

Mapping The Common Law Concept of Misrepresentation in Contract Under The Islamic Law

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ABSTRACT

*Misrepresentation is the act of making a fraudulent misrepresentation by a party or parties to a contract to influence the other party to enter into a contract. This concept, which originated from common law, is applied in almost all Commonwealth countries, including Malaysia. The legal provisions in place to prevent misrepresentation in a contract are based on contract law theory. However, this misrepresentation concept has not been explicitly discussed from the Islamic Law perspective. Therefore, this study aims to identify the common law concept of misrepresentation in the contract law theory from the Islamic law perspective. The methodology used in this study is library research of the qualitative method. The study found that although the concept of misrepresentation is not visibly discussed in Islamic Law, however, the subjects of *taghrīr* would be considered to be the closest to misrepresentation.*

*Keywords: Misrepresentation, contract, Islamic Law, common law, *tadlīs*, *taghrīr**

INTRODUCTION

Misrepresentation is an element that negatively affects the free consent of a party to a contract in deciding to agree to enter a contract. Misrepresentation usually occurs at the pre-contractual stage, whereby during negotiations between the contracting parties, one party makes a misrepresentation that affects the other party's decision to enter into the contract. This concept of misrepresentation has not been explicitly discussed from the Islamic Law perspective. Therefore, this study aims to identify the position of the common law concept of misrepresentation in contract law theory, according to Islamic Law. The study used a content analysis of the qualitative methodology. It analysed the scholars' opinions stemmed from Islamic Law, common law and Malaysian law regarding the fraudulent misrepresentation in contracts.

HONESTY AND FAIR DEALINGS IN CONTRACT

One general principle of Islamic contract law is that justice needs to be observed in all transactions and contracts (Afzal Al-Rahman 1982). Islamic contract law is also based on the concept of honesty and fairness, defined as *husnu al-niyah*, meaning to do something with good intentions. Therefore, Islamic Law compels the contracting parties to deal with one another honestly (Mace Abdullah 2013). Good intentions and fair conduct are highly stressed upon as Allah SWT. says in the Quran, meaning, "O you who believe! Eat (use) not your property among yourselves

unjustly (fraud, gambling, and alike)" (Quran 4:29). The necessity for fair dealings in a contract is to bring the contracting parties closer together through mutual assent (Hussain 1983).

Islamic Law also underscores several principles in performing the contract so that the contracting parties can avert damage, misappropriation, dishonesty and fraud by implementing the principles imposed by Islamic legal rules (Mohd Ma'sum Billah 2006). These principles fall in line with the divine words of Allah SWT. in the Quran, meaning, "And they (ever) strive to make mischief on earth. And Allah does not like the *mufsidun* (mischief-makers)" (Quran 5:64). Acts such as fraud, embezzlement, and misrepresentation may be present in a contract that can cause harm and incur liability. Islamic Law is wholly opposed to all of these harmful acts (Mohd Ma'sum Billah 2006).

These important principles within Islamic Law are intended to uphold justice and fairness, morals, and harmony between the contracting parties (Mohd Ma'sum Billah 2006), as Allah SWT. says in the Quran, meaning, "And give full measure when you measure and weigh with a balance that is straight. That is good (advantageous) and better in the end (reward for you in the afterlife)" (Quran 17:35). Allah SWT also says in the Quran, meaning, "So give full measure and full weight and wrong not men in their things" (Quran 7:85).

It is clear that based on the evidence of the Quran and al-Sunnah, a person entering into or performing a contract must do so with utmost honesty and fairness,

not to cause detriment to the other party. Hence, acts that deviate from fairness and honesty, such as misrepresentation, are strongly prohibited.

DEFINITION OF CONTRACT

In Arabic, contract, or *al-‘aqd* originates from the phrase *‘aqada ya‘qidu*, with *al-‘uqūd* being its plural form. According to the dictionary *al-Muhīṭ* (Al-Fayrūzābādī 1987), the word *al-‘aqd* was used to refer to ropes as in to strengthen ties and knots and later came to mean guarantee and agreement. According to Ibn al-‘Arabī (1967), the literal meaning of the word *‘aqd* is 'tie' or 'join' and can be translated as 'contract'. The word *‘aqd* can be found in the Quran as follows: Allah SWT says, meaning "O you who have believed, fulfil [all] contracts." (Quran 5: 1).

