

**VALIDITY OF CRYPTOCURRENCY AS DOWRY IN MARRIAGE IN INDONESIA
PERSPECTIVE OF ISLAMIC LAW**

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Abstract

This study examines the validity of cryptocurrency as a dowry in marriage in Indonesia from the perspectives of Islamic law and positive law. Technological advancements have driven the use of crypto assets as dowries, sparking debates regarding their legitimacy and mechanisms. This research aims to analyze these issues using a normative approach with contemporary ijtihad methods (intiqa'i and insya'i) and a statute approach. The findings reveal that, in general, the Indonesian Ulema Council (MUI) prohibits the use of cryptocurrency as a medium of exchange or commodity, except when it fulfills the requirements of sil'ah. In the context of national law, crypto assets can be used as dowries if agreed upon by both parties. The transfer mechanism requires a grant process before a notary to ensure legal validity. This study has implications for the development of regulations and legal understanding regarding the use of modern technology in religious traditions.

Key words: *Cryptocurrency, Dowry, Islamic Law, Positive Law, Technology.*

Abstrak

Penelitian ini membahas validitas cryptocurrency sebagai mahar dalam perkawinan di Indonesia dari perspektif hukum Islam dan hukum positif. Perkembangan teknologi telah mendorong penggunaan aset kripto sebagai mahar, yang memicu perdebatan terkait keabsahan dan mekanismenya. Penelitian ini bertujuan untuk menganalisis isu tersebut menggunakan pendekatan normatif dengan metode ijtihad kontemporer (intiqa'i dan insya'i) serta statute approach. Hasil penelitian menunjukkan bahwa secara umum Majelis Ulama Indonesia (MUI) mengharamkan penggunaan kripto sebagai alat tukar dan komoditas, kecuali memenuhi syarat sil'ah. Dalam konteks hukum negara, aset kripto dapat dijadikan mahar jika disepakati kedua belah pihak. Mekanisme peralihannya memerlukan hibah di hadapan notaris untuk menjamin keabsahan hukum. Penelitian ini memberikan implikasi pada pengembangan regulasi dan pemahaman hukum terkait penggunaan teknologi modern dalam tradisi keagamaan.

Kata kunci: *Cryptocurrency, Mahar, Hukum Islam, Hukum Positif, Teknologi.*

INTRODUCTION

Marriage as a religious means to achieve harmony in the family, marriage also regulates the pattern of relations between men and women as husband and wife to love each other, pour out affection between them and together achieve blessings.¹

The pattern of relations between men and women as a husband and wife can be viewed from the fulfillment of rights and obligations that exist between them. Right according to the great Dictionary of Indonesian is the right power over something or to demand something.² While the obligation according to the great Dictionary of Indonesian is derived from the word mandatory, which means something that must be done or should not be done.³ According to Lukman Santoso, rights are interests that are protected by law, while interests are demands of individuals or groups that are expected to be met. An obligation is a contractual burden. These rights and obligations arise when there is a legal relationship between two parties based on a contract or agreement.⁴ Based on this understanding, it can be said that the rights and obligations of husband and wife are a demand that must be met and the contractual burden between the two that arises as a result of marriage.

Marriage is a sacred bond that has spiritual and legal value in people's lives, where dowry or maskawin becomes one of the important elements that reflect the appreciation of a husband towards his wife. Dowry is not just a symbol, but an obligation that must be fulfilled by the husband as a form of respect and granting rights to the wife. In Islamic law, the dowry has a strong basis as mentioned in the Qur'an Surat An-Nisa verse 4 and confirmed by the fuqaha in various schools. On the other hand, the rapid development of technology has also influenced the practice of giving dowry, including the emergence of cryptocurrency or digital currency as a form of dowry which is now widespread among Indonesian people. This phenomenon not only causes uniqueness, but also controversy related to the validity and legality of cryptocurrency as a dowry from the perspective of Islamic law and positive law in Indonesia.

Amid these pros and cons, the Indonesian Ulema Council (MUI) has issued a fatwa banning the use of cryptocurrency as a medium of exchange, but providing exceptions if it qualifies as a legitimate commodity (*sil'ah*). Meanwhile, positive law in Indonesia through

¹Sifa Mulya Nurani, "Relasi Hak dan Kewajiban Suami Istri dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam dan Hadits Ahkam)," *Al-Syakhsyiyah*, no. 1 (2021), 99.

² Kamus Besar Bahasa Indonesia (KBBI).

³ *Ibid.*

⁴Lukman Santoso Az, Yahyanto, *Pengantar Ilmu Hukum*, (Malang: Setara Press, 2016), 85.

the Commodity Futures Trading Supervisory Agency (BAPPEBTI) recognizes cryptocurrencies as digital assets that can be traded, even though they are not recognized as legal tender. This difference in views raises the need to examine more deeply the validity of cryptocurrency as a dowry in marriage, both from the aspects of Islamic law and positive law. This paper aims to provide a comprehensive analysis of the issue with a normative approach and contemporary *ijtihad* methods, in order to provide legal certainty and guidance for the community in understanding the use of cryptocurrency in marriage traditions

One of the rights of the wife and automatically becomes an obligation for a husband is a dowry or in Indonesia commonly called *maskawin*. The emergence of the obligation to give dowry for the husband to the wife is also a logical consequence of the occurrence of a marriage. Dowry becomes a symbol of men to appreciate, be happy, and glorify a woman who wants *dipersuntingnya*. So the position of the dowry or dowry in marriage becomes important, although according to the majority of *fuqaha* dowry is not included in the pillars or conditions of a marriage.⁵

