

RECONSTRUCTION OF LIFE INSURANCE CLAIM AS ONE OF THE TREASURES OF THE HEIRS BASED ON JUSTICE VALUES (STUDY OF DECISION OF THE ACEH COURT OF SYAR'YAH AND THE SUPREME COURT OF THE REPUBLIC OF INDONESIA)

Rafiuddin
Anis Mashdurohaturun
Gunarto

Ahmad Rofiq
I Gusti Ayu Ketut Rachmi Handayani

ABSTRACT

The purpose of this research was to find out the problematic of life insurance claim in the decision of the Mahkamah Syar'iyah and the Supreme Court decision as well as the reconstruction of life insurance claims as one of heritage based on Values of Justice (Study on Syar'iyah Court decision and Supreme Court decision). Approach method used in this research was juridical normative and sociological juridical approach. The data used were primary and secondary data. The locations of the study were the Court of Syar'iyah Aceh and the Supreme Court as a court of appeal. The Aceh Syar'iyah Court was also considered appropriate as a research site because it is authorized to provide research on the judicial faculties for judgments granted by the Regency/City Syar'iyah Court. Analyze data was done by using descriptive analytic. The result of the research found that judicial institution gave different interpretation in deciding whether to use insurance rules that recognize the policyholder is entitled to claim the insurance fund or use the Compilation of Islamic Law that regulates the system of Islamic inheritance for the people of Aceh Province which is a special area. There is conflicting and inconsistent between the Court Decision of Syar'iyah and the Decision of the Supreme Court, because the Mahkamah Syar'iyah has decided the case of life insurance claim fund using the law of Islamic inheritance. The decision of the Supreme Court of the Republic of Indonesia decided the case of life insurance claim fund by using the rules of insurance law in accordance with the agreement and policy. Reconstruction of life insurance claims as one of Heritage-based relic value based on the reconstruction of Article 171 of Presidential Instruction no. 1 of 1991 on the Compilation of Islamic Law.

Keywords: Reconstruction, Life Insurance Claim, Justice Values

INTRODUCTION

Islam as a religion and a source for science today is experiencing a very rapid development. This is seen by the numerous study conducted on various aspects of Islam, ranging from the problems of theology, fiqh, studies of hadith, study of how the text should be interpreted in the Qur'an. ¹People tend avoid mistakes or disharmony in the family, if there is one family member who passed away, they will immediately divide their inheritance in ways that they agree with. The settlement of the division of inheritance cannot be separated from 3 (three) ways adopted by the Indonesian people today according to Customary Law, Civil Law, and according to Islamic Law. In the development of law in Indonesia up to now, still associated with these three ways, so that in the division of inheritance for Muslims is guided by the Law of Inheritance of Islam.

Allah (SWT) says in Surah Al-Anfal verse 75 reads, meaning: "And those who have the blood relation are each more entitled (inherited inheritance) according to the book of Allah, Allah knows all things."¹ God's Word as mentioned above is used as the basis that the relationship between the lineage or nasab² in the kinship of Muslims is the main cause of mutual inheritance among them. In addition to other causes such as relationships due to marriage, as the word of God letter An-Nisa verse 7 which means: "For men, there is a right to the treasures of the mother of the father and his relatives and to the women there is also the right of the relics of the mother's mother and the relatives either slightly or much according to the predetermined part".³ Among

¹MuhyidinGunartoAnisMashdurohaturunRo'fahSetyowati Ahmad Rofiq, *Disharmony The Concept Of Legal Property Between Migration Law, Islamic Law Compilation, And Islamic Law*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August), ISSN 2289-1552 2017, page 199 .

¹Al-Qur'an, *Al-Qur'an dan Terjemahan*, Yayasan Penyelenggara Penterjemahan/ Penafsiran Al-Qur'an, Departemen Agama RI, Jakarta, 1990, page. 212

²Nasabetymologicallymeans al qorobah (relative), relativecallednasabbecausebetweenthetwowordsthereis a relationship and interrelationship. Derivedfromtheirwordsnisbatuhilaaabiihinasaban (nasabnyatohisfather). IbnusSikitsaid, "TheNasabisfromtheside of thefather and alsothemothers." Whilesomelinguistssay, "Nasabisspecifictothefather, meaningthatsomeoneisfatheredtohisfatheronly and notmaternalizedexcept in exceptionalconditions.

³ Al-Qur'an, *Al-Qur'an dan Terjemahan*, Ibid, page. 116.

Muslims concerning the implementation of the division of inheritance, if someone dies, the people will manage all matters based on standardized ways⁴ both in terms of system and requirement.

The provisions concerning anyone who will be the heirs⁵ of a person's heir, inheritance and portion for each heir shall be governed by the foundations of Nash Al-Qur'an, As-Sunnah, and Ijma 'the scholars⁶, so that the error in its application can be overcome minimize.

In general, Muslims obey the exact system of inheritance that is regulated according to Islamic law⁷, because it has to do with adherence to religious teachings whose values are upheld. It is very close relationship between the divisions of inheritance in the Law of the Inheritance of Islam other than the Heir. The heir is the property and the material rights that are the object of inheritance which is also called the inheritance. The definition of inheritance is understood as follows: "Inheritance is everything left by a deceased person who can legally turn to the heir, therefore the inheritance must be investigated before it is distributed to all heirs who are entitled to receive it according to the provisions specified in the law of inheritance so as not to exist and mix with the rights of others therein".⁸ Although not the same between the object of inheritance and the type of insurance⁹ that can be attributed to the death of a person, but the insurance requires a sum of money that must be paid to after someone death, such as Life Insurance¹⁰. It is always closely related to who is destined for the life insurance claim fund, who is entitled to receive it, whether the insured as stated in the insurance policy¹¹, or heir of the customer¹² who have died related to the Insurance contract.

In the study it was found that between the Court of Syar'iyah Aceh¹³ and the Supreme Court of the Republic of Indonesia abbreviated as MARI¹⁴ in assessing and considering the status of this insurance claim fund, in particular Life Insurance there are contradictory or incompatible contradictory analysis. The Court of Syar'iyah of Aceh considers that the insurance claim fund of a

⁴JokoUtama, Muhammad Faridh, Mashadi, Al-Qur'an Al Karim dan Terjemahnya, CV. PutraToha Semarang, Semarang, 2015,page.62.

