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The Legal Politics of Formality and Substance of the Medina Constitution

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Abstract

The Constitution of Medina is considered the first constitution in the world because it almost has similar content with modern constitutions. So that the study of the history of the establishment of the Constitution of Medina, the politics of law, and the content of the material content is very necessary to be examined in order to be a material renewal of the modern constitution today. This research aims to be a comparative material with modern constitutions and as a material for constitutional reform in any country. This research is a normative research with historical and comparative approaches. The data source of this research uses literature study by tracing books and journals. While the data analysis method uses content analysis. The Constitution of Medina was formed by the Prophet Muhammad SAW. when he came to Medina to create peace and form a force to protect the city of Medina from outside attacks. This Medina Constitution in the concept of Philippe Nonet and Philip Selznick's legal criteria includes responsive law because it contains characteristics, namely democratic making, equality in law, no partiality, made for public needs, and shared morality realised for the common good. The Constitution of Medina is said to be the first modern constitution in the world because its content is in line with modern constitutions, namely the protection of human rights, duties and obligations of citizens, politics of peace and unity, material provisions of laws, and state institutions. This constitution was far more responsive than the constitutional conditions in Europe at the time.

Keywords: Constitution of Medina, constitution, law, and politics.

Abstrak

Konstitusi Madinah dianggap sebagai konstitusi pertama di dunia karena hampir memiliki persamaan muatan dengan konstitusi modern. Sehingga

kajian pembahasan sejarah berdirinya Konstitusi Madinah, politik hukumnya, dan kandungan materi muatannya sangat perlu ditelaah guna sebagai bahan pembaharuan konstitusi modern saat ini. Penelitian ini bertujuan untuk sebagai bahan pembanding dengan konstitusi modern dan sebagai bahan pembaharuan konstitusi di negara manapun. Penelitian ini merupakan penelitian normatif dengan pendekatan sejarah dan perbandingan. Adapun sumber data penelitian ini dengan menggunakan studi pustaka dengan menelusuri buku dan jurnal. Sedangkan metode analisis data menggunakan content analisis. Konstitusi Madinah dibentuk Nabi Muhammad SAW. ketika ia datang ke Madinah untuk menciptakan perdamaian dan membentuk kekuatan guna melindungi kota Madinah dari serangan luar. Konstitusi Madinah ini dalam konsep kriteria hukum Philippe Nonet dan Philip Selznick termasuk hukum responsif karena mengandung ciri-ciri yakni pembuatannya demokratis, adanya persamaan dalam hukum, tidak ada keberpihakan, dibuat untuk kebutuhan umum, dan moralitas bersama diwujudkan untuk kebaikan bersama. Konstitusi Madinah ini dikatakan sebagai konstitusi modern pertama di dunia karena muatannya selaras dengan konstitusi modern, yakni perlindungan hak asasi manusia, tugas dan kewajiban warga negara, politik perdamaian dan persatuan, ketentuan materi undang-undang, dan lembaga negara. Bahkan konstitusi ini jauh lebih responsif dari pada kondisi ketatanegaraan di Eropa saat itu.

Kata Kunci: Konstitusi Madinah, konstitusi, hukum, dan politik.

Introduction

Nowadays, the existence of a constitution is used as one of the prerequisites for the formation of a state. The existence of this written constitution has an important role in directing the administration of a country through the ideals of the state contained therein.[1] In addition to being the basic law in the direction of organizing a country, the nature of the constitution is also a consensus agreement of citizens who will be upheld in the life of the state.[2] In addition, the constitution is also a medium to limit power so as not to act arbitrarily against the people.[3] So great is the role of this

[1] Anna Saunders, "Constitution Making as a Technique of International Law: Reconsidering the Post War Inheritance," *The American Journal of International Law* 117, no. 2 (2023): 251–308, doi:https://dx.doi.org/10.2139/ssrn.4388068.

[2] Oliver Schmidtke, "The 'Will of the People': The Populist Challenge to Democracy in the Name of Popular Sovereignty," *Social and Legal Studies* 32, no. 6 (2023): 911–29, doi:https://doi.org/10.1177/09646639231153124.

[3] Yoyon Mulyana Darusman, Bambang Wiyono, and Guntarto Widodo, "The

constitution, that in the 18th century the notion of constitutionalism, which is an understanding of the supremacy of the constitution over power in the state. Today, the notion of constitutionalism is always attached to the notion of democracy (popular sovereignty), this is intended so that the majority power does not oppress the minority. Therefore, the form of state idealized by the majority of countries in the world today is a constitutional democracy.[4]

Today, it is widely believed that constitutionalism was first born in 1215 when King John of England was forced by some nobles to recognize their rights in a charter called Magna Charta, which then marked the birth of charters on the protection of human rights such as the Bill of Rights, Declaration of Independence, and Declaration des droits de I'homme et du citoyen.[5] This notion of constitutionalism is a form of protection of human rights that is included in a written text as a consensus and legal certainty between the ruler and the people. This means that all actions of the ruler and the people must be regulated in the constitution and there must be no deviations from it that can harm human rights.[6]

If constitutionalism is the protection of human rights embodied in documents based on the consensus of the ruler and the people, then Islam was first in the application of constitutionalism before England with the birth of the Medina Charter in 622 AD. The charter is a short agreement document between the tribes in Yathrib (Medina) which contains the protection of various rights. The charter completely not only regulates human rights, but also regulates the duties and obligations of citizens, state leaders, peace politics, and religious unity.[7]

Significance of Good Constitution for Resulting Good Governance Clean Goverment," *Jurnal Dinamika Hukum* 19, no. 3 (2019), 591, https://doi.org/http://dx.doi.org/10.20884/1.jdh.2019.19.3.2673.

[4] Nathan Gibbs, "The Foundations of Constitutional Democracy: The Kelsen-Natural Law Controversy," *Canadian Journal of Law and Jurisprudence* 37, no. 1 (2024): 79–107, doi:https://doi.org/10.1017/cjlj.2024.3.

[5] Robert W. Emerson and John W. Hardwicke, "The Use and Disuse of the Magna Carta: Due Prosecc, Juries, and Punishment," *North Carolina Journal of International Law* 46, no. 3 (2021): 571–662, https://scholarship.law.unc.edu/ncilj/vol46/iss3/5.

[6] Tanto Lailam, Putri Anggia, and M. Luthfi Chakim, "The Proportionality Test Models of Competing Rights Cases in the Civil and Common Law Systems: Lesson to Learn for Indonesia," *Hasanuddin Law Review* 10, no. 2 (2024): 206–25, doi:http://dx.doi.org/10.20956/halrev.v10i2.4844.

[7] Badruzzaman bin Ishak and Shamrahayu binti Abdul Aziz, "The Madinah Charter in Light of a Modern Constitution," *IIUM Law Journal* 30, no. 1 (2022): 196–220, doi:https://doi.org/10.31436/iiumlj.v30i1.713.

Judging from the content of the Medina Charter, it is very similar to the content of modern constitutions that developed from the 18th century to the present. Even Jimly Asshiddiqie called the Medina Charter the first modern constitution in the world.[8]

Many books refer to the Medina Charter as the Medina Constitution, one of which is Ahmad Sukardja's dissertation published as a book by UI-Press with the title "The Medina Charter and the 1945 Constitution: A Comparative Study of the Basis for Living Together in a Pluralistic Society".[9] In addition, many experts call the Medina Charter by various names. Majid Khadduri calls it the Treaty of Madina and Montgomery calls it The Constitution of Madina. While Phillips K. Hitti calls it the Agreement of Madina and Zainal Abidin calls it al-Shahifah al-Madina. [10]

Based on previous searches, there are several studies that have discussed the Medina Charter as a constitution. First, research by Hafiz Muhammad Arif Siddiqi and friends who discuss the similarities between the Charter of Medina and Magna Carta on the protection of human rights such as economic, social, and political freedom.[11] Second, research by T. Wildan who discusses the fundamental values in the Medina Charter such as trust, justice, deliberation, and obedience.[12] Third, research by Yusuf Faisal Ali who discusses the principles of statehood contained in the Medina Constitution which is very similar to modern constitutions that contain elements of the state, form of state, and system of government.[13] Fourth, research by Ovamir Anjum who discusses the fundamental values of the Medina Constitution which are rarely adopted by constitutions in modern Islamic Arab countries

[8] Jimly Asshiddiqie, Konstitusi Dan Hukum Konstitusi (Jakarta: Sinar Grafika, 2014), 13.

