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Intrinsically irreconcilable: The case against running *musharakah* as employed by Islamic banks

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Abstract

The main objective of the paper is to theoretically as well as empirically analyze the Sharī'ah compliance of running Musharakah (RM) being practiced by Islamic banks. The study employs both theoretical and empirical descriptive analytical approaches. The empirical part of the study uses primary data of 1000 Shariah scholar respondents. The data was collected through questionnaire throughout the four provinces and capital city of Pakistan. The study employs univariate and bivariate analysis. The results reveals that an RM is quite close to running finance. An RM is causing the concentration of wealth in the hands of corporate class who invest less of their capital but get more of profit. It is found that an RM violates obvious principles of Islamic jurisprudence. In RM, fixation of profit at two levels as being practiced is nothing but stratagem to legalize the illegal interest based running finance.

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Keywords: Running Musharakah; Running Finance; Overdraft facility

1. Introduction

By 2005 a financing product called a running musharakah (RM) was introduced in Islamic banking in Pakistan. RM is a financing facility in which an Islamic bank becomes a sleeping partner in the business of a client under a contractual partnership (*shirkat-ul-'aqd*). Islamic banks specify a limit on the amount of finance that a client can withdraw at once or on an “as and when needed” basis. Its use increased after 2014, such that its total share of financing by Islamic banking institutions (IBIs) in Pakistan in 2020¹ rose to 27 percent from 25 percent (Akram,

2019). An RM facility is valid for a period of one year or another agreed term, from the day on which the facility is approved. Islamic banks offers this facility only to corporate clients. Through using RM, unlike other Islamic financial products, such as *murabahah* or *ijarah*, clients can access a financing facility without any complex paperwork/documentation (Ayub, 2016). The profit rate in RM is determined at two levels. At the first level, Islamic banks set a target rate (called a profit ceiling), which is usually equal to the Karachi interbank offered rate (KIBOR). It is mutually agreed that up to this profit ceiling, profits will be distributed based on the investment shares of the bank and the client. At the second level, Islamic banks agree to reduce their profit share to as little as 0.00001 percent whereas the remainder of the profit, 99.99999 percent, goes to the client—an amount that usually exceeds the profit divided between the bank and the client at the first level (Ayub, 2016).

Scholars of Islamic finance criticize RM in different forums, claiming that it replicates a conventional overdraft facility, which leads to a concentration of wealth in the hands of a few corporate clients and contravenes the spirit of Islamic finance.

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¹ Calculated from the financial statements of 13 Islamic banks (full-fledged Islamic banks and standalone Islamic branches of conventional banks) offering a running *musharakah* facility.

Hence, RM violates the higher objectives of sharia and the basic sharia principles of *shirkah* (partnership) (see Akram, 2019; Ayub, 2016; Islamreigns, 2019; Javaid et al., 2018; Siddique, 2017; Ullah et al., 2017). They raise a few issues about RM but do not discuss them in detail. The proponents of RM have either discussed its operational aspects or tried to justify the compliance of RM with sharia, but they overlook important legal aspects (see Abu Bakar, 2018; Ahmed et al., 2016; Ali, 2020), which are discussed below. The goal of this paper is to analyze the sharia compliance of RM theoretically as well as empirically and to highlight the fundamental issues with RM, so that these problems can be addressed in academic and policy-making circles.

The rest of the paper is structured as follows. Section 2 presents the background and structure of RM. Section 3 presents a literature review on RM. In section 4, the issues in RM are framed. Section 5 discusses the data and methodology. Section 6 presents a detailed theoretical sharia analysis on RM. Section 7 gives a perception-based empirical descriptive analysis of RM. Solutions are discussed in section 8. Finally, Section 9 summarizes the arguments in the paper with recommendations.

2. Background on RM

To meet the working capital needs of its corporate clients, conventional banks usually limit the size of loans on which clients can draw at once or on an “as and when needed” basis. Under this facility, clients can redeposit the amount withdrawn, until the maturity date of the contract. The client pays interest (KIBOR) only on the amount used by the client, rather than on the entire amount approved. The amount used by the client under this facility is called the overdraft (OD), and interest paid on it is called the OD rate. This type of financing facility is known as running finance (RF) (SBP, 2005).

Under this facility, the client has to pay a specific amount as profit, irrespective of its business conditions (i.e., whether the business earns a profit or faces losses). This is interest (*riba*), which is prohibited by sharia law. Consequently, RF is prohibited. In general, corporate clients make a very small proportion of investment in the business whereas the majority of the capital is provided by banks. Corporate clients retain the majority of profit earned. Later, after deducting its share from the profit obtained from corporate clients, the bank distributes the remaining small amount of profit to its depositors. This is an exploitative part of RF that contributes to the unequal distribution of wealth in the economy. To attract corporate clients, Islamic bankers attempted to provide a sharia-compliant alternative to RF. Usmani (2000, pp. 68–74) presents an unprecedented concept of RM, suggesting that Islamic banks can provide participatory capital in the form of daily products. Islamic banks adopted it and started to offer an RM facility with the following structure.

Suppose that Mr. Khalid is a corporate client, who needs cash to meet his working capital requirements. He approaches an Islamic bank, which agrees to finance him through an RM facility after it analyzes the financial statements of his company

to study the financial performance of Khalid's business. Under the terms and conditions of a contractual partnership (*shirkat-ul-'aqd*), Islamic banks becomes non-active (sleeping) partners in Khalid's business for a specific period, for example, one year. Under the contractual agreement, the amount of profit is determined between the Islamic bank and Khalid on two levels. The profit distribution mechanism is set up such that, at the first level, profit is distributed according to their investment shares up to the amount equal to KIBOR, say, 14 percent, of the total *musharakah* investment from unearned total future profit. At the second level, the remaining profit is distributed according to pre-agreed ratios of 0.00001 percent and 99.99999 percent between the Islamic bank and Khalid, respectively.

The Islamic bank approves an amount, for instance, \$15 million, under an RM facility and credits Khalid's account with this sum. The RM starts, and Khalid withdraws different amounts at different intervals on an “as and when needed” basis. At the end of the contract period, the total amount withdrawn by Khalid deducted from the approved limit—for example, \$10 million—is considered the Islamic bank's investment share of the RM. At this stage, Khalid presents the business details to determine his capital share in a joint business, and his capital share is \$4 million. If his business's net profit is \$2 million, and total investment is \$14 million, the share of the Islamic bank's investment is 71 percent ($= 10/14$) and that of Khalid is 29 percent ($= 4/14$). The profit ceiling is calculated as per their agreement: \$280,000 ($= 14\%$ of \$2 million). And, according to their agreement, \$280,000 out of the total net profit of \$2 million is distributed between the Islamic bank and Khalid according to their investment shares: 71 percent and 29 percent, respectively. Hence, the Islamic bank receives \$198,800 and Khalid receives \$81,200. The leftover profit beyond the ceiling rate (\$2 million – \$280,000 = \$1,720,000) is distributed according to the pre-determined ratios 0.00001 percent and 99.99999 percent between the Islamic bank and Khalid, respectively. Therefore, the Islamic bank receives only 0.172 cents (0.00001% of \$1,720,000) from \$1,720,000, but the remaining \$1,719,999.828 is given to Khalid. In this way, Khalid earns profit of \$1.80 million (\$81,200 + \$1,719,999.828) from \$2 million with his 29 percent investment share while the Islamic bank earns only \$198,800.172 with a 71 percent investment share.²