⁵The number of male heirs is 15, while the number of women entitled to heirs is 10 groups.

⁶The portion and portion of the heirs are already specified in Al-Qur'an surat An-Nisa'.

⁷The division of inheritance in Islam has been so clearly regulated in the al quran, that is on An Nisa's letter. God with all His grace, has given guidance in directing man in terms of division of inheritance. The division of this property also aims that among humans who are left there is no dispute in the distribution of inheritance. The heirs are distributed if indeed the deceased person leaves a useful property for others. However, before the estate is given to the heir, there are three things that must first be issued, namely the relics of the dead:

1. All costs associated with the funeral process of the body;
2. The testament of the deceased; and
3. The debts of the debtor.

When the three things above have been fulfilled then the division of the estate is given to the family and also the eligible relatives.

⁸Fatchur Rahman, *Ilmu Waris*, Al-Ma'rif, Bandung, 1994, page. 36.

⁹According to the provisions of Article 1 number (1) of Law Number 2 Year 1992: "Insurance or coverage is an agreement between 2 (two) or more parties, with which the insurer binds itself to the insured by accepting the insurance premium, to provide reimbursement to the insured because loss of damage or loss of expected profit or legal liability to a third party which may be subject to the insured, arising from an uncertain event or to provide a payment based on the death or life of an insured person.

¹⁰In relation to life insurance, the focus of the discussion is directed to the type of insurance, item (b). If Article 1 number (1) of Law Number 2 Year 1992 in narrowly covers only the type of life insurance, then the affairs are: "Life insurance is an agreement, between 2 (two) parties or more with which the insurer binds himself to the insured by accepting Premium to provide a payment based on the death or life of an insured person.

¹¹An insurance policy is a letter of agreement containing an insurance agreement between the insurer and the policyholder.

¹²The definition of new customers can be realized in Law no. 10 of 1998 on Amendment to Law no. 7 of 1992 concerning Banking is governed by customers consisting of two terms, namely:

1. Depositors are customers who place their funds in a bank in the form of deposits based on the bank agreement with their respective customer.
2. Debtor customer is a customer who obtains creditor financing facility based on sharia principles or equivalent according to the bank agreement with their respective customer.

¹³Mahkamah Syar'iyah is a Syari'ah Islamic Courts Institution in Aceh as the development of Religious Courts inaugurated on March 4, 2003 Miladiyah coincided with the date of 1 Muharram 1424 Hijriyah by Chief Justice Bagir Manan attended by Minister of Home Affairs Sabarno, Minister of Religious Affairs Said Agil Husin Almunawar and Minister of Justice and Human Rights Yusril Ihza Mahendra.

¹⁴The Supreme Court of the Republic of Indonesia (abbreviated as MA RI or MA) is a state high institution in the Indonesian constitutional system which is the holder of judicial power together with the Constitutional Court and is free from other power influences.

person acquired after the customer dies, according to the Law of Inheritance of Islam it is Joint Treasure¹⁵ which is also as *tirkah* (heir). Meanwhile, according to the Supreme Court of the Republic of Indonesia, the allocation of insurance claim fund is not seen in terms of being awarded when and who the heirs of the deceased participants but viewed from the contents of clauses or requirements in the insurance policy when making insurance agreements. In addition to the essential elements in the Islamic heritage of property which become the object of division is intended to the heirs who have inheritance rights, also the requirements that must first exist on the heirs, namely the deceased and leaving the heirs, ie those who are still alive on when the heir died and there were no obstacles that caused the heir's status to be the heir of the heir.¹⁶

A deceased person is always associated with a living person as an heir who receives his or her inheritance from the property he earned or the material rights he or she possessed while alive. Efforts of the heirs are very varied so as to obtain a variety of wealth also source.

Based on the conflict of values and norms of inheritance of life insurance claim fund, it is deemed necessary to investigate further about "Reconstruction of Life Insurance Claim as one of the property of Values Based on Justice Values (Study of Judgment of Mahkamah Syar'iyah Aceh and Supreme Court of Indonesia)." the substance of this study is expected to be useful as a study for judges and the State of Indonesia in the application and development of law on inheritance, especially regarding the application of the law on insurance claims associated with the Istimewa Aceh that apply Islamic law.

RESULT AND DISCUSSION

1. the Problem of Life Insurance Claim Fund In The Decision of Syar'iyah Court And Supreme Court Decision A. Conflicting Law Arrangements

The Syar'Iyah Court is a judicial institution whose territory or status in a district or city in Aceh or outside the province of Aceh is called the Religious Court. Religious courts are the first courts charged with examining, deciding and cases or disputes between Muslims in Indonesia. Such cases include marriage, inheritance, wills, grants and other cases that use Islamic law as the basis.

The science of inheritance according to the jurists is: "the knowledge that he can in the know those who inherit, the people who cannot inherit, the level received by each heirs and how the treasure is divided" Pillars of inheritance are three namely:

- 1) Al-Muwaris, who died, both *haqiqi* and death *hukmi*. The death of *hukmi* is a death expressed by a judge because of several considerations
- 2) Al-Waris or heirs, namely the person who will inherit the inheritance of the dead because it has a base/cause of inheritance, such as due to a *nasab* or marital relationship or custody rights with the death person.
- 3) Mauruts, the treasures of the death person which have been cleaned after deducting for the cost of the mortuary payment of the debts and the implementation of his will is not more than one-third.

As for the requirements of inheritance are that the heirs are entitled to receive the inheritance there are 3 elements:

1. The death of *muwarrist* (the person who bequeathed)
2. His life inheritance (heirs) at the time of death muwaris.
3. The absence of inherited barriers.

The essential (*hakiki*) death is the demise of muwarris that has been believed without the need for a judge's decision, for example the death is witnessed by the multitude of senses, or death which can be proved by evidence. The death of hukmy is death (muwarris) on the basis of the judge's decision. Jurisdictionally he is dead although he may still be alive, for example against the mafqud.

Distinctive features of Aceh, Aceh Province. The province gained special autonomy status under Law No. 18 of 2001 on Special Autonomy for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam, which was amended by Law Number 11 Year 2006 on Aceh Government. What is special about the Aceh provincial autonomy? Aceh's features can be seen in three dimensions: terminology, institutions, and finances. The legal substance governs the implementation of adat (custom) in Aceh.

