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THE APPLICATION OF PROMISE (WA'D) IN ISLAMIC BANKING CONTRACTS IN MALAYSIA: A MASLAHAH PERSPECTIVE

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ABSTRACT

The concept of promise in Islamic banking contracts is a novel tool that has been introduced as a result of recent advancements. Wa'd has grown in popularity in recent years because it provides great flexibility. It was primarily developed by Malaysia's Islamic banks for product structuring. However, there are issues arising from this principle, which is considered to be against Shariah and merely intended to preserve the bank's interests, which is of course, contrary to Maqasid al-Shariah. The purpose of this study is to look into the significance of the promise concept in Islamic banking contracts, taking into account the *maslahah* and mafsadah principles recommended in Maqasid al-Shariah. The study uses a qualitative approach as it allows a more in-depth understanding of the subject matter. Data were gathered using published literature and information from the official website of Bank

Negara Malaysia (BNM). A semi-structured interview was conducted with three Shariah experts from the Shariah Advisory Council of Bank Negara Malaysia (SACBNM) and two industry practitioners from Bank Islam Malaysia Berhad (BIMB) and Maybank Islamic Berhad (MIB). The data obtained was analysed using the content analysis approach. In sum, the examination of Islamic law sources and discussions with Islamic scholars revealed that the use of the principle of promise in Islamic banking transactions can benefit the micro and macro economy. The concept of promise in Islamic banking contracts can benefit both customers and Islamic banks, particularly in terms of meeting consumer needs, generating profit for Islamic banks, as well as contributing to the country's development (maqasid kulliyah).

Keywords: Promise (wa'd), contract, Maqasid al-Shariah, Islamic banking, *maslahah*, Malaysia.

JEL Classification: G21.

INTRODUCTION

The term 'promise' in Arabic is equivalent to wa'd which connotes an expression of commitment given by one party to another to perform certain actions in the future (Aznan, 2008). The promise is binding, and breaches of the promise can be enforced by law. In Islamic finance, promise refers to the concepts of wa'd, wa'dan, and muwa'adah. It is neither a contract nor an agreement (Noor Suhaida & Siti Syafira, 2016). It has been widely applied in Islamic finance transactions such as murabahah, musawamah, forex, ijarah, musharakah, mudarabah, sukuk, option, and so on (Marina & Shofian, 2020). Nonetheless, the application of promise is still debated among scholars, so the permissibility of the promise is differentiated according to the type of promise given.

The majority of contemporary scholars recognise the concept of binding unilateral promise (wa'd) in Islamic banking contracts. There are also permissible two unilateral-promise (wa'adan) if the promises are independent of one another and its application is dependent on two different circumstances. However, the status of mutual promise (muw'adah), which is binding on both promisors, is a topic of debate among modern scholars. According to the majority of scholars, mutual promise becomes a forward contract (bay' al-ajal bi al-ajal) if it is binding on both parties (Md. Faruk & Asmak, 2015). According

to Al-Masri (2005), Al-Asyqar (1983) and Al-‘Ani, (1988), any kind of promise cannot be used in Islamic banking contracts. They contend that the legally binding promise is the contract itself, and therefore, the presence of *riba* renders the transaction invalid.

Due to the differences in view, the polemic surrounding the concept of promise has had an impact on the mechanism and validity of the permissible Islamic banking contracts such as the *Murabahah Purchase Order (MPO)*, *al-Ijarah Thumma al-Bay‘ (AITAB)* dan *Musharakah Mutanaqisah (MM)*, making the contract controversial and complicated (Nyazee, 2009; Mohamad Sabri et al., 2015). This is because it causes conflict with the *Shariah* such as *riba* (Khairul Hafidzi et al., 2017). These criticisms could harm Islamic banking’s reputation and ability to perform *Shariah*-compliant transactions. If this point of view is not harmonized, it could lead to misunderstandings and misconceptions among practitioners and the community. The failure to handle this idea of promise also raises doubts about the legitimacy of the contracts offered in Islamic banking products (Ginena & Truby, 2013).

