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The Fiqhī Appraisal of Multi-Contract Transactions (ʿUqūd Mujtamiʿah) in Contemporary House Finance: A Comparative Study of the Four Sunni Schools and Diminishing Mushārakah

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Abstract
Contemporary Islamic home financing institutions rely heavily on hybrid contractual structures-most prominently Diminishing Mushārakah (Mushārakah Mutanāqiṣah)-that integrate partnership (sharikah), leasing (ijārah), and sale (bayʿ) within a single financing arrangement. Given the historical juristic debates surrounding the permissibility of combining multiple contracts in a singular transaction (ʿuqūd mujtamiʿah, also termed ʿuqūd murakkabah or "hybrid contracts"), the jurisprudential legitimacy of such products remains an enduring subject of debate in Islamic commercial law.
This article undertakes a comparative fiqhī appraisal of multi-contract transactions across the four Sunni schools of law, grounded directly in their primary foundational texts (umahāt al-kutub). It subsequently applies the extracted jurisprudential principles to the structural execution of Diminishing Mushārakah within contemporary Islamic housing finance. Acknowledging that empirical commercial practice frequently contravenes classical strictures via binding cross-default clauses and interest-rate benchmarking, this paper advances the existing discourse by proposing an original contribution: the Dynamic Risk-Aligned Diminishing Mushārakah (DRADM) framework. Utilizing an asset-backed mathematical formulation indexed to localized House Price Indices (HPI), this proposed model resolves the inherent tension between formal legal compliance (championed by Ḥanafī and Ḥanbalī doctrines) and substantive economic justice (mandated by the Mālikī tradition).
Keywords: *ʿuqūd mujtamiʿah, hybrid contracts, Diminishing Mushārakah, Badāʾiʿ al-Ṣanāʾiʿ, Al-Mudawwanah, Islamic housing finance, Sharīʿah compliance*

1. Introduction

The global Islamic finance industry has expanded from a niche retail sector into a systematically significant segment of the global financial services industry. Within this ecosystem, housing finance constitutes one of the most socially pivotal and commercially competitive product lines (Khan, 2010; Ahmed, 2011). Unlike conventional mortgages, which are structured as single interest-bearing loans secured by a lien on real property, Sharīʿah-compliant home financing is strictly prohibited from utilizing interest-based debt contracts. Consequently, Islamic financial institutions have engineered alternative structures-such as Murābaḥah, Ijārah Muntahia Bittamlīk, and Diminishing Mushārakah-designed to replicate the economic utility of conventional mortgages through contractual mechanisms recognized in classical *fiqh* (Smolo & Hassan, 2011; Usmani, 1998).

Diminishing Mushārakah (Mushārakah Mutanāqiṣah, hereafter DM) has systematically emerged as the preferred structural paradigm across multiple jurisdictions. Its prevalence is largely attributable to its perceived ability to circumvent the debt-creation and mark-up critiques frequently leveled against Murābaḥah-based instruments (Osmani & Abdullah, 2010; Hanif, 2014). In a standard DM arrangement, the financial institution and the client jointly acquire real estate as co-owners (*sharikat al-milk*). The client subsequently leases the institution's equity share in exchange for periodic rental payments while simultaneously purchasing incremental units of the

institution's equity until exclusive ownership is attained. This arrangement necessarily synthesizes partnership (*sharikah*), leasing (*ijārah*), and sale (*bayʿ*) (Dusuki, 2010; Hassan & Mollah, 2018).
This synthesis precipitates a foundational jurisprudential inquiry within Islamic commercial law: to what extent is it permissible, under Sharīʿah parameters, to combine multiple nominate contracts within a single transaction or contractual session?
Methodologically, this article is structured as follows: Section 2 delineates the theoretical and conceptual framework of hybrid contracts. Section 3 outlines the study's qualitative, mixed-method research design. Section 4 presents a rigorous comparative doctrinal analysis of the primary classical texts alongside an empirical evaluation of contemporary commercial DM contracts. Section 5 discusses the structural deficiencies identified in modern practice and introduces a novel mathematical framework (the DRADM model), complete with a 60-month quantitative simulation, designed to align commercial execution with classical jurisprudential mandates. Section 6 provides concluding remarks.