[9] Ahmad Sukardja, *Piagam Madinah Dan Undang-Undang Dasar NRI 1945 : Kajian Perbandingan Tentang Dasar Hidup Bersama Dalam Masyarakat Yang Majemuk* (Jakarta: Sinar Grafika, 2014), 6.

[10] Asshiddiqie, *Konstitusi Dan Hukum Konstitusi*, 14.

[11] Hafiz Muhammad Arif Siddiqi et al., "Common Attributes of the Constitution of Madina and Magna Carta: Analytical Study from a Historical Perspective," *Russian Law Journal* 11, no. 10 (2023): 663–79, doi:https://doi.org/10.52783/rlj.v11i10s.1796.

[12] T. Wildan, "Principles of the Teaching of Nation and State Life in the Constitution of Medina," *Ibda': Jurnal Kajian Islam Dan Budaya* 21, no. 1 (2023): 17–36, doi:https://doi.org/10.24090/ibda.v21i1.6747.

[13] Yusuf Faisal Ali, "The Implementation of the Medina Constitution in Modern State Administration: A Theoritical Viewpoint," *Asy-Syari'ah* 23, no. 1 (2021): 21–38, doi:https://doi.org/10.15575/as.v23i1.10747.

such as equality, peace, tolerance, etc.[14]

This article has differences from the substance of previous research as described above. The difference is that this article seeks to find the political law of the Medina Charter. Therefore, this article uses the concept of the legal character of Philippe Nonet and Philip Selznick. Therefore, the research on the political law of the Medina Charter cannot be separated from the historical approach to the emergence of the Medina Charter. After that, the results of the characteristics of the Medina Charter explored through the historical approach are then compared with several opinions of modern constitutional law experts to find the ideal constitutional model for the development of constitutional law in the future. This is because the science of law is always evolving by the development of social society so the study of comparative constitutional law from the development of the previous time to the present is very necessary to be examined as a provision for ideal constitutional law reform.

This research is a normative/doctrinal research with a historical approach and a comparative approach.[15] The historical approach is done by exploring the history of the formation of the Medina Charter, the causes of the formation of the Medina Charter, and the application of the Medina Constitutional Law in reality. The comparative approach is done by comparing the content material of the Medina Charter with the concept of modern constitutional content material from the perspective of constitutional law experts. In addition, obtaining data is done by using literature studies, namely studying books and journals. The data analysis method used in this article is the content analysis method, which is an in-depth discussion of the object under study, in this case, the history of the formation of the Medina Charter and the relevance of the content material of the Medina Charter to the concept of modern constitutional content material.

[14] Ovamir Anjum, "Conjuring Sovereignty: How the 'Constitution' of Medina Became an Oracle of Modern Statehood," *Journal of Islamic Law* 5, no. 1 (2024): 140–81, doi:https://doi.org/10.53484/jil.v5.anjum.

[15] Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, 4th ed. (Jakarta: Kencana, 2016), 132.

Content/ Discussion

Concept of Political Law

Political power plays a big role in the law which is not only the formation of legislation, but also in law enforcement.[16] Therefore, law cannot be separated from politics, this is as explained by Mochtar Kusumaatmadja in an expression "*Hukum tanpa kekuasaan adalah angan-angan, dan kekuasaan tanpa hukum adalah kelaliman*". The meaning of this expression is that legal norms have no meaning if they are not enforced, the law can only be enforced through political power, and political power without a legal basis is an arbitrariness.[17] In line with this, Mahfudz MD said that law is the result of political crystallization, while a series of political activities must refer to the law, therefore the two cannot be separated.[18]

Law enforcement is not only in the aspect of forming laws and regulations that focus on *das Sollen* (the law that should be) but also the aspect of enforcement in the reality of life (*das Sein*).[19] This law enforcement is carried out through the monopoly of the authorities, either by formulating a law, applying sanctions, or others. Therefore, law is always identified as political power, but in the sense of power that seeks order in society, not to harm society.[20] In the discourse of legal science, the discussion of the relationship between politics and law is called legal politics. Thus, from the explanation above, the definition of legal politics can be drawn, namely the basic policies of state administration or rulers, both those that will, are, and have passed, which originate from the values that live in society to realize the ideals of the state.

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[16] Cosmin Cercel, "Law, Politics, and the Military: Towards a Theory of Authoritarian Adjudication," *German Law Journal* 22, no. 1 (2021): 1192–1208, doi:https://doi.org/10.1017/glj.2021.66.

[17] Mochtar Kusumaatmadja, *Konsep Konsep Hukum Dalam Pembangunan* (Bandung: Penerbit Alumni, 2006), 6.

[18] Mohammad Mahfud MD, *Politik Hukum Di Indonesia*, 1st ed. (Jakarta: Pustaka LP3ES Indonesia, 1998), 5.

[19] Oleg Yurievich Latyshev, Andrei Valerievich Skorobogatov, and Alexander Valerievich Krasnov, "Legal Principle Between Concept and Content," *JILS (Journal of Indonesian Legal Studies* 5, no. 2 (2020): 479–500, doi:https://doi.org/10.15294/jils.v5i2.37387.

[20] Pavlos Eleftheriadis, "Can That Be Law for Me," *Jurisprudence* 15, no. 2 (2024): 207–22, doi:https://doi.org/10.1080/20403313.2023.2233876. Giulia Gentile, "Effective Judicial Protection: Enforcement, Judicial Federalism, and Poltics of EU Law," *Europan Law Open* 2, no. 1 (2023): 128–43, doi:https://doi.org/10.1017/elo.2022.48.

In relation to legal politics, it is interesting to put forward the concept of legal politics from several experts. First, the concept of legal character of Philippe Nonet and Philip Selznick. Philippe Nonet and Philip Selznick outline three legal characters that develop in society, namely responsive law, autonomous law, and repressive law. Responsive law is law that responds to the needs of society for the problems that occur. Philippe Nonet and Philip Selznick divide the characteristics of responsive law into 4, namely first, the development of legal authority objectives in consideration. Second, the purpose of law is not only as a means of compliance with the authorities, but the conception of a better social order. Third, there is openness and flexibility for various elements in society in the political dimension for law-making. Fourth, the purpose of law and the integrity of its order depend on competent institutions of power.[21]

Autonomous law is law as an institution that can protect its integrity and tame its refrains. Philippe Nonet and Philip Selznick divide the characteristics of autonomous law into 4, namely First, the law is separated from politics in the sense that there is a separation of powers between the legislature and the judiciary (the existence of judicial independence). Second, legal order supports the regulatory model, meaning that regulations apply a measure of accountability of state institutions and limit the interference of legal institutions in the political realm. Third, Procedure is the main goal, justice is not the main goal, but legal order is the main goal. Fourth, there is perfect compliance with the law, criticism of the law is not justified except through judicial power procedures, namely judicial review procedures for certain judicial institutions.[22]

Repressive law is a law that is used as a tool of power to legitimize the ruler and the existence of public peace. Philippe Nonet and Philip Selznick divide the characteristics of repressive law into 4, namely First, the law is identified with state power (raison d'etat). Second, the subjectivity of the ruler dominates in the formation of law without regard to the public interest. Third, the interests of justice can be protected as long as it is in the regulations and is very limited. Fourth, special institutions such as the police become centers of free power. Fifth, the dual legal regime institutionalizes class justice by

[21] Philippe Nonet and Phiplip Selznick, *Law and Society in Transition* (New York: Routledge Taylor and Francis Group, 1978), 16.

[22] Nonet and Selznick, *Law and Society in Transition*, 16.

legitimizing patterns of social subordination. Sixth, law and power are used to enforce government stability and cultural conformity.[23]

The following table outlines three types of law according to Philippe Nonet and Philip Selznick.

Table 1.1. Characteristics of three types of law according to Philippe Nonet and Philip Selznick.

Criteria	Responsive Law	Autonomous Law	Repressive Law
Legal legitimacy	Competence for societal needs such as substantive justice.	Procedural justice.	A tool for government legitimacy and government stability (*raison d'etat*).
Thoughts	Subordinating the principles and policies of the ruler, the main point is the interests of the community.	The law must be binding on the ruler and commanding the people.	The law is only binding on the legislator as a means of legitimization.
Policy	Policies are widespread while remaining accountable to the primary purpose of law, which is to serve the needs of society	Strict adherence to legal authority and prone to legalism and formalism. The essence of compliance is legal certainty and order.	Opportunism, which wants the rules to benefit the ruler as much as possible.
Coercion	Intensive, which is the concept of earnest compliance based on the belief that the law is a tool to aspire to the needs of society.	Obedience to the law based on legalistic law order	Extensive, namely the concept of legal compliance solely to obey the authorities.
Morality	Common morality	Institutional morality	Morality of restraint
Politics	Politics and law are inseparable	Law is independent of politics	Law is subject to political power

[23] Nonet and Selznick, *Law and Society in Transition*, 16.

