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## Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)

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### Comparison of Regulations on Human Rights in the Constitution of 1945 and the Constitution of Medina

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## Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)

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After successfully being held the first International Conference on Law, Governance and Social Justice (ICOLGAS) in 2018, this year, 2020, Faculty of Law, Jenderal Soedirman University (UNSOED), had organized the 2nd International Conference on Law, Governance and Social Justice (The 2nd ICOLGAS). This international conference is an effort of the Faculty of Law Universitas Jenderal Soedirman to show global existence in contributing critical thoughts and studies to the scientific development of law, governance, and social justice. In a global context, issues of law, governance, and social justice are important aspects in order to create progress and achieve the goals of the country. However, on the other hand, the dynamics of the global political environment have the potential to influence state policies and become challenges faced in the implementation of good governance. In the national context, Indonesia's constitutional structure has undergone major changes by implementing a check and balance system, in which the roles of the executive, legislative, and judiciary have been divided according to their functions. This condition requires the government to realize good governance based on the concepts of nomocracy and democracy. As for the local context, the existence of regional autonomy which has the essence of managing and regulating society has created various problems in manifesting community needs towards social justice. These three conditions underlie the need for research and study around legal and governmental issues in order to create a system of government that is in accordance with the characteristics of the country and is oriented towards the needs and welfare of the community.

The 2nd ICOLGAS held on November 3rd -4th, 2020. This event was facilitated by Universitas Jenderal Soedirman and supported by about 450 participants and a number of institutions and parties involved. Participants joining this event were coming from various country, from Indonesia, Malaysia, Palestine, German, India, and many more. Through The 2nd ICOLGAS, it is expected that observers of law, society, and all stakeholders get a clear and balanced understanding of analyzing a government system that is based on theory, practice, comparisons, and lessons learned from other legal systems.

The committee thanked all those who greatly helped this event to be held successfully. Special thanks to the Rector of UNSOED, Dean of the Faculty of Law UNSOED, Chairman of The The Judicial Commission Republic of Indonesia, also the main invited speakers and all participants. We also thank the scientific committee and reviewers for the wonderful support. In addition, we greatly express our appreciation to all the committees that have tremendous contributions, time, thought, and energy for this conference.

Best Regards,  
Purwokerto,  
Chairman The 2nd ICOLGAS

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## The Meaning and Development of State Emergency Laws Based on Constitution in the Indonesian Legal System

Atma Suganda, Musa Anthony Siregar

# *Comparison Of Regulations On Human Rights In The Constitution Of 1945 And The Constitution Of Medina.*

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**Abstract-** *In terms of Human Rights there are many differences in the realm of the individual/private such as marriage, employment relations, citizenship status and differences in the concept of Human Rights protection in which the Constitution of 1945 adheres to the principle of democratic rule of law while the Constitution of Medina adheres to the understanding of the Qur'an and Sunnah. The difference in the regulation of Human Rights in the Constitution of 1945 and the Constitution of Medina is on the Article 28B paragraph (1) and (2), 28C paragraph (1), 28D paragraph (2), (3) and (4), 28G paragraph (2), 28H paragraph (1), 28I paragraph (5) and 28J paragraph (2), with all provisions stipulated in the Constitution of Medina. The equality of Human Rights regulation in the Constitution of 1945 and the Constitution of Medina is in the form of the basic rights of human life such as the right to freedom of life, the right to freedom of religion and belief, the right to equality and non-discrimination, also the right not to be tortured and the right to respect and protect each other in among them. As regulated in Article 28A. 28 C paragraph (2), 28D paragraph (1), 28E paragraphs (1), (2) and (3), 28G paragraph (1), 28H verses (2), (3) and (4), 28I paragraphs (1), (2), (3) and (4) and Article 28J paragraph (1), with provisions in the Constitution of Medina from number 1 to number 18.*

**Keywords-** *Human Rights; Constitution OF 1945; Constitution OF Medina*

## I. INTRODUCTION

At this time the issue of regulating Human Rights becomes a very important thing in human life, especially in the nation and state, in its development Human Rights are starting to become a special concern by developed and developing countries which begin to understand the very importance of the regulation on protection of Human Rights. The protection of Human Rights in society at large, in order to promote respect and protection of Human Rights, is an important feature of a democratic rule of law [1]. The conception of Human Rights initially emphasized vertical relations, mainly influenced by

the history of Human Rights violations committed primarily by the state, both against civil, political and economic, social and cultural rights. As a consequence, in addition because it is the duty of the government, the main obligation to protect and promote Human Rights lies with the government [2]. With the development of the conception of Human Rights also includes horizontal relations resulted in the expansion of the category of Human Rights violations and violating actors. The right to information and the right to participate in development, for example, are not only the responsibility of the state, but also the responsibility of corporations whose activities intersect with people's lives. [2].

