



Analysis of *Gharar fahisy* and *Maysir* in the DSN-MUI Fatwa on Crypto Assets: A Critical Review of Maqashid Sharia

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Abstract: This study examined Fatwa of the Dewan Syariah Nasional of the Indonesian Ulama Council (DSN-MUI) Number 140/DSN-MUI/XI/2021 concerning the prohibition of certain types of crypto assets through the lens of maqashid sharia. The analysis focused on identifying elements of *gharar fahisy* (excessive uncertainty) and *maysir* (speculative behavior resembling gambling) as the primary normative bases for the legal ruling. The study employed a qualitative methodology using content analysis of the DSN-MUI fatwa document, supported by classical and contemporary Islamic legal and financial literature. The findings indicated that crypto assets lacking clearly defined intrinsic value exhibited extreme price volatility and high levels of risk, thereby fulfilling the criteria of *gharar fahisy* as conceptualized in *fiqh al-muamalat*. Additionally, the prevalence of speculative trading practices, characterized by a zero-sum game structure, reflected elements of *maysir* that closely resembled the prohibited practice of *qimar*. From a maqashid sharia perspective, the DSN-MUI fatwa aligned with the objectives of protecting wealth (*hifzh al-mal*) and safeguarding intellect (*hifzh al-‘aql*), while also preventing collective harm (*dharar ‘am*). At the same time, the exemption granted to crypto assets backed by tangible underlying assets demonstrated the flexibility of Islamic law in balancing harm prevention with the accommodation of financial innovation that contributed to the real economic sector.

Keywords: *Gharar fahisy*, *Maysir*, Cryptocurrency, Fatwa, DSN-MUI, Maqashid sharia, Hifzh al-mal

Introduction

One of the rapid developments in financial technology, the spectacular advancement of technology has given birth to revolutionary digital assets, namely cryptocurrency (crypto assets) that operate using Distributed Ledger Technology (DLT) or Blockchain, which is the basis for the creation of digital currencies as a means of payment, such as bitcoin, ethereum, dogecoin, and so on. As the country with the largest Muslim population in the world, Indonesia faces an urgent need for Islamic legal guidance regarding the ownership status and transactions of these assets. To address this need, the Indonesian Ulema Council (MUI) has issued a fatwa which, in general, prohibits crypto as a currency due to speculation, *gharar*

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(uncertainty), and its unsuitability as a sharia-compliant medium of exchange (MUI, 2021).

This fatwa has had a significant impact, not only on individual Muslims but also on capital market regulations and Islamic banking in Indonesia. However, the fatwa has sparked ongoing academic and practical debate. Although the DSN-MUI fatwa aims to protect the people from loss (in accordance with the principle of *sadd al-dzari'ah*), in-depth analysis shows that there is a need to re-examine the methodological basis of the fatwa, particularly in relation to two crucial elements, namely the concept of *gharar fahisy* (excessive uncertainty). To what extent does the volatile and decentralized nature of cryptocurrency inherently fulfill the criteria of *gharar fahisy* that invalidates transactions, or is the *gharar* minor (*gharar yasir*) that can be ignored, as is common with modern market risks? Furthermore, the concept of *maysir* (gambling/speculation), which is to clearly distinguish between prohibited speculation (*maysir*) and acceptable risk-bearing investment (*mukhatarah*), especially in the context of commodity assets that are legally traded on futures exchanges in Indonesia. Although the fatwa has provided initial legal certainty, in-depth analysis evaluating the substance of this fatwa within the framework of the universal objectives of Islamic sharia (maqashid sharia) is still limited (MUI, 2021).

Previous studies by Ramadhan & Sukti (2025) has conducted a comparative analysis of crypto regulations and fatwas in Indonesia and Malaysia using the maqashid sharia approach, while analyzing Islamic law's stance on the development of cryptocurrency using the *sadd al-dzariah* approach. Meanwhile, this article will conduct a more in-depth analysis of the elements of *gharar fahisy* and *maysir* from the perspective of maqashid sharia and will focus on the DSN MUI fatwa and will contribute to and explore operational criteria for sharia-compliant cryptocurrency (Ramadhan & Sukti, 2025).

