

ANALYSIS AND TRANSLATION OF *KITĀB AL-MUḌĀRABAH* OF *AL-*  
*MABSŪṬ* BY AL-SARAKHSĪ (D. 483/1090)

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A thesis submitted in fulfilment of the  
requirements for the award of the degree of  
Master of Philosophy

School of Graduate Studies  
Universiti Teknologi Malaysia

JANUARY 2016

*Dedicated to*  
*The Seekers of True Knowledge*

## ACKNOWLEDGEMENT

All Praises be to Allāh the Almighty. It is indeed a great honor, joy and privilege for me to study at the Centre for Advanced Studies on Islām, Science and Civilisation (CASIS), University Teknologi Malaysia (UTM). First and foremost, I would like to express my sincere appreciation to Prof. Dr. Wan Mohd Nor Wan Daud, the Founder and Former Director of CASIS, of his constant intellectual, spiritual and moral guidance on me, I have become more convinced and *yaqīn* (certain) to embark into this intellectual journey. My heartfelt gratitude and acknowledgement goes to my supervisor, Prof. Dr. Muhammad Zainiy Uthman, Director of CASIS, who has guided me in many ways, by suggesting numerous improvements in thoughts and expressions while thoroughly gone through my thesis.

Throughout the course of finishing my thesis, I feel very much indebted to all the dedicated teachers at CASIS, Prof. Dr. Tatiana Denisova, Assoc. Prof. Dr. Wan Suhaimi Wan Abdullah, Assoc. Prof. Dr. Khalif Mu‘ammar A. Harris, Assoc. Prof. Dr. Syamsuddin Arif, Assoc. Prof. Dr. Adi Setia Md. Dom, and Dr. Suleiman Mohammed Hussein Boayo, also towards the many courses that are taught by them, which act as a preparation for my intellectual framework, among others, the Worldview and Epistemic Framework, Decolonization and Islamization of Contemporary Knowledge, Research Methodology in Islamic Studies, Islamic Philosophy of Science, Islamic Economic Thought and Institutions. Not to mention, the non-credit courses, such as the iconic CASIS Saturday Night Lectures Series by the CASIS Distinguished Professor, Tan Sri Professor Dr. Syed Muhammad Naquib al-Attas and text reading courses that are offered at CASIS.

I would also like to express my regards to Mr. Mohd Zain Abdul Rahman, Head Knowledge Management Centre, Islamic Banking and Finance Institute Malaysia (IBFIM), for giving me the privilege to access some of the rare and important collections on Islamic and Western economic sources in his institution. Thanks to Professor Osman Taştan of Ankara University, for suggesting me some references on al-Sarakhsī just over an email. I appreciate the intellectual input given to me by Dr. Mohd Zaidi Ismail (IKIM), Dr. Mohd Farid Mohd Shahrān (IKIM) and Dr. Mohd Sani Badron (IKIM), and the discourse and exchanges with friends at CASIS, Muhammad Ikhwan Azlan, Wan Mohd Aimran Wan Mohd Kamil, Muhammad Syukri Rosli, Syed Muhammad Muhiyuddin al-Attas, and Syafiq Borhanuddin. Wan Ahmad Fayhsal Wan Ahmad Kamal has also contributed to the discussion. In effect, all this has directly and indirectly impacted my thoughts while preparing this thesis. Thanks to Muhammad Husni Mohd Amin for taking the time to proofread the final draft of this thesis, to examine the precision of the language and expression, to Muhammad Zul-Faisal Omar and Masood Yusuf for their kind advice on some of the Arabic technical terms in al-Sarakhsī's text. In the course of my study at CASIS, I was assisted in many ways by the administrative staff, Mrs. Rashidah Sarip, Mrs. Sharifah Fadzlina Helmy Alhusaini, Mrs. Norehan Ismail and Mr. Amer Fahmi.

On top of the aforementioned, my utmost respect and profound admiration to Tan Sri Professor Dr. Syed Muhammad Naquib al-Attas, *rabb al-sayf wa'l-Qalam* (the Lord of Sword and Pen), a genius and a creative scholar of our time, for his scholarly commitment and *istiqāmah* which has continuously become my sources of intellectual inspiration.

To my parents, Ramli Kasman and Fatimah Budin, who always shower me with their prayers. Needless to say, my appreciation and thankfulness to my wife, Ruzieta Mohd Jusak for her understanding and patience, and also love for knowledge, and my kids, Balqis Solehah, Ammar Zuhaily and Nu'man Ilhami for being a *qurrat 'l-'Ayn* of ours.

## ABSTRACT

*Muḍārabah* is a contract of profit-sharing known as partnership in capital and labor. Its concept and practices were notable in the history of Muslims specifically after its incorporation in the *fiqh* literatures that have spread to the entire education and economic institutions in the Muslims world. It combines two parties; those who have capital and those who are skilful in business to achieve a common economic objective underpinned by the *Sharī'ah*. This study analyzes the work of *al-Mabsūṭ* by al-Sarakhsī (d. 483 A.H./1090 A.C.), an accomplished *Hanafi* jurist (*fāqih*) in fifth/eleventh century, pertaining to *muḍārabah* drawn from the translation and analysis of the first chapter of the book entitled *Kitāb al-Muḍārabah*. This study is significant as it fills the lacuna in the historiography of Islamic economic thought by focusing on al-Sarakhsī's definition of *muḍārabah*, the concept of currency as a form of capital (*ra's al-māl*), the spirit of cooperation and mutual respect in *muḍārabah*, the role of individual and the investment and distribution of profit. It is a testimony of how the Muslims conducted their economic activities based on the intellectual framework and moral guidance underlined by the *Sharī'ah*. This study has discovered that *muḍārabah* was integral in individual and societal dynamics and Islām does provide a coherent vision and concept of economics in contrast to modern economics.

