

# A MASLAHAH-BASED REVIEW OF MUI'S FATWA ON CRYPTOCURRENCY: A COGNIZANT HUMAN PERSPECTIVE

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Received 29-05-2025 | Revised 15-06-2025, 24-06-2025, 02-07-2025, 06-07-2025 | Accepted 30-07-2025

**Abstrak:** *Cryptocurrency* kian populer secara global, terutama di kalangan investor dan pelaku usaha digital. Seiring itu, perdebatan hukum Islam mengenai kehalalannya menguat. Ketidakjelasan posisi hukum di kalangan ulama menjadi tantangan dalam menyediakan panduan normatif. Fatwa MUI yang mengharamkan *cryptocurrency* menuai kritik karena dianggap tidak selaras dengan konsep *maslahah* kontemporer dan dinamika ekonomi digital. Studi ini mengkaji secara kritis fatwa MUI tentang keharaman *cryptocurrency* melalui teori *maslahah* berbasis kognisi Al-Tufi dan pemikiran sarjana Muslim kontemporer yang menilai hukum berdasarkan pertimbangan *mafsadah* (bahaya) dan *maslahah* (manfaat) secara kontekstual. Penelitian ini merupakan studi pustaka dengan pendekatan yuridis-normatif dan analisis kualitatif, yang mengkaji fatwa MUI melalui prinsip fikih, *maslahah*, dan *maqasid al-shari'ah*, serta merujuk pada pemikiran ulama klasik dan kontemporer. Hasil penelitian menunjukkan bahwa fatwa MUI yang mengharamkan *cryptocurrency* berdasarkan empat aspek fikih—*gharar* (spekulasi), *darar* (bahaya), *qimar* (judi), dan *sil'ah* (komoditas)—serta pendekatan hukum yang tekstual dan rigid, belum mempertimbangkan *maslahah* berbasis kognisi sebagai alternatif untuk mendorong regulasi yang pasti dan formulasi hukum Islam yang adaptif terhadap perkembangan teknologi keuangan digital. Studi ini merekomendasikan prioritasasi kepastian regulatif dan konstitusional oleh negara guna mendorong respons hukum Islam yang lebih adaptif dan progresif terhadap inovasi teknologi.

**Kata kunci:** *Cryptocurrency*, Fatwa MUI, *Maslahah* Berbasis Kognisi Manusia, Hukum Islam dan Teknologi Keuangan Digital

**Abstract:** Cryptocurrency is increasingly gaining global popularity, particularly among investors and digital entrepreneurs. In parallel, debates surrounding its permissibility under Islamic law have intensified. The lack of legal clarity among Islamic scholars presents a significant challenge in providing normative guidance. The fatwa issued by the Indonesian Ulema Council (MUI) declaring *cryptocurrency haram* (unlawful) has drawn criticism for being misaligned with contemporary concepts of *maslahah* and the evolving digital economy. This study critically examines the MUI's prohibition through the lens of Al-Tufi's human cognition-based theory of *maslahah* alongside contemporary Muslim scholars who assess legal rulings through contextual considerations of harm (*mafsadah*) and benefit (*maslahah*). This research is a literature-based study employing a normative-juridical approach and qualitative analysis, exploring the fatwa through the principles of Islamic jurisprudence, *maslahah*, and *maqasid al-shari'ah* while drawing on both classical and contemporary Islamic thought. The findings reveal that the MUI fatwa, based on four legal grounds—*gharar* (speculation), *darar* (harm), *qimar* (gambling), and *sil'ah* (tradable commodity)—and a rigid textual approach, fails to incorporate a human cognition-based *maslahah* as a viable alternative to support regulatory clarity and an adaptive formulation of Islamic law responsive to digital innovation. The study recommends prioritizing regulatory and constitutional certainty to enable a more adaptive and progressive Islamic legal response to technological advancement.

**Keywords:** Cryptocurrency, MUI Fatwa, Human Cognition-Based *Maslahah*, Islamic Law, Digital Financial Technology



## INTRODUCTION

The global rise in cryptocurrency adoption is mirrored in Indonesia, where digital asset transactions have expanded rapidly,<sup>1</sup> driven by increased virtual business activity<sup>2</sup> and the post-pandemic digital economy.<sup>3</sup> This growth is fueled by two key factors: the widespread shift to online economic activity and the low-cost, borderless nature of crypto investment.<sup>4</sup> Experts such as C. D. Leonard predict that cryptocurrency will emerge as a leading investment asset, akin to gold, offering high returns and portfolio diversification.<sup>5</sup> Jeth Soetoyo similarly anticipates a continued acceleration in Indonesia's crypto market,<sup>6</sup> supported by regulatory frameworks such as the Commodity Futures Trading Regulatory Agency (BAPPEBTI) Regulation No. 5 of 2019, which enhances investor confidence.<sup>7</sup> He projects that crypto users could reach up to 2 million, or 1–2% of the national population.<sup>8</sup>

Indonesia ranks among the top 30 countries in global cryptocurrency ownership, below Malaysia and Vietnam.<sup>9</sup> In 2017, crypto transactions in Indonesia involved approximately 200,000 users, with daily volumes reaching IDR 4 billion.<sup>10</sup> By July 2021, data from the Indonesian Blockchain Association (ABI) had recorded 7.4 million crypto users—an 85%

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<sup>1</sup> Chahat Tandon et al., “How Can We Predict the Impact of the Social Media Messages on the Value of Cryptocurrency? Insights from Big Data Analytics,” *International Journal of Information Management Data Insights* 1, no. 2 (November 1, 2021): 100035, doi:10.1016/J.IJIMEL.2021.100035; Atila Nurkhatiqah, Camelia Fitri, and Dhiya Rahmatina, “Bedah Makna, Unsur Dan Aspek Ijaz Al-Quran,” *MUSHAF JOURNAL: Jurnal Ilmu Al Quran Dan Hadis* 2, no. 2 (February 17, 2022): 150–58, doi:10.54443/MUSHAF.V2I2.29.

<sup>2</sup> Lei Xu et al., “Supporting Blockchain-Based Cryptocurrency Mobile Payment with Smart Devices,” *IEEE Consumer Electronics Magazine* 9, no. 2 (March 1, 2020): 26–33, doi:10.1109/MCE.2019.2953734.

<sup>3</sup> Emna Mnif and Anis Jarboui, “Resilience of Islamic Cryptocurrency Markets to Covid-19 Shocks and the Federal Reserve Policy,” *Asian Journal of Accounting Research* 7, no. 1 (February 21, 2022): 59–70, doi:10.1108/AJAR-01-2021-0004/FULL/PDF; T. D. Drysdale and J. Scoles, “Performing Engineering Digital Literacies in Context,” *SEFI 47th Annual Conference: Varietas Delectat... Complexity Is the New Normality, Proceedings*, 2020, 347–59.

<sup>4</sup> Abderahman Rejeb, Karim Rejeb, and John G. Keogh, “Cryptocurrencies in Modern Finance: A Literature Review,” *ETIKONOMI* 20, no. 1 (February 22, 2021): 93–118, doi:10.15408/etk.v20i1.16911.

<sup>5</sup> C. D. Leonard, *The Future of Cryptocurrency* (Cambridge: Len's eBooks, 2018), 3–4.

<sup>6</sup> Jeth Soetoyo, “Cryptocurrency Use May Be Close to Mass Adoption. Watch Experts Speak on the New Asset Class,” *DealStreetAsia*, accessed February 11, 2023, <https://www.dealstreetasia.com/stories/cryptocurrency-summit-video-275109/>.

<sup>7</sup> Dasih Irma et al., “The Future of Cryptocurrency Legality in Indonesia,” *Journal of Economics and Business Letters* 1, no. 1 (June 30, 2021): 20–23, doi:10.55942/jeb.v1i1.87; Raizza Kinka Intifada and Ahmad Izzuddin, “The Distinctions Of The Beginning Praying Time Calculation By Rinto Anugraha,” *Al-Hilal: Journal of Islamic Astronomy* 3, no. 1 (May 21, 2021): 129–48, doi:10.21580/al-hilal.2021.3.1.7638.

<sup>8</sup> Eko Sutriyanto, “Bursa Crypto Indonesia Dinilai Bisa Jaga Keamanan Pelaku Trading - TribunNews.Com,” accessed February 11, 2023, <https://www.tribunnews.com/new-economy/2022/01/28/bursa-crypto-indonesia-dinilai-bisa-jaga-keamanan-pelaku-trading>.