The rapid development of *modernism* and *postmodernism* has an impact on the rapid changes that occur in every aspect of life, such as technological advances that are increasingly sophisticated every year. It also has an impact on the variety of marriage dowry, both in terms of type and shape. In recent years, many of the Indonesian people have made *cryptocurrency* or digital currency as their wedding dowry. This is done both by ordinary people to celebrities of this country, such as the marriage between Teguh Kurniawan Harmanda and Nadya Aprilia Syaidin. Teguh as a husband gave *a crypto dowry* in the form of IDR Private (IDRP) worth Rp. 15,122,019 to Nadya as his wife.⁶ In addition to them, there are also celebrities who do something similar, namely the wedding between Cupi Warsita or commonly known Cupi Cupita and Hari Bagus. The dowry given is good for his wife in the form of *crypto discas* worth Rp. 199.000.000.⁷ The use of *crypto dowry* is a new and unique thing for the people of Indonesia, so this raises many pros and cons in it, especially related to the permissibility and validity of *crypto* as a dowry.

⁵Boby Juliansjah Megah Miko, "Konsepsi Hukum Mahar Cryptocoureny dalam Perkawinan," *JlUBJ*, no. 1 (Februari, 2022), 126.

⁶ Vinsensius Sitepu, "Pernikahan Bermahar Aset Kripto ala Manda-Nadya," accessed September 30, 2022, <https://blockchainmedia.id/pernikahan-bermahar-aset-kripto-ala-manda-nadya-bagaimana-kisahny/>

⁷Wisma Putra, "Fatwa Haram MUI dan Alasan Kripto jadi Mahar Pernikahan Cupi Cupita," accessed September 30, 2022, <https://hot.detik.com/celeb/d-5818894/pernikahan-cupi-cupita-pakai-mahar-kripto-di-tengah-kontroversi-fatwa-haram>

Based on the above background, this paper aims to examine the validity or validity of *cryptocurrency* (digital currency) as a dowry in marriage in the glasses of *usul Fiqh*.

METHOD

This study uses a normative approach that aims to analyze the validity of *cryptocurrency* as a dowry in marriage from the perspective of Islamic law and positive law in Indonesia. Normative approach is done by examining the relevant sources of law, both in the form of legislation, fatwa scholars, books of classical and contemporary *fiqh*, as well as other scientific literature.⁸ This study also applies contemporary *ijtihad* methods, namely *intiqā'i* and *Insha'i* methods, as an analytical tool in understanding the development of *cryptocurrency*-related laws in the context of marriage.

Intiqā'i method is used by conducting a comparative study of the opinions of contemporary scholars and Islamic legal institutions that have discussed *cryptocurrency*. This approach allows researchers to choose the most powerful opinion postulate, in accordance with the context of the Times and the needs of Indonesian society. On the other hand, *Insha'i*'s method is applied to develop a new legal conclusion regarding the validity of *cryptocurrency* as a dowry, especially in conditions where this issue has not been fully discussed by previous scholars.

LITERATURE REVIEW

Conception of dowry in Islamic law

Dowry or in Islamic law (*fiqh*) also called *shaddaq* is a special gift from men to women at the time of marriage.⁹ Giving dowry to a wife is obligatory for a husband. The legal basis for the obligation of dowry can be seen in the Qur'an surat al-Nisa verse 4:¹⁰

وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيًّا 4

“And give the women their dowry as a generous gift. Then, if they give you a portion of it with pleasure, then accept it and enjoy it with pleasure.”

This is a clear sign of the law. The four schools of *fiqh* also give the same legal position to the dowry, except that there are differences between them regarding the dowry

⁸ Kornelius Benuf dan Muhamad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer”, *Jurnal Gema Keadilan*, Volume 7 Edisi 1, Juni 2020, 22.

⁹ Amir Syarifuddin, *Garis-Garis Besar Fiqh*, (Jakarta: Kencana, 2013), 97.

¹⁰ Q.S. Al-Nisa ayat 4.

whether it is one of the pillars and conditions of marriage or a right and obligation between husband and wife. Hanafi, Maliki, and Shafi'i schools argue that the dowry is the right of the wife to be fulfilled by the husband, which means the husband's obligation. While the Hanbali school of thought that the dowry is one of the pillars of marriage in addition to the contract.¹¹

Regarding the validity of cryptocurrency as a dowry in Islamic law has provided sufficient foundation, but it is still less interesting because it has not linked the views of the imams of the school in depth. The opinions of the four major schools, namely Hanafi, Maliki, Shafi'i, and Hanbali, indicate a diversity of interpretations that can enrich the discussion. The Hanafi and Shafi'i schools, for example, emphasize that everything that has value, whether in the form of goods or benefits, can be used as a dowry as long as it is agreed by both parties. Meanwhile, the Maliki school is more strict in determining the type of goods that can be used as dowry, with the condition that the goods must have real value and can be used directly. The Hanbali school, on the other hand, considers the dowry to be one of the pillars of marriage, so the element of certainty of value and ownership is very important.¹²

In the context of cryptocurrency, the opinion of the imams of this school can be used as a reference to evaluate whether this digital asset qualifies as a dowry. For example, the Shafi'i School of jurisprudence, which allows goods with socially recognized value, can be used to support the argument that cryptocurrency can be used as a dowry, as long as its value and ownership are clear. However, this view may conflict with Maliki's School of thought which may see fluctuations in the value of cryptocurrencies as an obstacle to making them dowries. This distinction reflects the importance of in-depth analysis to understand how the principles of classical fiqh can be applied to modern phenomena.¹³

In addition, scientific debates have also emerged in contemporary fatwas regarding cryptocurrencies. The Indonesian Ulema Council (MUI) banned the use of cryptocurrency as a medium of exchange because of its speculative nature which is considered to contain elements of gharar, but allows crypto assets as commodities if they meet the requirements

¹¹Hasanuddin, "Rukun dan Syarat dalam Ibadah Nikah Menurut Empat Mazhab Fiqh," *Mimbar Akademika*, no. 2 (2018), 9-10.