The hadith of Rasulullah SAW also mentions the word *‘aqd*; in one hadith, ‘Abd al-Rahman Ibn Abu Bakr narrated, meaning, "And between us and among a nation is a contract (al-Bukhārī 1989)." In another hadith, Rasulullah SAW said, meaning, "So there is *‘aqd* (agreement and contracts) between the four companions of Muhammad (Aḥmad Ibn Ḥanbal 1978)." The word *‘aqd* used in the Quran and hadith does not stray from its literal meaning (al-Qarahdāghī 1985).

In terms of application, a contract means a mutual agreement from which flow legal consequences and obligations (Abū Zahrah 1976). According to the view of some fuqaha, 'contract' can be understood from two definitions (Shalabī 1983). The first definition is the fuqaha define a contract as something specific because the ties of agreement cannot be realised without the conjunction of two declarations by two different parties. This specific definition of a contract is the definition of choice for the majority of the fuqaha and is applied mainly by scholars and ulama from the Hanafi School (Madkūr 1963). The specific definition is as follows: "A binding offer (*ījāb*) and acceptance (*qabūl*) of that offer according to the tenets of shariah and have legal consequences concerning the subject matter (Majallah al-Ahkam al-‘Adliyyah n.d.: al-Marghinani n.d.) Another definition is, "A legal relationship created by the conjunction of two declarations or similar acts which give rise to legal obligations on one party or both parties (Faraj 1996)."

In the second definition, the fuqaha define a contract with a broader, general meaning because each *iltizam* or obligation must agree and refer to a contract's literal meaning. This definition is widely used by most of the fuqaha in their literature, especially fuqaha from the Maliki, Shafie, and Hanbali schools in their discussions relating to *muamalah* and matters of day-to-day life. The same applies to the fuqaha's opinions of the Hanafi School in their ongoing debate on topics concerning the addition of *ta'liq* as a condition to contract. The summary of the most used and accepted definitions of contract can thus be made as follows: 'every action intends to create or establish a right, or to stop or

terminate it, whether it is based on the intention of one party or more.'

Based on the definition of *‘aqd*, it may be established that a contract is formed through an agreement that arises between two parties, which creates obligations or duties through the intentions of the two parties (Madkūr 1963; Faraj 1969). This agreement, however, is only realised by a verbal demonstration known as *ījāb* (offer) and *qabūl* (acceptance) (al-Zarqā' 1968).

THE SUITABILITY OF TADLIS OR TAGHRIR IN MISREPRESENTATION OF CONTRACT

Islamic Law emphasises the principle of honesty or truthfulness when conducting transactions. According to Yusuf al-Qardawī, people should always be honest in all situations and at all times and place their faith above worldly profits (al-Qaradawi 2003). There are several prohibitions in the Quran against fraud, such as in the words of Allah SWT that means: "And do not consume one another's wealth unjustly (in any illegal way, e.g., stealing, robbing, deceiving, and alike)." (Qur'an 2:188). In another verse, Allah SWT says, "O believers! Do not devour one another's wealth illegally (fraud, gambling, and alike), but rather trade by mutual consent." (Qur'an 4:29). Based on these two verses, it is advised not to eat or use the property in vain and that it must be utilised willingly and mutually. Therefore, fraud is a senseless effort as it sets aside the concept of consent and free will. Allah SWT says, "Woe to the *al-Mutaffifin* (those who give less in measure and weight). Those who, when they have to receive by measure from men, demand full measure, and when they have to give by measure or weight to men, give less than due" (Qur'an 83:1-3).

Besides the abovementioned verses, there are also other verses in the Quran related to deceit and fraud, as Allah SWT says, "(The hypocrites) will call the believers: "Were we not with you?" The believers will reply: "Yes! Nevertheless, you led yourselves into temptations; you looked forward to our destruction; you doubted (in faith), and you were deceived by false desires till the Command of Allah came to pass. And the chief deceiver (Shaitan) deceived you in respect of Allah" (Qur'an 57:14).

Allah SWT also says, "Know that the life of this world is only a play and amusement, pomp and mutual boasting among you, and rivalry in respect of wealth and children" (Qur'an 57:20). Also, Allah SWT prohibits men from saying about things they did not do, as in the words of Allah SWT, "O you who believe! Why do you say that which you do not do? Most hateful it is with Allah that you say which you do not do" (Qur'an 61:2-3).