<sup>9</sup> Didik Susilo et al., “Cryptocurrencies: Hedging Opportunities From Domestic Perspectives in Southeast Asia Emerging Markets,” *SAGE Open* 10, no. 4 (October 1, 2020): 215, doi:10.1177/2158244020971609; Marataon Ritonga, “Problematika Syafak Dan Fajar Dalam Menentukan Waktu Salat Isyak Dan Subuh,” *Al-Marshad: Jurnal Astronomi Islam Dan Ilmu-Ilmu Berkaitan* 7, no. 2 (2021): 169–82.

<sup>10</sup> Axel Yohandi, Nanik Trihastuti, and Darminto Hartono, “Implikasi Yuridis Penggunaan Mata Uang Virtual Bitcoin Sebagai Alat Pembayaran Dalam Transaksi Komersial (Studi Komparasi Antara Indonesia-Singapura),” *Diponegoro Law Journal* 6, no. 2 (July 26, 2017): 1–19.

increase from the previous year.<sup>11</sup> Investor numbers also surged by nearly 100%, from 2.2 million in 2020 to 4 million in 2021.<sup>12</sup> This growth positions Indonesia as a fertile ground for the virtual asset market. However, Bank Indonesia strictly prohibits the use of cryptocurrency for payment transactions. Under PBI 18/40/PBI/2016 and PBI 19/12/PBI/2017, all financial institutions and fintech operators—both bank and non-bank—are barred from processing payments using virtual currencies.<sup>13</sup>

On the other hand, the rapid adoption of cryptocurrency in Indonesia has generated tension with the prohibition fatwa issued by the Indonesian Ulema Council (MUI) based on Islamic legal considerations. This tension reflects an epistemological dilemma between the need to adapt to the dynamics of the modern digital economy and the authority of religious institutions in determining the permissibility of technology-based financial instruments. This study aims to critically examine the MUI fatwa on cryptocurrency through a human cognition-based *maslahah* approach, as formulated by Najm al-Din al-Tufi and further developed by contemporary Muslim scholars who advocate a similar paradigm. This approach presents a more dynamic, contextual, and progressive model of Islamic legal reasoning, aiming to transcend textual-formalist interpretations by emphasizing the relevance of Islamic law to contemporary social, economic, and technological realities.

## METHOD

This research is a literature study employing a normative juridical approach and qualitative analysis to comprehensively examine the Indonesian Ulema Council's (MUI) fatwa declaring cryptocurrency *haram*. The analysis focuses on the principles of Islamic jurisprudence (*fiqh*), the concept of *maslahah*, and *maqasid al-shari'ah*, drawing on the views of both classical and contemporary scholars. Specifically, the study adopts the theoretical framework of human cognition-based *maslahah*, developed by Najm al-Din al-Tufi and expanded by modern Muslim scholars, to evaluate the relevance of MUI's legal reasoning within the context of current social, economic, and digital technological developments. This approach enables a more contextual,

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<sup>11</sup> Eddie, "Investasi Crypto Terus Meningkat, Ini Langkah Asosiasi Blockchain," *Fintechnesia.com* | *Berita keuangan dan teknologi*, July 1, 2021, <https://fintechnesia.com/2021/07/01/investasi-crypto-terus-meningkat-ini-langkah-asosiasi-blockchain/>.

<sup>12</sup> Kiki Saputri, "Kilas Balik Perkembangan Kripto di Indonesia Sepanjang 2021, Artis hingga Pejabat Berlomba Jualan NFT Halaman all," *KOMPAS.com*, January 14, 2022, <https://money.kompas.com/read/2022/01/14/104500726/kilas-balik-perkembangan-kripto-di-indonesia-sepanjang-2021-artis-hingga>.

<sup>13</sup> Federico Matteo Bencic and Ivana Podnar Zarko, "Distributed Ledger Technology: Blockchain Compared to Directed Acyclic Graph," in *2018 IEEE 38th International Conference on Distributed Computing Systems (ICDCS)* (2018 IEEE 38th International Conference on Distributed Computing Systems (ICDCS), Vienna: IEEE, 2018), 1569–70, doi:10.1109/ICDCS.2018.00171.

progressive, and responsive legal assessment in addressing the dynamics of contemporary digital finance.

This study employs documentary techniques, utilizing sources such as religious texts, scholarly journals, dissertations, and both classical and contemporary literature. The analysis is conducted through content analysis<sup>14</sup> to uncover the meaning within texts and system analysis<sup>15</sup> to trace the historical and conceptual continuity in the evolution of Islamic law. The findings reveal that the MUI fatwa prohibiting cryptocurrency—based on four *fiqh* principles: *gharar*, *darar*, *qimar*, and *sil'ab*—remains textual and rigid and has yet to incorporate a cognition-based *maslahah* approach. This study recommends prioritizing regulatory and constitutional certainty to support the formulation of Islamic legal responses that are more adaptive to the development of digital financial technologies.

## RESULTS AND DISCUSSION

### The Historical Trajectory of Cryptocurrency

Cryptocurrency, which has become increasingly popular in recent years, refers to a digital currency secured by cryptography—a technique originally developed during World War II to protect classified communications; derived from the words "cryptography" and "currency," cryptocurrency functions as a virtual medium of exchange stored in decentralized databases. Using complex cryptographic algorithms, it ensures transaction security, verifies ownership, prevents counterfeiting, and controls the creation of digital coins. In Indonesia, cryptographic technology is similarly employed to safeguard information and communication systems.<sup>16</sup>

Bitcoin, the first and most prominent cryptocurrency, was introduced by Satoshi Nakamoto in his seminal paper "Bitcoin: A Peer-to-Peer Electronic Cash System." Nakamoto proposed an electronic payment system grounded in cryptographic proof rather than trust, with transactions securely verified and recorded through blockchain technology.<sup>17</sup> Today, over 10,000

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<sup>14</sup> E. Page Bucy and R. Lance Holbert, *Sourcebook for Political Communication Research: Methods, Measures, and Analytical Techniques*, Communications Series (New York: Routledge, 2011), 269; Mark D. West, *Applications of Computer Content Analysis* (Greenwood Publishing Group, 2001), 37.

<sup>15</sup> Mikhail Z. Zgurovsky and N. D. Pankratova, *System Analysis: Theory and Applications*, 2007th edition (Berlin ; New York: Springer, 2007), 1–2; Ashok Dave, "Social Acceptability of the Systems Approach in Educational Planning," *Educational Technology* 12, no. 2 (1972): 87–88.

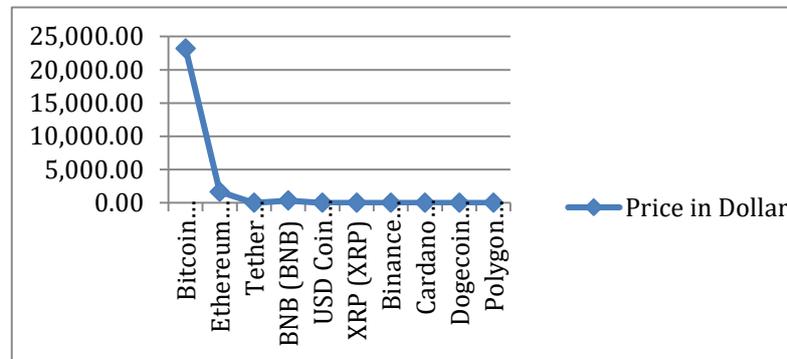
<sup>16</sup> Ria Manurung, *Sistem Informasi Akuntansi Cryptocurrency Bitcoin* (Solok: Insan Cendekia Mandiri, 2021), 2–3.

