

The Age Limit for Marriage in Brunei Darussalam in Maslahah and Legal Politics Perspectives

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Abstract

Brunei Darussalam which embraces Islamic law reform must be carried out in line with what is the goal of Islamic law itself, which is to fulfill the demands of the instincts of human life, and must be based on maslahah which is in line with the principles of maqoshid al-shari'ah and in accordance with the objectives law in the legal system. The formulation of the problem in this article was related to the age limit of marriage in Brunei Darussalam in the perspective of law and politics. The purpose of this research was to understand the legal and political review of the legal determination of the age limit of marriage in Brunei Darussalam. The research type was library research, by collecting data obtained from library research sourced from several books, theses, journals and articles related to the title to be discussed. This research used a juridical, normative, philosophical, and historical approach that served as the answer and solution to the problems that exist in the community and state. The results of this research were that the application of the concept of maslahah to the minimum age limit for marriages in Brunei Darussalam had not been carried out optimally because the country had local wisdom that was still considered in accordance with the context of their respective countries. In the political perspective of legal regulations the minimum age of marriage in Brunei Darussalam still needed to be improved in its justice, legal certainty, and legal usefulness.

Keyword: Age Limits of Marriage, Brunei Darussalam, Maslahah, and Politics of Law

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INTRODUCTION

Islamic law has been manifested as a legal product in various countries in the world, one of which is in Indonesia. Atho' Mudzar said there are at least four kinds of Islamic legal products that have developed and are known in the history of Islamic law, including: fiqh books, fatwa of ulama, court decisions, legislation in Muslim countries. (Atho' Mudzhar, 1998).

These include matters concerning the subject matter of Islamic family law law in the 20th century, among others, the age limit for marriage, guardianship in marriage, marriage registration, dowry and costs of marriage, polygamy and wife's rights, the issue of divorce in court, the rights of a divorced wife, child care after a will divorce, to family waqf. In the Muslim world starting from the classical period to the current contemporary, one of which is about how Islam as a universal religion can respond to various kinds of problems related to family law (al-Ahwal al-Shakhsiah) which are found in many Muslim communities spread across the world. (Yusdani, 2011). One of the many problems is regarding the minimum age limit for marriage which is applied in different countries. Although basically the principle applied in the marriage law is the principle

of maturity and maturity of the prospective bride and groom, marriage laws in the Islamic world are different in determining the age threshold for marriage (Rahmat Hakim, 2000). In seventeen countries the marriage law has the lowest age limit for marriage for both men and women as follows.

The regulation regarding the marriage age limit in the State of Brunei Darussalam is contained in the Islamic Family Law in the Laws of Brunei Chapter 217 does not clearly contain the minimum age limit for marriage, but there are several articles that say preventing male marriage - a man who has reached the age of 18 and a woman who has reached the age of 16 is a violation of the law and carries a maximum fine of two thousand dollars, imprisonment of a maximum of six months or both ("Laws of Brunei, Chapter 217, Islamic Family Law," Bagian IV No.35 (b), n.d.).

Brunei Darussalam which adheres to Islamic law reform must be carried out in line with what is the goal of Islamic law itself, it is to meet the demands of human life instincts, and must be based on *maslahah* which is in line with the principles of *maqoshid al-shari'ah* and in accordance with these law goals in the legal system. It is hoped that the reform of Islamic family law that has received legislation from the authorities can create peace, peace in the life of the Islamic community and the wider community in general (Abdul Manan, 2006). Based on the academic problems that the author has presented above, the authors consider it important to examine the regulations on the marriage age limit in Brunei Darussalam from the perspective of *maslahah* and legal politics.

RESEARCH METHOD

The research was library research, it was by collecting data obtained from library research sourced from several books, theses, journals and articles that are related to the title to be discussed (Bambang Waluyo, 2002). This was descriptive, it was by using a comparative method, namely comparison. This method was used to describe the provisions used in formulating the laws that apply in each country so that the similarities and differences in the rules relating to the minimum age of marriage can be seen.

In research related to law, an approach serves to be able to obtain various information from various aspects regarding issues related to research in order to be able to find solutions and answers. The approach used in this research is a juridical, normative, philosophical, and sociological approach. This approach is used as an answer and solution to the problems that exist in the community and the state.