Criteria	Responsive Law	Autonomous Law	Repressive Law
Participation	There is compliance but there are still opportunities for people to criticize the law and the application of the law is still guided by social advocacy.	There is compliance, but criticism must be based on legal procedures such as in the case of judicial review of legislation. No guidance by social advocacy.	Disobedience and criticism are seen as disloyalty to the state
Expectations of Compliance	Disobedience is assessed based on the substantive harm done to the community.	There is an expectation of judicial review of legislation	Absolute obedience and criticism of the law are not allowed

The three types of law proposed by Philippe Nonet and Philip Selznick reflect the dominance of different political paradigms behind them. The first stage begins with a repressive legal paradigm with the dominance behind it is the absolute power of a single ruler. This absolute power was characteristic of the Greek era until the beginning of the French Revolution in 1789. This absolute power is divided into two, namely the absoluteness of religion and the king. Religious absolutism was characteristic of medieval times (5th-15th centuries AD), especially in Europe, where the church was the center of power and the king acted according to the will of the church. At that time there was no freedom whatsoever for civil society other than following the will of the church, even at that time there was no freedom to think critically which disturbed its dominance. The absoluteness of the king illustrates that the king is the owner of absolute truth because he is the representative of God in the world. Therefore, the king has the right to take any policy according to his will even though it is detrimental to society. In its development, this paradigm still appears in countries led by authoritarian rulers who rely on the law to legitimize their position and absolute policies.[24]

[24] Clarence Morris, *The Great Philosophers: Selected Reading in Jurisprudence* (Philadelphia: University of Pennsylvania Press, 1963), 67. Martin Golding, *Philosophy of Law* (New Jersey: Engelwood Cliffs, 1975), 32-33.

The second stage is autonomous law with the dominance of state sovereignty and very strong law with the influence of legalisation, namely that all regulations must be formed in written form as a collective consensus (social contract). The purpose of requiring regulations in written form based on a joint consensus is solely so that there is no longer absolute power domination by a person or a small group that will oppress the community. In other words, legalization is a manifestation of the creation of the rule of law and not the rule of man.[25] The peak of the proliferation of autonomous law occurred during the French Revolution of 1789 until the early 20th century. Although it seems that the principle of legalization that is glorified has a noble purpose with the sole protection of individual rights, it also has many adverse effects. The most visible bad impact as expressed by Philippe Nonet and Philip Selznick is the loss of substantive justice. The concept of justice at that time was only aimed at what was stated in written regulations which were then abstracted from their applicability in society, whereas it should be noted that the law in each region and time has its characteristics so it is not feasible to overcome it with deductive logic. [26]

A further weakness is an assumption that law and politics are separate from portraying the law as sacred to reinforce the slogan of the rule of law, whereas the reality is that written regulations are produced from the political crystallization of various representatives of society who must have hidden interests, especially the dominant party or faction in power.[27] Another disadvantage is that it is difficult to seek true justice because everything is required to go through a very long formalistic path, and even traditional-based dispute resolution alternatives that are quick are minimal.[28]

The third stage is responsive law with the dominance of the pragmatic political paradigm, namely that not all things are always

[25] Dylan Riley, Rebecca Jean Emigh, and Patricia Ahmed, "The Social Foundations of Positivism: The Case of Late-Nineteenth-Century Italy," *Social Science History* 45, no. 1 (2021): 813–42, doi:https://doi.org/10.1017/ssh.2021.22.

[26] Boy Nurdin and Khayitjon Turdiev, "Paradigm of Justice in Law Enforcement in the Philosophical Dimensions of Legal Positivism and Legal Realism," *Lex Publica* 8, no. 2 (2021): 65–74, doi:https://doi.org/10.58829/lp.8.2.2021.65-74.

[27] David Plunkett and Daniel Wodak, "Legal Positivism and Real Definition of Law," *Jurisprudence* 13, no. 3 (2022): 1–32, doi:10.1080/20403313.2022.2037344.

[28] Imam Asmarudin, "Struggle of Legal Positivism Versus Progressive Thoughts in the Formal Tests of Job Creation Act (Legal Development Through Hermeneutics)," *Jurnal Dinamika Hukum* 22, no. 1 (2022): 124–43, doi:http://dx.doi.org/10.20884/1.jdh.2022.22.1.3178.

associated and resolved by legalization, but can also be resolved outside of it according to changing times and places. The community has the right to participate together in determining its ideals in the form of written regulations (social contract), but if it is not possible the length of time to change it can be transferred pragmatically without relying on formal aspects. In addition, this paradigm is a legal teaching of the postmodernist era that criticizes the legal positivism paradigm by saying that written regulations will always be closely related to politics, even equating them. Even so, there are limits in pragmatic politics that become the main principle as a control, namely the common good/morality and eclecticism. If the written regulation is not by the common good/morality among the people, then it should be resolved by reviewing the moral values developed in society to be revised or through direct progressive means.[29]

History of the Formation of the Medina Charter and Political Analysis of its Law based on the Concept of Philippe Nonet and Philip Selznick

The establishment of the Medina Charter began when the Prophet Muhammad decided to migrate to the city of Yathrib. The Hijrah of the Prophet SAW to the city of Yathrib was caused by several things.[30] First, there was an invitation from the residents of the city of Yathrib who wanted the Prophet to live in the city of Yathrib and guide Islam after many of them converted to Islam. Second, the amount of pressure and persecution carried out by the pagan Quraysh of Mecca against Muslims. In addition, the leaders of the Quraish disbelievers also slandered the teachings of the Prophet SAW to other tribes so as not to accept his teachings, even challenging the Prophet SAW by forcing him to preach his teachings to other people who want to accept his teachings.[31] Then he made a hijrah to Medina leaving his homeland and relatives who were still pagans to seek peace in upholding the religion of Allah as Allah's command in surah al-Taubah verses 20-22 which reads as follows:

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[29] Anthon F. Susanto, *Ilmu Hukum Non Sistematik: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia* (Yogyakarta: Genta Publishing, 2010), 245-247.

[30] Suleyman Sertkaya, "What Changed in Medina: The Place of Peace and War in the Life of Prophet Muhammad," *Religions* 14, no. 2 (2023): 1–15, doi:http://dx.doi.org/10.3390/rel14020193.

[31] Jati Pamungkas, "Alliances and Rivalries the Arabic Quraysh Tribes: Inhibiting Factor of Islamic Da'wah in Mecca 610-622 AD," *Jurnal Dinamika Penelitian: Media Komunikasi Sosial Keagamaan* 22, no. 1 (2022): 29–53, doi:http://dx.doi.org/10.3390/rel14020193.

اَلَّذِيْنَ اٰمَنُوْا وَهَاجَرُوْا وَجٰهَدُوْا فِيْ سَبِيْلِ اللّٰهِ بِاَمْوَالِهِمْ وَاَنْفُسِهِمْۙ اَعْظَمُ دَرَجَةً عِنْدَ اللّٰهِ ۗوَاُولٰۤىِٕكَ هُمُ الْفَاۤىِٕزُوْنَ. يُبَشِّرُهُمْ رَبُّهُمْ بِرَحْمَةٍ مِّنْهُ وَرِضْوَانٍ وَّجَنّٰتٍ لَّهُمْ فِيْهَا نَعِيْمٌ مُّقِيْمٌۙ خٰلِدِيْنَ فِيْهَآ اَبَدًاۗ اِنَّ اللّٰهَ عِنْدَهٗٓ اَجْرٌ عَظِيْمٌ.[32]

> "The ones who have believed, emigrated and striven in the cause of Allah with their wealth and their lives are greater in rank in the sight of Allah. And it is those who are the attainers of succes). (20). Their lord gives them good tidings of mercy from him and approval and of gardens for them wherein in enduring pleasure. (21). (They will be) abiding therein forever. Indeed, Allah has with him a great reward. (22). (Q.S. al-Taubah (9): 20-22).[33]

T.M. Hasbi Asshiddiqie in his tafsir explains the verse that all believers who believe in Allah and sacrifice their souls and property to Allah to exalt their religion will be raised by Allah and given a very large reward beyond the reward of prospering the mosque and giving drink to the pilgrims. The people who migrated following the Prophet SAW are the ones who will later gain victory and glory on the side of Allah. Hasbi Asshiddiqie explains that the verse explains the concept of hijrah as the spiritual journey of the Prophet SAW from Mecca to Medina, not as the concept of hijrah which refers to self-cleaning of immorality as understood today.[34]

After a grueling journey with his friend Abu Bakr as-Siddiq accompanied by death threats from the infidels of Quraysh Mecca, finally, after Friday prayer he arrived in the city of Yathrib. He received a warm welcome from the people of Yathrib, even the city of Yathrib was later replaced by the people of Mecca with the name Madinatur Rasulullah SAW which was later abbreviated as the city of Medina.[35] According to Nurkholish Madjid, the word Medina is epistemologically derived from Arabic, namely "*madaniyaah*" which means high civilization, this is because the people of Medina highly uphold morals.[36] The Prophet SAW was very familiar with the condition

[32] Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya* (Jakarta: Kementerian Agama RI, 2019), 261-262.