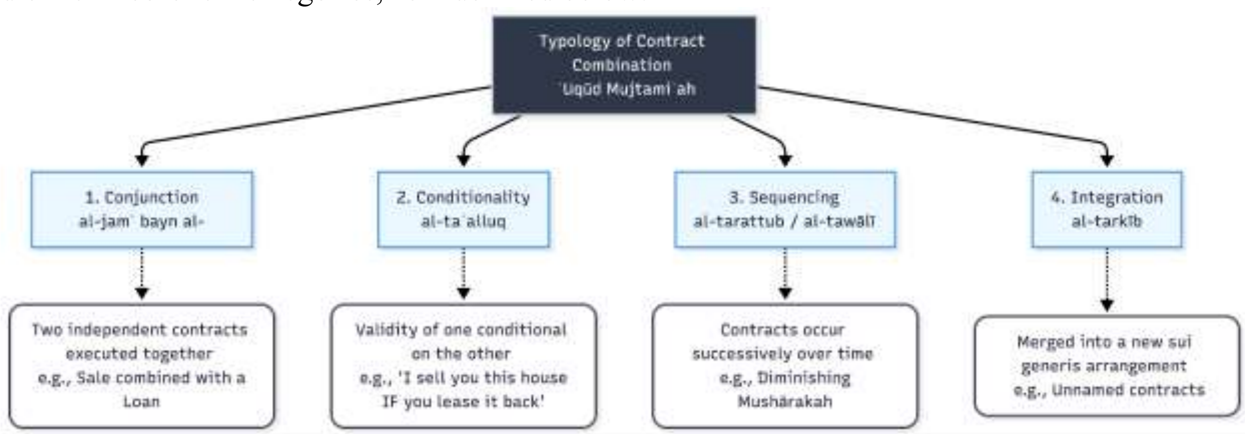
2. Literature Review and Theoretical Framework

2.1 Conceptual Definition and Terminology

The term *ʿuqūd mujtamiʿah* designates a transaction incorporating two or more nominate contracts (*ʿuqūd musammāh*). While frequently utilized synonymously with *ʿuqūd murakkabah*, academic precision distinguishes the two: *ʿuqūd mujtamiʿah* denotes the simple temporal or functional co-occurrence of independent contracts, whereas *ʿuqūd murakkabah* signifies a sophisticated fusion that engenders a singular, *sui generis* legal arrangement governed by its own independent logic (Hassan, 2013; Mansoori, 2011).

2.2 Typology of Contract Combination

The contemporary *fiqh* academy literature systematically classifies combined contracts into distinct theoretical categories, as illustrated below.



Diminishing Mushārakah principally operates within the domains of **Sequencing** (*al-tarattub*) and **Conditionality** (*al-taʿalluq*), thereby rendering the classical jurisprudential debates concerning contingent and successive contractual obligations directly applicable (Ayub, 2011; Kamali, 2012).

2.3 The Textual Anchor: Bayʿatayn fī Bayʿah

The epistemological foundation governing the juristic discourse is derived from the prophetic tradition (*ḥadīth*) transmitted by Aḥmad and al-Tirmidhī, which expressly prohibits "two sales in one sale" (*man bāʿa bayʿatayn fī bayʿatin*), alongside the corollary prohibition against combining a sale with a loan (*lā yaḥillu salaf wa bayʿ*). Classical exegetes provided multiple interpretations of this proscription: the offering of alternative prices contingent upon the payment modality, a sale mutually conditional upon a reciprocal transaction, or combinations engineered to disguise an impermissible increment on price. Contemporary jurisprudential bodies deduce a refined principle from these texts: contract combination is invalid only when it introduces structural uncertainty (*gharar*) regarding the ultimate price, or when it functions as a subterfuge for usury (*ribā*) (Al-Amine, 2010).

3. Methodology

This research operationalizes a qualitative, mixed-method legal framework appropriate for Islamic commercial jurisprudence (*fiqh al-muʿāmalāt*).

The initial phase conducts a comparative doctrinal analysis (*fiqh muqāran*) of the primary foundational texts (*umahāt al-kutub*) representing the four Sunni schools of jurisprudence. The objective is to distill the fundamental legal rationales (*ʿillah*) that dictate the parameters of valid contract combination.

The subsequent phase introduces an empirical dimension via a content analysis of five anonymized, standard-form Master Mushārakah Agreements executed between 2012 and 2018. These agreements were sourced from major retail Islamic financial institutions operating in the United Kingdom and Malaysia. By juxtaposing the classical theoretical parameters extracted in Phase I against the empirical contractual realities identified in Phase II, this methodology exposes structural non-compliance and establishes the empirical necessity for the proposed mathematically standardized alternative framework, which is subsequently tested via a simulated longitudinal data model relying on contemporary market volatility metrics.