AGE OF MARRIAGE ACCORDING TO CLASSIC AND CONTEMPORARY ULAMA

Al-Qur'an and hadith which incidentally are the main sources of Islamic law do not concretely determine the minimum age for marriage. In the Qur'an there are 23 munakahat verses or verses that discuss marriage, but none of these verses mentions the minimum age for marriage. Allah says in Surah an-Nisa' Verse 6:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ

Put the orphans to the test until they reach the age of marriage.

Mujahid is of the opinion that the word *حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ* (until old enough to marry) in the verse means that the child has reached puberty. A person who has reached maturity is termed in Islam as baligh, which literally means to arrive. It means the age of someone who has reached maturity and can distinguish between good and bad (Ningrum Puji Lestari, 2005). Because there is not a single verse that concretely addresses the age limit for puberty for both men and women, the mazhab scholars differ on this issue.

Within the age limit for puberty, Imam Abu Hanifah argues that the age limit for puberty for men is 18 years and for women 17 years. Imam Malik is of the opinion that the child's maturity is at the age of 18 years. Imam Shafi'i said that the age of puberty for a child is from 9 years if he experiences the discharge of sperm, whereas if not a small child will be baligh at the age of 15 years. Meanwhile, the Hanabilah school has the exact same opinion as the Shafi'i school (Wahbah al-Zuhaily, n.d.).

Although Ibn Kathir in his interpretation interprets lahfaz *حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ* to mean that puberty is a condition for a person to be allowed to marry, the imams of the four schools of thought have different views that aqil and baligh are not indicators for allowing someone to carry out marriage for both men and women, and allow children who are still small or crazy people are married off by their fathers (Wahbah al-Zuhaily, n.d.). This opinion is based on the hadith of the Prophet narrated by al-Bukhari,

حَدَّثَنِي عُبَيْدُ بْنُ إِسْمَاعِيلَ، حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، قَالَ: تُوَفِّيتُ حَدِيثَهُ قَبْلَ مَخْرَجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى الْمَدِينَةِ بِثَلَاثِ سِنِينَ، فَلَبِثَ سَنَتَيْنِ أَوْ قَرِيبًا مِنْ ذَلِكَ، وَنَكَحَ عَائِشَةَ وَهِيَ بِنْتُ سِتِّ سِنِينَ، ثُمَّ بَنَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ.

Meaning: Has conveyed to me Ubaid bin Isma'il, has conveyed to us Abu Usamah, from Hisham, from his father said: Khadijah died 3 years before the Prophet's departure to Medina, and stayed for about 2 years, and married Ayesha when he was born. was 6 years old, then had sex with him when he was 9 years old (Muhammad bin Ismail al-Bukhari, 1422).

In contrast to the opinion of Subrumah, Abu Bakr al-‘Ashom, and Uthman al-Bati who in their opinion tried to get out of the textual meaning of the hadith above and said that a girl who is still small and a virgin cannot be married until she reaches puberty and her father has permission him to marry her, as stated in the verse *حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ* while Ibn Hazm argues that it is not permissible if the child is the one who performs the marriage on his own if he is married by his guardian, then the law is allowed (Wahbah al-Zuhaily, n.d.).

Muhammad Ali al-Shabuni in his commentary argues that the indicator of a male puberty is when the man has dreamed, al-Shabuni’s opinion is in line with the opinion of fiqh scholars in general (Uber Nur Islam, 2014). while the characteristics of puberty for women according to him are when they have experienced menstruation and are pregnant (Muhammad Ali al-Shobuni, 1999).

Quraish Shihab interprets lahfaz rusydan as the accuracy and perfection of one’s mind and soul so that he can act appropriately. In his interpretation of his work, al-Maraghi defines the word rusydan, namely when someone has been able to use the property by spending it as well as possible, while the meaning of the word balig al-nikah is when someone reaches the age of being ready to marry. Meanwhile, Rasyid Rida interprets lahfaz balig al-nikah, it is when a person has a dream, and for women when she can give birth so that her heart is moved to get married (LTN PBNU, 2010). Wahbah Zuhaili in his interpretation interprets lahfaz rusydan, namely when someone is proficient in property management and is not weak to the deceptions of others (Muhammad Nawawi al-Jawi, 1413).

