

**COMPARISON OF AGRICULTURE COOPERATION CONCEPT
(MUZARA'AH AND MUSAQAH) PERSPECTIVE IMAM MADZAB**

THESIS

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STATE ISLAMIC UNIVERSITY MALANG

**2018COMPARISON OF AGRICULTURE COOPERATION CONCEPT
(MUZARA'AH AND MUSAQAH) PERSPECTIVE IMAM MADZAB**

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SHARIA BUSINESS LAW DEPARTMENT

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2018

STATEMENT OF AUNTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declairs that the theses and tittle :

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APPROVAL SHEET

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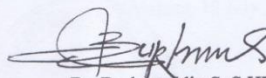
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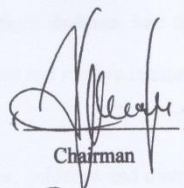
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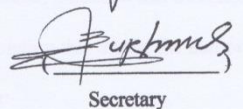
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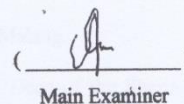
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Malang, 18 July 2018
Author,

Nala Tartila

TRANSLATION GUIDANCE

In this scientific opus, there is some terms or sentences that comes from Arabic language, but written in letter. The written is based on the rule as follows:¹

A. Consonant

| | | | |
|---|------|---|-----------------------|
| ا | = a | ض | = dl |
| ب | = b | ط | = th |
| ت | = t | ظ | = dh |
| ث | = ts | ع | = ' (comma facing up) |
| ج | = j | غ | = gh |
| ح | = h | ف | = f |
| خ | = kh | ق | = q |
| د | = d | ك | = k |
| ذ | = dz | ل | = l |
| ر | = r | م | = m |
| ز | = z | ن | = n |
| س | = s | و | = w |
| ش | = sy | ه | = h |
| ص | = sh | ي | = y |

The hamzah (ء) which is usually represented by and *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ("), as oppose to a comma (,) which replaces the “ ع ”.

¹ Berdasarkan Buku Pedoman Penulisan Karya Ilmiah Fakultas Syariah. Tim Dosen Fakultas Syariah UIN Maliki Malang, *Pedoman Penulisan Karya Ilmiah*, (Malang: Fakultas Syariah UIN Maliki, 2012), h. 73-76.

B. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

| | | |
|-----------------------|-------------------|--------------|
| Elongated (a) vowel = | â for example قال | beomes qâla |
| Elongated (î) vowel = | î for example قيل | becomes qîla |
| Elongated (u) vowel = | û for example دون | becomes dûna |

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “I”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و for example قول becomes *qawlun*

Diftong (ay) = ي for example خير becomes *khayrun*

C. Ta' marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillah*.

Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the phrase of lafadh jalalah (speaking of God) which is in the middle of a sentence and supported by and (idhafah), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said....
2. Al-Bukhâriy explains in the prologue of his book....
3. *Masyâ’ Allâh kâna wa mâ lam yasya’ lam yakun.*
4. *Billâh ‘azza wa jalla*

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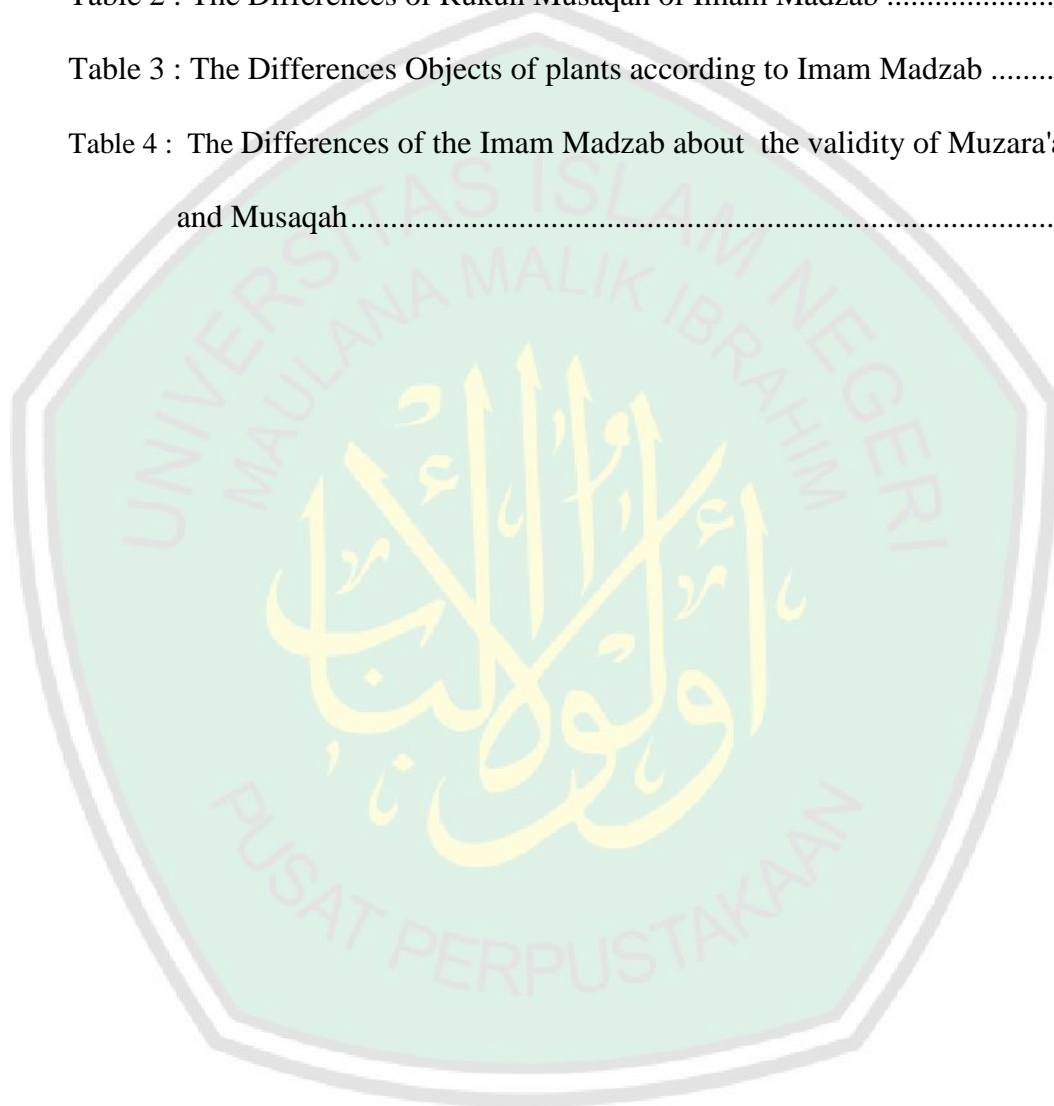
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ABSTRAK

Nala Tartila, 13220075, **Perbandingan Konsep Kerjasama Pertanian (Muzara'ah dan Musaqah) perspektif Imam Madzab**. Skripsi Jurusan Hukum Bisnis Syari'ah, Fakultas Syari'ah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing : Dr. Burhanuddin Susanto, S.HI., M.Hum.

Kata Kunci : *Muzara'ah, Musaqah, Imam Madzab.*

Dewasa ini ekonomi syari'ah semakin berkembang di Indonesia. Berbagai macam bentuk kerjasama semakin beragam salah satunya adalah kerjasama di bidang pertanian. Luasnya tanah yang dimiliki seseorang belum tentu bisa diolah dengan benar begitupun dengan sebaliknya seseorang yang memiliki kemampuan mengolah tanah belum tentu memiliki lahan untuk diolah. Prinsip saling melengkapi inilah yang kemudian menjadi peluang kerjasama bagi kedua belah pihak dalam sebuah kerjasama pertanian Muzara'ah dan Musaqah. Melalui pendapat Imam Madzab yang mengemukakan persamaan dan perbedaan bentuk Muzara'ah dan Musaqah dalam konsep klasik serta penjelasan mengenai perbandingan akad muzara'ah dan musaqah antara Imam Madzab dengan Kompilasi Hukum Ekonomi Syari'ah (KHES).

Dalam penelitian ini, terdapat dua rumusan masalah, yaitu: 1) Bagaimana konsep kerjasama pertanian (Muzara'ah dan Musaqah) perspektif Imam Madzab? 2) Bagaimana konsep muzara'ah dan musaqah dalam Kompilasi Hukum Ekonomi Syariah (KHES)? Penelitian ini merupakan jenis penelitian hukum normatif dengan menggunakan pendekatan perbandingan (comparison approach). Adapun metode analisis data yang dipakai adalah analisis data deskriptif kualitatif.

Hasil penelitian ini menunjukkan bahwa menurut adanya perbedaan konsep sehingga mempengaruhi pendapat mengenai validitas keabsahan akad Muzara'ah menurut Imam Madzab. Imam Hanafi dengan tegas menyatakan akad tersebut tidak sah. Sedangkan, Imam Maliki dan Imam Hambali menyatakan bahwa akad Muzara'ah adalah sah hukumnya. Hal berbeda diungkapkan oleh Imam Syafi'i bahwa konsep muzara'ah harus diikuti oleh musaqah. Lain halnya dengan Musaqah dimana semua Imam Madzab sepakat atas sahnya akad Musaqah. Dalam penelitian ini dijelaskan pula perbandingan konsep muzara'ah dan musaqah Imam Madzab dengan Kompilasi Hukum Ekonomi Syari'ah (KHES).

ABSTRACT

Nala Tartila, 13220075, **Comparison of Concept of Agricultural Cooperation (*Muzara'ah* and *Musaqah*) perspective of *Imam Madzab***. Thesis Department of Business Law Shari'ah, Faculty of Shari'ah, State Islamic University (UIN) Maulana Malik Ibrahim Malang, Advisor: Dr. Burhanuddin Susanto, S.HI., M. Hum.

Keywords: *Muzara'ah*, *Musaqah*, *Imam Madzab*.

Currently sharia economy is growing in Indonesia. Various forms of cooperation increasingly diverse one of them is cooperation in agriculture. The extent of land owned by a person can not necessarily be processed properly as well as with the contrary someone who has the ability to cultivate the land does not necessarily have the land to processed. The principle of complementarity is then the opportunity for cooperation for both parties in a cooperation of agriculture *Muzara'ah* and *Musaqah*. Through the opinion of *Imam Madzab* who expresses the similarities and different forms of *Muzara'ah* and *Musaqah* in the classical concept as well as an explanation of the application of *Muzara'ah* and *Musaqah* between *Imam Madzab* and Compilation Of Sharia Economic Law.

In this research, there are two formulation problem, that is: 1) How is the concept of agricultural cooperation (*Muzara'ah* and *Musaqah*) perspective of *Imam Madzab*? 2) How does the concept of *Muzara'ah* and *Musaqah* according to Compilation of *Syari'ah* Economic Law? This study is a type of normative legal research using a comparison approach (comparison approach). The data analysis method used is descriptive qualitative data analysis.

The results of this study indicate that according to the existence of different concepts so as to affect the opinion about the validity of the validity of *Muzara'ah* contract according to *Imam Madzab*. *Imam Hanafi* firmly declared the contract to be invalid. Meanwhile, *Imam Maliki* and *Imam Hambali* stated that the *Muzara'ah* covenant is lawful. Different things revealed by *Imam Syafi'i* that the concept of *muzara'ah* should be followed by *musaqah*. Another case with *Musaqah* where all the *Imam Madzab* agreed on the legitimacy of *Musaqah* contract. In this research explain about how the differences *muzara'ah* dan *musaqah* between *Imam Madzab* and Compilation of Sharia Economic Law.

ملخص البحث

نال ترتيلا، 13220075، مقارنة المفاهيم المزارعة و المصادقة عند إمام المذهب الأربعة. شعبة الحكم التجارة الشرعي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية مالانج. مشرف: الدكتور برهان الدين الماجستير.

الكلمة الرئيسية: مزارعة، مصادقة، إمام المذهب.

في هذا اليوم، قد منى الإقتصادية الشرعية في إندونيسيا. و فيها التعاون المتنوعة أحدها هي التعاون في مجال الزراعة. مدى الأرض لأحد لا يكاد ان يكون إعادة تصنيعها جيدا. و كذلك عكسها. مبادئها أن الإكمال بينهما الذي يؤسس التعاون الزراعة أو ما تسمى بالمزارعة و المصادقة. بتقديم الأراء الأمم المذهب التي تشتمل المساواة و المعارضة في شكل المزارعة و المساواة في المفاهيم التقليدي مع البيان في تطبق عقد المزارعة و المصادقة في عند تجميع الشريعة الاقتصادية.

في هذا البحث مسألتان و هما: (1) كيف مفهوم التعاون الزراعة (المزارعة و المصادقة) عند رأي إمام المذهب؟ (2) كيف مفهوم التعاون الزراعة (المزارعة و المصادقة) عند تجميع الشريعة الاقتصادية؟ هذا البحث هو البحث الحكمي المعياريا بإستخدام مدخل البحث التقريرين. و أما الطريقة تحليل البيانات في هذا البحث هو تحليل البيانات الوصفي النوعي.

وجدنا الإنتاج من هذا البحث أن الخلافة الفهم حتى يؤثر الرأي عن صحة عقد المزارعة عند أئم المذهب. قال إمام الحناني أن العقد صحيحا. و أما الإمام المملكي و الحنابلة قالا أن حكمها صحيح. و اختلافا عند الشافعي ان المزارعة لابد ان يتبعها مع المصادقة. و المصادقة هي يتفقها جميع الإمام أن عقدها صحيح. و في هذا البحث قدمت التطبيق و الشكل من المزارعة و المصادقة خاصة فبين كهنة المذهب الأربعة و تجميع الشريعة الاقتصادية.