[33] Saheeh International, *The Qur'an: English Meaning* (Jeddah: Al-Muntada Al-Islami, 2004), 172.

[34] Siti Fauzh, "Konsep Hijrah Nabi Muhammad Dalam Al-Qur'an," *Jurnal Al-Fath* 7, no. 2 (2013), 189-190, https://doi.org/https://doi.org/10.32678/alfath.v13i2.2898.

[35] Mohammed Ibraheem Ahmed, "Islam and Judaism: Religious and Identity in the Medinan Era," *Al-Masaq* 35, no. 2 (2023): 194–216, doi:https://doi.org/10.1080/09503110.2022.2154564.

[36] Andri Ardiansyah and Ali Alkosibati, "The Social Relevance of Hassân Hanafî's

of the city of Medina because when he was still working as a trader in the city of Sham, he often passed through the city of Medina. In addition, as a child, he was also often invited by his mother to Medina to meet his siblings. Even the grave of his father Abdullah bin Abdul Mutholib is buried in this city. Social conditions in the city of Medina are very different from the city of Mecca. The majority profession of the people of Mecca at that time were traders and breeders, therefore the people tended to be rough and hard. In contrast to the people of Medina, the majority of whom work as farmers so they tend to be polite and gentle.[37] Therefore, it is very appropriate that the city of Yathrib with its polite and gentle people is dubbed as a city of high civilization of adab, namely "Medina".

Judging from the social conditions of society, the people of Medina are a type of pluralistic or heterogeneous society because there is still a strong tribal nature (*'asabiyyah*). This *'asabiyyah* arises because of the factor of blood ties and love for his group.[38] The people of Medina initially consisted of two large nations, namely Arabs and Jews. The religions adopted by the two great nations were Judaism, Christianity and Paganism. Then the two nations split into various tribes. The majority of the Jewish religion was adopted by the Nadhir tribe, the Qainuqa tribe, the Quaridhah tribe, and the Gathafan tribe. Meanwhile, the majority of Christians are adhered to by the Aus and Khazraj tribes from the Arabs. The religion of paganism was embraced by a small part of the people of Medina. Initially, the Jews (Jewish race) were immigrants who came from the land of Jerusalem because of the anti-Semitism of the Roman Empire against the Jewish race. Because of the difficult terrain in the middle of the desert in the Arabian Peninsula, the massacre of the Jewish race did not occur. However the Roman Empire still wanted to destroy the Jewish race that migrated to the city of Medina. Therefore, he sent many messengers to order the Aus and Khazraj tribes to attack the Jewish race. Knowing he would

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and Nurcholish Madjid's Thoughts: A Sociological Analysis in the Context of Islam in Indonesia," *JII: Jurnal Indo-Islamica* 14, no. 1 (2024): 154–68, doi:https://doi.org/10.15408/jii.v14i1.39772.

[37] Suleyman Sertkaya and Zuleyha Keskin, "A Prophetic Stance against Violence: An Analysis of the Peaceful Attitude of Prophet Muhammad during the Medinan Period," *Religions* 11, no. 1 (2020): 1–13, doi:https://doi.org/10.3390/rel11110587.

[38] Hasrat Efendi Samosir, Effati Juliana Hasibuan, and Tappil Rambe, "Prophet Communications in the Madinah Charter for Constructing a Multicultural Society," *Journal of Namibian Studies* 33, no. 2 (2023): 929–55, doi:http://dx.doi.org/10.59670/jns.v33i.546.

be threatened, the immigrant Jewish race then counterattacked by pitting the Aus and Khazraj tribes so that both until the Prophet SAW migrated to Medina were still fighting.[39]

At that time, in general, the population of Medina was divided into three major groups, namely the Muhajirin and Anshar Muslim groups, the Medina polytheists, and the Jewish race. The Muhajirin Muslim group is a Muslim who accompanied the Prophet SAW to migrate to the city of Medina, while the Anshar Muslim group is a native of the city of Medina who has embraced Islam. They were the ones who physically became the backbone of Islamic society. The group of Medina polytheists are the natives of the city of Medina who have not embraced Islam and still embrace the religion of their ancestors. The Jewish racial groups are people who are descendants of Jews and Jews who generally make a living as traders and farmers, therefore the economic power of the city of Medina is in their hands.[40]

The development of Islam in the city of Medina is different from the period of Mecca, the teachings of Islam relate to the lives of many people descended in the city of Medina. The Prophet SAW is not only the head of religion or rosul only but also the head of state who has two powers, namely worldly and spiritual power. The Prophet SAW at that time was a source of law for the people of Medina and Qadhi in case of problems.[41] With such great power, the Prophet SAW did not exercise power in absolute monarchy a well-known form of government at that time. The Prophet SAW saw that the state could be strong if there was a bond of unity. Therefore, to maintain the stability of the government avoid division amid the plurality of the people of Medina and defend themselves from outside attacks because the strength of Muslims was still relatively small at that time, the Prophet SAW tried to make an agreement based on *ukhuwah* (unity).[42]

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[39] Khamami Zada, "Human Rights and Siyasah Syar'iyyah: Review of the Medina Charter and the Cairo Declaration," *Salam: Jurnal Sosial Dan Budaya Syar'i* 10, no. 2 (2023): 445–56, doi:https://doi.org/10.15408/sjsbs.v10i2.32055.

[40] Hayk Kocharyan, "Relations between Jews, Jewish Tribes, and Muslims: The Constitution of Madinah," *Journal of Oriental Studies* 24, no. 2 (2023): 231–40, doi:https://doi.org/10.46991/jos.2023.24.2.231.

[41] Tri Yuliana Wijayanti, "The Concept of Inter-Religious Life in the Medina Charter and Nostra Aetate," *Majalah Ilmu Pengetahuan Dan Pemikiran Keagamaan* 25, no. 1 (2022): 70–83, doi:https://doi.org/10.15548/tajdid.v25i1.4144.

[42] Ayse Kulahi, Muhammad Danyal Khan, and Rais Nouman Ahmad, "Dichotomy of State and Divine: A Study of Early Muslim Statehood," *Journal of Historical Studies* 6, no. 2 (2020): 326–40. Issa Khan et al., "A Critical Appraisal of Interreligious Dialogue in Islam,"

The agreement was carried out democratically by presenting all groups in the city of Medina and then signed by 13 groups and then.[43] The Prophet SAW at that time came to the Jews and Christians and took an open dialogue approach, especially the Jews were the scribes who recognized the teachings of monotheism. However, some Jewish groups later defected against the Medina Charter because of their malice. Even so, the existence of this deliberation further shows that there is no revolutionary and absolute state formation. The dialog also shows the spirit of nationality in the bond of brotherhood (*ukhuwah*).[44] According to Subhi Shalih, it is estimated that the Medina Charter was formed in the first year of Hijrah. This is as he quoted from Imam Ath-Thabari who said "He (Muhammad) had made a peace treaty with the Jews of Medina when he had just settled in Medina....".[45]

The Medina Charter consists of 10 chapters and 47 articles, the following describes the content of the Medina Charter:

1. Mukaddimah
2. Body
    a. Chapter I discusses the Formation of Ummah (Article 1)
    b. Chapter II discusses Human Rights (Articles 2-10)
    c. Chapter III discusses Religious Unity (Articles 11-15)
    d. Chapter IV discusses the Unity of All Citizens (Articles 16-23)
    e. Chapter V discusses Minority Groups (Articles 24-35)
    f. Chapter VI discusses the Duties of Citizens (Articles 36-38)
    g. Chapter VII discusses Protecting the State (Articles 39-41)

Sage Journal 5, no. 10 (2020): 1–10, doi:https://doi.org/10.1177/2158244020970560.

