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FACULTY OF SHARIA AND LAW

STATE ISLAMIC UNIVERSITY SUNAN GUNUNG DJATI BANDUNG-INDONESIA

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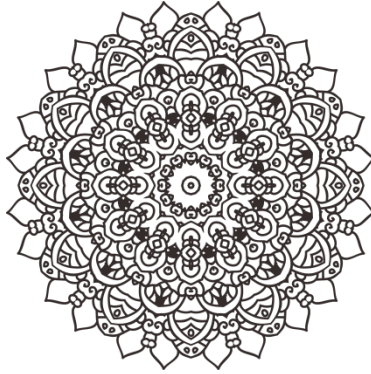
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# THE IMPLEMENTATION OF THE MEDINA CONSTITUTION IN MODERN STATE ADMINISTRATION: A THEORETICAL VIEWPOINT

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**Abstract:** The presence of the Constitution of Medina that was declared by the Prophet Muḥammad after His migration did not only manage and organize the internal life of Muslims and unify them with the Jews as well as their allies, but also presented a change on social status from stateless society to state society. It addresses an idea that the substance in the Constitution of Media should be overviewed and seen from various aspects of state's and nation's life. The purpose of this research is more intended to analyze the political principles in the Constitution of Medina. This study is qualitative with analytical descriptive method from data obtained in the literature. The data is then collected and analyzed inductively and deductively, which is elaborated with constitutional theory. This study resulted that substantially the Constitution of Medina contained the principle of politics that globally included elements of the state formation, model of state, governmental system, and type of power that remained in-progress at Medina based on the existing literatures in governmental science, political science, and developing countries in the whole world. The main aspect revealed in this study concerns the substance and implementation of the Medina constitution in the state administration that is relevant to modern countries that are developing at this time, both sociologically and politically.

**Keywords:** *the constitution of Medina; state elements; model of governance; governmental system; type of power*

**Abstrak:** Kehadiran konstitusi Madīnah yang ditetapkan oleh Nabi Muḥammad setelah berhijrah, sesungguhnya tidak hanya sekedar menata intern kehidupan kaum muslimin dan mempersatukan di antara mereka dengan kaum Yahudi beserta sekutu-sekutunya, tetapi juga memberikan perubahan status sosial yang mulanya dari masyarakat bukan negara menjadi masyarakat yang bernegara. Ini memberikan gambaran bahwa materi konstitusi Madīnah tidak dapat dilihat dari satu sisi atau dua sisi saja, tetapi mencakup berbagai aspek kehidupan dalam bermasyarakat dan bernegara. Adapun tujuan dari penelitian ini lebih dimaksudkan untuk menganalisis prinsip-prinsip kenegaraan dalam konstitusi tersebut. Kajian ini bersifat kualitatif dengan metode deskriptif analitis dari data yang diperoleh secara literatur. Data tersebut kemudian dihimpun dan dianalisis secara induktif dan deduktif, yang dielaborasi dengan teori ketatanegaraan. Hasil penelusuran menunjukkan bahwa secara substansial konstitusi Madīnah memuat prinsip-prinsip kenegaraan yang secara global meliputi unsur-unsur terbentuknya sebuah negara, bentuk negara, sistem pemerintahan, dan jenis kekuasaan yang berlaku di Madīnah pada saat itu sebagaimana yang dikenal dalam kepustakaan Ilmu Negara dan Ilmu Politik, dan juga sebagaimana yang berkembang di negara-negara di dunia. Aspek utama yang terungkap dalam kajian ini menyangkut substansi dan implementasi konstitusi Madīnah dalam ketatanegaraan yang relevan dengan negara-negara modern yang berkembang saat ini, baik secara sosiologis maupun politis.

**Kata-kata Kunci:** *konstitusi Madīnah; unsur-unsur negara; bentuk negara; sistem pemerintahan; jenis kekuasaan.*

## Introduction

One of crucial case that relates to a norm in nation's life is Constitution. For a country, the Constitution has a very important meaning, because it is used as guideline for the administration and the state, or as a rule in the state. In this matter, the importance of the Constitution in a country can actually be seen from two points of scientific views namely politics and Constitutional law. Both are interrelated each other. In the first context, the Constitution is a means of limitation on the power of the ruler, while in the second context, the Constitution is the basic law norms to regulate and organize the anatomy of power in the administration of state government.<sup>1</sup> From this, the existence of the Constitution in the modern life of a country is a 'must'. Besides, it always sets the highest position as the primary source of law to reflect ambition/vision and media to reach country's prospect.

In addition, the Constitutional state actually shows that a country is seen as a '*state of law*', as well as a '*democratic state*'.<sup>2</sup> In a state of law, a ruler cannot act according to the will of his own, because all actions and political policies are restricted by law.<sup>3</sup> Similarly, in a democratic country, the ruler must give guarantees and protections on human rights as an individual and as a citizen.<sup>4</sup> Both of these are the principals in the Constitution called as '*civilized state*'. The theme of the Constitution does not only grow among Western thinkers, but also has become serious concern of Muslim scientists to refer to the Constitution of Medina as a political manuscript compiled by the Prophet after emigrating. Muslim scientists put these themes as part of the discipline of '*fiqh*', especially '*fiqh siyâsah*' which substantially has cultivated political science and Constitutional law. As an autonomous science, *fiqh siyâsah* has an object of study. One of which '*siyâsah dustûriyyah*' that includes strategy related on the basic rules of governmental model and power limitation, strategy of the head of state election, and rights provision for individuals and society, as well as the relationship between the ruler and society.<sup>5</sup>

For Muslim thinkers, the Medina Constitution is a legacy of the Prophet Muhammad after the Qur'an and the hadith, because it contains universal values that are still relevant to serve as a benchmark reference in managing social life, nation, and pluralistic state.<sup>6</sup> Nurdin emphasizes that the Qur'an contains information about aspects in ethical and moral

<sup>1</sup> Alec Stone, "What Is a Supranational Constitution? An Essay in International Relations Theory," *The Review of Politics* 56, no. 3 (n.d.): 441–474, <https://papers.ssrn.com/3234269>.