In addition to the verses in the Quran, several hadiths urge Muslims to be honest in their transactions and abstain from fraud, such as this hadith of Rasulullah SAW: a man who was cheated during a sale transaction reported it to the Prophet SAW, where he then said: "When you buy and sell, say, 'there must not be any deceit' (al-Bukhārī 1989). In another hadith,

Rasulullah SAW. says, 'Whomsoever deceives us, he is not one of us.' (al-Tirmidhi n.d.)

Based on the evidence in the Quran and hadith above, it is clear that Islamic Law stresses the importance of honesty in transactions and the prohibition against deceit and fraud. Islamic Law, however, gravitates towards fraud as an action rather than a written or oral statement (Sa'odah Ahmad 1995). Islamic Law specifically discusses this act known as *al-Taghrīr* or *al-tadlīs*. *al-Taghrīr* or *al-tadlīs*, which is an act that compromises one's consent to enter into a contract according to the discourse in *fiqh* literature under the topic of *muamalat*.

The terms *taghrīr* and *tadlīs* are interchangeable; according to the Maliki School, *al-taghrīr* and *al-tadlīs* both carry the same meaning (Rayner 1991). These terms can be seen in the UAE Civil Code, which uses the term *taghrīr*, whereas, in the Bahrain Law of Contract, the term *taghrīr* can be found in Article 21, which translates as 'trickery', i.e., similar to the meaning of 'fraud' in English common law. In the same law, however, the word *al-tadlīs* refers to 'misrepresentation' (Rayner 1991).

The meaning of *taghrīr* and *tadlīs* are generally considered to be the same; as mentioned by al-Zuhaili (1995), *taghrīr* or *tadlīs* is the act of deceit by one party to entice the other party to enter into a contract with the assumption that it will give him *maslahat* (good), when in fact it is the opposite. *Taghrīr* or *tadlīs* is also an act of fraud committed by the contracting party to the other party resulting in an error in that party's mind, resulting in the parties' consent being compromised (al-Sūdāh 1974). Furthermore, the term *tadlīs* is mainly used to refer to actions, whereas the word *taghrīr* is mostly used to refer to speech (al-Qurrahdaghi 2008).

DEFINITION OF TAGHRĪR

The literal meaning of *taghrīr* is 'deceive' or *khida*^c in Arabic (al-Qurrahdaghi 2008). *Taghrīr* is the term applied by the fuqaha in discussing acts of deceit, or in the context of English common law, acts of misrepresentation (Nehad & Khanfar 2016). Based on Faruqi's Law Dictionary, which is an English-Arabic dictionary, the words 'misrepresentation' and 'misleading' are translated into Arabic as the following - *khidā*^c, *tadlīs* (fraud), and *kazib* (lying), all of which carry the meaning of making a fraudulent misrepresentation to attract and influence another party to fulfil the desire of the person making the fraudulent misrepresentation (Faruqi 2005). In the opinion of Nehad A & A Khanfar (2016), the words *taghrīr*, *ghish*, *ghabn al-fahish* and *tadlīs* fall under *gharar*, where the word *gharar* provides a more general meaning, while the other words have a more specific meaning.

Gharra is a verb in the simple past tense, rooted in the noun *gharar*, which translates as 'confusing' or 'lying' (Ebrahim & Rahman 2005). According to Badran (1973) *taghrīr* is to deceive, or in its literal term, *khidā*^c (fraud). Whereas from the *fiqh*

perspective, the contracting party decides to deceive the other party, who receives the goods and assumes that the goods are in good condition, although the actual situation is the opposite. The words *taghrīr* or *gharūr* come from the same word, *gharra*, which means to deceive. In section 164 of Majallah al-Ahkam al-'Aliyah, *taghrīr* is defined as describing goods sold to buyers with properties that are not their true nature (deception) (Md. Akhir Yaacob 2002).

Likewise, the Quran uses the same word in different forms to mean an act of deceit or fraud; some of the forms are as follows - *gharrah*, *gharūr*, *yaghurranaka*, *gharraka*, and *gharrakum*. For example, in the words of Allah SWT, "Let not then this (worldly) present life deceive you, nor let the chief deceiver (Shaitan) deceive you about Allah (and you forget and disobey)" (Quran, 31:33). Also, in the Quran, Allah SWT says: "And you were deceived by false desires, till the Command of Allah came to pass. And the chief deceiver (Shaitan) deceived you in respect of Allah" (Qur'an, 57:14).