CHAPTER I

INTRODUCTION

A. Background of Research

Man is a social being. Living in community,¹ working together, and helping each other is the human nature from birth in the world. Coexistence in peace and quiet is the goal of every human life. from Islamic point of view, man has two main tasks in his life. First, the duty as a servant of Allah (*Ibadatullah*). Second, the task as a substitute or successor of the leadership baton (*khalifah al ard*). Both goals are realized by running the Islamic *Syari'ah* that regulates the relationship between man and god (al worship), and the relationship between humans with each other (al

¹ Dalam *fiqhu al muyassar* Imam sayyid tanthawi menjelaskan bahwa manusia tidak dapat hidup tanpa bekerjasama dengan lainnya, karena Allah menciptakan manusia dalam kehidupan ini dalam keadaan saling membutuhkan, sebagian manusia membantu sebagian yang lain, sehingga mereka tidak mampu hidup sendiri tanpa lainnya. Oleh karena itu, adanya kerjasama antara mereka adalah keniscayaan baik dalam bentuk jual beli atau selainya.

muamalah).² The *muamalah* is revealed to be role of the game of human in social life. In addition to having a wide and flexible coverage, *muamalah* not discriminate between Muslims and non-Muslims. This fact is implied in a phrase narrated by Sayyidina Ali that in the field of *muamalah* their obligations are our duty and their rights are ours.

Work is one form of social relationships that occur between people. The working relationship aims to find the benefits that can be used for living expenses. In Islamic Work Ethics is a benchmark or view of a Muslim's belief that work has to do with the purpose of life, that is to obtain the pleasure of Allah SWT.

In another phrase, the work ethic in Islam is the work that a Muslim believes not only to glorify him, or to manifest his humanity, but also as a manifestation of charity, because he has a high value of worship, the rewards of work in Islam are more or less equal with Faith. Among the work ethic attitudes, for example are diligent in work, sincere, honest, committed, and do not know the word surrender in work.³

In one verse of the Qur'an, *Allah Subhanahu Wata'ala* advised all mankind to help each other in goodness.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْمِلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهَرِ الْحَرَامَ وَلَا الْهَدْيَ وَلَا
الْقَلَائِدَ وَلَا آمِينَ الْبَيْتِ الْحَرَامَ يَبْتَغُونَ فَضْلًا مِنْ رَبِّهِمْ وَرِضْوَانًا ۖ وَإِذَا
حَلَلْتُمْ فَاصْطَادُوا ۖ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ الْمَسْجِدِ

² KH. MA. Sahal Mahfudh, *Nuansa Fiqh Sosial*, cet-IV, (Yogyakarta, Lkis, 2014), p. xxxii

³ Mardani, *Hukum Bisnis Syariah*, (Jakarta: Kencana, 2014), p 48

الْحَرَامَ أَنْ تَعْتَدُوا ۖ وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ
وَالْعُدْوَانِ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۚ

O you who believe! do not violate the signs appointed by Allah nor the sacred month, nor (interfere with) the offerings, nor the sacrificial animals with garlands, nor those going to the sacred house seeking the grace and pleasure of their Lord; and when you are free from the obligations of the pilgrimage, then hunt, and let not hatred of a people-- because they hindered you from the Sacred Masjid-- incite you to exceed the limits, and help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil). (QS Al-Maidah :2)

The above verse provides the principle that a Muslim should always maintain a cooperative relationship within the framework of goodness and piety. Cooperation among human beings arises from the need that can not be achieved with self, simple example, humans need to eat, so people build cooperation in fulfilling the food needs from process processing seed to rice, rice, rice and so on.

Human needs include all things, in fulfilling the needs of humans to build cooperation, such as exchange of goods, selling and buying, renting goods, and investment cooperation. Activities are lazaim done to meet the livelihood of human life. The principle of mutual benefits and benefits become the main basis for establishing such cooperation with good and fair.

In principle Islam in allowing this form of cooperation because many who need it where this form of cooperation is what happens between

landowners and farmers in agriculture. This cooperation has been widely applied in agriculture, because in reality there are people who have farming skills but do not have a plot of land to be tilled and treated so as to provide benefits for the farmer. On the contrary, there are people who own a piece of land but have no expertise in farming. This fact opens opportunities for cooperation between the two parties.

In Indonesia any form of cooperation including *muzara'ah* dan *musaqah* based on sharia principles has been regulated in contract also arranged in a compilation of law i.e. Compilation of Sharia Economic Law that acts in accordance with the rule of the Supreme Court of the Republic of Indonesia (PERMA) number 2 year 2008 About the Compilation of Sharia Economic Law (KHES). However, the facts contained in the Compilation of Islamic Economic Law are not described in detail about the terms and conditions that must be met in every implementation of *the muzara'ah* and *the musaqah*. Whereas the terms and the pillars must be fulfilled so that every agreement or contract is done to be perfect and bring benefits for both parties. In dealing with that the researcher wanted to explain and compare the provisions of *muzara'ah* and *musaqah* described in KHES with the opinion of the *Imam Madzab* namely Imam Hanafi, Imam Maliki, Imam Syafi'i and Imam Hambali.

Imam Syafi'i is a scholar most widely embraced by the Indonesian population this is inseparable from his contribution as the first formulator of Islamic legal methodology *Ushul Fiqih* which is not known at the time of the

Prophet and Companions. *Madzab Syafi'i* generally regarded as the most conservative *madzab* among other Sunni schools.⁴ And he is a supporter of the science of hadith and reformer in religion (*mujaddid*) in the second century *Hijriyyah*.

Similarly, Imam Malik is very strict against the selection of *hadith* from the Prophet Muhammad SAW and be careful about the narrations of hadith for keeping mistakes between hadith *shahih* with hadith *dhaif* to be used as a proposition in each of his *hujjah* and he is one of the imams who face various patterns the cultures of two different dynasties and lived in various groups and behaviors from different nations and classes so that made Imam Malik a broad thinker.

Imam Hanafi was the first and foremost Priest of the other four High Priests. He is known as someone who is a big soul and someone who is wise in the field of fiber science someone who is right in giving a decision on a problem faced. Often the opinions of the Imam Hanafi contradict the opinion of Imam Syafi'i and Imam Maliki, thus becoming one of the most interesting topics to discuss.

Imam Hambali is one of the *Imams* for Muslims around the world, as well as a priest for *Darus Salam*, the *mufti* for Irak and a pious about the hadith of the Prophet SAW , he is a *zuhud*, illuminator for the world and as an example for the Sunna scholars. Imam Hambali was one of the reformers

⁴ https://id.wikipedia.org/wiki/Mazhab_Syafi%27i diakses pada tanggal 09 agustus 2017 pukul 23.55 WIB.

(*mujaddid*) of religion in the third century of *Hijriyyah*. He is a person who works hard in studying and holding fast to the hadith.

Currently the flow of *syari'ah* economy is inseparable from the role of banking, especially sharia banking, the development of Islamic banking today has increased significantly with the emergence of various kinds of financing products offered by banks. One is to extend the reach of agricultural cooperation transactions and multiply the cooperation contract model by maintaining the existing *Syari'ah* without violating the things that are prohibited by the *Syari'ah*.

Therefore, based on the above explanation of the difference of the *Imam Madzab* in terms of responding to the concept of agricultural cooperation, especially *Akad Muzara'ah* and *Akad Musaqah*, researchers will examine the differences and similarities of the concept with a study entitled **“Comparison of Agriculture Cooperation Concept (*Muzara'ah* and *Musaqah*) Perspective *Imam Madzab*”**. This research is increasingly important because there has been no similar research done with the same themes and approaches.

B. Problem Formulation

Based on the background of the above research, the researcher will explain some problems about the theme above, namely:

1. How does the concept of agricultural cooperation (*Muzara'ah* and *Musaqah*) according to Imam Madzab?
2. How does the concept of *Muzara'ah* and *Musaqah* according to Compilation of *Syari'ah* Economic Law ?

C. Objective of Research

Based on the above problem formulation, the purpose of this study are as follows:

1. Explain the concept of agricultural cooperation (*Muzara'ah* and *Musaqah*) according to *Imam Madzab*.
2. Explain the concept of *Muzara'ah* dan *Musaqah* according to Compilation of syari'ah economic law.

D. Research Benefits

There are two benefits to be derived from this research:

1. Theoretically

- a. The results of this study are expected to add information and knowledge in Islamic law. Especially in matters relating to *muamalah* and sharia business law.
- b. The results of this study are used to improve the motivation for further researchers to examine more depth, especially the problems

that have not been reached and resolved in this study, especially in agriculture.

2. Practically

- a. This research can be used as information materials for institutions or institutions, and the community in applying the cooperation of *muzara'ah* and *musaqah*.
- b. This research is expected to provide information about comparative concept of agricultural cooperation (*Muzara'ah* and *Musaqah*) perspective of *Imam Madzab* and according to Compilation of syariah economic law (KHES) so it can be a discussion and additional information especially for Sharia Faculty Students.

E. Conceptual Definition

1. *Muzara'ah* is the delivery of land to the person who is able to plant or the delivery of land and seed to the person who is able to plant it in the land.⁵
2. *Musaqah* is the delivery of trees that have been planted and not planted with the land to the people who are able to plant it and maintain it.
3. Imam Madzab are four prominent scholars whose opinions or *hujjah-hujjahnya* serve as a guide in the good practice in worship and *bermuamalah*. The four Imams are composed of Imam Hanafi, Imam Malik, Imam Shafi'i and Imam Hambali.

⁵ Shalih bin fauzan bin Abdullah Al-Fauzan. *Ringkasan Fiqih Lengkap*, diterjemahkan oleh Asmuni (Jakarta: Darul Falah, 2005) p. 625

4. *Al-umm* is the *fiqh* book written by Imam Shafi'i, is one of the most adherent priests, especially in Asia.
5. *Al Muwatha'* is a jurisprudence *fiqh* predicted by Imam malik wherein it contains the thoughts of fiqh from Imam malik.
6. The Compilation of Sharia Economic Law (KHES) is a summary of the various legal opinions taken from a variety of books that are written by scholars of *fiqh* which can be used as a reference in religion court to be processed and compiled into a single set. The set is the compilation itself.⁶

F. Limitation of Problem

Comparison in this study is to compare the concept of *muzara'ah* and *musaqah* according to *Imam Madzab* namely Imam Hanafi, Imam Maliki, Imam Syafi'i and Imam Hambali.

G. Research Methodology

1. Kind of Research

This research is normative legal research, namely the legal research that discusses the principles of law, legal systematic, vertical and horizontal synchronization level, comparison of law and legal history.⁷ In this study, the researcher is going to discuss about the comparison between opinion of *Imam Madzab* about the different of *muzara'ah* and *musaqah* in all aspects of the thinking of the *imam*

⁶ Nasrun Harun, *Ensiklopedia Hukum Islam*, (Jakarta: PT.Ichtiar Baru Van Hoeve, 2001), p. 968.

⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Press, 2011), p. 13-14.

madzab also according to compilation of syari'ah economic law (KHES).

2. Research Approach

In this study, the researcher used a comparative approach comparative approach is research that conducted by comparing a country's legislation with the legislation of one or more other country about the same thing. It can also be compared alongside the legislation judge's adjudication in several countries for the same case. The usefulness of this approach is to acquire the similarities and the differences between these laws.⁸ In this case, the researcher is going to compare the opinion between *Imam Madzab*.

3. Legal Material

- a. Primary legal material is datas obtained directly from the first source.⁹ According to another opinion, the primary legal material is material that has a legal authority (authoritative).¹⁰ In this case, the primary legal material used by the researcher is Al-Qur'an, Hadist, Al-Muwaththa' Imam Malik, *Al umm* of Imam Syafi'i and compilation of shariah economic law (KHES).
- b. Secondary legal material is all about the law publication which is not an official document. The publication consists of: (a) textbooks that discusses a problem of law, thesis, and law dissertation; (b) legal

⁸ Bambang Sanggono, *Metodologi Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persama, 1997), p. 114.

⁹ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), p. 47.

¹⁰ Zainuddin Ali, *Metode Penelitian Hukum*, p. 54.

journals; and (c) the comments of the judge's adjudication.¹¹ In this case, the researcher uses the books or the classic books, theses and law journal.

- c. Tertiary legal materials, it is a material that provides instruction or explanation against the primary and secondary legal materials.¹²

Tertiary legal materials used in this legal research is a law dictionary.

4. Data Collection method

Collecting legal material method used by researcher in this normative legal research is using documentation method. Documentation method is a data collecting method by searching for data on matters or variable in note forms, transcripts, books, newspapers, magazines, meetings, agendas and so on.¹³ In the collecting of data, the researcher uses this method because it is easier than other methods because when there are mistakes such as errors in the research, it can be examined again because the source data does not change.

5. Process and data analysis

After collecting data and legal materials, the next step is data processing. Data processing is processing of data in such ways so that the data and the law arranged in systematic, so it will make it easier for the researchers in conducting the analysis. In normative legal research,

¹¹ Zainuddin Ali, *Metode Penelitian Hukum*, p. 54.

¹² Soerjono Soekanto and Sri Mahmudi, *Penelitian Hukum Normatif*, p. 13

¹³ Soerjono Soekanto and Sri Mahmudi, *Penelitian Hukum Normatif*, p. 13

processing of materials formed in activities to organize a systematization of materials against written law.¹⁴

From legal materials have been collected by the author, furthermore the author's conduct legal materials or data processing, either primary or secondary in way of selecting datas, classifying as well as arranging those data systematically. In this case, the author relates and compares between a material law to other legal materials, so obtained a general overview of the research results. Data analysis is an activity toward research in the form of study or examination results of data processing that assisted with theories that have been obtained at first. In simple terms this data analysis is referred as an activity to provide an examination, which could mean opposing, criticising, supporting, augmenting, or making comments and then making a conclusion against the results of the research with own thoughts and theories that has been mastered.¹⁵ The preparation of the study, the author uses descriptive data analysis, because the author wants to give an overview or exposure over the subject and object of the research.