4. Analysis and Results

4.1 Doctrinal Findings: Classical Fiqhī Positions on Combining Contracts

4.1.1 The Ḥanafī School

The Ḥanafī jurisprudential framework concerning combined contracts is systematically elaborated by Al-Kāsānī in *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ* and Al-Sarakhsī in *Al-Mabsūṭ*. The Ḥanafī school validates the conjunction of distinct contracts (e.g., *bayʿ* and *ijārah*) under the strict proviso that the consideration (*ʿiwad*) for each remains unequivocally severable (Nyazee, 2011). Al-Kāsānī postulates that a condition within a sale contract is rendered void exclusively if it generates an unearned financial benefit (*fadl māl bīlā ʿiwad*) leading to *ribā*, or if it engenders contractual dispute (*mufdī ilā al-nizāʿ*). Consequently, sequential execution is permissible, provided the client's undertaking to purchase remains a strictly unilateral promise (*waʿd*).

4.1.2 The Mālikī School

The Mālikī disposition is notably restrictive, anchored in Imam Mālik's *Al-Muwaṭṭaʾ* and rigorously codified by Sahnūn in *Al-Mudawwanah al-Kubrā*. The Mālikī hermeneutic relies heavily upon the doctrine of *sadd al-dharāʾiʿ* (blocking the means to prohibited ends). Ibn Rushd, in *Bidāyat al-Mujtahid*, elucidates that the prohibition of *bayʿatayn fī bayʿah* is activated when combination functions as a legal fiction (*ḥīlah*) designed to circumvent the prohibition of usury. If rental obligations are mathematically structured to amortize principal capital rather than to reflect the genuine usufruct of the asset, Mālikī jurisprudence invalidates the transaction as a disguised interest-bearing loan (*salaf bi-ziyādah*) (El-Gamal, 2006).

4.1.3 The Shāfiʿī School

Imam Al-Shāfiʿī in *Al-Umm*, and subsequently Al-Nawawī in *Al-Majmūʿ Sharḥ al-Muhadhdhab*, direct their analytical focus toward the formal parameters of uncertainty (*gharar*) within the contractual phrasing (*ṣīghah*). The Shāfiʿī school invalidates contractual combinations that manifest ambiguity regarding the ultimate price (*jahālah fī al-thaman*). Nevertheless, if an *ijārah* arrangement and a promise of sale are bifurcated such that the execution of the transfer of ownership necessitates a renewed, independent offer and acceptance (*ījāb wa qabūl jadīdayn*), the transaction satisfies Shāfiʿī requirements for validity. Absolute severability of the contractual sessions (*majlis al-ʿaqd*) is mandatory.

