

THE GENERAL THEORY OF SHARES AND DISTRIBUTION OF DIVIDEND IN A COMPANY UNDER THE COMPANIES ACT 1965: WITH SPECIAL REFERENCE TO ITS LEGALITY UNDER THE ISLAMIC PERSPECTIVE

Muhammad Hafiz Mohd Shukri

Faculty of Economics and Business

Universiti Malaysia Sarawak

Email: msmhafiz@feb.unimas.my

Bakri Abdul Karim

Faculty of Economics and Business

Universiti Malaysia Sarawak

Email: akbakri@feb.unimas.my

ABSTRACT

Under company law, a share is the interest of a shareholder in a company. By the same token, shares also reflect the interest of a shareholder in a mudharabah or musharakah contract under the Islamic laws. Presently, a company which has been registered under the Companies Act 1965 is often regarded as a conventional company as opposed to a syariah-compliant company. Nevertheless, it is possible to harmonize the provision in the Companies Act 1965 with Syariah principles in relation to shareholding issues. This article focuses on the rights attached to ordinary shares and preference shares under the Companies Act 1965 and the compatibility of such rules with the Syariah principles. The concern is also to determine the legality of basic principles in relation to the distribution of dividend to shareholders in the light of Islamic perspective.

1. INTRODUCTION

By and large, the Muslim jurists recognized the *mudarabah* and *musharakah* contracts as two forms of business organisations and such contracts were created during medieval Islamic civilization. Nevertheless, it is not correct to set aside the contracts of *mudarabah* and *musharakah* from being utilized in the modern companies nowadays.

Under Islamic law, the contracts of *mudarabah* and *musharakah* are paramount forms of business organisation. In essence, the application and suitability of these two forms of business organisations has to be reconsidered in view of the existence of the modern company. This is because modern companies with distinct legal personality only existed after the 19th century, long after the introduction of *mudarabah* and *musharakah* contracts in the Muslim society. However, this is not to say that all modern companies are not