In Malaysia, the *Shariah Advisory Council of BNM* is the highest body that governs the operation of the Islamic banking system. The SAC of BNM has published policy documents pertaining to the concept of promise, and this policy came into effect on January 1, 2019 (Bank Negara Malaysia, 2017b). The application of promise in Islamic banking contracts has been made permissible by the SAC of BNM, regardless of the types of promises given. An Islamic Financial Institution (IFI) that uses promise for its products and services must make sure that these products and services adhere to the *Shariah* criteria as outlined in the policy. As such, the application of promise in the *Musyarakah Mutanaqisah* contract does not eliminate the element of profit and loss sharing between the contracting parties; a IFIs is not allowed to impose or make payments for any consideration respectively, for the provision of promise including fees or charges. The application of promise in Islamic banking contracts shall be entered into separately and shall be independent from the main contracts (Laila et al., 2021). IFIs can use the policy documents from BNM as guidelines to ensure that promises implemented in Islamic banking contracts are *Shariah*-compliant. To verify that there is no conflict with the policy, BNM must monitor IFIs that use the promise concept in their products. It is crucial that BNM monitor IFIs in order to prevent *Shariah* violations and safeguard customers from oppression (Wardhana, 2022).

The promise concept in Islamic banking contracts is a novel tool that has been introduced as a result of recent advancements. Shariah's flexibility and dynamism allow it to adapt to changes in time and space, particularly in the sphere of muamalah, ensuring that Shariah remains relevant throughout the years. The use of maqasid al-Shariah as a legal determination in addressing current issues is seen as a way to celebrate the benefits (*maslahah*) of human beings while avoiding harm (*mafsadah*) to society. The fundamental purposes of wealth circulation, fairness and openness in financial processes, and social justice at the micro and macro levels are all part of the Maqasid al Shariah framework in finance, which leads to the ultimate goal of general human happiness (Zaman et al., 2019). This principle has a wide range of applications in current financial contexts that necessitate flexibility due to changes in time and place (Mohd Awang et al., 2014). The application of promise in Islamic banking contracts has the prospect of being explored in more depth, taking into account the public interest. Therefore, to maintain the robustness of Islamic banking products, the application of promise must be based on the *maslahah* standard prescribed by Islamic law (Marina et al., 2021). The purpose of this research is to look into the application of the promise concept in Islamic banking contracts in Malaysia from the *maslahah* perspective. Based on an examination of Islamic law sources and discussions with Islamic scholars, the principle of promise in Islamic banking contracts can benefit both customers and Islamic banks, particularly in terms of meeting consumer needs and generating profit for Islamic banks, as well as contributing to the country's development. This study is significant in fostering consumer trust and confidence in Islamic banking products by demonstrating how the use of promises in Islamic banking contracts satisfies *maslahah* requirements. It also helps practitioners develop innovative products using the Islamic principle of promise.

METHODOLOGY

The study uses a qualitative approach to give a deeper understanding of the subject matter. Data were gathered using published literature and semi-structured interviews. Semi-structured interviews were conducted between 2016 and 2017 and lasted about 30 minutes each. To avoid collecting dropout data, the interviews were recorded on mobile devices. The researcher conducted the interviews in Malay and wrote the transcriptions. The interview questions were more open-

ended and less structured. Some generic questions were prepared first, and all the questions were worded flexibly. It was only after the researcher had conducted interviews with the informants would specific questions be determined. Using this style, the researcher was able to adapt to the current circumstance, the informants' developing worldview, and fresh perspectives on the subject. Since its widespread implementation across a variety of different Islamic financial products, there are even now, ongoing debates among scholars about the validity of the concept of promise (Marina et al., 2021). Therefore, the content of data interviews still relevant.

Interviews were conducted with five interviewees. They were three Shariah experts from the Shariah Advisory Council of Bank Negara Malaysia (SACBNM) and two industry practitioners from Bank Islam Malaysia Berhad (BIMB) and Maybank Islamic Berhad (MIB) who were considered experts in Shariah. They have a solid understanding of Shariah, as well as some knowledge of Islamic finance and related industrial experience. Details about the interviewees are as shown in Table 1. The identities of interviewees have been anonymized to protect their privacy and confidentiality.

Table 1

Profile of Interviewees

Expert	Gender	Designation	Interview Date
Shariah Expert A	Female	Shariah Advisory Council Member	3/2/2017
Shariah Expert B	Male	Shariah Advisory Council Member	3/1/2017
Shariah Expert C	Male	Head of Shariah Advisory Council	16/5/2017
Practioner Expert A	Male	Chief Shariah Officer of Bank Islam Malaysia Berhad (BIMB)	14/3/2016
Practioner Expert B	Male	The Acting Head Shariah of Maybank Islamic Berhad (MIB)	9/6/2016

The data obtained was analysed using the content analysis approach. The researcher will write the transcription and read it aloud numerous times to get a sense of the entire. After identifying the key ideas through inductive analysis, main themes were created through the synthesis process. The resulting theme, according to Meriam and Tisdell (2016), is the basis for assessing how in the context of the present study, the concept of *promise* becomes important in Islamic banking transactions.