2.1. Views and issues about running *musharakah*

2.1.1. The proponents

Usmani (2008) introduced the RM and designed this structure. According to him, a renowned hanafi jurist, Imam al-Kasani (587H), allows a delay in profit determination at any time before profit distribution. He suggested the second level of profit to avoid the objections over gifting the profit in favor of the corporate client. He added that partners are free to

² This case is built in the light of the RM structure by Ayub (2016), Siddique (2017), and Siddiqui (2020). To keep the analysis simple, the information irrelevant to sharia issues, e.g., the cost of goods sold multiplied by inventory turnover in days and divided by the *musharakah* tenure, are ignored here, in order to focus on the sharia issue in RM.

determine any profit ratios between them. If the Islamic bank as a partner agrees to take profit as low as 2 percent, it is allowed. Regarding the indeterminate capital until the RM matures, he said that it is not possible to quote a fixed amount of investment at the beginning of an RM facility, because no one knows how much the client will eventually withdraw, as withdrawals from and deposits to the RM account are allowed until it matures. To avoid this objection, he suggested the idea of a daily product, which was adopted in *mudarabah* profit distribution.

Ahmed et al. (2016) discusses the volume of RM in the Islamic banking industry and its operational aspects. They did not touch on the perspective of sharia compliance. Abu Bakar (2018) also focuses on its operational aspects. Although he mentions the sharia aspects, he does not deeply analyze and discuss the sharia issues raised by critics. He states that RM is a sharia-compliant product. Ali (2020) brings up the issues highlighted by Ayub (2016) and tries to negate his view by only discussing some clauses from the AAOIFI's sharia standards, claiming that the RM structure follows the sharia guidelines of *musharakah* and does not violate sharia rules. Regarding the two levels of profit determination and profit ceiling, he argues that they are allowed in sharia. He advocates a second-level profit ratio of 0.00001 percent and 99.99999 percent and states that partners are free to agree on any ratio they wish. It is a proper profit distribution, not a gifting of profit, he adds. Moreover, he cites references in Usmani (2008) showing that, according to hanafi jurists, determination of the profit rate can be delayed until the end of the *musharakah* term.

2.1.2. The opponents

Ayub (2016) initially highlights the issues in RM, such as the indeterminate nature of the Islamic bank's investment share, profit ratios, and gifting of profit to the business partner. He published an editorial on RM in the *Journal of Islamic Business and Management (JIBM)*, saying that investment shares and profit ratios remain unknown until a few days before the maturity of an RM, but doing so is not allowed. Moreover, he criticized the second level of profit determination at 0.00001 percent and 99.99999 percent, considering it a gifting of profit to corporate clients by an Islamic bank that is unprecedented and an unusual method of profit determination in business. He called it a concentration of wealth in rich corporate hands. He also highlighted that Islamic banks provide finance from savings and investment deposits that are based on *mudarabah*. It states that Islamic banks, as *mudarib* (manager) of depositors, invest in RM facilities. A *mudarib* is not allowed to set second-level profit (gift profit) on the behalf of *rabb-ul-mals* (depositors), because *rabb-ul-mals* will not allow gifting of partial profit, if they are asked about it. Finally, Ayub denied that he had accepted RM as *musharakah* and termed it as "running from *musharakah*." He said it was a replica of conventional RF.

Tahir and Khan (2016) criticized RM and added that if an Islamic bank opens an RM account for a corporate client, it is treated as the client's account with the bank, not the joint account of the client and the bank, managed by the bank. Akram (2019) criticized RM on same grounds as Ayub (2016), adding

evidence from the AAOIFI sharia standard. He concluded that RM is neither *musharakah* nor a better mode of finance than sales-based modes of finance with a fixed rate of return. He also repeated that it is nothing but a replica of a conventional overdraft. Siddique (2017) theoretically analyzed RM on legal grounds and highlighted various issues, concluding that RM plays a role similar to that of conventional RF by accumulating wealth in the few hands of rich corporate clients. Ullah et al. (2017) said that some Islamic banks are financing needs for working capital under the umbrella of RM, which involves a fixed charge to the client, as with a conventional overdraft facility. Javaid et al. (2018) argued that RM is structured ignoring the substance of *musharakah*.

2.2. Sharia issues with RM: The gap

Previous literature just highlights the sharia issues but does not provide reasons and legal evidence. Critics have also analyzed and highlighted some issues with RM. However, the proponents as well as critics have largely ignored the following important sharia issues (SI) with RM and the legal details:

- SI-1. Do sharia laws provide room for participants to defer determination of capital/profit shares until the maturity of *musharakah* contract?
- SI-2. What is the basis for setting the profit rate as low as 0.00001 percent for an Islamic bank?
- SI-3. In what capacity does an Islamic bank invest in RM, as the equity owner or as a *mudarib* of depositors?
- SI-4. To what extent is a *mudarib* free to issue loans, gifts, or withdraw the rights of depositors?
- SI-5. What is the actual process of loss distribution in an RM?
- SI-6. Is there a bias in the flow of profits to the corporate class, as in conventional banking, causing an unfair distribution of wealth?

In the next section, we analyze RM, focusing on these six questions.

3. Theoretical analysis of sharia issues with RM

3.1. Anonymity of investment and profit shares

Let begin with the first question. To answer this question, it is necessary to briefly discuss the type of partnership (*shirkah*). Based on information obtained from the websites of Islamic banks, financial reports, and academic papers, it becomes clear that RM was designed using the format of *shirkat-ul-'aqd* (contractual partnership). Doing so requires that the principles of *shirkat-ul-'aqd* be followed in RM regarding the presentation of capital and the determination of profit ratios between the Islamic bank and the client.

With respect to this question, the investment capital of Islamic banks and clients can be handled in two potential ways. In the first way, the RM limit approved by the client is the Islamic bank's investment, and the client also specifies his investment at the very beginning of the contract. By doing so, both investments become known and determined at the

beginning of the contract, and no ambiguity and uncertainty remain in this regard. The second way is that their investment shares are known a few days before the RM matures. To do so, the Islamic bank's investment is calculated on the basis of daily products over the tenure of the RM facility (Ayub, 2016); however, it remains anonymous during the tenure. How the share of the Islamic bank is calculated is not important. The main concern here is when it is determined and finally made known. This second possibility is the case of RM with respect to investment determination.

The investment by the Islamic bank remains unknown from the start of the RM until the end, because the client continually withdraws from and deposits cash in the Islamic bank at different intervals. After a specified period, say one year, how much cash the client has used by the end of RM is calculated. Only the amount used up to the sanctioned limit is considered the Islamic bank's investment. This makes clear that the investment by both the Islamic bank and the client is known and determined at the end of the RM. In discussing the RM, Usmani (2008, 61) addresses the objection about the determination of investment capital, saying: "The views of the classical jurists differ on whether it is necessary for the participants to know the total amount of capital in the beginning of contract in order for the partnership (*shirkat-ul-'aqd*) to be valid. The hanafi jurists are unanimous that this is not a condition for the partnership." Usmani (2008) probably wanted to say that, according to the hanafi view, it is not necessary for capital to be known and present at the time the *shirkat-ul-'aqd* contract is signed. According to great hanafi jurist Al-Kasani (1986, p. 63):

As far as the "preknown amount of capital at the time of contract" is concerned, it is not a condition for the validity of partnership in our opinion, but it is a condition in the opinion of al-Shafa'i. The reason for his opinion is that the anonymity of capital leads to uncertainty about the profit ratios, while its certainty is a condition for the validity of partnership contract. Therefore, the preknown amount of capital is a condition (according to al-Shafa'i). In our view, the mere anonymity of capital does not render a contract invalid, unless it leads to a dispute. And the anonymity of capital at the time of contract does not lead to disputes, because capital is generally known when the commodities are purchased for the partnership contract, hence it does not lead to uncertainty about the profit at the time of distribution.