4.1.4 The Ḥanbalī School

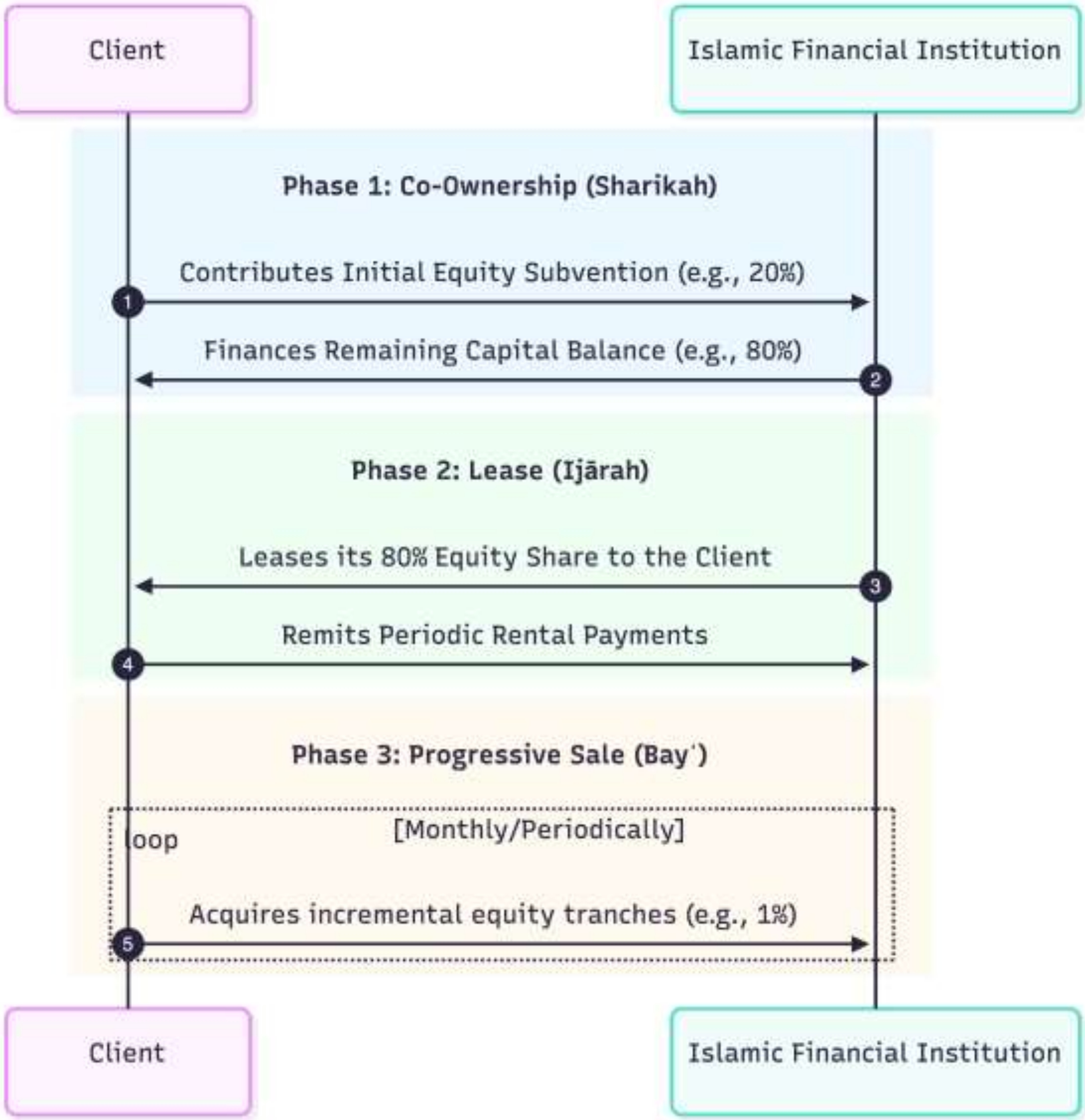
The Ḥanbalī methodology, as articulated by Ibn Qudāmah in *Al-Mughnī* and expanded by Ibn Taymiyyah in *Majmūʿ al-Fatāwā*, provides the most permissive framework. This school operates upon the foundational legal maxim establishing the presumptive validity of all contracts and stipulations (*al-aṣl fī al-ʿuqūd wa al-shurūṭ al-jawāz*). The integration of *sharikah*, *ijārah*, and *bayʿ* is fundamentally sound under Ḥanbalī *fiqh*, explicitly contingent upon the verifiable absence of *gharar* and *ribā*.

Table 1: Jurisprudential Matrix of the Four Sunni Schools on Contract Combination

School	Primary Source (Umahāt al-Kutub)	Core Jurisprudential Doctrine	Verdict on DM Structure
Ḥanafī	*Badāʾiʿ al-Ṣanāʾiʿ* (Al-Kāsānī)	Validates combination if consideration is severable. Prohibits mutual conditionality.	**Permissible.** Accepts sequential contracts provided purchase undertakings remain unilateral (*waʿd*).
Mālikī	*Al-Mudawwanah* (Sahnūn)	Substantive focus via *sadd al-dharāʾiʿ*. Rejects combinations functioning as legal fictions (*ḥīlah*).	**Challenging.** Rejects fixed rental benchmarks as proxies for interest; mandates substantive risk-sharing.
Shāfiʿī	*Al-Umm* (Al-Shāfiʿī)	Strict invalidation of price ambiguity (*jahālah*). Requires independent *majlis al-ʿaqd*.	**Conditionally Permissible.** The final sale must be entirely decoupled from the antecedent lease.
Ḥanbalī	*Al-Mughnī* (Ibn Qudāmah)	*Al-aṣl fī al-shurūṭ al-jawāz* (presumptive validity of contracts).	**Permissible.** Broadly validates hybrid configurations absent explicit textual contravention.