## ABSTRAK

*Muḍārabah* ialah kontrak perkongsian-untung yang dikenali sebagai perkongsian modal dan kerja. Konsep dan amalannya dikenali dalam sejarah umat Islām terutamanya selepas ia dibincangkan dalam karya-karya fikah yang tersebar di seluruh institusi pendidikan dan ekonomi di dunia Islām. Ia menggabungkan dua pihak; pihak yang mempunyai modal dan pihak yang cekap dalam perniagaan dengan tujuan mencapai tujuan ekonomi yang sama berlandaskan *Sharī'ah*. Kajian ini menganalisis konsep *muḍārabah* dalam *Kitāb al-Mabsūṭ* karya al-Sarakhsī (w. 483 H./1090 M.), seorang ahli Fikah mazhab *Ḥanafī* yang ulung dalam kurun kelima/sebelas, diambil daripada terjemahan dan analisis bab pertama yang bertajuk *Kitāb al-Muḍārabah*. Kajian ini penting kerana ia mengisi kelompangan pensejarahan (*historiography*) pemikiran ekonomi Islām oleh al-Sarakhsī dengan menumpukan takrif *muḍārabah*, konsep matawang sebagai modal, semangat kerjasama dan saling menghormati dalam *muḍārabah*, peranan individu, konsep pelaburan dan pengagihan keuntungan. Ia juga satu bukti bagaimana Muslim menjalankan kegiatan ekonomi mereka berdasarkan kerangka intelektual dan panduan akhlaki seperti yang digariskan oleh *Sharī'ah*. Kajian ini menemukan bahawa *muḍārabah* adalah suatu yang sehati dalam dayagerak (*dynamic*) individu dan masyarakat Muslim dan Islām telah mempunyai pandangan ekonomi yang sepadu berbanding ekonomi moden.

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## CHAPTER 1

### INTRODUCTION

#### 1.1 The Importance of the Study

The present study seeks to fill a lacuna in modern historiography<sup>1</sup> of economic thought of Muslim scholars during the period of which the civilization of Islām was enjoying the status of being the main political, economic, cultural and intellectual centers of the world.<sup>2</sup> This study is based on the work by Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī (d. 483 A.H./1090 A.C.), the sun of the leading scholars (*shams al-a'immah*)<sup>3</sup> and the pride of Islām (*fakhr al-Islām*)—namely the encyclopedic thirty volumes of *Kitāb al-Mabsūṭ* of the *Ḥanafī*'s legal compendium of the fifth/eleventh century. Thus far this work has escaped scrutiny as a subject of research.<sup>4</sup> Although this *magnum opus* is considered as a legal work, by a notable

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<sup>1</sup> See Ugi Suharto, *Kitāb al-Amwāl: Abū 'Ubayd's Concept of Public Finance*, with a forward by Sabri Orman (Kuala Lumpur: ISTAC, 2005), xiii-xvii.

<sup>2</sup> See Marshal G. Hodgson, *The Venture of Islam*, 3 Vols., (Chicago: The Chicago University Press, 1974).

<sup>3</sup> The *shams al-a'immah* title (*laqab*) is a distinguished title popularly ascribed to al-Sarakhsī, but few other jurists are also known by the title, for example his own teacher himself carrying the *shams al-a'immah* al-Ḥulwānī (d. 448 A.H./1056 A.C.), al-Zarnajrī (d. 584 A.H./1188 A.C.), al-Qurḍarī (d. 642 A.H./1244 A.C.), and Maḥmūd al-Awzjandī (n.d), see details in Maryam Muḥammad Ṣāliḥ al-Zafīrī, *Muṣṭalahāt al-Madhhāhib al-Fiqhīyah* (Beirut: Dār Ibn Ḥazm, 2002), 96.

<sup>4</sup> In the words of Nejatullah Siddiqi: “Though his legal texts are quoted very often, his works have not been explored for economic ideas and analysis so far”; see Nejatullah Siddiqi, *Recent Works on*

*Ḥanafī* jurist, al-Sarakhsī's overriding theme on the economic and commercial environment is repeatedly demonstrated in his discussions on various aspects of partnership and *commenda* law.<sup>5</sup> In that capacity, this genre of literature can be regarded as the most original of his contribution to Muslim scholarly intellectual life.

This study is inspired to be part of a wider project of comprehensive epistemic framework of using various methods of approach such as chronological, biographical, thematic and bibliographical, or any combination of all these, for the purpose of writing the history of economic thought.<sup>6</sup> The study on the contribution of Muslim scholars in the past is not pursued for the sake of nostalgia but to identify their genuine intellectual contribution. It is a necessary step to turn to the bright of light of the past to derive guidance from their experiences and to learn how they studied, analyzed and solved economic problems of their times.<sup>7</sup> This study, through an integrated study of the original text and ideas of our great scholars, seeks to offer a robust and vibrant counter idea to the current secular-based economic system that exert an overwhelming prevalence.

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*History of Economic Thought in Islam: A Survey* (Jeddah: International Centre for Research in Islamic Economic, King Abdulaziz University, 1982), 14.

<sup>5</sup> See Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970).

<sup>6</sup> This has been espoused by Sabri Orman, a renown economic historian in his extensive works in "Sources of the History of Islamic Economic Thought (I)", *al-Shajarah*, Vol. 2, No. 1 (Kuala Lumpur: ISTAC, 1997), 21-62 & "Sources of the History of Islamic Economic Thought (II)", *al-Shajarah*, Vol. 3, No. 2 (Kuala Lumpur: ISTAC, 1998), 1-17. Earlier, Bernard Lewis has produced a similar work, but not that extensive as the former; see "Sources for the Economic History of the Middle East, *Studies in the Economic History of the Middle East: From the Rise of Islam to the Present Day*, ed. M.A. Cook, (London: SOAS, 1970; reprinted., Oxford: Oxford University Press, 1978), 88-89. Both have contributed meaningfully to the course of historiography of Islamic economics thought, but the work by Sabri Orman is more refined and contains the sense of revivalism of Islamic intellectualism.

<sup>7</sup> Abdul Azim Islahi, "Thirty Years of Research on History of Islamic Economic Thought: Assessment and Future Directions", Seventh International Conference on Islamic Economics, Islamic Economics Research Center, King Abdulaziz University, Jeddah, Kingdom of Saudi Arabia, April 1-3, 2008, 1.