¹⁵The definition of common property according to the jurists have in common with each other. According to Sayuti Thalib, the acquisition of the property during the marriage bonds acquired on the individual business or obtained in a joint venture is a common property for the husband and wife. (Indonesian Family Law, 1986, p. 89). Meanwhile, according to Hazairin, the property earned by husband and wife for his business is a joint property, whether they work together or husband who works while the wife only take care of household and children at home, once they are bound in a marriage agreement as husband and wife then all become united both the wealth and the children..

¹⁶Instruction of the President of the Republic of Indonesia Number 1 Year 1991 dated June 10, 1991 on the Compilation of Islamic Law.

From the description of the legal arrangements governing Aceh Province, it has been concretized in the positive law of Indonesia regarding the authority of the implementation of Shari'iyat Islam in Aceh. This confirms that in Aceh the law enforcement apparatus serving in Aceh must respect and enforce Islamic law especially for cases regulated by Islamic law and which have been affirmed and legalized by law and institutions that deal with cases of community law in Aceh.

2. The Basic Philosophy of Judges in Deciding Cases

A judge in deciding cases must have a basic philosophy, so that the resulting verdict can be accounted for, either to the litigants, the community, the state or Allah. In Indonesia, a judge in deciding a case brought before a court must fulfill its material legal basis and its formal legal basis.

The legal basis of material law is the law that contains rules governing the interests and relationships in the form of orders and prohibitions. While formal legal basis is also called procedural law, according to Sudikno Mertokusumo, the legal regulation that regulates how to guarantee the obedience of civil law material with intermediate judges or legal regulations that determines how to guarantee the implementation of civil law material.²

And according to Mukti Arto, the law of civil religion is all rules of law that determine and regulate the way how to enforce the rights and obligations of civil religion as stipulated in the material civil law applicable in the religious court environment.³

The sources of legal proceedings of the religious court include:⁴

- 1) HIR / R.Bg.
- 2) Law Number 7 Year 1989.
- 3) Law Number 14 Year 1970.
- 4) Law Number 14 Year 1985.
- 5) Law Number 1 Year 1974 Jo. Government Regulation Number 9 Year 1975.
- 6) Law Number 20 Year 1947.
- 7) Presidential Instruction No. 1 of 1991 (Compilation of Islamic Law).
- 8) Regulation of the Supreme Court of the Republic of Indonesia.
- 9) Circular Letter of the Supreme Court of the Republic of Indonesia
- 10) Regulation of the Minister of Religious Affairs.
- 11) Decision Minister of Religious Affairs.
- 12) The Books of Islamic Fiqh and Other Unspecified Legal Resources.
- 13) Jurisprudence of the Supreme Court.

Then based on the provisions of Article 28 of Law Number 4/2004, Judges is as law enforcement and justice must explore, follow and understand the values of the living law in society. Thus also in the field of procedural law in the Religious Courts, judges are required to explore, follow and understand the legal values of the event derived from Islamic Shari'a. This is in addition to filling the void-vacuum in the procedural law as well so that the resulting verdict is closer to the truth and justice that blessed by Allah SWT. Thus, judges' decisions will provide a sense of justice that satisfies the seekers of justice who are Muslims.

In addition, there are principles that serve as the basis for lawyers in the Court. The principles of civil procedure law are linked to the basis and principles of justice and guidelines for the general court environment, religious courts, military courts and state administrative courts; where the provisions on this matter are regulated in Law number 4 Year 2004 regarding Basic Provisions of Judicial Power. While the special principles that become the authority of Religious Courts are among others:

- 1) The Principle of Islamic Personality

Subjected and subjugated to the religious justice, only those who claim to be Muslims. The principle is regulated in Law no. 3 of 2006 on Amendment to Law no. 7 of 1989 on Religious Courts Article 2 general explanation of the third paragraph and Article 49 are limited to cases which are the jurisdiction of religious courts.⁵

²Ach Zayyadi, Civil Procedure Law (Diktat On Civil Law Subject Course). Or in another sense, Sudikno Mertokusumo said: that to enforce civil material law especially in the case of a violation or to maintain the ongoing civil material law in the event of a rights claim is required a series of other legal rules in addition to the material law itself. These rules are called formal civil law or civil procedure law

³Arto, *Praktek Perkara*, page. 7

⁴*Ibid*, page. 12.

⁵Particularly for divorce cases that are used as a measure of determining whether or not a religious court is law applicable at the time of marriage takes place. So that if a person marries an Islamic marriage in case of a marriage dispute the case remains the absolute authority of the Religious Courts, even if one party is no longer Muslim (apostate), either from the husband or wife, can not abrogate the principle of the Islamic personality attached at the

The provisions inherent in Law No.3 of 2006 on the principle of Islamic personality are:

- a. The parties to the dispute must be equally Muslim.
 - b. Disputed civil cases concerning marriage, inheritance, will, grant, endowment, zakat, infaq, shodaqoh, and sharia economy.
 - c. The legal relationship underlying under Islamic law, therefore the settlement event is based on Islamic law
- 2) The principle of Ishlah (peace efforts)

Peaceful efforts are regulated in Article 29 of Law No.1 Year 1974 about marriage of marriage jo article 31 PP.No.9 Year 1975 about the implementation of UU.No.1 about marriage jo. Article 65 and Article 85 (1 and 2) of Law no. 7 of 1989 which is not amended in Law No.3 of 2006 on religious junior jo article 115 KHI jo article 16 (2) of Law No.4 of 2004 on judicial power.

Peace efforts in Religious Courts sessions are imperative, especially in cases of polygamy permits. For in this case the reconciliation effort is the burden required by law to the judge in every case of polygamy and as long as the case has not been decided, reconciliation efforts can be done at every hearing.

- 3) Open Principles For Public

The principle of public openness is provided in article 59 (1) of Law No.7 of 1989 which is not amended in Law No.3 of 2000 on Religious Courts jo.article 19 (3 and 4) UU.No.4 Year 2004. Court hearing religion is open to the public, unless the law otherwise provides or if the judge for important reasons recorded in the minutes of the hearing commands that the examination in whole or in part shall be conducted by a closed session.⁶

- 4) Equality Principle

Equality principle in religious court is regulated in article 58 paragraph 1 Law No.7 Year 1989 which article and its contents are not changed according to Law No.3 Year 2006 about Religious Judgment jo article 5 paragraph 1 of Law no. 4 of 2004 on Judicial Power. Every person who has case before the court is equal to his rights and position in the same sense of rights and status before the law. Therefore, there is no discriminatory distinction.