RESULTS

The *Promise* is a way Out (*Makhraj*) from Riba and Gharar

In Malaysia, Islamic banking operations and services are still imperfect because they operate within the framework of a usury-based economic system. This contrasts with the Islamic countries of the Middle East, such as Egypt, Pakistan, and Iran, which implement legal Islamization systems in all aspects, including the economy, crime, and education (Ahmad Hidayat, 2001). This situation makes it difficult, if not impossible, for Islamic banking to offer Shariah-compliant products (Shariah Expert B, personal interview, Jan 3, 2017) and compete with conventional banking in offering products and services to customers. There is the need to force the use of the promise principle as a way out of strict contractual compliance (Shariah Expert A, personal interview, Feb 3, 2017).

As a result, the use of promise in Islamic banking contracts is considered a way out (*makhraj syar'i*), as opposed to tricks (*hiyal*) because the parties seek to avoid narrowness, difficulties, and prohibited elements. Without the principle of promise, it may be difficult for the public to obtain Shariah-compliant products (*maslahah hajiyyah*) (Azlin Alisa et al., 2014). Furthermore, there is no other alternative that can replace the principle of promise (Shariah Expert A, personal interview, Feb 3, 2017; Shariah Expert B, personal interview, Jan 3, 2017; practioner expert B, personal interview, June 9, 2016). This scenario demonstrates that without the use of the principle of promise, it is difficult for society to obtain Shariah-compliant products, even if they do not endanger human life. Celebrating the common needs of the people (*al-hajah al-ammah*) corresponds with *Maqasid al-Shariah*, which aims to alleviate human hardship and complexity (Mohammad Ikhlas, 2017). It enables Islamic banking to perform Shariah-compliant transactions as a way out (*makhraj*) of *riba* and *gharar* transactions while meeting some of the *Maqasid al-Shariah* requirements with the correct method. As a result, it can prevent more harm than allowing the community to employ conventional banking (practioner expert A, personal interview, Mac 14, 2016). This position is consistent with the legal maxim that when two *mafsadah* (harms) are in conflict, the bigger harm is safeguarded or avoided by selecting the lesser damage (Al- Suyutī, 1983).

Risk Management

Risk management refers to the forecasting and evaluation of financial and business risks, as well as the identification of procedures and measures to avoid or minimize their potential impact. It is the process of bearing the risks we want to bear and reducing the risks we do not want to a minimum exposure (Market Business News, n.d.). Risk management is a necessary prerequisite for establishing a strong and resilient Islamic banking institution (Bank Negara Malaysia, 2005). Without promise, Islamic banks would be exposed to a broader variety of risks, such as business risks and risks related to the keeping and managing the actual underlying assets, in addition to financial risks. On the other hand, through a combination of certain primary Shariah contracts with other ancillary contracts such as promise, it enables Islamic banks to mitigate specific risks and achieve the principal objectives of a particular transaction. As an example, in the Musharakah Mutanaqisah contract, without the promise concept, Islamic banks and customers share the risk of the venture, hence bearing risks associated with equity investments. On the other hand, a customer's promise to purchase the asset in the future exposes Islamic banks mostly to credit risk (Bank Negara Malaysia, 2014).

The bank appears to be trying to avoid taking any risks (Mustafa Omar & Syahidawati, 2013) which goes against the Islamic legal maxim of '*al ghum bil ghurm*,' (الغرم بالغرم) based on the hadith '*al-kharaj bi al-dhaman*' which refers to 'no risk, no return.' As a requirement for profit entitlement, this legal maxim demands a contracting party to assume risk and incur liabilities. Otherwise, supporting contracts such as the principle of *promise* applied in Islamic banking contracts is actually an exploitation that aims to protect the interests of the bank only to gain various advantages and profits (Nur Zuliana & Mohd Adib, 2011). Customers will, however, continue to be exposed to a variety of risks. This approach is not dissimilar to that of traditional banking, which tries to maximise profit at all costs, ignoring client welfare in order to sustain the bank's profitability (Ridzwan & Azizi, 2009).