## 1.2 Background of the Study

This study has twofold purposes that complement one another. Primarily this study is intended to derive the economic thought from the work of the erudite jurist of the past as the authoritative material source as to establish the epistemic framework of the Islamic economics. In this part, Sabri Orman has made an important study<sup>8</sup> in which he stressed the requirement of establishing an epistemic framework for Islamic economics in his extensive study on the history of economic thoughts in Islām, using various methods of approach such as chronological, biographical, thematic and bibliographical, or any combination of all these. He argued that the definition of *economics* is problematic and it requires profound and thorough analysis based on a coherent framework that it can only be derived from the Islamic sources. It must be highlighted that there are distinctions between Islamic economics and the history of Islamic economics thoughts, even though they have some overlapping elements.

However, for the purpose of this study, it is important to distinguish that the Islamic economics is understood as an emerging discipline of knowledge in Islām that requires further analysis as it will be done some of its aspects in the following passage. It can also be regarded as the universal part. Meanwhile the history of Islamic economic thoughts can be understood as a sub-field of the Islamic economics that its subject matters are specific and confined to the study of thoughts of Muslims scholars on economics in the past, that it could eventually develop to the establishment and refinement of a coherent thought and framework of the discipline of Islamic economics.

In relation to the establishment of the framework, it will then be able to recognize the progress of the prevalent Islamic economics in the ambit of

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<sup>8</sup> See footnote 6.

establishing its own discipline within the general framework of knowledge of Islām. This study will be utilizing the Islamic scientific framework as espoused brilliantly by Alparslan Açıkgenç. In his extensive works,<sup>9</sup> he has deliberated the meaning of scientific in a general sense, the stage of scientific development, the elements that constituted the progress of a scientific research and the rising and the naming of a new discipline within the framework of scientific progress. His framework will be used as an architectural intellectual backdrop that will be analyzing the progress of Islamic economics and subsequently, by virtue of the framework, it be able to posit it in a proper place in the general framework of knowledge of Islām.

The work of *muḍārabah* by al-Sarakhsī was particularly chosen because it falls under the classification of *fiqhī* literatures that is considered as important source materials for the Islamic economics. It contains extensive discussion on *muḍārabah* compared to other literatures of the same nature particularly of the same *madhhab*, which this *muḍārabah* constitutes one of the key features of Islamic economics in the Muslims history. The discussion of *muḍārabah* has not been understood in the realm of idea only, but it has been widely practiced by the Muslims in the past. According to Sabri Omran, the nature of this literature forms on the top positions on the list of potential sources of epistemic framework of the history of Islamic economic thought because it does not only provide source material in the field of economic law, but also of the instances of economic analysis that it provides. This is based on the common definition of *fiqh* that is the effort to derive practical *shar'ī* rulings from their detailed (*tafsīlī*) sources or proof (*adillah*).<sup>10</sup> In that sense, the jurist (*fāqih*) like al-Sarakhsi was truly a man of practical because he could give a practical answer based on the *fiqhī* concept and the issues raised to him.

As for the case of *muḍārabah*, as the equivalent concept of *commenda* in the Western world, it is one of the legal instruments that exist in the legal works of the

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<sup>9</sup> He writes brilliant and profound works that deliberated the framework of Islamic scientific tradition, the first of its nature. He began briefly with the *Islamic Science: Towards A Définition* (Kuala Lumpur: ISTAC, 1996), and then extended the idea in the *Scientific Thought and Its Burdens* (Istanbul: Fatih University Publications, 2000) and expounded it in more comprehensive in the recent work the *Islamic Scientific Tradition in History* (Kuala Lumpur: IKIM, 2014).

<sup>10</sup> Sabri, *History (I)*, 44.

major Islamic law schools (*madhhāhib*) as established by the forefathers Imām Abū Ḥanīfah (d. 150 A.H./767 A.C.), Imām Mālik (d. 179 A.H./795 A.C.), Imām Shāfiʿī (d. 204 A.H./819 A.C.), and Imām Aḥmad Ḥanbal (d. 241 A.H./855 A.C.), and it is read and studied in the learning institutions in the Muslim world even until today. The *muḍārabah* is not treated as only a theory; it was even put into practiced at individual level as exemplified traditionally by the Prophet (PBUH) with the rich and noble lady Khādījah whom later became his wife, and many examples in Muslim history.

Furthermore, *muḍārabah* is a successful testimony of inter-civilizations convergence of ideas and practices between Islām and other civilizations.<sup>11</sup> There are claims that some of the seeds of the modern economic analyses can be observed in the previous Muslim writings.<sup>12</sup> However, the claim must be carefully substantiated and clarified with a rigorous study on what aspects of Muslim thoughts and practices were faithfully transferred to the modern economic. If the claim is true, why is it the case that majority of people in the world and the natural living are suffering terribly the problem of poverty and environmental devastation due to the modern economic system engineered predominantly by the capitalism ideology? Despite that, Murat Çizakça argues that institutional borrowing has played an enormously important role in the subsequent economic development of the borrowing civilization through primarily a substantial reduction in the transaction cost.<sup>13</sup>

As argued further by Çizakça, the inter-civilizational borrowing is common and necessary in the history of ideas of human civilization because nothing is emerged in vacuum. As for the Muslims, it is affirmed the ultimate sources of knowledge are from God the Almighty and this is considered as the revealed

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<sup>11</sup> See Udovitch, “Origins”, 207.

<sup>12</sup> AbulHasan M. Sadeq, “Introduction: Islamic Economic Thought”, *Readings in Islamic Economic Thought*, AbulHasan M. Sadeq & Aidit Ghazali, eds., (Petaling Jaya: Longman Malaysia Sdn Bhd, 1992), 4.

<sup>13</sup> Murat Çizakça, “How Civilizations Borrow Institutions From Each Other?”, paper conference on the Globalization’s Origins and the Great Divergence: Trading Networks and the Trajectory of Economic Institutions-Europe-Asia, 1500-2000, sponsored by CNRS and convened at L’Ecole des Hautes en Sciences Sociales, Paris on 29th-30th November 2013, 1.

knowledge. Apart from this, we also affirm on the acquired knowledge, which the human beings gain and produce by virtue of their experience, senses and intellectual.