This study argues that the review of the methodology (*istinbath al-ahkam*) of fatwas must be conducted through the lens of maqashid sharia (the objectives of Islamic law), to ensure that legal decisions are not only bound by form (classical fiqh formalism) but also by the main objectives of protecting property (*hifzh al-mal*) and the interests of the people in the contemporary digital ecosystem. A fundamental issue that has arisen in the legal and economic discourse related to cryptocurrency is the determination of its status, whether it can be classified as a currency or rather as a commodity. In the literature, there are at least two main views on this matter. The first view places cryptocurrency as a form of digital currency (virtual currency), with the argument that this asset has been used in practice as a medium of exchange and a store of value in certain transactions (Sahamad et al., 2023). In contrast, the second view classifies cryptocurrency as a digital commodity. This view stems from the assumption that cryptocurrency has a virtual intrinsic value that is formed through consensus mechanisms and market demand, so that it can be viewed as a public good that is utilized and exchanged within its user community.

This study aims to analyze Fatwa DSN MUI No. 140 of 2021 from the perspective of maqashid sharia, with an emphasis on the elements of *gharar fahisy* and *maysir* in crypto assets that could threaten the protection of property (*hifzh al-mal*) and the protection of reason (*hifzh al-aql*). The research question posed is how the DSN-MUI identifies the elements of *gharar fahisy* and *maysir* in crypto assets, and to what extent is the legal ruling in line with the objectives of maqashid

sharia, particularly *hifzh al-mal* (protection of property)? In addition, this study is expected to contribute academically to the discourse on contemporary fiqh and Islamic economics by offering a critical review that integrates contemporary fiqh muamalah with the perspective of maqashid sharia. This analysis is important because it does not stop at legal-formal justification (*bayani*), but evaluates the MUI's decision through the framework of Islamic legal objectives (*maqashid sharia*). The maqashid sharia approach, particularly that which focuses on the protection of the five basic needs (*al-dharuriyyat al-khams*), is needed to assess the extent to which fatwas not only answer legal-formal issues, but also realize the interests of the people and protect them from harm (Hanifa, 2025).

Method

This study uses a qualitative method with a content approach. The primary data in this study is the text of MUI DSN Fatwa Number 140 of 2021. Secondary data was obtained from academic literature, journal articles, and literature discussing maqashid sharia, Islamic law related to muamalah, gharar and *maysir*, as well as regulations and characteristics of crypto assets. The analysis was conducted using deductive techniques, namely comparing the provisions of the fatwa with the principles of *hifzh al-mal* and the criteria of *gharar fahisy* and *maysir*. The data was analyzed using deductive techniques, namely deriving general principles of maqashid sharia (particularly *hifzh al-mal* and *hifzh al-'aql*) to analyze their compatibility with specific provisions in the fatwa. The analysis was conducted critically to identify the strengths, weaknesses, and opportunities for development of the existing fatwa.

Result and Discussion

Identifying Elements of *Gharar fahisy* and *Maysir* in Crypto Assets in the DSN-MUI Fatwa

The provisions most relevant to the discussion of cryptocurrency are the laws of buying and selling, which contain elements of *gharar* and *maysir*. The main sources of law are the Quran and Hadith, which explain the provisions of *gharar* and *maysir*, including QS al-Baqarah verse 188, which prohibits some of you from consuming the wealth of others in an unjust manner and prohibits bringing (matters of) wealth to a judge, so as not to consume some of the wealth of others by (committing) sin, even though you know that it is unjust. This verse prohibits Muslims from consuming the wealth of others in an unjust manner, including through bribing rulers or judges to obtain rights that do not belong to them. This verse forms the basis for the prohibition of all forms of corruption, fraud, and unjust acquisition of wealth in Islam.