¹² Bobby Juliansjah Megah Miko, "Konsepsi Hukum Mahar Cryptocurrency Dalam Perkawinan", *Jurnal Ilmiah Universitas Batanghari Jambi*, 22(1), Februari 2022, 127.

¹³ Eis Nur Aini, Skripsi, "Mata Uang Kripto Sebagai Mahar Dalam Perkawinan", (Yogyakarta: UIN SUKA, 2024), 4.

of SIL'ah. This opinion is in line with the views of scholars who emphasize the importance of clarity in transactions. However, this fatwa is different from the view of the Bahtsul Masail PWNU Yogyakarta institution which legalizes cryptocurrency as a medium of exchange and asset, as long as it does not contain gharar and maisir. This difference shows the need for tarjih approach to determine the most appropriate opinion in the context of Indonesian society.¹⁴

Mahr can be distinguished in terms of shape and type. The form of dowry can be divided into two, there is a dowry in the form of goods and services. According to ibn Qasim, one of the Shafi'i scholars, everything that has a good value from the form or benefits, it may be used as a wedding dowry.¹⁵ Dowry in the form of this item is commonly done by the people of Indonesia, such as dowry in the form of money, gold, houses, or other valuables. While the dowry in the form of services is something that is very rarely found in Indonesian weddings. Marriage dowry in the form of services such as, educate, Shepherd, liberate, teach the Qur'an¹⁶ and so forth. One of the basic legal dowry form of this service is the Hadith of the Prophet Muhammad:¹⁷

عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَعْتَقَ صَفِيَّةَ وَجَعَلَ عِتْقَهَا
صَدَاقَهَا

“From Anas bin Malik, The Messenger of Allah. he set them free and set them free.”

The dowry in terms of its type can be seen from the side of its pronunciation and payment. The type of dowry in terms of pronunciation can be divided into two, namely mahar *musamma* and mahar *mitsil*. Mahr *musamma* is a dowry that is mentioned in the amount of value promised during the marriage contract process. This type of dowry must be given by the husband to his wife if there has been a marital relationship between the two and if the husband and husband die first, then this dowry must still be given.¹⁸ According to Amir Syarifuddin, mahar *musamma* is a dowry that is clearly mentioned in the marriage contract. This type of dowry should be handed over directly in cash at the

¹⁴ Abdul Jalil dan Hilmi Abdillah, “Hukum Cryptocurrency sebagai Mata Uang Dan sebagai Komoditas (Analisis Fatwa MUI Tentang Hukum Cryptocurrency)”, *Jurnal Ilmiah Ekonomi Islam*, 9(03), 2023, 4246.

¹⁵ Muhammad Ibnu Qasim, *Fathu al-Qarib al-Mujib Fi Syarh al-Faazh al-Taqrif*, (Mesir: Darul Hijrah, 2012), 111.

¹⁶ Ibnu Qasim, *Fathu al-Qarib*, 111.

¹⁷ Muhammad bin Ismail al-Bukhari, *Shahih al-Bukhari*, No. 4696, (Beirut: Daar al-Kutub al-Ilmiah)

¹⁸ Harijah Damis, “Konsep Mahar dalam Perspektif Fiqh dan Perundang-Undangan,” *Yudisial*, no. 1 (April, 2016), 24-25.

time of the marriage contract.¹⁹ While Mahar *mitsil* is the opposite of mahar *musamma*, which is a dowry that is not clearly stated in the amount of its value at the time of the contract. So that in determining its value, this dowry is matched or equated with the dowry of women who are equal among their families.²⁰

The type of dowry from the payment side can also be divided into two, namely the cash dowry of *MU'ajjal* and the credit dowry. Cash dowry is a dowry that is directly or immediately given which is generally handed over at the time of the marriage contract. While the dowry is a dowry credit deferred payment or given in installments.²¹

There are certain conditions for real and genuine repentance which if met, will be accepted by God. This exception relates to the absence of marital relations or intercourse. What if the husband has not had sex with his wife but there has been a divorce, either because of death or other reasons, then the husband is only obliged to give his dowry half of the specified value. If the wife has committed half of it, then the husband is free from the obligation to give the dowry.²²

1. Conception of dowry in Indonesian positive law

Regarding the rights and obligations between husband and wife in Indonesia, its provisions have been regulated in the positive law of the country. These provisions can be seen in Law No. 1 of 1974 on marriage (Marriage Law) and the compilation of Islamic law (KHI) enacted through Presidential Instruction No. 1 of 1991. Although the Marriage Act regulates the rights and obligations of husband and wife, but the written provisions are still very universal compared to KHI. This may be due to the position of the law in the legislation in Indonesia as a higher legal norm, so that the provisions contained must be universal.

While the compilation of Islamic law contains provisions that are more specific and particular than the marriage law. As with the dowry of marriage, the provisions on the dowry can be seen in Article 30 to Article 38 KHI. In Article 30, dowry is defined as something that must be given by the husband to his wife. In addition to the mandatory law, the determination of the type and form of dowry must also be based on the agreement of two parties,²³ it means that if one does not agree with the form and type of dowry, then

¹⁹Syarifuddin, *Garis-Garis*, 98.

