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## Conception of the Contents of the Medina Charter and the 1945 Constitution: The Right to Freedom of Religion

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### ABSTRACT

*The right to freedom of religion is a right that must be regulated and guaranteed by the state as a fundamental and universal human right inherent in human beings. This study aims to analyze the differences in the regulation of the right to religious freedom in the Medina Charter and the 1945 Constitution of the Republic of Indonesia and their application. This normative juridical research uses a legal and conceptual approach. The results of the study indicate that both the Medina Charter and the 1945 Constitution of the Republic of Indonesia have contained provisions regarding the right to freedom of religion, but there are fundamental differences between the two, namely in terms of the difference in regulation between religion and belief. The 1945 Constitution of the Republic of Indonesia stipulates that there are differences between religion and belief, while in the Medina Charter there is no different arrangement between religion and belief. The 1945 Constitution of the Republic of Indonesia only regulates rights, while obligations are not regulated and must be carried out according to their respective beliefs. The conception of differences in regulation between religion and belief in the 1945 Constitution of the Republic of Indonesia can be an opportunity to cause religious conflict in Indonesia.*

**Keywords:** Human Rights, Medina Charter, Right to Freedom of Religion, 1945 Constitution

### ABSTRAK

*Hak atas kebebasan beragama merupakan hak yang harus diatur dan dijamin oleh negara sebagai hak asasi manusia yang fundamental dan universal yang melekat pada diri manusia. Penelitian ini bertujuan untuk menganalisis perbedaan pengaturan hak kebebasan beragama dalam Piagam Madinah dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 serta penerapannya. Penelitian yuridis normatif ini menggunakan pendekatan legal dan konseptual. Hasil penelitian menunjukkan bahwa baik Piagam Madinah maupun Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 telah memuat ketentuan mengenai hak atas kebebasan beragama, namu*

*terdapat perbedaan mendasar antara keduanya yaitu dalam hal perbedaan pengaturan antar agama. dan kepercayaan. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 mengatur bahwa ada perbedaan antara agama dan kepercayaan, sedangkan dalam Piagam Madinah tidak ada pengaturan yang berbeda antara agama dan kepercayaan. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 hanya mengatur tentang hak, sedangkan kewajiban tidak diatur dan harus dilaksanakan menurut keyakinannya masing-masing. Konsepsi perbedaan pengaturan antara agama dan kepercayaan dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dapat menjadi peluang untuk menimbulkan konflik agama di Indonesia.*

**Kata kunci:** Hak atas Kebebasan Beragama, HAM, Piagam Madinah, UUD 1945

## **Introduction**

The development, there is not a single country that does not have a constitution, whether it is a written or unwritten constitution. The conception of the State and the Constitution is an institution that cannot be separated from one to another, like two sides of a coin that cannot be separated, even in its development there is also an understanding that without a constitution, the state does not exist and does not arise. (Thaib, Hamidi, etc, 2010, p.227). It is common knowledge that the conception of the constitution is growing fast from Western countries with the theories contained in it, but if examined and seen further that, the embryo and forerunner of the development of the constitution have long emerged and is showing its spurs, but this has been mistaken by the frenetic development of the constitution of Western countries. When viewed from the historical context, long before the existence of Western ideas that began in the Greek era, there had been an embryo and the forerunner of the constitution that existed at the time of the Prophet Muhammad SAW, historically noted that the birth of the first written constitution in the world was the Medina Charter or called the Medina Charter. Also, the Medina Constitution, which was formulated by the Prophet Muhammad.

It has been approximately 13 years in Mecca with the Prophet Muhammad SAW with Muslims that there is no political power and unit that controls an area, but

thanks to the grace of Allah SWT, Muslims have become a free, independent and sovereign community after the Muslims migrated to Medina in the period of 622 AD. The city before it was called Medina was known as Yathrib. The Prophet Muhammad SAW made a political charter to regulate common life in Medina in which there were various heterogeneous groups. The Prophet Muhammad SAW made the basic rules of living together in Medina as a goal to form a harmonious living unity among all the residents contained in it. (Sukardja, 1995, p. 2)

The Medina Charter as a written rule and constitution that was formed by the Prophet Muhammad SAW, has a very complex and comprehensive content that regulates the scope of the elements of the population contained in the state of Medina at that time. The unity of life and elements in the Medina Charter, which was formed by the Prophet Muhammad SAW, shows an effort to accommodate and manage a good government system and shows that the Prophet Muhammad not only had the characteristics of the Messenger of Allah SWT but also had the fundamental nature of the Head of State. (asution, 1985, p. 2)

An arrangement and scope of human rights must be fundamentally regulated in a country's constitution, which requires a good consensus between the power holders, namely the state and the people they lead, which is a complex element in a government administration. The position in the pillars of the Indonesian state government is regulated in the provisions of Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which explains that *"Sovereignty is in the hands of the people and is carried out according to the Constitution."* (Provision of Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia).