However, according to Nor Fahimah and Shamsiah (2011) the risks found in Islamic banking are risks that can be avoided because these risks are under human control and are not included in the risks to be borne based on the hadith '*al-kharaj bi al-daman*'. According to Elgari (2003) this hadith relates to a few specific risks such as risks

relating to the safety of goods or commodities, not the risk of loss of business.

As a result, the present author believes that it is permissible for Islamic banking to implement various risk-control measures, as long as the instruments used do not violate the Shariah. Binding promise is permissible by Shariah (Ahmad Hidayat, 2007). Furthermore, Islamic banks that operate as intermediate institutions or 'amil al-sunduk,' i.e., as trustees, must protect the interest of depositors, who are the main contributors to a bank's fund (92%), while only 8 percent represents stockholders (practioner expert A, personal interview, Mac 14, 2016). As such, risk management is vital for an Islamic bank in order to return depositors' funds. If Islamic banking becomes vulnerable to danger, depositors are very likely to withdraw their funds and seek alternative options, such as safer and more secure conventional banks. If this occurs, Islamic banking will be unable to grow sustainably, owing to capital constraints and will suffer insolvency. When Islamic banking is unable to withstand adversity, it will undoubtedly harm Muslims by forcing them to engage in usury transactions that are prohibited in Shariah (Muhammad Ramadhan, n.d.). This situation is, of course, contrary to the Maqasid Shariah, which wants both customers and Islamic banks to be protected with the implementation of Islamic banking (Mohd Hafiz, 2016).

Producing a Diverse Range of Competitive Products

The diversity of products offered by Islamic banking is crucial in meeting the needs of different communities with various types of banking services required (Towpek & Borhan, 2006). Without the promise, there will be a problem with idle funds due to the lack of investment opportunities and financial financing tools (Ab. Mumin & Fadillah, 2006). It has become a major component of the current Islamic financial products to compete with and match the conventional financial products (Khairun Najmi et al., 2012) In fact, almost all Islamic financial products have to rely on promise to make the underlying structures legally binding (Dar, 2003). The widespread application of the principle of promise has undoubtedly helped strengthen the Islamic banking services industry and enhanced product diversification (Jasani & Munawwaruzzaman, 2008) because the promise can produce quality products that meet the needs of society and are comparable to conventional products (Mohd Hafiz, 2016).

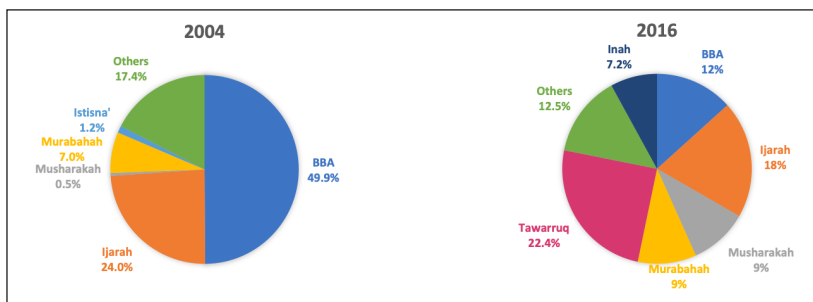
Developing New Contracts

The promise principle in Malaysia was first introduced in early 2005, when Islamic banking began using products similar to Middle Eastern countries under the Gulf Cooperation Council (GCC), which comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (Jasani & Munawwaruzzaman, 2008). Acceptance of Shariah binding promise has reduced Islamic banking's reliance on Bay' Bithaman Ajil (BBA) contracts, causing controversy as Islamic banking began to diversify Shariah contracts in the structuring of products. This is as shown in Figure 1.

Without promise, not many Islamic banks will offer new contracts, as such Shariah contracts have varying risk profiles. For example, Murabahah without a promise will cause the bank to be charged a capital of 15 percent due to its exposure to inventory risk (Bank Negara Malaysia, 2015). As a result of this situation, Murabahah products are uncompetitive. (Jasani & Munawwaruzzaman, 2008). On the other hand, with a binding promise, it will not impose such capital charges on the bank. Similarly, when credit risk is offered with a binding promise, the risk weight of a Shariah contract can be eliminated. For example, the AITAB's risk weight without promise is 187.5 percent and with promise, the risk weight is reduced to 100 percent. (Bank Negara Malaysia, 2015).