<sup>2</sup> Yusuf Faisal Ali, "Konsep Negara Hukum dalam Islam dan Relevansinya di Indonesia", *Mores: Jurnal Pendidikan (Hukum, Politik dan Kenegaraan)*, Vol. 1, No. 2 (Agustus 2014): 107-118.

<sup>3</sup> Colleen Murphy, "Lon Fuller and the Moral Value of the Rule of Law," *Law and Philosophy* 24, no. 3 (n.d.): 239–262, <https://www.jstor.org/stable/30040345?seq=1>.

<sup>4</sup> Regina Queiroz, "Individual Liberty and the Importance of the Concept of the People," *Palgrave Communications* 4, no. 1 (n.d.): 1–12, <https://papers.ssrn.com/3234269>. <https://papers.ssrn.com/3234269>.

<sup>5</sup> Khallâf, *al-Siyâsah al-Syar'iyyah fî al-Syu'ûn al-Dustûriyyah wa al-Khârijiyyah wa al-Mâliyyah* (Bayrût: Dâr al-Qalam. 1977), hlm. 4.

<sup>6</sup> Lana Oweidat, "Islamic Ethos: Examining Sources of Authority," *Humanities* 8, no. 4 (n.d.): 170, <https://doi.org/10.3390/h8040170>. <https://doi.org/10.3390/h8040170>.

guidance for human life.<sup>7</sup> In fact, the presence of the Constitution at the time was considered very modern, because it became the embryo of the democratic society emergence, justice and peace in the life of country.<sup>8</sup>

The existence of the Medina Constitution by the Prophet Muḥammad has affirmed two things, namely: 1) As an evidence of the Prophet Muḥammad's capability to negotiate and consolidate various communities (clans and social groups) in Medina, until they confessed him as their leader. It was proven that Prophet Muḥammad was success in uniting Muslims from different tribes, unite the Muslims and the Jews, and establish equality of rights and obligations among them in aspect of public, social and politics. 2) Being an evidence that the Prophet Muḥammad presented himself as a leader to define and organize the public interest as the basis of state law (the Constitution of the state).<sup>9</sup>

On other hand, the birth of the Constitution implies that 'Medina' can be regarded as a 'state', or (in other words), the Constitution is a statement of state formation of 'Medina'. Indeed, Prophet Muḥammad did not proclaim to establish a state, and nor is a single verse of *The Qur'an* was ordered to form a state. However, in the perspective of politics, 'Medina' was qualified to be a state. There are three elements of state formation, namely (1) territory; (2) population; and (3) sovereign governments. If the condition is associated with the formation of the state, then 'Medina' has met so-called the state elements, namely: (1) the large area of 'Medina' and its surroundings; (2) the population consisted of Muslim (*Anṣār* group), the Jewish, the immigrants as settlers (*Muhājirīn*); and (3) a sovereign government held by Prophet Muḥammad as well as the laws based on Islamic law, including the Constitution of Medina.

The birth of the Constitution established by Prophet Muḥammad gives social status changes that are originally from the community -not from the state (*stateless society*) to be *state society*. This is the initial formation of the state in the Islamic world that is supposed to illustrate the relationship between Islam, the Constitution and laws stated by Prophet Muḥammad to organize social and political life of society in 'Medina'.

As a state and Constitutional state, in managing its governmental environment, 'Medina' certainly does not only base on Islamic law (*The Qur'an* and *Sunnah*), but also base on the Constitution of 'Medina' itself.

Research on the constitution or the Medina charter has been previously described from various sides. For example, the focus on the the focus on the content of the Medina constitution which is compared to the Indonesian constitution in the framework of the

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<sup>7</sup> Ahmad Ali Nurdin, "Revisiting Discourse on Islam and State Relation in Indonesia: The View of Soekarno, Natsir and Nurcholish Madjid," *Indonesian Journal of Islam and Muslim Societies* 6, no. 1 (n.d.): 63–92, <https://o.o.71.150/ijims.v6i1>. <https://18326/ijims.v6i1>.

<sup>8</sup> Faiz Ibrahim et al., "Konstitusi Madinah Dalam Membangun Civil Society," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 16, no. 1 (n.d.): 1–16, <http://ejournal.radenintan.ac.id>. <http://ejournal.radenintan.ac.id>.

<sup>9</sup> Efrinaldi Efrinaldi, "Paradigma Politik Islam: Prototipe Negara Madinah Dan Prinsip-Prinsip Politik Kenegaraan," *Al Ijarah: Jurnal Pemerintahan Dan Politik Islam* 2, no. 2 (2019). <https://ejournal.iainbengkulu.ac.id>.

principles of constitutionalism has been widely reviewed by Himas.<sup>10</sup> Another point of view on the Medina charter in relation to the philosophical foundation of a democratic state constitution has been discussed in detail by Jailani.<sup>11</sup> In addition, there is also a study on the similarities of the Medina charter with the Indonesian constitution in relation to the protection of human rights, as reviewed by Faiq Tobroni.<sup>12</sup> On the other hand, in his article, Nurhadi wrote about the relevance of Medina's constitutional ideology to the ideology of Pancasila.<sup>13</sup>

Of the many studies, this article tries to reveal and describe the Medina constitution from a constitutional point of view, and this aspect has not been widely reviewed by other authors. Thus, the purpose of this study is to analyze the principles of statehood in the constitution and their practice in the state of Medina.