The chief reason that initiated this study is the failure of articulating the works of Muslim scholars in the past and how their ideas could be adopted and adapted in the modern economic framework without compromising the underlying principles. There is an overwhelming insistence on the need and necessary of the popular thought and current orientation of revivalism of Islamic economics to follow and comply strictly with the spirit of *Shari'ah*, namely the adoption of whatever is understood from *al-Qur'an* and *Hadith* of the Prophet. The returning to the primary sources in the *al-Qur'an* and *Hadith* is commendable, but the emergence of "textualism" tendency among the contemporary Muslim economists and jurists as immensely in their writings and advocates is problematic. This spirit, if it is properly scrutinized may or may not show a direct and parallel connection, but it is a reflection of the modernist's orientation<sup>14</sup> that as for them simply everything in religion must go back directly to *Al-Qur'an* and *Hadith*.

The insistence for the Islamic economics to return to *Shari'ah* is manifested in many of the writings of their prominent proponents. For example, Nejatullah Siddiqi, the leading scholar in Islamic economics has suggested that;

We may conclude with some suggestions relating to our agenda [i.e Islamic economics] for the future. The most important thing is to aspire to is a clearer visions of things as they should be in a contemporary Islamic society. This requires going back again and again to Qur'an and Sunnah with contemporary problems in mind.<sup>15</sup>

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<sup>14</sup> See Ahmad Bazli Shafie, *The Educational Philosophy of al-Shaykh Muhammad 'Abduh* (KL: ISTAC, 2004).

<sup>15</sup> Nejatullah Siddiqi, "Islamic Economic Thought: Foundations, Evaluation and Needed Direction", *Development and Finance in Islam*, eds. Abulhasan Muhammad Sadeq, Ataul Huq Pramanik & Nik Mustapha bin Hj. Nik Hassan (Petaling Jaya: IIU Press, 1991), 37.



Siddiqi's writings and contributions has become a milestone in the growth of research in Islamic economics, and have their stamp on the discipline for the last forty years, that could influence tremendously the following generations.<sup>16</sup> Muhammad Abdul Manan, has stressed on the methodology of Islamic economics that it must be based on the principle of *Shari'ah*, and the principles are primarily meant as the sources of *Shari'ah*. He said:

...we can easily say that Islamic economics is certainly part of a complete code of life based on four distinct parts of knowledge: "revealed knowledge" (i.e the *Qur'an*), then the existing practices of the society as adopted by the Prophet (peace be upon him) and his actual sayings (i.e the *Sunnah* and the *Hadith*) subsequent analogical deductions, interpretations and the consequent consensus of the community or doctors of religion (i.e *Ijma'*).<sup>17</sup>

Aslam Haneef has observed there is no dispute concerning matters where there are clear injunctions in the *Qur'an* and *Sunnah*, but the interpretation of certain terms and concepts found in the *Qur'an* and *Sunnah*.<sup>18</sup> The interpretations like *riba*; some economists discuss *riba* in the context of bank or financial interest only, and some see it as unearned gain, while others conceive it as any form of exploitation.<sup>19</sup> Due to the failure of articulating the insights of the economic ideas, a conceptual tension<sup>20</sup> emerges due to interpolation of modern key words and concepts in economics to the economic thought of Muslims in the past. For example an article by Paul Oslington, in which he criticizing Ghazanfar and Islahi's article on the *Economic Thought and*

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<sup>16</sup> This is according to Nevzat Yalcintas, who was the Head of Research Division of the Islamic Research and Training Institute of the Islamic Development Bank. See his statement in *Problems of Research in Islamic Economics: A Symposium Jointly Held With The Islamic Research and Training Institute Islamic Development Bank* (Amman: The Royal Academy for Islamic Civilization Research, April 1986), 26.

<sup>17</sup> Muhammad Abdul Manan, *Islamic Economics: Theory and Practice*, revised edition. (Cambridge: Hodder and Stoughton, 1986), 14.

<sup>18</sup> Aslam, *Contemporary*, 2-3.

<sup>19</sup> Ibid.

<sup>20</sup> See the recent study on the foundational problem of "Islamic Economics" by Muhammad Akram Khan, *What is Wrong With Islamic Economics?* (Cheltenham, UK: Edward Elgar, 2013).

*Religious Thought* (1990), when both of them look at al-Ghazālī's writings through a modern Western lens that blocks out the eleventh century, non-European nature of the texts, and as if al-Ghazālī was a late twentieth century professor of economics at an American University!<sup>21</sup> However, in the same book, both the authors had defended their article by justifying their position that as for the case of al-Ghazālī's thought on economics, any discussion of the history of ideas is intrinsically interpretative, and there is no need to be universal agreement; indeed, they argued that the past is linked to the present through interpretation.<sup>22</sup>

Also, it is quoted that the "price theory in the microeconomic analysis" is implicitly mentioned in the writings of Ibn Taimiyyah (d. 728 A.H./1328 A.C.).<sup>23</sup> On the contrary, the term "price theory" and "microeconomic analysis" are value loaded terms ingrained in the modern economy that need critical evaluation. The imposition of alien key terms and concepts not in its proper places is a manifestation of loss of *adab* towards the intended knowledge and concept.

In this regard, Wan Mohd Nor Wan Daud has profoundly expounded the importance of put things into its proper places, drawing a parallel between Syed Muhammad Naquib al-Attas' profound concept of *adab*<sup>24</sup> and consistent theoretical

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<sup>21</sup> See Paul Oslington, "Economic Thought and Religious Thought: A Comment on Ghazanfar and Islahi," *Medieval Islamic Economic Thought: Filling The "Great Gaps" in European Economics*, ed. S.M. Ghazanfar (London: RoutledgeCurzon, 2003), 45-52;

<sup>22</sup> Ibid.

<sup>23</sup> Aslam, *Contemporary*, 5.

