

LEGAL REVIEW OF THE INHERITANCE RIGHTS OF WIDOWS AND/OR WIDOWERS AS A RESULT OF AN UNDERHANDED MARRIAGE

krisia wira cahaya¹, Ani Yumarni², Hidayat Rumatiga³

¹faculty of law, Universitas Djuanda, Indonesia ;

²faculty of law, Universitas Djuanda, Indonesia ;

³faculty of law, Universitas Djuanda, Indonesia ;

¹krisiawiracahaya@gmail.com; ²ani.yumarni@unida.ac.id; ³hidayat.rumatiga@unida.ac.id;

Abstract

Background - The phenomenon that occurs today in society is marriage, marriage never ceases to develop in society. many of them are people who carry out underhand marriages that are not registered in religious courts. in the law, it has been regulated in law number 1 of 1974 in article 2 which states "marriage is valid if it is carried out according to the laws of each religion and belief. And every marriage is recorded according to the applicable laws and regulations". the purpose of this marriage registration is to provide legal certainty and protection for the parties to the marriage, so as to provide authentic evidence of the occurrence of marriage and the parties can defend the marriage before the law. on the contrary, if the marriage is not recorded, the parties cannot have legal force and proof that a marriage has occurred. This research uses several theories such as grand theory, middle theory and appleid theory. And each of these theories has a different purpose such as grand theory which discusses the rule of law which contains the interests of justice and recognition of marriage inheritance rights for those who enter into an underhand marriage. The middle theory is legal certainty which is one of the objectives of the law which is commonly said to be legal certainty in this title such as in inheritance rights, legal certainty is very important so that widows / widowers who marry underhand can get clear inheritance rights if one of the spouses dies. The last Applied theory is using the maslahah approach in Islamic law, the maslahah referred to in this problem is the discovery of judges can argue in maslahah by prioritizing the interests or maslahat for widows and / or widowers in a marriage to obtain inheritance rights as a legal result.

Purpose - This research uses several theories such as grand theory, middle theory and appleid theory. And each of these theories has a different purpose such as grand theory which discusses the rule of law which contains the interests of justice and recognition of marriage inheritance rights for those who enter into an underhand marriage. The middle theory is legal certainty which is one of the objectives of the law which is commonly said to be legal certainty in this title such as in inheritance rights, legal certainty is very important so that widows / widowers who marry underhand can get clear inheritance rights if one of the spouses dies. The last Applied theory is using the maslahah approach in Islamic law, the maslahah referred to in this problem is the discovery of judges can argue in maslahah by prioritizing the interests or maslahat for widows and / or widowers in a marriage to obtain inheritance rights as a legal result

methodology - The approach used by the research is a Normative Juridical Approach, the normative juridical method used in the research is a literature study or comparative law method. This research also uses an approach to legislation and regulations relating to underhand marriage. The statutory approach is used to examine the laws and regulations governing marriage registration.

Findings - In this research, the author finds many problems such as inheritance rights, marriage registration and underhand marriage.

Originality - The value taken in this study is the value of adit marriage, namely by marrying under the hand.

Keywords: inheritance rights, widow/widower, marriage, recording
