



## THE RULING OF CRYPTOCURRENCY ACCORDING TO THE INDONESIAN COUNCIL OF SCHOLARS (MUI) AND THE INDONESIAN COMMODITY FUTURES TRADING REGULATORY AGENCY (BAPPEBTI)

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### ABSTRACT

Cryptocurrency is a form of currency that does not exist physically in the real world but only in the digital realm as data, which is bound by a hash as proof of its validity. The emergence of cryptocurrencies, especially those with high market value worldwide, has sparked debates and controversies regarding their legal status as currency or commodities in Indonesia. This paper aims to explore the conceptions of cryptocurrency according to the Indonesian Council of Scholars and the Indonesian Commodity Futures Trading Regulatory Agency (BAPPEBTI). The study adopts a normative and descriptive analytical approach in the form of a comparative study. This paper relied on two primary sources: 1) the Seventh Edict of the Indonesian Council of Scholars, which discusses cryptocurrency, issued by the Secretariat of the Fatwa Commission of the Indonesian Council of Scholars, and 2) a digital leaflet containing regulations and explanations regarding cryptocurrency regulations in Indonesia, issued by BAPPEBTI. Based on the methodology used, the research findings are as follows: First, according to the Indonesian Council of Scholars, the use of cryptocurrency as currency or commodities is deemed invalid and prohibited due to its involvement in *gharar* (excessive uncertainty), *dharar* (potential harm), and its conflict with the law that mandates the use of the Indonesian Rupiah as the official currency within the territory of the Republic of Indonesia. Second, BAPPEBTI allows the trading of cryptocurrencies that have utility as assets or commodities in Indonesia, provided they meet the requirements set by BAPPEBTI.

**Keywords:** Crypto, Law, MUI, BAPPEBTI

### ABSTRAK

Cryptocurrency adalah mata uang yang tidak memiliki fisik di dunia nyata dan hanya terdapat di dunia maya dalam bentuk data yang terikat dengan hash sebagai bukti validitasnya. Kemunculan cryptocurrency khususnya yang memiliki nilai jual tinggi di dunia, menimbulkan pro dan kontra berkaitan dengan hukumnya sebagai mata uang atau komoditi di Indonesia. Penelitian ini

bertujuan untuk mengetahui konsepsi cryptocurrency menurut majelis ulama Indonesia dan BAPPEBTI. Penelitian ini adalah penelitian normatif bersifat deskriptif analitis yang berupa studi komparatif. Peneliti menggunakan dua sumber rujukan utama, yaitu 1) Edaran hasil Ijtima' ketujuh Majelis Ulama Indonesia berkaitan tentang cryptocurrency oleh Sekretariat Komisi Fatwa Majelis Ulama Indonesia dan 2) Leaflet digital yang memuat peraturan dan penjelasan berkaitan dengan regulasi cryptocurrency di Indonesia yang diedarkan BAPPEBTI. Berdasarkan metode yang digunakan diperoleh hasil penelitian sebagai berikut: Pertama, menurut MUI penggunaan cryptocurrency atau kripto sebagai mata uang dan komoditi tidak sah dan hukumnya haram karena mengandung gharar, dharar dan bertentangan dengan Undang-Undang yang mewajibkan penggunaan Rupiah sebagai mata uang di wilayah NKRI. Kedua, menurut BAPPEBTI kripto yang memiliki utilitas boleh diperdagangkan sebagai aset atau komoditi di Indonesia selama memenuhi persyaratan yang telah ditetapkan oleh BAPPEBTI.

**Kata Kunci:** Crypto, Hukum, MUI, BAPPEBTI

## 1. INTRODUCTION

In this ever-advancing era, trading activities have also evolved over time. Before the discovery of paper money as a medium of exchange, humans used the barter system. The barter system is an economic system where goods are exchanged for other goods in transactions. The method of payment has continuously undergone development, starting from the barter system using goods, which was later replaced by basic commodities, and then valuable metals like gold or silver, until the creation of paper money, which is considered more convenient to carry, store, and accepted by all strata of society. Further technological advancements subsequently gave rise to more efficient payment instruments, such as e-money and debit cards, and currently, the booming trend is the use of cryptocurrencies or digital currencies known as cryptocurrency.