The main aspect revealed in this study concerns the substance and implementation of the Medina constitution in the state administration that is relevant to modern countries that are developing at this time, both sociologically and politically.

## Methodology

This research is qualitative with analytical descriptive method from data obtained from the literature, both in the form of classical books as primary data and other supporting books in accordance with the object under study as secondary data. The data is then collected and analyzed inductively and deductively, which is elaborated with constitutional theory.

## Result and Discussion

### The Phenomenon of Terminology

One of crucial case that relates to a norm in nation's life is Constitution. For a country, the Constitution has a very important meaning, because it is used as guideline for the administration and the state, or as a rule in the state. In this matter, the importance of the Constitution in a country can actually be seen from two points of scientific views namely politics and Constitutional law. Both are interrelated each other. In the first context, the Constitution is a means of limitation on the power of the ruler,

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<sup>10</sup> El Hakim and Himas Muhammadiyah Imammullah, "Prinsip Konstitusionalisme Dalam Piagam Madinah Dan Relevansinya Bagi Konstitusi Indonesia," *UNIVERSITAS AIRLANGGA* (n.d.), <http://js.law.ui.ac.id>. *Journal of Islamic Law Studies: Sharia Journal*, Vol. II, No. 2 (2019): 41-61, <http://js.law.ui.ac.id>.

<sup>11</sup> Imam Amrusi Jailani, "Piagam Madinah: Landasan Filosofis Konstitusi Negara Demokratis," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 6, no. 2 (n.d.): 269-295, <http://jurnalfsh.uinsby.ac.id>. <http://jurnalfsh.uinsby.ac.id>.

<sup>12</sup> Faiq Tobroni, "The Similarity Of The Medina Charter And The Indonesian Constitution In Human Right's Protection," *Al-Bayyinah* 4, no. 2 (2020): 212-224. <http://jurnal.iain-bone.ac.id>.

<sup>13</sup> Nurhadi Nurhadi, "Ideologi Konstitusi Piagam Madinah Dan Relevansinya Dengan Ideologi Pancasila," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 1 (n.d.): 107-129, <http://ejournal.iainpurwokerto.ac.id>. <http://ejournal.iainpurwokerto.ac.id>.



while in the second context, the Constitution is the basic law norms to regulate and organize the anatomy of power in the administration of state government.<sup>14</sup> From this, the existence of the Constitution in the modern life of a country is a 'must'. Besides, it always sets the highest position as the primary source of law to reflect ambition/vision and media to reach country's prospect.

To demonstrate the political manuscript drawn up by Prophet Muḥammad in Medina, the historians particularly have diversity to call it. W. Montgomery Watt (d. 2006 Messiah) called it as '*The Constitution of Medina*'; R.A Nicholson (d. 1899 Messiah) called it as '*charter*'; Majid Khadduri (d. 2007 Messiah) called it as '*treaty*'; and Philip K. Hitti (d. 1978 Messiah) called it as '*agreement*'. Meanwhile, Zainal Abidin Ahmad called it as '*charter*'.<sup>15</sup> The content of the text was called as '*shahîfah*'. This term has two plural forms, namely '*shuhuf*' and '*shahâif*' which is significantly meant '*sheet*'.<sup>16</sup> In the perspective of Ahmad Sukardja, the word *shahîfah* convey the same as '*charter*', because both are showing the official letter that contains a statement on something.<sup>17</sup>

Meanwhile, 'Alî Syîrî; the editor of '*al-Bidâyah wa al-Nihâyah*' by Ibn Katsîr (d. 774 AH) in issue of "*Dâr al-Ihyâ al-Turâts al-'Arabî*" in the first publication in 1988/1408, has called it as '*Dustûr al-Madînah*'. Al-Sadîrî mentioned the term as '*al-Watsîqah*' which had the same meaning as *charter*. Etymologically, *dustûr* was derived from the Persian language that had two basic meanings, namely: (1) a book which contained the names of the troops; and (2) a set of rules of the authorities. That term was straightforwardly interpreted as 'the rule holder', because it was formed from two words, namely '*dust*' which meant rule, and the '*ur*' which meant 'the holder or owner'.<sup>18</sup> Then, the term *dustûr* was then absorbed into Arabic language by the plural form '*dasâtîr*' which meant '*statute*' and '*Constitution*'.<sup>19</sup> The word *dustûr* was later absorbed into Indonesia language by different meaning, namely the basic law in a country.<sup>20</sup>

Many different references on the manuscript created by Prophet Muḥammad. Of course, it is reasonable due to the different paradigms in translation of both historical and content point of view. However, the term 'agreement/contract', 'charter' or even 'Constitution', the format and substance of *shahîfah* do not change the essence and meaning of these three terms. Here are some tendencies in viewing *shahîfah*. First, The *shahîfah* is called as 'treaty/agreement/contract', because it includes an agreement between Muslims

<sup>14</sup> Stone, "What Is a Supranational Constitution? An Essay in International Relations Theory." 441-474

<sup>15</sup> Elkhairati Elkhairati, "Piagam Madinah Dan Spiritnya Dalam Undang-Undang Dasar (UUD) 1945," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 1 (n.d.): 51-68, <http://journal.iaincurup.ac.id>. <http://journal.iaincurup.ac.id>.

<sup>16</sup> Ibn Fâris, *Maqâyis al-Lughah* (Bayrût: Dâr al-Fikr. 2002), Juz II, hlm. 260.

<sup>17</sup> Ahmad Sukardja, *Piagam Madinah Dan Undang-Undang Dasar 1945: Kajian Perbandingan Tentang Dasar Hidup Bersama Dalam Masyarakat Yang Majemuk* (Penerbit Universitas Indonesia, n.d.). hlm. 36.