- 5) The Active Principle Gives Help

The active principle of providing rocks to justice seekers in the religious court environment is set out in article 119 HIR / 149 R.Bg. jo. article 58 (2) of Law No.7 of 1989 which is not amended in Law No.3 of 2006 on Religious Courts jo. article 5 (2) of Law No.4 of 2004 on Judicial Power which reads: Courts assist the justice seekers and endeavor to overcome all obstacles and obstacles to the achievement of a simple, fast and low cost trial.⁷

- 6) Principles of Legal Appeal

Against a court decision of the first instance may be appealed to the Court of Appeal by the parties concerned unless the law determines otherwise.

- 7) Principles of Cassation Law Efforts

Against a court decision on the appeal level may be requested by the parties to the Supreme Court by the parties concerned unless the law determines otherwise.

- 8) Principles of Review Efforts

Against a decision that has obtained permanent legal force, the parties concerned may file a review to the Supreme Court, in the event of certain circumstances or conditions specified in the Act.

- 9) Principles of Legal Consideration

time of the marriage is carried out, that is, any settlement of divorce disputes is determined by legal relationship at the time the marriage takes place is not based on the religion held in the event of a dispute.

⁶The examination of the case in the Religious Court to be conducted in closed session is related to the examination of divorce and / or divorce divorce (article 67 paragraph 2 of Law No.7 of 1989 which is not amended in Law No.3 of 2006 on Religious Courts).

⁷So the law for judges to provide assistance to the parties in the smooth process of the trial is imperative (compulsory) insofar as to the matters relating to formal issues and not with regard to the material or principal issue of the case

All court decisions other than shall contain the grounds of the decision, include also certain articles and the relevant legislation or source of the unwritten law as the basis for judgment.

10) Principle of Giving Assistance between Courts

For the sake of justice all courts are obliged to give each other the requested assistance⁸. To give a verdict is a judge's duty. The ruling is demanded by a justice and for that the judge conducts the constituency of the event, qualifies and constitutes it. So for the judge to judge a matter of importance is the fact or event and not the law. The rule of law is a tool, while the determining is the event. So in the judge's ruling that need to be considered is the legal considerations, so that anyone can judge whether the judgment is enough to have an objective reason or not. In addition, judges' considerations are important in making memory appeals and memory of cassation.⁹

Consideration is the basis of the decision. The consideration in the decision is divided into two, namely the consideration of the sitting of the case or event and consideration of the law. The consideration of the event should be raised by the parties, while the legal considerations are the affairs of the judge. The consideration of the verdict is the reasons of the judge as accountability to the community why he has taken such a decision (objectively).¹⁰

3. The Authority of the Judge in Interpreting and Reconstructing the Law

In the Law on the Basic Law of Justice (Law No. 4 of 2004) in Article 16 paragraph (1), the Court should not refuse to examine the case and adjudicate a case filed under the pretext that the law is absent or less clear, but obliged to examine and prosecute him¹¹. This indicates that a judge is considered to understand the law. That is, all cases submitted to him must be accepted. If in his case does not find a written law, he is obliged to extract unwritten laws to decide upon the law. In what ways can he dig up and discover what can be law?

The provisions of article 28 paragraph 1 of the Judicial Power Law Number 4 of 2004 indicates that judges as law enforcement and justice shall explore, follow and understand the values of the living law in society¹². The provisions of article 28 paragraph 1 should be interpreted as an obligation for the judge because he is the framers and diggers of the legal values that live among the people. Thus, judges can provide decisions that are in accordance with the law and sense of community justice.

Thus, the important task of the judge is to adjust the Act with real things in society. If the Act cannot be executed by its meaning, the judge must interpret it. In other words, if the Law is not clear then the judge is obliged to interpret it so that he can make a fair decision and in accordance with the legal intent of reaching legal certainty. Therefore, one can say that interpreting the Law is the legal obligation of the judge.¹³

Although interpretation is a legal duty of the judge, there are some restrictions on judge's independence to interpret the Law. Logeman said that the Judge must be subject to the will of the legislator. In that case the will cannot be read simply from the words of the rule of law, the judge must look for it in the history of the words. In the system of the Law or in the sense of such words were used in the daily association.¹⁴

The judge shall seek the will of the legislator, for he shall not make any interpretation which is incompatible with that will. Each interpretation is an interpretation limited by the will of the legislator. Therefore the judge is not allowed to interpret the Law arbitrarily. One should not arbitrarily interpret a bounding principle, only an interpretation in accordance with the intent of the legislator alone being the correct interpretation.

In order to achieve the will of the legislator and to enforce the law in accordance with social reality, the judge uses several means of interpretation:

- 1) Interpreting the Act according to the meaning of word (term) or so-called grammatical interpretation. Between languages and laws there is a very close relationship.¹⁵

⁸Ach Zayyadi, *Hukum Acara Perdata* (Diktat pada mata kuliah hukum acara perdata)

⁹R. Soeroso, *Praktek Hukum Acara Perdata Tata Cara dan Proses Persidangan*, Sinar Grafika, Jakarta, 2003, page. 79.

¹⁰*Ibid*

¹¹The Judicial Power Law, Article 7

¹²*Ibid*, 9

¹³Yudha Bakti Ardhiwisastra, *Penafsiran dan Kontruksi Hukum*, Penerbit Alumni, Bandung, 2000, page. 1

¹⁴*Ibid*. page. 2

¹⁵Language is the only tool used by lawmakers to declare their will. Therefore, the lawmakers who want to express their wishes should clearly choose the right words. The words must be brief, clear and not biased to be interpreted differently. Sometimes the lawmakers can not afford to use the right words. In this case the Judge shall seek the

- 2) Interpreting the Law according to history or historical interpretation.¹⁶
- 3) Interpreting the Law according to the existing system within the law or commonly referred to as systematic interpretation.¹⁷
- 4) Interpreting the law in a certain way so that the law can be carried out in accordance with the current state of existence in society, or so-called sociological interpretation or teleological interpretation.¹⁸
- 5) Authentic interpretation or formal interpretation.¹⁹
- 6) Interdisciplinary Interpretation. This type of interpretation is commonly done in an analysis of issues concerning various disciplines of law.²⁰
- 7) Multidisciplinary Interpretation. In contrast to the disciplinary interpretation that is still within the cluster of disciplines concerned, in a multidisciplinary interpretation of a person. The judge must also study some other discipline outside the science of law. In other words, here the Judge requires verification and assistance from other disciplines.