Imam Taqiy al-Din al-Hishni provides the following definition of buying and selling,

البيع في اللغة إعطاء شيء في مقابلة شيء وفي الشرع مقابلة مال بمال قابلين للتصرف بإيجاب وقبول على الوجه  
المأذون فيه<sup>1</sup>

"Etymologically, buying and selling means giving an object to be exchanged for another object. In terminology, buying and selling refers to the exchange of property with another property for the purpose of ownership or management, accompanied by the utterance of offer (*ijab*) and acceptance (*qabul*) according to the prescribed procedure."

Cryptocurrency is a form of currency that lacks physical existence in the real world and only exists in the digital realm as data, which is bound by a hash as proof of its validity.<sup>2</sup> Cryptocurrency was introduced by an anonymous individual using the pseudonym Satoshi Nakamoto in 2008, employing the peer-to-peer principle. Such a system allows individuals

<sup>1</sup> Taqiyuddin al-Hishni, *Kifayah al-Akhyar* (Damaskus: Dar al-Khair, 1994). p. 232

<sup>2</sup> Hardian Satria Jati and Ahmad Arif Zulfikar, "Transaksi Cryptocurrency Perspektif Hukum Ekonomi Syariah" 6, no. 2 (2021): 12.

to transact directly with each other without the involvement of intermediaries, such as central banks.

In Indonesia, according to Law No. 7 of 2011 on the currency, the use of the Rupiah is mandated in every buying and selling transaction that involves payment and other liability settlements that can only be discharged with money, occurring within the territory of the Republic of Indonesia. The authority to issue, circulate, withdraw, and recall Rupiah from circulation is exclusively granted to Bank Indonesia (BI). At the end of 2018, the Minister of Trade issued Regulation No. 99 of 2018 on the General Policy of Cryptocurrency Futures Trading, followed by five subsequent regulations: BAPPEBTI Regulation No. 2 of 2019, BAPPEBTI Regulation No. 5-6 of 2019, BAPPEBTI Regulation No. 9 of 2019, and BAPPEBTI Regulation No. 2 of 2020. These regulations serve as the legal basis for the validity of cryptocurrency transactions to be traded as commodities or assets, rather than being considered as a legal means of payment.

The emergence of cryptocurrencies, especially those with high market value worldwide, has led to various debates and controversies regarding their legal status as a currency in Indonesia, particularly within the context of Indonesia being a predominantly Muslim country. In Indonesia, a Muslim is expected to adhere to Islamic principles in both religious rituals (*'ibadah*) and daily transactions (*muamalah*). A devout Muslim must ensure that their buying and selling activities comply with Islamic law (*syariat*) to avoid engaging in practices prohibited by Allah and His Messenger. On the other hand, during the Seventh Edict held by the Indonesian Council of Scholars (Majelis Ulama Indonesia) from November 9 to 11, 2021, cryptocurrencies were declared haram (forbidden) due to their involvement in *gharar* (excessive uncertainty) and *dharar* (potential harm). As a result, the issue of cryptocurrency raises significant concerns about its permissibility and compliance with Islamic principles in the context of trading and investing among the Muslim community in Indonesia. This has become a topic of ongoing discussions and deliberations within both religious and legal circles in the country.

## 2. LITERATURE REVIEW

### 2.1 Property(*al-mal*)

The term "mâl" in the Arabic language refers to everything that can be effectively owned by an individual, whether in tangible form (*'ayn*) or in the form of benefits (*manfa'ah*). This includes items such as gold, silver, animals, plants, and the benefits derived from things like using transportation, wearing clothes, and occupying a house, among others. On the other hand, anything that cannot be owned by an individual linguistically cannot be considered as "mâl." For example, birds in the sky, fish in the water, trees in the forest, and mineral commodities inside the earth cannot be regarded as "mâl." According to Qamus al-Muhith, "mâl" means everything that can be owned. According to

Lisan al-'Arab, "mâl" in the context of custom ('urf) refers to anything that can be possessed.<sup>3</sup>