Furthermore, in a hadith narrated by Muslim, the Prophet Muhammad SAW prohibited *al-hashah* (transactions involving throwing stones) and *gharar* (transactions involving uncertainty) (Al-Naisaburi, n.d., p. 1153). In a hadith narrated by Ibn Majah, from Abu Sa'id al-Khudri, the Prophet said that buying and selling is only based on mutual consent (both parties are willing) (Al-Qazwini, n.d., p. 737). The first Hadith prohibits two forms of invalid transactions: *Bai' al-hashah*, transactions involving throwing stones (a system of chance), and *bai' al-gharar*, transactions involving uncertainty. The second Hadith emphasizes that in muamalah, the basic principle is that transactions must be based on the willingness of both parties and there must be no coercion or deception. Imam

Ghazali argues that permissible transactions are those recognized or permitted by the mufti or the government (Al-Ghazali, 1987). Meanwhile, Ibn Hajar al-Haitami argues that the original ruling on buying and selling is permissible, provided that it complies with valid laws and is conducted on a mutual consent basis, because a transaction can be considered valid if it is based on mutual agreement (Al-Haytami, 1987).

Gharar is defined as uncertainty or ambiguity in a contract that will cause disputes and losses for one of the parties. (Al-Zuhayli, 1997). The prohibition of gharar in the hadith aims to ensure fairness and transparency. The fuqaha distinguish between two levels of gharar, namely gharar yasir (minor), which is permitted, and *gharar fahisy* (extreme), which is prohibited. The main characteristics that trigger *gharar fahisy* are the uncertainty of the object of the contract (*ma'qud 'alaih*) and the emergence of risks that cannot be predicted reasonably. As for *maysir* (qimar), it is a transaction that contains elements of gambling or speculation that brings profit to one party and causes loss to the other party without any contribution of economic value or balanced effort. (Hasan, 2004). From this explanation regarding gharar and *maysir*, it is understood that in any form of muamalah, both elements must be taken into consideration to avoid fraud and injustice in muamalah. One party gains a large profit while the other party suffers a large loss.

Cryptocurrency is a digital currency secured by cryptography, operating in a decentralized manner without relying on a central authority such as a bank or government (Tapscott, 2016). The system allows users to send and receive payments directly to anyone around the world (peer-to-peer), with all transactions recorded in a public ledger called a blockchain. At the heart of how cryptocurrency works is blockchain technology, which is Distributed Ledger Technology (DLT) (Uzougbo et al., 2024). The main way cryptocurrency works is based on blockchain technology, which functions as a decentralized digital ledger that permanently and transparently records all transactions (Radziwill, 2018).

Basically, cryptocurrency operates without a central authority (such as a bank) through a network of computers. The transaction and verification process involves five main stages, namely: First, transaction initiation, where a user, for example Alice, wants to send a certain amount of cryptocurrency to another user, Bob. Alice uses her digital wallet and authorizes the transaction using a private key. (Vigna & Casey, 2015). This private key proves that Alice is the rightful owner of the asset. Second, transaction broadcasting: transaction requests (data containing details of the sender, recipient, and amount) are then broadcast to a global peer-to-peer (person-to-person) computer network, called nodes. These transactions will wait to be verified by the network (Uzougbo et al., 2024).

Third, verification and block formation: special computers on the network, called miners or validators, compete to perform three tasks, namely checking the validity of broadcast transactions, ensuring that Alice has sufficient funds and that there are no double-spending attempts, and then grouping valid transactions into a data container called a block (Nakamoto, 2024) To secure this new block, miners must solve highly complex cryptographic mathematical puzzles. This process, best known as Proof-of-Work (PoW), ensures network security and achieves consensus without requiring a central authority, but it requires significant computing power (Nakamoto, 2024). The miner who successfully solves it first will receive a new cryptocurrency reward and have the right to add that block.

