ABSTRACT

Yulia Kusuma Wardani, 2015. Comparative Studies Between the decision of hisbah council (Islamic Unity) and the Bahtsul Masail Institute (Nahdlatul Ulama) about marrying a woman who is pregnant out of wedlock (married by accident). Thesis, Department of Al-ahwal Al-Syakhshiyah. Faculty of Syariah. Maulana Malik Ibrahim State Islamic University of Malang. Supervisor: Dr. H. Saad Ibrahim, MA

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The influence of technological advance which impacts on social life is growing mindset of society today. Not only the positive things that we know but also there are many negative sides in the advance of technology. However, the negative impact which appears obviously is the increase of adultery among Muslims and it causes the pregnancy without legal ties. It makes Islamic organizations move to provide the legal provisions about marrying a pregnant woman through the istinbath method which is conducted by the Hisbah Council (Islamic Unity) and the Bahtsul Masail Institute (Nahdlatul Ulama). The research problems are how manhaj istinbath of hisbah Council (Islamic Unity) and Bahtsul Masail (Nahdlatul Ulama) about the law of marrying a woman who is pregnant out of wedlock (married by accident) and also what are the advantages and disadvantages of the methodology of the Hisbah Council (Islamic Unity) and Bahtsul Masail (Nahdlatul Ulama).

The purpose is to describe the methodology of istinbath used by both the Islamic organizations about marrying a woman who is pregnant out of wedlock (married by accident) and also to compare the strengths and weaknesses in the use of the methodology of istinbath.

This research is normative by using comparative qualitative method to identify the difference of manhaj istinbath used in the case of married by accident and also the strengths and weaknesses of the methodology of istinbath. The book is a primary data from this research.

Based on the analysis, this research reveals that manhaj istinbath which is used by hisbah Council (Islamic Unity) is Saddu dzari'a (the decision which does not allow it as a prevention movement to stop the adultery. While manhaj Bahtsul Masail (Nahdlatul Ulama) is Ilhaq (the decision to allow it as long as the pregnant woman does not has a waiting period of mass (iddah)). The advantage of manhaj hisbah council is having the careful characteristic while the weakness is not bernadzhab. Then, the advantage of Bahtsul Masail manhaj is the existence in the fikih book so that it can be understood by the layman while the weakness is the decrease of creativity in investigating in principles of fikih.