Seeing and reflecting on the state of Medina which was founded thousands of years ago, the state of Medina, like the state of Indonesia, is composed of diversity and heterogeneity of elements of its society. Elements of the people of Medina at that time were immigrants who were commonly called the Emigrants and the original population of people, namely the Ansar, with a diversity of religious differences, namely Islam, Judaism, Christianity, and the diversity of tribes in it, namely the

Quraysh, Muhajirin, Auz people. , Khazraj, and so on, the diversity of diversity and religious freedom for the Prophet Muhammad is a *sunnatullah*. The consensus formed by the government administrators in Medina at that time in this case was the Prophet Muhammad, with the people in it, namely the Medina Charter. The Medina Charter holds a message, experience and history, which is proof of the essence of peace and brotherhood. (Misrawi: 2009,p.237).

Based on the above thoughts, this paper will explain and analyze the differences in the regulation of the right to religious freedom in the Medina Charter and the 1945 Constitution of the Republic of Indonesia and their application.

### **Research methods**

This normative juridical research uses a statutory and conceptual approach. The data is based on primary legal materials in the form of various laws and regulations related to research and secondary legal materials in the form of complementary books and journals. Data collection techniques with the inventory, classifying and systematizing primary and secondary legal materials that are relevant to this legal research. The analysis technique uses prescriptive analysis with logic and legal reasoning.

### **Finding and Discussion**

#### **Conception of Human Rights**

Human rights are rights that humans have as creatures of God, and are natural, these rights are not a gift from society as part of positive law, but are fundamentally based solely on dignity as human beings. (Donnelly: 1973, pp. 7-21). In the sense that although every human being is born with different skin colour, gender, language, culture and nationality, each individual has these rights which are fundamental and universal, and cannot be revoked ( *inalienable* ) arbitrarily by others. , including the country in it. Human rights are rights that are inherent in every human being, without

these rights, it is impossible for a human being as a whole to become a human being, this is closely related to the social contract, democracy and the welfare state.

The social contract is a legitimate agreement on political authority to limit it from arbitrariness that will rob and violate the rights of humans themselves. (Lessnoff M:1990, p.2). The relevance between the meaning of human rights based on natural law and social contracts is that it begins with the meaning of human rights that are inherent, and inherent in humans, this humans will continue to seek what they are entitled to, and can even justify any means if there is no conception of regulation. Furthermore. Hobbes and Locke explained that these conditions must be taken a middle way, namely, there is an urgency to agree with human beings as the embodiment of peace, and as a result of the agreement the state will guarantee justice and the welfare of the people in the agreement can be realized (Wijaya: 2016, hlm.192) The relevance between the social contract and natural law theory regarding human rights as an inherent right is that this social contract is a compromise and agreement between the people and the government with the discussion like these inherent rights, to be more regulated. continued by the authorities or the government, so that there is no chaos in the community because there is no mechanism that regulates these basic rights.

there is a conception that can be drawn as a common thread that, human rights are inherent and fundamental rights that exist in humans, which rights are rights that cannot be contested, and are universal and fundamental. In the process of protecting and implementing it, it is the obligation of all human beings, as well as the government to be able to accommodate and regulate and fight for human rights so that there is no discrimination by arbitrary actions, whether carried out by fellow people or by the state itself.

However, along with its development, the conception of the protection of human rights seems to go up and down, coupled with the existence of globalization and the heterogeneous structure of society, which makes it more or less influential on the protection of these human rights. Relations between fellow people, or with the

government, are not always built with romance, because there is a heterogeneous composition composed of ethnicity, religion, race, custom, which often creates friction and violations of fundamental human rights. The rights that tend to be violated are the right to freedom of expression, as well as the right to freedom to embrace religion according to their respective beliefs and beliefs, these violations can originate from the state, or not infrequently come from the people themselves which can cause divisions and disputes.

Awareness of Human Rights (HAM) among the wider community is still a complex problem and becomes a serious discussion, this is due to the existence of factors in the conception of human rights that have not been clearly understood by every human being so that it has not been able to raise awareness. comprehensive, and vulnerable to the occurrence of violations against human rights. (Sudjana: 1998, p.vii). Awareness of the recognition of Human Rights (HAM) must be legally regulated in a country's constitution, as well as in its derivative laws and regulations, with the aim that human rights can become basic human rights that are recognized not only as recognition but can recognize strongly and legally because there are legal and normative arrangements from the state as a policymaker, and the main organizer in the enforcement and recognition of human rights.