Figure 1

Composition of Financing in Shariah Contracts



Source. Bank Negara Malaysia, 2005 & 2017a

Figure 1 depicts the composition of financing in Shariah Contracts in Malaysia between 2004 and 2016. There is a significant difference in

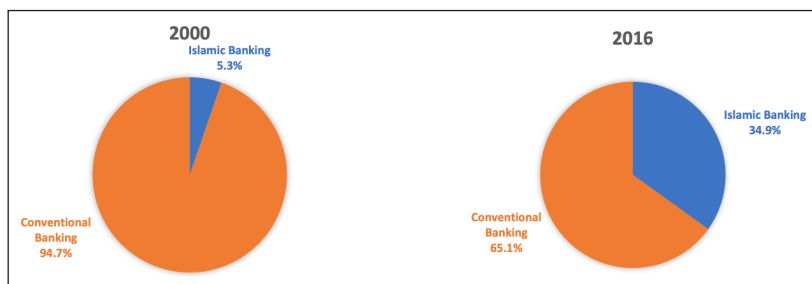
Shariah contract financing as the BBA controlled 49.9 percent of the financing in 2004. In contrast, BBAs accounted for only 12 percent of all Shariah contracts in 2016.

Enhancing the Development and Competitiveness of Islamic Banking

Figure 2 depicts a comparison of the financing markets for conventional and Islamic banking. In 2000, conventional banking controlled 94.7 percent of the local market, while Islamic banking controlled only 5.3 percent. This is due to the unprogressively move of Islamic banks as compared to their conventional banking counterparts in terms of innovation, technology, and service; all of which are critical, not only for defending market franchises, but also for differentiating in a competitive market.

Figure 2

Financing Markets



Source. Bank Negara Malaysia, 2018

Figure 2 also illustrates the growth of conventional and Islamic banking. It can be clearly seen that over a period of 16 years, the Islamic banking sector grew by 34.9 percent, but this is still considered small when compared to the conventional banking sector, which grew by 65.1 percent. The former's growth was due to Islamic banks' increasing product innovation and product launches, which provided consumers with a broader range of financing options that were previously unavailable. This development has allowed Islamic banking to continue to grow and compete effectively with conventional banking (Stubing, 2017). The marked change in the Islamic banking sector demonstrates how its diversity of competitive and innovative

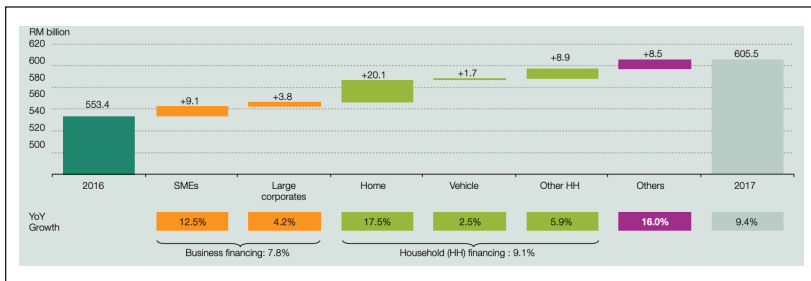
products are critical to the sector's positive development and that they complement the financial products offered by conventional banking (Bank Negara Malaysia, 2018).

Meeting the Economic Needs of the Nation and Society

Shariah-compliant financial solutions offered by the Islamic banking industry (including by development financial institutions), continued to support the diverse needs of the economy in 2017, (Bank Negara Malaysia, 2018) especially through financing activities such retail financing, business financing and corporate financing. Islamic banking financing is essential to investors and individuals for wealth creation, capital income, and enjoyment of various amenities and goods such as houses and cars that are unlikely to be available through their own proceeds due to a lack of cash.

Figure 3

Growth of Islamic Financing



Source. Bank Negara Malaysia, 2018

Figure 3 shows the growth of Islamic financing from 2016 until 2017, in which Islamic financing grew by 9.4 percent to RM605.5 billion (2016: 11.8%). Islamic business financing continued to increase at a positive growth of 7.8 percent (2016: 12.2%), mostly in the banking, insurance, and business services and manufacturing sectors. Business financing was driven by small and medium enterprises (SMEs), which grew by 12.5 percent (2016: 13.3%). In addition, Islamic house financing continues to increase at a strong growth of 17.5 percent (2016: 16.3%) (Bank Negara Malaysia, 2018).