6. Literature Review

Previous Research After looking at and reviewing some of the research related to the theme raised in this study, found several studies that approached the theme, among the following:

¹⁴ Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta, 2010), p. 160.

¹⁵ Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, p. 183.

1. Thesis written by Erik Prasetyo agus (2008) students of Muamalah Studies Program (Islamic Economics) Faculty of Shariah and Law UIN Syarif Hidayatullah Jakarta, with the title of research ***“Produktivitas Kerja Petani Ditinjau Dari Sistem Muzara’ah (Studi Pada Desa Pakan Rabaa, Kabupaten Solok Selatan, Sumatera Barat)***. This research includes empirical research, because it examines reality in society, this researcher try to explain *muzara'ah* System by gambling and its effect to productivity in agricultural cooperation. So in this study using a quantitative approach to obtain accurate results associated with the application of *muzara'ah* contract in agriculture. The results of this study explain that the picture of productivity of farmers' work in terms of the system of *muzara'ah* with statistical tests of the correlation relationship is low. Implementation of *muzara'ah* system to the productivity of farmers working Pakan Rabaa village with statistical test does not affect each other between variables. What makes the difference in this research is that researchers research the concept of *muzara'ah* and *musaqah* based on the opinion of the Imam Madzab.
2. Thesis written by Istiqomah,(2005) student of Muamalah School of Sharia Faculty of IAIN Walisongo Semarang with research title ***“Studi Analisis Pendapat Imam Syafi’i Tentang Muzara’ah”***. In this research, the researcher describes the opinion of Imam Syafi’i about the *muzara'ah* contract, and then compares it with the concept

of akad *muzara'ah* in the viewpoint of other scholars. The result of the study explains that the *muzara'ah* contract in the opinion of syafi'i is not allowed. Through comparison, it was found that according to Imam Malik, Imam Hanafi *muzara'ah's* contract was also forbidden because the reward was the result later, and his plea consisted of half, one-third, or a quarter which was unclear and definite. In the above research there is similarity of research that is opinion of Imam Syafi'i about *muzara'ah*. But in this study the researcher focuses on the basic concept of the law of the validity of *muzara'ah* and *musaqah*.

3. Thesis written by Muhammad Firdaus (2014) Students majoring in Islamic Economics Faculty of Shariah and Law State Islamic University Sultan Syarif Kasim Riau with Research Title ***“Pelaksanaan Sistem Musaqah dalam Pengelolaan perkebunan Sawit di Desa Sungai Putih Kecamatan Tapung Ditinjau menurut Ekonomi Islam”***. This research explains the implementation of the *musaqah* system in the management of oil palm plantations in Sungai Putih Village in an Islamic economic overview. This research is a field research located in Sungai Putih Village Tapung Sub-district, Kampar District which is motivated by the management of oil palm plantation conducted on the basis of trust.¹⁶

¹⁶ Muhammad Firdaus (2014) Mahasiswa jurusan Ekonomi Islam Fakultas Syariah dan Hukum Universitas Islam Negeri Sultan Syarif Kasim Riau dengan Judul Penelitian “ *Pelaksanaan Sistem Musaqah dalam Pengelolaan perkebunan Sawit di Desa Sungai Putih Kecamatan Tapung Ditinjau menurut Ekonomi Islam*”.

4. Thesis written by Novika Rismawan (2013) Students majoring in Islamic Business Law Syariah State Islamic University Maulana Malik Ibrahim Malang with Title research “ ***Kerjasama Pengelolaan Buah Siwalan di Desa Manunggal Kecamatan Semanding Kabupaten Tuban Perspektif Kompilasi Hukum Ekonomi Syariah (KHES)***”. This research explains about application of *muzara'ah*, *musaqah* and *mukhabarah* as well as sharing of profit sharing in agricultural activity in Desa Manunggal. The method used in the research is empirical research and from the results of this study indicates that the main factor behind the practice of profit sharing in the Village Manunggal is still the extent of empty farmland that is not done by landowners.¹⁷
5. Thesis written by Dian Nurdiani Rahmat (2015) Student of Islamic Finance and Banking Study Program of Islamic University of Bandung entitled “***Tinjauan Pelaksanaan Musaqah menurut Imam Syafi'i (Pelaksanaan Akad Musaqah Pada Koperasi Kopi Malabar Indonesia di Desa Marga Mulya Kecamatan Pengalengan)***”. This thesis is written to know the implementation of the contract and the legal impact of the implementation of musaqah according to Imam Syafi'i. Research This is a field study using analytical descriptive method to examine the implementation of

¹⁷Rismawan, Novika. 2013. *Kerjasama Pengelolaan Buah Siwalan di Desa Manunggal Kecamatan Semanding Kabupaten Tuban Perspektif Kompilasi Hukum Ekonomi Syariah (KHES)*. Skripsi. Jurusan Hukum Bisnis Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang.

musaqah contract according to Imam Syafi'i in the management of Malabar coffee plantation in Marga Mulya Village, Pengalengan District. This study explains how the application of the concept of *musaqah* Imam Syafi'i in the management of plantations that make a difference is the researcher explains the concept of *musaqah* of Imam four madzab

Table 1: The Simmilarities and Differences of Previous Research

| No | Name/Faculty/ University/Year | Tittle | Similarities | Differences |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Erik Prasetyo agus (2008) mahasiswa Program Studi Muamalah (ekonomi Islam) Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, | Produktivitas Kerja Petani Ditinjau Dari Sistem Muzara'ah (Studi Pada Desa Pakan Rabaa, Kabupaten Solok Selatan, Sumatera Barat). | -Related to Muzara'ah | -does not compare the concept of muzara'ah in KHES and Imam Shafi'i. -empirical research |
| 2 | Istiqomah,(2005) mahasiswa Jurusan Muamalah Fakultas Syariah IAIN Walisongo Semarang | “Studi Analisis Pendapat Imam Syafi’I Tentang Muzara’ah”. | -Related to Muzara’ah -Using the opinion of Imam Shafi’i | - not a comparative study - just focus on muzara'ah |
| 3 | Muhammad | Pelaksanaan Sistem | - Related to | -Empirical |

| | | | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| | Firdaus (2014) Mahasiswa jurusan Ekonomi Islam Fakultas Syariah dan Hukum Universitas Islam Negeri Sultan Syarif Kasim Riau | Musaqah dalam Pengelolaan perkebunan Sawit di Desa Sungai Putih Kecamatan Tapung Ditinjau menurut Ekonomi Islam”. | Musaqah | research -Not a comparative study |
| 4 | Novika Rismawan (2013) Mahasiswa jurusan Hukum Bisnis syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang | “ Kerjasama Pengelolaan Buah Siwalan di Desa Manunggal Kecamatan Semanding Kabupaten Tuban Perspektif Kompilasi Hukum Ekonomi Syariah (KHES)”. | -Related to Muzara'ah -using KHES as the main reference of understanding of muzara'ah and musaqah | - not a comparative study -empirical research |
| 5 | Dian Nurdiani Rahmat (2015) Mahasiswa program Studi Keuangan dan Perbankan Syariah Universitas Islam Bandung | “Tinjauan Pelaksanaan Musaqah menurut Imam Syafi’i (Pelaksanaan Akad Musaqaq Pada Koperasi Kopi Malabar Indonesia di Desa Marga Mulya Kecamatan Pengalengan). | -Related to musaqah -using imam syafi'I perspective | -not a comparative study -empirical research |
| 6 | Nala Tartila / Faculty of Sharia, Islamic State University of Maulana Malik | Comparison of <i>agricultural cooperation</i> Concept (muzara’ah dan musaqah) perspective Imam Madzab | -Using Comparative approach -Related to <i>muzara’ah dan</i> | - using Comparing -Concept muzara'ah and musaqah |

| | | | | |
|--|-------------------------|--|----------------|---------------------------------|
| | Ibrahim Malang/ 2017 | | <i>musaqah</i> | perspective imam madhhab. |
|--|-------------------------|--|----------------|---------------------------------|



7. Structure of Discussion

To obtain the understandable and comprehensive description about the content in this thesis globally, they can be seen from the systematic discussion of the thesis below:

Chapter I: In this chapter is introduction that is going to describe several things, there are formulation of the problems, research objectives, benefits of research, operational definition, as well as a systematic discussion.

Chapter II: the chapter is about review of the literature. In this chapter, there are two parts that is, previous research studies explain the difference with previous research that examined by researcher and general review of *muzara'ah dan musaqah* including: understanding, basic legal of *muzara'ah dan musaqah* and *rukun* and requiremen of *muzara'ah and musaqah*, etc.

Chapter III: the chapter is talking about research results and discussion. This chapter is a core chapter in this study it is discussing the comparative analysis about the *muzara'ah dan musaqah* concept between Imam Madzab either from similarity or difference side of both Imam Madzab.

Chapter IV : this chapter is closing or final chapter. This chapter is going to present the conclusions of the research results conducted by listing the similarities and differences between Imam Madzab. Then proceed with the suggestions as input both for practitioners in the field of law and readers. Then proceed with the attachment and biodata researcher.

CHAPTER II

REVIEW OF RELATED CONCEPT

A. *Muzara'ah*

1. Definition of *Muzara'ah*

According to language, *al-muzara'ah* has two meanings, the first of *al-Muzara-ah* which means *tharh al-zur'ah* (throwing plants), the meaning is capital (*al-hadzar*). The first meaning is the meaning of majaz and the second meaning is the essential meaning.¹⁸ Meanwhile, according to imam Syafi'i *muzara'ah* are:

اكتراء العامل ليزرع الأرض ببعض ما يخرج منها

"A worker leases the land with what the land produces".¹⁹

¹⁸ Abdurrahman al-Jazir , *Fiqih ala Madzahib Al Arbaah*, (Beirut :Dar al Qalam, 1999) p. 1

¹⁹ Hendi Suhendi, *Fiqih Muamalah*, (Jakarta: Raja Grafindo Persada, 2003) p. 153

According to *Hanafiyyah*, *muzara'ah* is:

عقد على الزرع ببعض الخارج من الأرض

"Akad for planting with most coming out of the earth".²⁰

According to *Hanabilah*, *muzara'ah* is:

ان يدفع صاحب الأرض الصالحة المزارعة أرضه للعامل الذي يقوم بزرعها ويدفع له

الحب

"The landlord who actually gave up his land for planting and whose work was given seeds".²¹

According to *Malikiyyah*, *muzara'ah* is:

الشركة في العقد

"Allied in contract"

Further explained from this understanding it is stated that *muzara'ah* is to make the rented price of land from money, animals, or trade goods.²²

Definition of *muzara'ah* is handing over land to the person who could plant on the land, and take care to pay a certain portion of the results, while the rest of the landlord.²³

²⁰ Hendi Suhendi, *Fiqh Muamalah*, p. 154

²¹ Hendi Suhendi, *Fiqh Muamalah*, p. 154

²² Hendi Suhendi, *Fiqh Muamalah*, p. 154

²³ Shalih bin Fauzan bin Abdullah alfauzan, *Ringkasan Fiqh Lengkap*, diterjemahkan oleh Drs Asmuni, (Jakarta: Darul Falah, 2005), p. 625

2. The Legal Basis of *Muzara'ah*

The legal basis used by scholars in establishing *muzara'ah* is a hadith narrated by Bukhari and Muslim from Ibn Abbas r.a.

إِنَّ النَّبِيَّ ﷺ لَمْ يَحْرَمْ الْمَزَارَعَةَ وَلَكِنْ أَمَرَ أَنْ يَرْفُقَ بَعْضُهُمْ بِبَعْضٍ بِقَوْلِهِ مَنْ كَانَتْ لَهُ أَرْضٌ

فَلْيَزْرِعْهَا أَوْ لِيَمْنَحْهَا إِخَاهُ فَإِنْ أَبَى فَلْيَمْسُكْ أَرْضَهُ (رواه البخاري)

"Verily, the Prophet (saas) declares, does not forbid the muzara'ah, even he enjoins it so that some will love some of the others with his utterance whoever owns the land should be planted or given his benefit to his brother if he does not want it can only be restrained".²⁴

Mentioned in another narration, the hadith narrated by Abu Dawud and al-Nasa'i from Rafi' r.a from the Prophet (s), he said:

إِنَّمَا يَزْرَعُ ثَلَاثَةَ رِجَالٍ لَهُ أَرْضٌ فَهُوَ يَزْرِعُهَا وَرَجُلٌ مَنَحَ أَرْضًا فَهُوَ يَزْرِعُهَا وَرَجُلٌ اسْتَكْرَى

أَرْضًا بِذَهَبٍ أَوْ فَضَّةٍ (رواه أبو داود و النسائي)

"Only planted three kinds of people: men who have the land, then he is the one who has the right to plant it and the man who is entrusted with the benefit of the land, so it is he who planted it and the man who rented the land with mas or silver".²⁵

²⁴ Hendi Suhendi, *Fiqh Muamalah*, p. 156

²⁵ Hendi Suhendi, *Fiqh Muamalah*, p. 156

3. The Principle and Requirement of *Muzara'ah*

a. *Jumhur Ulama* allows the contract of *muzara'ah* to express the pillars that must be fulfilled so that the contract becomes valid that is:

- (1) Landlord
- (2) Farmers
- (3) Object of *muzara'ah* between the benefits of land and the work of managers
- (4) *Ijab kabul*

Meanwhile, According to *Hanafiah* the pillars of *muzara'ah* are:

- (1) *Ijab*
- (2) *Kabul*

According to Compilation of Islamic Economy Law (KHES) the pillars of *muzara'ah* are :

- (1) Landlord
- (2) Farmers
- (3) Land
- (4) *Akad*

b. The requirements of *muzara'ah* are:

According to *Jumhur Ulama*, the requirements of *muzara'ah*, some relate to the person who is intentional, the seeds to be planted, the land to be worked on, the yields to be harvested, and the validity period of the contract, described below:

(1) Terms relating to the person making the contract must be baligh and reasonable so that they can act on behalf of the law. By some Hanafi scholars, other than the requirement of non-apostates, since apostasy is considered mauquf, ie not having legal effect until he returns to Islam. However, Abu Yusuf and Muhammad Hasan Asy-syaibani disagreed with the addition, since the *muzara'ah* contract was not only between Muslims but also between Muslims and non-Muslims.