In Islamic law, the concept of "mâl" is not restricted to a narrow definition; instead, it is left broad and open, based on the customs and traditions of the community. Therefore, the Arabs, whose language is used in the Qur'an, understand the meaning of "mâl" each time they hear the term, just like they understand terms like sky, earth, and others. That is why some linguists argue that "mâl" is generally recognized (al-mâl ma'ruf). The term "mâl" or its derivatives are mentioned in the Qur'an in more than 90 verses and in the Hadith of the Prophet Muhammad ﷺ in countless numbers. Therefore, the term "mâl" is understood in the same way as terms like prayer, fasting, pilgrimage, and charity, without referring to a more specific meaning.

After the emergence of various schools of thought in Islamic law, the term "mâl" has been employed to denote various technical terms, and jurists (*fukaha*) have endeavored to define it according to their respective understandings. Due to the diverse interpretations and approaches within different legal schools, the concept of "mâl" has evolved and taken on nuanced meanings depending on the specific context and application within each school's jurisprudence. As a result, there are multiple perspectives on how the term "mâl" should be understood and applied in various legal contexts, reflecting the richness and diversity of Islamic legal thought, as per se according to Imam al-Hijawi,

أَنَّ يَكُونُ الْمَبِيعَ مَالًا وَهُوَ مَا فِيهِ مَنَفَعَةٌ مَبَاحَةٌ لِّغَيْرِ حَاجَةٍ أَوْ ضَرُورَةٍ

"Wealth is something that contains legitimate legal benefits and is obtained without coercion or compulsion arising from urgent needs."

فَخَرَجَ مَا لَا نَفْعَ فِيهِ أَصْلًا كَالْحَشْرَاتِ وَمَا فِيهِ مَنَفَعَةٌ مُحْرَمَةٌ كَالْخَمْرِ، وَمَا فِيهِ مَنَفَعَةٌ مَبَاحَةٌ لِلْحَاجَةِ كَالْكَلْبِ، وَمَا فِيهِ

مَنَفَعَةٌ تَبَاحٌ لِلضَّرُورَةِ كَالْمَيْتَةِ فِي حَالِ الْمَخْمَصَةِ

"Things that are inherently non-beneficial, such as insects, or those that may have benefits but are legally prohibited, such as alcoholic beverages, or those that have legitimate benefits but only in urgent situations of necessity, such as keeping a dog or consuming carrion for survival in times of emergency, are not classified as wealth." According to Imam al-Buhuti al-Hanbali.

The term "manfa'ah" or manafi' in its plural form is derived from the root word "nafa'", which literally means benefit and profit, or the means used to attain such benefits and gains or achieve advantageous objectives. Consequently, the term "manfa'ah" generally encompasses all the benefits obtained from various objects, which may be

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<sup>3</sup> al-Fairuzabadi, *Qamus Al-Muhith* (Beirut: Muassasah al-Risalah, 2005). v. 4 p. 250

physical or in the form of substances, for example, milk and calf from a cow, fruits from trees, house rent, and the like.

The majority of jurists use the term "manafi" specifically to define the benefits obtained from material objects through their tangible use, such as living in a house, riding a car, wearing clothes, and working as an employee. Benefits in the form of substances, such as cow's milk, fruits from trees, rental income from a house, and the like, are therefore not legally considered as "manafi". Instead, they are referred to as the produce or income from material objects.<sup>4</sup>

The term rights refers to something that can be legitimately claimed or the interests and demands that a person has according to the law. According to Syaikh Wahbah al-Zuhaili, a right is what the law recognizes for someone, enabling them to exercise certain authority or binding others to do something related to them. He also states that rights are sometimes related to property, such as ownership rights (haqq al-milkiyyah) and usage rights (haqq al-irtifaq) over adjacent land, especially concerning the right to pass through roads, access water, and develop the environment. Sometimes rights are not related to property but instead indicate the legal claims that must be fulfilled by someone who possesses such rights, such as guardianship and custodianship over someone who is incapable of self-management (tashâruf).<sup>5</sup>