²⁰Harijah, "Konsep Mahar," 25.

²¹Harijah, "Konsep Mahar," 25.

²²Syarifuddin, *Garis-Garis*, 99.

²³Pasal 30, Kompilasi Hukum Islam.

it cannot be used as dowry. KHI also lists the principles in determining the dowry of marriage, namely the principle of simplicity and ease advocated by the religion of Islam.²⁴ Although the dowry is the right of the wife, but it is better that the specified dowry does not make it difficult for her husband, or it can be said that it is in accordance with the ability of her husband.

In the compilation of Islamic law, the various forms of dowry are not specifically mentioned whether the dowry is in the form of goods or can also be in the form of services. As for the distribution of the types of dowry, it is implicitly mentioned in Articles 32, 33, and 35 KHI. The type of dowry according to KHI can be distinguished from two aspects, namely pronunciation and payment. The type of dowry in terms of pronunciation is divided into two types, namely the dowry that has been determined in number (*musamma*) and the dowry that has not been determined in number (*mitsil*). Dowry predetermined amount, implicitly can be seen in Article 35 (1) KHI which states that “the husband who has divorced his wife qobla Al dukhul shall pay half the dowry specified in the marriage contract”.²⁵ And for dowry that has not been determined the amount can be seen in Article 35 (2) KHI which states that “if the husband dies qobla al dukhul but the amount of dowry has not been determined, then the husband is obliged to pay the dowry mitsil”.²⁶

In both verses, it is clear that explicitly regulates the provisions of the dowry that must be given if the husband has or has not married his wife, but on the other hand implicitly, it can also be said that the two verses state that the dowry in terms of pronunciation can be distinguished into a dowry that has been determined and has not been determined.

Apart from the pronunciation, the type of dowry in terms of payment can also be divided into two, namely cash dowry and deferred dowry. Basically, the dowry was given directly to his wife in cash²⁷ and from then on it became his wife's personal right.²⁸ However, if the prospective wife allows the delivery of the dowry by suspension, either in whole or in part, then it is still permissible and becomes the debt of her future husband.²⁹

²⁴Pasal 31, Kompilasi Hukum Islam.

²⁵Pasal 35 ayat (1), Kompilasi Hukum Islam.

²⁶Pasal 35 ayat (2), Kompilasi Hukum Islam.

²⁷Pasal 33 ayat (1), Kompilasi Hukum Islam.

²⁸Pasal 32, Kompilasi Hukum Islam.

²⁹Pasal 33 ayat (2), Kompilasi Hukum Islam.

In addition to provisions on dowry obligations, forms and types of dowry, KHI also contains provisions on settlement in the event of a dispute about the dowry and about the perfection of the dowry. As stated in Sections 37 and 38:

Article 37:

If there is a dispute about the type and value of the dowry set, the settlement is submitted to the Religious Court.

Article 38:

If the dowry submitted contains defects or less, but the bride and groom are still willing to accept it unconditionally, the delivery of the dowry is considered paid off.

2. Overview of *cryptocurrencies*

Cryptocurrency or crypto currency is a digital currency that is in great demand by many people in this era as an investment instrument. The forerunner of this crypto currency was discovered by David Chaum in 1983, he was one of the cryptographers from America. There are several types of cryptocurrencies that are often used, including Litecoin, Bitcoin, IDR Private, Ripple, Monero, and many others.³⁰

Cryptocurrencies are created with uniquely encrypted cryptography, so the determination of their value is highly dependent on market mechanisms. In general, the value of any type of cryptocurrency is the same as any other financial product, which when demand is high and miners are few, then the value will increase. So the value of cryptocurrencies is very volatile depending on the availability or trust of users. The mature transaction mechanism of this crypto money is quite flexible because it can be done anytime, anywhere, and from anywhere. This transaction mechanism is decentralized, that is, there is no intermediary party in the transaction (*peer-to-peer*). Despite this, all transactions carried out remain recorded in *the cryptocurrency network system*.³¹

The existence of this cryptocurrency has received various responses from various countries, ranging from those who reject it and who accept it as a legitimate medium of exchange. The Indonesian government refused and stated that cryptocurrencies *cryptocurrency* are not legal tender in the country. However, this does not mean that the existence of this currency is illegal in Indonesia. The central government through Bank Indonesia suggests that cryptocurrencies can be stored and traded as assets

³⁰Dewi Indrayani Hamin, "Crypto Currensi dan Pandangan Legalitas Menurut Islam: Sebuah Literature Review," *Jambura*, no. 2 (September, 2020), 129-131.

³¹Indrayani, "Crypto Currensi," 130-132.

but at their own risk. This is evidenced by the permit for the establishment of bitcoin Indonesia known as Indodax (*Indonesia Digital Asset Exchange*).³²

Cryptocurrency as an investment asset has been regulated in the regulation of the Commodity Futures Trading Supervisory Agency (BAPPETI) number 5 of 2019 concerning technical provisions for the implementation of the physical market of crypto assets on the Futures Exchange. As mentioned earlier, in Indonesia the circulation of crypto currency as a means of money exchange and a means of transaction is still prohibited, but it is allowed if it is used as an investment instrument.³³ Aset kripto (*crypto asset*) menurut peraturan BAPPETI No. 5 of 2019 is an intangible commodity in the form of digital assets, using cryptography, *peer-to-peernetworks*, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without interference from other parties.³⁴ Based on that, the crypto that is understood is crypto as an asset or investment instrument, not as a transaction tool both online and offline.