It can be concluded that classical and contemporary scholars do not concretely determine the age of marriage but only mention the indicators. The opinion of the majority of scholars, including the imams of the four schools of thought, is of the opinion that there is no age limit for marriage for both men and women and it is permissible to marry them, while some classical scholars such as Subrumah, Abu Bakr al-‘Ashom, and Uthman al-Bati are of the opinion that it is not permissible to marry or be married off. until the child is mature.

A STUDY OF AISYAH’S MARRIAGE AGE HISTORY WITH THE PROPHET

Discussions about the age limit for marriage can be considered quite complex and reap the pros and cons of it. Those who are pro against early marriage by referring to the hadith contained in the book of shahih al-bukhari which almost all scholars recognize its credibility. However, the assumption that the book of shohih al-bukhari is the most correct book (ashoh) after the Koran does not mean that the traditions contained in the book should not be criticized and reviewed in

terms of matan, narrators and historically. In this discussion the author will examine the historical sacra of the hadith relating to the age of marriage of 'Aisyah with the Prophet Muhammad.

If you look at the discussion of the hadith criticism of 'Aisyah's marriage age, the problem point in her hadith criticism is the narration of Hisham bin Urwah. Because of the many companions of the prophet in Medina, none of them narrated this hadith except Hisham bin Urwah and what is another oddity this hadith was narrated by Hisham bin Urwah not when he was still living in Medina but when he had settled in Iraq (Muhammad Makmun Abha, 2005).

Further criticism concerns the age and credibility of Hisham bin Urwah as a narrator of hadith since he was in Iraq. Among the scholars who criticized Hisham bin Urwah were Imam Malik bin Anas who firmly rejected the narration of Hisham after he settled in Iraq. was a person who could be trusted when he was in Medina and was not trusted in the narration of his hadith when he was living in Iraq. Ya'qub bin Syaibah also conveyed the distrust of the narration of Hisham bin Urwah after he was in Iraq because the traditions he narrated while in Medina were directly from his father, but when he was in Iraq the narration was on behalf of his father (Ibn Hajar al-'Asqolani, n.d.).

Then the author will describe and narrow the discussion about the hadith of 'Aisyah's marriage age with a historical approach. In the book *Sirah Nabawiyyah* written by Ibn Ishaq, it is written that the first people who converted to Islam were both men and women. In the order of the first to embrace Islam, 'Aisyah was recorded as the 18th person to embrace Islam. With the estimated age of 'Aisha at that time about 7 years. By looking at historical records that 'Aisyah converted to Islam in the early days of prophethood, it is when the prophet was 40 years old and married the prophet at the age of 51 years. So it can be calculated that Ayesha's age at the time of her marriage to the prophet was 18 years old and she met the prophet when she was 21 years old. (O. Hashem, 2009).

The hadith of 'Aisyah's marriage age was also criticized by linking the age gap between 'Aisyah and Asma' who is 'Aisyah's sister. Imam al-Zahabi quoted the opinion of Abdu al-Rahman bin Abi Zinad who said that Asma' was 10 years older than 'Aisha. In historical records Asma died at the age of 100 years in the 73rd year Hijri. The data informs that Asma' was aged between 27 or 28 years at the time of the hijrah. Then it can be seen that 'Aisyah's age was 17 or 18 years, at the time of the hijrah event in which she married the prophet in the same year (Ahmad Rajafi, 2014).

As it is written in history that the Prophet Muhammad. received the revelation for the first time at the age of 40 years married to Aisha at the age of 51 years, and it is calculated that the

Prophet Muhammad. married after 11 years from the beginning of the first revelation came down. While the average age of children can remember when they are 4 years old. Based on this analogy, it can be seen that Aisyah's marriage occurred when she was 14 years old.