<sup>17</sup> Fred Huibers, "Distributed Ledger Technology and the Future of Money and Banking: Banking Is Necessary, Banks Are Not. Bill Gates 1994," *Accounting, Economics and Law: A Convivium*, 2021, 55, doi:10.1515/AEL-2019-0095.

cryptocurrencies are actively traded, reflecting growing interest among investors.<sup>18</sup> The following are the ten most widely used cryptocurrencies globally:

Graph 1

Top Ten Most Used Cryptocurrencies and Their Prices as of February 2022



Source: Data processed from Investing.com. Accessed on February 5, 2023

As shown in Graph 1, the cryptocurrencies with the largest market capitalizations in USD are Bitcoin, Ethereum, Binance Coin, Cardano, Dogecoin, and Litecoin—each possessing distinct characteristics. According to Forbes, as of January 3, 2023, there are 21,910 cryptocurrencies globally, with a total market value of \$ 697 billion (approximately IDR 12,949.56 trillion). Bitcoin remains the dominant asset, with a market capitalization of £267.1 billion (IDR 4,962.45 trillion), and continues to exhibit an upward price trend.<sup>19</sup> In Indonesia, cryptocurrency is regulated under BAPPEBTI Regulation No. 5 of 2019;<sup>20</sup> however, Bank Indonesia (BI) and the Financial Services Authority (OJK) have not authorized its use as a legal means of payment.<sup>21</sup>

### The Legal Framework for Cryptocurrency Regulation in Indonesia

Cryptocurrency adoption in Indonesia has grown significantly in recent years. According to the Ministry of Trade, by May 2021, the number of crypto investors reached 6.5 million—an increase of over 50% from 4 million in 2020.<sup>22</sup> This surge reflects the appeal of cryptocurrency as a secure digital asset for financial transactions. As of July 2022, Indonesia ranked 10th globally in cryptocurrency ownership, as illustrated in the accompanying graph:

<sup>18</sup> Dewa Ayu Fera Nitha and I. Ketut Westra, “Investasi Cryptocurrency Berdasarkan Peraturan Bappebti No. 5 Tahun 2019,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4 (December 31, 2020): 712–22, doi:10.24843/JMHU.2020.v09.i04.p04.

<sup>19</sup> Cindi Mutia Annur, “Deretan Mata Uang Kripto Terbesar Di Dunia Pada Awal 2023, Bitcoin Teratas,” accessed February 11, 2023, <https://databoks.katadata.co.id/datapublish/2023/01/06/deretan-mata-uang-kripto-terbesar-di-dunia-pada-awal-2023-bitcoin-teratas>.

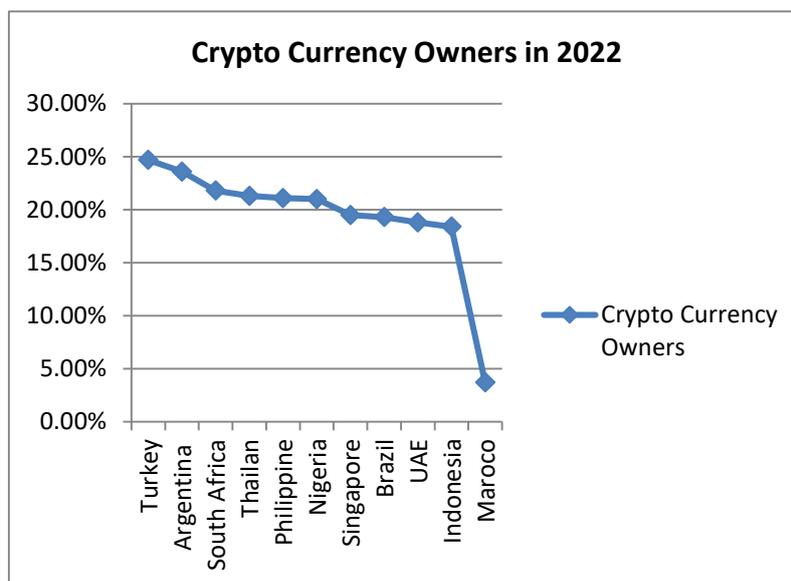
<sup>20</sup> Dewa Ayu Fera Nitha and I. Ketut Westra, “Investasi Cryptocurrency Berdasarkan Peraturan Bappebti No. 5 Tahun 2019,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4 (December 31, 2020): 33–44, doi:10.24843/JMHU.2020.V09.I04.P04.

<sup>21</sup> Alief K, *Dasar Investasi dan Trading Cryptocurrency* (AK Pedia, 2020), 14–15.

<sup>22</sup> Marsya Nabila, “Kemendag Catat 6,5 Juta Orang Investasi Kripto Per Mei 2021,” accessed February 11, 2023, <https://dailysocial.id/post/kemendag-catat-65-juta-orang-investasi-kripto-per-mei-2021>.

Graph 2

Top 10 Countries by Cryptocurrency Ownership (July 2022)



Source: Processed from Databoks, Katadata.co.id. Accessed on February 6, 2023

The graph 2 illustrates the percentage of cryptocurrency ownership across selected countries. Turkey leads with the highest ownership rate at approximately 25%, followed closely by Argentina and South Africa. Ownership rates then gradually decline across countries such as Thailand, the Philippines, and Nigeria, with Brazil and the UAE nearing 18%. Notably, there is a significant drop in ownership in Indonesia and Morocco, with Morocco recording the lowest rate at under 5%. The data indicates substantial regional variations, with higher adoption in some emerging markets and lower engagement in others.

Through BAPPEBTI, the Ministry of Trade (KEMENDAG) has provided legal certainty for crypto asset trading in Indonesia, with four key regulations enacted since December 17, 2020.<sup>23</sup> These include BAPPEBTI Regulations No. 2, 3, 4, and 5 of 2019, which govern the organization and technical provisions of physical markets for digital commodities and crypto assets on futures exchanges. These regulations aim to (1) ensure legal certainty for crypto asset businesses, (2) protect consumers from trading-related risks, and (3) support innovation and market development. As a result, crypto asset trading activity and market expansion have continued to grow, accompanied by rising asset values.<sup>24</sup>

To support a secure and conducive investment climate, BAPPEBTI issued Regulation No. 7 of 2020, which designates 229 approved crypto assets eligible for trading in Indonesia's physical market. Unregistered assets are subject to delisting and legal action. The regulation aims

<sup>23</sup> K, *Dasar Investasi dan Trading Cryptocurrency*, 15.

<sup>24</sup> Wardoyo and Hapsari, "Cryptocurrency Assets as a Physical Collateral in Indonesia."

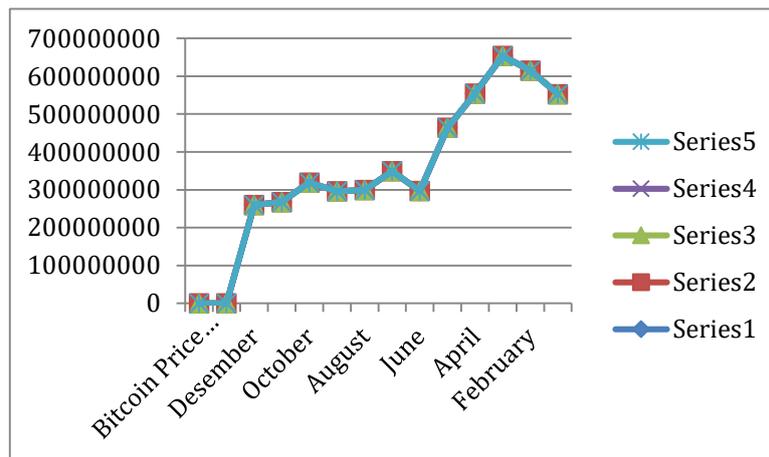
to mitigate risks such as money laundering, terrorism financing, and misuse of crypto assets.<sup>25</sup> Between 2019 and 2022, 25 crypto asset traders were licensed by BAPPEBTI, reflecting both rising public interest and the government's commitment to regulatory oversight. Minister of Trade Muhammad Lutfi emphasized the importance of public literacy in crypto asset trading to minimize risks and prevent losses.<sup>26</sup>

### The Future of Cryptocurrency in the Digital Age

The rising value of cryptocurrencies, particularly Bitcoin—now in its 15th year since its launch in 2009—has attracted significant interest from digital investors. Despite generating substantial profits, the market remains highly volatile; for instance, in May 2021, it experienced a 50% decline within a single week. This fluctuation underscores the inherent risk in cryptocurrency trading, as illustrated in the following graph:

Graph 3

Bitcoin Price Fluctuation in Indonesia, January–December 2022



Source: Processed from Investing.com, accessed on February 5, 2024

The graph 3 illustrates Bitcoin price fluctuations in Indonesia from January to December 2022. Starting from a low base in the early months, prices surged significantly by mid-year, peaking around April with values nearing 65 million IDR. A slight decline followed, but the general trend remained upward compared to the beginning of the year. The data reflects Bitcoin's high volatility and its growing appeal despite periodic corrections in the Indonesian market.