(2) Things related to the acquisition of crops, namely:

- a. Each part must be specified in amount (percentage) when the contract
- b. Results are shared
- c. The parts of Amil and Malik are the same type of goods, for example from cotton, if Malik is part of rice then Amil is cassava then this is not valid.
- d. Parts of both parties can be known
- e. It is not required for one of the more advanced additions.²⁶

(3) Related to the land to be planted, namely:

- a. The land can be planted
- b. The land can be known to its limits

²⁶ Hendi Suhendi, *Fiqih Muamalah*, p. 276

(4) Related to the time, the requirements are:

- a. The time has been determined
- b. It is possible to plant the intended crops, such as planting rice less than 4 months (depending on the technology used, including the habit of the place
- c. This time allows both sides to live by habit.

(5) Terms relating to the object of the contract, must also clear the utilization of its seeds, fertilizers, and drugs as applicable to the local area.

Imam Abu Yusuf and Muhammad bin Hasan Asy-Syaibani stated that in terms of the contract of *muzara'ah* there are four forms of *muzara'ah*:

- (1) If the land and seeds of the landlord, work, and tools of the peasants so that the object of *muzara'ah* is the services of farmers, then the law is valid.
- (2) If the landlord only provides land only, while the farmer provides seeds, tools, and work so that the object of *muzara'ah* is the benefit of land, then the *muzara'ah* contract is also considered legitimate.
- (3) If the land, tools, and seeds from the landlord and the employment of the farmers the *muzara'ah* contract are also valid.

(4) If the farm and equipment are provided by the landlord, while the seeds and work are provided by the farmers, the contract is not valid. They reasoned if the farming tools of the landlord, then the contract becomes damaged because the farming tools cannot bind on the land. According to them, the benefits of agricultural equipment is not the same as the benefits of land, because the land is to produce plants and fruits, while the benefits of the tool only to cultivate the land only. Agricultural equipment should be tied to the farmers, not the landlords.²⁷

4. Due to Muzara'ah Contract

According to Jumhur Ulama (which permits *the muzara'ah* contract), if the contract has fulfilled the terms and conditions, the legal consequence is:

- a. Farmers are responsible for the cost of seed and maintenance of the farm.
- b. Agricultural costs such as fertilizer, water costs, and plant cleaning costs, are borne by farmers and landowners according to their respective percentages.

²⁷ Hendi Suhendi, *Fiqh Muamalah*, p 276-278

- c. The crops are divided according to the mutual agreement.
- d. Irrigation is carried out in accordance with the agreement together if there is no agreement, apply the habit in each place.
- e. If one dies before harvest, the contract remains valid until the harvest and the deceased is represented by the heir. Furthermore, the contract may be considered by the heirs whether to continue or not.

5. The End of *Muzara'ah* Contract

A *Muzara'ah* covenant will end if:

- a. When the agreed time period ends. However, if the time period is up, while the harvest has not been implemented because it is not yet worthy of harvest, it is expected until the harvest is over, even if it is due.

According to *jumhur ulama*, while waiting for harvest the farmer is entitled to get wages according to local custom. Furthermore, regarding the costs required for agriculture such as fertilizer and others are shared by the landlords and farmers.

- b. According to the cleric Madzab Hanafi and Hambali if one of the deceased died, then the *muzara'ah* contract

ended. But the scholars Madzab Maliki and Syafi'i argue that the contract does not end and can be passed on by his heirs.²⁸

c. There *Udzur* one of the parties that causes them can not continue *muzara'ah* such as:

1. The landlord is involved in debt, so the land must be sold.

If the cancellation of the contract cannot be settled by both parties, then the cancellation must be through the intervention of the judge. If the land is almost harvested, then the land can only be sold after the harvest. In this case, the landlord must take into account not to lose the farmers.

2. An *udzur* farmer, such as sickness or traveling to distant places that do not allow him to perform his duties as a farmer.²⁹

²⁸ Hendi Suhendi, *Fiqih Muamalah*, p. 277

²⁹ Hendi Suhendi, *Fiqih Muamalah*, p. 278-279

B. *Musaqah*

1. Definition of *Musaqah*

Al musaqah is *mufa'alah* from *As Saqyu*. *Mufa'alah* this is not including its chapter. Given this name because the trees of the Hijaz people desperately need this *saqi* (sprinkling) from the wells. Because it is named *musaqah* (watering = irrigation).

In the sense *syara'* *musaqah* is the surrender of the tree to the person who waters it and promises it if until the fruit of his cooking tree (sprinklers) will be rewarded fruit in a certain amount.³⁰

While the *musaqah* according to the jurists is the delivery of trees that have been embedded or not planted with the land to people who able to plant in the land and water it and meet the needs of the plant until the fruit, then the working person that get a certain part of the fruit tree and the rest for tree owners.³¹

Meanwhile, according to the term, *musaqah* defined by the scholars, as proposed by Abdurrahman al-Jaziri, is as follows:

According to Abdurrahman al-Jaziri, *musaqah* is:

عقد على خدمة شجر و نخل و زرع ونحو ذلك بشرائط مخصوصة

"Akad for the maintenance of date palms, crops (agriculture) and others with certain conditions."³²

³⁰ Sayyid Sabiq, *Fiqh Sunnah* diterjemahkan oleh Marzuki, (Bandung: Al ma'arif, 1988) jilid 13, p. 165

³¹ Shalih bin Fauzan bin Abdullah Al-Fauzan, *Ringkasan Fiqh Lengkap*, p. 625

³² Hendi Suhendi, *Fiqh Muamalah*, p. 145

According to *Malikiyyah*, musaqah is:

ما ينبت بالأرضى

"Something growing on the ground."

According to *Malikiyyah*, something that grows on the ground is divided into five kinds, namely:

- a. The tree is firmly rooted (fixed) and fruitful. The fruit is picked as well as the tree remains there for a long time, such as vines and olives trees.
- b. The tree is rooted, but does not bear fruit such as hardwood trees, rubber and teak.
- c. The tree is not deeply rooted, but bears fruit and can be picked, such as rice and qatsha'ah (the tree is like a pumpkin tree and its fruit is like a cucumber).
- d. The tree is not rooted strongly and no fruit can be picked, but has a useful flower, like a rose.
- e. Trees took green and wet as a benefit, not fruit, such as ornamental plants grown on the house and in other places.³³

According to *Syafi'iyyah*, *musaqah* means :

³³ Hendi Suhendi, *Fiqh Muamalah*, p. 146

أن يعامل شخص يملك نخلا أو عنبا سخصا آخر على أن يباشر ثانيهما النحل
والعنب بالسقى والتربية والحفظ و نحو ذلك وله في نظير عمله جزاء معيّن من
الثمر الذي يخرج منه

*"Giving the work of the man who has the Tamar tree, and the wine to others for his pleasure by watering, preserving, and keeping it and the worker acquiring a certain part of the fruit produced by the trees."*³⁴

2. The Legal Basis of *Musaqah*

The legal basis for the permissibility of this *musaqah fiqh* experts allow the *musaqah* because seeing this is needed and bring benefits to the person who did the contract.

In this case, *Jumhur Ulama* argues for the acquisition of *musaqah* to:

روى مسلم عن ابن عمر أنّ النبي ﷺ عامل أهل خيبر بشطر ما يخرج منها من ثمر
أو زرعٍ

"Muslim history from Ibn Umar, that the Prophet SAW employs the people of Khaibar by blessing him with half the results that come out, in the form of fruit or plants.

³⁴ Hendi Suhendi, *Fiqh Muamalah*, p. 146

This hadith is similar to that of Imam Maliki:

عن سعيد بن المسيب, أنّ رسول الله ﷺ قال ليهود خيبر يوم الفتح : اقْرَكم فيها ما اقْرَكم الله عزّ وجلّ, على أنّ الثمر بيننا وبينكم , قال : فكان رسول الله صلى الله عليه وسلم يبعث عبدالله بن رواحة , فيخرّس بينه وبينهم , ثمّ يقول : ان شئتم فلکم , وان شئتم فلي , فكانوا يأخذونه.

"Sourced from Sa'id bin Al Musayyab, in fact, the Messenger of Allah (saws) had spoken to the Khaibar Jews at the time of the conquest of Makkah:" I let you stay in Khaibar as Allah Almighty did to you, the fruit is divided between us and you ". Sa'id said Rasulullah SAW then sent Abdullah bin Rawahah to think between him and them, then he said: "If you want then for you, and if you want then for me. They then picked it up. "³⁵

وروى البخارى أنّ الانصار قالت للنبي ﷺ : اقسام بيننا وبين اخواننا النّخيل قال :

لا فقالوا: تكفّنا المؤونة ونشرككم في الثمرة؟ قالوا : سمعنا و اطعنا

"Al-Bukhari narrates that the Ansar once said to the prophet:" Divide between us and our brethren the date palm. "The Messenger of Allah replied:" No ". Then they say: "Let the financing be for us, and we are together in a fellowship of the fruit." They (Muhajirin) said: "We hear and we obey."

³⁵ Al-Imam Malik RA, *Muwattha'*, diterjemahkan oleh Adib Bisri Musthofa dkk .(Semarang: Assyifa, 1998) p. 326

This means that the *Ansar* wanted to cooperate with the *Muhajirin* in managing the date palms, then they delivered it to the Messenger of Allah, then he was unwilling. Then they make a suggestion that they are the ones who manage the issues, and they are entitled to some of the results. Then the Messenger of Allah granted their request.³⁶

3. The Principle and Requirement of *Musaqah*

a. Principle of *Musaqah*

According to Hanafi have two the principles of *Musaqah*

1) *Ijab*

2) *Qabul*

Ijab and *Qabul* are declared valid with anything that can show it, whether in speech, writing or sign language, as long as it comes out of the person who has the right to act.³⁷

Meanwhile, according to imam Syafi'i practiced occasionally with a clear (*sharih*) and with a disguise (*kinayah*). Required *sighat* with *lafadz* and not enough with deeds only.

Meanwhile, according to *Jumhur ulama* (Madzab Shafi'i, Maliki, and Hambali) states that there are five pillars of *musaqah*:

³⁶ Sayyid Sabiq, *Fiqih Sunnah*, p 166

³⁷ Sayyid Sabiq, *Fiqih Sunnah*, p 166

- 1) There are two persons (parties) who hold the contract.

Contracting Parties shall be persons capable of acting in the name of the law (baligh and sensible).

- 2) There is a plot of land in the agreement.

Objects made as the object of an agreement must be sure.

According to Imam Syafi'i garden which became the object of the agreement is wine and dates only, because both kinds of plants are stated in the hadith of the Prophet SAW. In contrast to Hambali madzab that all the edible plant objects of his fruit can be made the object of the covenant.

- 3) Form/type of business undertaken.

The form of business undertaken by the manager must be related to the effort to develop and care for the garden, in order to obtain maximum results. Thus it will benefit both parties.

- 4) There is a provision of each part of the results of such cooperation.

The result or fruit produced from the garden is the right of cooperation and the distribution is also in accordance with the agreement in the agreement.

- 5) There is an agreement, both written and oral.

There is a willingness of each party to enter into a written or oral agreement.³⁸

In the implementation of *musaqah* there are some things that become legal requirements, namely:

1) That the tree as a object of *musaqah* known to see or introduce the properties that are not contrary to the reality of the tree. Because the contract is declared invalid, for something that is not known clearly.³⁹

2) That the time required is clearly known.

Because *musaqah* is a common contract that resembles a lease contract. With this clarity, there will be no *gharar* element in it.

Abu Yusuf and Muhammad argue: That explaining its duration, is not a requirement in the *musaqah*, but the *sunnah*.

The group that believes that this requirement is unnecessary is *Zahiriyah*. They argue to the *mursal* hadith narrated by Malik:

That the Messenger of Allah once said to the Jews:

اقركم ما افركم الله

““I promise you according to what Allah promises to you”.⁴⁰

³⁸ M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam*, (Jakarta: Rajagrafindo Persada, 2003) , p. 282

³⁹ Sayyid Sabiq, *Fiqh Sunnah*, p 167

⁴⁰ Sayyid Sabiq, *Fiqh Sunnah*, p 167

The contract is held before it appears to be good fruit/yield. Because in these circumstances, trees require cultivation. As for after seeing the results, according to some jurists is the law of the *musaqah* is not allowed. Because no longer need it, if the contract is still executed then akadnya will turn into Akad *ijarah* (lease) is no longer *musaqah*. But there is also a permit even in such circumstances. For if it can happen before God creates fruit, the aftermath is certainly more important.⁴¹

- 3) That the reward received by the cultivator in the form of fruit is known clearly.

For example, half or one-third. If this agreement is required for the cultivator or the owner of the tree to extract the proceeds from certain trees or some degree, then the *musaqah* becomes not valid.

If one condition of the terms of these conditions is not met, then the contract is declared *fasakh* and *musaqah* become the facade.

When the tree grows, or the plants with the work of the tiller, then he is entitled to the appropriate wages. As for the growing tree or plant, it remains the owner's right.⁴²

⁴¹ Sayyid Sabiq, *Fiqih Sunnah*, p 167

⁴² Sayyid Sabiq, *Fiqih Sunnah*, p 167

C. Biography of *Imam Madzab*

1. Imam Hanafi

a. History of Life

Imam Abu Hanifa is one of the priests of the 4 other eminent priests. He was born and died earlier than the other priests. Abu Hanifah Born in 80 *Hijri* / 659 M in the city of Baghdad, Iraq where the city was experiencing the rapid development of science.⁴³

Abu Hanifah lived in the reign of the *Umayyah* empire and the *Abbasiyyah*. He was born in a village in the reign of Abdullah bin Marwan and died during the *khalifah* of Abu Ja'far Al-Mansur. During his lifetime he can follow the various growth and development of science both in the field of political science and the emergence of religion. This era is known as the era of politics, religion, and ideologies.