REASONS OF UNDERAGE MARRIAGE

The practice of underage marriage in various countries in the world continues to increase every year. Various efforts in the legal protection of children have not been able to reduce the number of underage marriages in children. There are many factors that cause people to marry their children under age, including:

1. Economic factors, it is a situation where the child's parents have difficulty in economic terms, also sometimes because they are in debt and unable to pay it to the point of sacrificing their child to be married off when they were underage as a debt, this situation is exactly like one of the applicants for a judicial review to the Court Constitution whose parents married because of the debt factor. This can also lead to the low level of education of women, because they are forced to marry rather than continue their education.
2. Educational factors, it is the mindset of the community, both from parents and children concerned. People who have a low level of education will tend to practice underage marriage. Unlike the case with people who have tiered education, by knowing the various negative impacts they tend not to practice underage marriage. The level of education also affects the maturity level of a person's personality, through an education the community will respond more and receive information that is good in nature, and filter out the positive and negative things in their environment.
3. Self-willed factor, this is one factor that is difficult to avoid, this situation occurs where men and women have a love relationship without considering their age nor considering the impact of underage marriage. This self-willing factor is closely related to the factor of poor education, with the lack of knowledge and information about the desire to carry out underage marriages.
4. Factors of promiscuity, namely a situation where parents lack attention and guidance to their children. Children's desire to have fun without limits by finding ways so that they can feel happiness, with wrong (free) associations that lead to relationships outside the marriage bond so that inevitably the child's parents will give permission to their child who basically has not yet are old enough and have not been able to accept the mandate of a marriage.
5. Customary and environmental factors, in some traditional marriages, it often occurs because since the child was small, his parents had arranged an arranged marriage. Some

customary provisions say that child marriage occurs with the aim of establishing a family relationship between the relatives of the groom and relatives of the bride which has been planned, this is done so that the family relationship between the relatives of the bride and groom does not break. In addition, parents' concern for their teenage children causes parents to find a mate for their child (Beteq Sardi, 2016).

6. The mass media factor, with the many exposures about sex in the media, has resulted in modern adolescents who are increasingly permissive to sex (Hesti Agustian, 2013). Even in today's digital era, various sex content is very easy to get through the gadgets used by children. Surely, this factor is closely related to education, environment and knowledge factors as well as parental control over their children..

NEGATIVE IMPACT OF UNDERAGE MARRIAGE

Socialization of the impact of early marriage has been carried out by various groups, both from the government, Non-Governmental Organizations (NGOs), academics, and others to the wider community (Hasan Bastomi, 2016). Efforts to reduce the number of underage marriages can be done by increasing public sensitivity, and educating children, especially girls, can minimize the bad consequences of underage marriage (Erwinsyah, Argyo Demartoto, dan Supriyadi, 2018).

The following are the negative impacts caused by the practice of underage marriage:

1. Impact on health

Underage marriage has a negative effect on children's health (Sulistiyowati Irianti, 2006). Because at that age a child does not yet have the physical readiness to conceive and give birth. A person who is still a minor or has not yet had physical maturity when he gives birth has a great potential for disability and death in both the mother who is pregnant and gives birth and the child she is carrying.

2. Impact on family economy

The family economy is one of the important things for the survival of the household. One of the reasons for the occurrence of underage marriages is due to economic factors. However, solving economic problems by carrying out underage marriages is futile. The unpreparedness of children who engage in underage marriages actually results in a deteriorating family economy.

3. Impact on Family Welfare

The negative impact of underage marriage is the great potential for domestic violence (KDRT). Plan said as many as 44% of girls who had underage marriages experienced cases of domestic violence and this was included in the high frequency. Meanwhile, as many as

56% of those who are not married under age experience domestic violence at a relatively low frequency level (Djamilah dan Reni Kartawati, 2014).

6. Impact on Divorce

Divorce in couples who marry underage also occurs in many communities. This divorce occurs in married couples who are still young, and at a young age of marriage, which is still in a matter of months. Due to the immaturity of the souls of those who get married at a young age and are not mentally and physically ready to carry out their married life, they are vulnerable to conflict, which ultimately decides to divorce

7. Impact on Education

A child who engages in underage marriage will certainly have a negative impact on his formal education. For example, if a child gets married when he just graduated from high school or high school education, he does not want to continue his education to the next level. This happens because of the lack of motivation to learn a child who does underage marriage. So it can be said that early marriage has a negative impact on the education and learning of a child.