B. Acehese People Applying Inheritance In accordance with Islamic Inheritance Law.

1. Law Number 44 Year 1999 on the Implementation of Aceh's Privileges in Articles 3 and 6 explained that Aceh is given the authority to revive customs in accordance with Islamic Shari'a.²¹
2. Law Number 22 Year 1999 regarding Regional Government and in Aceh.
3. Law Number 44 Year 1999 concerning the Implementation of Special Feature of Aceh Province.²²
4. In Law Number 18 Year 2001 on Special Autonomy for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam (NAD).²³
5. Law Number 32 Year 2004 regulating the Regional Government.

Previously the Central Government had granted privileges to Aceh Province²⁴, covering four main areas including the holding of customary life²⁵. The meaning of the first privilege is the implementation of religious life embodied in the form of implementation of Islamic Shari'ah for the followers in the community, one of the implementation of Islamic Shariah.²⁶

meaning of the word in question which is commonly used in everyday conversation, and the judge may use a language dictionary or request an explanation from the linguist.

¹⁶Every statutory provision has its history. From the history of the legislation of judges can know the intent of the author. There are two historical interpretations, namely historical interpretation, and the establishment of a statutory provision.

¹⁷The legislation of a State is unity, meaning that none of these laws can be interpreted as if it were independent. In the interpretation of legislation should always be remembered in relation to other laws and regulations. Such systematic interpretation may cause the words in the law to be given a broader or narrower understanding than it is in the ordinary rules. The first is called the expanding interpretation and the second is called narrowing interpretation

¹⁸Any interpretation of a law that begins with a grammatical interpretation must end with a sociological interpretation. Otherwise, the decisions made do not fit the circumstances that really live in society. Therefore, every rule of law has a social purpose, namely bringing legal certainty in the association between members of the community. The judge shall seek the new social objectives of the relevant regulations. If the Judge looks for him, go to the sociology lesson. Through the interpretation of sociology Judges can resolve differences or disparities between the positive nature of the law (*rechtspositiviteit*) and the reality of law (*rechtswerkelijkheid*), so that sociological or theological interpretation becomes very important.

¹⁹Sometimes the lawmaker itself gives an interpretation of the meaning or term he uses in his legislation. This interpretation is called an authentic interpretation or official interpretation. Here the Judge is not allowed to do interpretation in any way other than what has been defined in the law itself.

²⁰Here is used logic more than one branch of jurisprudence. For example, there is a connection of legal principles from one branch of jurisprudence, for example civil law with public legal principles.

²¹See Articles 3 and 6 of Law Number 44 Year 1999 concerning the Implementation of Aceh's Privileges

²²See Article 3 paragraph (2) covering (a) Implementation of religious life, (b) Implementation of customary life, (c) Implementation of education, (d) role of ulama in determining regional policy. From the above provisions of course be the basis and further reinforce the existence of customary institutions of Aceh.

²³See Article 2 paragraph (3), the role of gampong and mukim is increasingly widespread in resolving various customary cases in their respective territories. In 2004 the government enacted Law Number 32 Year 2004 which regulates the Regional Government which gives more opportunities to the regions especially Aceh to further revive the customary system and customary institutions in Aceh.

²⁴The granting of licenses to the implementation of Islamic Shari'ah to Aceh has actually been given through various regulations in the history of the journey of Aceh. Among other things, the Sumatran Wire Governor Number 189 of 1947 granting permission to the Aceh resident established the Mahkamah Syar'iyah with full authority, although only in the kinship field. Other rules. PP no. 29 of 1957 concerning the Establishment of the Syar'iyah Court. Across Aceh, its structure and authority. Similarly, the decision of Prime Minister R.I. No. 1 / Missi / 1959 which replaced Aceh as the meaning of the giving of "Daerah Istimewa Aceh." This title implies the giving of "The broadest autonomy, especially in the field of religion, cults and education." However, the granting of authority or

As a joint commitment to peace between the Government of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka, GAM), the Law No.11 of 2006 on Aceh Government (UUPA) was established. UUPA is a new hope for Aceh people to realize prosperity in lasting peace. It was not felt that the implementation of UUPA had entered the 12th year and various positive changes had been felt by some people of Aceh. But on the other hand there are still many challenges that must be faced before this UUPA became the legal protection and became the spirit of the change to be achieved by the people of Aceh to a better direction.

The birth of the Law on the Governing of Aceh (UUPA) is a milestone in the journey of the Indonesian people, especially for the people of Aceh, because with this law the hope for a lasting peace, comprehensive, just and dignified, to create a prosperous Aceh community. The UUPA itself consists of 40 Chapters and 273 Articles.²⁷

State recognition of the special features and specificity of the last Aceh region is provided through Law Number 11 Year 2006 regarding Aceh Government (LN 2006 No 62, TLN 4633). This Aceh Government Law is inseparable from the Memorandum of Understanding between the Government and the Free Aceh Movement signed on 15 August 2005 and is a form of reconciliation in a dignified way towards sustainable social, economic and political development in Aceh. The basic matters which are the content of the Law on Governing Aceh are:

1. The Government of Aceh is a provincial government within the NKRI system based on the 1945 Constitution which carries out government affairs carried out by the Government of Aceh and the House of Representatives of Aceh in accordance with their respective functions and authorities.
2. The broadest autonomy arrangement applied in Aceh under the Aceh Government Law is a subsystem within the national system of government.
3. Arrangements in the Aceh and Regency/City Qanuns that are widely mandated in the Aceh Government Law are concrete forms for the implementation of constitutional obligations in the implementation of such government.
4. The arrangement of central and regional financial balances is reflected through the granting of authority for the utilization of existing funding sources.
5. The formal implementation of Islamic Shari'a enforcement with the Islamic personality principle of every person in Aceh without distinction of citizenship, status and status within the territory in accordance with the boundaries of Aceh Province.