Abu Hanifah lived in a chaotic society because it was composed of various tribes such as Arabic, Foreign (non-Arabic), Persian and Roman. Often there is a dispute among the people so it is very difficult to find a harmonious and peaceful life at that time, the rich act as it pleased and oppression and slavery become a habit.⁴⁴

After the wealth of almost all Arab countries, the influence of material (material) began to appear and penetrate in all life. The attempt to unite the religious texts with secular life began to emerge

⁴³ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, (Jakarta: Amzah, 2013), p 13-14

⁴⁴ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 13

until two methods arose in understanding the verses of the Al-Qur'an and Hadiths of the Prophet:

First, Hold to the existing verse or hadith without any addition.

Secondly, Using reason in addition to interpreting Qur'anic verses or hadiths of error (*mutasyabihat*)⁴⁵

b. Education and Teachers

Abu Hanifah lives in Kuffah City, Iraq. The city is famous for a city that can accept the changes and the development of science. He is a wise man and fond of knowledge. As he added to the science, the first thing he began to learn was Arabic literature. Because of the science of language, the mind cannot be used (the mind) he left this lesson and went to study fiqh. He is interested in a lot of subjects using mind.⁴⁶

In addition to studying the science of jurisprudence, he had also studied other sciences, such as *tauhid* and others. Among his several study books are *Al-Fiqhul Akbar*, *Al-rad Ala Al-Qadariah*, and *Al-'Alim Wal-Muta'allim*.

Abu Hanifah is also famous as an Alim in the Science of *Fiqh* and *Tauhid*. According to some of the historians that he studied the science of fiqh from Ibrahim, Umar, Ali bin Abi Talib, Abdullah ibn Mas'ud and Abdullah bin Abbas. Among his teachers is Hamad bin Abu Sulaiman Al-Ash'ari. He teaches him so much. After his

⁴⁵ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 14

⁴⁶ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 17

teacher, Hamad bin Abu Sulaiman Al-Ash'ari died he succeeded his teacher to teach science Fiqh. His name was famous throughout the country at that time.⁴⁷

Tajwid science lessons also he learned from Idris bin 'Asir a pious in science *tajwid*. He was deeply influenced by his teacher Ibrahim An-Nukha'il. Abu Hanifah is well known as an accomplished person in following the qiyas rule. This rule continues as one of the foundations of Islamic law.⁴⁸

c. The Death of Imam Hanafi

Abu Hanifah died in 150 *Hijri*. According to Imam Nawawi, he died in prison. It is narrated that before Abu Hanifah passed away, he ordered (the testament) that his corpse would be buried in a good burial ground which he meant good land was a land not seized by a king or head of state. The body of Abu Hanifah was buried in the tomb of Al-khaizaran's grave in the eastern city of Baghdad.⁴⁹

d. *Istinbath* Method

Madzab Abu Hanifa as a clear and clear picture of the laws of fiqh in Islam with the views of society in all kinds of lifestyle, because Abu Hanifah based his madzab on the basis of *Al-Qur'an*, *Hadith*, *Al-Ijma* ', *Al- Qiyas*, and *Al-Istihsan*.⁵⁰ Because according to Imam Abu Hanafi the basis is very important and can cover with

⁴⁷ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 17

⁴⁸ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 18

⁴⁹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 69

⁵⁰ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 19

the basic breadth of his *ijtihad* in making the conclusions for the laws according to the will or the needs of society at that time but on the basis of not deviating the main points and civilization or rule of law Islam.

2. Imam Malik

a. History of Life

Imam Malik is a priest of the City of Medina and priest of the Hijaz, he is one of the last jurists for the City of Medina and also the last for the Madinah fuqaha. Imam Malik was born in a place called Zulmarwah in the north of Madinah. Then he stayed at Al-kik for a while until he finally settled in Madinah. Various opinions of historians about the birth of Imam Malik. There is a half-opinion that says 90, 94, 95 and 97 Hijriyah, disputes have occurred since ancient times.⁵¹

During his lifetime, Imam Malik could experience two patterns of government namely the Abbasid government and the Umayyad government in which there was a great dispute between the two governments. At that time knowledge of Arabic science, Persi and Hindu (India) flourished in society at that time. Various kinds of changes that occur, such as in agriculture, commerce, carpentry and various shades of life which all use the excuse of religious law and

⁵¹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 71

the laws of fiqh and in this period also the beginning of a compilation of science of hadith, fiqh, and legal issues.⁵²

b. Education and Teachers

Imam Malik memorized Al-Qur'an and Hadith-hadith Rasulullah SAW. His memory is very strong and has become his custom when he heard the hadiths of his teachers then collected with the number of hadiths he had ever studied.⁵³ Imam Malik studied various fields of science, such as Hadist Science, *Ar-Rad ala ahlil ahwa* fatwa-fatwa from the Companions and Science of fiqh Ahli Al-ra'yu. Imam Malik is a very active man in the search for knowledge. He often holds meetings with experts of hadith and ulama.⁵⁴

In the time of Imam Malik studying, he has many teachers. The book "*Tahzibul asthma wallughat*" explains that Imam Malik had studied to 900 *syaikh*. 300 of them are from the *tabi'in* group and 600 more from *Tabi'it tabi'in*. All of them are eligible and sufficient persons with reliable terms in the field of religion and the law of fiqh. Imam Malik does not accept the hadith (rawi) which is unknown to his collection even though the bearer of the hadith is a good person in the field of religion.⁵⁵

⁵² Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 72

⁵³ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 73

⁵⁴ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 75

⁵⁵ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 75-76

Imam Malik had studied with Abdul Rahman bin Harmuz Al-'Araj for about seven years. Among the malik priest teachers are Rabi'ah bin Abdul Rahma Furukh, Nafi'I 'Auli Abdullah, Ja'far ibn Muhammad Al-Baqir. Muhammad bin Muslim Az-zuhri, Abdul Rahman bin Zakuan, Yahya bin Said Al Ansari, Abu Hazim Salmah ibn Dinar, Muhammad bin Al-Munkadir, and Abdullah bin Dinar, and many more from the *At-Tabi'in* group.⁵⁶

c. The Work Creation

The greatest work of Imam Malik is Kitab *Al-Muwatta* 'which is a complete book composing apart from the book of *Al-Majmu* by Zaid. The word of Al-Muwatta is an easy way to worship, it is the greatest book written by Imam Malik. The reason for its composition is the result of the emergence of the opinions of the Iraqi population and the irresponsible persons and caused by the weakness of memory and history, hence the compilation of the book which contains the hadiths and the opinions of the Companions of the Prophet (s) opinion *tabi'in*.⁵⁷

Imam Malik wrote his book with various fields of religion such as the science of hadith and the opinions of the people of Medina. He tried to write the book until the year 159 *Hijriyah* and for 40 until the book was finished fabricated.

⁵⁶ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 76

⁵⁷ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 103

d. The Death of Imam Malik

Imam Malik was sick for twenty days. On the night he breathed his last breath, by coincidence Bakar Sulaiman As-Sawaf was with them in his home. Imam Malik died in Medina, on the 14th of the month of Rabi'ul Awwal in 179 Hijriyyah. Imam Malik is buried in the land of Al-Baqi ', his grave at pinti Al-Baqi'.⁵⁸

e. *Istinbath* Method

He considered the deeds or practices of the people of Medina as a *hujjah* and the most important source in the law of fiqh, he was based on the Sunnah of the Prophet during the giving of a fatwa.

The laws of Fiqh given by Imam Malik are based on Al-Quran and Hadith. Imam Malik made the hadith as a help in understanding the Al-Qur'an. Imam Malik was very careful about the narrations of hadiths for keeping mistakes between Saheeh hadith and hadith dha'if (weak).⁵⁹ Then Imam Malik clung to the fatwa-fatwa companions because they were the former people of the group of people who move (*Al-Muhajirin*) with the Prophet or from the supporters (*Al-Ansar*), they are people who are friends with the Prophet also they are people who see and hear the teachings of the Prophet and learn from him.

Imam Malik received *ijma* ', meant by *ijma*' are cases approved by the Fiqh and Science Experts.

⁵⁸ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 138

⁵⁹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 82

If Imam Malik does not get the texts from that source he also holds *qiyas*, *istihsan*, *'urf* (custom), *Saddud Zara'i* and *Al-Masalih Al-Mursalah*. But he made certain conditions to hold on to *Al-Masalih Al-Mursalah* namely:

- a. Let the benefit that followed does not deviate from any of the principal issues of religious law, nor to reject the fixed argument (*qat'i*) of its propositions.
- b. Let the benefit be accepted by the wise man.
- c. Let it be raised with all the objections in Islam according to the Word of God:

وما جعل عليكم في الدين من حرج

*And He (Allah) has not made you above any religion or any objection.*⁶⁰

3. Imam Syafi'i

a. History of Life

Muhammad Idris Asy-Syafi'i or known as Imam Syafi'i was born in Gaza City, Palestine in 105 Hijriyyah. Imam Syafi'i's family is from a poor Palestinian family, they live in a Yemeni village, but the glory of his descendants is a ransom for the poverty he endured.

Imam Syafi'i's father passed away when he was a child. His mother took him to Mecca at the age of two and lived as an orphan.

⁶⁰ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 88

Imam Syafi'i's mother is descended from Al-Azd. His mother's name is Fatimah bint Abdullah Al-Azdiyyah.

During his youth Imam Syafi'i lived in poverty, so he was forced to collect stones, bones, tamar bark and camel bones as his writing media. Sometimes he goes to a gathering of people asking for a paper to write his lesson.⁶¹

b. Education and Teachers

Imam Syafi'i can memorize the Al-Qur'an easily, that is when he was little and he memorized and wrote hadiths. He is very diligent in studying the rules and *nahwu Arabic*. For that purpose he once wandered into the villages and lived with the Huzail tribe for about ten years, as he was about to learn their language as well as their customs.⁶²

In addition to studying science he has the opportunity to learn archery, and spend his youth by studying poetry, literature, and history but God has destined for him some of the causes that encouraged him to study the science of jurisprudence and other sciences.⁶³

In a narration that Imam Syafi'i followed Muslim bin Khalid Az-Zinji mufti Mecca to study fiqh to him. Then Imam Syafi'i wandered into the land of Iraq to study the science of Muhammad Al-Hasan. A few years later Mas'ab and Imam

⁶¹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 142-143

⁶² Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 143

⁶³ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 144

Syafi'i came to Mecca. Mas'ab narrated about Imam Syafi'i to Ibn Daud, then awarded to him as much as ten thousand dirhams.⁶⁴ Then Imam Syafi'i moved to Medina and studied to Imam Malik to study *Al-Muwatta* '. Imam Syafi'i almost memorized all of them and continued to study the science of fiqh and hadith from Imam Malik until Imam Malik passed away.

Based on the biography of Imam Syafi'i the author knows that the Imam Syafi'i teacher is very much among the first Imam Syafi'i teacher is Muslim Khalid Az-Zinji from Mecca and Imam Malik from Medina.

Among his teachers who came from Mecca were Muslim bin Khalid az-Zinji, Sufyan bin Umayyah, Said bin Al-Kudah, Daud bin Abdurrahman, Al-attar and Abdul Hamid bin Abdul Aziz bin Abi Daud. While from Medina is Malik bin Anas, Ibrahim bin Sa'ad Al-Ansari, Abdul Aziz bin Muhammad Ad-Dawardi, Ibrahim bin Yahya, Al-Usami, Muhammad Said bin Abi Fudaik and Abdullah bin Nafi 'As-Saigh.

From Yemen are Matraf bin Mazin, Hisham bin Yusuf, Umar ibn Abi Maslamah and Al-Laith bin Saad and from Iraq are Muhammad bin Al-Hasan, Waki 'bin Al-Jarrah al-Kufi, Abu

⁶⁴ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 146

Usamah Hamad bin Usamah Al-Kufi, Ismail bin Attiah Al-Basri and Abdul Wahab bin Abdul Majid Al-Basri.⁶⁵

Of the many teachers of Imam Syafi'i above many found each of the teachers based on different backgrounds among them there is a priority about the hadith and some are primarily about the mind (*Ar-Ra'yu*). Among them also from the Mu'tazila and even from the Shi'ites. Different teacher circumstances can help him in expanding the field of jurisprudence, also increase the number of the sciences are studied and exalt science.

c. The Work Creation

Imam Syafi'i compiled and wrote many books. According to half the historian that he compiled 13 books in various sciences such as jurisprudence, tafsir, ushul science, and literature as well as others. Among the books of Imam Syafi'i is *Ar-Risalah* which talks about the science of ushul fiqh. Another book is the book of *Al-Umm* is a book wide and high in the science of jurisprudence. Some historical scholars say that the book of *Al-Umm* was composed by Imam Syafi'i. But some of them argue that the book of *Al-Umm* was composed by Abi Jacob Al-Buaiti.