### **Human Rights as Contents of the Constitution**

Human rights as basic and universal rights of every human being, it is clear that these human rights must be clearly and properly regulated and accommodated in the contents of a country's constitution. In its development, many experts have suggested the ideal content of a constitution, one of which is the content of human rights.

Soemantri (2016) explained in a complex manner what content materials should be contained in a country's constitution. In explaining the content material contained in the constitution, Prof Sri cites the opinion of JG Steenbeek who describes ideally a constitution can at least regulate three types of content material, namely as follows: 1) The existence of regulations regarding the protection of human rights and

citizens; 2) The existence of arrangements regarding the constitutional structure of a country that is fundamental and fundamental; and 3) There are arrangements regarding the division and limitation of fundamental constitutional tasks.

Furthermore, Savonir Lohman also explained the scope of the material content of human rights in the constitution, he explained that there are three elements contained and wrapped in the body of the constitutions, namely as follows: 1) The constitution is seen as the embodiment of a community agreement (social contract), in terms of this aspect the existing constitution in each country is the result of a conclusion or an agreement between the community and the state, to be able to foster the state and the government that will regulate citizens; 2) The constitution as a charter that can guarantee a human right, which has a meaning that the protection and guarantee of the rights of humans and citizens as well as the determination of the limits of rights and obligations, both citizens and government instruments'; 3) The constitution as a "*regiment form*" is the building framework of a government. (Lubis: 1982, p.48)

Furthermore, in the conception of the meaning of the constitution explained by CF Strong in his book entitled *Modern Political Constitution An Introduction to the Comparative Study of Their History and Existing Form*, explaining his opinion regarding the definition of the constitution, CF Strong explained that the constitution is "*Constitution is a Collection of principles according to which the power of the government, the rights of the governed, and the relations between the two are adjusted.*" (CFStrong: 1963, p.11). The meaning of the constitution according to CF Strong is that the constitution is a collection of principles according to the power of the government, the rights that are ordered, and the relationship between the two elements (government and those who are governed in the context of human rights. The definition of CF Strong contains three elements of complex principles, namely the principles of governmental power, the principles of the rights of citizens, as well as the principles of the relationship between citizens and government. (Sirojul Munir: 2014, hlm.400) .Prinsip-related principles of the rights of citizens ( *The principles According to*

*The rights of The Governed ) implies a fundamental right owned by citizens that must be protected and regulated by the state and the authorities (Munir: 2014, p.400).*

From the explanation above regarding the material content of the constitution presented by the experts, it can be seen and studied further that the conception of human rights as a fundamental right inherent in human beings must be so regulated in the constitution of each country, this condition gives rise to the condition that the state must be able to carry out the regulation and enforcement of human rights based on the constitution as a whole, both written and unwritten regulations, which regulates binding on the administration of government, as an organization of a state.

### **The conception of the Development of Human Rights Thought (Negative Rights and Positive Rights in the Right to Freedom of Religion)**

The development of the protection of human rights, there is a development of thought from generation to generation regarding the protection of human rights. Karel Vasak, a legal expert from France explains and expresses his opinion regarding the development of human rights thinking which is divided into three generations, while the explanation is as follows: (Alston, Philip, DKK, *Human Rights Law*, Yogyakarta: Center for Human Rights Studies Indonesian Islamic University (PUSHAM UII), 2008, pp. 15-16).

#### **1. First Generation of Human Rights**

The development of the first generation of human rights is commonly referred to as freedom of rights that underlies the existence of civil and political rights. Human rights in this first generation indicate that in essence there is a divine-human right to be able to protect human personal life which is authoritative in humans or also called individual sovereignty. This first generation of rights in its development is referred to as "negative rights", with the meaning that for these rights there must be freedom and do not emphasize intervention from anyone, including the government. In the fulfilment of this first generation of human rights, Vasak explained that the fulfilment



of human rights depends on the state's activity towards these human rights, the state should not be too active to interfere with these rights.

The right to freedom of religion according to their respective beliefs can be included in a right that is "negative" because in exercising the right to religion by the beliefs of each country as the main implementation of human rights, one should not be too active to interfere with this right, because the right to freedom of religion is an inviolable and civil right against human sovereignty.