<sup>24</sup> *Adab* is "the recognition and acknowledgement, progressively instilled into man, of the proper places of things in the order of creation, such that it leads to the recognition and acknowledgement of God in the order of being and existence". See Muhammad Naquib al-Attas, *The Concept of Education in Islām* (Kuala Lumpur: ABIM, 1980), 26. Wan Mohd Nor has been extensively commented and deliberated the philosophy and practice of al-Attas on the concept of *adab* and many other key thoughts his major works, for example *The Beacon on the Crest of a Hill, A Brief History and Philosophy of the International Institute of Islamic Thought and Civilization* (Kuala Lumpur: ISTAC, 1991), *Penjelasan Budaya Ilmu (The Culture of Knowledge: An Elaboration)* (Kuala Lumpur: DBP, 1991; reprinted Kuala Lumpur: DBP, 1995; reprinted Kuala Lumpur: Pustaka Nasional, 2007), *The Educational Philosophy and Practice of Syed Muhammad Naquib al-Attas: An Exposition of the Original Concept of Islamization* (Kuala Lumpur: ISTAC, 1998), *Pembangunan di Malaysia: Ke Arah Satu Faham Baru Yang Lebih Sempurna (Development in Malaysia: Towards a Better Understanding)*, (Kuala Lumpur: ISTAC, 2001; reprinted Kuala Lumpur: Jabatan Akidah dan Pemikiran Islam, Akademi Pengajian Islam, Universiti Malaya, 2005) and many other in the form of articles.

and practical concern about the notion of right place with that of the great Catholic reformer Thomas Aquinas. He argued that the latter not at all influenced the former.

According to him, one of Aquinas's most profound insights, as analyzed by Étienne Gilson, is "to insist that everything especially philosophical matters should be put in the right place; otherwise it is considered as lost in the sense that it is placed somewhere else, can be theoretically found and, correctly put it back in its original and proper place but it becomes an entirely different things altogether."<sup>25</sup>

The above brief background<sup>26</sup> led to a sense of curiosity on the legitimacy status of *Islamic economic*, is it a new development within the realm of academic sphere or is it a social revolution, in light of the overwhelming obsession on the idea of *Islamization of economics* as propagated since 1976.<sup>27</sup> There are two opposing poles with one side of the *Islamization of economics* movement that was initiated by a group of Muslim scholars and activists during the initial period of the so-called revival of Islām in early twentieth century especially those who came from the Islamic movement background,<sup>28</sup> while on the other side they are the Muslim thinkers and philosophers, from Jamal al-Dīn al-Afghānī (d. 1897 A.C.), Sayyid Ahmad Khān (d. 1898 A.C.), Muḥammad 'Abduh (d. 1905 A.C.), Muḥammad Iqbāl (d. 1938 A.C.), Fazlur Rahman (d. 1988 A.C.),<sup>29</sup> who revealed no interest in the *Islamization of economics*,<sup>30</sup> including the current living renowned philosophers like Syed Hussein Nasr and Syed Muhammad Naquib al-Attas—although it is said that

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<sup>25</sup> See *Knowledge, Language, Thought and The Civilization of Islām: Essays in Honor of Syed Muhammad Naquib al-Attas*, eds. Wan Mohd Nor Wan Daud & Muhammad Zainiy Uthman, (Kuala Lumpur: UTM, 2010), 49-50.

<sup>26</sup> Including also the criticisms by Masudul Alam Choudhury, Ziauddin Sardar and Timur Kuran in early phase of the Islamic economics development as captured by Nejatullah Siddiqi; see Muḥamad Nejatullah Siddiqi, "Islamic Economic Thought: Foundations, Evolution and Need Direction," *Readings in Islamic Economic Thought*, eds. AbulHasan M. Sadeq & Aidit Ghazali (Petaling Jaya: Longman Malaysia, 1992), 14-32.

<sup>27</sup> Refer to the First International Conference on Islamic Economics, held in Mecca in 1976.

<sup>28</sup> See for example Abul 'Ala Maududi, Kurshid Ahmad etc.

<sup>29</sup> Fazlur Rahman did produce one article on Islamic economics. In the article, he criticized that the notion that "the full expression of an individual, according to Islam, is obviously not just an economic expression." His stand on *ribā* is also the controversial one, he said, "If capital has a share of the capital in the production of wealth, bank interest must be allowed"; See Fazlur Rahman, *Economic Principles of Islam*, Islamic Studies, 8:1 (1969), 1-8.

<sup>30</sup> Kuran, *Mammon*, 90.

Iqbal when he was twenty-six years of age he wrote a book called *Ilm-ul Iqtasad* (Science of Economics)—but later he abandoned the idea that economics is a key instrument of change.<sup>31</sup>

Notwithstanding that, the insistence of the revivalism of Islamic economics to look and base on the principle of *Shari'ah* as their foundation has been criticized as being reckless.<sup>32</sup> While all of them stress that the *Shari'ah* is a primary source of Islamic economics, none of them can point what precisely is its content.<sup>33</sup>

There are pertinent questions that this study is interested to inquiry for the purpose of establishing a foundation (*uṣūl*) for the field what could we call as *Islamic economics*; firstly whose thought among the Muslim scholars that is worth and relevant to be studied their economic insights that these scholars can be the guiding ideas for the Muslims facing the economics problems nowadays; secondly what the thoughts are that can be learned and studied, that the thoughts have been proved its sustainability and influence throughout the ages; and thirdly how could we articulate and relate their thoughts with the modern complicated instruments of economics without compromising the essential elements?

### 1.3 The Problem Statement

It is not an exaggeration that numerous attempts<sup>34</sup> have been made in order to comprehend the underlying economic problems or issues<sup>35</sup> of modern society and

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<sup>31</sup> Ibid.

<sup>32</sup> Akram, *Islamic*, 67.

<sup>33</sup> Ibid.

<sup>34</sup> See Khurshid Ahmad, "Islamic Economics Based on Human Values", *Anthology of Islamic Banking* (London: Institute of Islamic Banking and Insurance, 2000), 32-33.