<sup>25</sup> Christoph Wronka, "Money Laundering through Cryptocurrencies - Analysis of the Phenomenon and Appropriate Prevention Measures," *Journal of Money Laundering Control* 25, no. 1 (January 1, 2021): 79–94, doi:10.1108/JMLC-02-2021-0017.

<sup>26</sup> Marsya Nabila | DailySocial.id, "Kemendag Catat 6,5 Juta Orang Investasi Kripto Per Mei 2021 | DailySocial.Id," accessed February 11, 2023, <https://dailysocial.id/post/kemendag-catat-65-juta-orang-investasi-kripto-per-mei-2021>.

In 2021, the global cryptocurrency market experienced significant volatility, marked by China's complete ban on crypto transactions and El Salvador's historic move to legalize Bitcoin as a national currency. The year also saw the rise of meme tokens and the booming NFT market, with one NFT selling for USD 69 million.<sup>27</sup> Despite economic uncertainty due to the pandemic, Bitcoin remained the leading cryptocurrency, posting substantial gains alongside U.S. stock indices. Entering 2023, the market is projected to recover its monetary stance and ease inflation.<sup>28</sup> According to analysts, including Tokocrypto's Afid Sugiono and Cryptowatch's Christopher Tahir, improved liquidity and stable economic conditions will be key to the rebound of crypto asset values.<sup>29</sup>

### Legal Foundations of the MUI Fatwa Prohibiting Cryptocurrency

On November 10, 2021, the Fatwa Commission of the Indonesian Ulema Council (MUI) convened its 7th National Ijma' in Jakarta, attended by over 700 participants, including representatives from the Central MUI, Islamic organizations, pesantren leaders, and *members of the Syari'ah Faculty* from various institutions.<sup>30</sup> The commission declared cryptocurrency unlawful, citing elements of *gharar* and *darar*, as well as its contradiction with Law No. 7 of 2011 and Bank Indonesia Regulation No. 17/2015. Normatively, cryptocurrency—whether as a commodity or digital asset—is considered impermissible as it involves *gharar*, *darar*, and *qimar* and fails to meet the legal criteria of *sil'ah*, which require physical form, value, certainty, ownership, and transferability.<sup>31</sup>

The conclusions of the MUI's deliberation on cryptocurrency are as follows: (1) Its function as a virtual currency is prohibited due to elements of *gharar*, *darar*, and its contradiction with Law No. 7 of 2011 and Bank Indonesia Regulation No. 17 of 2015; (2) As a digital commodity or asset, cryptocurrency is not legally tradable if it contains *gharar*, *darar*, *qimar*, and fails to meet the criteria of *sil'ah*, which include physical form, intrinsic value, certainty of quantity,

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<sup>27</sup> Adityawardhan Gaikwad and Dr Sushil Mavale, "The Impact of Cryptocurrency Adoption as a Legal Tender in El Salvador," *International Journal of Engineering and Management Research* 11, no. 6 (December 30, 2021): 112–15, doi:10.31033/ijemr.11.6.16.

<sup>28</sup> Silvia Trifonova and Svilen Kolev, "Impact of the Fed's Unconventional Monetary Policy on the US Financial Market," *Eurasian Journal of Economics and Finance* 9, no. 3 (2021): 145–58.

<sup>29</sup> Grahanusa Mediatama, "Pasar Kripto Masuk Masa Pemulihan di 2023, Simak Prediksi Harganya," *kontan.co.id*, December 2, 2022, <https://investasi.kontan.co.id/news/pasar-kripto-masuk-masa-pemulihan-di-2023-simak-prediksi-harganya>.

<sup>30</sup> Muh. Iqbal, "Resmi Nih, Fatwa MUI: Kripto Seperti Bitcoin Cs Haram!," accessed February 11, 2023, <https://www.cnbcindonesia.com/tech/20211111145640-37-290794/resmi-nih-fatwa-mui-kripto-seperti-bitcoin-cs-haram>.

<sup>31</sup> DSN-MUI, "Uang Elektronik Syariah," *Fatwa Dewan Syariah Nasional*, no. 19 (2017): 1–12.

ownership rights, and transferability;<sup>32</sup> and (3) Cryptocurrency may be traded as a commodity or asset if it meets the conditions of *sil'ah*, is backed by an underlying asset, and provides clear benefits.<sup>33</sup>

The legal argumentation of the MUI's fatwa regarding the prohibition of cryptocurrency is that this technology contains *gharar*, *darar*, and *qimar* and is an unconstitutional act. The first is *gharar*. *Gharar*, also known as *taghrir*, is a term in Islamic jurisprudence (*fiqh*) that refers to doubt, deception, or an action that may harm others. *Gharar* can be present in a contract that contains an element of fraud because there is no certainty regarding whether the object of the contract exists, the size of the amount, or the ability to deliver the object mentioned in the contract. According to Imam al-Nawawi, *gharar* is an element of a contract prohibited in Islamic law.<sup>34</sup>

In this context, the Qur'an states: "O you who believe, do not consume one another's wealth unjustly, but only [in lawful] business by mutual consent. And do not kill yourselves. Surely, Allah is Most Merciful to you." (*al-Nisa'*, 4:29). Similarly, the Prophet Muhammad (peace be upon him) forbade transactions involving excessive uncertainty, as reported in the hadith: "The Messenger of Allah prohibited transactional practices involving stone-casting and uncertainty (*gharar*)" (Muslim).<sup>35</sup>

The distinction between *tadlis*<sup>36</sup> and *taghrir* lies in the level of awareness of the parties involved. *Tadlis* occurs when one party is unaware of the other's intention, while *taghrir* involves mutual uncertainty regarding the object of the transaction.<sup>37</sup> *Gharar* arises when certainty is replaced by ambiguity, often through the inclusion of speculative elements.<sup>38</sup> Linguistically derived from *khatr* (risk or betting), *gharar* is also associated with *mukhabarah* (speculation) and *jahalalah* (obscurity), placing it within the broader category of gambling.<sup>39</sup> In commercial contexts,

<sup>32</sup> Mulvi Aulia, "Uang Elektronik, Uang Digital (Cryptocurrency) Dan Fatwa Dsn-Mui No.116 Tentang Uang Elektronik," *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* 5, no. 1 (February 13, 2021): 15–32, doi:10.33511/almizan.v5n1.15-32.

<sup>33</sup> DSN-MUI, "Uang Elektronik Syariah."

<sup>34</sup> Rashid al-Din al-'Atar, *Al-Gharar al-Favaid al-Majmu'ah Fi Bayani Ma Waqa'a Fi Sahib Muslim Min Abadith al-Maqtu'ah* (Beirut: Dar al-Kutub al-Ilmiyyah, 1996), 34.

<sup>35</sup> Al-Shatibi, *Al-Muwafaqat*, Abu 'Abidah, vol. 6 (Saudi: al-Maktabah al-'Arabiyyah al-Su'udiyah, 1998); 'Abd al-Qadir Ibn Badr al-Damshiqi, *Al-Madkhal Ila Mazhab al-Imam Ahmad Li 'Abd al-Qadir al-Damshiqi*, 'Abd Allah Ibn 'Abd al-Muhsin (Beirut: Muassasah al-Risalah, 1981); Aulia, "Uang Elektronik, Uang Digital (Cryptocurrency) Dan Fatwa Dsn-Mui No.116 Tentang Uang Elektronik," 15–32.

<sup>36</sup> Burhan al-Din Ibrahim Ibn Ibrahim al-Laqqani, *Qada'u al-Watri Fi Nazhah al-Nadri Fi Taudih Nukbbah al-Fikri Fi Mustalah Abl al-Athar*, Muhammad Salim Hashim (Dar al-Kutub al-Ilmiyyah: Beirut, 1971), 431; Hildir As'ad Ahmad, *Nadbriyah Al-Ghish Fi al-'Aqd*, Muhammad Sulaiman Ahmad (Beirut: Dar al-Kutub al-Ilmiyyah, 2011), 87.