implementation opportunity Islamic law can be regarded as a "Thumb Isap" that was never realized properly. This situation continues until the birth of Law no. 44 of 1999 and Law no. 18 Year 2001. To know the history of various regulations on the privilege to implement Islamic Shari'a in Aceh, see for example Al Yasa Abubakar, "Pelaksanaan Syariat Islam di Aceh (Sejarah dan Prospeknya)," dalam Safwan Idris (et.al.), *Syariat di Wilayah Syariat*, (Banda Aceh: Dinas Syariat Islam dan YUA, 2002), page.. 26-51

²⁵See: Article 3 paragraph (2) of the Act. No. 44 of 1999 on the Implementation of Aceh's Privileges. covers four main areas:

First, the implementation of religious life;

Second, the implementation of customary life;

Third, the provision of education, and

Fourth, the role of ulama in determining regional policy

²⁶The Islamic Shariah in its broadest sense covers all aspects of human life. But in the division of its fields the thinkers differ. There are thinkers who divide it into 2 (two) major fields, 'aqidah and shari'ah. This division was proposed by Mahmud Saltut in his book *al-Islam 'Aqidah was Shari'ah* (Kuwait: Dar al-Qalam, 1996). Other opinions mean the Shari'a of Islam widely covering 3 (three) major fields: al-T'iqadiyyah faith), al-Khuluqiyyah (ethics), and al-Ahkam al-'Amallyyah (the laws of deeds). While Islamic law in the narrow sense is only limited to the areas of the law of action called fiqh. See, for example, Hasan Ahmad al-Khatib, *al-Fiqh al-Muqarran* (Cairo: Dar al-Ta'lif, 1957), p. 8. If Shari'ah Islam in a narrow sense is limited only to fiqh, then fiqh term in the beginning of Islamic history has a wide range of understanding. But in the development experienced a shift of meaning so that finally only limited to the legal literature only. See Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1994), p. Although in history there has been a shift in the meaning of shari'a and fiqh, but in general the majority of Islamic legal thinkers distinguish shari'ah with fiqh. First, the scope of shari'ah is broader than fiqh, so fiqh is one part of the Shari'a. Secondly, the Shari'a is sourced from Allah so it has the value of absolute truth, while fiqh comes from fuqaha thought so the truth is only relative. Thirdly, Shari'a is universal, whereas fiqh is only local - temporal.

²⁷The following are some of the specificities of the arrangements contained in the LoGA, among others: 1. Special Authority, 2. Institutions in the Region, 3. Aceh Governor, 4. House of Representatives of Aceh / Kabupaten / Kota (DPRA / K), 5. Local Political Parties, 6. WaliNanggroe, 7. Recognition of Customary Institutions, 8. Shari'ah Islam, 9. Sya'iyah Court, 10. Human Rights Court in Aceh, 11. Truth and Reconciliation Commission (TRC) in Aceh, 12. Source Management Natural Power, 13. Finance, 14. Land.

Law 11/2006, which contains 273 Articles, is a special Regional Government Law for Aceh. The material of this Act, in addition, is to the material specificity and privilege of Aceh which became the main framework of Law 11/2006, mostly similar to Law 32/2004 on Local Government. Therefore, Aceh is no longer dependent on the Law on Regional Government (as long as the matters governed by the Aceh Government Law).

The dispute on the ownership of the life insurance claim fund decided by the Aceh Syar'iyah Court cannot be accepted by the defeated party so that the defeated party appeals to the Supreme Court of the Indonesian republic as the Supreme Court of the State. The Supreme Court in its verdict overturned the decision of the Aceh Syar'iyah Court.

According to Surya Ahmad, the case that has been decided by the District/City Syar'iyah Court and the Syar'iyah Court of Aceh is always canceled at the Cassation Level by the Supreme Court. The reasons put forward by the Supreme Court are the verdicts imposed by the Regency/City Syar'iyah Court and the Aceh Syar'iyah Court are wrong in the application of the law, because according to the Supreme Court in trying to claim life insurance claims should be guided by Government Regulation number 17 of 1965, Article 1 paragraph (1,2 and 3).²⁸

According to Muhammad Is, the juridical foundation used by the Supreme Court in deciding cases of life insurance claims is not part of the inheritance, since the Supreme Court based its decision on the provisions of government No. 17 of 1965. So that the Supreme Court always canceled the decision of the Regency/City Syar'iyah Court and The Aceh Syar'iyah Court which includes life insurance claim funds as inheritance.²⁹

It has clearly appointed the party who receives life insurance benefits as stipulated in the life insurance policy concerned. The life insurance fund is not part of the inheritance, not as decided by the Aceh Syar'iyah Court, which is a life insurance claim fund as a heritage. Therefore, the decision of the Mahkamah Syar'iyah of the Regency/City and the Syar'iyah Court of Aceh is always annulled by the Supreme Court.³⁰

With the emergence of a different ruling between the Mahkamah Syar'iyah and the Supreme Court of the Republic of Indonesia, there has been uneasiness in society and legal uncertainty, as the rulings of different courts vary in the use and application of laws used between Islamic inheritance and conventional insurance law.

2. Reconstruction of Life Insurance Claims Fund In Decision of Syar'iyah Court And Supreme Court Decision-Based Justice Values

Positive Legal Basis is in Article 1 of Law Number 4 Year 2004 regarding Judicial Power, it is determined that judicial power is the power of an independent state to administer the judiciary to enforce law and justice pursuant to Pancasila for the implementation of the State of the Republic of Indonesia. The free judicial power of the Judiciary implies that the judicial authority is free from any interference of the extra-judicial power, except in matters referred to in the 1945 Constitution³¹.

Merdeka means free, then the judicial power is free to administer the judiciary. Freedom of judicial power or the freedom of judiciary freedom is a universal principle that is everywhere, both in European countries as well as in America, Japan, Indonesia and others. The meaning of freedom in exercising judicial authority is not absolute because the duty of judges is to uphold law and justice based on Pancasila, so that its verdict reflects the sense of justice of the Indonesian people. Free judiciary or judge is free to adjudicate and be free from interference of extra-judicial parties.

Technically the freedom of judges is limited by the will of the parties concerned, Pancasila, the Constitution, the law, public order and morality. Judges, especially in civil cases, are tied to what the parties are saying. Basically it cannot decide more or less than that required by the concerned. The ruling should not conflict with Pancasila, the Constitution, the law, public order and decency. Politically constrained by system of government, economy, culture and so on.