<sup>35</sup> It is said that: "The economic framework which has been developed during the last three or four decades is unable to tackle the problems. There is mass poverty and increasing disparity between

what is or should be the best remedy; among which is to include studying the economic thought of selected scholars in Islām. Most will admit that any attempt to analyze the problems using the Islamic lens will end up under the ambience of mainstream economics<sup>36</sup> buttressed predominantly by the secular worldview. Aslam Haneef has noticed in his study<sup>37</sup> of selected prominent contemporary Muslim economists that all of them stressed the importance of freeing Islamic economics from the western worldview. As the discussion on the legitimacy of “Islamic economics” as a single economic system in the modern economic system is continually argued, it is still important to study the economic thought of the Muslims scholars in the past especially during their time which is regarded as the peak of Islamic civilization. Understanding the fact that it is difficult to find a dedicated work by the scholars in the past on the topic of economics, it is still necessary to examine the contributions of each scholar from the point of view of what they have written about questions commonly regarded as economic.

The prevalent thought in the Islamic economics is the insistence upon the “Sharī‘ah” as conceived strictly and mainly according to the four major sources of *Sharī‘ah* which are the *al-Qur’ān*, the *Ḥadīth*, the *Ijmā‘* and the *Qīyās*. Indeed, the thought has in fact evolved as a dogma that whatever comes to hand in the name of Islām from any source, found a place in Islamic economics under the overriding phrase of “injunctions of the *Sharī‘ah*”.<sup>38</sup> The genesis and influence of the thought could be possibly traced its legitimacy from the rationalization of *Sharī‘ah* paradigm

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nations and regions; and the irrational use of non-renewable resources is posing a threat for civilization. There is incongruity between technology and developmental requirements. The production and consumption processes are unsuitable vis-à-vis the environmental needs of society. There is exploitation of the poor and affliction by the rich and powerful etc.”, *Ibid*; It is also argued that “the crisis of economics is as certain as the absence of a generally accepted solution to it, and yet the issue is incorrectly envisioned”. See Homa Katouzian, *Ideology and Method in Economics* (London: The Macmillian Press Ltd., 1980), 4.

<sup>36</sup> See Muhammad Anas Zarqa, “Islamization of Economics: The Concept and Methodology”, *J.KAU: Islamic Economics*, Vol. 16, No. 1, 3-42; Masudul Alam Choudhury, “A Critique of Economic Theory and Modelling”, *Social Epistemology*, 25:4 (2011), 423-446; Ziauddin Sardar, *Islamic Futures: The Shape of Ideas to Come* (London: Mansel, 1985), 201.

<sup>37</sup> He studies the economic thought of notable contemporary Muslim economists: Muhammad Abdul Manan, Muhammad Nejatullah Siddiqi, Syed Nawab Haider Naqvi, Monzer Khaf, Sayyid Mahmud Taleghani and Muhammad Baqir al-Sadr. See Mohamed Aslam Haneef, *Contemporary Islamic Economic Thought: A Selected Comparative Analysis* (Kuala Lumpur: Ikraq, 1995).

<sup>38</sup> Muhammad Akram Khan, *What is Wrong with Islamic Economics* (Cheltenham, UK: Edward Elgar Publishing Ltd., 2013), 67.

based on the writing of Muhammad Arif, *Towards the Sharī'ah Paradigm of Islamic Economics: The Beginning of Scientific Revolution*.<sup>39</sup>

In this study, although we do not entirely reject the validity of their view on the *Sharī'ah* as the underlying basis, we do, however, claim greater validity in the underlying thought of the discipline of Islamic economics according to higher levels of interpretation and consciousness as expounded by the people of discernment like the philosophers (*ḥukamā'*), the theologians (*mutakallimūn*), and the higher *Ṣufīs* based on the *Qur'ān*.

The excellent literature of *Kitāb al-Muḍārabah* (the Book of Profit Sharing or Partnership in Capital and Labour) by al-Sarakhsī, the multitalented *Hanaḥī* legal theorist (*uṣūlī*), chief scholar (*imām 'ālim*), theologian (*mutakallim*), the proof (*ḥujjah*), the debater (*munāẓir*), the learned scholar (*'allāmah*), the people of *ḥadīth* (*muḥaddith*), and *mujtahid* is chosen for study and to be translated into English language because it contains extensive and analytical thought on how the *muḍārabah* could be understood and subsequently practiced under the ambit of the coherent understanding of the *Sharī'ah*, that this *muḍārabah* unifying the intellect and skill with wealth which are two distinctive domains for the noble purpose of achieving a sound cooperation and dignified investment. This will involve two groups, which are the investor but lack of expertise or skill in investment together with the skillful entrepreneur but limited of the capital. The uniting of the two groups under the *muḍārabah* contract can be a feasible alternative mode of managing wealth at

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<sup>39</sup> See Muḥammad Arif, "Towards the Sharī'ah Paradigm of Islamic Economics: The Beginning of a Scientific Revolution", *The American Journal of Islamic Social Sciences*, Washington, (2:1), July 1985, 79-99. Muhammad Ariff has advocated that Islamic economics is a matured and normal science, and the *Sharī'ah* is the paradigm for the discipline. His notion of "paradigm" has been greatly influenced by Thomas Kuhn's *The Structure of Scientific Revolution* that throughout the history of modern economics there were no less than six revolutions or paradigmatic changes; namely; Mercantilist paradigm, Classical paradigm, Neo-classical paradigm, Marxian paradigm, Keynesian paradigm, and Neo-Classical counter revolution. According to Arif, the *Sharī'ah* can be the seventh revolution for bringing a new paradigm of Islamic economics. However Ugi Suharto has criticized it on the basis that if *Sharī'ah* is the paradigm of the Islamic economics, it means *al-Qur'ān* and tradition of the Prophet that being a basis for the *Sharī'ah* are deemed to be a subject of constant changing. See Ugi Suharto, "A Critical View of the Application of Kuhnian Paradigm for Islamic Social Sciences-With A Special Focus on Islamic Economics", (M.A. theses, International Islamic University Malaysia, April, 1993).

individual as well institutional level in the spirit of replacing the injustice of interest based system that only favor the haves, not supportive for the have nots. This study is important in the context of reviving the true meaning and of infusing the purpose of economics in general that seems is becoming neglected.