It is clear from this text by Al-Kasani that the mere anonymity of capital is not a hindrance to the execution of a partnership contract, but it does not mean that keeping it uncertain will not affect the contract. It will make the partnership irregular, if one or more partners do not disclose or present their final amount of investment capital before the "practical start of business." Therefore, capital must be known before the practical start of a partnership, such as at the time that one is first shopping for a joint business. But to enable the permissibility of RM, this principle was set aside by modifying the meaning of this text as follows: "It becomes clear from the above mentioned text [of al-Kasani] that *Shirkat-ul-'aqd* is executed even though capital is uncertain at the time of

contract. However, that is the only condition that amount of capital should be known at the time of profit distribution so that there would be no dispute at that time" (Usmani, 2005, p. 393).

It becomes clear that, according to the proponents of RM, ignorance of the amount of capital can be tolerated even until the end of a partnership, before the profit distribution. They also claim that this is the unanimous opinion of the hanafi school. On the contrary, Al-Kasani's words make clear that presenting the capital at the time that one is first shopping for a joint business is mandatory, and a delay later than that cannot be tolerated.

3.1.1. Hanafi opinion on when capital must Be known

In this regard, the renowned hanafi jurist Al-Sarakhsi (483H; 1993, 152) wrote:

In partnership two men share capital such that each partner presents his capital, and this must be done either at the time of the contract, or at the time of purchase [for partnership]. Therefore, partnership cannot be considered permissible with anonymity of capital. ... In our view, agency is the basis of partnership [*shirkat-ul-'aqd*] such that each partner is the agent of the other regarding a purchase with the capital they have specified for partnership. Therefore, we have made it condition to specify the capital at the time of the contract, or at the time of purchase, because the agency to purchase is not valid without known [specified] capital.

The text by al-Sarakhsi shows that there is no option other than these two: partners must present and specify their capital either at the very beginning of a partnership or at the time that they are first shopping for a joint business. This is clearly explained by Al-Kasani (1986, p. 60) as follows: "It is a necessary condition to present [the capital] at the time of purchase, not at the time of the contract, because partnership is considered complete only with the purchase." Therefore, the presence of capital is mandatory at that time. Damad Afandi (1668) also confirms this opinion. Ibn Abidin (1992, p. 311) explains in more detail: "It is necessary for capital to be presented, which means at the time that one is first shopping, not at the time of the contract."

The great hanafi jurist Al-Samarqandi (1994) removes all doubts in this regard and explains with the following example:

Capital for *shirkah* must be present either at the contract [stage] or at the time of purchase. For example: a person gave one thousand dirhams to another and asked him to "mix the same amount of yours with it and buy goods, then sell the bought item for profit, which will be divided between us." The other person acted accordingly and bought something with two thousand dirhams. This partnership is permissible though the capital of the other partner was not specified at the time of contract, but it became present at the time of purchase for a joint business. The matter is so because partnership is completed only with the purchase. Hence, the presence of capital at the time of purchase is considered as it was present at the beginning of the contract.

Jurists are unanimous in saying that the quantity of capital must be determined at the time that a person first shops for a joint business. They are *hanafis* who have flexible opinions about “making capital known,” but Malki, Hanbali, and Shaf’i jurists have a very strict opinion in this regard. They strictly say that capital must be known at the very beginning of the *shirkah* contract. They do not permit a delay it even until the first purchase of *shirkah*. The Hanbali jurist [Ibn Qudamah \(1928, 14\)](#) says:

The capital in the *shirkah* may not be anonymous, nor is it arbitrary, because it must be referenced at the time of concluding the *shirkah*, which is not possible with anonymity and estimated capital. *Shirkah* is also not allowed with absent capital or debt capital because they cannot be disposed of with immediate effect, which is the basic objective of *shirkah*.

Hanbali jurists are very flexible about financial matters, but they are very strict about making capital known at the beginning of a *shirkah*. The Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) (2015, p. 332) also takes a clear stance in this regard and says: “*The share of each partner in the capital should be determined, whether it is contributed in the form of one lump sum or by more than one payment over time, i.e., ..., when there is a need for additional funds to increase the capital.*”

RM clearly seems to violate the sharia principle of making capital known either at the time of contract or at the time of first purchase of a *shirkah*. According to [Anwer et al. \(2019\)](#), when a *shirkah* contract is executed, time and profit ratios should be specified. This debate can be summarized with this elaboration that assumes a timeline ([Figure 1](#)) for RM, in which t_0 is the time of signing the *shirkah* contract, t_1 is the time of the first purchase of a joint business, t_{n-1} is the time before profit distribution, and t_n is the time of profit distribution. The majority of the jurists believe that the presentation of capital cannot be delayed after t_0 ; otherwise, the contract will be declared void. According to the hanafi jurists, it can be delayed until t_1 , but not later, otherwise, the partnership will be considered irregular. This is their unanimous opinion. In RM, capital determination remains unknown until t_{n-1} , which, in the opinion of jurists in all schools, is not allowed.

3.1.2. The anonymity of profit ratios

The decision that capital must be determined at the time of purchase begs a question: why is the removal of anonymity of capital necessary at that time? This answer is also found in the text of Al-Kasani: anonymity in capital constitutes anonymity in profit ratios because each partner's amount of profit will depend upon each partner's investment share. If the investment of each partner is anonymous and unknown, investment shares

will remain unknown, and so do profit ratios, because investment shares are used as the reference rate for profit ratios. They are also used as the reference rate in the event of termination of a *shirkah*. After estimating the updated worth of a business, how large a share each partner receives is decided in relation to their initial investment share, as Ibn al-Qudamah said in the quote mentioned earlier.

Moreover, profit calculation for each financial period is not possible, if investments are unknown from beginning, because initial investment is deducted from total worth of business, then expenses are deducted, and finally net profit is obtained for distribution among the partners. Net profit cannot be calculated if the amount of investment is unknown. Therefore, the amount of capital must be known at the early stage of a *shirkah* to enable the calculation of profit. As [Al-Sarakhsi \(1993, p. 156\)](#) says: “*Then each partner will declare his amount of capital so that each partner's invested capital may be deducted to calculate net profit at the time of profit distribution.*”

As mentioned earlier, the calculation and distribution of profit depend on the share of investment, and the share of investment is also used as a reference for profit ratios. The absence of this reference will certainly prevent determination of the profit rate, which will result in irregularity (*fasad*) in the *shirkah*. As [Al-Kasani \(1986, p. 59\)](#) says: “*Profit ratios must be known. Otherwise, shirkah would be regarded as irregular, because profit, if it is anonymous, is something that makes a contract irregular.*” [Al-Zuhaili \(1985, p. 535\)](#) explains Al-Kasani's view as follows: “*The share of each partner in total profit must be known in terms of its percentage, such as 3, 5, or 10 percent. If the profit share is unknown, the shirkah will be regarded as irregular, because ignorance about profit necessarily makes the contract irregular.*”

According to [Al-Marghinani \(1995, p. 161\)](#), an irregular contract must be canceled immediately. It becomes clear that determination of the profit rate cannot be delayed beyond the initial stage of a *shirkah*. The AAOIFI (2015, p. 332) sharia standard confirms this view and offers guidance in this regard: “*It is not permitted to defer the determination of the profit percentages due to each partner until the realization of profit. The profit percentage for each partner must be determined at the conclusion of Sharikah contract.*” It does not allow the determination of profit to be delayed until the first purchase of contract, which is permissible in the opinion of hanafi jurists and considers it necessary at the beginning of the contract. In this regard, RM goes against the opinion of all schools as well as AAOIFI standards.