<sup>37</sup> Muhammad al-'Azawi, *Al-Nur al-Sawi Min Fa'id Sahib al-Imam al-Bukhari*, Hasan al-'Adawi al-Hamzani (Beirut: Dar al-Kutub al-Ilmiyyah, 2014), 579–80.

<sup>38</sup> Ibid.

<sup>39</sup> Ibn Taimiyyah, *Mausu'ah Fatawa al-Imam Ibn Taimiyyah Fi al-Mu'amalat Wa Ahkam al-Mal*, Ahmad Ibn 'Abd al-Halim (Egypt: Dar al-Salam li al-Taba'ah wa al-Nashr wa al-Tauzi' wa al-Tarjamah, 2004), 127.

gharar refers to transactions characterized by ambiguity, risk, or deception.<sup>40</sup> Imam al-Qarafi defines *gharar* as a contract whose outcomes are uncertain, such as the sale of unknown birds or fish in a body of water.<sup>41</sup>

The second principle is *darar*, referring to transactions that cause harm, loss, or injustice, potentially leading to the unlawful transfer of ownership. The Prophet Muhammad (peace be upon him) stated, *la darara wa la dirara*: "Do not cause harm to yourself or others" (Ibn Majah, Daruqutni),<sup>42</sup> emphasizing the prohibition of harmful actions. In the context of cryptocurrency, investors risk significant financial losses without legal protection or recourse. MUI argues that, in the absence of precise government regulation, such risks become more complex and detrimental, particularly for stakeholders in digital financial systems. Another hadith reinforces this warning: "Whoever harms others, Allah will harm him; and whoever causes hardship, Allah will cause hardship for him" (Abu Dawud, al-Tirmidhi).<sup>43</sup>

The third principle is *qimar*, or gambling, which is explicitly prohibited in Islamic jurisprudence.<sup>44</sup> Both *qimar* and *maysir* refer to games of chance involving speculative gain and potential harm.<sup>45</sup> Islamic law forbids all forms of gambling due to its exploitative nature and detrimental social effects. Muhammad Ayyub defines *maysir* as seeking unearned gain without effort, while *qimar* involves profiting at another's expense through opportunistic means.<sup>46</sup> The Qur'an strongly condemns such practices: "O you who believe, intoxicants, gambling, sacrificing to idols, and divining with arrows are abominations of Satan's work—so avoid them that you may prosper" (*al-Ma'idah* 5:90–91).

### **Human Cognition-Based *Maslahah***

*Maslahah* represents the foundational principle of Islamic law, as its ultimate aim is to ensure human welfare. Scholars of Islamic legal theory have introduced diverse terms and

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<sup>40</sup> Caturida Meiwanto Doktoralina and Fikki Mutarotun Nisha, "Mudharabah Deposits among Conventional Bank Interest Rates, Profit-Sharing Rates, Liquidity and Inflation Rates," *International Journal of Financial Research* 11, no. 1 (2020): 25–33, doi:10.5430/IJFR.V11N1P25.

<sup>41</sup> 'Abd Allah Ibrahim, *Al-Imam Shibab al-Din al-Qarafi Wa Atharub Fi al-Fiqh al-Islami* (Beirut: Markaz Dirasat al-'Ilm al-Islami, 1991), 243; Al-Husain Ibn Muhammad, *Nidham Al-Ta'min al-Islami* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2006), 346.

<sup>42</sup> Muhammad Nasir al-Din al-Bani, *Al-Ta'liqat al-Raudiyyah 'ala al-Randat al-Nadiyyah*, Ali Ibn Hasan Ibn 'Ali Ibn 'Ab al-Hamid (Riyad: Dar Ibn 'Affan li al-Nashr wa al-Tauzi,' 2001), 476–77.

<sup>43</sup> Abi Bakar Ahmad al-Husaini Ibn 'Ali al-Baihaqi, *Al-Sunan al-Kubra*, 'Abd al-Qadir 'Ata, vol. 6 (Bairut: Dar al-Kutub al-'Ilmiyyah, 2002), 222.

<sup>44</sup> Investment and Finance, "Islamic Finance | What Is the Difference Between Qimar and Maysir?," accessed February 12, 2023, <https://www.investment-and-finance.net/islamic-finance/questions/what-is-the-difference-between-qimar-and-maysir.html>.

<sup>45</sup> Desy Wahyuni, "Dampak Inflasi Pada Pinjaman (Qard) Dalam Hukum Perniagaan Islami," *FINANSIA : Jurnal Akuntansi Dan Perbankan Syariah* 2, no. 1 (September 12, 2019): 84–101, doi:10.32332/finansia.v2i01.1555.

<sup>46</sup> Faleel Jamaldeen and Joan Friedman, *Islamic Finance for Dummies*, For Dummies (Hoboken, N.J.: Chichester: Wiley ; John Wiley [distributor], 2012), 17.

conceptual frameworks to articulate this notion. Abu al-Ma'ali al-Juwayni (d. 1085 AD) referred to it as public interest, emphasizing collective benefit.<sup>47</sup> Abu Hamid al-Ghazali (d. 1111 AD) expanded the theory by introducing the concept of unrestricted benefit, referring to interests not explicitly supported by textual evidence but consistent with the spirit of the law. In contrast, Ibn al-Qayyim (d. 1347 AD) adopted a more integrative view, asserting that any legal ruling must be rooted in justice, mercy, wisdom, and the promotion of public welfare. He argued:

*Shari'ah* is a legal system founded on wisdom and aimed at promoting public welfare in both this life and the hereafter. It must reflect the values of justice, compassion, and rationality. Therefore, any legal ruling that replaces justice with injustice, mercy with hostility, benefit with harm, or wisdom with absurdity cannot be regarded as part of *Shari'ah*, even if derived through formal interpretive methods.<sup>48</sup>

Ibn Qayyim's concept of *maslahah* views it as being within the realm of human cognition, utilizing their various intelligences and experiences to manage their own lives based on universal *shari'ah* values. Ibn Qayyim's concept of *maslahah* aligns with the linear spirit initiated by Najm al-Din al-Tufi (d. 1316 AD). Al-Tufi defines *maslahah* as "a goodness that must be achieved according to the will of *Shari'* (*shari'ah* maker) while remaining oriented towards human goodness."<sup>49</sup> Long before the two, al-Qarafi (d. 1285 AD) saw the relationship between *maslahah* and *maqasid* as a linear relationship that *maqasid* could not be said to be valid if it had not contributed positively and eliminated harm (*mafsadah*) for humankind.<sup>50</sup>

Ibn Qayyim conceptualizes *maslahah* as operating within the domain of human cognition, shaped by intellect and experience, to guide individuals in living their lives under the universal values of Islamic law. His perspective aligns closely with that of Najm al-Din al-Tufi, who defines *maslahah* as a form of good that must be realized according to the will of the Lawgiver while remaining centered on human well-being.<sup>51</sup> Preceding both scholars, al-Qarafi (d. 1285) articulated the relationship between *maslahah* and *maqasid* as intrinsically linked, asserting that the objectives of Islamic law cannot be considered valid unless they promote benefit and prevent harm (*mafsadah*) for humanity.<sup>52</sup>

<sup>47</sup> Corinne Maier, *Childfree Marriage* (Canada: McClelland & Stewart, 2009), 33.

<sup>48</sup> Al-Shams al-Din Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, Taha 'Abd al-Ra'uf Sa'ad, vol. vol 1 (Beirut: Dar al-Jil, 1973), 5; Ğāsir 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. Jasser Auda (London: The International Inst. of Islamic Thought, 2008), 20.

<sup>49</sup> Munadi Munadi and Budi Iswanto, "The Concept Maslahah of Najamuddin al Tufi and It's Relevance of Sharia Business," *IQTISHODUNA: Jurnal Ekonomi Islam* 9, no. 2 (April 10, 2020): 153, doi:10.36835/iqtishoduna.v9i2.526.

<sup>50</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 2.

<sup>51</sup> Munadi and Iswanto, "The Concept Maslahah of Najamuddin al Tufi and It's Relevance of Sharia Business," 153.

<sup>52</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 2.