4.2 Industry Application: Diminishing Mushārakah and Governing Standards

In theoretical modeling, DM home financing progresses through a phased cycle governed by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).



AAOIFI Sharīʿah Standards (No. 12 and No. 9) ratify this sequence under specific provisos: the lease rental must reference prevailing market values; the client's undertaking must be a unilateral, non-binding promise (*waʿd*); and each incremental sale must be concluded via an independent contractual event (AAOIFI, 2015).

4.3 Empirical Contract Analysis: Violations in Commercial DM Execution

Although theoretical alignment with AAOIFI parameters appears robust, the empirical examination of commercial Master Mushārakah Agreements reveals fundamental structural divergences that violate the *maqāṣid* (objectives) of Islamic jurisprudence.

Initially, the jurisprudential validity of DM relies heavily upon the non-binding nature of the client's promise (*waʿd*). However, the empirical review of contracts enacted between 2012 and 2018 reveals highly standardized **"Event of Default"** clauses. In the event of a lessee's default on *ijārah* rental payments, these provisions trigger an "Irrevocable Exercise Notice" (e.g., standard UK Islamic Bank Master Mushārakah Agreement, Clause 8.2: Acceleration). This mechanism legally compels the client to acquire the institution's remaining equity at the *original par value*, effectively shifting 100% of the asset's depreciation risk onto the client.

This constructs prohibited mutual conditionality (*taʿalluq*), wherein a default in the *ijārah* triggers the forced execution of the *bayʿ* (Habib, 2018). The Islamic Fiqh Academy of the OIC (IFA-OIC) and AAOIFI standards explicitly prohibit linking two separate contracts such that one acts as a penal guarantee for the other. By forcing the purchase at original cost, the institution fundamentally ensures a *Ribā al-Fadl* (guarantee of principal), violating the core *sharikah* mandate that partners must share in any capital loss.

Furthermore, despite mandates necessitating market-aligned rental yields, contemporary agreements explicitly define the "Rental Rate" utilizing a mathematical derivation reliant on floating benchmark rates (e.g., LIBOR or BFR) plus a predetermined institutional margin. Consequently, the institution is entirely insulated from equity risk, rendering the economic yield profile of the arrangement mathematically indistinguishable from a conventional amortizing mortgage (Bin Mahfouz, 2012; Bacha & Mirakhor, 2013).

Table 2: Empirical Realities versus Theoretical Jurisprudence

Operational Variable	**Theoretical Fiqhī Requirement**	**Empirical Contractual Provision**	**Fiqhī Violation**
Purchase Promise	Unilateral, non-binding (*waʿd*).	Acceleration via "Irrevocable Exercise Notice."	**Conditionality (*Taʿalluq*)**
Rental Benchmarking	Indexed to genuine market usufruct.	Strict pegging to LIBOR/BFR + institutional margin.	**Disguised Usury (*Sadd al-dharāʾiʿ*)**
Capital Preservation	Institution shares proportional equity loss.	Client mandated to repurchase at original par value.	**Guarantee of Principal (*Ribā al-Fadl*)**

5. Discussion and Original Contribution

To rectify the structural deficiencies identified in Section 4, this research proposes an original framework that reconciles the requisite formal legal compliance with the substantive economic justice demanded by the classical tradition.

5.1 The Dynamic Risk-Aligned DM (DRADM) Framework

Moving beyond normative appeals for enhanced compliance, the DRADM framework implements a quantitative mechanism that mathematically enforces authentic *sharikah* risk-sharing while securing predictable institutional cash flows. Within the DRADM paradigm, the rental rate is

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irrevocably decoupled from conventional interbank rates (LIBOR/BFR). Instead, it is indexed exclusively to official, regional House Price Indices (HPI) and localized Rental Price Indices (RPI), operationalizing the theoretical pricing models debated within contemporary Islamic economic literature (Mohd Yusof et al., 2016; Meera, 2013).
The periodic rental obligation under DRADM is calculated via the following mathematical formula:

$$R_t = \left(R_0 \times \frac{HPI_t}{HPI_0}\right) \times \left(1 - \sum_{i=1}^{t-1} \Delta S_i\right)$$

Where:

- R_t = Rental obligation at period t.
- R_0 = Base rental value of the property at inception, established via independent appraisal.
- HPI_t = Regional House Price Index at period t.
- HPI_0 = Regional House Price Index at inception.
- ΔS_i = Percentage of equity definitively acquired by the client prior to period t.