[43] The Medina Charter was an agreement between 13 communities, namely the Muhajirin, the Anshar, the Jews of Bani 'Auf, the Jews of Bani Sa'idah, the Jews of Bani al-Hars, the Jews of Bani al-Najjar, the Jews of Bani Sa'labah, the Jews of Bani 'Amr bin 'Auf, Bani Jusyam, Bani al-Nabit, Bani al-'Aws, the Jafnah tribe of Bani Sa'labah, and Bani Shuthaybah. See Muhamad Abror and Awalia Rahma, "Sira Nabawiyya: Historiography of the Propeth Muhammad by Three Modern Writers," *Buletin Al-Turas* 30, no. 1 (2024): 25–38, doi:https://doi.org/10.15408/bat.v30i1.30008. Muhammad Burhanuddin, "Conflict Mapping Piagam Madinah (Analisa Latar Belakang Sosiokultural Piagam Madinah)," *Jurnal Al-Ijtimaiyyah: Media Kajian Pengembangan Masyarakat Islam* 5, no. 2 (2019): 1–20, doi:http://dx.doi.org/10.22373/al-ijtimaiyyah.v5i2.5233.

[44] Arlis, Rahmat Hidayat, and Ahmad Bakhtiar Jelani, "Intensity of Religious Moderation According to the Medina Constitution," *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 11, no. 2 (2022): 156–72, doi:https://doi.org/10.24252/ad.vi.32615.

[45] Zulfian Awaludin and Wakhit Hasim, "Strategi Transformasi Sosial Nabi Muhammad SAW Dalam Piagam Madinah (619-622 M)," *Jurnal Yaqzhan: Analisis Filsafat, Agama, Dan Kemanusiaan* 5, no. 1 (2019), 55, https://doi.org/http://dx.doi.org/10.24235/jy.v5i1.4521.

h. Chapter VIII discusses State Leaders (Articles 42-44)
i. Chapter IX discusses the Politics of Peace (Articles 45-46)
j. Chapter X discusses the Closing (Article 47)

From the description of the content above, it can be determined some of the main principles of the Medina Charter as follows:

1. People's Sovereignty
   The principle of popular sovereignty means that the supreme power is in the hands of the people. This means that any policy-making must involve deliberation for consensus. One of the things inherent in the principle of popular sovereignty is deliberation, not voting which will later give birth to the hegemony of the majority over the minority.[46] The principle of popular sovereignty is regulated in the Preamble of the Medina Charter, the translation of which reads "This is a written charter from the Prophet Muhammad Shalllahu Alaihi Wa Sallam among the believers and embraced Islam (who came) from Quraysh and from Yathrib, and those who followed them united themselves and fought with them". This implies that this charter was made based on deliberation between the groups of the city of Medina and is binding for them. In addition, the Prophet SAW when making the Medina Charter also did it democratically with a dialog approach to the community groups of the city of Medina. Without the making of the Medina Charter which emphasizes deliberation as a whole, there will certainly be opposition from other parties because they feel excluded and refuse absolute power.[47]
2. Constitutional Supremacy
   The principle of constitutional supremacy means that all actions taken in the life of the state must be based on the constitution as the supreme law. This principle of supremacy is very close to the principle of legality, which emphasizes the existence of clear and definite written law as the basis of civic life and law

[46] Eza Aulia, Saldi Isra, and Yuslim, "The Conception of the Sovereignty in Indonesia: Mohammad Hatta's Thought Approach," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 146–63, doi:https://doi.org/10.22373/petita.v9i1.221.

[47] Arifin Zain and Maturidi, "Interreligious Relations in the Structural Da'wah Framework: A Historical Review of the Medina Charter, the 1945 Indonesian Constitution, and Aceh Qanun No. 4 Year 2016," *Komunika: Jurnal Dakwah Dan Komunikasi* 15, no. 1 (2021): 97–109, doi:https://doi.org/10.24090/komunika.v15i1.4544.

enforcement.[48] The existence of the Medina Charter in the form of a written text containing the foundation of civic life is the right step to achieve legal certainty so that everyone knows and obeys the Medina Charter. The absence of this constitution makes power without rights which means arbitrariness among the strongest or most influential. Recording the Medina Charter in writing and becoming the basis of organization for the people of Medina is not without reason, namely so that all the people of Medina know the agreement made by representatives of all groups of Medina society. Without written evidence and only through speech-to-speech unclear hearsay will only cause no legal protection for each individual. This appears to be like the time before the arrival of the Prophet SAW to the city of Medina where the state of society is divided and hostile to each other. One of the factors causing this is because the peace agreement between them is only through speech so that in the short course of time there is no strong binding rope as in the written text.

3. Freedom
   The freedom referred to in this case is individual freedom from inter-ethnic subordination. This freedom from subordination is regulated in Chapter I Article 1 which reads "Indeed they are one nation-state (ummah) free from (the influence and power of) other humans". The article emphasizes that all tribal elements in the city of Medina are in an equal position, no one tribe dominates another tribe to curb its freedom. This article is an important aspect in the formation of a united and strong community because subordination will only cause divisions that lead to war. This principle of freedom is set not without reason considering that in the period before the arrival of the Prophet SAW to the city of Medina, the tribes in Medina showed their strength to other tribes so that divisions, feuds, and wars between tribes were always happening.[49]
4. Protection of Human Rights and Equal Rights
   The principle of human rights protection is regulated in Chapter

[48] Emad H. Atiq, "Legal Positivism and the Moral Origins of Legal Systems," *Canadian Journal of Law and Jurisprudence* 36, no. 1 (2023): 37–64, doi:https://doi.org/10.1017/cjlj.2022.17.

[49] Rizzaldy Satria Wiwaha et al., "The Social Context of Hadits History from the Perspective of Hadits Sociology," *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 8, no. 1 (2024): 96–105, doi:http://dx.doi.org/10.58258/jisip.v8i1.5946.

II Articles 2-10 and Chapter VII Articles 39-41. The protection of human rights referred to in these chapters is the original rights which can be understood by basic rights such as the right to life, the right to obtain wealth, the right to politics, the right to religion, the right to opinion, and others, and one tribe must take care of each other if someone among them commits a *jinayah*. In addition, the principle of protection can also be found in Chapter V on Minority Groups (Articles 24-35). The chapter regulates the equality of rights among the tribes of Medina, especially the Jews who are a minority group. The protection of human rights is an important element in the establishment of a state considering that the realization of a peaceful and prosperous life will be achieved with the protection of rights by the state. The inclusion of the principle of human rights protection is not without reason considering that before the arrival of the Prophet SAW to the city of Medina, the tribes in the city of Medina committed many human rights violations such as persecution between tribal members so that there should be *diyat* as a sanction in law enforcement.[50]

5. Unity
   This principle of unity is regulated in Chapter III Articles 11-15 and Chapter IV Articles 16-23. Chapter III regulates religious unity, the content of this third chapter is the obligation for fellow religious believers to protect and help each other and not to divide or damage the solidarity of certain religious believers. While chapter four discusses the unity of all citizens, the content of this fourth chapter is the unity of the various groups of Medina society to work together to defend the city of Medina against attacks from outside parties. In addition, the chapter also requires that each group or tribe not make strategic policies without involving or agreeing with all groups. The principle of unity is very important in the life of the state because without the principle of unity that is strictly regulated in the constitution, a country will be divided and does not have a strong power base so it will gradually cause destruction. The inclusion of unity in the Medina Charter is not without reason considering the strength

[50] Nazil Mumtaz Al-Mujtahid and Hasan Sazalli, "Revitalization of Moderation Message in the Madinah Charter: Religious Development Communication Studies," *At-Turas: Jurnal Studi Keislaman* 10, no. 1 (2023): 59–79, doi:http://dx.doi.org/10.33650/at-turas.v10i1.5301.

of Muslims at that time was still not strong and still vulnerable to being divided due to the characteristics of '*asabiyyah*.[51]

From the explanation above, concerning the concept of legal criteria according to Philippe Nonet and Philip Selznick, it can be said that the legal character of the Medina Charter is responsive law. This is due to the similarity of the characteristics of the Medina Charter with the characteristics of responsive law that Philippe Nonet and Philip Selznick have described. The following are the similarity criteria:

Table 2.1. Similarities between the characteristics of the Medina Charter and the characteristics of Philippe Nonet and Philip Selznick's responsive law

Criteria	Responsive Law	Medina Charter
Legal legitimacy	Competence for societal needs such as substantive justice	The Charter of Medina was created for the needs of a structured state, protection of human rights, and unity.
Thoughts	Subordinating the principles and policies of the ruler, the main point is the interests of the community.	The Medina Charter was made for the common good which at the time of its creation was very democratic so that all groups were able to provide the best opinion for all.
Policy	Policies are widespread while remaining accountable to the primary purpose of law, which is to serve the needs of society	The Medina Charter is binding as a whole for the groups listed on the Medina Charter and there is no favoritism.