## 2. Second Generation of Human Rights

The second generation of human rights in its development shows protection of economic, social and cultural rights. Second-generation rights indicate the contribution and role of the state to be able to provide fulfilment and protection of human rights. In contrast to the first generation which limits the intervention from the state, it is different from the second generation which demands the state to actively regulate and fulfil human rights. These second-generation rights are also called "positive rights" which also mean "rights to" not in a negative language which means "freedom from" (*freedom from*).

The right to freedom of religion according to their respective beliefs includes positive rights, which indicate that the government as the incumbent and the main implementer of human rights must be able to participate in the process of protecting and fulfilling human rights in the aspect of the right to freedom of religion according to their respective beliefs. The state through the government must be able to accommodate the right to freedom of religion according to their respective beliefs in the state constitution and other regulations, not only that the state must be able to implement the regulation of these rights into a reality so that every human being can freely practice worship. according to their respective beliefs.

From the explanation above, it is clear that the right to freedom of religion is a "negative" right and a "positive" right, in the sense that the right to freedom of religion is a fundamental right and cannot be disturbed and forced by anyone, including the state, but also The right to freedom of religion is a positive right, namely a right that

must be able to get attention and intervention from the government to be able to regulate and protect this right so that it is not abused by anyone and can be implemented fairly.

### **The State's Obligations in Fulfilling Human Rights in Aspects of the Right to Freedom of Religion according to their respective beliefs**

The state should be able to guarantee the implementation of the protection and implementation of human rights, must be able to carry out the most fundamental obligations in the aspect of human rights. The basic obligations of the state in fulfilling human rights are as follows: (Setiaji, Luthfan, & Amirullah, 2018, p.76).

#### 1. Obligation to Respect ( *obligation to respect* ).

The state's obligation to respect is interpreted by the state's attitude not to interfere with a human right unless otherwise stipulated in the applicable law. The obligation to respect relates to the existence of "negative" rights, that the state must be able to respect human rights and is not allowed to intervene too deeply about human rights.

*The obligation to respect* in regulating the right to freedom of religion according to their respective beliefs has a means that the state must be able to respect the right to freedom of religion for every community in its country, and the state does not intervene in the right to freedom of religion, with these conditions, it can guarantee no the existence of state actions that can even lead to violations of the right to freedom of religion.

#### 2. Obligation to Fulfill ( *obligation to fulfil* ).

The *obligation to fulfil* is an obligation of the state to fulfil a human right by taking an action in the legislative and administrative fields to ensure the fulfilment and implementation of human rights. The state's obligation to fulfil this can be realized by the state through the government to be able to formulate laws and regulations governing the protection and recognition of human rights.

In terms of the right to freedom of religion according to their respective beliefs, the state's *obligation to fulfil* is related to how the state can accommodate and regulate elements and aspects of the right to freedom of religion according to their respective beliefs into the constitution and laws and regulations in force in the country concerned.

### 3. Obligation to Protect ( *obligation to protect* )

The *obligation to protect* is defined as the obligation of the state to be able to protect the human rights of every human being in its country, or in its territory from various aspects of the potential or opportunity for violations of these human rights. The state must protect human rights from various forms of violations, whether committed by the state or by other parties, both nationally and internationally.

The right to freedom of religion according to their respective beliefs is a human right, which must receive protection from the state from the aspects and opportunities for violations of these rights, both originating from the state itself and violations originating from the people. With this protection, the right to freedom of religion according to each belief can be fully protected and enforced and is not easy to abuse, because this right is protected by the state.

### **The scope of the right to freedom to embrace religion according to their respective beliefs in the Constitution of the Republic of Indonesia**

The Indonesian state in terms of regulating the right to freedom of religion according to their respective beliefs, there has been an effort and action to be able to regulate this, which is regulated and strategically accommodated in Pancasila, precisely in the First Precept which reads "To God Almighty". Pancasila is a fundamental basis of state philosophy ( *filosofische grondslag*), which is also contained in the opening of the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia. Yusril Ihza explained that the First Precepts of Pancasila have a meaning not only as a spiritual basis and moral basis for the life of the nation, but it is a meaning that contains the teachings of religious tolerance. (Yusril Ihza Mahendra:

1996, p. 98). In the meaning of the First Precepts of Pancasila, namely "Belief in the One and Only God" there is a meaning that every human being in Indonesia must be able to respect the religion and beliefs of others, even though that person does not believe in the doctrines and beliefs of that religion, this is required because every people have the right to choose, embrace, and practice their religious teachings freely without any pressure and interference from other parties. (Mahendra: 1996, pp. 98-99)

