

CHAPTER I

INTRODUCTION

A. Background

Marriage is the strong bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Supreme Godhead.¹ A strong marital bond is a visible formal relationship because it is established by law, an inner bond is an informal relationship formed with a genuinely shared will which binds both parties.² The birth bond and the inner bond is the foundation to form a happy and eternal family. One of the goals of marriage is to achieve the happiness of the life of the world of the hereafter and to abstain from adultery.

Marriage is protected by religion and state to create order in society, so every citizen must follow the rules. The Law Number 1 of 1974 on marriage states that marriage is lawful if it is done according to the law of each religion. The marriage according to Islam is valid if it fulfills *rukun* and term of marriage, but it has no legal power before it is registered at the marriage registrar's office. The function of marriage registration is to ensure lawful order which has a function as an instrument of legal certainty, legal convenience, and as the evidence of marriage.

In fact, there are still many marriages done without being registered in the office of religious affairs or civil registration as a marriage registrar that eventually cause problems someday, like marriage *sirri*.

¹ *Law No 1 of 1974 on Marriage, Article 1*

² Abdulkadir Muhammad, 1993, *Hukum Perdata Indonesia*, Jakarta, Alumni, p.74.

Sirri marriage is a form of marriage which develops in the Muslim population of Indonesia. *Sirri* tries to avoid the marriage regulation system under the Marriage Law. For this reason, the applicant takes his own way which is not contrary to Islam. *Sirri* marriage does not have any legal effect because it does not have a marriage certificate. This means that if a husband or wife does not fulfill its obligations, then the wife cannot demand anything from the court. Even if one dies (husband/wife), then one cannot inherit the property. *Sirri* marriage in the hands of these legal system has a very high risk and very detrimental to women, especially in children which have been born.³ The children will face difficulty in making administrative document such as birth certificates, ID cards, and others. And also don't have the right to demand a maintenance or inheritance from father.

Generally, *sirri* marriage is defined as a marriage performed in accordance with the provisions of Islam and has no legal force because it has not been recorded by the marriage registry officer, therefore, its actor does not get an authentic deed or marriage certificate as proof of marriage.⁴ Because it does not meet the procedures for recording according to the relevant legislation, *sirri* marriage will bring many problems, especially about civil records. There are still many people in Indonesia who perform *siri* marriage. In case of marriage cannot be proven with the marriage certificate, that marriage may be filed to the Religious Court for re-establishment.

³ Faizah Bafadhal, "Nikah Siri dalam Perspektif Undang Undang" <http://www.e-jurnal.com/2016/03/nikah-siri-dalam-perspektif-undang.html>, accessed on Friday, December 1st 2017 at 09.55 am

⁴ Muhaimin, *Praktek Kawin arakat Islam Daerah Istimewa Yogyakarta*, Penelitian Fakultas Hukum UGM, Yogyakarta, 1993 p.21

The re-establishment (*itsbat*) is an administrative act, which must be done so that a legal marriage according to religion has the force of law. Then, the judge of the Religious Courts can make a decree (*itsbat*) that a marriage is declared legitimate then ordered the marriage registry officials to record it in the marriage register. Thus, with the establishment by the Religious Courts, a person may receive a marriage certificate issued by the Office of Religious Affairs based on the determination of the Religious Courts even though the marriage has been done long time before. The process of determination by the Religious Courts seems to be one way out in solving the *sirri* marriage problems.

B. Research Problem

Considering the research background above, the formulation of the problems of this research are:

1. What is *sirri* marriage (the data, causes, legal status and legal consequence)?
2. What is the urgency of the establishment of *sirri* marriage?
3. How is the process of establishing marriage for *sirri* marriage in Bantul Religious Court after the enactment of the Law Number 1 of 1974 on Marriage?

C. The Objective of the Research

Based on the research problem above, the objective of the research is;

1. To know the *sirri* marriage (the data, causes, legal status and legal consequences).
2. To know what is the urgency of the establishment of *sirri* marriage.
3. To understand the process of establishing marriage for *sirri* marriage couple in Bantul Religious Court after the enactment of the Law Number 1 of 1974 on Marriage.

D. Benefit of research

There is some benefit of this research, namely:

1. Theoretical Benefit

This research would give benefit in order to understand more about how the establishment of marriage (*itsbat nikah*) for *sirri* marriage in Bantul Religious Court after the enactment of the Law Number 1 of 1974 on Marriage.

2. Practical Benefit

This research would give a better understanding of how the establishment of marriage (*itsbat nikah*) for *sirri marriage* in Bantul Religious Court after the enactment of the Law Number 1 of 1974 on Marriage.