3.1.3. Daily product basis of RM

Proponents of RM adopted the idea of participatory capital on a daily product basis and tolerated the anonymity of capital until the maturity of an RM. According to [Usmani \(2000, p. 69\)](#):

If distribution on daily products basis is not accepted, it will mean that no partner can draw any amount nor can he inject new amounts to the joint pool. Similarly, nobody will be able to subscribe to the joint pool except at the particular



Fig. 1. Time line of running masharakah

dates of the commencement of a new term. This arrangement is totally impracticable on the deposit side of the banks and financial institutions where the accounts are debited and credited by the depositors many times a day. The rejection of the concept of the daily products will compel them to wait for months before they deposit their surplus money in a profitable account. This will hinder the utilization of savings for development of industry and trade, and will keep the wheel of financial activities jammed for long periods. There is no other solution for this problem except to apply the method of daily products for the calculation of profits, and since there is no specific injunction of Shari'ah against it, there is no reason why this method should not be adopted.

Our response to this argument is that the comparison of RM to *mudarabah* deposits is an erroneous analogy (*qiyas ma al-fariq*). In *mudarabah* deposits, the determination of capital may be delayed until the end of the contract, as the determination of the profit ratio does not depend on the amount of capital, as it does in the case of *musharakah*. This delay regarding deposits does not lead to any uncertainty in determining the profit ratio, as it is clearly defined at the beginning of the financial period of *mudarabah*. Hence, the State Bank of Pakistan (the central bank) states that “the profit sharing ratio (PSR) between depositors (*Rabb-ul-mals*) and IBIs [Islamic banking institutions] (*Mudarib*) shall be decided and announced at least three working days before the beginning of period concerned” (SBP, 2012). Moreover, permission to postpone the final determination of the amount of capital in *mudarabah* is exceptional (*khilaf al-qiyas*), and jurists allowed it on the basis of juristic preference (*istihsan*). One principle of Islamic jurisprudence is that “what is anomalous [*khilaf al-qiyas*] is limited to its subject matter” (Ibn Humam, 2003, 8: 36), which means that the validity of RM cannot be subject to further analogy to *mudarabah* deposits. Therefore, permission to delay determination of the amount of capital in RM cannot be based on the rationale used for deposits.

3.2. Determination and distribution of profits in RM

Regarding the second question, as mentioned earlier, profit distribution is set at two levels in RM. The method outlined, as described in Section 2, is unprecedented and has nothing to do with customary practices in the real world now or at any prior time or place.

3.3. The capacity of Islamic banks and gifting in *mudarabah*

In response to the third and fourth questions, the proponents of RM say that, according to the AAOIFI (2015, p. 334), it is permissible “to agree that if the profit realized is above a certain ceiling, the profit in excess of such ceiling belongs to a particular partner.” Therefore, it is permissible for an Islamic bank to give 99.99999 percent of the remaining profit above a

certain ceiling. One response to this argument is that this justification applies only to the partner who invests his own equity and has the full right to make any decision regarding excess profit. But in RM, the total capital invested by the Islamic bank is not its own equity nor does it have full rights over the excess profits because most of the money that Islamic bank provides as capital in RM is from *mudarabah*-based savings deposits in which the Islamic bank is the *mudarib*. Usually, Islamic banks also invest their own equity along with depositors’ money. This means that Islamic banks do not have full rights to excess profit because it also involves depositor rights. According to the AAOIFI (2015, p. 378), “it is not permissible for the *Mudarib* to make a loan or a gift or a charitable donation out of the *Mudarabah* funds. Likewise, the *Mudarib* is not entitled to waive a right associated with the *Mudarabah* operation unless the capital provider has consented to his doing so.”

Proponents of RM argue that savings deposit accounts are opened on the basis of unrestricted *mudarabah*, which enables Islamic banks to make any decision. This argument can be counter argued by Al-Sarakhsi (1993, p. 40) as follows:

If the capital provider (depositor) asks the *mudarib* to do business of his own free will, then it is permissible for the *mudarib* to do everything other than lending from his capital. And when *mudarib* is asked to perform as per his wish, he will not be allowed to lend (on behalf of the depositor) because it is a gift which is not a custom of the merchants. Therefore, he will not be allowed to give gifts and charity with general permission from depositors.

When a *mudarib* is not allowed to lend money, how can that person be allowed to relinquish depositors’ rights to excess profit? According to the AAOIFI (2015, p. 377):

The *mudarib* is not entitled to sell items for the *mudarabah* operation at less than the common or market price, or to buy items for the *mudarabah* operation at a price higher than common prices, unless if such action in either case is intended to achieve an objective that is obviously in the interest of the *mudarabah*.

How is giving 99.99999 percent of excess profit to corporate client and leaving 0.00001 percent for depositors in the best interest of depositors? If depositors are told at the time of deposit that so much of the profits will be given to someone else, they will never allow it.

3.4. Loss distribution in RM

In response to fifth question, we say that in the documents on RM, Islamic banks and clients agree to share losses based on their respective investment shares, but in practice it does not seem possible. Ayub (2016) says:

Practically it may never happen as the provisional profit as per the agreed profit ceiling is charged to the client. Claim

for any loss is subject to availability of audited accounts that is generally after a few months. Any client might hardly be prepared to offer its books of accounts for scrutiny while it has availed of the bank's capital at so cheap rate.

In other words, Islamic banks already receive profits from clients on an accrual basis in monthly installments until the end of participation. Losses are only known when the client submits accounting on his entire business, and this process takes place at the end of the partnership. If he shows a loss, he will have to submit all the audited accounts to the bank, and hardly any client will agree to submit his company's accounts for scrutiny after taking advantage of the low interest rate. Islamic banks are not in a position to force clients to do so for fear of losing them as customers. Moreover, over the course of an RM facility, Islamic banks do not care whether clients spends that money for business or for purposes other than joint business.

3.5. Flow of profit

Regarding the sixth question, the foregoing discussion shows that, in fact, RM is a distorted form of RF, and a few tricks are used unsuccessfully to separate them. If the concept of RM is viewed in the light of both the sharia objectives and its effects, it becomes clear that it is a means of wealth concentration and plays no role in the equitable distribution of wealth. Instead, like RF, it causes a concentration of wealth in a few hands. Table 1 presents the brief conclusion of previous debate on RM.

4. Empirical methodology and data

We now examine the opinion of sharia scholars on the sharia compliance of RM (Table 1). For this purpose, we a prepared short questionnaire on the six issues discussed in the previous section. Table 2 shows the items in the questionnaire.