All events that encourage the emergence of the freedom and independence movement always have the characteristics of oppressive and unjust power relations, namely both in the structure of relations between one nation and another nation and in the relationship between a government and its people. In the discourse of the struggle for independence and Human Rights in the early to mid-early 20<sup>th</sup>, the prominent thing is the fundamental struggle of the colonized nations to face the colonizing nations. Therefore, people in all colonized countries easily arouse their enthusiasm to unite together in the solidarity movement of the anti-colonial struggle. [3].

For Indonesia, before the declaration of 1948 of Human Rights was accepted by the general assembly of the United Nations (UN), the issue of Human Rights was not a new problem, basically the Indonesian people had first understood the regulation of Human Rights. This can be traced through the long history of the Indonesian people to

realize independence and after independence. For example, in the debate on the regulation of Human Rights at the Indonesian Independence Preparatory Agency (BPUPKI) Investigation Body which prepared the Basic Law as the Constitution of the Republic of Indonesia, the debate took place between the *Founding Fathers* to incorporate the principles of Human Rights into The Constitution as a formulation of the Constitution of a country that will be independent. The debate took place between the Soekarno-Soepomo group who did not agree to include the formulation of Human Rights, especially those that are individualistic liberal in the Constitution. on the other hand, the Yamin-Moh.Hatta group who wanted the constitution to contain the principles of regulating Human Rights in detail and in the end the debate succeeded in an agreement that included the provision of Human Rights into the constitution in a limited manner with a scope slightly compared to the declaration of Human Rights of the world. This coverage is contained in articles 27, 28, 29, 31 and 34 of the Constitution but after a political and governmental upheaval that led to an amendment to the provisions on Human Rights there is a wider development of coverage as is the case in Chapter XA articles 28A to 28J. [4].

Human Rights as mentioned in *The Universal Declaration of Human Right* which was declared on December 10<sup>th</sup>, 1948 by the United Nations, although for the most basic things are the same in the Al-Quran, there are also still minor differences in both. So the concept of Human Rights is also not exactly the same between western views and Islamic teachings. In the midst of the plurality of the inhabitants of the city of Medina, the Great Prophet Muhammad S.A.W tried to build a living order together, including all groups in the city of Medina. As a first step, he "civilizes" between immigrant Muslims and Medina Muslims. [5]. It should be mentioned here that there were two initial steps undertaken by Muhammad S.A.W were the first, building a mosque known as a quba mosque and secondly, as mentioned above, bringing the Muhajirins and Anshors together. Both of the actions of the Prophet Muhammad S.A.W mentioned above reflect, as the name implies, that Islam, namely Muslims, spread peace. Imagine, a mosque is a place of prostration worshiping The Almighty God, Most Gracious, Most Merciful, as

well as the brotherhood between Muhajirin and Anshor is an effort to establish affection between one another. This is very contrary to the habits of the imperialists, for example, like the Netherlands, which arrived in the territory of another country, usually accompanied by the sound of bullets, followed by the building of a bastion which was a manifestation of hostility. [6]. In the situation and conditions of the Medina population as mentioned above, namely the diversity in religion and beliefs and plurality in the tribe of the Prophet Muhammad S.A.W made a political document that is the Constitution of Madinah as a basic rule of governance in Madinah. The newly formed life force was led by Muhammad himself as a sovereign state. [7].

The state of Indonesia which was proclaimed on August 17, 1945, as is well known is a country with a fairly large area, which is inhabited by a very diverse population. There are many different ethnic groups, customs and habits, regional languages, culture and other aspects. Nevertheless in the formulation and making of the Constitution of 1945 there is an undeniable fact that most of the Indonesian people are Muslims. Even followers of Islam with the largest number in the world. Likewise, it is an undeniable fact that 62 members of *Dokuritzu Zyunbi Tyoosakai* (BPUPKI) were chaired by Radjiman Wedyodiningrat with deputy chairman R.P. Soeroso, most of whom are Muslim, 15 of whom represent Islamic nationalist groups. Furthermore, because the Constitution of Medina is a concept created by the Prophet Muhammad S.A.W, as the bearer of the treatise of Islam, the Constitution of 1945 was made by BPUPKI as mentioned above, its members are mostly Muslim, and Indonesia is a nation whose population is the largest Muslim religion in the world. It can be concluded that the influence of Islamic teachings on the problems of democracy and human rights in the two Constitutions will be felt if it cannot be said to be dominant. [9]. The basic difference between the two is that the principle of power comes from the people and is accountable to the people, whereas in the Constitution of Medina the principle of power comes from God and is accountable to God.