The right to freedom of religion according to their respective beliefs in the 1945 Constitution of the Republic of Indonesia is regulated precisely in the provisions of Article 28 E of the 1945 Constitution of the Republic of Indonesia which reads as follows: *(1) Everyone is free to embrace a religion and worship according to his religion, choose] education and teaching, choose a job, choose a nationality, choose a place to live in the territory of the country and leave it, and has the right to return. (2) Everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes according to his conscience.* (Provision of Article 28 E of the 1945 Constitution of the Republic of Indonesia)

Provisions regarding the right to freedom of religion is further affirmed and regulated in the provisions of Article 29 of the 1945 Constitution of the Republic of Indonesia explains that: *(1) The state is based on God Almighty. (2)The state guarantees the freedom of each resident to embrace his religion and to worship according to his religion and beliefs.* (Provision of Article 29 of the 1945 Constitution of the Republic of Indonesia).

Mahendra explained regarding the provisions of Article 29 of the 1945 Constitution, studied from the point of view of religious theology, the freedom to be able to embrace religion is transcendent (sourced from God) which gives humans the freedom to be able to embrace religion freely according to their respective beliefs without coercion from anyone, Article 29 of the 1945 Constitution strictly regulates the freedom to embrace religion, not the meaning of freedom, on the contrary, namely not to follow a religion. (Yusril Ihza Mahendra: 1996, p. 99). Ismail Suny explained the

correlation between the 2 (two) paragraphs in Article 29 of 1945 Constitution, namely that religions and beliefs that are given the right to live and grow in the Republic of Indonesia are religions and beliefs that do not conflict with the state basis of the One Godhead. ( Suny: 1982, p. 87).

Formally, no law complexly regulates specifically regarding the recognition of religion in Indonesia. However, the regulation regarding religious recognition in Indonesia is regulated in the Presidential Decree of the Republic of Indonesia Number 1 of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion, precisely in the elucidation of Article 1 of the Presidential Decree of the The Republic of Indonesia Number 1 of 1965 concerning Prevention of Abuse and/or Blasphemy. Blasphemy of Religion explains that there are 6 (six) religions embraced by the Indonesian population, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism, this does not mean that other religion, for example, Judaism, Zarasustrian, Shinto, Taoism are prohibited in Indonesia, they get full guarantees as provided by Article 29 Paragraph 2 and they are allowed to exist, as long as they do not violate the provisions contained in this regulation or other laws and regulations. concerning Prevention of Abuse and/or Rejection of Religion). So from this provision, Indonesia accommodates the right to freedom of religion according to the respective beliefs of the people in it, without discriminating between one religion and another, even though there are religions officially recognized by the Indonesian state. because the 6 (six) religions are the most widely practised in the country of Indonesia but outside of that religion refers to Article 1 of the Decree of the President of the Republic of Indonesia Number 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, it is still recognized as long as it does not violate the provisions contained in the 1945 Constitution of the Republic of Indonesia.

The author tries to examine further the provisions of Article 28 E Paragraph (1) and Paragraph (2) regarding the regulation of the right to freedom of religion in Indonesia. The provisions of the article, in the author's opinion can be an understanding that there is a separation of regulations between religion and belief, as

we know that in Indonesia there are not only religious groups but also groups who adhere to their respective beliefs. This provision can cause further problems because there are rules under the 1945 Constitution of the Republic of Indonesia which regulates the official religion recognized by the state, as has been explained above, although it does contain further explanations, that The 6 (six) religions are recognized because they are based on the most widely practised in Indonesia, but the state still recognizes other religions or beliefs as long as they do not conflict with the 1945 Constitution. However, if examined further, it is the Indonesian Constitution or the Basic Law. The Republic of Indonesia Year 1945 does not distinguish between official and unofficial religions, only distinguishing the provisions of the Paragraph regarding religion and belief. However, due to the conception of the distinction, in the opinion of the author, the meaning is wild and varied. This condition can be a gate or negative opportunity for unity and integrity among religious communities in Indonesia, there is a the distinction between religion and belief, as well as between official and unofficial religions, which can lead to various *interpretations* or *multiple interpretations* from the community regarding religion. This the situation will have the opportunity to lead to divisions and friction between religious communities which will compare the validity or number of followers, compared to the quality of their worship of God. Such a situation will be vulnerable to divisions and hostility between religious communities in Indonesia.