In other words, rights is a general term ('am), while "manfa'ah" (benefits) is a specific term (khaṣ). Thus, both have the same scope and coverage of benefits, which apply to goods utilized for profit, such as living in a house and using a car. However, they differ from each other when "hak" is more applicable to interests not related to the use of beneficial objects, for instance, redemption rights, option rights, supervisory rights, custodial rights, and so forth. Although some jurists use these terms as synonyms, there is actually a distinction between the two. "Hak" refers to the rights granted by law to an individual. On the other hand, "manfa'ah" pertains to the benefit or utility gained by an individual from a specific object, such as a car. The benefit or utility derived from using the car is considered "manfa'ah," while the right or authority to use the car is considered "hak," which is granted to the rightful owner of the right.

## 2.2 Money

In Islam money is not deemed to possess inherent value; instead, it serves merely as a medium of exchange in trade, except in specific cases. Each unit of currency carries an equal value to other units of the same denomination, leaving no room for gaining profit through exchanges of similar currency units. Profits are earned when something of intrinsic value is sold in exchange for money or when different currencies are swapped

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<sup>4</sup> 'Ali al-Khafif, *Ahkām Al-Mu'amalaat al-Syar'iyyah* (Dar Fikr al-'Arabiyy, n.d.). p. 27

<sup>5</sup> al-Zuhaili, Wahbah, *Fiqh Al-Islamiyy Wa Adillatuh* (Damaskus: Dar al-Fikr, 1985). p. 2877

with one another. Earning profit through trading money (within the same currency) or its representative in paper form is considered usury (riba), which is forbidden in Islam.

Syaikh al-Islam Ibn Taymiyah said,

المقصود من الأثمان أن تكون معيارا للأموال يتوسل بها إلى معرفة مقادير الأموال ولا يقصد الانتفاع بعينها فمتى بيع بعضها ببعض إلى أجل قصد بها التجارة التي تناقض مقصود الثمنية<sup>6</sup>

“Indeed, the purpose of money (tsaman) is to serve as a standard measure for wealth, which is used to determine the amount of one's possessions, and it is not intended for direct acquisition. If a certain amount of money is exchanged with another amount of money within a specific time frame, then this would be considered as trading, which goes against the very purpose of money itself.”

Al-Imam al-Ghazali also shares a similar view,

فإذن خلقهما الله تعالى لتداولهما الأيدي وَيَكُونَا حَاكِمَيْنِ بَيْنَ الْأَمْوَالِ بِالْعَدْلِ وَالْحِكْمَةِ أُخْرَى وَهِيَ التَّوَسُّلُ بِهَيْمَا إِلَى سَائِرِ الْأَشْيَاءِ لِأَنَّهُمَا عَزِيزَانِ فِي أَنْفُسِهِمَا وَلَا غَرَضُ فِي أَعْيَانِهِمَا<sup>7</sup>

"Allah Ta'ala created dinar and dirham to circulate and serve as a just and equitable standard among different commodities. Dinar and dirham serve as a means to acquire other goods; they hold value as currency in themselves, but are not desired for their intrinsic properties alone."

### 2.3 Trade

The term used in Islamic jurisprudence for buying and selling or trade is called "al-ba'i," which etymologically means exchanging or substituting. According to Wahbah al-Zuhaili, it can be linguistically defined as "exchanging something for something else." The Arabic term "al-ba'i" is sometimes used to refer to its opposite meaning, which is the term "al-syira" (purchase). Therefore, "al-ba'i" signifies both selling and buying simultaneously.

البيع فِي اللُّغَةِ إِعْطَاءُ شَيْءٍ فِي مُقَابَلَةِ شَيْءٍ وَفِي الشَّرْعِ مُقَابَلَةُ مَالٍ بِمَالٍ قَابِلِينَ لِلتَّصَرُّفِ بِإِجَابٍ وَقَبُولٍ عَلَى الْوَجْهِ الْمَأْدُونِ فِيهِ<sup>8</sup>

In the Arabic language, buying and selling means exchanging one item for another (barter). In Islamic jurisprudence, jual beli means the exchange of property for property for the purpose of utilization or management, accompanied by the proper utterance of

<sup>6</sup> Ibn Taymiyyah, *Majmu' al-Fatawa* (Majma' Malik Fahd, n.d.). v. 29 p. 471-472

<sup>7</sup> Abu Hamid al-Ghazali, *Ihya' 'Uluum al-Diin*, n.d. v. 4 p. 91

<sup>8</sup> al-Hishni, *Kifayah al-Akhyar*. p. 232



offer (ijab) and acceptance (qabul) according to the permissible (sah) rules and regulations.