MINIMUM AGE OF MARRIAGE IN BRUNEI DARUSSALAM

The government of Brunei Darussalam has an absolute monarchy style of government based on Islamic law. The Sultan is the Head of State and Government. In addition, the sultan who was assisted by the Advisory Council of the Sultanate and several Ministers also acted as Prime Minister and as Minister of Defense. Since the 15th century AD the Sultanate of Brunei has been established, with a system of decreasing power from sultan to other sultans as head of government and head of state.

Chapter 17 of Brunei's Law on Islamic Family Law does not explicitly specify a minimum age for marriage. The Brunei Law Chapter 17 concerning Islamic Family Law only in Part IV Article 35 letter (b) in the Interference with marriage it is stated "in an effort to prevent a man who has reached the age of 18 or a woman who has reached the age of 16 from entering into a marriage may be found guilty of an offence and liable to a fine not exceeding \$2,000 or imprisonment of not more than 6 months or both". From the provisions of the article, it can be understood that the minimum age for marriage in Brunei Darusslam is 18 years for men and 16 years for women.

If it is seen closely, this is in accordance with research conducted by Hooker which states that the Islamic Family Law used by Brunei Darusslam is the result of the adoption of the Kelantan State Islamic Family Law but there are some adjustments to the socio-cultural state of Brunei Darussalam (M B Hooker, 1991). It is because the country of Kelantan itself imposes a minimum

age limit for the same marriage (Enakmen Undang –Undang Keluarga Islam No.1 Negeri Kelantan pada seksyen 14, 1983).

Marianne Clark-Hattingh, who is the representative of the United Nation Children’s Fund (UNICEF) for the country of Brunei Darussalam, urged the Brunei Darussalam government to take steps in an effort to abolish child marriage. He continued the steps of the United Nations Committee on the Convention on the Rights of the Child, which had previously urged the government of Brunei Darussalam to abolish child marriage and raise the minimum age for marriage to 18 years for both men and women. Marianne Clark-Hattingh also considers that child marriage is not a solution to family social and economic problems, and invites the public to be aware of the negative impact of child marriage in the form of physical and psychological unpreparedness of children, also has a negative impact on children’s education (Ain Bandial, <http://thescoop.co/>, 2020).

OVERVIEW OF MASLAHAH AND LEGAL POLITICS ON THE MINIMUM AGE OF MARRIAGE IN BRUNEI DARUSSALAM

Brunei Darussalam is classified as an Islamic country that makes changes to the law by updating existing laws. By changing the form of legislation slowly in accordance with the socio-anthropological needs and local wisdom of each country.

Furthermore, the author will analyze more deeply about the minimum age for marriage in Brunei Darussalam by using *maslahah* glasses. ‘Izz al-Din ‘Abd al-Salam said that *maslahah* is synonymous with an *al-naf’* (benefit), *al-khair* (benevolence), *al-husn* (goodness). Based on this theory, we can see that the main thing that is the basis for determining the minimum age for marriage is based on the goodness and benefit of humans in general.

In the division of *sharia* law there are 2 (two) legal categories. First, the law that is sourced from the texts of the *Qur'an* and *hadith* directly. Second, the law that is based on *ijtihad*, which is not directly taken from the texts of the *Qur'an* and *Sunnah*, this type of law is the law formed in the foundation of *maslahah*. The *Qur'an* and *hadith* which are the main sources of Islamic law do not specify concretely the minimum age for marriage. The word of Allah in *Surah an-Nisa* ‘verse 6 gives many different interpretations from the scholars.

The author sees that in understanding the *hadith* of Aisyah’s marriage to the Prophet Muhammad. Subrumah, Abu Bakr al-Ashom, and Uthman al-Bati had earlier departed from the textual meaning of the *hadith* and said that a young and virgin girl should not be married until she reaches puberty and her father has given her permission to marry her. (Wahbah al-Zuhailly, n.d.)