The next review is the regulatory provisions regarding the right to freedom of religion according to their respective beliefs contained in the provisions of Article 28 E and Article 29 of 1945 Constitution. -respectively, however, it is not regulated regarding the obligations of citizens towards the right to freedom of religion. This the condition will more or less make citizens will only demand their rights, but forget the obligations that should be carried out and fulfilled for the rights they get. Glancing at the dynamic developments taking place in Indonesia regarding the recognition and regulation of the right to freedom of religion as a conception of fundamental human rights, in the author's opinion, the normative provisions stipulated in Article 28 E and Article 29 of 1945 The Constitution of the Republic of Indonesia have not can be fully

said to have been ideal and successful in maintaining peace and respecting the tolerance between religious communities in Indonesia. The author cites data from equivalent institutes during the period from November 2014 to October 2019, there have been 846 incidents of violations of freedom of religion and belief, with 1,060 actions. These violations show that the government has not fully enforced the provisions of Article 28 E and Article 29 of 1945 Constitution.

From the explanation above, it can be drawn a common thread that, in the 1945 Constitution of the Republic of Indonesia, fundamentally has strategically regulated and accommodated human rights in the aspect of the right to freedom of religion by their respective beliefs, which are regulated in the provisions of Article 28 E and Article 29 of the 1945 Constitution of the Republic of Indonesia, however, if you look further from the aspect of implementation, the provisions regarding the right to freedom of religion by their respective beliefs in the Indonesian state have not been fully implemented yet, because in reality there are still there are problems of violations of human rights in the aspect of the right to freedom of religion, and these problems have not been fully resolved. So that there is a need for improvement and improvement by the state through the government to be able to implement and guarantee the right to freedom of religion by their respective beliefs.

### **The scope of the right to freedom to embrace religion according to their respective beliefs in the Medina Charter**

The Medina Charter in its development, although the background was founded by Muslims, in this case, the Prophet Muhammad, but its contents also accommodate and acknowledge the existence of other groups such as the existence of Jewish and Pagan groups and their allies. These groups are committed to forming the Medina Charter with the Prophet Muhammad to be able to live together in a frame of peace and slowly but surely together build the city of Medina to become a civilized and civilized city. Abdul Husein Sya'ban in *Fiqh al-Tasamuh fi al-Fikr al-'Arabi al-Islami: al Tsaqafah wa al-Dawlah* describes the Medina Charter as a peak manifestation of the

tolerance form of Muslims. Why is that? because the Medina Charter is not only a text of an ordinary agreement but can be embodied in a political document that complexly regulates the life of the nation and state, through the embodiment of the Medina constitution. (Misrawi: 2009,p.239).

It can be said that the Medina Charter is a precise constitution in every corner of its field arrangement, as explained by Ahmad Sukardja in his book entitled *Medina Charter and the 1945 Constitution of the Republic of Indonesia; Comparative Study of the Basics of Living Together in a Plural Society*, that the Medina Charter has attempted to describe an ideal arrangement in the field of state administration with the existence of agreements between Muslims and community groups (tribes/bani) found in Medina. So it is not surprising that the Medina Charter can be said to be the forerunner and embryo of the development of the conception of the constitution that exists in every country at this time.

The Medina Charter knit the existence of an essential difference from the people who were in the city of Medina at that time, namely there were thirteen communities or people who were in Medina which were also mentioned in the Medina Charter, namely, there were the following people (i) Believers and Muslims (Emigrants) from the Quraysh tribe of Mecca, (ii) Believers and Muslims from Yathrib (Ansar), (iii) Jews from Banu'Awf, (iv) Jews from Banu Sa'idah, (v) Jews from Banu al-Hars, (vi) Banu Jusham, (vii) Jews from Banu Al-Najjar, (viii) Jews from Banu 'Amr ibn'Awf, (ix) Banu Al Nabit (x) Banu al- 'Aws, (xi) Jews from Banu Sa'labah, (xii) Tribe Jafnah from Banu Sa'labah, and (xiii) Banu Shuthaybah. (Ashhidique:2006, p.14).

The Medina Charter substantially has seven points contained in it, namely the first is related to the community supporting the Medina Charter, which is based on a pluralistic society composed of various tribes, nations, and religions. Second, every citizen has the same position and is obliged to respect and cooperate, and it is forbidden to treat it badly. Third, the state through the Medina Charter recognizes, protects and guarantees the freedom to worship and embrace religion according to their respective beliefs, both Muslims and non-Muslims, Fourth, all citizens have the



same position in the eyes of the law ( *equality before the law* ). Fifth, customary law, based on the principles of truth and justice, is still enforced. Sixth, every citizen has equal and equal rights and obligations towards the state. Seventh, the Medina government system is decentralized, Medina being the centre. (Sukardja: 2012, p.5)

