have not right. The threat of punishment for that crime is varied, ranging from six (6) months until three (3) years and fines ranging from 6 million to 12 million.74

73 Peraturan Pemerintah No, 9 Tahun 1975 tentang pelaksanaan undang-undang no. 1 tahun 1974.
74 Nikah Siri? Awas Dipenjara! Kompas, Friday, 12 Februari 10, p. 1.