<sup>18</sup> al-Sadîrî, *al-Islâm wa al-Dustûr* (t.p.n.: Wikâlâh al-Mathbû'ah wa al-Baḥts al-'Ilmî Wizârah al-Syu'ûn al-Islâmiyyah wa al-Awqâf wa al-Da'wah wa al-Irsyâd. 1425), hlm. 33.

<sup>19</sup> Qal'ajî and Qanîbî, *Mu'jam Lughah al-Fuqahâ* (Bayrût: Dâr al-Fikr. 1988), hlm. 208.

<sup>20</sup> Tim Penyusun Kamus Pusat pembinaan dan Pengembangan, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka. 1998), hlm. 217.

and the Jews against their allies. The agreement is made fore of Prophet Muḥammad. Second, The *shahīfah* is called as 'charter', because it is a document that guarantees the rights of citizens of Medina, and establishes obligations between them as well as the power belongs to the Prophet Muḥammad in the social and political life. Third, The *shahīfah* is called as 'Constitution', because it contains the principles of fundamental governance in a country.

Strictly speaking, whatever the terms (*the agreement of Medina, the Medina Charter, and the Constitution of Medina*), the *shahīfah* has involved the essence meaning of three terms. Clearly stated that *shahīfah* is formally written in a script,<sup>21</sup> and it includes rules and regulations to organize the social and political order of life in the territories of Medina at the time.

## Content and Substance of The Constitution of Medina

Based on historical research, the content of the Charter of Medina (textually) can be found in four classical books, namely: (1) *al-Sīrah al-Nabawiyah* by Ibn Hisyâm (d. 213 AH) quoted from Muḥammad Ibn Ishâq or known as Ibn Ishâq (d. 151 AH)<sup>22</sup>; (2) *al-Amwâl* by Ibn 'Ubayd (d. 224 AH)<sup>23</sup>; (3) *al-Amwâl* by Ibn Zanjawayh (d. 251 AH)<sup>24</sup>—both books narrated are from Ibn Syihâb al-Zuhrî (d. 124 AH); and (4) *al-Sunan al-Kubrâ* by al-Bayhaqî (d. 458 AH) narrated from the family of 'Umar Ibn al-Khaththâb.<sup>25</sup>

The Constitution of Medina by Ibn Ishâq cited within the historical book of Ibn Hisyâm gets a lot of appreciation from Muslim and Western thinkers. This Constitution has been studied by Muhamad Hamidullah and published in his scientific journals.

The journals are then translated into four languages entitled: '*Corpus des document sur ladeplomate musulmane*' (1935), '*Aqdam Dustûr Musajjal fî Ālam*' (1938), '*Dunia Kasab Sie Pahla Dustur*' (1939), and '*The first Written-Constitution of the World*' (1941).<sup>26</sup> Then, it is re-written into Arabic language by Ābâdî al-Hindî (d. 1424 AH) with his work '*Majmû'ah al-Watsâiq al-Siyâsah li al-'Ahd al-Nabî wa al-Khilâfah al-Râsyidah*'.<sup>27</sup> In his writing, he divides the contents of the Medina Constitution into 47 chapters, then followed by 'Ajjâj Karamî,<sup>28</sup> Muḥammad al-Shallâbî,<sup>29</sup> and 'Alî Syîrî (the editor of '*al-Bidâyah wa al-Nihâyah*' in 1988. Meanwhile, Aḥmad Ghalûsy elaborates it into 52 chapters,<sup>30</sup> al-Sadîrî elaborates

<sup>21</sup> Dahlan Thaib, "Teori Dan Hukum Konstitusi, PT," *Raja Grafindo Persada Jakarta* (2011), hlm. 33.

<sup>22</sup> Ibn Hisyâm, *al-Sīrah al-Nabawiyah* (Al-Qâhirah: al-Maktabah al-Ḥadlariyyah. 2006), hlm. 270-272.

<sup>23</sup> Ibn 'Ubayd, *al-Amwâl* (Bayrût: Dâr al-Fikr. 1406), hlm. 260.

<sup>24</sup> Ibn Zanjawayh, *al-Amwâl* (Al-Mamlakah al-'Arabiyyah: al-Buḥûts al-Dirâsah al-Islâmiyyah. 1986), hlm. 117.

<sup>25</sup> Al-Bayhaqî, *al-Sunan al-Kubrâ* (Bayrût: Dâr al-Fikr. 2005), Juz XII, hlm. 182.

<sup>26</sup> Jazim Hamidi, *Hukum Perbandingan Konstitusi* (Prestasi Pustaka Publisher, n.d.). hlm. 134-135.

<sup>27</sup> Ābâdî al-Hindî, *Majmû'ah al-Watsâiq al-Siyâsah li al-'Ahd al-Nabî wa al-Khilâfah al-Râsyidah* (Bayrût: Dâr al-Nafâis. 1407), hlm. 59-62.

<sup>28</sup> 'Ajjâj Karamî, *al-Idârah fî 'Ashr al-Rasûl saw* (Al-Qâhirah: Dar al-Salâm. 1427), hlm. 248-250.

<sup>29</sup> Muḥammad al-Shallâbî, *al-Sīrah al-Nabawiyah* (Bayrût: Dâr al-Ma'rifah. 2008), hlm. 79.

<sup>30</sup> Aḥmad Ghalûsy, *al-Sīrah al-Nabawiyah wa al-Da'wah fî al-'Ahd al-Madanî* (Bayrût: Muassasah al-Risâlah. 2004), hlm. 120-123.

it into 59 chapters,<sup>31</sup> and al-Ghadlbân divides it into 66 chapters.<sup>32</sup> By this, it can be seen that the experts generally detail the contents of the Medina Constitution into 47 chapters, and it is more popular than of the 52, 59 and 66 chapters.