#### 1.4 Literature Review

To begin, the study on the general framework of the economic thought of Muslim scholars is still very limited. The current growing immense studies on the economics thought have yet seemed to show the unity and coherent of the framework. Among the pioneers are Muhammad Akram Khan and Nejatullah Siddiqi who have earlier produced an extensive list of Muslim economic literatures on various topics including on *mushārah* (Profit and Loss Sharing or Partnership on Capital and Labour) and *muḍārah* written in Arabic, Urdū and English as early as in 1953.<sup>40</sup> This writing indicates the extensive works on the thought of Muslims jurists, philosophers and *sufis* that are yet to be explored.

‘Abdul ‘Azim Islahi was the earlier who made a thorough assessment on the development of research of history of Islamic economic thought that for the past thirty years (1970s-2000s) it has tremendously enriched the discipline with immense literature.<sup>41</sup> He pointed out that the impact of revivalism in Islamic economic thought has exerted the mainstream economic to the extent that the study of the history of Western economic thought will be incomplete if the contributions of the Islamic

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<sup>40</sup> See Muhammad Akram Khan, *Islamic Economics: Annotated Sources in English and Urdu*, 2 Vols., (Leicester: The Islamic Foundation, 1983), 1: 169-171; Nejatullah Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature* (Leicester: The Islamic Foundation, 1981; reprinted 1988), 97-98. Siddiqi also produced a particular work on *Muḍārah*, see Nejatullah Siddiqi, “Some Economic Aspects of Muḍārah”, *Review of Islamic Economics, Journal of the International Association for Islamic Economics*, Vol. 1., No. 2., (1991).

<sup>41</sup> Azim, *Thirty Years*, 11. He is also a prolific scholar in studying the economic thought of Muslims scholars in the past, for instance, al-Imām al-Ghazālī, Ibn Taymiyyah, Ibn Qayyim, Ibn Khaldūn, Shah Wali Allah al-Dihlāwī and Sir Syed Aḥmad Khān.

thoughts are not included.<sup>42</sup> However, despite the growing awareness of the contribution of Islamic economic thoughts nowadays as pointed by ‘Azim, if a random survey is made on the mainstream economic textbooks, there is still a gap on the acknowledgement and recognition of the contribution of Islamic thoughts.

Among the things that are recommended for the future direction of research in the history of Islamic economic thought are; firstly to expand the research and translation of the works of other scholars other than the commonly and repeatedly studied such as al-Ghazālī, Ibn Taymiyyah, and Ibn Khaldūn;<sup>43</sup> secondly to investigate further the development and refinement of the economic ideas and institutions in the history of Muslims that has yet to be explored;<sup>44</sup> thirdly to discover the economic thought erstwhile Andalus, West Africa, Turkey, Persia and South East and Far East Asia beyond the predominantly confined region, Middle East. This also means the study should be extended to other literatures written in Islamic languages such as Turkish, Persian, Urdu, Malay and other Muslim spoken languages.<sup>45</sup> The ultimate aim of the systematic and uninterrupted writing of the history of economic thought in Islām is eventually to provide textbooks for the growing demands and interest of that subject particularly at the tertiary level.

There have been numerous studies on *muḍārabah*, especially in contemporary period (*mu‘āṣir*) that it takes comparative study of legal opinions from all the major schools. For example ‘Abdul Raḥman al-Jazīrī in his work *Kitāb al-Fiqh ‘alā al-Madhhāhib al-Arba‘ah*,<sup>46</sup> Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa*

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<sup>42</sup> Ibid., 11-12.

<sup>43</sup> Ibid., 13.

<sup>44</sup> Ibid., 14.

<sup>45</sup> Ibid.

<sup>46</sup> See ‘Abdul Raḥman al-Jazīrī, *Kitāb al-Fiqh ‘alā al-Madhhāhib al-Arba‘ah*, 5 Vols., (Dār Iḥyā’ al-Tūrath al-‘Arabī, 1986), 3: 34- 61.



*ādillatuh*,<sup>47</sup> ‘Abdullah bin Ḥamd bin al-‘Uthmān al-Khuwayṭir, *al-Muḍārabah fī al-Sharī‘ah al-Islāmiyyah Dirāsah Muqāranah bayna al-Madhhāhib al-Arba‘ah*<sup>48</sup> etc.

The emergence of a more specialized study based on a comparative and historical study based on the major Islamic law schools (*madhhāhib*) in Islām particularly in English on the topic of partnership is produced by Abraham L. Udovitch, *Partnership and Profit in Medieval Islam*<sup>49</sup> which is considered as the earliest work in the field. Murat Çizakça has also produced a work of the same comparative and historical genre, but it is confined to the experience of the Ottoman Caliphate which is, *A Comparative Evolution of Business Partnerships: The Islamic World and Europe, With Specific Reference to the Ottoman Archives*.<sup>50</sup> In addition of the two works, a work by Imrān Aḥsan Khān Nyazee, *Islamic Law of Business Organization: Partnership*<sup>51</sup> is considered more analytical because he approaches the classical teaching on the partnership and how it could address the modern issue of partnership in the form of corporation.

Besides the literatures produced by the accomplished scholars as indicated above, the rising of the Islamic banking and finance—as an offshoot of Islamic economics—has forced the study of empirical aspects of *muḍārabah* so that it could be applied at the institutional level.

Despite all that development, as far as this study is concerned, there is no dedicated study on *muḍārabah* that is produced by a single scholar such as al-Sarakhsī in English medium has been done. Perhaps, the only work by al-Sarakhsī

<sup>47</sup> See Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Ādillatuh*, 8 Vols., (Damascus: Dār al-Fikr, 1989), 4: 836- 875.