3. Usul Fiqh: methods of establishing law *Intiqa'i* and *Insha'i*

Fiqh is a product of Islamic jurisprudence established by the *fuqaha* through the process *istinbath* of *istinbath* method based on the arguments of the Qur'an and Hadith. The legal product in the form of fiqh established by the *fuqaha* uses a very varied according to the situation and conditions of the region, so that it allows for differences of opinion. Along with the development of the Times and the increasing number of demands that must be answered by the law, there are two contemporary legal determination methods that can be used by the mujtahid, namely *intiqa'i* dan *the intiqa'i and Insha'i methods*.³⁵

Intiqa'i method is a method of establishing Islamic law (fiqh) which is made by revealing the opinions of previous scholars and the arguments used by them, then comparing and choosing opinions that are stronger arguments and more in accordance with current conditions. Basically, this method is an application of the *tarjih* method, namely by conducting a comparative study between the opinions of the previous scholars who in the end can be selected a stronger opinion postulates and arguments in accordance

³²Indrayani, "Crypto Currensi," 133.

³³Miko, "Konsepsi Hukum," 129.

³⁴Pasal 1 ayat (7), Peraturan Badan Pengawas Perdagangan Berjangka Komoditi Nomor 5 Tahun 2019.

³⁵Kasuwi Saiban, "Metode Intiqa'i dan Insha'i: Sebuah Solusi Pembentukan Madzhab Fiqh Kontemporer di Indonesia," *Jurnal Ulumuddin*, no. 4 (Januari-Juni, 2010), 506-507.

with the measuring instruments used in *mentarjih*.³⁶ While the method of *Insha'i* is a way of determining the law of *fiqh* with a certain method of *ijtihad*, to draw new legal conclusions in a problem that has never been put forward by previous scholars. The issue may not have been discussed at all or has already been discussed but a contemporary *fiqh* expert has a different legal decision than before.³⁷

Based on the explanation, the *ntiqa'i method* can be said to apply only to problems that have already been discussed, while the *Insha'i method insya'ican* apply to problems that have not been discussed or that have been discussed due to differences in situations and conditions with previous times that ultimately require appropriate legal updates and support current conditions.

In this paper, the author will use the *intiqai method intiqai'in* analyzing the validity of crypto as a marriage dowry. Nonetheless, the author will limit the legal comparison made in this discussion to contemporary scholars. Seeing this crypto discussion is a discussion that has just emerged in recent times but there are already several scholars or Islamic law institutions currently in Indonesia who discuss it, so it will be more appropriate to make comparisons to contemporary legal products that have been produced, and also in accordance with the context of Indonesia.

RESULTS AND DISCUSSION

Cryptocurrency law in Indonesia: between Halal and Haram

Cryptocurrency is a digital currency that has only been present for a few years. So many scholars and Islamic law institutions in Indonesia are starting to study *this cryptocurrency law* as one of the media in *bermuamalah*. The results of the assessment vary widely, some stipulate *that cryptocurrencies* are haram, halal, or halal with several conditions. The author presents the results below:

First, the opinion that says that *cryptocurrency* is haram. Lembaga Bahtsul Masail (LBM) PWNNU Jawa Timur stated that *cryptocurrency* was illegal due to several factors, namely 1) the absence of *underlying assets* or assets underlying the crypto money; 2) the extraordinary potential of *gharar*; 3) the absence of regulations in Indonesia that regulate

³⁶Kasuwi, "Metode Intiqa'i, 507.

³⁷Kasuwi, "Metode Intiqa'i, 508.

crypto as a means of transaction.³⁸ Majelis Tarjih dan Tajdid PP Muhammadiyah also banned crypto as an investment instrument and medium of exchange. This is because: 1) the thick speculative nature or *gharar*; and 2) the state is not recognized as a legitimate medium of exchange.³⁹

In addition to the East Java PWNU LBM and Muhammadiyah Tarjih Council, the Indonesian Ulema Council also issued a haram fatwa for *cryptocurrencies*. According to the MUI, crypto is haram because: 1) it is illegal to use crypto as a currency, because *it is gharar* and contrary to law No. 7 of 2011; 2) crypto as a commodity or digital asset is not legally traded because it does not meet the requirements of *Syar'i sil'ah* (physical form, has value, definite amount, property rights); 3) crypto as a commodity or digital asset that meets the requirements of *SIL'ah* and has clear legal benefits is legally valid to be traded.⁴⁰

Secondly, the opinion stating that *cryptocurrency* is lawful. Bahtsul Masail NU yang diadakan bersama Islamic Law Firm (ILF) menyatakan bahwa *cryptocurrency* hukumnya halal sepanjang tidak terjadi *gharar*. This is because crypto is a wealth asset that in *fiqh* is called *mal*, but that wealth must be avoided from *gharar* so that it does not conflict with *Shari'ah*.⁴¹ In addition to LBM NU and ILF, LBM PWNU Yogyakarta also legalizes *cryptocurrency* because: 1) crypto qualifies well as a medium of exchange; and 2) there are no elements of *gharar* and gambling.⁴²

Looking at the opinions above, it can be said that the concern of this crypto is that it has the potential to cause *gharar* and gambling (*maisir*), which is prohibited in the *Shari'ah*. The basis of the evidence related to this is the word of Allah Swt.:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ٩٠

"O you who have believed, indeed, drinking, gambling, (sacrificing to) idols, and casting lots with arrows are abominations (and) among the deeds of Satan. So avoid them that you may prosper." (Q.S al-Maidah: 90)

³⁸Abdul Wahab Ahmad, "Mengapa LBM PWNU Jatim Mengharamkan Cryptocurrency?," accessed Mei 27, 2023, <https://islam.nu.or.id/ekonomi-syariah/mengapa-lbm-pwnu-jatim-mengharamkan-cryptocurrency-BaKaf>.