The variety of chapter details in the Constitution is merely technical and interpretive matter, because the content of the Medina Constitution—based on the narration of Ibn Ishâq that becomes a main reference, has been presented in a complete and intact form (not separated into peace of chapter). In his study, Wensink (d. 1939 CE) and W. Montgomery Watt (d. 2006 AD) does not only detail the contents of the Medina Constitution into 47 chapters, but also divides it into two main parts, namely Preamble and 10 chapters.<sup>33</sup>

The observers of the Constitution of Medina do not only discuss the issue of narration chronology and number of chapters and structures, but also translate and uncover the meanings within the Constitution from various paradigms. Abdurrahman suggests that the content and substance of the Constitution of Medina is primarily based on three main points, namely: (1) the basic state, (2) the regulated laws, and (3) relations between religious groups in Medina.<sup>34</sup> Furthermore, he argues that the Article 1 to 23 have relationship among believers with regardless of ethnicity, because they have become a nation. Article 3 to 4 speaks about social responsibility, democracy, human rights, law enforcement, civil defense, and the attitude of mutual assistance among communities, state finance, and foster brotherhood among the people. In last, Article 24 to 47 regards to shared-relationships and responsibilities between Muslims and Jews in Medina and its surrounding areas.

Al-Ghadlbân clarifies that the Constitution of Medina generally outlines four main parts, namely: (1) an agreement of brotherhood among the Muslims (Articles 1 to 27); (2) an agreement for mutual assistance among the Muslims (Article 27 to 45); (3) the agreement between Muslim alliance with other groups of different race and religion (Article 46-48); and (4) establishes a common law for all citizens without discrimination (Article 49-66).<sup>35</sup> In his view, Husayn Haykal (d. 1376 AH) argues that the Constitution of Medina or '*al-Watsîqah al-Siyâsah*' (*charter of politics*) contains some basic provisions, namely freedom of religion and expression, protecting country, protecting the right to life and the right to property ownership, and a prohibition on criminal acts.<sup>36</sup>

According Pulungan, the Medina Constitution contains several principles namely: (1) the principle of Muslims, the believers (*mu'min*), and non-Muslims are unity; the principle of unity and brotherhood; the principle of equality; the principle of freedom; the

<sup>31</sup> Al-Sadîrî, *al-Islâm wa al-Dustûr*. hlm. 241.

<sup>32</sup> Al-Ghadlbân, *al-Tahâluful al-Siyâsî fî al-Islâm* (Yordan: Maktabah al-Manâr. 1982), hlm. 85-87.

<sup>33</sup> Hamidi, *Hukum Perbandingan Konstitusi*. hlm. 136

<sup>34</sup> M. Abdurrahman, "Transformasi Piagam Madinah dalam Sistem Ketatanegaraan Indonesia: Telaah Haditsiyah dan Tarikhiah", *Syiar Madani: Jurnal Ilmu Hukum*, IV, No. 3 (Nopember 2002): 40-41.

<sup>35</sup> Al-Ghadlbân, *al-Tahâluful al-Siyâsî fî al-Islâm*. hlm. 88.

<sup>36</sup> Husayn Haykal, *Hayât Muhammad SAW* (Bayrût: Dâr al-'Arabî. 2002), hlm. 150.

principle of mutual assistance and defend the persecuted; the principle of co-existence; the principle of justice; the principle of consultation; the principles of law enforcement and criminal penalties; the principle of religious freedom and relations between religious believers in national and international view; the principle of defense and peace; the principle of leadership; the principle of personal responsibility and group; and the principle of piety and obedience (discipline).<sup>37</sup> These principles are (in fact) corresponding to the instructions of the Qur'an as written in letters and verses. By this view, it can be seen that the Constitution of Medina is an elaboration of the values of the Qur'an that are implemented by the the Prophet Muḥammad as the basis of society and state's life.<sup>38</sup>

According to Iqbal, another important substance of Medina Constitution is to form a harmonious society, set up a large people and uphold the rule of equality.<sup>39</sup> In addition, the Medina Constitution has laid the foundations for political and social basis for Medina community in a government under the leadership of Prophet Muḥammad. In the perspective of political experts, the Constitution is considered as the first basic law in the Islamic state established by Prophet Muḥammad.

There are still various interpretations raised by Muslim and Western scholars associated with the substance of the Constitution of Medina, both from a sociological, political and juridical point of view. It seems quite reasonable and not excessive that *shahīfah al-Madīnah* is seen as Constitutional Constitution in this modern context, because it contains a general agreement or collective agreement that is poured into a written rule to realize the ideal national and state life.<sup>40</sup> As a Constitution, *shahīfah al-Madīnah* outlines, namely the basis of state, and guarantee on the protection of human rights, and the rights of citizens.<sup>41</sup> It is categorized to be *documentary Constitution*, *written Constitution*, or 'the book' by the Muslims terminology in accordance with what was written by Prophet Muḥammad in the Constitution text. With the inclusive quality of the substance, *shahīfah al-Madīnah* is recognized as 'the first written Constitution in the world'.

## The Principles of The State in The Constitution of Medina

Like the previous description, the Constitution of Medina does not only contains the principles in society, but also the principles of a state.<sup>42</sup> Both principles include: (1)

<sup>37</sup> Febri Hijroh Mukhlis, "Konsep Ummah Dalam Piagam Madinah; Asas Demokrasi Nabi Muhammad Dan Relevansinya Di Indonesia," *AL-TADABBUR* 5, no. 1 (2019): 1-16. <http://journal.iain-ternate.ac.id>.

<sup>38</sup> Al-Sadrī, *al-Islām wa al-Dustūr*. hlm. 82-85.