About the right to freedom of religion by their respective beliefs, the Medina Charter has regulated and adopted it strategically in the normative provisions of the articles in it, namely precisely in the provisions of Articles 25 to 35 of the Medina Charter. by their respective beliefs in the Medina Charter contained in Article 25, namely as follows: Article 25: *The Jews of Bani'Awf are one people with the believers. For the Jews their religion, and for the Muslims their religion. Also, freedom applies to allies and themselves, except for the unjust and evil.*

Fundamentally, the Prophet Muhammad SAW, considers a difference as a *sunnatullah* as a mercy and grace, so that when you underestimate religious freedom, it is a denial of *sunnatullah*. Allah SWT created and made humans with various beliefs and religions and believed in the teachings brought by the Prophets. The freedom of religion that is promoted and regulated in the Medina Charter, is a form of application and implementation of the revelation of Allah SWT in the holy book Al-Qur'an which has the meaning of being able to recognize the right to freedom of religion. Implicit in the Qur'an Surah Al-Baqarah verse 256

Meaning: *"There is no compulsion in religion, it has become clear which one is true and which is fake"* (Al-Qur'an Surah Al-Baqarah: 256).

Other verses underlie the principles of rights and freedom of religion, namely in the Qur'an Surah Al-Baqarah verse 148, which are as follows: Meaning: *"Each religious/belief group has its Qibla direction; so compete among yourselves for good; wherever you are surely Allah will bring you together; Verily Allah is almighty overall."* (Al-Qur'an Surah Al-Baqarah: 148). Then the life of the nation and state, also in which there is the right to freedom of religion according to their respective beliefs, is reflected in the Medina Charter that, everyone has the right to worship according to their respective beliefs, people who embrace Islam, then freely can perform worship

by the provisions of Allah SWT, and the demands and sunnah of the Prophet Muhammad SAW, while for the Jews and their allies are also freely able to perform worship by the beliefs and teachings of their religion, as well as with customs and customs, as long as it is by the principle of goodness. and peace. (Zuhiri Misrawi:2009,p.254)

This is illustrated and implied in the word of Allah SWT in the Qur'an Surah Al-Kafirun verse 6, which is as follows: "*For you is your religion, for me is my religion*" (Surah Al-Kafirun (109):6) This verse indicates that basically, the Medina Charter implements the word of Allah SWT regarding religious freedom by their respective beliefs, this is illustrated by the provisions of the Medina Charter which accommodates and respects religious differences among the people in it. Zuhairi Misrawi explained that the spirit and spirit that emerged in the Medina Charter was the spirit of the narrative of equality. The spirit of equality, among others, is not a commitment and vision of the Prophet Muhammad SAW, to be able to invite and embrace various groups of people, who are moved to play a joint role in building Medina as a city of civilization that upholds diversity. Tolerance in building cities and civilizations as well as the life of the nation and state is emphasized, as long as it does not offend the aqidah as well as the principles of worship of each people. (Zuhairi Misrawi: 2009, p.255).

In the Medina Charter, the author also finds an interesting conception that there is no separation between religion and belief. The Messenger of Allah has made and regulated explicitly the rights and freedom of religion through the Medina Charter or the Medina Constitution, which stands on the diversity of tribes, nations, and religions. However, the leadership of the Prophet in Medina did not make the Muslims, namely the Ansar and Muhajirin, who incidentally become the majority, be authoritarian to others. Because all groups can be recognized and accommodated their basic rights as human beings who have the right to freedom of religion in the Medina Charter so that with this provision, minority groups such as the *Shabi'in* and Majusi still get their basic rights and can carry out their daily activities normally. This is illustrated

in Article 25 of the Medina Charter which indicates that the recognition of the right to freedom of religion does not only apply to *divine* or *celestial* religions, but also tribal religion, or *wadh'ie* religion. The Medina Charter still stipulates that tribal religions or customs such as Majudi and Shabi'in are religions with the same rights and protections, as regulated by Articles 25 to 35 of the Medina Charter which regulates the right to freedom of religion by their respective beliefs, along with the right to freedom of religion according to their respective beliefs. -his rights.