The hadith of the Prophet SAW also prohibits *gharar*, as in one such hadith narrated by Abu Hurairah, that the Prophet SAW prohibited sales that were *gharar* (a sale transaction that contains elements of ambiguity, fraud, wager, and anything that could result in a loss) (al-Tirmidhi n.d.). Besides, there is evidence from the majority of the ulama's opinions that also prohibits *gharar* in the sale and purchase transactions, such as *bay' al-ma' dum* (selling something that does not exist) (al-Khamis 2013).

Taghrīr is prohibited in transactions because it can cause a person to wrongfully consume other people's property and expose one to the risk of property damage as the protection of wealth and property is one of the shariah objectives (*maqasid shariah*). Moreover, *taghrīr* can also cause conflict and unrest among the community (al-Khamis 2013).

TYPES OF TAGHRĪR

Taghrīr is divided into two: *taghrīr fi'li* (an act of fraud or deceit) and *taghrīr 'sqawli* (fraud or deceit in verbal or written form) (Badrān 1973). In the context of misrepresentation, the debate on *taghrīr qawli* is the closest to misrepresentation as it is an act of deceit resulting from a verbal fraud or deception by one of the parties, such as telling a seller to buy something at a certain price in a fraudulent manner or deceptively advertising his goods so that people will buy them.

Taghrīr qawli is a fraudulent act by one or both contracting parties to attract or entice the other to enter into a contract (Abdul Fatah Mahmud Idris 2007). *Taghrīr qawli* can occur in terms of price; for example, a seller may tell a buyer that their goods at the prices offered cannot be found elsewhere (Ismat Abdul Majid Bakr 2009). Zuhaili (1995) explained that it relates to fraud in words (verbal or written) that originate from one contracting party or a trusted individual so that the other contracting party is compelled to enter into a contract with him, despite the loss. For example, a seller tells a buyer, "this item is

of high value and incomparable to all of the others in this entire market," or other words of misleading – fraudulent – false encouragement.

From the discussion, it is clear that, although the concept of misrepresentation is not visibly discussed in Islamic Law, however, the subjects of *tadlīs* or *taghrīr* would be considered to be the closest to misrepresentation especially in the concept of *taghrīr qawli*.

MUTUAL CONSENT IN CONTRACT

Consent, or in some contexts, willing acceptance (*reḍa*), is the satisfaction gained by a person who has attained or gained what he wanted (al-Bazdawī 1974; Badrān 1973). Consent can also be defined as an illustration of the perfect choice or heart's desire; its effect is shown visibly through the person's serene and happy countenance and so on (Amīr Badshāh & Muḥammad Amīn Al-Husaynī 1930). Consent is construed as a person's desire for the legal consequences of the *ʿaqd* that the law has determined at the time of the contract's formation. The difference between consent and choice is explained as; thus, a choice is merely the intention of a cause that is an expression or something that supports it. On the other hand, consent is the desire for the legal effects or consequences of the *ʿaqd*. Consent often complements choice, but not vice versa; in other words, a choice can exist without consent, such as the *ʿaqd* of a joking person or a coerced person, where both are considered to be choices made without consent.

In order for an *ʿaqd* to be binding, according to Hanafiah (Badrān 1973), the key is to prove that there is a choice because the choice will create the *ʿaqd* and shape it, as long as the party intends to express his declaration; meanwhile, consent is a condition for the validity of most *ʿaqd* and will either itself be affected or affect the contract.

The second opinion is that of the Syafi'iah, where there is no distinction between consent/contentment (*reḍa*) and choice (*ikhtiār*). Their opinion is that consent and choice are two declarations of the same meaning, proving the intention of the contracting parties by way of an open declaration to form a contract with the hope of achieving and gaining from the legal consequences determined by law for them. In the event that such a declaration is incomplete and has insufficient evidence to prove their intent to enter into the contract, there is no consent or choice in that particular *ʿaqd*. Hence, there is an absence of an absolute depiction of them intending to form a contract due to the lack of consent. In the view of the Shafi'iah, a declaration made by a person in jest is valid because he intends the words of his own volition and choice (Badrān 1973). However, also in their opinion, a false or incorrect declaration is void because the words were unintended, and no absolute correlation can be drawn between the declaration and proof of consent.

The third opinion is shared among the Hanabilah, Malikiyah, and Shafi'iah, where consent (*reḍa*) and choice (*ikhtiār*) are interchangeable and interrelated in terms of meaning; one cannot exist without the other. The choice is founded on the intention behind the declaration made to form the contract within the individual and proof of his desire to obtain the contract's legal consequences. Similarly, for consent, a person who intends the declaration to form the contract without desiring the determined legal consequences cannot be said to have either consent or choice. This circumstance also applies to declarations made in jest or under duress because there is no wish for the contract's consequences. The early Shafi'iah scholars opined that if the intention to form a contract is expressed clearly in the declaration, even if it is uttered as a joke, it is sufficient to prove consent and implicit intention, and the contract should therefore be executed; the *ʿaqd* is not corrupted by claims that the entire matter is a joke (Badrān 1973).