<sup>39</sup> Muhammad Iqbal, *Fiqh Siyasaḥ Konstekstualisasi Doktrin Politik Islam* (Kencana, n.d.). hlm. 181-182.

<sup>40</sup> Ahmad Zayyadi, "Sejarah Konstitusi Madinah Nabi Muhammad Saw (Analisis Piagam Madinah Dan Relevansinya Di Indonesia)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 4, no. 1 (n.d.), <http://ejournal.uin-suka.ac.id>. : 178-196, <http://ejournal.uin-suka.ac.id>.

<sup>41</sup> Tahir Azhary Muhammad, *Negara Hukum, Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam Implementasinya Pada Periode Negara Madinah Dan Masa Kini* (Jakarta: Prenada Media, n.d.). hlm. 164-165.

<sup>42</sup> Agus Nurhakim, "City-State (Medina) and Its Implementation in the Republic of Indonesia," *International Journal of Nusantara Islam* 4, no. 2 (n.d.): 37-48, <https://journal.uinsgd.ac.id>.166. <https://journal.uinsgd.ac.id>.166.

The Constitution of Medina places the foundations of society, the foundations of the politics and social unity, the basics of state construction; (2) the Constitution of Medina set, define composition of people, society, and government; (3) the Constitution of Medina contains rights and obligations for all parties, following the guarantee and protection; and (4) the Constitution of Medina governs the relationship of brotherhood among people, establish the rights and guarantee the protection of all people's property and their religion freely.<sup>43</sup> The fourth point imply that according to the theory of F. Lassalle, the content of the Constitution of Medina is categorized as Constitutional in the sense of a juridical understanding (*juridische begrip*) and not in the political sense (*politische begrip*),<sup>44</sup> because the content of the Constitution of Medina is more stressing on setting the general provisions regarding the existence of a state, nation building, governmental joints, and citizenship as well as their rights.

Regarding the principles of the state, the Constitution of Medina finally teaches that an independent state that has full sovereignty should meet three main elements, namely: (1) people; (2) the area (territorial area); and (3) of sovereign governments as mandatory citizen. To demonstrate the concept of 'people/citizen' as one of elements on the formation of the state, the Constitution of Medina calls it as '*ummah*' according to Article (1): "*Innahum ummatun wâhidatun min dûni al-Nâs*" (that they are a people with their difference from other humans). What is meant by the word *ummah* in the article can be understood in the sense of 'people/nation', as one of elements of the state formation. The nation includes all groups mentioned in the Constitution which is generally called as '*ahl hâdzihî al-Shahîfah*' (those who agree on the Constitution) as in the Article (37, 39, 42, 46). This statement reinforces at least three things, namely: (1) Medina can materially be seen as a state due to the availability of community or communion; (2) the formulation of *ummah* in its status as nation is not united by only its territorial area, but also bound by religion and humanity that are built on the awareness and agreement among them; and (3) the Constitution of Medina confesses the existence of nation without negating others.

On the other hand, the Article (1) indicates that the meaning of 'nation' or 'community' does not use '*qawm* or *qabîlah* (tribe)' as its terminology, but it uses *ummah* as terminology. It may be very possible to avoid the connotation of kinship contained in these two words, because there are common interests which are dealt with, so it is not concerned with the interests or his own ethnic group. Furthermore, the expression '*min dûni al-Nâs*' (different from other humans) that accompanies the clause '*ummatun wâhidatun*' in the Article (1), confirms that *ummah* has its own identity and free from mastery of other people.<sup>45</sup> It implies that the Medina Constitution requires a sovereign

<sup>43</sup> Hamidi, *Hukum Perbandingan Konstitusi*. hlm. 40.

<sup>44</sup> Ilmu Politik Dari Ilmu Politik Efriza, *Sampai Sistem Pemerintahan* (Bandung: Alfabeta, n.d.). m. 166.

<sup>45</sup> Abdul Muin Salim, Fiqh Siyasah, and Konsepsi Kekuasaan Politik Dalam Al-Quran, "Jakarta: Raja Grafindo Persada, 2002, Cet" (III, n.d.). hlm. 256.

state gains recognition of its own people. At the same, the Article suggests that the people of Medina has its own natural identity, such as plurality of ethnic groups, ethnics, and religious diversity.<sup>46</sup>

The Constitution of Medina does not only require its nation as an element of the state formation, but also certain regions. This element is natural factors, and Rudolf Kjellin (d. 1922 Messiah) includes it in the section between the elements of the state in sociological context.<sup>47</sup> The area of the state in the Constitution, called as 'Yathrib' as in Article (39), or 'Medina' as mentioned in Article (47). The naming of Yathrib in the article, was not only attributed to people as sourdough, but also shows the inherent nature of the generation next occupant who behave beyond reproaching, so that the region is deemed uncivilized and it is lack in its order.<sup>48</sup>

Likewise, the term Medina in the article, is the name for the area specifically occupied by the Prophet Muḥammad after emigrating, so that he was named the 'City of the Prophet' or the 'City of the Messenger'. So called because when the prophet occupied the area in his position as the Prophet and the Messenger.<sup>49</sup> This terminological difference can be compared with the the action of King Constantin from Byzantium who gives a title as 'Constantinopel' (*Constantinopolis*, 'City of Constantine') to the city he established.<sup>50</sup>

The ascribing of the Prophet or al-Rasūl to the word 'Medina' is not certainly to immortalize His personal name, but it is more intended as a differentiator from the word 'Medina' in its meaning as 'city', and also to position Himself as a new Inhabitant that inhabits the area<sup>51</sup> by the purpose of forming a new civilized society in accordance with the prophetic treatise and His missionary works.<sup>52</sup> It will be interesting to observe that the word Yathrib and Medina in its Constitution are mentioned together although in different chapters. At least, it is to affirm some things, namely: (1) it was historically indicating that before the Prophet Muḥammad emigrated, the 'Medina' was originally named Yathrib; (2) the change of name officially from 'Yathrib' to 'Medina', was to avoid a negative impression on bad behavior by the earlier societies; and (3) to provide an overview of the status change which was originally 'Yathrib' (the stateless society) to be 'Medina' as a state society.