The formation of the Medina Charter was not without obstacles or problems, the struggle of the Prophet to be able to form the Medina Charter was a long and not easy process, to be able to unite tribes, nations, religions among the people who were in the city of Medina at that time. In its development there is also a criticism of the Medina Charter regarding the right and freedom to embrace religion according to their respective beliefs, this problem arises from the notion that the Jews who were embraced and accommodated by the Prophet were Jews who incidentally had Arab ancestry, while Jews who have Hebrew affiliation are not accommodated, and there are criticisms that the Jews involved in the Medina Charter are a minority Jewish group. (Zuhiri Misrawi:2009,p250)

However, these criticisms and problems can easily be broken, there is fact that the absence or escape of the majority of the Jews in the scope of the Medina Charter is because in a consensus or agreement they are not willing to be able to join the Medina Charter, not the Prophet did not accept it. they. The majority of the Jews preferred the way of exile because they felt they had lost their influence in Medina. The dream of those who had ruled Medina for hundreds of years hoped to be in control again, but failed. So that along with the development of the Medina Charter, they often became a stumbling block by causing conflict and spreading slander against the Prophet and his followers. (Zuhiri Misrawi: 2009, p.250)

The continuity of the existence of the Medina Charter, the Prophet Muhammad SAW died, was continued by his friends, namely in the leadership of the Rashidun Caliph, especially in the leadership of Ali bin Talib and Umar bin Khattab, they saw

freedom as a treasure given by God to every human being that must be protected. existence.

Ali bin Talib emphasized that a religious difference is not a problem because in it there is brotherhood as fellow human beings. Ali bin Talib said, "You should not be wild animals that want to prey on everyone because everyone has two identities, namely as your brother in religion or your friend in his capacity as a creature of God." This is reflected in the leadership of Caliph Umar bin Khattab, during his leadership Umar bin Khattab implemented the things that have been regulated in the Medina Charter, including the right to freedom of religion according to their respective beliefs. Umar bin Khattab, really does not want any discrimination against individuals and groups, which is an act that cannot be justified. The recognition of the right to freedom of religion according to their respective beliefs is also illustrated when Umar bin Khattab controlled the Jerusalem area, Umar bin Khattab entered the city by agreeing, the agreement is commonly known as the "Umar Agreement". The agreement indicates the existence of a right and freedom of religion and mutual respect. Umar saw the diversity of religion not as a threat, but as a strength to be able to build unity and togetherness. (Zuhiri Misraw: 2009, p.257).

From the Medina Charter, we can all learn and understand further that a conception of religious rights and freedom is a rule that gives everyone the right to be religious and to practice religious worship. With the existence of these rules, for the purpose that everyone can sincerely and commit to carrying out all their religious activities because the freedom referred to in the Medina Constitution is the right to have religion and practice religious teachings, not the act of freely changing religions by the provisions of the Constitution. desire, even worse to have no religion. (Asnawi: 2012, p.27)

## **Conclusion**

Accommodation or the scope of the right to freedom of religion according to their respective beliefs in the 1945 Constitution of the Republic of Indonesia there

have been regulations regarding this right, namely in the provisions of Article 28 E Paragraph (1) and Paragraph (2) and Article 29 of the Law. The 1945 Constitution of the Republic of Indonesia, but in its implementation, there are still problems and problems as well as conflicts in terms of the right to freedom of religion in Indonesia, this is more or less influenced by various factors, the main of which comes from a regulation that has not been maximally implemented, and the nature and ego of the people of the religion and beliefs they hold, give rise to intolerance. There is a conception of the existence of different arrangements between religion and belief, which can be an opportunity to cause religious conflict in Indonesia, and only regulates rights while obligations that must be carried out in the freedom of religion according to each belief are not regulated.

The Medina Charter is a Covenant Charter that was formed by the Prophet Muhammad SAW, in it is based on the differences in the background of the people, ethnicity, nation, and religion. However, the Charter can bind and unite differences and brotherly ties between Muslims, and the Jews and their allies are united through the Medina Charter. About the right to freedom of religion, it has been strategically regulated in the Medina Charter, precisely in the provisions of Articles 25 to 35 of the Medina Charter. The basic principle of the right to freedom of religion in the Medina Charter, which was also realized by the Messenger of Allah, is for you your religion, for me my religion, departing from that conception, every ummah, be it Muslims or Jews and their allies, is guaranteed freedom of religion, by performing worship and activities by their religion and beliefs. each. Unlike in the 1945 Constitution of the Republic of Indonesia where there is a regulatory distinction between religion and belief, in the Medina Charter, there is no regulatory distinction between religion and belief. Hopefully, this can be an input or example for other countries in terms of recognizing and accommodating the right to freedom of religion.

Recognition of the right to freedom of religion according to their respective beliefs is an accommodation and protection for human rights that have a "positive and "negative" nature in the sense that the right to freedom of religion according to each

belief is a right that cannot be contested by anyone. including by the state, but on the one hand, these rights are "negative" with the conception of these rights having to be recognized by the state.

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