From these various perspectives, it is evident that Hanafiah deems the difference between consent and choice is important because, among the Hanafiah, there is a law regarding contracts that are *fasid* which are not present in the views of the other schools. Therefore, if it is proven that the choice is not voluntary, the agreement between the parties is considered to be *fasid*. However, the contract becomes valid only when consent is proven at a reasonable time. If there is neither consent nor choice, then the contract becomes annulled and the declaration to enter into contract becomes valueless. A contract is valid only if there is consent, followed by an assured choice (Badrān 1973). The majority of the fuqaha, on the other hand, do not differentiate between consent and choice because they do not recognise the three classifications of choice as given by Hanafi. Conversely, they categorise them as either *ṣāḥiḥ* or *bāṭil* only.

Based on the discussions above, it is clear that intention or desire generates one's consent. Therefore, in forming a contract, a person's willingness is crucial to ensuring that the contract is legally binding according to Islamic Law. The fuqaha agree that consent is fundamental to all contracts (al-Zuhailī 1995) by referring to the word of Allah SWT, meaning, "O you who have believed, do not consume one another's wealth unjustly (fraud, gambling, and alike)" (Quran 4:29).

Based on this verse of the Quran, once there is mutual consent, a contract is consequently formed with the legal duties that apply therein (al-Zuhailī 1995). However, seeing and proving consent is determined by the contracting parties' contractual declaration; given that consent is such a subjective matter, it, therefore, needs to be demonstrated. There is a set formula called *ṣiḡḡah* for making offers and acceptances through which consent from competent contracting parties is obtained (al-Sharbīnī 1978) to achieve that goal.

The requirement for *ṣighah* is stated by Shirbini al-Khatib of the Syafi'i sect, where he states that a contract requires *ṣighah* as it involves the contracting parties' consent as stated in the Quran and Hadith. Since consent is a subjective matter that is intangible and cannot be seen, it is usually based on an external criterion called *ṣighah* (al-Sharbīnī 1978). Therefore, if there is a false statement made in the *ṣighah* of the contracting parties, it is clear that the parties' consent is tainted, or in plain terms, there is no consent.

Consent is considered to be lost or impaired if there are things or acts such as mistake (*ghalaṭ*), fraud (*tadlīs or taghrīr*) or coercion (*ikrah*) (ʿAbd al-Bāqī 1984). According to al-Zuhailī (1995), defective consent means those matters which cause defects in 'desire' or diminish 'absolute consent' in a contract. These matters are divided into four parts: coercion (*ikrah*), mistake (*ghalaṭ*), fraud (*tadlīs or taghrīr*) and over-pricing and fraud (*ghabn ma'a al-taghrīr*). For this research, since Islamic Law does not discuss misrepresentation in detail as in English common law, the present discourse will only revolve around areas with similar elements to misrepresentation in a contract under common law and Malaysian law.

FRAUDULENT MISREPRESENTATION ACCORDING TO COMMON LAW

Fraudulent misrepresentation can be defined based on essential elements, i.e., incorrect, or false or untrue statements of fact, made by one contracting party to another, which act as an influence for other the party to enter a contract, which is not intended to bind obligations under a contract (T. Chris, 2004). Moreover, the statement made is addressed to the party receiving the statement as decided in *Smith v Eric S Bush* [1990] 1 AC 831. The statement is also made before or when the contract is made (G. Stephen, 2015). According to Atiyah (1995), fraudulent misrepresentation is defined as the incorrect statement of fact.

In the discussion about fraudulent misrepresentation, there are several views from contract law experts on the elements. According to Adam and Brownsword (2004), there are three important things to consider in claiming that fraudulent misrepresentation has been committed; namely, the statement is a statement of fact, the statement is untrue, and the recipient of the statement relies on the statement specifically to enter into a contract. Mindy Chen (2015) states that several elements need to be proven to substantiate fraudulent misrepresentation; that is, the statement is a misrepresentation of facts addressed to the claimant, which influences the party to enter into a contract and intend to misrepresent. The elements of misrepresentation are discussed in detail as follows:

Misrepresentation

A person is said to have committed a fraudulent misrepresentation when he or she makes a misrepresentation that influences the other party, as in *Arnison v Smith* (1889) 41 Ch. D.348. The statement made must be a positive statement or conduct in which the statement may imply the occurrence of fraudulent misrepresentation. Such behaviour is like nodding or winking, or shaking the head, or smiling, as well as a piece of picture as decided in the case of *Walters v Morgan* (1861) 3 De G.F. & J 718,724 (Lord Campbell), *R v Charles* [1977] AC 177 and *Atlantic Estates plc v Ezekiel* [1991] 2 EGLR 202.