The change of the state's name is considered reasonable in the context of state, because it becomes an identity of a state. It also has been experienced by some

<sup>46</sup> Ejaz Akram, "Muslim Ummah and Its Link with Transnational Muslim Politics," *Islamic Studies* (n.d.): 381–415, <https://www.jstor.org/stable/20839080>. <https://www.jstor.org/stable/20839080>

<sup>47</sup> Daud Busroh and Abu, "Ilmu Negara," *Cet* (n.d.): 7. hlm. 82.

<sup>48</sup> Ibn Hajar, *Fath al-Bârî bi Syarh Shahîh al-Bukhârî* (Bayrût: Dâr al-Fikr. 2000), Juz I, hlm. 7.

<sup>49</sup> Abû Ḥabîb Sa'îd, *al-Qâmûs al-Fiqhî* (Damaskus: Dâr al-Fikr. 1988), hlm. 337.

<sup>50</sup> Nurcholish Madjid, *Islam: Doktrin Dan Peradaban* (Yayasan Wakaf Paramadina Jakarta, n.d.). 312.

<sup>51</sup> Al-Ḥamawî, *Mu'jam al-Buldân* (Bayrût: Dâr Shâdir. 1995), Juz V, hlm. 430.

<sup>52</sup> Manhaj Jâmi'ah al-Madînah al-Âlimiyyah, *al-Siyâsah al-Syar'iyyah* (t.pn.: Jâmi'ah al-Madînah al-Âlimiyyah. 2007), hlm. 71.

countries, such as the *Persian to Iran*, and *Burma to Mynmar*. Many factors can be a reason for a state to change its name. Perhaps, it is due to political situation, the adjustment of language, independence, similar to other states, and so forth. Similarly, when the Prophet Muḥammad changed *Yathrib* into *Medina*, He did not just consider the political situation and avoid negative connotation, but also to create an orderly and civilized society (from *Jahiliyyah* to Islamic civilization). By the change, the objectives of *Medina* could be achieved, and the Prophet Muḥammad also mentions it with some terms, namely: (1) *Thâbah*<sup>53</sup>; and (2) *Thîbah*.<sup>54</sup>

The next element required by the Constitution of Medina for the establishment of a state, is the 'government' as shown in the Preamble and the Article (23, 36, 42). In the Constitution, the intended government is the Prophet Muḥammad Peace Be upon Him. It indicates that the Prophet Muḥammad is the main element who represents a state and as the holder of political power in Medina. Therefore, from the political viewpoint, it can be said that the Medina formally has been qualified as a state, because it has a government that has an authority to regulate and run the organization of power. Similarly, in terms of the state administration, the position of the Prophet in his role as the government, is to project one of elements of state in legal context, and it is terminologically termed by Logemann (w. 1969 Messiah) as *persoonsleer*.<sup>55</sup>

The government as an organ of the establishment of a state in the Constitution of Medina is not mentioned explicitly, but merely pointed directly to personal name followed by the title of the apostolate, namely 'Muḥammad, *the messenger of God*'. It does not mean that the Prophet Muḥammad is not recognized as a state organ, but it is rather that the authority of Him as a government or head of state and the Messenger of God; not due to political power and the basis of political legitimacy. In His position as the Messenger, the Prophet Muḥammad acts as a leader and ruler of His people in the frame '*siyâsah al-Nabawiyyah*' (prophetic politic) as the former prophet who was sent earlier to *banî Isrâîl*. Even if His name is listed in the text of the Constitution of Medina, it becomes the basis for formal juridical legitimacy as head of state and the head of government appointed by acclamation or community agreements from Medinas. From this evidence, there are two thing that can be an idea. Firstly, the recognition of the Medinas on the leadership of the Prophet Muḥammad as head of state and head of government based on two empowering forces at once: (a) *de facto*, because of His position as the Messenger of Allah the Almighty that becomes a 'central figure' of the publics; (b) and *de jure*, because he has a juridical Constitutional legitimacy. Secondly, the scope and the leadership role of the Prophet Muḥammad is not only as religious leader, but also as a political leader like Prophet Dâwud.

<sup>53</sup> Bukhârî, *al-Jâmi' al-Shahîh* (Bayrût: Dâr al-Fikr. 1995), Juz I, hlm. 318.

<sup>54</sup> Muslim, *al-Jâmi' al-Shahîh* (Bayrût: Dâr al-Fikr. t.th.), Juz IV, hlm. 56.

<sup>55</sup> Busroh and Abu, "Ilmu Negara." hlm. 82.

In the Constitution of Medina, the Prophet Muḥammad as head of state and head of government has the duty and authority, namely: overcoming disputes, judge a juridical matter, leading the people (*ummah*), engaging a covenant of peace, maintaining harmony, security, public order and protecting people's rights.<sup>56</sup> This statement means that in organizing governmental aspect of Medina, the Prophet Muḥammad also runs two functions, namely as an executive, and judicial.

Thus, the requirements of a state establishment as projected in the Constitution of Medina, involve (a) nation, (b) certain territory, and (c) government. These three requirements have been relevant to the theory of state known as state (governmental) science and political science. Like Mac Iver (d. 1970 Messiah) as quoted by Sutisna clarifies that state is an association that has three main elements, namely government, certain territory (area), and communities or nation.<sup>57</sup> According to the '*Encyclopedia Britanica*', there are three essential elements of a state, namely population, territory, and government. A similar opinion is also presented by Nasroen M as quoted by Sutisna, that state is a specific form of a state of human social life that has three absolute terms, namely certain people, certain territory (area), and certain government. By referring to some previous notions, it can be ascertained that Medina is a state that is constitutively eligible, and this argument has been clearly stated in the Articles of the Constitution of Medina.