Another book composed by Imam Syafi'i is *Al-hujjah* in this book authorized by four men of the great scholars of

⁶⁵ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 149

Ahmad ibn Hanbal, Ibnu-t-Tawaur, Az-Za'faran and Al-Karabisi, Kitab Al-Wasaya Al-Kabirah , Ikhtilaf Ahlil Iraq, Wasiyyatus Syafi'i, Jami 'Al-Ilm, Ibtal Al-Istihsan, Jami' Al-Mizani Al-Kabir, Jami " Al-Mizani As-Saghir, Al-Amali, Muktasar Ar-Rabi 'wal Buwaiti, Al-Imla 'and others.⁶⁶ Imam Syafi'i composed some of his books or he wrote himself.

d. The Death of Imam Syafi'i

Imam Syafi'i died in Egypt on the night of Thursday after maghrib, ie on the last night of Rajab in 204 Hijri. His age at that time was 54 years. He died at Abdullah bin Abdul Hakam's residence. The body of Imam Shafi'i was interred on Friday the next day.⁶⁷

e. *Istinbath* Method

Imam Syafi'i is someone who is very careful in his efforts to choose or perfect his madzab, besides that he is a high knowledge of science and his ideals, with his wisdom he is able to cultivate a variety of knowledge and understand it with serious and be careful. In his efforts, he wrote a complete regulation in the *Al-Qur'an*, *As-Sunnah*, *Ijma* 'and *Qiyas*.

⁶⁶ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 161-162

⁶⁷ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 188

4. Imam Hambali

a. History of Life

Ahmad ibn Muhammad ibn Hanbal or Ahmad ibn Hanbal⁶⁸ and also known as Imam Hambali is the fourth priest of the Fuqaha Islam, he was born in Baghdad City in Rabi'ul Awwal in 164 hijriyyah, after his mother moved from the city of Murwa where his father lived.

His full name is Abu Abdullah Ahmad bin Muhammad bin Hanbal bin Hilal bin Asad bin Idris bin Abdullah bin Hayyain bin Abdullah bin Anas bin Auf bin Qasit bin Syaiban, earned the title of Al-Mururi then Al-Baghdadi. The descendants of Ibn Hanbal met with the descendants of Rasulullah SAW.⁶⁹

Ibnu Hambali's father passed away when he was a child. Therefore, he lives as an orphan cared for by his mother alone. His mother was named Safiyyah bint Maimunah bint Abdul Malik Asy-Syaibani from the Amir tribe who was descended from an Arab descendant of Shyaibaniyah and was the same descendant of his father.⁷⁰

Ibn Hanbal lived as a poor and poor man because his father only left a small house he lived in and a little bit of land.

Therefore, he works to meet the necessities of life by working in

⁶⁸ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 190

⁶⁹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 191

⁷⁰ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 192

sewing, picking up the leftovers after harvesting the seizing of his owner, he also takes the wages of writing, weaving the fabric and selling it. Thus Imam Hambal is very guarded by lawful matters.

b. Education and Teachers

When Ahmad bin Hanbal was 14 years old he memorized the Koran and learned the language. He studied writing and writing in Diwan. He lives as a love to study and work hard in learning. Part of his lesson was learned from Abu Yusuf. At the beginning he copied the books he learned and then memorized until at one point there was interest to study the science of hadith and began collecting it from several places, the collection of hadith began in 179 Hijriyyah.

He studied with a moving place, the first odyssey was Kuffah, ie in the year 133 Hijriyyah and in that year also his teacher named Husyaim bin Busyair died. Then proceed to Basrah for the first time in 186 Hijriyyah and in the following year which is the year 187 Hijriyyah he performed the pilgrimage for the first time.⁷¹

Ibnu Hanbal's first teacher was Abu Yusuf Jacob bin Ibrahim al-Qadhi, a friend of Abu Hanifa. Ibn Hanbal began to study the science of Fiqh and hadith from this teacher. Then

⁷¹ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 194

Ibn Hambal studied Ilmu Hadith from Husyaim bin Basyir bin Abi Khasim Al-Wasiti and his teacher had such a powerful influence on Ibn Hanbal after following him for more than four years, he studied the hadiths and then wrote them to more than 3000 hadiths.⁷²

In addition to learning from Husyaim he also learned from Umair bin Abdullah, Abdur Rahman bin Mahdi and Abi Bakar bin Iyasy. Imam Syafi'i was also one of his teachers when he taught at Al-Haram Mosque, and Ibn Hanbal had learned from Ibrahim bin Sa'ad, Yahya bin Al-Qattan, Wakie and others. Then learn to Sufyan bin Umayyah in Mecca.⁷³

c. The Work Creation

From some of us composed by Ibn Al-Hambal Al-Masnad is the most famous in which he collected more than 40 thousand hadiths from the Prophet Muhammad SAW has chosen from 700 thousand hadith until later this book is used as a guidance of priests after Ibn Hanbal.

Among his other books is the book of Az-Zuhd in this book concerning the zuhud of the Prophets, Companions, and Caliphs as well as some of the Imams based on the hadith, Ashar, and Akbar and As-Salah one of the small books written by Ibn Hanbal. Books composed by Ibn al-Hambal others are Al-

⁷² Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 195

⁷³ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 195-196

Manasikul Kabir, Al-Manasikus Saghir, At-Taufik, An-Nasikh, wal Mansukh, Al-Muqaddim wal Muakhir fi Kitabillah Ta'ala, Fadhail Sahabah and others.⁷⁴

d. Istinbath Method

Ibn Hanbal is a very strong acceptance of the hadiths of the Prophet Muhammad. As-sunnah is the light of the *Al-Qur'an* and the interpreter of its laws. So it does not become strange if Ibn Hambal makes the *Al-Qur'an* and *As-Sunnah* the first source in the science of jurisprudence. Besides *Al-Quran* and *As-Sunnah* he also uses *ijma* 'and *fatwa* from the scholars, *Qiyas*, *Al-Masalihul Mursalah* and *Saddud Zara'i*. Ibn Hanbal also uses the hadith *dha'if* (weak history) if there is no other source, but on condition does not contradict one of the rules of religion and also not contrary to one law established by the hadiths saheeh.⁷⁵

⁷⁴ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 230

⁷⁵ Ahmad Asy-Syurbasi, *Sejarah dan Biografi Empat Imam Madzab*, p 201-202

CHAPTER III

RESEARCH RESULT AND DISCUSSION

A. Concept of Agricultural Cooperation (*Muzara'ah* and *Musaqah*)

According to *Imam Madzab*

1. *Muzara'ah*

Muzara'ah is one of the contracts in the cooperation of processing and utilization of land. This has been done since the time of Rasulullah SAW. But with the development of the era and the increasingly complex problem is no exception Imam Syafi'i who explained about muzara'ah is

اكتراء العامل ليزرع الأرض ببعض ما يخرج منها

"A worker leases the land with what the land produces".

Muzara'ah itself according to Imam Syafi'i shows in two meanings, one of which is that it is permissible to do *muamalah* on palm trees and something that results from it. Because this according to Imam Syafi'i has been in accordance with *syariah* by Rasulullah SAW, because basically it is the delivery of palm trees to people who do *muamalah* with him (cultivators) so that between the land and the tree looks different. This is done so that people who work can produce good fruit, where some of the results are for cultivators and others for the owner of the tree.⁷⁶

If there are two fellows who one of them gives the land and one gives the seeds of the plant, and the cow of the two or one of them, then both parties cultivate or one of the cultivators, then what is produced from the land becomes the two of them with the half-division of results.

Based on thought of *Jumhur Ulama* allows the contract of *muzara'ah* to express the pillars that must be fulfilled so that the contract becomes valid that is:

1. Landlord
2. Farmers
3. Object of *muzara'ah* between the benefits of land and the work of managers
4. *Ijab kabul*

⁷⁶ Imam Syafi'i Abu Abdullah Muhammad bin Idris, *Mukhtashar Kitab Al Umm fi Al Fiqh*, diterjemahkan oleh Muhammad Yasir (Jakarta: Pustaka Azzam, 2007), p 140

Meanwhile, According to *Hanafiah* the pillars of *muzara'ah* are:

1. *Ijab*
2. *Kabul*

According to Compilation of Islamic Economy Law (KHES) the pillars of *muzara'ah* are :

1. Landlord
2. Farmers
3. Land
4. *Akad*

In the case of *akad muzara'ah* Imam Syafi'i said that this contract is not valid unless the contract of *muzara'ah* binds to the contract of the *musaqah*. The *muzara'ah* contract which states the profit sharing of such a quarter and the other half of the law is nullified is because the context in which the contract contains the element of *jahalah* (not known clearly) and *gharar* (speculative). The invalidity of the *muzara'ah* contract is due to the fact that the object in the *muzara'ah* is absent and unclear, since the reward for the farmer is the agricultural product that has not existed yet and is unclearly (الجعالة), so the profit to be split from the beginning is unclear. It is possible that the farm does not produce, so the farmer does not get anything from his work. This unclear and unclear contract is what causes the contract to be invalid.

Regarding the actions of the Prophet with the khaibar population according to Imam Syafi'i is not a *muzara'ah* but *al-Kharaj al-muqaasamah* (الخراج المقسمة) which is a provision that must be paid to the Prophet every time the harvest in a certain percentage.

A different point is put forward by Imam Hambali and Imam Maliki that the *muzara'ah* contract is law permitted, because the cause of the contract is clear, ie there is cooperation between the landowner and the farmer as the manager. This is based on the words of the Prophet

عن ابن عمر أنّ النبي ﷺ : عامل أهل خيبر بشرط ما يخرج منها من ثمر أو زرع (رواه مسلم)

From Ibn Umar: Verily the Prophet has given his garden to the khaibar people to keep their covenant with a portion of their income, both from fruits and from crops (HR Muslim).

Differences from the interpretation of the hadith that led to differing opinions about whether or not the legitimacy of the *muzara'ah* law is correct.

According to the Scholars' Hambali:

دفع الأرض إلى من يزرعها أو يعمل عليها والزرع بينهما

*Muzara'ah is the delivery of agricultural land to a farmer to be processed and the result is divided in two.*⁷⁷

The Hanabilah scholars say: *Muzara'ah* is the man who has the land that can be used for cultivation to give it to someone who will work and give him the seeds, on the basis given to him a portion of the produce, one-third and a half with no specified amount as agreed . So, may *Muzara'ah* and the seeds should be given by the owner of the land.⁷⁸

Hanafiyah said: "Muzara'ah in *syara'* is a contract about the above work by a person by giving a good portion of the proceeds by leasing the land with a result, or the owner of the land handing out the work with the sharing of the proceeds. Abu Hanifah and Muhammad say: May be. This is the opinion of the Fatwa of Hanafi Schoolar. Abu Hanifah: "May *Muzara'ah* work and seeds belong together. Thus the worker leases the land by means of his means and also the owner hires the worker by giving the tools and the seed."⁷⁹

Akad Muzara'ah may be terminated if the agreed period has expired. However, if the time period is up, while the harvest has not been implemented because it is not yet worthy of harvest, it must wait

⁷⁷ M. Ali Hasan, *Berbagai macam transaksi dalam islam*, (Jakarta : PT Raja Grafindo Persada, 2004), p 272

⁷⁸ Teungku Muhammad Hasbi As- Shiddieqy, *Hukum-hukum Fiqh Islam*, (Semarang: Pustaka Rizki Putra), 1997, Cet. ke-1, p.426

⁷⁹ Teungku Muhammad Hasbi As- Shiddieqy, *Hukum-hukum Fiqh Islam*, p. 425

until the harvest is over, even if it is due. If a person who does the agreement died this is the debate among the scholars. According to Imam Hanafi and Hambali, if any one who does the agreement died, then the *akad muzara'ah* is over. Because according to them the contract can not be inherited, just as the *ijarah* contract can not be inherited. But Imam Maliki and Syafi'i argue that the contract is not over and can be passed on to his heirs.

2. *Musaqah*

In deciding the law on whether or not the contract of this *musaqah* Imam Hanafi, Imam Maliki, Imam Syafi'i and Imam Hambali allow the existence of this *musaqah* with provisions that already exist in the opinion of each of the scholars.

According to Imam Syafi'i *musaqah* may be in date palms and vines and date palms, because the Prophet SAW took on both trees with guess. He performs *musaqah* on the date palm trees whose fruit has fruitful fruit and no barrier and should not perform *musaqah* on trees other than date palms and vines. Can be done *musaqah* if it looks good fruit.

According to Imam Maliki the law of *musaqah* is permissible and when someone tells others to water the small palm tree and beside that there is still empty ground, then planted by that person then the result is for him.

If the landowner requires that his partner planted it for himself, then it should not be. Because it is tantamount to asking for additional incriminating and even harm one party. Unlike the case if the result is shared for both parties, then the law becomes permissible, if all costs related to the procurement of seeds, watering work and maintenance are borne by those working on it.

If the cultivator (farmer) requires the owner by saying that the seed is borne by the owner then it should not, because it is tantamount to burdening the additional harm. Model ideal *musaqah* contract is all costs borne by the tiller without burdening a bit to people who have property. This is according to Imam Malik if all costs and expenses are borne only to the owner of the garden, while his partners do not cost anything at all except the labor, so the status is only the workers who will get some of the fruit, then it should not, because it is not known how long he worked and how much he will get his reward.

Typically in the contract of the *musaqah*, which is allowed for the owner of the garden is to require its partners to strengthen the cracked parts, make the springs clear as well as maintain it, sufficient irrigation, clean up the dirt, cut the plants into parasites and so on, in exchange for partners entitled to half the results or less or even more by mutual agreement. But for those who have a point, he is not allowed to require his partner to start a new job from scratch like a well to be dug by a cultivator, or a spring to drill, or make a seed first where all the

costs are charged to the farmer. Because it does not make any difference as if the owner of the garden said to someone else with the words "Wake me a house here or reverse a well for me, or run a spring for me, or do something for me, in return for half my garden, and it happens or is spoken when the results of the garden has not been real and not kosher sold. Of course it is the same as selling the fruit before it looks feasible and it is prohibited by the Prophet SAW.

The above problem will be different if it is pronounced when the fruit in the garden is already visible, it appears to be kosher and already halal for sale, then the law is okay. Because that means he hires people in exchange for something that is already there and without any coercion. If in a *musaqah* contract, it turns out that the garden does not produce fruit or produce but only a few, or attacked by the pest to die, then the bitter reality must be accepted as it is. And a worker must be rewarded with something clear and certain. Because basically *akad ijarah* it includes from *akad* sale and purchase which also can not enter gharar element or deception because Rasulullah SAW forbid it.