[51] Dedi Eko Riyaldi H.S. et al., "Analysis Study of Islamic Nomocracy and Pancasila Democracy in Indonesia," *International Journal of Multicultural and Religious Understanding* 7, no. 2 (2020): 746–53, doi:http://dx.doi.org/10.18415/ijmmu.v7i10.2238.

Criteria	Responsive Law	Medina Charter
Politics	Politics and law are inseparable	The making of the Medina Charter is inseparably looking for the crystallization of various groups of Medina society by way of deliberation for consensus through a dialogue approach.
Morality	Common morality	Shared morality by realizing the common good for the groups listed in the Medina Charter (common good).
Coercion	Intensive, which is the concept of earnest compliance based on the belief that the law is a tool to aspire to the needs of society.	Intensively, complying with the Medina Charter is a must as a whole for the groups listed on the Medina Charter with the belief of bringing about a better change as stated in its legal ideals.
Expectations of compliance	Disobedience is assessed based on the substantive harm done to the community	Disobedience is judged based on substantive harm to society, but the Medina Charter is so democratic that it does not regulate any harm to the groups it regulates. However, a few years later some Jewish groups denied the Medina Charter due to malice which was not a form of substantive harm.

This shows that the charter or constitution of Medina formed by the Prophet Muhammad with the people of Medina had been more responsive than the country in Europe at that time. It should be noted that at the time of the Prophet Muhammad (6th-7th century AD), Europe was experiencing a dark period with the strong supremacy of the church and the king, especially when it was also the year of the growth of Christianity. This is proof that the Constitution of Medina can be categorized as the first modern constitution in the world that greatly favors human values and shared morality, long before the premises of the concept of legal types were elaborated by philosophers or legal thinkers. This constitution is still far superior to constitutions that are considered modern such as the French Constitution after the 1789 Revolution and the United States Constitution of 1778 which turned out to be too discriminatory of ethnicity or race and very vulnerable to fulfil the needs of capitalism.

Comparison of the Content of the Medina Charter with the Concept of Modern Constitutional Content from the Perspective of Constitutional Law Experts

In the 18th century, many countries were formed and at the same time, the concept of the principle of legality developed in the development of legal science.[52] This means that something is not considered unlawful if there is still no regulation. In addition, this time was also the beginning of the rise of constitutional democracy which had overthrown the absolute monarchy form of government. Constitutional democracy is considered the ideal understanding of the state order.[53] Therefore, the supremacy of a written text became very important in the revival revolution. This written text is called the Constitution. This constitution is then referred to as the basic norm that serves as the foundation of state life. Even though constitution is the reference for subordinate legal norms, the legal norms below all refer to the constitution.[54] So sacred that in its interpretation there are two approaches, namely living constitution and originalism

[52] Felipe Jiménez, "Legal Positivism for Legal Officials," *Canadian Journal of Law and Jurisprudence* 36, no. 2 (2023): 359–86, doi:https://doi.org/10.1017/cjlj.2022.36.

[53] Hartmut Kliemt, "The Logical Foundations of Constitutional Democracy between Legal Positivism and Natural Law Theory," *Public Choice* 195, no. 1 (2023): 269–81, doi:10.1007/s11127-021-00888-9.

[54] Lars Vinx, "Hans Kelsen and the Material Constitution of Democracy," *Jurisprudence* 12, no. 4 (2021): 466–90, doi:https://doi.org/10.1080/20403313.2021.1921493.

interpretation.[55]

Nowadays, there is a debate about the Medina Charter as the first modern constitution that far exceeds the age of the 1787 United States Constitution which has been considered as the first modern constitution in the world.[56] According to Irfan Idris, although the Medina Charter does not regulate state institutions and their authorities, such as the executive, legislature and judiciary, it can still be called a constitution. This is because it is fulfilled by the characteristics of other constitutions, such as being a written text, being a reference or basis in living a state life for the people of Medina, the existence of state sovereignty held by the Prophet SAW, the protection of human rights, and the rights and obligations of citizens. Therefore, re-examining the content material of the constitution according to several figures as a comparison is very necessary.[57]

The following will describe some of the opinions of modern constitutional law experts related to the content of the constitution. According to Sri Soemantri who took J.G. Steenbeek's opinion that a constitution is considered ideal if it regulates the guarantee of human rights, the existence of the constitutional structure, and the division or limitation of power to state institutions.[58] In addition, K.C. Wheare revealed that a constitution must regulate the structure of government, namely the legislature, executive, and judiciary, the reciprocal relationship between these state institutions with each other, the relationship between these state institutions and society, the protection of human rights, and the political ideals of the state or

[55] Living constitution is an interpretation of the constitution by leaving it intact without amendment and treating it dynamically in accordance with the development of society. This approach ultimately leads to a judicial activism approach for judges when deciding a case he will interpret many current problems by opening his own door or less respect for the legislator. Meanwhile, the originalism interpretation demands an amendment to the constitution if it is felt that the constitution is outdated and does not fulfil the needs of society because the framers of the constitution made provisions for amendments to the constitution. See I dewa Gede Palguna and Bima Kumara Dwi Atmaja, "'Originalism' of Interpretation in the United States Constitution," *Sriwijaya Law Review* 7, no. 2 (2023): 190–208, doi:http://dx.doi.org/10.28946/slrev.Vol7.Iss2.2134.pp190-208.

[56] James Parisot, "Capitalism and the Creation of the U.S. Constitution," *Studies in American Political Development* 37, no. 2 (2022): 199–211, doi:https://doi.org/10.1017/S0898588X23000032.

[57] Idris Irfan, *Islam Dan Konstitusionalisme* (Jakarta: Antonilib, 2009), 26.

[58] Sri Soemantri, *Prosedur Dan Sistem Perubahan Konstitusi* (Bandung: Penerbit Alumni, 2006), 60.

nation.[59] Meanwhile, Podsnap also explained that the constitutional mutant material is the provision of a policy statement (a sort of manifesto), a statement of belief, a statement of the ideals of the state, and a state charter.[60]

In addition, Struycken also explained that the constitution at least regulates the results of the nation's political struggle in the past, the highest levels of constitutional development, the views of national leaders to be realized both for the present and the future and a desire with which the development of the nation's constitutional life will be led. Meanwhile, according to Rocco J. Tressolini and Martin Shapiro, the constitution must regulate the provisions of the framework or structure of government, delegation of government, and restrictions on the power of government officials in exercising their powers so that individual rights are protected. [61] Meanwhile, Henc van Maarseveen explains that at least the elements of the constitution are to contain the basis of the state, a set of basic rules that establish state institutions, the authority of state institutions, human rights, the obligations of citizens and the government, limiting the power of the government as a policy maker, containing the ideology of the ruling elite, and regulating the material relationship between the state and the ruler.[62]

In addition, according to Hans Kelsen, the elements of the constitution are the preamble, material provisions of the law, provisions on government and judicial functions, unconstitutional laws and their cancellation procedures, constitutional prohibitions, human rights, and constitutional guarantees.[63] Meanwhile, according to R.M. Ananda and B. Kusumah that a constitution must regulate the preamble, the structure of government along with its functions and authorities, the rights and obligations of citizens, guarantees of the constitutionality of laws, and norms regarding constitutional amendments.[64]

The Medina Charter, which consists of 1o chapters and 47 articles, at least regulates some of the main content material, namely the protection of human rights, duties and obligations of citizens, politics of peace and unity, material provisions of the law, and state institutions. The protection of human rights is expressly regulated in Chapter II

[59] I Dewa Gede Atmaja, *Hukum Konstitusi* (Malang: Setara Press, 2012), 70.
[60] Atmaja, *Hukum Konstitusi*, 70-71.
[61] Atmaja, *Hukum Konstitusi*, 71-72
[62] Atmaja, *Hukum Konstitusi*, 73.
[63] Atmaja, *Hukum Konstitusi*, 74.
[64] Atmaja, *Hukum Konstitusi*, 80.

Articles 2-10. The duties and obligations of citizens are regulated in Chapter VI Articles 36-38. The politics of peace is regulated in Chapter IX Articles 45-46, while unity is regulated in Chapter III Articles 11-15 and Chapter IV Articles 16-23. The politics of peace and unity are made the subject matter because they regulate the binding consensus for the realization of a state as is also the case in the constitutions of countries that adhere to the federal form of government today.