#### 2.4. Cryptocurrency

Cryptocurrency is also known as virtual currency and is sometimes referred to as digital currency. Virtual currency is a representation of value that can be traded digitally and serves as a medium of exchange, unit of account, and store of wealth, but it does not have the status of legal tender in any country. Virtual currency is not issued or guaranteed by any government and can only fulfill these functions through agreements among users of the virtual currency. Virtual currency differs from fiat currency or "real currency," which is physical money that serves as legal tender in a country, and it also differs from e-money, which is a digital representation of fiat currency.

The European Central Bank defines cryptocurrency as a digital representation of value that is not issued by a central bank or authorized entity and is not necessarily tied to fiat currency, but is used as a means of exchange and can be transferred, stored, or traded electronically. Unlike fiat currency, virtual currency is not legal tender, but it is still accepted by its users in virtual/online communities as a medium of exchange and unit of account. Virtual currency should also be distinguished from electronic money or e-money, such as Paypal (or Gopay, OVO, Dana, etc.). With electronic money, the connection between e-money and fiat currency is guaranteed through specific legal provisions, and the balance is displayed in the same unit of account (USD, Euro, Rupiah, etc.). In contrast, virtual currency creates its own unit of account that exists solely in digital form (Bitcoin, Litecoin, Ripple, etc.), which can be used as an alternative to fiat currency or converted into fiat currency.<sup>9</sup>

### 3. RESEARCH METHODOLOGY

The research methodology employed in this study is as follows:

#### 3.1. Research Design

The research method employed will be a normative legal literature study, involving the examination and analysis of various legal materials, books, and other related literature concerning the issue being researched, which is the ruling on cryptocurrency according to the Majelis Ulama Indonesia and BAPPEBTI. The nature of the research will be descriptive analytical, conducted as a comparative study, which aims to depict, explain, and analyze a range of literature relevant to the issue being investigated, namely the law on cryptocurrency according to the Majelis Ulama Indonesia and BAPPEBTI.

#### 3.2. Instruments

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<sup>9</sup> European Central Bank., *Virtual Currency Schemes: A Further Analysis*. (LU: Publications Office, 2015), <https://data.europa.eu/doi/10.2866/662172>.

The legal materials utilized in this research encompass primary legal sources, secondary legal sources, and tertiary legal sources. The primary legal materials utilized regarding the ruling on cryptocurrency according to the Majelis Ulama Indonesia and BAPPEBTI include digital leaflets containing regulations and explanations related to cryptocurrency regulations in Indonesia, disseminated by BAPPEBTI, and the circular from the seventh Ijtima' of the Majelis Ulama Indonesia concerning cryptocurrency, issued by the Secretariat of the Fatwa Commission of the Majelis Ulama Indonesia. The secondary legal materials consist of supporting data obtained from various books, treatises, and informational sources that discuss cryptocurrency. These secondary legal materials serve as supplementary references to the primary legal materials. Among the secondary legal materials utilized are: "al-Fiqh al-Islâmîyy wa Adillatuhu" by Wahbah al-Zuhaili, "Kasyâf al-Qinâ'" by al-Buhuti, "al-Mughnîyy syarah Matan al-Khirâqi" by Ibn Qudamah, "Hâsyiah al-Bahr al-Râiq" by Ibn 'Abidin, and "Kifâyah al-Akhyâr" by Taqiy al-Din al-Hishni.

### 3.4. Analysis Techniques

Once the legal materials have been gathered, they will be processed through several stages, including:

- **Editing:** This involves re-examining the collected data to ensure its completeness and address any shortcomings.
- **Transliteration:** The texts in foreign languages will be translated into proper and scientifically written Indonesian.
- **Description:** The research findings will be presented in a clear and detailed manner using appropriate language.
- **Interpretation:** If any data appears unclear or challenging to comprehend, necessary explanations will be provided to facilitate understanding.
- **Analysis of Legal Materials:** The legal materials will be thoroughly analyzed to extract meaningful insights and draw relevant conclusions.