Similarly, Subhi R. Mahmassani emphasizes that any legal methodology based on *al-maslahah al-mursalah* must aim to achieve public benefit consistent with the objectives of Islamic law. Within the Maliki school, *al-maslahah al-mursalah* is considered a valid legal foundation under three conditions: (1) it applies exclusively to matters of social transactions (*muamalah*) through legal reasoning; (2) it must align with the spirit of the *shari'ah*; and (3) it must uphold the five essential objectives (*al-daruriyyat al-khams*): the protection of religion, life, intellect, lineage, and property.<sup>53</sup>

Najm al-Din al-Tufi offers a distinctive formulation of *maslahah*, grounded in a philosophical framework and built upon four key principles. First, he emphasizes the autonomy of human reason in identifying benefit (*maslahah*) and harm (*mafsadah*). Second, he considers *maslahah* a legitimate and independent source of Islamic legal evidence, separate from textual sources. Third, he restricts its application to the domain of social transactions (*muamalah*) and customary practices, excluding acts of worship and fixed penalties.<sup>54</sup> Fourth, he argues that *maslahah* constitutes the most authoritative legal proof. Al-Tufi's approach is particularly notable for prioritizing *maslahah* over both scriptural texts and scholarly consensus when conflicts arise—a methodological stance that sets him apart from other jurists.<sup>55</sup>

Najm al-Din al-Tufi offers a distinctive, philosophically grounded theory of *maslahah* within Islamic legal thought. His framework is based on four key principles: (1) the autonomy of human reason in identifying benefit (*maslahah*) and harm (*mafsadah*); (2) the recognition of *maslahah* as an independent legal source, not reliant on scriptural texts; (3) its scope confined to social transactions and customary practices, excluding rituals and fixed sanctions; and (4) its status as the most authoritative form of legal evidence. Uniquely, al-Tufi maintains that *maslahah* may override both scriptural texts and scholarly consensus when conflicts arise, positioning it as a dynamic tool for legal reasoning.

In contrast, and building on the limitations outlined by al-Tufi, Jasser Auda consistently critiques the methodology of *ijtihad* in Islamic law, arguing that it remains constrained by a classical paradigm. A defining feature of this paradigm is the assumption that human-derived sources—such as *ijma'*, *qiyas*, *urf*, and *maslahah*—hold the same epistemological status as revealed sources, namely the Qur'an and Sunnah. Auda contends that for Islamic law to remain relevant in the modern era, this classical framework must give way to a contemporary paradigm.<sup>56</sup> He

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<sup>53</sup> Subhi R. Mahmassani, *The Philosophy of Jurisprudence in Islam* (Kuala Lumpur: Open Press, 2000), 87–89.

<sup>54</sup> 'Abd al-Wahhab al-Khalaf, *Masadir Al-Tashri' Fi Ma La Nass Fiqh* (Kuwait: Dar al-Qalam, 1972), 143.

<sup>55</sup> Mustafa Zayd, *Al-Maslahah Fi Tashri' al-Islami Wa Najm al-Din al-Tufi* (Kairo: Dar al-Fikr, 1954), 21–22.

<sup>56</sup> Abbas Irfan, "Maqasid Al-Syari'ah Sebagai Sumber Hukum Islam: Analisis Terhadap Pemikiran Jasser Auda," *Al-Manabij: Jurnal Kajian Hukum Islam* 7, no. 2 (December 23, 2013): 183–94, doi:10.24090/mnh.v7i2.563.

proposes reorienting the objective of *maslahab* from serving divine interests to prioritizing human and universal welfare.<sup>57</sup> A paradigm shift becomes evident, according to Auda when Muslim scholars demonstrate openness to change and recognize scientific and technological advancements as divine opportunities to enhance human progress.<sup>58</sup>

From the above descriptions, it is clear that the concept of human cognition-based *maslahab* marks a progressive shift in Islamic legal theory, centering on human intellect, experience, and context in legal reasoning. Drawing on scholars such as Ibn Qayyim and al-Tufi, it positions *maslahab* as a rational, independent source capable of addressing contemporary realities. Al-Tufi's precedence of *maslahab* over text and consensus, particularly in social matters, aligns with Jasser Auda's call for a paradigm shift in *ijtihad*—toward a legal model grounded in ethical universals, public welfare, and responsiveness to contemporary change.

### **MUI's Fatwa: Navigating Between Normative Textualism and Progressive Contextualism**

The Indonesian Ulema Council (MUI) issued a fatwa prohibiting the use of cryptocurrency, citing several legal grounds, including the presence of *gharar*, *darar*, and *qimar*, as well as non-compliance with the legal criteria of *si'lah*. This fatwa reflects a classical-normative approach to Islamic jurisprudence, as it relies on traditional legal categories without incorporating insights from the social sciences or engaging with the rapid transformations in global economic and digital market dynamics.

The continued reliance on classical paradigms and normative argumentation in Islamic jurisprudence is insufficient for addressing contemporary issues.<sup>59</sup> A meaningful engagement with the advancements in science and technology is essential to ensure legal relevance in a rapidly evolving context.<sup>60</sup> Instances of fraud or harm in cryptocurrency transactions should be assessed on a case-by-case basis, as similar risks exist across various economic sectors. Legal judgments must, therefore, be framed within a broader analytical context to align Islamic law with its inherently adaptive nature.<sup>61</sup> If the core issue lies in regulatory gaps or legal uncertainty, the Indonesian Ulema Council (MUI) holds strategic influence to advocate for clearer frameworks.

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<sup>57</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 204.

<sup>58</sup> *Ibid.*, 31–58.

<sup>59</sup> Abdulaziz Sachedina, *Islamic Ethics: Fundamental Aspects of Human Conduct*, 1st ed. (New York: Oxford University Press, 2021), 127.

<sup>60</sup> Shazia Ahmad, *Migration as a Metaphor for Religious Conversion: A Reinterpretation of Freedom of Conscience and Belief in Colonial India and Pakistan*, Michal Jan Rozbichi (London: Littlefield Publishing Group, 2018), 98–99.

<sup>61</sup> Mohammad Omar Farooq and Fareed Hadi, "Islam and Business: Beliefs, Values, and Norms," SSRN Scholarly Paper (Rochester, NY, May 1, 2020), 6–7.

As a moral and legal authority, MUI is also well-positioned to offer constructive recommendations to policymakers, acknowledging that legal reform is both necessary and inevitable.<sup>62</sup>

Globally, rapid advancements in science and technology have transformed all aspects of human life, reshaping social structures and lifestyles in ways that differ significantly from the past. These shifts have widened the perceived gap between Islamic teachings and contemporary realities, rendering Islam—at times—detached from worldly concerns and less responsive to modern challenges.<sup>63</sup> This disjunction has prompted contemporary Muslim thinkers, such as Farid Esack, to call for a critical deconstruction of theological stagnation and the reconstruction of a more dynamic and contextually relevant Islamic discourse.<sup>64</sup>

In the contemporary era, the paradigm of *fiqh* has shifted from a theocentric to an anthropocentric orientation.<sup>65</sup> Many jurists acknowledge that *fiqh* is a product of human understanding, perception, and interpretation—profoundly shaped by the worldview of its scholars. However, *fiqh* is often mistakenly treated as divine and absolute rather than as a human intellectual effort.<sup>66</sup> This shift has transformed *fiqh* from a dynamic, science-based discipline into rigid dogma. Historically responsive to social developments, *fiqh* has, in many contexts, become static—memorized and preserved rather than critically engaged. This conflation of human legal reasoning with divine revelation, as Khaled Abou El Fadl observes, amounts to "humans seizing God's territory," blurring the line between the profane and the sacred.<sup>67</sup>

Similar to Ibn Taymiyah, Jasser Auda contends that scholarly consensus should not be regarded as a binding source of law but rather as a consultative and participatory decision-making mechanism. He criticizes the way some contemporary scholars use consensus to monopolize fatwas and reinforce their authority as an elite class. In contrast, Auda aligns with modernist thinkers who advocate reinterpreting consensus as a democratic process—enabled by global communication technologies—to foster broader community participation in legal deliberation.<sup>68</sup>

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<sup>62</sup> Robert W. Hefner, "Islam and Covenantal Pluralism in Indonesia: A Critical Juncture Analysis," *The Review of Faith & International Affairs* 18, no. 2 (April 2, 2020): 1–17, doi:10.1080/15570274.2020.1753946.

<sup>63</sup> Khalid Mustafa Medani, *Black Markets and Militants: Informal Networks in the Middle East and Africa*, 1st ed. (Cambridge: Cambridge University Press, 2021), 14–15, doi:10.1017/9781108961011.