Considering that the Constitution is a *fundamental law* tool in a country, the constitution is an inseparable part of law enforcement efforts. As the most important part in the life of the nation and

state based on the law, in addition to reflecting the relationship between the government and the people, the constitution also contains basic matters regarding Human Rights issues. [8].

## II. PROBLEMS

The problem in this article is how to compare the human rights arrangements between the Constitution of 1945 and the Constitution of Medina.

## III. RESEARCH METHOD

This research uses a normative legal research method by means of literature study. The data used is secondary data, that is the Constitution of 1945 and Constitution of Medina as well as journals, books and related laws and regulations.

Data analysis was carried out by descriptive analytical. The analysis phase starts from data collection, the next data is presented by selecting, classifying systematically, logically and juridically to find out a specific picture related to the problem in the research, after which the writers makes an interpretation. Then the writers compare the theories and concepts from secondary data consisting of scientific books, journals, and related laws and regulations as well as legal opinions from legal experts.

## IV. DISCUSSION

### A. Comparison of the Constitution of 1945 and the Constitution of Medina in Terms of Regulations Regarding Human Rights

The significant difference between the Constitution of 1945 and the constitution of Medina in terms of Human Rights regulation is the fundamental concepts in the position of the constitution in the rule of law in the country if we look at the enactment of the constitution of Medina that what constitutes the highest legal sovereignty is not left to the people as governed by the Constitution of 1945 stipulated in Article 1 paragraph (2) sovereignty is in the hands of the people and implemented according to the Constitution which means that the highest sovereignty in the Republic of Indonesia is popular sovereignty in which the people's sovereignty is carried out according to the

Constitution as the basic law and the highest law governing national life guidelines and state. [9]. Whereas the highest sovereignty in the Constitution of Medina is the decree of Allah and His Messenger as stated in Article 1 and Article 23 which are very clear as in Article 23 "If there is a difference of opinion between you regarding something, then it is returned to Allah and Muhammad" [7].

"The purpose of the sentence is very clear, which is to assert that the highest authority is in the hands of religion. So that religion is in power in Medina, he is entitled to make decisions in all disputes in order to prevent internal shocks due to too many parties in power. [10]. One that makes the sovereignty of God and His Messenger become the highest sovereignty that The Messenger of Allah has a strong desire to enforce all the commands of God through the Islamic state that he formed, as in the words of Allah Subhanahu Wata'ala in surah (Alqur'an Surah Yusuf: 40) [11]. That it can be seen that there are fundamental differences in the Constitution of 1945 with the constitution of Medina which are fundamental differences that greatly affect the regulation of Human Rights between the two constitutions, of course the difference from the view of Human Rights arrangements contained in the two constitutions. [12].

Regulations on Human Rights in the Constitution of 1945 are contained in chapter XA starting from article 28A up to article 28J, while there are some articles outside chapter XA that cover Human Rights like articles 26 through article 28. Whereas in the constitution of Medina the regulation of Human Rights is not mentioned which article expressly regulates Human Rights in the written text of the constitution of Medina, some experts try to examine which articles regulate Human Rights in the Constitution of Medina as contained in the book of Zainal Abidin which titled the Charter of Madinah which classifies Human Rights provisions in the Constitution of Medina in Roman II concerning Human Rights starting from article 2 to article 10, when seen in other Medina Constitution texts quoted by experts such as Ahmad Sukarja in his Medina charter and the Constitution of 1945 of the Republic Indonesia does not clearly state which articles governing Human Rights in the constitution of Medina nor does Muhammad Ali Ash-Shalabi in his Complete History of the Prophet not explicitly

mention which articles in the constitution of Medina or until western scholars such as Montgomery do not explain explicitly article man a which regulates Human Rights in the Constitution of Medina. [6].

Although it is not explicitly explained in the constitution of Medina which article regulates Human Rights but it can be seen and read clearly that the constitution of Medina regulates Human Rights, the question is why in the constitution of Medina it is not explicitly explained which articles regulate Human Rights due to thoughts and the term of human rights itself only arises in the political developments that occur on mainland Europe while the constitution of Medina first existed before the emergence of the conception of Human Rights thought in Europe. Islam first regulates Human Rights even though it is not clearly stated by mentioning the term of Human Rights. [12].