## 4. DISCUSSION

Both the MUI and BAPPEBTI have distinct roles and focus on their duties, they concur that cryptocurrencies cannot be considered lawful currencies. They share a similar viewpoint, asserting that the use of cryptocurrencies as legitimate means of payment runs counter to established principles. According to MUI's perspective, cryptocurrencies are regarded as inconsistent with Sharia principles and may entail substantial risks. Conversely, BAPPEBTI emphasizes that cryptocurrencies lack official recognition as legal tender by the government and authorized financial authorities. The utilization of cryptocurrencies in Indonesia is governed by BAPPEBTI Regulation No. 5 of 2019, which pertains to the Technical Provisions for the Operation of Cryptocurrency Physical Markets (Crypto Assets) on Commodity Exchanges. This regulation classifies cryptocurrencies as commodity derivatives on commodity exchanges, rather than currencies or transactional instruments



akin to fiat money. Thus, employing cryptocurrencies as investment assets or commodities traded by participants in the digital market aligns with BAPPEBTI's standpoint.

Although MUI and BAPPEBTI share a similar perspective on cryptocurrency as a forbidden currency, the differences in their roles and authorities also give rise to distinct approaches to cryptocurrencies. MUI, being a religious institution, provides viewpoints based on Sharia principles and aspects of compliance with religious teachings. On the other hand, BAPPEBTI, as a regulatory agency for commodity futures trading, focuses on the regulation and supervision of cryptocurrency trading activities.

An examination of the use of cryptocurrency as a currency and/or asset from the perspective of Islamic jurisprudence (*fikih*) reveals that it does not align with the definition of *sil'ah* or commodity in Islam, which linguistically means the same as *mabi'* (merchandise or traded goods). MUI does not consider the current circulating cryptocurrencies in the digital market as commodities or assets, while BAPPEBTI views them as digital assets, especially when cryptocurrencies with their various forms hold economic value according to some parties and can be digitally traded.

It appears that MUI tends to lean towards the view of the Shafi'i school of thought, which requires the object of a contract (*akad*) to be something visible through sight or describable by its characteristics, whether orally or in writing. However, there are other perspectives outside the Shafi'i school of thought that allow the object of a contract to be more general, encompassing anything that is considered valuable and has worth in the eyes of society. As previously discussed, the Hanafi school of thought considers the benefits derived from an object or service to be eligible as the object of a contract because they are categorized as property. Similarly, the *mu'tamad* view within the Hanbali school of thought allows for the permissibility of buying and selling benefits (*manfa'ah*) as long as the benefits are related to permissible matters,

(مبادلة عين مالية أو منفعة مباحة مطلقا) أي بأن لا تختص إباحتها بحال دون آخر كحجر دار وبقعة لحفر بئر، بخلاف نحو جلد ميتة مدبوغ فلا يباح هو ولا ينتفع به مطلقا بل في الياسات<sup>10</sup>

"The exchange of goods or permissible benefits is absolute, meaning its permissibility is not restricted by specific conditions, such as the benefit of passing through a road or a place for digging a well. However, this does not include the skin of a dead animal that has been tanned. Such use is not permitted and should not be employed in any circumstance, except when the tanned skin is completely dry."

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<sup>10</sup> Abdurrahman al-Ba'li, *Kasyf Al-Mukhaddarat Syarah Akhsar al-Mukhtasharat*, 1st ed. (Beirut: Dar al-Basyair al-Islamiyyah, 2002). v. 1 p. 359

MUI's argument against the permissibility of cryptocurrency transactions as commodities is based on the notion that cryptocurrencies lack underlying assets. However, it is suggested that MUI should consider viewing cryptocurrencies as a form of benefit and adopt the perspectives of the Hanafi and Hanbali schools of thought, which permit their trade as long as the specific benefits associated with certain cryptocurrencies can be clearly proven to be beneficial.