³⁹Ilham, "Pandangan Majelis Tarjih terkait Mata Uang Kripto," accessed Mei 27, 2023, <https://muhammadiyah.or.id/pandangan-majelis-tarjih-terkait-mata-uang-kripto/#:~:text=Karenanya%2C%20dalam%20Fatwa%20Tarjih%20yang,investasi%20maupun%20sebagai%20alat%20tukar>.

⁴⁰Majelis Ulama Indonesia, "Keputusan Fatwa Hukum Uang Kripto atau Cryptocurrency," accessed Oktober 03, 2022, <https://mui.or.id/berita/32209/keputusan-fatwa-hukum-uang-kripto-atau-cryptocurrency/>

⁴¹Syifa Arrahmah, "Hasil Bahtsul Masail tentang Halal dan Haram Transaksi Kripto," accessed Mei 27, 2023, <https://www.nu.or.id/nasional/hasil-bahtsul-masail-tentang-halal-dan-haram-transaksi-kripto-IhUDC>.

⁴²Tentya Noerani, "Berbeda dengan MUI, NU Yogyakarta Halalkan Kripto," accessed Mei 27, 2023, <https://ibadah.co.id/news/berbeda-dengan-mui-nu-yogyakarta-halalkan-kripto/>

There are also signs of God. narrated Imam Muslim:

نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَ عَنِ بَيْعِ الْغَزَرِ

“*The Prophet saw. it is forbidden to buy and sell Al-hashah and gharar*” (P.R. Muslim: 1513).

Both arguments are the main reference for scholars to establish all forms of transactions that contain elements of gharar and gambling is haram.

However, according to the author, it is not appropriate to generalize all types of crypto containing gharar elements. So that the main problem that must be overcome is to make a *cryptocurrency system* that avoids gharar elements. Based on this, the author is more favorable to the opinion expressed by LBM NU and ILF, and the MUI Fatwa which essentially allows *cryptocurrency* to meet the requirements of SIL'ah and avoid gharar elements. If in Indonesia, then such crypto can only be a valuable asset, not as a legal means of exchange. This is because according to the laws and regulations the legal tender in Indonesia is only the rupiah.

1. **Validity Cryptocurrency as dowry in marriage**

Dowry of a marriage is an obligation that must be given by the husband to his wife, not as a price from his wife but as a form of respect, honor, and happiness of his wife.⁴³ Islamic law and positive law of the state allows the dowry in two forms, either in the form of goods or services. dowry in kind can be in the form of money, gold, houses, cars, Securities, and so forth. While the dowry in the form of services can be liberating, educating and so forth. Based on that, making crypto assets as a dowry is possible because it is included in the dowry in kind. It also looks at the definition of the crypto asset itself as stated in BAPPETI Regulation No. 5 of 2019 that declared crypto assets as digital assets.⁴⁴

There are several opinions, especially in the Islamic community regarding the halal and haram of *cryptocurrencies*, such as the Indonesian Ulema Council (MUI) which then issued a fatwa against the use of crypto. The MUI Fatwa contains three legal provisions related to *cryptocurrencies*, which can be summarized as follows: 1) it is Haram to use crypto as a currency, because *it is gharar* and contrary to law No. 7 of 2011; 2) crypto as a commodity or digital asset is not legally traded because it does not meet the requirements of Syar'i sil'ah (physical form, has value, definite amount, property rights); 3) crypto as a commodity or digital asset that meets the requirements of SIL'ah and has clear legal

⁴³Miko, “Konsepsi Hukum,” 126.

⁴⁴Pasal 1 ayat (7), Peraturan Badan Pengawas Perdagangan Berjangka Komoditi Nomor 5 Tahun 2019.

benefits is legally valid to be traded.⁴⁵ If you look at these provisions, the MUI still provides exceptions for cryptocurrencies that meet the *Sil'ah* requirements, then the law is valid as a commodity or digital asset. While from the positive legal aspects of the country, cryptocurrencies remain illegal if used as a means of transaction, but legitimate if used as an investment asset. It has been regulated in the legislation. Rashed Hasan Polas dan kawan-kawan dalam tulisannya "*Is Bitcoin Halal or Haram in The Islamic Banking and Finance? An Overview*" seeks to analyze the halal and Haram through the protocol used. The paper concludes that crypto is halal if the protocol used is Proof of Work (PoW).⁴⁶

BAPPEPTI as a commodity supervisory agency allows crypto assets to be used as dowry as long as the woman (wife) is willing to accept it as a marriage dowry.⁴⁷ It needs to be underlined, that the consent of the wife to the form of dowry to be given is one of the important conditions. KHI also regulates this in Article 30 which states that the form and type of dowry must be based on the agreement of husband and wife.

