

CHAPTER V

CONCLUSION AND RECOMMENDATION

A. Conclusion

Based on the discussion in Chapter Four, it could be concluded:

First, there are many *sirri* marriages in Indonesia today and truly happened. As we know, *Sirri* marriage is also done by Indonesian artist, Nikita Mirzani. The reason of her *sirri* marriage is the request of her husband and does not want to be known by many people because of shame if they fail again. like a previous marriage. The Nikita Mirzani's reason to held *sirri* marriage is one of several factors that cause *sirri* marriage. The others are:

1. Low public awareness of the law
2. Pregnancy outside of marriage
3. Avoiding Lawsuits
4. Provisions on Marriage Records
5. Economic Factors
6. The difficulty of polygamy permits

Even though the *sirri* marriage is considered a legitimate marriage if it meets the terms and *rukun* of marriage according to Islamic Law, but the consequences caused by the *sirri* marriage are greater than the benefits. The legal consequences of *sirri* marriage including:

1. There is no legal force that remains against the legality of the marriage.
2. The interests of husband and wife in the household cannot be protected

3. Because there is no proof of marriage, the interests which include, ID card, passport, birth certificate cannot be served.
4. *Sirri* marriage makes one partner especially husband free to leave obligations,
5. *Sirri* marriage can disturb the benefits of religion.
6. With no record of marriage by marriage registrars, then the child who is born does not have a clear identity that can be proven legally.
7. Because the child's identity is unclear, as a result, if his parents died, the child had difficulties to get an inheritance from his parents. And the wife also found it difficult to declare herself a legitimate heir.

The legal status of *sirri* marriage according to Islam is valid if it fulfills *rukun* and legal requirements for marriage and the legal status of the *sirri* marriage according to the law has no legal power because it is not registered at the marriage registrar's office.

Second, *Itsbat* marriage is the most important part of solving the problem from the *sirri* marriage. The urgencies of *itsbat* marriage are;

1. The urgency of *itsbat* marriage for the wife
 - a. There is a permanent legal force on the legality of the marriage after *itsbat* marriage. So, if a wife's rights are violated by the husband, the wife can claim her rights.
 - b. Protect the right of the wife in getting maintenance from her husband and easeing in declaring that she is a legal heir as a wife when her husband passed away.
 - c. After *itsbat* marriage, the wife can sue the husband to court if the husband wants to divorce him because it already has authentic evidence.

2. The urgency of *itsbat* marriage for the husband
 - a. The husband has the right to be the guardian of his daughter's marriage in the future.
 - b. The husband will get legal protection regarding rights and obligations in the household.
3. The Urgency of *itsbat* marriage for children
 - a. After *itsbat* marriage, children born from *sirri* marriages will not only have a civil relationship with mother and mother's family but also with father's family
 - b. Children born in the *sirri* marriage after *itsbat* marriage have the right to demand a maintenance or inheritance from the father.
 - c. Children born to the marriage become legitimate children according to the state law.
 - d. Father is entitled to be a marriage guardian for his daughter
 - e. Do not have problems in making administrative interests such as birth certificates, identity card, and others

Third, the process of 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 is as follow:

1. Submit an application

Application of *itsbat* marriage is registered by the applicant to the religious court where the applicant lives. Applicants who come to the religious court to submit an application for its marriage confirmation, meet the young clerk of application (*panitra muda permohonan*) to get information about how to make an application of *itsbat* marriage. Application letter must contain about the identity of the applicant, the reasons for registering *itsbat* marriage (*posita*) and application to the marriage is declared valid by the religious court (*petitum*)

2. Registration

The applicant meets the officer with bringing a letter of application of *itsbat* marriage and then the officer makes a power of attorney to pay. Application letter of *itsbat* will be registered in the court case list if the applicant pays a court fee. For the applicants who cannot afford to pay, can apply to litigate for free. After the applicant gets a power of attorney to pay, then bring it to waste to pay court fees. And the officer gives the case number in the application letter. And then the applicant registers his case to the officer to record the application letter in the case register of the application. Then the applicant waits for a trial call from the bailiff the head of the religious court.

3. Calling the trial

When the trial will be held, the applicant must be called to attend the trial by a surrogate bailiff (*juru sita*) on the orders of the judge's chairman. Letter of invitation it must be delivered directly to the residence and to the applicant itself. If it cannot be delivered directly, then the letter of invitation submitted to the head of the village no more than 3 days before the trial opened.

4. Trial

Trial examination of *itsbat* is carried out by the judge no later than 30 days after receipt of the application case file. In the trial, the panel of judges immediately read out the petition from the applicant. If the letter is not changed by the applicant, then proceed with proof, conclusion, and reading of the determination. Examination of the application case of *itsbat* marriage is carried out by a panel of judges with trials open to the public.

5. Settlement

After the application case of *itsbat* marriage, it is decided with a determination within 14 days and there is no legal remedy filed by the applicant, then the determination has permanent legal force. Then the final settlement of the case is that the officer issues a copy of the determination that must be received by the applicant.

B. Recommendation

Based on the problem that has been discussed, it can be proposed two suggestions. *First*, Religious courts must be careful in examining and deciding cases. Be careful in checking whether the marriage is legal according to Islamic law and the reason for the application of *itsbat* marriage fulfills the requirements for the application of *itsbat* marriage based on Law 1 of 1974 concerning marriage or not. Because at this time so many *sirri* marriages without following *rukun* and terms of marriage based on Islamic law. And also based on the strong evidence and testimony of the witness who confirmed the marriage which has been proposed to the Bantul Religion Court.

Second, for the community because of many adverse effects of its marriage, especially for wives and children, as much as possible the community does not do *itsbat* marriage. And for people who have *sirri* marriage should immediately register the application for *itsbat* marriage to a religious court to avoid the adverse effects of its marriage.