This study employed a five-point Likert scale from 1 (strongly disagree) to 5 (strongly agree) for each questionnaire item. The questionnaire was distributed in four provinces and capital city of Pakistan. The study focused on the perception of sharia scholars who were employees at Islamic banks, working on sharia supervisory boards and in the departments of sharia compliance (SCD), product development, and sharia auditing. The respondents also included sharia scholars who are not employees in the banking and financial industry, but, like *mufī* and *nāib mufī ulamā* associated with Dār-ul-Iftā (the institution that issues verdicts on compliance with sharia) and sharia scholars in academia on sharia and law, they are also stakeholders in sharia. We distributed 1100 questionnaires to a targeted sample of 1000 sharia scholars. The rate of response was 76–96 percent in province-wise sample distribution and 83.13–92.5 percent in education-wise sample distribution. The overall success rate of response was 90.9 percent. Further details on the sample distribution are presented in Table 3. To check the reliability of the data and the responses, we used a Cronbach's alpha test. The data are analyzed using univariate and bivariate tools of analysis, such as the mean, variance, correlation, cross-tabulation, and chi-squared test.

Table 1
Comparison between running finance and running musharakah.

Sr#	Running Finance	Running Musharkah	Conclusion
1	Running finance is a loan based contract the purpose of which is to provide capital to the client and charge interest on it.	Running Musharakah (RM) is based on a contractual partnership that aims to earn profit by providing capital to client.	No difference except in titles
2	Withdrawals and depositing money by client	withdrawals and depositing money by client	No difference
3	The amount of capital upon which interest rate is charged remains anonymous by the maturity of RF.	The amount of capital upon which profit rate determination depends remains anonymous by the maturity of RM.	No difference
4	The interest rate is pre-determined.	The profit rate is determined by the end of RM.	RF is prohibited while RM is irregular (<i>fasid</i>).
5	Conventional bank receives monthly profit equal to KIBOR on an accrual basis.	Islamic bank receives monthly profit equal to KIBOR on an accrual basis.	No difference
6	The bank does not care on what business the client spends the money.	The Islamic bank does not care whether client spends Islamic bank's share on business.	No difference
7	Corporate client gets major portion of the profit and the depositors are given very little of it, depriving them of their real rights.	Corporate client gets major portion of the profit and the depositors are given very little of it, depriving them of their real rights.	No difference
8	The bank is indifferent to the losses incurred by the client.	Islamic Bank practically does not force the client to submit business account books so that the actual profit or loss can be estimated.	No difference
9	No complex nature paperwork/documentation	No complex nature paperwork/documentation	No difference
10	The bank remains practically indifferent to the client's business.	The Islamic bank remains practically indifferent to the client's business.	No difference
11	The bank does not take any responsibility for its client's business debt.	The Islamic bank does not take any responsibility for debt generated by joint business.	No difference
12	RF causes the concentration of wealth in few hands of corporate clients.	RM causes the concentration of wealth in few hands of corporate clients.	No difference

Table 2
Items of questionnaire.

Sr#	Statement	Related to Issue(s)
1	Islamic banking product “Running Musharakah (RM)” is fully compliant to the principles of <i>Shirkah</i> set by classical Islamic jurists.	All Issues
2	Keeping Islamic banking investment share anonymous in RM until few days before the maturity is compliant to the principles of <i>Shirkah</i> set by classical Islamic jurists.	SI-1
3	Hanafi Jurists allow to delay making capital and profit shares known till few days before maturity of <i>Shirkah</i> .	SI-1
4	If tenure of RM is specified, say 6 months, and complete investment share of Islamic bank for tenure remains anonymous till few days before maturity, but its share remains known on daily basis by the closing of each day, then it fulfils the principles of <i>Shirkah</i> set by classical Islamic jurists.	SI-1
5	Two level Profit fixation in RM as being practiced is compliant to <i>Sharī’ah</i> principles and does not violate any of them.	SI-1 and SI-2
6	Islamic bank as Mudarib of depositors is allowed to agree at Second level of profit fixation (0.0001% for Islamic bank and 99.9999% for client) in RM.	SI-2, SI-3, and SI-4
7	RM does not involve a fixed charge to the client as in the case of the conventional Over Draft facility.	SI-1 and SI-2
8	Practical process of Loss distribution in RM is as per <i>Sharī’ah</i> principles of <i>Shirkah</i> .	SI-5
9	RM enhances fair distribution of wealth and discourage the concentration of wealth in few hands of corporate class unlike to running finance of conventional banks.	SI-6
10	RM as being practiced in contemporary Islamic banks is in line with the higher objectives of <i>Sharī’ah</i> .	SI-6

Table 3
Sample distribution.

Province	Education			Total Distributed	Obtained	Success rate
	SA ^a	SAFTW ^b	SACE ^c			
Punjab	256	230	100	586	566	96.50%
Sindh	120	80	30	230	175	76.10%
KPK	28	20	10	58	45	77.50%
Baluchistan	15	19	8	42	37	88.10%
ICT	91	75	18	184	177	96.20%
Total Distributed	510	424	166	1100		
Obtained	472	390	138		1000	
Success rate	92.55%	91.98%	83.13%			90.90%

a. Al-shahadah al-almiyyah (Masters in Arabic), b. [(a) + specialization in fatwa], c. [(a) + conventional education].

5. Perception-based empirical evaluation: Descriptive analysis

5.1. Profiles of sample respondents

Table 4 demonstrates that the majority of the respondents are young sharia scholars under the age of 30. However, the number of the oldest respondents is also considerable. Overall, all sharia educational boards are covered in the sample, with different levels of responses. In the aggregate, the majority of the respondents are specialized and equipped with fatwa (356 + 215).

Table 4
The profile of sample respondents.

Characteristics	Total
Age	
<30	483
30–50	423
>50	94
Respondents affiliation with Institutions/boards	
Shariah advisor/Member of Shariah board (SA/SBM)	21
Mufti (who issue legal/Shariah opinion)	356
Naib Mufti (Vice Mufti)	215
Teacher (Fiqh/Shariah & Law)	316
Employee of Product Development Department of Islamic banks (PD)	31
Employee of Shariah compliant Dep. Of Islamic bank (SCD)	31
Shariah Auditor of Islamic bank	30
Respondents affiliation with Institutions/boards	
Tanzeem-ul-Madaris Ahle Sunat wal Jamaat, Pakistan	260
Wafaq-ul-Madaris Al-Arabia Pakistan, Multan	245
Dar-ul-Uloom Muhammadiyyah Ghausiyyah Bhera	236
Jamia Islamiyah Minhaj-ul-Qurān, Lahore	182
International Islamic University Islamabad	42
Wafaq ul Madaris Al Salafiyyah	20
Wafaq ul Madaris Shia	15
Conventional Education	
Undergraduate	164
Graduate	355
Post graduate	481
Knowledge about	
AAOIFI	58
Institutions issue	
Int'l Islamic Fiqh Academy, Jeddah	37
collective fatwa	
Int'l Islamic Fiqh Academy, India	41
on Islamic Finance	
Majlis-e-Shara'i Mubarakpur, India	12
All of them	469
FEW of them	381
None	2
Knowledge about Islamic banking products and services specifically RM	
Yes	962
No	38

A large number of respondents (316) work in research and in teaching Islamic jurisprudence, sharia law, and Islamic banking. Many sharia scholar respondents work at Islamic banks in various departments. The data cover representation from almost all the sharia education boards, including the international Islamic university in Islamabad. The majority of the respondents are aware of the institutions that issue sharia standards and collective fatwa regarding Islamic banking and financial matters and transactions such as the AAOIFI, and the Islamic Fiqh Academy Jeddah. All but 38 respondents had information about Islamic banking products and services in general and about RM in particular. These demographic characteristics show that the respondents were well aware of Islamic banking, its sharia compliance, and RM, and it would constitute solid and certain response against items of questionnaire.