<sup>48</sup> See ‘Abdullah bin Ḥamd bin al-‘Uthman al-Khuwayṭir, *al-Muḍārabah fī al-Sharī‘ah al-Islāmiyyah Dirāsah Muqāranah bayna al-Madhhāhib al-Arba‘ah*, ed. Ṭāriq bin Muḥammad al-Khuwayṭir, (Riyād: Dār Kunūz Ishbīliyyā, 2006).

<sup>49</sup> See Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970).

<sup>50</sup> See Murat Çizakça, *A Comparative Evolution of Business Partnerships: The Islamic World and Europe, With Specific Reference to the Ottoman Archives*, (Leiden: Brill, 1996).

<sup>51</sup> See Imrān Khān Nyazee, *Islamic Law of Business Organization: Partnership* (Kuala Lumpur: The Other Press, 2006, reprinted. Islamabad: IIII, 1997).

that has been widely studied in the realm of economics is the Book of Earnings (*Kitāb al-Kasb*)<sup>52</sup> that was originally a lecture by al-Shaybānī (d. 189 A.H./804 A.C.) and later narrated and transmitted by his student Muḥammad ibn Samā'ah al-Tamīmī,<sup>53</sup> and it is this narration and transmission that formed the basis of the commentary (*sharḥ*) on it by al-Sarakhsī, and then he has embedded his commentary in *al-Mabsūṭ*.<sup>54</sup> It is found that al-Sarakhsī's thoughts and works are immensely studied in Turkish language as implied by the extant of discussion in two international commemorative seminars on al-Sarakhsī so far,<sup>55</sup> but this study is limited to resources only in English and Arabic.

## 1.5 The Objectives of the Study

- First and foremost, this study concentrates on the primary source, which is the Arabic text of *Kitāb al-Muḍārabah* in *al-Mabsūṭ* that has not been translated and analysed before. It is aided by analysis on his thought on theological, legal and ethical matters that encompassing the economics matter. Comparison with the original work *al-Aṣl* by al-Shaybānī on particular chapter on *muḍārabah* is made because in order to comprehend the progress and development of the discussion between the original work, *al-Aṣl* and the commentary work, the *al-Mabsūṭ*. Studies on al-Sarakhsī's thought and contributions are still limited, moreover the study of his economic thought. Since the subject matter of *muḍārabah* is predominantly discussed under the domain of Islamic law, it is indeed suggested to stick where al-Sarakhsī's position legally pertaining to the *muḍārabah* is established.

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<sup>52</sup> See the recent publication; Muḥammad ibn al-Ḥasan al-Shaybānī, *Kitāb al-Kasb*, trans. Adi Setia, *The Book of Earning A Livelihood* (Kuala Lumpur: IBFIM, 2011).

<sup>53</sup> His full name is Abū 'Abdillāh Muḥammad ibn Samā'ah ibn 'Ubaydillah al-Tamīmī al-Kūfī (d. 233/848). See Muḥammad bin Ishaq al-Nadīm, *al-Fihris* (Beirut: Dār al-Ma'rifah, n.d) 289.

<sup>54</sup> See al-Sarakhsī *al-Mabsūṭ*, 30 Vols., (Beirut: Dār al-Ma'rifah, 1993).

<sup>55</sup> Refer to the 900. *Ölüm yıldönümü münasebetiyle büyük İslam hukukçusu, Şemşü'l-Eimme es-Serahsi armagani* (Ankara: A.Ü. İlahiyat Faculty 1965) and the *International Symposium on al-Sarakhsi*, 15-17 Ekim/ October 2010, Sakarya/ Türkiye.

- In an overall picture, the *muḍārabah vis-à-vis commenda* is known as a sleeping partnership, is able to create an eco-system of society that mutually helps each other in acquiring some economics return based on mutual contribution. This is actually already a principle that is embedded in society, regardless of Muslims or non-Muslims societies, which require mutual help. Notwithstanding that, the subtle distinct between both of the societies is perhaps the underlying purpose and philosophy, which for Muslims, it is divinely purpose for the sake of *ta'āwun* and *takāful* for the sake of God's blessing. In an overall picture, the *muḍārabah vis-à-vis commenda* is known as a sleeping partnership, is able to create an eco-system of society that mutually helps each other in acquiring some economics return based on mutual contribution.

- To analyze from the text of *al-muḍārabah* of al-Sarakhsī pertaining to economics matters, with reference to the primary function of individual man (*insān*) within the general context of economic activities of partnership, the usage of multi currencies, the spirit of cooperation, the mutual respect, his concept of justice and wealth. By definition, economics are an activity that involve a management of money, labor and profit between individuals within a community, as such the study of *muḍārabah* by al-Sarakhsī in his voluminous *Kitāb al-Mabsūṭ* will be the special reference of the application of the how the Muslims conducted their economics based on the guidance underlined by *Sharī'ah* and *adab (akhlāk)*.

Due to the incoherent underlying thought of the contemporary Islamic economics, it fails to acknowledge and recognize the proper place of individual in the general framework of economics, on the contrary it stresses the application of the *muḍārabah* concept at the level of societal (*ummah*) and institution. The failure has steered into another consequential effect which the individuals have lost their knowledge, art and skill of mastering the commercial transaction at all cost, which in the past—and will be exemplified in the work of al-Sarakhsī—the mastering of commercial transaction, from understanding its concept to the application of it, for

examples the drafting a legal document (*'aqd*), managing the dispute, arranging the fair profit, which all these were ingrained in the personality of an individual Muslims in the past. It is not an exaggeration to claim that people of the past were truly master of the commercial transaction until the modern economy fragmented the orientation and practice of it, from individual centric to institutional centric.

## **1.6 The Limitation of The Study**

This study is limited to the analysis and translation the first chapter on *muḍārabah*, entitled the *Kitāb al-Muḍārabah*, which consists of thirteen pages in the *al-Mabsūṭ*. It is perhaps accurate to say that the gradual broadening of the horizons of *muḍārabah* as discussed in the work of *al-Mabsūṭ* by al-Sarakhsī was a natural consequence to the expansion of Islām and the corresponding need to bring the partnership type of business into some relation with the new reality.

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