<sup>64</sup> Farid Esack, *Qur'an, Liberation & Pluralism* (Oxford: Oneworld, 1997), 50; Dustin J. Byrd and Seyed Javad Miri, eds., *Syed Hussein Alatas and Critical Social Theory: Decolonizing the Captive Mind*, Studies in Critical Social Sciences, Volume 233 (Leiden ; Boston: Brill, 2023), 9–21.

<sup>65</sup> Alfitri, *Islamic Law and Society in Indonesia: Corporate Zakat Norms and Practices in Islamic Banks*, 1st ed. (London: Routledge, 2022), 46, doi:10.4324/9781003183112; Jennifer A. Selby, 'Secularism' in the Ontario Sharia Debate." *In The Shari'a: History, Ethics and Law, Muslim Heritage Series* (London: I.B. Tauris, 2018), 55.

<sup>66</sup> Lahouari Addi and Bonnie Einsiedel, *The Crisis of Muslim Religious Discourse: The Necessary Shift from Plato to Kant*, Routledge Studies in Islamic Philosophy Series (London ; New York: Routledge/Taylor & Francis Group, 2022), 75.

<sup>67</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 75.

<sup>68</sup> *Ibid.*, 194.

Auda criticizes the use of analogical reasoning (*qiyas*) when its outcomes are treated as absolute or "perfect law."<sup>69</sup> He warns that such *ijtihad* leads some jurists to speak as if on behalf of God, blurring the distinction between divine revelation and human interpretation—what Goraudi describes as "erasing the boundary between God's words and human words."<sup>70</sup> To address this epistemological confusion, Auda calls for a reorientation of *fiqh* from the realm of divine knowledge to that of human understanding. This distinction clarifies the difference between *thawabit* (fixed values) and *mutaghayyirat* (changing values) and, by extension, between *shari'ah* and *fiqh*. Scholars such as al-Qarafi and Ibn Ashur support this differentiation by emphasizing the Prophet's dual role as both a divine messenger and a human interpreter.<sup>71</sup> In contemporary contexts—such as the emergence of cryptocurrency-based business—legal evaluations must move beyond purely textual analysis toward a more contextual and cognitively grounded approach to achieve a human-centered *maslahah*.

According to Abdullah Saeed, progressive Islamic legal scholars in Islamic thought exhibit several key characteristics. First, they advocate reforming aspects of traditional Islamic law that no longer align with modern human values. Second, they support renewed *ijtihad* through updated methodologies capable of addressing contemporary challenges. Third, they integrate classical Islamic scholarship with modern Western thought and education. Fourth, they affirm that intellectual, moral, legal, economic, and technological changes must be reflected in Islamic legal development. Fifth, they reject dogmatism and avoid strict adherence to any single legal or theological school of thought. Sixth, their work emphasizes universal justice, gender equality, human rights, and interfaith harmony. Finally, they employ contextualist and ethico-legal frameworks, drawing on Qur'anic verses that provide moral and legal guidance, including laws and ethical principles, to uncover the Qur'an's universal moral teachings.<sup>72</sup>

### **MUI's Fatwa on Cryptocurrency: A Critical Appraisal from a Human Cognition-Based *Maslahah* Perspective**

The Indonesian Ulema Council (MUI), established on July 26, 1975, under Law No. 17 of 2013 on societal organizations, functions as a religious authority that supports national development and issues fatwas for public welfare.<sup>73</sup> In response to the growing

<sup>69</sup> Irfan, "Maqasid Al-Syari'ah Sebagai Sumber Hukum Islam."

<sup>70</sup> Auda, *Maqasid Al-Syari'ah as Philosophy of Islamic Law*, 193.

<sup>71</sup> *Ibid.*, 195–96.

<sup>72</sup> Abdullah Saeed, "Understanding the Three Abrahamic Faiths: Judaism, Christianity and Islam," accessed February 12, 2023, <https://www.dunedininterfaith.net.nz/Notices050907.php>.

<sup>73</sup> Stewart Fenwick, *Blasphemy, Islam and the State: Pluralism and Liberalism in Indonesia* (Abingdon, Oxon ; New York, NY: Routledge, 2017), 88–89.

prevalence of cryptocurrency trading, MUI issued a fatwa prohibiting its use based on four core legal arguments grounded in Islamic jurisprudence:<sup>74</sup> (1) *gharar* due to the extreme and unpredictable volatility of cryptocurrencies; (2) *darar*, linked to their vulnerability to cybercrime; (3) *qimar*, given the instability and high-risk nature of these assets; and (4) failure to fulfill the criteria of *sil'ah*, as the assets lack physical form and perceptibility among all transacting parties.<sup>75</sup>

Beyond the four primary legal concerns, cryptocurrency poses additional risks. First, it reflects a speculative bubble with price volatility that defies standard investment indicators. Second, regulatory ambiguity persists due to overlapping jurisdiction between the Financial Services Authority (OJK) and the Commodity Futures Trading Regulatory Agency (BAPPEBTI). Third, its dependence on digital infrastructure renders it highly vulnerable to technological disruptions.<sup>76</sup> Fourth, cryptocurrencies are susceptible to misuse for illicit activities such as money laundering, terrorism financing, and the proliferation of weapons of mass destruction.<sup>77</sup>

The MUI's declaration that cryptocurrency is haram is based on classical *fiqh* reasoning, particularly the maxim *dar'u al-mafasid muqaddamun 'ala jalb al-masalih* (preventing harm takes precedence over obtaining benefit).<sup>78</sup> Although acknowledging the potential economic advantages of cryptocurrency, MUI emphasizes its speculative nature, volatility, and technological vulnerabilities as greater threats.<sup>79</sup> This legal stance, while institutionally valid, remains essentially normative and lacks engagement with recent developments. The fatwa aligns with Subhi R. Mahmassani's framework of *al-maslahah al-mursalab*, which mandates that legal rulings prioritize public interest under the objectives of *shari'ah*—specifically through rational *ijtihad* in the domain of *muamalah*, adherence to the spirit of the law, and the safeguarding of essential values (*al-daruriyyat al-khams*).<sup>80</sup> However, relying

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<sup>74</sup> Mohammad Zen Nasrudin Fajri, *Islamic Fintech: Present and Future* (Ponorogo: UNIDA Gontor Press, 2020), 43–45.

<sup>75</sup> Aulia, “Uang Elektronik, Uang Digital (Cryptocurrency) Dan Fatwa Dsn-Mui No.116 Tentang Uang Elektronik,” 30.

<sup>76</sup> Tiran Rothman and Chen Yakar, “Empirical Analysis Towards the Effect of Social Media on Cryptocurrency Price and Volume,” *European Scientific Journal ESJ* 15, no. 31 (November 30, 2019): 31, doi:10.19044/esj.2019.v15n31p52.

<sup>77</sup> Marcin Kasprzyk, “Comparative Review Of Regulatory Framework Of Virtual Currency (Cryptocurrency) In Selected Countries,” *Review of European and Comparative Law* 35, no. 4 (June 16, 2019): 7–26, doi:10.31743/recl.4807.

<sup>78</sup> Al-Shatibi, *Al-Muwafaqat*, vol. 6 (Saudi: al-Maktabah al-‘Arabiyyah al-Su’udiyah, 1997), 446; ‘Abd al-‘Aziz Ibn ‘Abd Allah Ibn ‘Abd al-Rahman Ibn Baz, *Majmu’ Fatawa Wa Maqalat Mutanaawwi’ah*, vol. 5 (Riyad: Dar al-Qasim li al-Nashr, 2004), 86.

<sup>79</sup> Klemens Katterbauer et al., “Sharia Compliance of Cryptocurrencies: Data-Driven Sharia Compliance Assessment,” *Talaa: Journal of Islamic Finance* 2, no. 2 (December 30, 2022): 75–85, doi:10.54045/talaa.v2i2.691.

<sup>80</sup> Subhi R. Mahmassani, *The Philosophy of Jurisprudence in Islam*, 87–89.

solely on textual-normative reasoning without considering contemporary socio-economic realities may limit the practical relevance of Islamic law in addressing modern financial innovations such as cryptocurrency.