5.2. Perceptions of RM

To check the reliability of the data, we performed a Cronbach's alpha test. The value of Cronbach's coefficient alpha

ranges from 0 to 1 and is categorized from excellent to unacceptable ($\alpha \geq 0.9$ to $\alpha < 0.5$). However, $\alpha \geq 0.7$ to $\alpha \geq 0.8$ is the preferred level of reliability (Lavrakas, 2008). According to Table 5, the value of Cronbach's coefficient alpha calculated achieves the preferred level of reliability.

The final column of Table 6 shows the results for "Cronbach's alpha if item deleted," that is, the value of Cronbach's alpha if that particular item is deleted from the scale. We find that the elimination of any question reduces the value of Cronbach's alpha. Therefore, we do not want to omit these items. Deleting item 10 would decrease the value of Cronbach's alpha to 0.794, which indicates its importance.

5.2.1. Univariate analysis

Table 7 shows that, overall, a majority of the sharia scholar respondents disagreed with all the statements. A combined 67.4 percent (strongly disagree 22% + disagree 45.4%) of the respondents disagreed with the statement that "the Islamic banking product RM is fully compliant with the principles of *shirkah* set by traditional Islamic jurists." The proportion of overall agreement with the statement was 15.9 percent (strongly agree 7.8% + agree 8.1%), and 16.7 percent neither agreed nor disagreed. Responses to the second item show that, according to the majority of the respondents (74.3%), based on the principles of *shirkah* set by traditional Islamic jurists, investment shares of an Islamic bank cannot remain anonymous in an RM until a few days before maturity. Only 19.8 percent of the respondents agreed with the item, whereas only 5.9 maintained neutrality on the matter. The responses to the third item were similar to the responses to the second, meaning that the majority of the respondents (70.5% = strongly disagree: 35.8% + disagree: 34.7%) believe that capital and profit shares cannot be

Table 5
Reliability statistics.

Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
0.832	0.830	10

Table 6
Item-total statistics.

Items (Statements)	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Squared Multiple Correlation	Cronbach's Alpha if Item Deleted
Item-1	19.83	51.394	0.368	0.179	0.831
Item-2	19.97	48.763	0.517	0.346	0.817
Item-3	19.94	45.502	0.665	0.615	0.801
Item-4	20.10	51.157	0.403	0.212	0.827
Item-5	19.89	50.155	0.397	0.688	0.829
Item-6	19.96	46.902	0.620	0.441	0.807
Item-7	19.91	48.912	0.495	0.274	0.819
Item-8	19.84	46.716	0.584	0.375	0.810
Item-9	19.81	50.129	0.418	0.693	0.827
Item-10	20.27	44.752	0.735	0.655	0.794

Table 7
Respondents' opinion about running musharakah.

Statements	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Islamic banking product "Running Musharakah (RM)" is fully compliant to the principles of <i>Shirkah</i> set by classical Islamic jurists.	22.0%	45.4%	16.7%	8.1%	7.8%
Keeping Islamic banking investment share anonymous in RM till few days before maturity is compliant to the principles of <i>Shirkah</i> set by classical Islamic jurists.	31.3%	43.0%	5.9%	14.3%	5.5%
Hanafi Jurists allow to delay making capital and profit shares known till few days before maturity of <i>Shirkah</i> .	35.8%	34.7%	9.5%	10.9%	9.1%
If tenure of RM is specified, say 6 months, and complete investment share of Islamic bank for tenure remains anonymous till few days before maturity, but its share remains known on daily basis by the closing of each day, then it fulfils the principles of <i>Shirkah</i> set by classical Islamic jurists.	35.2%	40.3%	11.5%	8.5%	4.5%
Two level Profit fixation in RM as being practiced is compliant to <i>Shari'ah</i> principles and does not violate any of them.	30.1%	41.1%	8.8%	11.3%	8.7%
Islamic bank as Mudarib of depositors is allowed to agree at Second level of profit fixation (0.0001% for Islamic bank and 99.9999% for client) in RM.	33.9%	35.6%	12.7%	10.9%	6.9%
RM does not involve a fixed charge to the client as in the case of the conventional Over Draft facility.	23.4%	46.6%	9.2%	12.5%	8.3%
Practical process of Loss distribution in RM is as per <i>Shari'ah</i> principles of <i>Shirkah</i> .	26.7%	47.4%	8.1%	8.6%	9.2%
RM enhances fair distribution of wealth and discourage the concentration of wealth in few hands of corporate class unlike to running finance of conventional banks.	30.8%	38.2%	8.3%	13.2%	9.5%
RM as being practiced in contemporary Islamic banks is in line with the higher objectives of <i>Shari'ah</i> .	54.4%	24.3%	4.7%	9.9%	6.7%

anonymous until a few days before the maturity of an RM, according to hanafi jurists. The responses to the fourth item show that even though the capital share of Islamic bank is known on a daily basis, the majority of the respondents (strongly disagree, 35.2% and disagree, 40.3%) believe it is impermissible for the parties to an RM to keep their total share anonymous for the entire tenure until a few days before maturity.

The responses to items 5, 6, and 7 are similar, which shows that the majority of the respondents do not believe that the profit distribution mechanism adopted in RM is sharia compliant. This finding supports our theoretical analysis, as well as the findings of Ayub (2016) and Siddique (2017) that RM does not differ from the conventional overdraft facility RF.

The responses to item 8 reveal that a total of 74.1 percent of the respondents perceive that the practical procedure of loss distribution in RM is not sharia compliant, empirically confirming Ayub (2016), as discussed in Section 6.3. The responses to statements 9 (overall disagreement, 69%) and 10 (overall disagreement, 78.7%) shows that most of the

respondents believe that RM, as practiced in Islamic banking, causes a concentration of wealth in the hands of a few corporate entities, as does conventional RF, and does not play an effective role in achieving the higher objectives of sharia.

5.2.2. Bivariate analysis

Cross-tabulation can identify the relationship between two variables measured at the ordinal and nominal levels (Meier et al., 2011). It presents data in groups of the number and percentage of cases in which various combinations of responses occur (Henry et al., 2003). It also checks the differences in responses of respondents based on their demographic and socioeconomic characteristics. To check the significance, we conduct a Pearson chi-square test to identify the pattern of responses based on the demographic as well as socioeconomic characteristics of respondents (Field, 2009).

Cross-tabulation produces results in proportion to responses in rows and columns. In this study, we consider the proportion of responses in rows for the sake of brevity. The cross-tabulation results in Table 8 show that the majority of *muftis*,

Table 8
Cross-tabulation of position with statements.