In the current modern constitution the regulation of Human Rights is one of the most important content items in the constitution as is the case in the Constitution of 1945 which is a modern constitution governing Human Rights while the constitution of Medina is the only constitution that first regulates Human Rights due to the regulation of Human Rights itself has been known in Islam before the thought and term of Human Rights which only emerged in the 19<sup>th</sup> century [13].

The articles governing Human Rights in the Constitution of 1945 are as follows:

1. Article 27 paragraph (1) "All citizens are at the same position in law and government and are obliged to uphold the law and government without exception."
2. Article 27 paragraph (2) "Every citizen has the right to work and a decent living for humanity".
3. Article 27 paragraph (3) "Every citizen has the right and obligation to participate in efforts to defend the state" ..
4. Article 28 "Freedom of association and assembly, speaking out with orally and in writing and so forth shall be determined by law.
5. Article 28A "Everyone has the right to live and has the right to defend his life and lives.
6. Article 28B paragraph (1) "Everyone has the right to form a family and continue the descent through a legal marriage".
7. Article 28B paragraph (2) "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination."
8. Article 28C paragraph (1) "Everyone has the right to develop themselves through the fulfillment of his basic needs, the right to education and benefit from science and technology, arts and culture, in order to improve his quality of life and for the welfare of humanity".
9. Article 28C paragraph (2) "Everyone has the right to advance themselves in fighting for their collective rights to develop their society, nation and country."
10. Article 28D paragraph (1) "Everyone has the right to recognition, guarantees, protection and certainty of law that is just and equal treatment before the law."
11. Article 28D paragraph (2) "Everyone has the right to work and to receive fair and appropriate remuneration and treatment in an employment relationship."
12. Article 28D paragraph (3) "Every citizen has the right to have the same opportunity in government."
13. Article 28D paragraph (4) "Everyone has the right to citizenship status.
14. Article 28E paragraph (1) "Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose employment, choose citizenship, choose a place to live in the territory of the country and leave it and have the right to return."
15. Article 28E paragraph (2) "Everyone has the right to freedom of belief and belief, to express his thoughts and attitudes in accordance with his conscience."
16. Article 28E paragraph (3) "Everyone has the right to freedom of association, assembly and expression."
17. Article 28F "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, process and deliver information using all types of available channels."
18. Article 28G paragraph (1) "Every person has the right to protection of personal, family, honor, dignity, and property under his authority, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a right basic.



19. Article 28G paragraph (2) "Everyone has the right to be free from torture or treatment that demeans human dignity and is entitled to obtain political asylum from another country."
20. Article 28H paragraph (1) "Every person has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy environment and to have the right to health services."
21. Article 28H paragraph (2) "Everyone has the right to get special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice."
22. Article 28H paragraph (3) "Every person has the right to social security that enables the development of himself as a whole with dignified human beings."
23. Article 28H paragraph (4) "Every person has the right to have private property rights and such property rights must not be taken arbitrarily by anyone."
24. Article 28I paragraph (1) "Right to life, right not to be tortured, right to freedom of thought and conscience, right to religion, right not to be enslaved, right to be recognized as a person before the law, and right not to be prosecuted on the basis of law which applies retroactively are human rights that cannot be reduced under any circumstances. "
25. Article 28I paragraph (2) "Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against discriminatory treatment."
26. Article 28I paragraph (3) "Cultural identity and traditional community rights are respected in accordance with the times and civilizations."
27. Article 28I paragraph (4) "Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government."
28. Article 28I paragraph (5) "To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in legislation."
29. Article 28J paragraph (1) "Everyone must respect the human rights of others in the orderly life of society, nation and state."
30. Article 28J paragraph (2) "In exercising their rights and freedoms, every person is obliged to

submit to limitations set forth in the law with the sole purpose of guaranteeing recognition and respect for and freedom of others and to fulfill fair and appropriate demands. with consideration of morality, religious values, security, and public order in a democratic society. [14].

Such is the regulation of Human Rights in the constitution which illustrates the arrangements in the modern constitution today which are based on democratic principles and the rule of law. As for the regulation of Human Rights in the Constitution of Madinah which is the first constitution in the world, of course the constitution of Madinah differs from the modern constitution of today because the constitution of Madinah existed since 1400 years ago which symbolizes the classical constitution of today.

In the original written form as quoted in Sirah Nabawiyah Ibn Hisham there is no form in chapters, articles or formats that are neatly arranged like the written constitution in general in today's modern times. As for Zainal Abidin in his book, the Charter of Medina tries to arrange it neatly and follows the format of writing in the modern constitution in general, in the form of chapters and articles. [7].