The material provisions of the law in the Medina Charter are contained in Chapter VII Article 42 paragraph 1, in the article it is explained that if an event occurs then the settlement is submitted according to the law of Allah, namely the revelation revealed by Allah. The state institution is an organ that organizes the state administration, in the Medina Charter the legislator is Allah SWT through revelation revealed (Article 42 paragraph 1), and the executor of the government is in the hands of the Prophet SAW. (article 47 paragraph 7), and the Prophet SAW. as Qadhi if there is a dispute (Article 47 paragraph 1). Although not explained in detail as today's state institutions, the existence of a simple state institution can be said that Islam has implemented the concept of power-sharing. Therefore, it can be concluded that it is appropriate to say that the Medina Charter is the first modern constitution in the world. Thus, based on the Prophet's sunnah, ideally, the formation of the constitution should regulate the protection of human rights, the duties and obligations of citizens, the politics of peace and unity, the material provisions of the law, and state institutions.

Conclusion

The Medina Charter is a consensus made by the Prophet SAW with the community of Medina. The Charter was made as a unity of strength to defend the territory of Medina and as a form of peace between various groups of Medina society. The Medina Charter in the concept of Philippe Nonet and Philip Selznick's legal criteria includes responsive law, as its characteristics are made for public needs, its making is done democratically through deliberation with a dialogue approach, there is no difference in its binding force, and shared morality is manifested for the common good. The Medina Charter can be called the world's first modern constitution because its content regulates the main points of modern constitutions such as the protection of human

rights, the duties and obligations of citizens, the politics of peace and unity, the material provisions of the law, and state institutions. This constitution was more responsive and humane long before Western societies discovered the premises of the legal type concept.

References

Abror, Muhamad, and Awalia Rahma. "Sira Nabawiyya: Historiography of the Propeth Muhammad by Three Modern Writers." *Buletin Al-Turas* 30, no. 1 (2024): 25–38. doi:https://doi.org/10.15408/bat.v30i1.30008.

Ahmed, Mohammed Ibraheem. "Islam and Judaism: Religious and Identity in the Medinan Era." *Al-Masaq* 35, no. 2 (2023): 194–216. doi:https://doi.org/10.1080/09503110.2022.2154564.

Al-Mujtahid, Nazil Mumtaz, and Hasan Sazalli. "Revitalization of Moderation Message in the Madinah Charter: Religious Development Communication Studies." *At-Turas: Jurnal Studi Keislaman* 10, no. 1 (2023): 59–79. doi:http://dx.doi.org/10.33650/at-turas.v10i1.5301.

Ali, Yusuf Faisal. "The Implementation of the Medina Constitution in Modern State Administration: A Theoritical Viewpoint." *Asy-Syari'ah* 23, no. 1 (2021): 21–38. doi:https://doi.org/10.15575/as.v23i1.10747.

Anjum, Ovamir. "Conjuring Sovereignty: How the 'Constitution' of Medina Became an Oracle of Modern Statehood." *Journal of Islamic Law* 5, no. 1 (2024): 140–81. doi:https://doi.org/10.53484/jil.v5.anjum.

Ardiansyah, Andri, and Ali Alkosibati. "The Social Relevance of Hassân Hanafî's and Nurcholish Madjid's Thoughts: A Sociological Analysis in the Context of Islam in Indonesia." *JII: Jurnal Indo-Islamica* 14, no. 1 (2024): 154–68. doi:https://doi.org/10.15408/jii.v14i1.39772.

Arlis, Rahmat Hidayat, and Ahmad Bakhtiar Jelani. "Intensity of Religious Moderation According to the Medina Constitution." *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 11, no. 2 (2022): 156–72. doi:https://doi.org/10.24252/ad.vi.32615.

Asmarudin, Imam. "Struggle of Legal Positivism Versus Progressive Thoughts in the Formal Tests of Job Creation Act (Legal Development Through Hermeneutics)." *Jurnal Dinamika*

Hukum 22, no. 1 (2022): 124–43. doi:http://dx.doi.org/10.20884/1.jdh.2022.22.1.3178.

Asshiddiqie, Jimly. *Konstitusi Dan Hukum Konstitusi*. Jakarta: Sinar Grafika, 2014.

Atiq, Emad H. "Legal Positivism and the Moral Origins of Legal Systems." *Canadian Journal of Law and Jurisprudence* 36, no. 1 (2023): 37–64. doi:https://doi.org/10.1017/cjlj.2022.17.

Atmaja, I Dewa Gede. *Hukum Konstitusi*. Malang: Setara Press, 2012.

Aulia, Eza, Saldi Isra, and Yuslim. "The Conception of the Sovereignty in Indonesia: Mohammad Hatta's Thought Approach." *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 9, no. 1 (2024): 146–63. doi:https://doi.org/10.22373/petita.v9i1.221.

Awaludin, Zulfian, and Wakhit Hasim. "Strategi Transformasi Sosial Nabi Muhammad SAW Dalam Piagam Madinah (619-622 M)." *Jurnal Yaqzhan: Analisis Filsafat, Agama, Dan Kemanusiaan* 5, no. 1 (2019): 42–69. doi:http://dx.doi.org/10.24235/jy.v5i1.4521.

Burhanuddin, Muhammad. "Conflict Mapping Piagam Madinah (Analisa Latar Belakang Sosiokultural Piagam Madinah)." *Jurnal Al-Ijtimaiyyah: Media Kajian Pengembangan Masyarakat Islam* 5, no. 2 (2019): 1–20. doi:http://dx.doi.org/10.22373/al-ijtimaiyyah.v5i2.5233.

Cercel, Cosmin. "Law, Politics, and the Military: Towards a Theory of Authoritarian Adjudication." *German Law Journal* 22, no. 1 (2021): 1192–1208. doi:https://doi.org/10.1017/glj.2021.66.

Darusman, Yoyon Mulyana, Bambang Wiyono, and Guntarto Widodo. "The Significance of Good Constitution for Resulting Good Governance Clean Goverment." *Jurnal Dinamika Hukum* 19, no. 3 (2019): 590–611. doi:http://dx.doi.org/10.20884/1.jdh.2019.19.3.2673.

Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum: Normatif Dan Empiris*. 4th ed. Jakarta: Kencana, 2016.

Eleftheriadis, Pavlos. "Can That Be Law for Me." *Jurisprudence* 15, no. 2 (2024): 207–22. doi:https://doi.org/10.1080/20403313.2023.2233876.

Emerson, Robert W., and John W. Hardwicke. "The Use and Disuse of the Magna Carta: Due Prosecc, Juries, and Punishment." *North Carolina Journal of International Law* 46, no. 3 (2021): 571–662. https://scholarship.law.unc.edu/ncilj/vol46/iss3/5.

Fauzh, Siti. "Konsep Hijrah Nabi Muhammad Dalam Al-Qur'an." *Jurnal Al-Fath* 7, no. 2 (2013): 186–215. doi:https://doi.org/10.32678/alfath.v13i2.2898.

Gentile, Giulia. "Effective Judicial Protection: Enforcement, Judicial Federalism, and Poltics of EU Law." *Europan Law Open* 2, no. 1 (2023): 128–43. doi:https://doi.org/10.1017/elo.2022.48.

Gibbs, Nathan. "The Foundations of Constitutional Democracy: The Kelsen-Natural Law Controversy." *Canadian Journal of Law and Jurisprudence* 37, no. 1 (2024): 79–107. doi:https://doi.org/10.1017/cjlj.2024.3.

Golding, Martin. *Philosophy of Law*. New Jersey: Engelwood Cliffs, 1975.

H.S., Dedi Eko Riyaldi, Ach. Syaiful, Syamsuri, Moh. Lutfi, Homaidi, Mas'odi, Lailatul Qodariyah, and Zainol HudaMoh. Fadli. "Analysis Study of Islamic Nomocracy and Pancasila Democracy in Indonesia." *International Journal of Multicultural and Religious Understanding* 7, no. 2 (2020): 746–53. doi:http://dx.doi.org/10.18415/ijmmu.v7i10.2238.

International, Saheeh. *The Qur'an: English Meaning*. Jeddah: Al-Muntada Al-Islami, 2004.

Irfan, Idris. *Islam Dan Konstitusionalisme*. Jakarta: Antonilib, 2009.

Ishak, Badruzzaman bin, and Shamrahayu binti Abdul Aziz. "The Madinah Charter in Light of a Modern Constitution." *IIUM Law Journal* 30, no. 1 (2022): 196–220. doi:https://doi.org/10.31436/iiumlj.v30i1.713.

Jiménez, Felipe. "Legal Positivism for Legal Officials." *Canadian Journal of Law and Jurisprudence* 36, no. 2 (2023): 359–86. doi:https://doi.org/10.1017/cjlj.2022.36.