Although the author does not deny the prevalence of numerous cryptocurrencies currently circulating in the market, even those verified by BAPPEBTI, it is acknowledged that they lack unequivocal ascertainable benefits. In truth, their inherent worth is non-existent, as they merely exist as mere digits on a digital screen. Their sole advantage lies in the valuation bestowed upon them by buyers, whether they be investors, traders, or speculators, thereby enabling their eventual exchange for real currency on exchanges, and any subsequent increase in their value may lead to profits.

Another argument presented by MUI is the presence of *gharar* in cryptocurrency trading. *Gharar* refers to uncertainty that can lead to losses for one or both parties. Cryptocurrencies are not issued by any government that can guarantee their value. Moreover, they do not possess any inherent utility except as a series of digits visible on a monitor. The determination of cryptocurrency prices is largely influenced by market speculation. This causes their prices to soar to astronomical heights and plummet uncontrollably. It is possible that the cryptocurrencies existing today may become invalid tomorrow. The potential *gharar* persists when cryptocurrencies are considered not as currencies but as assets or commodities. Their value remains uncertain, as they are essentially mere numbers on a monitor with arbitrary assigned values. In the event of any mishap in this risky investment, there will be no party held accountable. Instances of fraud, hacking, government blocking, exchange website closures, and various other scenarios can lead cryptocurrency investors to incur substantial losses instantly, with no legal mechanism to safeguard their assets.

One of the elements of *gharar* present in cryptocurrency asset trading arises because potential buyers lack proper knowledge about the cryptocurrency they intend to purchase. However, this aspect of *gharar* can be eliminated when prospective buyers undertake to analyze the whitepaper or prospectus associated with the cryptocurrency they plan to buy, study technical analysis to predict price movements or trends, and determine economically feasible profit and loss ratios. This is akin to stock trading in the Indonesia Stock Exchange, where traders engage in transactions involving sharia-compliant stocks. When the potential *gharar* can be entirely avoided in the future, the author believes that MUI may reconsider this point, following the principles of jurisprudence (*Qawaid al-Fiqhiyyah*),

الحكم يدور مع العلة وجودا وعدما<sup>11</sup>

“The ruling revolves with its cause, existing and non-existing”

This proverb implies that a legal ruling is contingent upon the presence or absence of its underlying cause or rationale (العلة). The legality of an action or decision is determined by the circumstances and conditions surrounding it. If the reason or cause for a specific ruling exists, the ruling is applicable and enforceable. On the other hand, if the cause is absent, the ruling does not apply. The proverb emphasizes the importance of considering the underlying reasons and context when making legal judgments or decisions. It also underscores the idea that the applicability of a law is not fixed, but rather, it changes depending on the presence or absence of its underlying cause.

Another aspect of *gharar* is the ambiguity surrounding cryptocurrencies themselves, as most current cryptocurrencies are anonymous, making it impossible to trace precisely their creators and the actions taken by the developers when issues arise with the cryptocurrencies. In this regard, BAPPEBTI has implemented regulations to protect consumers by tightening the licensing requirements for cryptocurrency exchanges in Indonesia. However, BAPPEBTI has not yet provided regulations regarding consumer protection concerning cryptocurrency developers or fellow "investors/traders" in cryptocurrencies. As long as this issue remains unresolved, the element of *gharar* in cryptocurrency assets persists.

Although the author believes that originally trading cryptocurrency is permissible, as there is no clear evidence prohibiting it based on the principle "The default ruling in transactions is permissibility until there is evidence indicating its prohibition," the writer still agrees with MUI's prohibition of trading cryptocurrency as an asset due to the greater harm (*mafsadah*) it brings compared to its benefits. For instance, Kunci Coin (KUNCI), one of the verified cryptocurrencies by BAPPEBTI, reached its highest point at Rp15,000.00 on March 3, 2022, but has since experienced a continuous decline, reaching Rp109.00 on June 22, 2023, resulting in a 99.3% decrease from its peak within one year and three months since listing on the crypto exchange.