However, what was explained by Zainal Abidin in his book only included a few chapters which according to him as a regulation of Human Rights, seeing what was written in other history books the contents of the Medina charter governing Human Rights were not only those stated by Zainal Abidin alone many sentences in the constitution contains elements of Human Rights in its writing, as it is in the Constitution of 1945 contained in articles 27 and 28 of the 1945 constitution although the article is not included in the chapter on Human Rights but the article contains the meaning of the element of Human Rights [15]. The regulation of Human Rights in the constitution of Medina in a broader sense includes:

1. Truly they are one entity among other humans.
2. The Muhajirin of the Quraysh lived shoulder to shoulder with each other. They are willing to sacrifice for good and fair people among the believers.
3. Bani Awf with their tribes shoulder to shoulder with each other. They are willing to sacrifice for

- those who are troubled among them in a way that is good and fair among the believers.
4. The Children of Harith bin Khazraj worked hand in hand among themselves. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  5. The Bani Sa'idah work hand in hand among themselves. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  6. Bani Jusyam shoulder to shoulder with each other between them. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  7. The Bani Najjar are shoulder to shoulder with each other. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  8. Banu Amr bin Awf worked hand in hand with each other. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  9. The Children of An-Nabit work hand in hand. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  10. The Bani Aus work hand in hand. And they are willing to sacrifice for those who are troubled among them in a way that is good and fair among the believers.
  11. Indeed, believers are not permitted to leave the poor among them. They should give him a good treatment in the form of ransom or diyat. A believer cannot accompany another believer's slave without his presence.
  12. Indeed, believers who fear (their hands) for each person are arbitrary between themselves, or commit sins, or incite hostility, or cause damage among fellow believers. Indeed, their hands are on that person together, even if that person is the son of one of them.
  13. A believer cannot kill a believer because he defends an infidel. And may not help unbelievers by putting down believers.
  14. Surely the Jews who follow us, then he is entitled to get help and will not be wronged.
  15. Surely the Jews of the Bani Awf were a group with the believers. For Jews their own religion, and for Muslims their own religion too. Likewise

with regard to slaves and their souls. Except for those who commit wrong doing or sin, then it really does not lose except his soul and family.

16. Truly the Jews are responsible for their spending, and for Muslims too. Indeed among them may help one another against those who fight the holders of this provision. And to them advise one another and goodness besides sin.
17. Actually, no honor must be violated except the owner's permission bag.
18. Verily this writing does not discredit except for the wrongdoers and ungodly, for those who leave the house he will be safe and those who live in Medina he is also safe, except for the wrongdoers and ungodly, and surely Allah will help the righteous, and Muhammad is a messenger of Allah. [7].

That it can be seen in the description above how the difference between the Constitution of 1945 and the Constitution of Medina which is the first constitution in the world regulates Human Rights regulations, among others as follows:

1. Sovereignty and position in the two constitutions, in the Constitution of 1945 the constitutional sovereignty is in the hands of the people and the position of Human Rights regulation in the Constitution of 1945 is the source of the basic or highest law in the regulation of Human Rights while the constitution of Medina sovereignty in its constitution is in the hands of Allah and His Apostles, while the position of the Constitution of 1945 is in the form of the highest law in the Republic of Indonesia while the highest law in the state of Medina at that time was not the constitution of Medina but it was Al-Qu'an and the Sunnah of the Prophet although in this case the sovereignty and position of a constitution greatly influenced the regulation Human Rights contained in the constitution.
2. The Constitution of 1945 regulates Human Rights issues as stipulated in the constitution neatly arranged in the form of chapters, articles and paragraphs, whereas in the constitution of Medina the Human Rights regulation is not clearly explained in its writing as stipulated in the 1945 Constitution which clearly explains clearly firmly wrote Human Rights (HAM).
3. The Constitution of 1945 through several amendments in the form of perfection to the Constitution of 1945 uses modern writing and