After examining various views and criticisms regarding the authenticity of the *hadith*, Aisyah's marriage age with the Prophet Muhammad. the author concludes that the *hadith* is

categorized as a *maqbul ghairu ma'mul* hadith, namely a hadith that can be accepted as a *specialiyyah* of the Prophet Muhammad. but not to be practiced by his people with the cause of *muwaqqaf fih*, namely the occurrence of the conflict of the hadith with other traditions so that the hadith is suspended for blasphemy and its practice (*tawaqquf*) (Supiana, 2017).

In *maqoshid sharia*, there are five principles in religion, guarding religion, guarding the soul, guarding reason, protecting offspring, and protecting property. In an effort to keep the descendants of Islam, it has arranged how to build a lawful relationship through marriage. Discussions on marital relations are closely related to the needs and biological functions of humans, family welfare, harmony in the household and how the family can provide positive outputs to the community (Titik Triwulan, 2007).

Al-Syatibi said that in exploring a law, one must pay attention to the benefit which is the spirit of *maqoshid sharia*. A legal excavation can be said to be in accordance with *maqoshid sharia* if it has fulfilled four conditions. The first is based on the texts and laws which are also based on *maqoshid sharia*. Second, compromise between messages that are universal with messages that are partial. Third, based on the principle of attracting *maslahah* and rejecting *mafsadah*. Fourth, consider in the long term the impact that will occur (Ahmad al-Rasyuni, 1995).

Abu Bakr Isma'il Muhammad Miqa categorizes *maslahah* based on its limitations. First, *maslahah 'ammah*, namely *maslahah* which is applied based on the public interest of society, not by looking at the individual units of them. Second, *maslahah rasasah*, namely *maslahah* that is applied based on individual interests that lead to collective good (Abu Bakar Isma'il Muhammad Miqa, 1985). According to the author, based on this division, the rules regarding the minimum age for marriage should be classified as *maslahah khassah*, namely the excavation of an individual *maslahah* and then developed towards collective goodness. Because, although not all feel the negative impact of the practice of underage marriage, there have been many studies that reveal the negative impact of early marriage from various aspects.

Based on what the author has described above, using the *even mursalah* or *istishlah* method has the meaning of extracting Islamic law on a legal issue that must be based on goodness (Abdul Wahab Khalaf, 1994). Although in the text there is no explicit provision regarding the minimum age for marriage, every regulation applied has a benefit value which is the output of the values of Islamic teachings.

The term legal politics is an absorption of the term *rechtspolitiek* which is Dutch. The word *rechtspolitiek* is formed from two words, namely *rechts* and *politiek* which in Indonesian *rechts* means law and *politiek* means politics. The word law in Indonesian itself is an absorption from

hukm which is Arabic which can be interpreted as provision, decision, command, authority, or government (Hans Wehr, 1980).

The birth of the Marriage Law in Brunei Darussalam which historically was the result of political negotiations cannot be interpreted as a form of government intervention in the personal problems of its people. With the existence of the Marriage Law in the three countries, the government actually wants the realization of order and security and keeps away all things that are considered to have the potential to cause chaos in society if there are no standard regulations regarding marriage. Even the Marriage Law is intended to maintain, perfect, and create new marriage law ideas that are in line with the development of the people.

The realization of the Marriage Law in Brunei Darussalam is the ideal of the three countries in unifying national marriage laws that are adapted to the times. However, these ideals cannot be separated from political and socio-cultural factors that become challenges in achieving the ideals of a perfect law.

In order to achieve the legal objectives of the regulations regarding the minimum age limit for marriage in Indonesia, Malaysia, and Brunei Darussalam, according to Gustav Radbruch, it must be based on three values that have first priority, namely legal justice, legal expediency, and lastly legal certainty. Meanwhile, Achmad Ali did not agree with the order put forward by Gustav Radbruch, he considered that the order of the principle of legal priority applies casuistically, which means that the order of priority depends on the case (Achmad Ali, 1996).