2. Mechanism *Cryptocurrency* as a marriage dowry

The problems of *cryptocurrencies* dwell not only on their validity, but also on the mechanism for the delivery of such assets as a wedding dowry. Until now there has been no provision regulating the transfer of crypto asset rights due to marriage dowry, but these assets must be transferred to his wife's property so that they can be used as dowry. This is because the dowry is the right of the wife to be given by the husband, and from then on it becomes the personal right of his wife.⁴⁸ So that the rights of crypto assets can be transferred and used as dowry can be done by way of grants.⁴⁹

The grant is a legal act due to the form of transfer of property rights. According to the Civil Code, a grant is a free gift of an object from a benefactor irrevocably for the purposes of the donee.⁵⁰ There are several requirements in the legislation relating to grants, such as: 1) done through a notarial deed; 2) is a free gift; 3) given when the grantor is still alive, if the grantor has died then the form of a Will Grant; 4) the grantor is capable of doing legal deeds; 5) granted are movable property (stocks, bonds, deposits, etc.) or

⁴⁵Majelis Ulama Indonesia, "Keputusan Fatwa Hukum Uang Kripto atau Cryptocurrency," accessed Oktober 03, 2022, <https://mui.or.id/berita/32209/keputusan-fatwa-hukum-uang-kripto-atau-cryptocurrency/>

⁴⁶Mohammad Rashed Hasan Polas, dkk, "Is Bitcoin Halal or Haram in The Islamic Banking and Finance? An Overview," *Economics, Business and Market Research*, no. 2 (Agustus, 2020), 102.

⁴⁷Miko, "Konsepsi Hukum," 127.

⁴⁸Pasal 32, Kompilasi Hukum Islam.

⁴⁹Miko, "Konsepsi Hukum," 130.

⁵⁰Pasal 1666, Kitab Undang-Undang Hukum Perdata Republik Indonesia.

immovable (land or house); 6) the grant is final and irrevocable.⁵¹ Then the crypto assets to be donated in order to transfer the rights due to the dowry must also meet the above conditions.

In general, the mention of crypto assets as a dowry is made when the marriage contract. The groom names the amount of crypto dowry that will be given to the bride. Therefore, the materialization process is carried out before the contract before a notary⁵² in order to make a crypto asset grant deed. The creation of a crypto asset grant deed must meet several elements, namely: 1) the presence of the face (giver and donee); 2) The Giver of crypto assets is registered in the crypto asset trading market; 3) The transferred crypto assets are not transferable and free from dispute; 4) crypto assets are legitimate assets traded in crypto market and by market managers who have received permission from BAPPEPTI; 5) the existence of a legal domicile where the harassers live. The responsibility of notaries for the validity of the identity of the faces must be considered because it is related to the legal acts they make. Errors in the identity of the perpetrators resulted in a decrease in the status of evidence of authentic notarial deed. Authentic deed is a letter of agreement or statement made according to legislation so that it is bound by the provisions of applicable law.⁵³

This crypto grant deed or authentic deed is indispensable. If at any time there is a dispute between husband and wife related to the crypto dowry, then the deed of Grant can be used as strong evidence in court. This is because the nature of the deed that has perfect proof and can be used as evidence in front of the trial.⁵⁴

The debate over the validity of cryptocurrency as a dowry is more prominent on the issue of conformity between Sharia principles and national regulation. The MUI Fatwa banning the use of cryptocurrency as a medium of exchange is based on its high speculative nature and gharar potential, while positive law is more flexible in recognizing this asset as an investment instrument. Here, contemporary *ijtihad* methods, such as *intiqā'i* and *Inshā'i*, play an important role in bridging these differences. This method allows researchers to choose opinions that are relevant to the context of the era and develop new legal conclusions that are more adaptive to technological developments.

⁵¹Miko, "Konsepsi Hukum," 130.

⁵²Pasal 1682, Kitab Undang-Undang Hukum Perdata Republik Indonesia.

⁵³Miko, "Konsepsi Hukum," 130-131.

⁵⁴Miko, "Konsepsi Hukum," 131.

The discussion further underlines the importance of a clear transfer of Rights mechanism to make cryptocurrency a legitimate dowry. A grant before a notary becomes a practical solution to ensure that the crypto asset actually passes ownership to the wife. In addition, more specific regulation regarding the use of cryptocurrencies in religious contexts is needed to reduce existing legal ambiguities. Thus, this study provides not only theoretical contributions, but also practical implications for people who want to take advantage of modern technology in wedding traditions.

In the context of cryptocurrency law in Indonesia, the scientific debate that has occurred has not been able to provide sufficient clarity regarding the legitimacy of crypto assets in various aspects, including their use as a marriage dowry. This can be seen from a variety of views that have not reached a common point, both in Islamic law and positive law. On the one hand, the Indonesian Ulema Council (MUI) issued a fatwa that generally bans cryptocurrencies as a medium of exchange, but provides exceptions if they qualify as *Sil'ah*. On the other hand, positive law through the Commodity Futures Trading Supervisory Agency (BAPPEBTI) recognizes cryptocurrencies as tradable digital assets, even though they are not legal tender. These differences indicate that cryptocurrency-related regulation is still in a transitional stage and requires a more solid legal foundation

With an analytical approach that aims to bridge both perspectives. Through normative studies and contemporary *ijtihad* methods, the authors argue that cryptocurrency can be accepted as a dowry if it meets the requirements of Islamic law and positive law, such as the agreement of the parties as well as compliance with the grant procedure before a notary. This approach is not only relevant to address modern legal challenges, but also provides practical solutions for people who want to integrate technological innovations in religious traditions.

However, a major flaw in the current crypto law discourse is the lack of in-depth exploration of contemporary scholars' differing views, which should be an important foundation in establishing new laws. For example, the *intiqā'i* method can be used to select the most powerful opinion, while the *Insha'i* method can help create new laws that are relevant to the current conditions of Indonesian society. By putting forward arguments based on arguments and data, the author seeks to contribute to the development of law that is not only adaptive to technology, but also remains grounded in the principles of *Sharia*.