In finding the law, affirmed in Article 28 of Law Number 4 Year 2004, that "Judge shall dig, follow and understand the values of law and sense of justice living in society. The word digs assumes that the law exists, but is hidden, to arrive at the surface still to be dug. So the law is there, but it still has to be dug, sought and found, then created. It is said by Scholten that in human behavior itself there is the law. While every human moment in society behaves, acts or works, therefore the law already exists, just dig, search or find it.

²⁸H. Abdullah, Ketua Mahkamah Syar'iyah Jantho, *interview*, January 5th 2017

²⁹Muhammad Is, Hakim Tinggi Mahkamah Syar'iyah Aceh, *interview* 9 January 2017

³⁰Rosmawardani, Hakim Tinggi Mahkamah Syar'iyah Aceh, *interview* 9 January 2017

³¹The Preamble of the 1945 Constitution of the State of the Republic of Indonesia mandates that the national objective is to protect the entire nation and the whole of Indonesia's blood sphere promotes the general welfare, the intellectual life of the nation, and the participation of a world order based on freedom, eternal peace, and social justice. To achieve the mandate of the 1945 Constitution of the State of the Republic of Indonesia, it requires the joint efforts of all Indonesian people. Said Gunawan, Anis Mashdurohatun, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, *Development Concept Of Non Alutsista Abuse By Indonesian National Army*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August) ISSN 2289-1552, 2017, page.180

Perception Differences At Concept Level. How Judges decide cases is important; because through the judge's decision the litigants may obtain the rights that are fought for and may otherwise lose their rights. If the Judge's verdict is unfair, then the verdict will result in moral harm to the aggrieved party, since the ruling has stigmatized the person concerned as a "law breaker". There are three problems that always arise in every case, namely:

- a) What actually happened (fact)?
- b) What relevant law applies in such cases (the law)
- c) If the law refuses to compensate, is it unfair and if it is considered unfair, should the Judge ignore such a law and grant the request for compensation (the relationship between political capital and legal obedience)?

This dispute is called the theoretical disagreement about the law and the difference of opinion on what actually becomes the concept of law with regard to the compensation, because they do not agree whether the law or judge's decision has thoroughly examined the relevant legal basis. These disputes are called empirical disputes about the law, namely differences of opinion about what words are actually contained in the law in the same way they disagree about the number of other facts.³²

Why the Difference of Opinion Exists. It is amazing that law does not have a plausible theory with regard to the theoretical dispute concerning the concept of the rule of law. Law philosophers must be aware that this theoretical dispute is problematic³³. Popular opinion in society that Judges in making decisions must follow the law rather than trying to develop an existing law. Unfortunately some Judges do not accept this wise and covert boundary or overtly bend the law for the purposes of the authorities or their own interests.

From the above view, it can be concluded that institutional rulings are not only occasional, but every time, unclear or ambiguous or incomplete, sometimes even such decisions are often inconsistent or incoherent, (in fact there is no law about everything, but only Judges wrapping their decisions with factual rhetoric influenced by class or ideological preferences), although on the other hand it is understood that this view will be rejected in the thoughts given to the work of Judges and Lawyers in their day-to-day practice -day.

What is really disputed and then constructs and proposes a theory of the proper foundations for a legal concept. Legal practice is different from other social phenomena because legal practitioners are argumentative.

The legal argument is the "explicitly described explanation of the argument, in the form of a series of statements logically, to reinforce or reject an opinion, opinion or opinion, in relation to legal principles, legal norms and concrete legal rules, and legal system and legal discovery".

A meaningful argument, constructed on the basis of logic, is a "*conditio sine qua non*" for a decision to be accepted, that is, when it is based on reasoning, in accordance with the formal logic system which is an absolute requirement of argument. No Judge or Lawyer, who began to argue from a hollow state. The legal argument always begins with positive law. Positive law is neither a closed nor static state, but a continuous development. From a positive law provision, jurisprudence will determine the new norms. One can reason from the positive legal provisions of the principle contained in positive law to take new decisions.

The concept of rule of law gives birth to the concept of a welfare state which describes that the rights of political freedom must be accompanied by the rights of economic, social and cultural freedom. It does not want formal State and formal democracy, but also the welfare of all the people. The State of the Law has the property in which its means of equipment can only act accordingly and be bound by rules which have been predetermined by its equipment.³⁴

The Syar'iyah Court is an institution of the Mahkamah Syar'iyah whose territory or position in a district or city in Aceh or outside the province of Aceh is called the Religious Court. Religious courts are the first courts charged with examining, deciding and cases or disputes between Muslims in Indonesia. Such cases include marriage, inheritance, wills, grants and other cases that use Islamic law as the basis.

³²Between law enforcers (Judges, Prosecutors and Lawyers) sometimes disagree about what benchmarks should be used to determine what 'law is relevant to a case'. They sometimes disagree about whether the legal basis in a particular case has been met or not.

³³The theoretical dispute over the law is nothing more than an illusion that in fact both the Police / Attorney / Attorney and Judge agree on the legal basis a view is accepted as a legal concept. What the law is about is what the legal institutions have decided upon. Why did Hakim and Attorney / Attorney sometimes still disagree theoretically about the concept of law? because when they seem to theoretically dispute about what exactly the law should be. The issue is actually nothing more than a matter of morality and meticulous care, not about the concept of law itself.

³⁴The theoretical dispute over the law is nothing more than an illusion that in fact both the Police / Attorney / Attorney and Judge agree on the legal basis a view is accepted as a legal concept. What the law is about is what the legal institutions have decided upon. Why did Hakim and Attorney / Attorney sometimes still disagree theoretically about the concept of law? because when they seem to theoretically dispute about what exactly the law should be. The issue is actually nothing more than a matter of morality and meticulous care, not about the concept of law itself.