First, regarding the value of justice for the minimum age limit for marriage in Brunei Darussalam. The discussion on the principle of legal justice cannot be separated from the opinion of Thomas Aquinas who divides legal justice into 2 (two) including general justice (*justitia generalis*), it is actions based on laws that must be carried out in the public interest and special legal justice (*justitia specialist*), it is justice with proportionality or equality in law (Soedantyo Wignjosoebroto, 2002). From the opinion of Thomas Aquinas, it can be analyzed that the determination of the minimum age limit for marriage in Brunei Darussalam does not meet the special element of justice because of the inequality between the minimum marriage age for men and women.

Second, legal certainty. In written legal norms, legal certainty is a feature that must be contained in it. Because if the value of written legal certainty is lost, then the law cannot be used as a guide for community behavior (Sulaeman Jajuli, 2005). Legal certainty can be interpreted as a clear, consistent and consistent application of the law whose implementation is not affected by subjective circumstances.

The Brunei Darussalam Law Chapter 17 concerning Islamic Family Law does not explicitly specify the minimum age for marriage. Brunei Law Chapter 17 concerning Islamic Family Law is only in Part IV Article 35 letter (b) in Interference with marriage.

If we analyze the provisions regarding the age limit for marriage in Brunei Darussalam as contained in the article, it can only be understood implicitly that men who have reached the age of 18 (eighteen) years and women who have reached the age of 16 (sixteen) years have the right to carry out a marriage and cannot be prevented by anyone, the article above also has the meaning that those who are still below the minimum age limit for marriage can get married if the marriage guardian does not prohibit or prevent the marriage. According to the researcher, the article is ambiguous in legal language because in realizing legal certainty the rules regarding the minimum marriage limit should be stated clearly and firmly in advance in a new article then supplemented with additional sanctions.

Third, legal benefits. The discussion of expediency as one of the objectives of the law cannot be separated from the opinions of Jeremy Bentham, who is a figure as well as the originator of the flow of expediency or what is often known as Utilitarianism. Bentham argues that the essence of benefit in a law is life and enjoyment free from misery. According to the utilitarian school, the state and law must play a role in achieving true benefit so as to create happiness in the midst of society (Amran Suadi, 2018).

There are several basic principles of legal expediency according to Bentham. According to Bentham, the purpose of a law is to guarantee the greatest happiness of the greatest number of people. The application must be quantitative not qualitative because Bentham views the quality of pleasure for everyone as the same. The realization of happiness according to Bentham can be achieved by legislation that has four objectives (1) to provide subsistence (2) to provide abundance (3) to provide security (4) to attain equality.

Brunei Darussalam is listed as a country that has ratified The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child. The two instruments state that what is meant by a child is a human being under 18 (eighteen) years of age. These two instruments are certainly present after conducting various kinds of research on the impact of child marriage as the author described earlier.

According to the author, as a country that has ratified the two instruments above, by looking at the many studies that have revealed the negative impact of underage marriage, the minimum age limit for marriage in Brunei Darussalam for both men and women should be 18 (eighteen) year. Do not even let the regulations regarding the age limit for marriage in the three countries become a blunder as if to legalize the practice of child marriage. Based on what the author

described above, that in the legal political perspective of determining the minimum age limit for marriage in Indonesia, Malaysia and Brunei Darussalam, it can be seen how the policy directions of the three countries are in determining the minimum age limit for marriage in realizing justice, certainty, and benefit

CONCLUSION

1. The application of the concept of *maslahah* to the minimum age limit for marriage in Brunei Darussalam has basically been carried out. Based on consideration of the various negative impacts of underage marriage, Indonesia applies the concept of *maslahah* by setting 19 (nineteen) years as the minimum age for marriage. However, the application of the concept of *maslahah* in the regulation of the minimum age limit for marriage in Brunei Darussalam cannot be carried out optimally because the two countries have local wisdom which is considered to be in accordance with the context of their respective countries.
2. In the perspective of legal politics, the regulation of the minimum age for marriage in Brunei Darussalam still needs to be perfected in terms of justice, legal certainty, and legal benefits. In terms of fairness, the minimum age for marriage in Brunei Darussalam still distinguishes between men and women. In terms of legal certainty, Brunei Darussalam has implemented it while still paying attention to the living law that exists in the community, but the value of legal certainty has not been realized because there is no article that clearly states the age limit for marriage. In terms of legal expediency, Brunei Darussalam has not done so.

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