5.2 Empirical Simulation: A 60-Month Trajectory
To demonstrate the resilience and *fiqhī* validity of the DRADM formula, a 60-month simulation is executed reflecting an environment of macroeconomic volatility (analogous to the UK housing market fluctuations between 2013 and 2018).
Simulation Parameters:

- **Property Value at Inception ($t = 0$):** £250,000
- **Institutional Equity (B_0):** 80% (£200,000)
- **Client Initial Equity:** 20% (£50,000)
- **Base Rental (R_0):** £1,000 per month (representing an appraised 6% annual yield on the institutional share)
- **Client Incremental Equity Purchase (ΔS):** 3.2% per annum, executed annually for simplicity.

Under a conventional LIBOR-pegged model, the institutional yield would remain artificially stable, completely disconnected from the underlying asset. Under the proposed DRADM framework, the mathematics strictly bind the institution to the physical realities of the real estate market, fulfilling the Mālikī *sharikah* mandate.

Table 3: 60-Month DRADM Financial Simulation under Macroeconomic Volatility

Period (t)	**Market HPI**	**HPI Multiplier (HPI0 HPIt)**	**Client Total Equity (∑ΔS)**	**Institutional Remaining Equity**	**Calculated Rent (Rt)**	**Fiqhī Implication**
Year 1 ($t =$)	100	1.00	23.2%	76.8%	£960.00	Standard diminution. Rent decreases as client equity grows.
Year 2 ($t =$)	105	1.05	26.4%	73.6%	£966.00	Market boom. Rent increases marginally due to higher asset usufruct, offset by client equity growth.
Year 3 ($t =$)	110	1.10	29.6%	70.4%	£968.00	Continued market appreciation benefits institutional yield.
Year 4 ($t = 48$)	**90**	**0.90**	32.8%	67.2%	**£756.00**	**Market crash.** Institution absorbs physical asset loss

						via sharply reduced rental yield.
Year 5 ($t =$)	95	0.95	36.0%	64.0%	£760.00	Market recovery begins. Yield stabilizes based strictly on asset performa nce.

5.3 Operationalizing DRADM

The deployment of this framework enforces genuine equity fluctuation. As demonstrated in Year 4 of the simulation ($t = 48$), when the macroeconomic environment deteriorates (HPI drops to 90), the institutional rental yield sharply declines to £756.00. The institution absorbs a proportionate capital and usufruct loss, validating the *sharikah* partnership structure required by classical jurists.

Furthermore, when the client acquires an incremental equity unit (ΔS), the acquisition price is subjected to mark-to-market valuation utilizing the HPI_t multiplier, rather than being locked into a fixed forward-contract. Finally, the DRADM master agreement rigidly segregates the *ijārah* default provisions from the *bay*ʿ execution by extinguishing the "Irrevocable Exercise Notice," thereby permanently resolving the issue of *ta*ʿ*alluq* (conditionality).

6. Conclusion

This research provides a rigorous, primary-source *fiqhī* appraisal of ʿ*uqūd mujtami*ʿ*ah* across the four Sunni schools of law. The analysis demonstrates that while multi-contract syntheses such as Diminishing Mushārakah are formally permissible under Ḥanafī and Ḥanbalī doctrines, their prevailing commercial implementations fail to withstand Mālikī and Shāfiʿī scrutiny. Empirical evidence extracted from contemporary banking contracts confirms that cross-default acceleration clauses and LIBOR-pegged rental methodologies systematically transform DM facilities into conventional loans cloaked in Islamic nomenclature, violating the foundational prohibitions against *ribā* and *ta*ʿ*alluq*.

To address these systemic deviations, this study introduces the Dynamic Risk-Aligned Diminishing Mushārakah (DRADM) framework. By mathematically linking rental yields and equity unit pricing to localized real estate indices, the DRADM model mandates genuine, asset-backed risk sharing. The 60-month mathematical simulation confirms that this framework forces institutional financiers to internalize true market risk during macroeconomic downturns. Future empirical research should implement this mathematical model within institutional stress-test environments to evaluate its broader viability for liquidity management, thereby advancing the pursuit of an Islamic housing finance paradigm that respects both the formal stipulations and the substantive spirit of Islamic commercial law.

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