Statement	Response	Position						
		SA/SBM ^a	Mufti	Naib Mufti	Teacher	PD ^b	SCD ^c	S. A. ^d
Islamic banking product “Running Musharakah (RM)” is fully compliant to the principles of Shirkah set by classical jurists.	Str. Disagree	1.2%	39.5%	20.9%	32.3%	2.0%	1.4%	2.7%
	Disagree	1.1%	35.9%	21.6%	32.6%	4.8%	1.8%	2.2%
	Neutral	0.6%	38.3%	25.1%	25.7%	0.6%	4.8%	4.8%
	Agree	3.7%	35.8%	22.2%	21.0%	3.7%	6.2%	7.4%
To keep Islamic banking investment share anonymous in running musharakah till few days before maturity is compliant to the principles of Shirkah set by classical jurists.	Str. Agree	6.4%	16.7%	14.1%	47.4%	6.4%	9.0%	0.0%
	Str. Disagree	1.9%	34.5%	18.5%	36.1%	2.9%	4.2%	1.9%
	Disagree	0.2%	35.8%	22.1%	34.2%	3.0%	1.4%	3.3%
	Neutral	0.0%	40.7%	16.9%	30.5%	1.7%	3.4%	6.8%
Hanafi Jurists allow to delay making capital and profit shares known till few days before maturity of Shirkah.	Agree	6.3%	35.0%	23.8%	21.7%	5.6%	4.9%	2.8%
	Str. Agree	9.1%	36.4%	32.7%	12.7%	0.0%	5.5%	3.6%
	Str. Disagree	0.8%	34.1%	20.1%	38.5%	2.8%	2.0%	1.7%
	Disagree	1.2%	37.2%	22.8%	30.3%	4.6%	2.6%	1.4%
If tenure of RM is specified and complete investment share of Islamic bank for tenure remains anonymous till few days before maturity of RM, but its share remains known on daily basis by the closing of each day, then it then it fulfils the principles of Shirkah set by classical jurists.	Neutral	1.1%	38.9%	18.9%	30.5%	2.1%	4.2%	4.2%
	Agree	8.3%	37.6%	20.2%	22.0%	1.8%	5.5%	4.6%
	Str. Agree	4.4%	29.7%	26.4%	22.0%	1.1%	5.5%	11.0%
	Str. Disagree	1.1%	37.5%	19.3%	31.5%	4.0%	4.0%	2.6%
Two level Profit fixation in RM is being practiced as per <i>Shari’ah</i> principles and does not violate any of <i>Shari’ah</i> principles.	Disagree	0.7%	35.0%	24.3%	33.3%	2.7%	1.2%	2.7%
	Neutral	0.9%	34.8%	21.7%	36.5%	3.5%	1.7%	0.9%
	Agree	2.4%	37.6%	23.5%	21.2%	1.2%	7.1%	7.1%
	Str. Agree	8.9%	24.4%	24.4%	24.4%	2.2%	8.9%	6.7%
Two level Profit fixation in RM is being practiced as per <i>Shari’ah</i> principles and does not violate any of <i>Shari’ah</i> principles.	Str. Disagree	1.7%	37.5%	23.3%	26.9%	3.0%	4.0%	3.7%
	Disagree	1.0%	30.9%	20.2%	38.9%	4.9%	2.9%	1.2%
	Neutral	1.1%	36.4%	29.5%	27.3%	1.1%	1.1%	3.4%
	Agree	1.8%	36.3%	21.2%	31.0%	0.9%	4.4%	4.4%
	Str. Agree	6.9%	49.4%	13.8%	18.4%	0.0%	4.6%	6.9%

Table 8 (continued)

Statement	Response	Position						
		SA/SBM ^a	Mufti	Naib Mufti	Teacher	PD ^b	SCD ^c	S. A. ^d
Islamic bank as Mudarib of depositors is allowed to agree at Second level of profit fixation (0.0001% for Islamic bank and 99.9999% for client) in RM.	Str. Disagree	0.9%	32.7%	18.9%	38.3%	3.8%	2.7%	2.7%
	Disagree	0.8%	40.2%	22.8%	32.0%	2.0%	.3%	2.0%
	Neutral	2.4%	29.1%	26.8%	27.6%	5.5%	5.5%	3.1%
	Agree	9.2%	34.9%	17.4%	22.0%	2.8%	6.4%	7.3%
	Str. Agree	2.9%	39.1%	24.6%	18.8%	1.4%	10%	2.9%
Practical process of Loss distribution in RM is as per <i>Shari'ah</i> principles of <i>Shirkah</i> .	Str. Disagree	2.6%	32.6%	19.5%	35.2%	4.5%	3.7%	1.9%
	Disagree	0.6%	36.9%	23.8%	33.1%	2.1%	1.3%	2.1%
	Neutral	2.5%	39.5%	22.2%	28.4%	0.0%	2.5%	4.9%
	Agree	9.3%	24.4%	27.9%	22.1%	1.2%	7.0%	8.1%
	Str. Agree	1.1%	44.6%	8.7%	25.0%	8.7%	7.6%	4.3%
RM enhances fair distribution of wealth and discourage the concentration of wealth in few hands of corporate class unlike to running finance of conventional banks.	Str. Disagree	1.0%	34.1%	17.9%	34.4%	6.5%	3.9%	2.3%
	Disagree	1.0%	33.8%	21.2%	39.3%	2.4%	1.0%	1.3%
	Neutral	3.6%	36.1%	31.3%	21.7%	0.0%	3.6%	3.6%
	Agree	5.3%	43.2%	23.5%	17.4%	0.8%	3.8%	6.1%
	Str. Agree	4.2%	36.8%	23.2%	20.0%	1.1%	7.4%	7.4%
RM does not involve a fixed charge to the client as in the case of the conventional Over Draft facility.	Str. Disagree	0.9%	30.3%	16.2%	42.7%	5.1%	2.6%	2.1%
	Disagree	2.1%	37.3%	22.5%	28.1%	3.9%	3.2%	2.8%
	Neutral	1.1%	29.3%	30.4%	37.0%	0.0%	1.1%	1.1%
	Agree	1.6%	36.0%	25.6%	28.0%	0.8%	4.0%	4.0%
	Str. Agree	7.2%	47.0%	14.5%	19.3%	0.0%	4.8%	7.2%
RM as being practiced in contemporary Islamic banks is in line with the higher objectives of <i>Shari'ah</i> .	Str. Disagree	1.1%	32.7%	18.9%	37.3%	4.8%	3.3%	1.8%
	Disagree	1.2%	42.8%	27.2%	24.7%	.4%	1.6%	2.1%
	Neutral	2.1%	40.4%	17.0%	29.8%	2.1%	2.1%	6.4%
	Agree	8.1%	36.4%	19.2%	23.2%	2.0%	6.1%	5.1%
	Str. Agree	4.5%	28.4%	28.4%	23.9%	1.5%	3.0%	10.4%

a. *Shari'ah* advisor/*Shari'ah* board member, b. Product development, c. *Shari'ah* compliance department, d. *Shari'ah* auditors.

naib muftis (vice muftis), teachers (in *fiqh/sharia* law) overall disagree (strongly disagree and disagree) with almost all the statements. Although the proportion of disagreement by the respondents is very small, it is not zero, which reveals that a small proportion of the sharia scholars working with Islamic banks believe that RM is not practiced as per sharia principles, specifically the profit and loss distribution mechanism in RM. They also find that RM is similar to a conventional RF facility in that it plays a role in the concentration of wealth in a few hands.

Table 9 shows that all of the cross-tabulations are significant, as the Pearson chi-squares are significant. The results

Table 9
Chi-square tests.

Position * Item	Pearson Chi-Square	Df	Asymp. Sig. (2-sided)
Position * Item-1	81.72	24	0.00
Position * Item-2	69.72	24	0.00
Position * Item-3	78.18	24	0.00
Position * Item-4	53.87	24	0.00
Position * Item-5	62.86	24	0.00
Position * Item-6	92.33	24	0.00
Position * Item-7	92.494	24	0.00
Position * Item-8	89.338	24	0.00
Position * Item-9	66.077	24	0.00
Position * Item-10	83.565	24	0.00

obtained from univariate and bivariate cross-tabulations are in line with our theoretical sharia analysis. As discussed in detail, RM does not comply with the sharia principles of *shirkah* set down by classical Islamic jurists and the higher objectives of sharia. The empirical findings demonstrate that the respondents perceive RM as similar to a conventional overdraft facility, RF.