- thought in accordance with the development of its era, while the constitution of Medina is also in accordance with the development of the era and the problems faced in its society.
4. Regulations on Human Rights in the constitution are rearranged and explained further in the form of legislation such as the existence of a human rights law and the human rights court law as regulations governing further discussion of Human Rights contained in the constitution of 1945, while the constitution of Medina has no further regulation which explains Human Rights such as legislation whose legal position is under the constitution, instead the regulation of rights in the state of Medina at that time was the main arrangement namely the Qur'an and the Sunnah of the Messenger of Allah not on its constitution.
  5. In the Constitution of 1945 which regulates Human Rights to the private sphere of its citizens, that is, which regulates the formation of families to continue offspring through marriage as contained in Article 28B paragraph (1), whereas in the constitution of Medina there is no explanation of Human Rights arrangements in this regard. In fact, in the Medina community the problem of marriage is set in the Qur'an and Sunnah not in the constitution.
  6. In the Constitution of 1945 article regulates the right to life for children and their protection as contained in Article 28B while in the constitution of Medina there is no such regulation in the constitution of Medina only regulates in general do not do arbitrarily do not kill among themselves and do justice to one another .
  7. In the constitution of 1945 which regulates Human Rights regulates the right to develop themselves as well as getting education and obtaining benefits from science and technology, arts and culture as stipulated in article 28C paragraph (1) of the 1945 Constitution whereas in the constitution of Medina no Human Rights regulation is found like this.
  8. In the Constitution of 1945 there is a Human Rights regulation concerning the right to work and get fair and proper treatment in employment relations while the constitution of Medina does not regulate it because the Medina state has no obligation on its residents to give the right to work and receive compensation and treatment that is fair and proper in an employment relationship as contained in article 28D paragraph (2). The Constitution of Medina only regulates in general terms about mutual help to help people who are in distress and do justice among themselves.
  9. In the Constitution of 1945 regulates the equality of every person who is a citizen gets the same opportunity as contained in Article 28D paragraph (3). Whereas the constitution of Medina does not regulate this matter because in carrying out the whole government the provision is in the hands of Allah and His Messenger.
  10. The difference between the Constitution of 1945 and the constitution of Medina is also found as in Article 28C regarding the right to education to science and technology and also Article 28H this is not regulated in the constitution of Medina because the regulation is the same as the regulation regarding the right to life. This arrangement also arises because of modern developments at this time.
  11. In the Constitution of 1945 there is Article 28D paragraph (4) concerning citizenship status and it is a right owned by every citizen, this citizenship status right is a human rights owned by citizens, whereas if seen in the constitution of Medina, such Human Rights regulations are not found to be absent. in the constitution of Madinah the rights of the people of Madinah that are within the territory of the leadership of the Prophet namely in the state of Medina because at that time the people who were in the Medina state did not know the name of their citizenship status, because they all gave up and made an agreement with the Prophet to live together in Medina without any coercion although not all residents share the same belief, namely a Muslim.
  12. In the Constitution of 1945 concerning political asylum contained in Article 28H paragraph (1). when viewed in the constitution of Madinah the decree does not recognize political asylum because every Madinah community receives fair protection and if anyone tries to engage with other groups with the aim of collaborating with the intention to commit crimes against the Messenger of Allah then he will be fought and will be driven out from the Medina region as it was tried by the Jewish groups who collaborated with other groups to fight the Muslims,

Rasullullah fought back and expelled the Jews from the Medina region.

13. The Constitution of 1945 adheres to the principle of a democratic rule of law to uphold and protect Human Rights as contained in Article 28I paragraph (5). In the constitution of Medina there is no such thing as the enforcement and protection of every human being based on shari'ah values, that is, what God commands in the Qur'an and Sunnah which is the subject of life in the Medina community.

From the description above it can be seen that there are differences in the regulation of Human Rights in the two constitutions as well as sovereignty and position. Although there are differences between the Constitution of 1945 and the Constitution of Medina there are also some similarities in the concept of Human Rights provisions contained in the two constitutions.

#### B. Equality in Regulating Human Rights in the Constitution of 1945 and the Constitution of Medina

Although there are some differences in the regulation of Human Rights in the Constitution of 1945 and the Constitution of Medina there are also some similarities in terms of regulating Human Rights. This equation proves that the Constitution of Madinah as the first constitution in the world has governed the rights in human life that must be protected, although at that time the existing civilization still often violated the rights and freedoms to run their lives, but the Medina state which is the basis of da'wah Muslims have arranged this because Islam is a religion that is rahmatan lil Alamin which brings mercy to every human being and therefore Islam respects the rights of every human being without forgetting their rights and this is evidenced by the existence of this constitution of Medina in which the people who are in the territory Medina state is not entirely one tribe and one people let alone one aqeedah or one religion namely Islam and the Constitution of Medina illustrates how Islam teaches to always respect and do justice to every human being. The Constitution of 1945 as a modern constitution which regulates Human Rights has similarities with the Constitution of Madinah which is a classic constitution at this time. [16].