According to Imam Malik *akad musaqah* also may against the plants that have been out, but the owner is not able to watering, working and taking care of him. *Musaqah* like that the law is allowed. But it is not permissible to institute a *musaqah* contract against the fruits of the tree that has been fruitful, it appears feasible and is lawful for sale. Such a tree can only be made *musaqah* in the coming season.

Because, hold a *akad musaqah* to the already *halal* fruit sold, then his name is *akad ijarah* (hire) or hire.

Based on the above matters according to Imam Malik whoever holds a *musaqah* contract against the existing fruits but not yet feasible but is lawful for sale, then the law of the *musaqah* is *halal*, which should not be if someone who holds a *musaqah* contract on vacant land. But for the owner may rent it with some dinar or some dirhams.

Because someone who gives up his empty land to someone else to work on the condition that he will get a share of one-third or one-quarter of the result, then it already contains elements *gharar* (trickery). The cause is probably the result of the fruit so little or much, sometimes even when the fruit is dead from small. It is better for the landowner to rent his land for a certain price than to take the risk of the trick elements because it is not yet known whether or not the fruit produced from the tree is known. This is the same as someone who employs others to sell his obviously salable merchandise and then says "Do you give me a tenth of the profit of my merchandise as a reward for you?" Because this is not lawful and should not be legal.

Imam Malik also argued in his book that it is not permissible for a person to employ his land or his boat except with something that has been understood and not moved on to others. Obviously the difference between holding a *musaqah* contract to the goods in the form of date trees with vacant land. The owner of the palm tree is clearly unable to

sell the fruit before the fruit appears to be feasible. Meanwhile, the landowner, he can rent the land even though it is still empty.

In the *akad musaqah* all of *madzab* agrees that the *musaqah* is an irrevocable contract except with the consent of each party. Although it lasts long according to the age of the plant, the contract of this *musaqah* must be determined the length of time. The worker must do all the effort to support the fruit produced, such as plowing the soil, watering the trees, removing everything that disturbs the trees and fruit, drying the fruit and fixing the waterways and draining them into the trees.

In the matter of *musaqah* all Imam Madzab Imam Hanafi, Imam Maliki, Imam Syafi'i and Imam Hambali agree that the law of law is legitimate and permissible. Yet even though all the *madzab* scholars agreed in terms of their validity in other factors the different scholars will be outlined in the table below :

Table 2: Differences of Rukun Musaqah According to the Imam Madzab

| Madzab Hanafi | Madzab Maliki | Madzab Syafi'i | Madzab Hambali |
|-----------------|--------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|
| 1. <i>Ijab</i> | 1. There are two parties that hold the contract | 1. There are two parties that hold the contract | 1. There are two parties that hold the contract |
| 1. <i>Kabul</i> | 2. There is a land that is the object of the agreement | 2. There is a land that is the object of the agreement | 2. There is a land that is the object of the agreement |
| | 3. The form / type | 3. The form / | 3. The form / type |

| | | | |
|--|---------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------|
| | of business undertaken | type of business undertaken | of business undertaken |
| | 4. There is a provision of each part of the cooperation | 4. There is a provision of each part of the cooperation | 4. There is a provision of each part of the cooperation tersebut |
| | 5. There is an agreement, both written and oral | 5. There is an agreement, both written and oral | 5. Ada perjanjian, baik tertulis maupun lisan |

Table 3: Differences Objects of plants according to Imam Madzab

| Madzab Hanafi | Madzab Maliki | Madzab Syafi'i | Madzab Hambali |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1. Grape trees | 1. The tree is firmly rooted (fixed) and fruitful. The fruit is picked as well as the tree remains there for a long time, such as vines and olives trees. | 1. <i>Qaul Qadim</i> a. Grape trees b. Date Palms | 1. All the edible plants of the fruit can be the object of the agreement |
| 2. Date palms | 2. The tree is rooted, but does not bear fruit such as hardwood trees, rubber and teak. 3. The tree is not deeply rooted, | 2. <i>Qaul Jadid</i> All plants are has strong roots and fruitful | |

| | | | |
|--|-----------------------------------------------------------------------------------------------------------------------------------|--|--|
| | but bears fruit and can be picked, such as rice and qatsha'ah (the tree is like a pumpkin tree and its fruit is like a cucumber). | | |
| | 4. The tree is not rooted strongly and no fruit can be picked, but has a useful flower, like a rose. | | |
| | 5. Trees took green and wet as a benefit, not fruit, such as ornamental plants grown on the house and in other places | | |

From the table above can be seen the difference of each *madzab* about object of plant that can be used as object *musaqah*. According Madzab Hambali plants that can be used as the object of *musaqah* only date palms and vines only because this is only done Rasulullah SAW to the residents Khaibar. While Madzab Maliki is very specific to the category of plants that will be used in the contract of the *musaqah* is a strong rooted and fruitful tree where the fruit produced from the tree can be picked in a long time such as vines and olives,

trees rooted still but not bear fruit such as timber trees hard, rubber, and teak. Trees that are not rooted strong but fruitful and can be picked like rice, a tree that is not rooted strong and no fruit but has a useful interest like a rose, and the last is a tree taken green and wet as a benefit, not fruit, like plants ornaments planted on the home page and elsewhere.

It is different also stated in the *Madzab* Syafi'i pendant which in his opinion is divided into two categories namely *Qaul Jadid* and *Qaul Qadim* of Syafi'i which states in *Qaul Qadim* that plants that can be used as objects in *musaqah* are date palms and grapes while *Qaul Jadid* states that all plants that are strongly rooted and fruitful can be used as objects of plants in the contract of *musaqah*. The *Madzab* Hambali also states that all the edible plants of the fruit can be made objects in the covenant of the *musaqah*.

Regarding the issue of the distribution of results *Fuqaha* agreed that the profit-sharing agreement can be done with each part of the fruit agreed by both parties. *Imam Malik* allows if the whole fruit production for the tenants as he thinks in the *qiradh* issue. But it is narrated that such a method is a gift and not a profit sharing deal and in other opinion it should not be.

Fuqaha also agrees that requiring a greater benefit in the profit-sharing contract should not, as if one party requires additional parties in the form of a *dinar* or *dirham*. Nor should it require anything out of the profit-sharing agreement. *Imam Malik* did not allow the profit-sharing contract on the other two gardens over the other gardens. The reason for not being allowed is the

action of *Rasulullah* at *Khaibar*. Namely, he held a production sharing agreement on several gardens with one part. *Fuqaha* is still at loggerheads on this issue.

Some scholars argue that the division of fruit between tiller and the owner of the garden must use the dosage. However, some *fuqaha* allow sharing based on estimates. The followers of Maliki differed in this matter. And the history that comes from it is different, one of the history allows while other history prohibits and according to another history is absolutely permissible, when the needs of both parties are different. *Jumhur fuqaha* argues that such ways include destructive in terms of *muzabanah* (selling dried fruit with wet fruit) in addition to including the category of wet dates and dried dates, and selling food without cash.⁸⁰

⁸⁰ Ibnu Rusyd, *Bidayatul Mujtahid (Analisa Fiqih Para Mujtahid)* diterjemahkan oleh Imam Ghazali Said dan Achmad Zaidun, (Jakarta: Pustaka Amani, 2007) p 135-136

Table 4: Differences of the Imam Madzab about the Validity of Muzara'ah and Musaqah

| Al-Mazâhib Al-Arba'ah | Muzara'ah | Musaqah |
|-----------------------|-----------|---------|
| Madzab Hanafi | x | ✓ |
| Madzab Maliki | ✓ | ✓ |
| Madzab Syafi'i | ✓* | ✓ |
| Madzab Hambali | ✓ | ✓ |

Note :

✓ : valid

X : not valid

✓* : akad muzara'ah must be followed by a akad musaqah

Based on the explanation above table in the implementation of the contract *Muzara'ah* the imam differed opinion in stating about whether or not to do *muzara'ah* in agricultural cooperation. Imam Hanafi and Zufar bin Huzail bin Qais al-Kufi (jurisprudence *fiqh* Hanafi) firmly declare that the *muzara'ah* contract is not permitted, because the *muzara'ah* contract with a quarterly profit sharing and the second law is void. This according to them is reinforced with the words of the Prophet SAW namely:

أن رسول الله صلعم نهى عن المزارعة (رواه مسلم)

"*Rasulullah SAW* forbide the *al-Muzara'ah*"(HR Muslim dari Tsabit al-Dakhak)⁸¹

According to *Imam Hanafi* the object in the *muzara'ah* is not present and is not clear, because that will be used as a reward for farmers is the agricultural product that does not exist and not clear about the size, so that the profit to be distributed since the beginning is not clear. It is possible that the farm does not produce, so the farmers get nothing from their work. This non-existent and unclear contract is what makes the contract illegitimate.

Contrary to the opinion of Hanafi stating that the *muzara'ah* contract is illegal. Maliki and Hambali's *Madzab*, Imam Abu Yusuf, Muhammad Hasan asy-Syaibani and cleric Madzab Az-Zahiri argue that the legal *muzara'ah* contract is permissible because the contract is quite clear, ie there is cooperation between the landowner and the farmer as the manager. They reasoned to the hadith of Rasulullah SAW ie :⁸²

عن ابن عمر أن النبي ﷺ :عامل أهل خير بشرط ما يخرج منها من ثمر أو زرع (رواه

مسلم)

⁸¹ M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam*, p 273

⁸² M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam*, p 274

“From Ibn Umar: Verily the Prophet (saas) has given his garden to the khaibar people to keep their covenant with a portion of their income, both from fruits and from crops”. (HR Muslim)

If agriculture does not work, because of pests and other things then it is natural because not every effort brings results as expected by everyone. Different opinion is also conveyed by Imam Shafi'i which states that muzara'ah is an illegitimate contract unless the contract is followed by the musaqah is the cooperation of the owner of the garden with the farmers in managing the existing plant in the garden which results will be divided according to the agreement of both the contracting party.

B. Concept of *Muzara'ah* dan *Musaqah* according to Compilation of Shariah Economic Law

The emergence of the Compilation of Islamic Economic Law stems from the issuance of Law No. 3 of 2006 on Amendment to Law No. 7 of 1989 on Religious Courts. Law No. 3 of 2006 extends the authority of Religious Courts in accordance with the development of law and the needs of the Islamic peoples in Indonesia today. With the expansion of these authorities, religious courts are now not only authorized to resolve disputes in the areas of marriage, inheritance, will (*wasiat*), grant (*hibah*), endowment (*wakaf*), and charity (*shadaqah*), but also handle appeals for adoption and resolve disputes in *zakat*, *infaq*

and property rights disputes and other civility between fellow Muslims and sharia economics.

After the Law no 3 of 2006 was enacted, the Supreme Court chairman formed the Compilation Team of Islamic Economic Law Compilation based on Decision Letter Number KMA / 097 / SK / X / 2006 dated October 20, 2006 which is chaired by Prof. Dr. H. Abdul Manan, S.H., S.I.P., M.Hum. The task of the team is to draft the manuscript, to hold discussions and seminars that examine the draft of the manuscript with institutions, scholars and experts, structuring the manuscript and reporting the results of the drafting to the Chief Justice of the Supreme Court of the Republic of Indonesia

In the Compilation of Islamic Economic Law *muzara'ah* and *musaqah* described in chapter VIII where in the first part explains about the pillars and conditions of *muzara'ah* while in the second part explains about the pillars and requirements of the *musaqah*. In chapter 211 the pillars of *muzara'ah* are:

- a. Land owner
- b. Cultivators
- c. Cultivated land
- d. Contract

The pillars of *muzara'ah* mentioned in the Compilation of Islamic Economic Law are:

- a. Land owner
- b. Cultivators (managers)
- c. Object *muzara'ah* in the form of land benefits and the work of managers
- d. Solemnization of a marriage

Meanwhile, according to hanafiah pillars of *muzara'ah* is;

- a. Consent
- b. Granted

While the requirements of *muzara'ah* in the Compilation of Sharia Economic Law mentioned in chapters 212 to 217. Here is an explanation of the requirements *muzara'ah*:

- a. Article 212 reads that the land owner must submit the land to be worked on to the party who will work on it.
- b. Article 213 states that the Workers must have farming skills and are willing to assume the land they receive.
- c. Article 214 states that the tenants are obliged to provide benefits to the landowners if the management they undertake is profitable.
- d. Article 215 states that:
 1. *Muzara'ah* contract can be done absolutely and or limited.
 2. The type of seed to be planted in a limited *muzara'ah* must be declared with certainty in the contract, and known by the tiller.

3. Free cultivators choose the type of plant seeds to be planted in an absolute *muzara'ah* contract.
4. Cultivators must pay attention to and consider the condition of the land, weather conditions, and possible ways to cope with the planting season.

The requirements described by *Jumhur Ulama* in the implementation of the *muzara'ah* are more detailed starting from the state of the person who is intentional, the seeds to be planted, the work to be done, the results to be harvested, and the duration of the contract validity are as follows:

1. Terms relating to the person making the contract, must be *baligh* and reasonable, so that they can act on behalf of the law. By some hanafi scholars, other than the requirement of non-apostates, because apostasy is considered *mauquf*, that is, it has no legal effect until it returns to Islam. However, Abu Yusuf and Muhammad Hasan Asy-syaibani disagreed with the addition, since the *muzara'ah* contract was not only between Muslims but also between Muslims and non-Muslims.
2. Matters relating to the acquisition of crops where each part shall be mentioned (presentations) when the contract, the result is the common property, the mile and the malik are one of the same kind of goods, the two sides can be known.