Fourth, adding blocks to the chain (blockchain): after a block is successfully secured, it is timestamped and added sequentially to the existing block chain (blockchain). This new block is cryptographically linked to the previous block using a hash, which functions like a digital fingerprint. The main characteristic of blockchain is immutability (Uzougbo et al., 2024). Once a block is added, the data within it cannot be changed or deleted, because any change would invalidate the hash of all subsequent blocks (Radziwill, 2018). Fifth, transaction finalization. After the new block is validated and synchronized across all nodes in the network, Alice's transaction to Bob is considered final. The cryptocurrency is definitively transferred to Bob's digital wallet, and a permanent record of it is recorded in the public ledger (Radziwill, 2018).

Innovation and expansion of crypto assets such as Bitcoin and Ethereum have developed into a global economic phenomenon that is fraught with controversy. This development has sparked widespread debate regarding its legal status and regulatory patterns, not only in Western countries, but also in the Islamic world in various jurisdictions, including Indonesia. One of the main issues that has arisen is the determination of the status of crypto assets, whether they can be categorized as currency or as commodities. In international practice, there are differences in approach between countries. Some jurisdictions recognize cryptocurrency as digital currency, while Indonesia firmly rejects this recognition. Through Bank Indonesia, the government has determined that the only legal tender in the territory of the Republic of Indonesia is the Rupiah (IDR), as stipulated in Law Number 7 of 2011 concerning Currency. Therefore, the use of cryptocurrency as a means of payment is declared illegal and constitutes a violation of positive law (Peraturan Bank Indonesia Number 18/40/P/2016).

However, in its capacity as a commodity asset, cryptocurrency has gained legal recognition in Indonesia. Crypto assets are officially classified as digital commodities that can be traded on the physical market of the Commodity Futures Exchange. Regulation and supervision of these activities fall under the authority of the Commodity Futures Trading Regulatory Agency (Bappebti), which is under the Ministry of Trade, as stipulated in Bappebti Regulation Number 5 of 2019 and its amendments. In line with this status, the government imposes Income Tax (PPh) and Value Added Tax (PPN) on cryptocurrency transactions, treating them as traded assets rather than as a medium of exchange (PMK Number 68/PMK.03/2022). Thus, within the national regulatory framework, cryptocurrency has a dual legal status: it is prohibited as a currency but legal as a commodity traded on futures exchanges under Bappebti supervision. This regulation provides legal certainty for investors while maintaining a clear separation between the functions of cryptocurrency and the role of fiat currency (Rupiah), ensuring that monetary stability remains under the control of Bank Indonesia.

As a response to the increase in crypto investment and trading activities, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) issued Fatwa Number 140/DSN-MUI/XI/2021 on Crypto Assets in November 2021. This fatwa plays a strategic role in providing sharia legal certainty for Muslims in Indonesia. The DSN-MUI established different legal statuses for crypto assets based on their functions, namely the prohibition of crypto assets as currency and the invalidity of their trade as general commodities that do not have underlying assets. The main fiqh basis for this determination is the existence of the elements

of *gharar fahisy* (extreme uncertainty) and *maysir* (speculation resembling gambling) (MUI, 2021).

Furthermore, Fatwa DSN-MUI Number 140 of 2021 classifies the law on crypto assets into three main provisions. *First*, crypto assets are ruled haram if they are used as currency because they contain elements of *gharar*, *dharar*, and are contrary to Law Number 7 of 2011 concerning Currency and Bank Indonesia Regulation Number 17 of 2015 concerning the Obligation to Use the Rupiah. *Second*, crypto assets are declared invalid as commodities or digital assets in general if they are traded without meeting the criteria as valid *sil'ah* (goods), such as clarity of form, value, and transferability, and still contain elements of *gharar*, *dharar*, and gambling (MUI, 2021).

