ABSTRACT

This thesis aims to study and analyze sukuk al-mudharabah in Malaysia by studying Principal Terms and Conditions of three companies, decisions of Fiqh Councils and views of jurists to know whether sukuk are consistent with legitimate mudharabah. The researcher used the approach of information gathering and the personal interview to obtain information and data and to know the views of experts about mudharabah in general and sukuk al-mudharabah in particular in Malaysia. He also used the approach of information analysis to analyze the views of jurists about mudharabah and sukuk al-mudharabah and to analyze results that can be achieved. He used the comparative approach to compare the views and opinions of jurists, too. The researcher concluded that sukuk al-mudharabah in Malaysia are consistent with some of the characteristics of legitimate mudharabah, but - at the same time - they are not consistent with the most important of those characteristics. Sukuk are consistent with legitimate mudharabah because there is a pre-agreed certain percentage of profit to be obtained by each party. Some companies stated that investors (rab al-mal) will bear any loss that might occur. This is not enough to consider sukuk consistent with legitimate mudharabah. Sukuk are not consistent with legitimate mudharabah because there is a commitment by two companies to refund all money at the end of mudharabah. Thus, capital is guaranteed. Sukuk were issued at a discount by one company. Thus, profit is guaranteed. Sukuk were amortized at nominal value not at market value by all companies. This is not consistent with the basics of legitimate mudharabah.