Khan, Issa, Mohammad Elius, Mohd Roslan Mohd. Nor, Mohd. Yakub Zulkifli bin Mohd. Yusoff, Kamaruzzaman Noordin, and Fadillah Mansor. "A Critical Appraisal of Interreligious Dialogue in Islam." *Sage Journal* 5, no. 10 (2020): 1–10. doi:https://doi.org/10.1177/2158244020970560.

Kliemt, Hartmut. "The Logical Foundations of Constitutional Democracy between Legal Positivism and Natural Law Theory." *Public Choice* 195, no. 1 (2023): 269–81. doi:10.1007/s11127-021-00888-9.

Kocharyan, Hayk. "Relations between Jews, Jewish Tribes, and Muslims: The Constitution of Madinah." *Journal of Oriental*

Studies 24, no. 2 (2023): 231–40. doi:https://doi.org/10.46991/jos.2023.24.2.231.

Kulahi, Ayse, Muhammad Danyal Khan, and Rais Nouman Ahmad. "Dichotomy of State and Divine: A Study of Early Muslim Statehood." *Journal of Historical Studies* 6, no. 2 (2020): 326–40.

Kusumaatmadja, Mochtar. *Konsep Konsep Hukum Dalam Pembangunan*. Bandung: Penerbit Alumni, 2006.

Lailam, Tanto, Putri Anggia, and M. Luthfi Chakim. "The Proportionality Test Models of Competing Rights Cases in the Civil and Common Law Systems: Lesson to Learn for Indonesia." *Hasanuddin Law Review* 10, no. 2 (2024): 206–25. doi:http://dx.doi.org/10.20956/halrev.v10i2.4844.

Latyshev, Oleg Yurievich, Andrei Valerievich Skorobogatov, and Alexander Valerievich Krasnov. "Legal Principle Between Concept and Content." *JILS (Journal of Indonesian Legal Studies* 5, no. 2 (2020): 479–500. doi:https://doi.org/10.15294/jils.v5i2.37387.

MD, Mohammad Mahfud. *Politik Hukum Di Indonesia*. 1st ed. Jakarta: Pustaka LP3ES Indonesia, 1998.

Morris, Clarence. *The Great Philosophers: Selected Reading in Jurisprudence*. Philadelphia: University of Pennsylvania Press, 1963.

Nonet, Philippe, and Phiplip Selznick. *Law and Society in Transition*. New York: Routledge Taylor and Francis Group, 1978.

Nurdin, Boy, and Khayitjon Turdiev. "Paradigm of Justice in Law Enforcement in the Philosophical Dimensions of Legal Positivism and Legal Realism." *Lex Publica* 8, no. 2 (2021): 65–74. doi:https://doi.org/10.58829/lp.8.2.2021.65-74.

Palguna, I dewa Gede, and Bima Kumara Dwi Atmaja. "'Originalism' of Interpretation in the United States Constitution." *Sriwijaya Law Review* 7, no. 2 (2023): 190–208. doi:http://dx.doi.org/10.28946/slrev.Vol7.Iss2.2134.pp190-208.

Pamungkas, Jati. "Alliances and Rivalries the Arabic Quraysh Tribes: Inhibiting Factor of Islamic Da'wah in Mecca 610-622 AD." *Jurnal Dinamika Penelitian: Media Komunikasi Sosial Keagamaan* 22, no. 1 (2022): 29–53. doi:http://dx.doi.org/10.3390/rel14020193.

Parisot, James. "Capitalism and the Creation of the U.S. Constitution." *Studies in American Political Development* 37, no. 2 (2022): 199–211. doi:https://doi.org/10.1017/S0898588X23000032.

Plunkett, David, and Daniel Wodak. "Legal Positivism and Real

Definition of Law." *Jurisprudence* 13, no. 3 (2022): 1–32. doi:10.1080/20403313.2022.2037344.

RI, Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama. *Al-Qur'an Dan Terjemahnya*. Jakarta: Kementerian Agama RI, 2019.

Riley, Dylan, Rebecca Jean Emigh, and Patricia Ahmed. "The Social Foundations of Positivism: The Case of Late-Nineteenth-Century Italy." *Social Science History* 45, no. 1 (2021): 813–42. doi:https://doi.org/10.1017/ssh.2021.22.

Samosir, Hasrat Efendi, Effati Juliana Hasibuan, and Tappil Rambe. "Prophet Communications in the Madinah Charter for Constructing a Multicultural Society." *Journal of Namibian Studies* 33, no. 2 (2023): 929–55. doi:http://dx.doi.org/10.59670/jns.v33i.546.

Saunders, Anna. "Constitution Making as a Technique of International Law: Reconsidering the Post War Inheritance." *The American Journal of International Law* 117, no. 2 (2023): 251–308. doi:https://dx.doi.org/10.2139/ssrn.4388068.

Schmidtke, Oliver. "The 'Will of the People': The Populist Challenge to Democracy in the Name of Popular Sovereignty." *Social and Legal Studies* 32, no. 6 (2023): 911–29. doi:https://doi.org/10.1177/09646639231153124.

Sertkaya, Suleyman. "What Changed in Medina: The Place of Peace and War in the Life of Prophet Muhammad." *Religions* 14, no. 2 (2023): 1–15. doi:http://dx.doi.org/10.3390/rel14020193.

Sertkaya, Suleyman, and Zuleyha Keskin. "A Prophetic Stance against Violence: An Analysis of the Peaceful Attitude of Prophet Muhammad during the Medinan Period." *Religions* 11, no. 1 (2020): 1–13. doi:https://doi.org/10.3390/rel11110587.

Siddiqi, Hafiz Muhammad Arif, Munazz Sultana, Attiq Ur Rehmen, Syed Faiz Ul Rasool Shah, Tahmina Batool, Hafiz Khursheed ahmed Qadri, Naeem Anwer, and Shamshad Akhter. "Common Attributes of the Constitution of Madina and Magna Carta: Analytical Study from a Historical Perspective." *Russian Law Journal* 11, no. 10 (2023): 663–79. doi:https://doi.org/10.52783/rlj.v11i10s.1796.

Soemantri, Sri. *Prosedur Dan Sistem Perubahan Konstitusi*. Bandung: Penerbit Alumni, 2006.

Sukardja, Ahmad. *Piagam Madinah Dan Undang-Undang Dasar NRI 1945 : Kajian Perbandingan Tentang Dasar Hidup Bersama Dalam Masyarakat Yang Majemuk*. Jakarta: Sinar Grafika, 2014.

Susanto, Anthon F. *Ilmu Hukum Non Sistematik: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia*. Yogyakarta: Genta Publishing, 2010.

Vinx, Lars. "Hans Kelsen and the Material Constitution of Democracy." *Jurisprudence* 12, no. 4 (2021): 466–90. doi:https://doi.org/10.1080/20403313.2021.1921493.

Wijayanti, Tri Yuliana. "The Concept of Inter-Religious Life in the Medina Charter and Nostra Aetate." *Majalah Ilmu Pengetahuan Dan Pemikiran Keagamaan* 25, no. 1 (2022): 70–83. doi:https://doi.org/10.15548/tajdid.v25i1.4144.

Wildan, T. "Principles of the Teaching of Nation and State Life in the Constitution of Medina." *Ibda': Jurnal Kajian Islam Dan Budaya* 21, no. 1 (2023): 17–36. doi:https://doi.org/10.24090/ibda.v21i1.6747.

Wiwaha, Rizzaldy Satria, Alfi Nur Hidayati, Siti Nur Hanifah, Muhammad Bagus Wicaksono, and Taufik Haris Lubis. "The Social Context of Hadits History from the Perspective of Hadits Sociology." *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)* 8, no. 1 (2024): 96–105. doi:http://dx.doi.org/10.58258/jisip.v8i1.5946.

Zada, Khamami. "Human Rights and Siyasah Syar'iyyah: Review of the Medina Charter and the Cairo Declaration." *Salam: Jurnal Sosial Dan Budaya Syar'i* 10, no. 2 (2023): 445–56. doi:https://doi.org/10.15408/sjsbs.v10i2.32055.

Zain, Arifin, and Maturidi. "Interreligious Relations in the Structural Da'wah Framework: A Historical Review of the Medina Charter, the 1945 Indonesian Constitution, and Aceh Qanun No. 4 Year 2016." *Komunika: Jurnal Dakwah Dan Komunikasi* 15, no. 1 (2021): 97–109. doi:https://doi.org/10.24090/komunika.v15i1.4544.