The similarities between the two constitutions in the regulation of Human Rights are:

1. In the formulation of Human Rights regulations in the Constitution of 1945 the most fundamental right is the right to live and maintain life as contained in article 28A, article 28B paragraph (2), article 28I paragraph (1), as well as in the constitution of Medina the most basic right fundamental is the right to live and maintain life as contained in number 2 and in other provisions such as number 3 through number 12 of the constitution of Medina, that still gives the right to live, defend life and not be killed and there is no discrimination unless violating existing provisions.
2. Every human being has the right to be able to live with a sense of security and does not violate his honor without distinguishing anyone. This is a human right owned by every human being, this formulation is also contained in the regulation of Human Rights in the Constitution and the constitution of Medina. As stated in Article 28B paragraph (2), 28D paragraph (1) with numbers 12 through 16 the constitution of Medina.
3. Everyone has the right to choose and believe in a religious belief, this is part of the regulation of Human Rights in the Constitution of 1945 and also in the constitution of Medina. As contained in Article 28E paragraphs (1), (2) and (3) with numbers 15, 17 and 18 of the constitution of Medina.
4. Everyone has the same position in law and government which means the state does not distinguish a person based on their ethnicity or religion, this is an element included in the regulation of Human Rights. Between the Constitution of 1945 and the constitution of Medina both govern the regulation of Human Rights. As contained in Article 28D paragraph (2) with number 14 of the constitution of Medina.
5. Fair treatment before the law without distinguishing who did it, in the constitution of Madinah such matters are highly upheld, the Messenger of Allah never discriminated against anyone who made a mistake even though the one who did that was his son so he would still give punishment to anyone the guilty one. All people are equal before God, the only difference being the piety.
6. In the Constitution of 1945 in one of the articles states that every citizen has the same

- opportunity, so also in the constitution of Medina which states we are one community and in its provision is determined for each tribe to help each other help and respect.
7. In the constitution of Madinah also gives freedom to every community to associate and gather and issue their opinions as is known in this stipulation. The Messenger of Allah as a leader for the people never forbids people to associate and gather and issue their opinions. Madinah which is actually a Muslim, the Messenger of Allah still allowed the people of Medina to gather among them and issue their opinions related to their relations as long as they do not violate this provision. This has something in common between the Constitution and the constitution of Medina.
  8. Everyone in the constitution of Medina and the Constitution of 1945 are equally entitled to protection of themselves as contained in Article 28G paragraph (1) the concept of regulating Human Rights contained in this article is also found in the constitution of Medina as well as believers may not apply arbitrarily and kill Jews without cause and they help one another among those who fight this decree. As contained in the numbers 12 to 16 the constitution of Medina.
  9. All forms of obtaining justice and maintaining dignity and mutual protection in Human Rights between the constitution of Medina and the Constitution of 1945 have similarities in terms of its regulation.
  10. Equality also exists in the Constitution of 1945 and the constitution of Medina where everyone has the right to obtain information and process this information is the right of freedom in carrying out life. This is not prohibited in the constitution of Medina as long as it does not spread false information and aims to commit treason to the Messenger of Allah.
  11. The Constitution of 1945 and the constitution of Medina also do not justify all forms of discrimination between them because all forms of discriminatory attitudes will lead to arbitrariness and mutual disrespect while the Constitution of 1945 and the constitution of Medina respect each other for differences, they are mutual tolerance between them in terms of social relations between them.

12. The equality between the Constitution of 1945 and the constitution of Medina is that both provide protection between them and do justice and respect the Human Rights of others in the life of the nation and state between them.

13. Equations are also found as in Article 28I paragraphs (1), (2), (3) with numbers 12 through 18 as described in the equations above.

The equality in regulating Human Rights between the Constitution of 1945 and the constitution of Medina is the basic equality in the basic values of the rights of every human being such as the right to life, the right to religion, the right to uphold justice between them, the right to help, the right to non-discrimination and respect for Human Rights between them. Of course there are many differences between the Constitution of 1945 and the constitution of Medina because the concept of regulating Human Rights in the constitution has been different as described in the previous description. Even so, of course the similarities between the two also exist in several respects and this is the basic basis of Human Rights in running lives. [4]. From the structure of community life there are similarities between the two which in the constitution of Madinah respect each other with diversity even though the Islamic community is more dominant and under the leadership of the Prophet. But the Messenger of Allah still respected them with that agreement arose to live together between them. This has similarities with the lives of Indonesian people who are predominantly Muslim but respect each other among them and respect each other's diversity without violating each other's rights. This is reflected in the Constitution of 1945 as the basic law or the highest law which is upheld by every citizen. This condition tells us that between the Constitution of 1945 and the constitution of Medina, there are quite a number of similar Human Rights arrangements including: the right to live and maintain life, the right to a sense of security, the right to receive equal treatment without distinguishing anyone, the right to be protected both property and honor and the right to be free in choosing religious beliefs. [17].