CONCLUSION

This study confirms that cryptocurrency as a dowry in marriage in Indonesia has a complex legal basis, both from the perspective of Islamic law and positive law. In Islamic law, the use of cryptocurrency as a dowry is permissible if it qualifies as legitimate *sil'ah*, such as having clear benefits, definite value, and free from *gharar* elements. This perspective is supported by the fatwa of the Indonesian Ulema Council (MUI) which provides exceptions for crypto assets that meet these criteria. Meanwhile, in positive law, crypto assets are recognized as digital commodities that can be traded, but not as legal tender.

The study also shows that the scientific debate regarding the validity of cryptocurrency as a dowry has not been fully explained, especially regarding the harmonization between Islamic law and state law. The *intiqa'i* and *Insha'i* methods used in this analysis make an important contribution to bridging these differences, by selecting relevant postulates and developing legal approaches that are appropriate to the Indonesian context. In addition, the study highlights the importance of more specific regulations to regulate the mechanism of using cryptocurrencies as dowry, including grant procedures involving notaries to ensure legal validity.

Therefore, its use as a dowry depends on the agreement of both parties and must go through a grant mechanism to ensure legal ownership. In addition to its validity, regarding the mechanism for transferring crypto asset rights is also a matter that must be considered, considering that there are no provisions governing the matter. The transfer of crypto asset rights can be done by means of a grant made in front of a notary by making an authentic deed or crypto grant deed. This is very important because the dowry after being given to the wife is fully owned by the wife and can also be strong evidence in the trial if there is a dispute between husband and wife.

REFERENCE

- Abdul Jalil dan Hilmi Abdillah. 2023. "Hukum Cryptocurrency sebagai Mata Uang Dan sebagai Komoditas (Analisis Fatwa MUI Tentang Hukum Cryptocurrency)". *Jurnal Ilmiah Ekonomi Islam*. 9(03), 4246.
- Aini, Eis Nur. Skripsi. 2024. "Mata Uang Kripto Sebagai Mahar Dalam Perkawinan". Yogyakarta: UIN SUKA.

Al-Bukhari, Muhammad bin Ismail, *Shahih al-Bukhari*, No. 4696, (Beirut: Daar al-Kutub al-Ilmiah).

Al-Qur'an Kementerian Agama, <https://quran.kemenag.go.id/>

Boby Juliansjah Megah Miko. 2022. "Konsepsi Hukum Mahar Cryptocurrency Dalam Perkawinan". *Jurnal Ilmiah Universitas Batanghari Jambi*. 22(1), 127.

Damis, Harijah, "Konsep Mahar dalam Perspektif Fiqh dan Perundang-Undangan," *Yudisial*, no. 1 (April, 2016).

Hamin, Dewi Indrayani, "Crypto Currensi dan Pandangan Legalitas Menurut Islam: Sebuah Literature Review," *Jambura*, no. 2 (September, 2020).

Hasan Polas, Mohammad Rashed, dkk, "Is Bitcoin Halal or Haram in The Islamic Banking and Finance? An Overview," *Economics, Business and Market Reasearch*, no. 2 (Agustus, 2020).

Hasanuddin, "Rukun dan Syarat dalam Ibadah Nikah Menurut Empat Mazhab Fiqh," *Mimbar Akademika*, no. 2 (2018).

Ibnu Qasim, Muhammad, *Fathu al-Qarib al-Mujib Fi Syarh al-Faazh al-Taqrib*, Mesir: Darul Hijrah, 2012.

Kamus Besar Bahasa Indonesia (KBBI), <https://kbbi.web.id/hak>.

Kornelius Benuf dan Muhamad Azhar. 2020. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Jurnal Gema Keadilan*. 7(1), 22.

Majelis Ulama Indonesia, "Keputusan Fatwa Hukum Uang Kripto atau Cryptocurrency," accessed Oktober 03, 2022, <https://mui.or.id/berita/32209/keputusan-fatwa-hukum-uang-kripto-atau-cryptocurrency/>

Megah Miko, Boby Juliansjah, "Konsepsi Hukum Mahar Cryptocoureny dalam Perkawinan," *JIUBJ*, no. 1 (Februari, 2022).

Nurani, Sifa Mulya, "Relasi Hak dan Kewajiban Suami Istri dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam dan Hadits Ahkam)," *Al-Syakhsyiyah*, no. 1 (2021).

Putra, Wisma, "Fatwa Haram MUI dan Alasan Kripto jadi Mahar Pernikahan Cupi Cupita," accessed September 30, 2022, <https://hot.detik.com/celeb/d-5818894/pernikahan-cupi-cupita-pakai-mahar-kripto-di-tengah-kontroversi-fatwa-haram>

Republik Indonesia, Kitab Undang-Undang Hukum Perdata.

Republik Indonesia, Kompilasi Hukum Islam.

Republik Indonesia, Peraturan Badan Pengawas Perdagangan Berjangka Komoditi Nomor 5 Tahun 2019 tentang ketentuan teknis penyelenggaraan pasar fisik aset kripto di bursa berjangka.

Santoso Az, Lukman, Yahyanto, *Pengantar Ilmu Hukum*, Malang: Setara Press, 2016.

Sitepu, Vinsensius, “Pernikahan Bermahar Aset Kripto ala Manda-Nadya,” accessed September 30, <https://blockchainmedia.id/pernikahan-bermahar-aset-kripto-ala-manda-nadya-bagaimana-kisahny/>

Syarifuddin, Amir, *Garis-Garis Besar Fiqh*, Jakarta: Kencana, 2013.