An analysis of the human cognition-based *maslahab* theory developed by Najm al-Din al-Tufi reveals a more dynamic, contextual, and progressive approach within Islamic legal thought in responding to contemporary realities. Al-Tufi emphasizes that human reason holds independent authority in discerning what is beneficial and what is harmful, particularly within the realm of social transactions.<sup>81</sup> He further argues that in cases of conflict between *maslahab* and textual sources or scholarly consensus, *maslahab* must take precedence.<sup>82</sup> This framework allows for *ijtihad* rooted in socio-economic and technological realities, thereby rendering Islamic law more adaptable to the complexities of the modern world—including the phenomenon of cryptocurrency, which demands a multidisciplinary, rather than purely textual, approach.<sup>83</sup>

Conversely, the fatwa issued by the Indonesian Ulema Council (MUI), declaring cryptocurrency haram, appears to be predominantly grounded in a textual-formalist approach. The ruling is based on four classical *fiqh* arguments: *gharar*, *darar*, *qimar*, and the failure to meet the requirements of *sil'ab*.<sup>84</sup> While these justifications are rooted in traditional jurisprudence, the legal methodology employed lacks substantial engagement with the evolving realities of digital technology, virtual economies, and the dynamic nature of global markets.<sup>85</sup> As a result, MUI's *istinbat* (legal derivation) tends to overlook the potential of contemporary *maslahab*, such as financial inclusion, transactional efficiency, and digital economic empowerment, which may arguably offer greater public benefit in the current context.<sup>86</sup>

In this context, contemporary Muslim scholars such as Jasser Auda and Abdullah Saeed advocate for a paradigm shift in Islamic legal thought—from a theocentric textual

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<sup>81</sup> Serdar Kurnaz, “The Search for Originality within Established Boundaries—Rereading Najm al-Dīn al-Ṭūfī (d. 716/1316) on Public Interest (Maslaḥa) and the Purpose of the Law,” *Religions* 14, no. 12 (December 2023): 1522, doi:10.3390/rel14121522.

<sup>82</sup> Mustafa Zayd, *Al-Maslahab Fi Tasbri' al-Islami Wa Najm al-Din al-Tufi*, 21–22.

<sup>83</sup> Abdullah Saeed, “Understanding the Three Abrahamic Faiths: Judaism, Christianity and Islam.”

<sup>84</sup> Aulia, “Uang Elektronik, Uang Digital (Cryptocurrency) Dan Fatwa Dsn-Mui No.116 Tentang Uang Elektronik,” 30.

<sup>85</sup> Wartoyo and Alvien Septian Haerisma, “Cryptocurrency in The Perspective of Maqasid Al-Shariah,” *Afkaruna: Indonesian Interdisciplinary Journal of Islamic Studies* 18, no. 1 (July 26, 2022): 111–30, doi:10.18196/afkaruna.v18i1.14164.

<sup>86</sup> Maryam Batubara and Muhammad Tho'in, “Transactions of Cryptocurrency in the Perspective of Islamic Finance and Economics,” *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 14, no. 2 (2023): 133–47, doi:10.18326/muqtasid.v14i2.133-147.

approach to an anthropocentric contextual one.<sup>87</sup> They emphasize the essential role of human intellect and contextual social understanding in the process of *ijtihad*, including on issues such as digital currency.<sup>88</sup> This approach aligns with the spirit of *maqasid al-shari'ah* in striving to achieve broader public benefit.<sup>89</sup> Accordingly, the human cognition-based *maslahah* theory proposed by al-Tufi and further developed by contemporary scholars offers a relevant methodological framework for re-evaluating the prohibition fatwa on cryptocurrency. This approach responds effectively to contemporary transformations while preserving the relevance and applicability of Islamic legal principles in addressing the challenges of the digital age.<sup>90</sup>

As an official religious institution, the Indonesian Ulema Council's (MUI) fatwa prohibiting cryptocurrency, grounded in a textual-formalist approach, holds its significance—particularly in upholding the principle of prudence in Islamic law. The emphasis on potential elements such as *gharar*, *darar*, *qimar*, and the absence of essential *sil'ah* criteria can be understood as an early form of protection against systemic harm and injustice in digital economic transactions.<sup>91</sup> In a context where state regulations remain underdeveloped and consumer protections are still limited, MUI's preventive stance cannot be easily dismissed.<sup>92</sup> In this regard, text-based and conservative *ijtihad* retains a crucial role in preserving the foundational objectives of *maqasid al-shari'ah*, especially in safeguarding life and property.<sup>93</sup>

However, to address increasingly complex contemporary challenges, Islamic law must evolve through a more dynamic, contextual, and progressive approach. In this regard, the cognition-based *maslahah* theory developed by al-Tufi<sup>94</sup> and contextualized by contemporary Muslim scholars becomes highly relevant. A multidisciplinary approach that incorporates legal, economic, technological, and social perspectives should be prioritized

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<sup>87</sup> Sangkot Sirait et al., "The Contribution of Jasser Auda in Maqashid Al Syari'ah Concept on Islamic Education Psychology," *AL-MUADDIB: Jurnal Kajian Ilmu Kependidikan* 4, no. 2 (July 4, 2022): 116–34, doi:10.46773/muaddib.v4i2.360.

<sup>88</sup> Abdul Hamid, "Abdullah Saeed's Progressive Ijtihad in the Application of Rechtsvinding Judges in Religious Courts," *Indonesian Journal of Islamic Law* 5, no. 2 (December 30, 2022): 1–17, doi:10.35719/ijil.v5i2.824.

<sup>89</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 204.

<sup>90</sup> Muhammad Mattori and Rusdiana, "Konsep Maqasid Syariah Jasser Auda Melalui Pendekatan Sistem," *SETYAKI: Jurnal Studi Keagamaan Islam* 1, no. 3 (August 25, 2023): 112–25, doi:10.59966/setyaki.v1i3.872.

<sup>91</sup> Al-Shatibi, *Al-Muwafaqat*, 1997, 6:446; 'Abd al-'Aziz Ibn 'Abd Allah Ibn 'Abd al-Rahman Ibn Baz, *Majmu' Fatawa Wa Maqalat Mutanaammi'ah*, 5:86.

<sup>92</sup> Hasanudin and Nuning Haryati, "Review of the Al-Sharf Academic on the Purchase and Sale Transactions of Digital Cryptocurrency Assets in Tokocrypto Application," *IQTISHOD: Jurnal Pemikiran Dan Hukum Ekonomi Syariah* 2, no. 2 (October 30, 2023): 102–14, doi:10.69768/ji.v2i2.25.

<sup>93</sup> Faizi, "Are Cryptocurrencies Haram? A Critical Analysis toward MUI's Fatwa," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 29, 2023): 420–42, doi:10.19105/al-lhkam.v18i2.8290.

<sup>94</sup> 'Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 195–96.

to prevent Islamic legal opinions from becoming trapped in ahistorical legal reasoning. By creating space for *ijtihad* grounded in empirical realities and technological advancements, such as cryptocurrency, Islamic law can remain a functional moral and legal compass while maintaining its normative values and responding effectively to modernity.<sup>95</sup>

## CONCLUSION

The Indonesian Ulema Council's (MUI) fatwa declaring cryptocurrency haram is grounded in four classical *fiqh* concepts—*gharar*, *darar*, *qimar*, and *sil'ab*—within a textual-normative framework. While legally valid, this approach lacks responsiveness to the complexities of the digital economy. It fails to incorporate more adaptive frameworks, such as human cognition-based *maslahah*, which limits its practical relevance in contemporary financial contexts.

Al-Tufi's theory of *maslahah*, expanded by contemporary Muslim scholars, provides a rational, contextual, and progressive alternative to Islamic legal reasoning. By centering on human intellect and empirical realities, this approach enables a situational evaluation of harm and benefit, offering a more responsive legal methodology suited to issues such as cryptocurrency and digital finance while maintaining the ethical foundations of *shari'ah*.

To actualize such responsiveness, state institutions must prioritize regulatory and constitutional clarity by reforming fatwa methodology, reinforcing collective *ijtihad*, and promoting interdisciplinary inquiry. These efforts will support the development of Islamic legal rulings that are both normatively grounded and capable of addressing the evolving landscape of modern financial technologies.

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<sup>95</sup> Andika Kurniawan et al., "Cryptocurrency Under Islamic Law: Assessing Its Halal or Haram Status," *FIRM Journal of Management Studies* 10, no. 1 (2025): 34–41.

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