The reconstruction of the Reconstruction Norms for Criminalization in Indonesia's positive criminal law based on Aceh's customary law is as follows:

Presidential Instruction No. 1 of 1991 on the

Compilation of Islamic Law Article 171

Before the reconstruction of Article 171 of the Presidential Instruction no. 1 of 1991 on the Compilation of Islamic Law	After the reconstruction of Article 171 of Presidential Instruction no. 1 of 1991 on the Compilation of Islamic Law
<p>a. The law of inheritance is a law that regulates the transfer of ownership rights of heritage (tirkah) of the heir to determine who is entitled to be the heir and how much of each part.</p> <p>b. Heir is a person who at the time of his death or declared dead under the judgment of the Islamic Court, leaving the heirs and treasures of the relics.</p> <p>c. Heirs shall be persons who, at the time of death, have a blood relation or marriage relationship with heirs, are Muslim and are not hindered by the law of being an heir.</p> <p>d. The estate is a treasure left by the heir either in the form of property that belongs to him or his rights.</p> <p>e. Inheritance is an inherited property plus parts for the heirs' sake during the sickness until death, the cost of the corpse (tazhiz), the payment of debt and the giving for the relatives.</p> <p>f. Wasiat is the giving of an item from the heir to another person or institution that will be valid after the heir died.</p> <p>g. Grant is the giving of an item from the heir to another person or institution that will be valid after the heir of death.</p> <p>h. The adopted child is a child who, in the case of maintenance for his or her daily life, the cost of education and so on transfers responsibilities from the parents of origin to his adoptive parents on the basis of the decision of the Court.</p> <p>i. Baitul Mal is Hall of Religious Treasure.</p>	<p>a. The law of inheritance is a law that regulates the transfer of ownership rights of heritage (tirkah) of the heir to determine who is entitled to be the heir and how much of each part.</p> <p>b. Heir is a person who at the time of his death or declared dead under the judgment of the Islamic Court, leaving the heirs and treasures of the relics.</p> <p>c. Heirs shall be persons who, at the time of death, have a blood relation or marriage relationship with heirs, are Muslim and are not hindered by the law of being an heir.</p> <p>d. The estate is a treasure left by the good heirs in the form of property that belongs to him, insurance claims or other rights</p> <p>e. Inheritance is an inherited property plus parts for the heirs' sake during the sickness until death, the cost of the corpse (tazhiz), the payment of debt and the giving for the relatives.</p> <p>f. Wasiat is the giving of an item from the heir to another person or institution that will be valid after the heir died.</p> <p>g. Grant is the giving of an item from the heir to another person or institution that will be valid after the heir of death.</p> <p>h. The adopted child is a child who, in the case of maintenance for his or her daily life, the cost of education and so on transfers responsibilities from the parents of origin to his adoptive parents on the basis of the decision of the Court.</p> <p>i. Baitul Mal is Hall of Religious Treasure.</p>

CONCLUSION

1. The problem of implementation of life insurance funds in the Decision of the Supreme Court of Justice and the Decision of the Supreme Court, are: The judicial institution (judges are not applying the law), the legal arrangement of the claim of Insurance is not expressly regulated in the Complications of Islamic Law. This becomes a different interpretation in deciding whether to use insurance rules that recognize policyholders who are entitled to claim insurance funds or use the system of Islamic inheritance Implementation of life insurance claim funds in the decision of the Mahkamah Syar'iyah and Supreme Court Decision. There is conflicting and inconsistent between the Court Decision of Syar'iyah and the Decision of the Supreme Court, because the Mahkamah Syar'iyah has decided the case of life insurance claim fund using the law of Islamic inheritance. Decision of the Supreme Court of the Republic of Indonesia Decides the case of life insurance claim funds using the rules of insurance law in accordance with the agreement and policy.
2. Reconstruction of life insurance claim as one of heritage assets based on the Value of Justice by reconstructing the provisions in Article 171 of Presidential Instruction no. 1 Year 1991 About Compilation of Islamic Law, that claim life insurance as one of heritage property.

REFERENCES

Ach Zayyadi, *Hukum Acara Perdata* (Diktat pada mata kuliah hukum acara perdata).Aceh.2015
Al Yasa Abubakar, "Pelaksanaan Syariat Islam di Aceh (Sejarah dan Prospeknya)," dalam Safwan Idris (et.al.), *Syariat di Wilayah Syariat* , (Banda Aceh: Dinas Syariat Islam dan YUA, 2002.

- Al-Qur'an...*Al-Qur'an dan Terjemahan*, Yayasan Penyelenggara Penterjemahan/ Penafsiran Al-Qur'an, Departemen Agama RI, Jakarta. 1990
- Fatchur Rahman, *Ilmu Waris*, Al-Ma'rif, Bandung. 1994.
- H. Abdullah, Ketua Mahkamah Syariah Jantho, *interview*, January 5th 2017
- Joko Utama, Muhammad Faridh, Mashadi, , Al-Qur'an Al Karim dan Terjemahnya, CV. Putra Toha Semarang, Semarang. 2015
- Muhammad Is, Hakim Tinggi Mahkamah Syariah Aceh, *interview* January 9th 2017
- Muhyidin. Gunarto. Anis Mashdurohatun. Ro'fah Setyowati. Ahmad Rofiq, *Disharmony The Concept Of Legal Property Between Migration Law, Islamic Law Compilation, And Islamic Law*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August), ISSN 2289-1552 2017.
- R. Soeroro, *Praktek Hukum Acara Perdata Tata Cara dan Proses Persidangan*, Sinar Grafika, Jakarta, 2003.
- Rosmawardani, Hakim Tinggi Mahkamah Syariah Aceh, *interview* January 9th 2017
- Said Gunawan, Anis Mashdurohatun, Teguh Prasetyo, I Gusti Ayu Ketut Rachmi Handayani, *Development Concept Of Non Alutsista Abuse By Indonesian National Army*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August) ISSN 2289-1552, 2017.
- Yudha Bakti Ardhiwisastro, *Penafsiran dan Kontruksi Hukum*, Penerbit Alumni, Bandung, 2000.

Rafiuddin
Student of Doctoral Program in Law Science UNISSULA, Semarang

Anis Mashdurohatun
anism@unissula.ac.id
Lecturer at Doctoral Program in Law Science, UNISSULA

Gunarto
gunarto@unissula.ac.id
Lecturer at Doctoral Program in Law Science, UNISSULA

Ahmad Rofiq
ahmad_rofiq@walisongo.ac.id
Lecturer at Faculty of Syariah UIN Walisongo Semarang

I Gusti Ayu Ketut Rachmi Handayani
ayu_igk@staff.uns.ac.id
Universitas Sebelas Maret