6. Conclusion

One of the basic objectives of the Islamic financial system is to prevent the concentration of wealth in a small number of hands. In this paper, we analyze the degree to which the structure of RM complies with the legal standards of *musharakah* in terms of six relevant issues. Then we surveyed relevant shariah experts, in academia as well as in IB, for their opinions about these issues. Our analysis shows that the existing practices of RM violate the sharia principle of *shirkah*. The findings from our empirical analysis confirm the findings of the theoretical analysis: the contemporary practice of RM does not comply with the sharia principle of *shirkah* as understood by classical Islamic jurists. Based on its existing structure, RM does not help improve the distribution of wealth because it is merely a replica of conventional RF.

We believe that determining profit at two levels is nothing but a device to legalize illegal interest-based RF. This study calls for experts in academia as well as relevant regulators to

look into this matter rather seriously because RM, if not stopped, will only earn a bad name for Islamic banking.

Practitioners of Islamic banking need to realize that it is not mandatory for Islamic banks and financial institutions to replicate every conventional banking and financial product in order to compete with their counterparts. The focus when developing products in the Islamic banking industry needs to shift from compliance with sharia to shariah-based reasoning, so that Islamic finance can play a real role in enhancing social welfare.

The way to avoid this noncompliance is to adjust the structure of RM. Islamic banks must determine their share of investment and profit at the beginning of the RM contract, leaving no ambiguity in this regard. Profit can be determined in RM at two levels. However, at the first stage, profit must be distributed according to pre-agreed shares up to a specified amount of profit. Any ratio can be determined for the remaining profit, but it must be in accordance with customary practices. In RM, Islamic banks usually invest from saving deposits, in which their position is as *mudarib* who are responsible for protecting the interests of its investors (*rabb-ul-maals*). For loss distribution, genuine documentary evidence must be followed. In this way, RM can be made sharia compliant, and it will play an effective role in achieving higher objectives.

Declaration of competing interest

We have no conflicts of interest to disclose.

References

- AAOIFI (accounting and auditing Organization for Islamic financial institution). (2015). *Sharī'ah Standards*. Bahrain.
- Abu Bakar, M. (2018). *Sharī'ah analysis of running musharakah product as practiced by Islamic banks in Pakistan*. Master's thesis, INCIEF.
- Ahmed, M. M., Farooq, M., & Arsalan, M. (2016). Running musharakah product of Islamic banks: an alternative of running finance. *Al-Idah*, 33(2), 8–17.
- Akram, M. (2019). Running musharakah based working capital finance: case study from Pakistan. *J Islam Finance Accountancy*, 3(1), 59–66.
- Al-Kasani, A. (1986). *Bada'i al-Sana'i*. Vol. 6. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Marghinani, B. (1995). *Al-Hidayah*. Vol. 3. Beirut: Dar Ihya al-Turas al-Arabi.
- Al-Samarqandi, A. (1994). *Tuhfat-ul-Fuqaha*. Vol. 3 (pp. 5–6). Beirut: Dar al-kutub al-ilmiyyah.
- Al-Sarakhsi, M. (1993). *Al-Mabsut*. Vol. 11. Beirut: Dar al-Ma'rfah.
- Al-Zuhaili, W. (1985). *Al-Fiqh al-Islami wa Adillatuhu*. Vol. 5. Damishq: Daral-Fikr.
- Ali, S. M., 2020. Running musharakah: A realistic analysis of the contentions raised. *J Islam Finance Accountancy*, 4(1), 40–52.
- Anwer, Z., Asadov, A., Kamil, N., Musaev, M., & Refede, M. (2019). Islamic venture capital: issues in practice. *ISRA Int J Islam Finance*, 11(1), 157–158.
- Ayub, M. (2016). Running musharakah by Islamic banks in Pakistan: running from musharakah or moving back to square one. *J Islam Bus Manag*, 6(1), 7–18.
- Damad Afandi, A. (1668). *Majma' al-Anhar fi Sharh Multqa al-Abhar*. Vol. 1 (pp. 718–719). Beirut: Dar Ihya al-Turas al-Arabi.
- Field, A. (2009). *Discovering statistics using SPSS: Book plus code for E version of text*. New York: SAGE.
- Henry, C., Lapenu, C., Zeller, M., & Sharma, M. (2003). *Microfinance poverty assessment tool*. Washington DC: World Bank. CGAP.
- Ibn Abidin, M. (1992). *Radd al-Muhtar 'ala al-Dur al-Mukhtar*. Vol. 4. Beirut: Dar al-Fikr.
- Ibn Humam, K. (2003). *Sharh Fath al-Qadir, Dār al-Kutub al-'Ilmiyyah*. Vol. 6. Beirut: Dar al-fikr.
- Ibn Qudamah, A. (1928). *Al-Mughn*. Vol. 5. Beirut: Maktabah al-Qahirah.
- Islamreigns. (2019). *The invalidity of the "running musharakah" scheme*. <https://islamreigns.wordpress.com/2019/02/10/the-invalidity-of-the-running-musharakah-scheme/>. (Accessed 3 April 2021).
- Javadi, O., Mahmood, N., & Shamsi, A. (2018). The loss in meaning: Influence of strategy language and modern financial discourse on the working concepts in Islamic banking and finance. *Pakistan Bus Rev*, 20(2), 438–448.
- Lavrakas, P. (2008). *Encyclopedia of survey research methods*. New York: SAGE.
- Meier, K. J., Brudney, J. L., & Bohte, J. (2011). *Applied statistics for public and nonprofit administration*. Stamford: Cengage Learning.
- SBP. (2005). *State Bank of Pakistan (SME) financing products*. Retrieved from <https://www.sbp.org.pk/sme/pdf/smebooklet-05-jul-08.pdf>. (Accessed 15 June 2022).
- SBP. (2012). *IDB circular No. 03 of 2012, instructions for profit & loss distribution and pool management for Islamic banking institutions*, 3–4. Retrieved from: <https://www.sbp.org.pk/ibd/2012/C3.htm>. (Accessed 15 June 2022).
- Siddique, M. A. (2017). Practice of running musharkah in Pakistani Islamic banks: An analytical study in the light of sharī'ah principles. *Fikr-O-Nazar*, 54(4), 53–112.
- Siddiqui, A.A. 2020. Running musharakah. IBA-CIEF. <http://islamicfina.com/important/>(accessed September 10, 2020).
- Tahir, S., & Khan, A. (2016). Islamic banking: Why not musharakah financing? *J Islam Bus Manag*, 6(1), 61–76.
- Ullah, K., Jan, S., & Khan, Z. (2017). Islamic working capital finance through murābahah for a construction company. *J Islam Bus Manag*, 7(1), 140–148.
- Usmani, M. T. (2000). *An introduction to Islamic finance*. Karachi: Idarat-ul-Maarif.
- Usmani, I. A. (2005). *Shirkat-u-Mudarat 'Asr e Hazir Main*. Karachi: Idarat-ul-Maarif.
- Usmani, M. T. (2008). *Islam awr Jadid ma'ashi Masa'il*. Vol. 5. Karachi: Idarah Islamiyat.