3. Matters relating to the land to be planted where the land is a land that can be planted or fertile and known boundaries.
4. Time-related matters must meet certain conditions, that is, the time has been determined, it is possible to plant the intended crops, such as planting the rice for about 4 months, allowing the two sides to live by habit.
5. Terms relating to the object of the contract, must also clear the utilization of its seeds, fertilizers, and drugs as applicable to the local area.

Whereas in article 216 and article 217 explains the outcome where in article 216 it states that the cultivator shall explain the estimate of the harvest to the landowner in the absolute *muzara'ah* contract and in article 217 it is explained that the tenants and the landowners can agree on the distribution of agricultural products to be received by each side. This is in line with the *jumhur ulama's* opinion on the acquisition of crop yields, ie each part must be mentioned the amount (percentage) when the contract, the result is joint property, the amil and malik parts are the same kind of goods eg from cotton when malik gets the rice and amil get the cassava part then this is not valid, the second part of the party can be known the intention is when the contract process occurs both parties (landowners and farmers) must determine clearly the second part, and the last is not required for one of the addition allowed.

Then in article 218 explains the cancellation of the *muzara'ah* contract resulting from irregularities committed by the cultivators in carrying out the contract as a side effect all the crops done by the cultivators who committed the violation belong to the landowner and in this case, the landowner is encouraged to for the work the cultivators have done.

Furthermore, Article 219 and Article 220 describes the continuation of the cooperation agreement of the *muzara'ah* if one of the parties who committed the contract dies. Article 219 stipulates the provisions of continuing the contract when the owner of the land that the cultivator is entitled to continue *muzara'ah* if the plant has not been harvested yet, although the land owner has died and the heir of the land owner must continue the cooperation of *muzara'ah* done by the deceased, before the plant the tiller can be harvested. Whereas Article 220 explains the continuation of the contract if the land tenant dies when the right to work on the land can be transferred by way of inheritance if the cultivator dies, until the plants can be harvested and the heirs of the tillers are entitled to continue or cancel the *muzara'ah akad* committed by the deceased.

However, according to there are differences of opinion among the scholars of *Imam Madzab* regarding the *akad muzara'ah* can be forwarded by his heir or not, in this case the opinion is divided into two that according to scholar *Madzab* Hanafi and *Madzab* Hambali if one

who committed the death, the *muzara'ah* ended and could not be inherited, according to *Madzab* Maliki and *Madzab* Shafi'i argued that the contract did not end and could be passed on by his heirs. It is also stated in the Compilation of Islamic Economic Law article 221 stating that the *muzara'ah* contract ends if the agreed time has expired.

In the second part of the *muzara'ah* chapter and *the musaqah* explaining the pillars and conditions of the *musaqah*, in Article 222 it is stated that the pillars of the *musaqah* are:

- a. The supplier of the plant
- b. Crop keepers
- c. Plants are maintained
- d. Contract

There are differences of opinion about the pillars of *musaqah*, according to Imam Hanafi harmonies there are two pillars of *musaqah* namely *Ijab* and *Kabul*, whereas according to *Jumhur* scholars consisting of Imam Syafi'i, Imam Maliki and Imam Hambali mention that there are 5 pillars of *musaqah* namely:

1. There are two parties who commit the contract, which is meant in this case are the parties who commit the contract must be a person capable of acting in the name of law (*baligh* and rational).
2. There is a plot of land in the covenant, that is, the object to which the object of the covenant must be established. According to Imam Syafi'i gardens which became the object of the agreement is the

wine and dates only because the two kinds of plants are stated in the hadith of the Prophet SAW, this is different from *madzab* hambali that all plant objects that can be eaten fruit can be made object agreement.

3. The form / type of business undertaken must have something to do with the effort to process and maintain the garden, in order to obtain maximum results.
4. There is a provision of each part of the outcome of such cooperation.
5. There is an agreement, both written and oral.

Whereas in article 223 explains that the owner of the plant must submit the plants to the carers and keepers are obliged to maintain the plants that are the responsibility. Furthermore, in article 224 states that crop keepers are required to have the skills to perform their work. Then in article 225 states that the distribution of the proceeds from the cultivation of the plant must be declared with certainty in the contract, this is in line with the opinion of all the *madzab* that the division of the proceeds of the plant must be mutually agreed.



CHAPTER IV

CLOSING

A. Conclusion

Based on the results of the research, researchers found that there are differences of opinion about the law of agricultural cooperation through *muzara'ah* contract and *musaqah*. Based on the formulation of the problem in this study the researcher concludes that:

1. According to Hanafi the concept of *muzara'ah* should not be done because there are elements of *gharar* inside which allows both parties to lose. It is different with Imam Maliki and Hambali who allow this *muzara'ah* contract to take place between the parties that make the agreement. While Imam Syafi'i argue that the

implementation of this *akad muzara'ah* may be done with the condition must be followed by another contract of the *akad musaqah*. As for the concept and law of Imam Hanafi Imam, Imam Maliki, Imam Syafi'I and Imam Hambali agree that this cooperation can be done on terms and in harmony.

2. Currently the system of cooperation is often done is likely to *mudharabah* (cooperation with profit sharing). Especially in the banking system that occurs is Where landowners should provide farmland, seed / seedlings, fertilizers and other necessary tools. While the tillers are willing with skill, energy and time. After the agreement is completed then both will get a certain percentage of parts in accordance with the agreement.

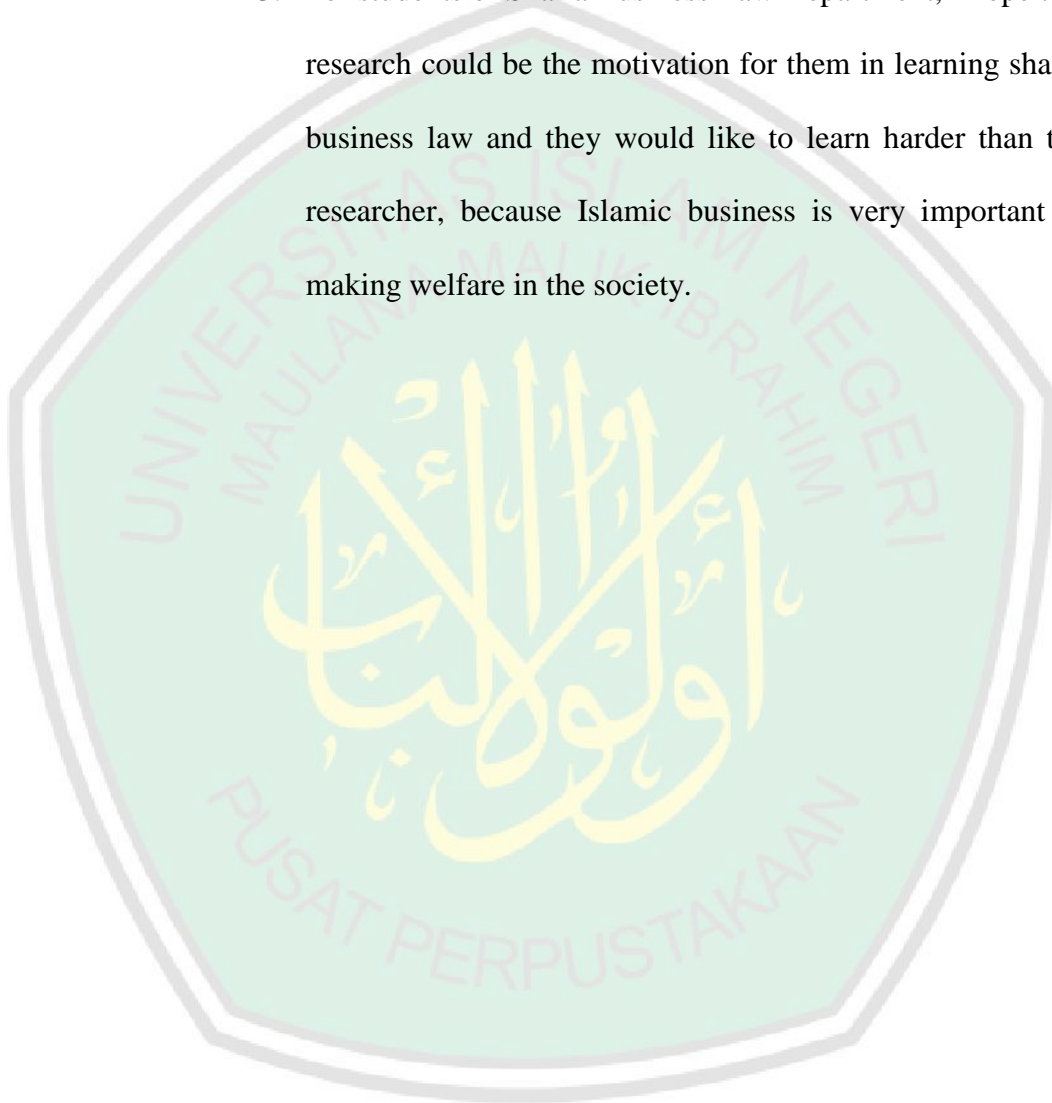
B. Suggestion

From the comparison of the concept of agricultural cooperation which consists of *akad muzara'ah* and *musaqah* according to imam madzab, there are a few things that the researcher would like to recommend as the following:

1. For Sharia Faculty, especially Sharia Business Law Department of State Islamic University of Maulana Malik Ibrahim, researchers hope through this comparison can be used as additional material to expand knowledge.
2. For the practitioner of sharia business especially for Islamic finance practitioner, researchers hope more attention and

develop the concept of cooperation in this field of agriculture. Because it can increase the type of product from banking, especially syariah banking.

3. For students of Sharia Business Law Department, I hope this research could be the motivation for them in learning sharia business law and they would like to learn harder than the researcher, because Islamic business is very important in making welfare in the society.



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APPENDIXES

CURRICULUM VITAE

A. Data Pribadi

Nama : Nala Tartila

Tempat, Tanggal Lahir : Jember, 22 September 1995

Jenis Kelamin : Perempuan

Agama : Islam

Alamat : Jl Ngurawan 14 Rt 09 Rw 03 Dampit Kabupaten Malang

No. Hp : 081230045653

Email : nalatartila95@gmail.com

B. Latar Belakang Pendidikan

Pendidikan Formal

| No | Lembaga Pendidikan | Tahun Lulus |
|----|----------------------------------|-------------|
| 1 | SDI Diponegoro Dampit | 2007 |
| 2 | SMP Negeri 1 Turen | 2010 |
| 3 | MAN 3 Malang | 2013 |
| 4 | UIN Maulana Malik Ibrahim Malang | 2017 |

C. Pengalaman Organisasi

1. (2015) Member and daily committee of FORKES (Forum Kajian Ekonomi Syariah) UIN Maulana Malik Ibrahim Malang.
2. (2015) Volunteer of Development a village focus on improvement economy in Desa Sumber Kradenan, Pakis Kab Malang.
3. (2015) Member of Ulul Albab Astronomy Club In Islamic State University of Maulana Malik Ibrahim Malang
4. (2014) Member and volunteer in UIN Malang Mengajar

5. (2013) Founder and Chief of AKLAMAN 3 Malang (Asosiasi Kaligrafer MAN 3 Malang)
6. (2012) Chief of Bakti Sosial dan Safari Dakwah MAN 3 Malang in Sumber Pucung village Kabupaten Malang
7. (2012) Coordinator of activation section Ied Fitri in Al Falah Mosque of MAN 3 Malang
8. (2012) Divisi humas orientasi dan training kepemimpinan santri Mahad Al Qalam MAN 3 Malang
9. (2012) Coordinator Divisi Acara Intensif Bahasa Inggris Santri Mahad Al Qalam MAN 3 Malang
10. (2012) Coordinator Divisi Acara Intensif Bahasa Arab Santri MAhad Al Qalam MAN 3 Malang
11. (2012) Coordinator Divisi Sponsorship Lomba Islamic Teenager Competition (ITC) Badan Dakwah Islam MAN 3 Malang
12. (2012) Divisi Acara Latihan Dasar Kepemimpinan (LDK) Organisasi Intra Mahad Al Qalam MAN 3 Malang
13. (2012) Ketua Pelaksana Language Fair Mahad Al Qalam MAN 3 Malang Periode 2012-2013
14. (2012) Divisi Konsumsi Panitia Idul Adha Masjid Al Falah MAN 3 Malang
15. (2012) Divisi Kreatif Badan Dakwah Islam MAN 3 Malang Periode 2012 -2013
16. (2012) Divisi Dekorasi dan Dokumentasi Muwaddaah Akhirissanah Santi Mahad Al Qalam MAN 3 Malang
17. (2012) Coordinator Divisi Humas RIHLAH ILMIAH siswa MAKBI (Madarasah Aliyah Keagamaan Bertaraf Internasional) MAN 3 Malang.
18. (2012) Koordinator Lapangan Orientasi Santri Baru Mahad Al Qalam MAN 3 Malang

19. (2012) Ketua Divisi Bahasa Organisasi Intra Mahad Al Qalam MAN 3 Malang
20. (2012) Divisi Acara Pondok Ramadhan siswa MAN 3 Malang
21. (2011) Divisi Kreatif Badan Dakwah Islam MAN 3 Malang
22. (2011) Divisi Acara Muwaddaah Akhirissanah Santri Mahad Al Qalam MAN 3 Malang
23. (2011) Divisi Kesekretariatan Bakti Sosial dan Safari Dakwah MAN 3 Malang
24. (2011) Divisi Acara Language Fair Organisasi Intra MAhad Al Qalam MAN 3 Malang
25. (2011) Sekretaris 1 Divisi Bahasa Organisasi Intra Mahad Al Qalam MAN 3 Malang

D. Prestasi-prestasi

1. 2nd Place at Calligraphy contemporer art contest in Universitas Negeri Malang East Java 2011
2. 1st Place at Calligraphy contemporer art contest in Universitas Negeri Malang East Java 2012
3. 1st Place at Calligraphy contemporer art category female MKQ Kota Malang 2012