In terms of equality everyone before the law and the government both have similarities, the constitution of Medina does not distinguish anyone who violates between them and also so in the Constitution of 1945 which strongly emphasizes the

principle of *equality before the law* in the law enforcement system. The Constitution of 1945 justifies the existence of everyone as a leader among them but in the constitution of Madinah it is not justified because leadership and the implementation of government are absolutely in the hands of the Prophet and cannot be contested.

This situation began to not be accepted by the Jewish group and felt unwilling to continue to be led by the Messenger of Allah with the provisions that were brought by the Messenger of Allah even though the Messenger of Allah had respected them enough to respect their rights and protect them instead became them in the Muslim group even though they did not believe to the treatise that was brought by Rasulullah, that to convert Allah and worship only solely to God and acknowledge the apostles of the Prophet Muhammad. Even though they did not accept the treatise they were respected and protected by their rights, but they still hated the Messenger of Allah. They tried to fight the Prophet and the Muslims so they were fought by the Prophet until they left Medina. [6]. Likewise with the Constitution of 1945, anyone who tries to violate all the provisions contained in the Constitution of 1945 must be a legitimate government will give a punishment to everyone who commits such violations otherwise if the government says that violates the Constitution of 1945 by arbitrarily abusing the use of its power (*Abuse of Power*) then it is the people who will revoke their mandate towards the government. [4].

Medina and Indonesia are countries that have similarities in terms of the diversity of its citizens, both in terms of culture, language, ethnicity, customs, religion and even political interests. So, to regulate and provide protection against pluralism, a constitution was made which became the foundation of living together in the country. The regulation in Medina is known as the Medina Charter, while in Indonesia it is known as the Constitution of 1945, which also contains recognition of Human Rights between the people and the people and between the people and the government, this regulation does not mean limiting Human Rights but rather to protect Human Rights of each party in various fields of life that must be respected and implemented. [3]. The right to freedom of religion is one of the rights regulated in the two constitutions, and this right is the most

fundamental right among other human Rights because religious freedom is directly rooted in human dignity as creatures of God. However, in its application, especially in Indonesia, the right to religious freedom has many problems, it can be seen from the many actions taken by individuals, groups, and even by the state that lead to violations of the right to religious freedom. [17].

#### IV. CONCLUSION

The regulation of Human Rights in the Constitution of 1945 and the Constitution of Medina has quite a number of differences and these differences are not fundamental differences. In terms of Human Rights there are many differences in the individual/private realm of every human being such as marriage, work relations, citizenship status and differences in the concept of Human Rights protection in which the Constitution of 1945 adheres to the principle of democratic rule of law while the Constitution of Medina adheres to the understanding of the Qur'an and Sunnah. Basically the constitution of Medina is subject to the concepts of the Qur'an and Sunnah because the constitution of Medina itself is forms of Islamic teachings that originate from the Qur'an and Sunnah. In the case of marriage actually has been set on the Qur'an and Sunnah which is the basis of Islamic religious teachings. Therefore, it does not mean that it is not regulated in the constitution of Medina, so it is not regulated in the Qur'an and Sunnah because that is the source of the provisions of the constitution of Medina. In running a life that is not regulated in the constitution of Medina, it does not mean that it is not regulated in the teachings of Islam because the constitution of Medina is not the main source of Islamic teachings, the constitution of Medina is only in the form of a collective agreement in carrying out life by sticking firmly to the Islamic foundation, namely Al-Qur'an and Sunnah. The difference in the regulation of Human Rights in the Constitution of 1945 and the Constitution of Medina is Article 28B paragraph (1) and (2). 28C paragraph (1). 28D verses (2), (3) and (4). 28G paragraph (2). 28H paragraph (1). 28I paragraph (5) and Article 28J paragraph (2), with all provisions stipulated in the constitution of Medina. As for the equality, the regulation of Human Rights in the Constitution of 1945 and the constitution of Medina is in the form

of the basic rights of human life such as the right to freedom of life, the right to freedom of religion and belief, the right to equality and non-discrimination, also the right not to be tortured and the right to mutual respect and protect between them. As regulated in Article 28A. 28 C paragraph (2). 28D paragraph (1). 28E paragraphs (1), (2) and (3). 28G paragraph (1). 28H verses (2), (3) and (4). 28I paragraphs (1), (2), (3) and (4). And Article 28J paragraph (1), with provisions in the constitution of Medina from number 1 to number 18.

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