



UNIVERSITI PUTRA MALAYSIA

**FAULT LINES IN CORPORATE GOVERNANCE : DIRECTORS
VERSUS SHAREHOLDERS**

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**FAULT LINES IN CORPORATE GOVERNANCE:
DIRECTORS VERSUS SHAREHOLDERS**

By

HALYANI HAJI HASSAN

**Thesis Submitted to the Graduate School of Management, Universiti Putra
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Philosophy**

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Specially dedicated to:

Beloved parents Hj Hassan Hj Idris and Hjh Rogayah Hussein,

Beloved husband Yusri Kamarudin

And

Three lovely pearls:

Nurfadhlilah Hanani

Nur Iman Nadhira

Muhammad Ihsan



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Faculty : Economics and Management

The economic downturn faced by the Asian countries in 1997 highlighted the importance of good corporate governance practices. Entailed from that crisis, measures undertaken towards improving the standard of corporate governance within the Malaysian corporate sector have been extensive. The Malaysian Code on Corporate Governance were introduced by the Malaysian Institute of Corporate Governance. The Kuala Lumpur Stock Exchange Listing Requirements were revamped. Other rules and legislation which were already in existence were viewed afresh. But they are all subject to ambiguities which may affect a conflict-free relationship between directors and shareholders and consequently affect the standard of corporate governance.

This thesis intends to emphasize the fault lines or conflicts which hinder a better relationship between directors and shareholders who are the most important organs in a corporation.



The dichotomy between control and ownership which refers to directors who hold the control and shareholders who hold the ownership, has contributed to the existence of the fault lines. These fault lines are discussed in several areas of company law for instance, power to manage, refusal to register transfer of shares, winding up and general meeting. The research methodology adopted for this thesis involves judicial and legislative interpretation combined with comparative analysis from other jurisdictions with positive developments. Analysis of case law has shown the approach taken by the courts in solving conflicts between directors and shareholders. This study proposes some recommendations, for instance, amending the ambiguous provisions concerning the power to manage and to wind up corporation and expanding the concept of fiduciary duty beyond its traditional scope to apply to the shareholders in exceptional circumstances. These proposals aim at providing a balance of power between these two organs. Although corporate governance covers a wider scope than merely focusing on the directors and shareholders relationship, improving this relationship will consequently improve the standard of corporate governance. Both directors and shareholders have their own role in achieving that purpose. In the final analysis, assisted by relevant rules and regulations and their conscious conduct in improving their relationship, a better standard of corporate governance can be attained which will implicitly affect the corporate economic condition.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk ijazah Doktor Falsafah

**GARIS SESAR DI DALAM PENGOVERNAN KORPORAT :
PENGARAH DAN PEMEGANG SAHAM**

Oleh

HALYANI HAJI HASSAN

Januari 2004

Pengerusi: Profesor Shaik Noor Alam S.M. Hussain, Ph.D.

Fakulti: Ekonomi dan Pengurusan

Kemelesetan ekonomi yang di alami oleh negara-negara Asia bermula dari tahun 1997 telah mengubah persepsi massa terutama masyarakat ekonomi dan kewangan serta kerajaan terhadap peri pentingnya Pengovernan Korporat yang baik. Bertitik tolak dari krisis ekonomi ini, tindakan ke arah memperbaiki standard Pengovernan Korporat di sektor Korporat Malaysia amat meluas dan pelbagai sifatnya. Sungguhpun telah tumbuh Institut Pengovernan Korporat Malaysia yang telah memperkenalkan Etika Pengovernan Korporat Malaysia dan juga penyusunan semula Syarat-syarat Penyenaraian Bursa Saham Kuala Lumpur, ia tidak lepas dari kekaburuan yang boleh menjelaskan hubungan bebas-konflik di antara Pengarah dan Pemegang Saham dan ini selanjutnya akan mencacatkan standard Pengovernan Syarikat.

Tesis ini bertujuan untuk memberi penekanan terhadap garis sesar (Fault lines) atau konflik yang menggugat wujudnya hubungan yang lebih baik di antara

Pengarah dan Pemegang Saham yang merupakan organ-organ penting di dalam struktur sesebuah syarikat.

Dikotomi di antara kawalan dan pemilikan, merujuk kepada institusi Pengarah yang memegang tampuk kuasa dan kawalan syarikat dan Pemegang Saham yang mempunyai hak milik dan sebagai tuan punya sesebuah syarikat telah menyumbang kepada wujudnya garis sesar ini. Garis-garis sesar ini dibincangkan menerusi beberapa aspek undang-undang Syarikat, sebagai contoh, kuasa untuk mengurus, keengganan untuk mendaftarkan pindahmilik saham, penggulungan syarikat dan mesyuarat agung. Metodologi kajiselidik yang digunakan untuk tesis ini melibatkan pentafsiran oleh Badan Kehakiman dan Perundangan yang digabung jalankan dengan analisis perbandingan daripada wewenang kehakiman di negara lain dengan perkembangan yang positif. Analisis kes-kes telah menunjukkan kecenderungan Mahkamah untuk memilih pihak di dalam menyelesaikan sesuatu konflik di antara Pengarah dan Pemegang Saham. Hasil kajian ini telah mencadangkan beberapa syor untuk mewujudkan keseimbangan kuasa di antara dua organ ini. Walaupun Pengovernan Korporat meliputi skop yang lebih luas daripada hubungan Pengarah-Pemegang Saham, usaha memperbaiki hubungan dua organ ini pada akhirnya akan meningkatkan standard Pengovernan Korporat. Kedua-duanya mempunyai peranan tersendiri di dalam mencapai matlamat ini. Dengan dibantu oleh peraturan dan undang-undang yang relevan dan disertakan dengan kesedaran dan keprihatinan kedua-dua belah pihak,

standard Pengovernan Korporat yang lebih baik yang kemudiannya memberi impak positif kepada ekonomi negara akan dapat dicapai.

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CHAPTER ONE

INTRODUCTION

The country's economy depends on the drive and efficiency of its companies. Thus the effectiveness with which their boards discharge their responsibilities determines Britain's competitive position. They must be free to drive their companies forward but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance.¹

The above statement describes the importance of corporate governance and its role in achieving efficient corporations that will influence the economic development of a country. A corporation which practices good corporate governance will provide greater accountability and transparency in its business operations, whilst taking into consideration the interest of its shareholders and other stakeholders.

The East Asian financial crisis of 1997 had highlighted the importance of good corporate governance. It is believed that corporations with good governance managed to survive the turmoil. Since then 'corporate governance' became the most talked about agenda or corporate buzzword within the Malaysian corporate sector.

In March 1998, the Ministry of Finance established the Finance Committee on Corporate Governance to prepare a report for the purpose of upgrading the

¹ Sir Adrian Cadbury, Chairman, *Report of the Committee on the Financial Aspects of Corporate Governance* (1992), at paragraph 1.1.