Similarly, Asix coin (ASIX), a cryptocurrency project owned by a renowned Indonesian artist, Anang Hermansyah, which promised an NFT marketplace, Metaverse Nusantara, and mobile games that generate ASIX itself, experienced a similar pattern. After being verified by BAPPEBTI on March 3, 2022, it reached its highest point at Rp89.00 and has since continued to decline, reaching Rp3.00 at present, experiencing a 96.4% decrease from its highest price. These examples illustrate that when someone purchases ASIX on the day of its listing on the crypto exchange at its highest price of 100 million

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<sup>11</sup> Muhammad al-Sarkhasi, *Ushul Al-Sarkhasi* (Beirut: Dar al-Ma'rifah, 1395). v. 2 p. 182

rupiahs, after one year and three months, their ASIX holdings would only be worth 3.7 million rupiahs, resulting in a loss of 96.3 million rupiahs of the initial capital.

Upon observing the harm (*mafsadah*) caused by the current cryptocurrency trading, which involves the loss of significant amounts of wealth, it contradicts the fundamental principles of Islamic law regarding *hifzh al-mâl* (preservation of wealth). Therefore, such harmful consequences must be avoided by adhering to the principle,

درء المفسد مقدم على جلب المصالح<sup>12</sup>

"Rejecting harm takes precedence over seeking benefits."

In this matter, BAPPEBTI has been less successful in regulating cryptocurrency trading as an asset in Indonesia. BAPPEBTI should also accommodate consumer protection, especially for cryptocurrency investors/traders. When developers of a certain cryptocurrency asset fail to fulfill their promises as stated in the whitepaper or during the ICO (initial coin offering) publication, there should be actions taken by BAPPEBTI to impose sanctions on these dishonest developers. The listing by BAPPEBTI should not merely serve as an exit liquidity opportunity for major players who hold the majority of the cryptocurrency's supply. The impact of such actions is detrimental to small-scale players who initially bought the cryptocurrency based on the promising claims made by the developers, only to end up losing a significant amount of money due to the developers' failure to fulfill their promises.

As of the present time, the prevailing regulations in the Republic of Indonesia acknowledge only one currency, which is the rupiah. This regulatory framework is aimed at achieving measured benefits for the nation, and therefore, declaring certain cryptocurrencies as *halal* for use as an alternative currency in Indonesia is clearly erroneous, both from the perspectives of positive law and Islamic jurisprudence (*fikih*). However, if the Indonesian government were to develop its own cryptocurrency and designate it as an alternative currency, granting it *tsamaniyah* status, it would no longer be treated as a commodity subject to extreme value fluctuations within a short period and anonymity would be eliminated. Consequently, the potential *gharar* present in current cryptocurrencies could be entirely eradicated. This novel cryptocurrency would possess a different legal status compared to the majority of existing cryptocurrencies. Notably, it would not only be permissible as a commodity but also as a legitimate currency, owing to the recognition and assurance provided by the competent government authority, akin to the case of China's Digital Yuan.

## 5. CONCLUSION

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<sup>12</sup> al-Syatibi, *Al-Muwafaqat Fi Ushul al-Syari'ah* (Mesir: Dar al-Qalam, 1998). v. 6 p. 446

According to the Indonesian Council of Scholars (MUI), the use of cryptocurrency or crypto as a currency is considered invalid and prohibited (*haram*) due to its involvement in *gharar* (excessive uncertainty) and *dharar* (potential harm), and it also contradicts Law No. 7 of 2011, which mandates the use of the Indonesian Rupiah as the official currency within the territory of the Republic of Indonesia. The use of crypto as a tradable asset or commodity is also deemed invalid because of the presence of *gharar* and *dharar*, and it does not meet the criteria as a valid commodity (*sil'ah*) in accordance with Sharia law. However, when crypto is considered as an asset that meets the criteria as a *sil'ah* and has an underlying asset while being free from *gharar*, it is considered valid and permissible for trading. According to the Indonesian Commodity Futures Trading Regulatory Agency (BAPPEBTI), cryptocurrencies that have utility can be traded as assets or commodities in Indonesia if they meet the requirements set by BAPPEBTI. Assets that have been verified by BAPPEBTI can then be traded on local cryptocurrency exchanges.

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