Statement of Fact

Misrepresentation made by the party making the statement must be factual. In the case of *Edgington v Fitzmaurice* (1885) 29 Ch D 459, Bowen LJ stated:

The state of man's mind is as much a fact as the state of his digestion. It is indeed very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained, it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact.

In the case of Eaglesfield v Marquis of Londonderry, James L.J stated, "of course the misrepresentation, if misrepresentation there must be a misrepresentation of a matter of fact."

Statements that persuades the contracting parties

A misrepresentation made by the statement maker shall also be a statement influencing the other party to enter into a contract as stated in *Attwood v Small* (1838) 6 CI & Fin 232, 502. If the statement is false, but it does not influence the contracting party, it is also not considered a fraudulent statement (Atiyah, 1989). Therefore, a person who buys shares of a company who believes the fraudulent misrepresentations contained in the company's prospectus, and also believes the falsity of the information that he or she may own the interest charged on the company's assets, is eligible to claim having been deceived by such misrepresentations as in the case of *Edgington v Fitzmaurice* (1885) 29 Ch D 459.

Moreover, the statement's recipient relied on the misstatement even though the statement's recipient could easily find out about the information's truth as decided in *Redgrave v Hurd* (1881) 14 App. Cas. 337. In this case, the statement recipient still has the right to cancel the contract unless the statement maker states the statement recipient's unreasonableness depending on the statement (Atiyah, 1989).

The recipient of the statement must prove that the statement made by the statement maker is a factor that caused him/her to decide to enter into a contract; if the misrepresentation does not affect him or her to enter into the contract, then he or she cannot claim

misrepresentation (Atiyah, 1995). While on behalf of the statement makers, they are not allowed to defend themselves by stating that the statement recipient can obtain the correct facts easily or with reasonable diligence as decided in *Redgrave v Hurd* (1881) 20 Ch D 1, provided that the statement recipient relies on at least the part of the fraudulent misrepresentation even though they could easily find faults in the statement (Atiyah, 1995). The English common law triggered the idea of fraudulent misrepresentation in this contract, and then there was equity intervention to ensure the fairness of the contracting party in granting fraudulent misrepresentation remedies.

FRAUDULENT MISREPRESENTATION IN CONTRACT LAW IN MALAYSIA

Fraudulent misrepresentations introduced by common law are practised in Malaysia in the Contracts Act 1950. In Malaysia, misrepresentation in a contract is governed by the Contracts Act 1950 under section 18. Section 18 provides the following:

"Misrepresentation" includes—

- (a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (b) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or the prejudice of any one claiming under him; and
- (c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Based on this provision, it can be understood that misrepresentation is a fraudulent misrepresentation, whereby the misrepresenting party is convinced that the statement is true and is not made with any fraudulent intention.

Based on the principle of fraudulent misrepresentation in the common law and contract law in Malaysia, the principle of *taghrīr* or *taghrīr qawli* in Islamic Law is the closest principle to fraudulent misrepresentation.

CONCLUSION

Based on the above discussions, it is clear that from the Islamic law perspective, the concept that applies to all aspects of human life, especially contracts, is justice and contractual honesty. This concept of justice and honesty form the basis and primary goal of the parties to enter into a contract, whereby the contract they enter must be made honestly and in good faith to achieve justice for all contracting parties.

Based on the definition of contract discussed above, it is clear that a contract is a binding agreement that creates contractual obligations between the contracting parties according to their respective requirements. The contract must be made by the contracting parties voluntarily with mutual consent (*reḍa*) to ensure the contract's validity.

Therefore, any acts that compromise the parties' consent must be avoided as these potentially destructive acts will affect the contract entered into by the contracting parties. The majority of fuqaha agree that these acts comprise mistake, fraud, and coercion. Based on the discourse above, it is clear that the discussion closest to misrepresentation in common law and the Law in Malaysia is *taghrīr* or *taghrīr qawli*.

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