Besides containing the elements of a state, the Constitution of Medina also implicitly gives an overview of a state form, system of government, and kind of power.<sup>58</sup> The theme of the model of state (*staats vorm*) is actually a concept that discusses how the characteristics and power relationship when dealing with the region. In this regard, the state can be distinguished into a federative state (union) and the unitary. From the viewpoint of political science, the classification of 'federation' and 'unity' regards to the division of power according to the level, is technically called as *power sharing* or *territorial division of power*.

In the Constitution of Medina, there are number of statements on the recognition of the existence of all classes, either from the Arabs and Jews, and both tribes have become citizens of Medina. In addition, the Constitution of Medina entitles each tribe to organize itself and maintain its integrity as part of the state. Their details autonomy of rights have signaled that Medina is a federative state. However, the federative form in the Constitution can be seen as an early model of the Medina before rapidly developing.<sup>59</sup> Besides, the

<sup>56</sup> Hamidi, *Hukum Perbandingan Konstitusi*. hlm. 41.

<sup>57</sup> H Sutisna, "Pemilihan Kepala Negara: Perspektif Hukum Islam Dan Hukum Positif Indonesia" (Deepublish, n.d.). hlm. 49.

<sup>58</sup> Haza Hanurhaza Md Jani et al., "A Review on the Medina Charter in Response to the Heterogeneous Society in Malaysia," *Procedia Environmental Sciences* 28 (n.d.): 92–99, <https://doi.org/10.1016/j.proenv.2015.07.014>.

<sup>59</sup> Yusuf Faisal Ali, "Distribusi Kekuasaan Politik Dalam Kajian Fiqh Siyâsah," *Untirta Civic Education Journal* 2, no. 2 (2017). 214-235.



Constitution of Medina introduces a model of state; one of which is federative.<sup>60</sup> It is rational, because Medina relies on the agreement among tribes and social groups, and self-intertwining for the sake of all people. Yet, each tribe and social group is willing to organize their rights and policies.

The next development shows that Medina has transformed into a unitary, because it has developed so rapidly, the state territory has become increasingly widespread, government affairs has become increasingly complex, as well as citizens has become increasingly heterogeneous. This evidence can be seen from governmental practice of the Prophet Muḥammad. During carrying out the governmental tasks whose population had converted to Islam, He raised an official called as *amîr* who was given general power over his territory, and *'âmil* whose task was to collect *zakât* and implemented the task of teaching and educating in areas whose population was Muslim. This evidence implicitly addresses that the distribution of power in the governmental era of the Prophet Muḥammad was performed by a principle of '*decentralization*' (centralization of power) and '*deconcentration*' (division of power) as in the governmental science and politics.<sup>61</sup> Thus, the Prophet Muḥammad has made a transformation of federative state into unity of decentralization.

In the Constitution, the changes of governmental model can be a common problem, because politics can undergo a dynamics as long as agreement and general will be reconsidered important. This evidence ever happens in Indonesia which initially uses federation state according to the Constitution of the States Republic of Indonesia (RIS-1949) that transforms into a unitary state based on the Temporary Constitution (UUDS-1950).<sup>62</sup> Although there was a change in the model of state at the time, but Indonesia was still intact.

Regarding the governmental system, the governmental model of *regerings vorm* has a tight discussion that emphasizes more on the executive, legislative, and judiciary function in the governmental administration. In its model and structure of state organization, these functions are broadly divided into two parts, namely presidential and parliamentary.<sup>63</sup> Relevant to the previous description, juridically the Prophet Muḥammad acts as head of state and head of government in Medina. It means that the Prophet Muḥammad does not only act as head of state, but also carry out executive function. From this viewpoint, it indicates that the Constitution of Medina adopts a presidential system, because one of the characteristics of the presidential system is head of state also acts as head of government.

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<sup>60</sup> Ali Iyad Yakub, "The Islamic Roots of Democracy," *U. Miami Int'l & Comp. L. Rev.* 12 (2004): 270-295, <https://repository.law.miami.edu/umiclr/vol12/iss2/3>.

<sup>61</sup> Ali, "Distribusi Kekuasaan Politik Dalam Kajian Fiqh Siyâsah." 214-235.

<sup>62</sup> Taufiqurrohman Syahuri, "Hukum Konstitusi: Proses Dan Prosedur Perubahan UUD Di Indonesia 1945-2002 Serta Perbandingannya Dengan Konstitusi Negara Lain Di Dunia" (Ghalia Indonesia, n.d.). hlm. 126.

<sup>63</sup> Efriza, *Sampai Sistem Pemerintahan*. hlm. 266.

As head of state and head of government, the type of power of the Prophet Muḥammad is 'Constitutional monarchy'. Monocracy means that the authority and responsibility of government is intrinsically the Prophet Muḥammad himself. Besides, *Constitutional* means the governmental system is implemented based on the Constitution that refers to the laws of Allah the Almighty.<sup>64</sup>

## Conclusion

Based on the search results, it shows that the Constitution of Medina contains general principles in the state which include the elements of the state formation in the aspect of material, formal, sociology, model of state, governmental system, and kind of power according to the governmental and political science. By containing these principles, the Constitution of Medina can be categorized as a constitution in a juridical sense.

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<sup>64</sup> ali, "Distribusi Kekuasaan Politik Dalam Kajian Fiqh Siyâsah." 214-235.

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