The increase in funding is indirectly related to the promise principle since it makes a product affordable, not cumbersome, and buyers are

not subject to tight approval criteria (Jasani & Munawwaruzzaman, 2008) such as collateral, hamish jidiyah, or other restrictions (Jasani & Munawwaruzzaman, 2008), which makes financing approval to be a long and difficult process (Shariah Expert C, personal interview, May 16, 2017). When promise risks shifted the accountability of the Islamic bank to a customer, it caused customers to bear a wider variety of risks and this was compensated by a reduced price for the financing obtained (Bank Negara Malaysia, 2014).

This study has found that the practice of the concept of promise can aid wealth formation (wealth growth) by making it easier for clients to get financing for basic requirement assets such as houses (daruriyyat) (Fakhri & Khairul Anuar, 2018). While business financing assists them in obtaining initial capital to establish a business, purchasing raw materials, paying salaries, and acquiring assets to expand the company, job possibilities are also created, which can contribute to the community's source of funding. Plus, the funding offered can help with wealth creation and growth (tanmiyyah) and ensure that their level of living improves.

At the same time, some of the expectations placed on Islamic banking are unrealistic, particularly when considering that the goal of Islamic banking is to make and achieve as much profit as possible, as opposed to social responsibility; it is not at all concerned with the development of the economy or the welfare of society (Mustafa Omar & Syahidawati, 2013). The reasoning, according to my point of view, is unjustified and unsound. Eradicating poverty and other social responsibilities are all important goals of an Islamic economic system and not the primary aim of the Islamic banking system. According to Al-Amine (2015), poverty will not be erased and social justice will not be achieved unless Islamic economic concepts are completely followed, as well as Islamic principles and values. Expecting Islamic finance to eliminate poverty in the current environment is unrealistic, and it may be founded on a misunderstanding of the Maqasid al-Shariah. Yet, Islamic finance can help achieve that goal, but it will only play a secondary role. According to Shinkafi and Nor Aini (2018) zakat and waqf have the primary responsibility of promoting the welfare and growth of the community.

In this scenario, the author of the present paper believes that it is critical to take a closer look and try to understand that Islamic banking is a

business, not a philanthropic institution. Making a profit in business is acceptable as long as it is not earned through unethical methods such as usury, fraud, or ghabn (Shamsiah, 2013). Profit is significant not only because it can stimulate and encourage investment, shift the use of output resources to the optimal level, and lead to efficiency, but also because it can stimulate and encourage investment, move the use of output resources to the optimal level, and lead to efficiency (Towpek & Borhan, 2006).

The profits earned will enable Islamic banking to fulfil its social responsibility of contributing to the development of society's socio-economic system. Islamic banking is one of the most significant contributors to the growth of zakat funds in the country. Various activities can be carried out through the zakat fund that can contribute to one's comfort and well-being in life and help improve the socioeconomic status of the asnaf, as well as contribute to the development of the ummah (Bank Islam, 2018; Mohd Iskandar, 2020). As a result, the principle of promise should not be viewed solely through the perspective of jurisprudence, but also through the viewpoint of kulliyah al-kubra in maqasid, where the promise not only aims to strengthen a contract or agreement, but also to contribute to the variety of services provided to customers and to the economic development of the local community and the country as a whole (Shariah Expert C, personal interview, May 16, 2017).

CONCLUSION

In conclusion, from a Shariah perspective, the use of the principle of *promise* in Islamic banking transactions can benefit the micro and macro economy. The *maslahah* approach to *promise* in Islamic banking contracts must be investigated and viewed not only from a *fiqh* perspective, but also from the nature of the business, which must be competitive, profitable, and viable in the long-term. It is essential in this sense to take into account the *maslahah* and *mafsadah* principles when evaluating any good or service provided in order to ensure that the development made in this system complies with both modern needs and demands, as well as the legal standards of Islam. Without the application of the principle of *promise*, customers are having trouble obtaining finance for necessities of life like housing, because banking products are pricey and subject to tight

financing approval requirements. In addition, the cost of Islamic banking products and services, as well as the lack of a wide range of products available to customers, will make it difficult for banks to compete with conventional banks. It is because of this constraint that it is challenging for Islamic banking to remain in business when its products and services are not in demand. As the result, the concept of *maslahah* is primarily implemented in the application of *promise* in Islamic banking contracts because the *promise* benefits not only the individuals but also the bank, which eventually contribute to the well-being of society and the country (*maqasid kulliyah*).

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