Third, crypto assets are declared legal as commodities or digital assets with certain requirements, namely meeting the qualifications as *sil'ah* and being supported by underlying assets and clear benefits (MUI, 2021). Underlying asset is understood as a real asset that underlies, guarantees, or determines the value of a financial instrument, whether in the form of derivative products, investment instruments, or digital assets (Khan, 2013). In the fatwa, DSN-MUI also recommended that the public exercise greater caution when conducting crypto transactions and encouraged the government to develop comprehensive regulations to protect the public interest.

Under Sharia economics and muamalah jurisprudence, the existence of underlying assets plays a fundamental role. First, it serves to eliminate the element of *gharar* by providing clear intrinsic value to a financial product (Al-Zuhayli, 1997). Instruments whose value depends solely on market speculation without the backing of real assets potentially contain *gharar fahisy*, which is prohibited (Mansoor, 2025). Second, underlying assets contribute to the realization of the principle of *hifzh al-mal* by protecting investors' assets from disproportionate risks of loss. Third, it clearly distinguishes between trading transactions and debt exchanges, because buying and selling in Islam requires the transfer of ownership of real assets (Ahmid & Ali, 2024). The existence of underlying assets also ensures that financial transactions are based on real sector activities (asset-backed), rather than merely monetary sector activities (money-backed) (Hasan, 2004). Examples can be found in common stocks backed by ownership of company assets (Karim, 2018), equity mutual funds backed by equity portfolios, and sukuk based on real project assets such as buildings or public infrastructure (Fatwa DSN-MUI Number 128/DSN-MUI/V/2019).

Based on the provisions of the DSN-MUI fatwa, it can be concluded that from a sharia perspective, the use of cryptocurrency, whether as currency, commodity, or digital asset, is essentially prohibited if it still contains elements of *gharar* and *qimar* or *maysir*. The high volatility of prices, which fluctuate extremely and even have the potential to reach zero value, is considered to cause significant harm to users and investors of crypto assets.

Cryptocurrency Law Establishment Realization of Maqashid Sharia

Maqashid sharia are universal and fundamental objectives that Islamic sharia law seeks to achieve in order to bring about benefits and prevent harm (Auda, 2008). The five basic objectives (*al-dharuriyyat al-khams*) that must be protected include religion (*din*), life (*nafs*), intellect (*aql*), lineage (*nasl*), and property (*mal*) (Harun et al., 2025). When viewed in terms of crypto assets, the two most relevant aspects of *dharuriyyat* are *hifzh al-mal* (protection of property)

from all forms of damage, uncertainty, exploitation, and injustice. Extreme price volatility, the potential for fraud, and the absence of underlying assets in many crypto assets pose a serious threat to the protection of property. *Hifzh al-'aql* (protection of intellect) emphasizes the importance of transparency, knowledge, and avoiding things that can mislead thinking. Excessive speculation similar to gambling (*qimar*) and technological complexity without adequate understanding can damage the function of reason (Mansoor, 2025).

In its fatwa, the MUI identified elements of *gharar fahisy* and the absence of underlying assets, which formed the basis of the DSN-MUI fatwa, demonstrating a strong commitment to the principle of *hifzh al-mal*, as seen in the prohibition or impermissibility of cryptocurrencies as currency, based on the existence of *gharar* (high uncertainty of value) and *dharar* (potential for significant loss) (MUI, 2021). The extreme form of *gharar fahisy* is: First, the absence of value of the object of the contract (*ma'qud 'alaih*). Prohibited cryptocurrencies (such as bitcoin) are not backed by real assets, so they have no fundamental value. Price volatility is entirely driven by market speculation. Doubt about the intrinsic value of this object of sale and purchase is a form of *gharar fahisy*, as prohibited in the hadith (Rusyd, 2000). Second, wild volatility, extreme and rapid price fluctuations, without stable corrections or regulations, create unmanageable risks of mass losses (*dharar 'am*). This clearly contradicts the principle of *hifzh al-mal*, which emphasizes stability and fairness in transactions. Extreme volatility is considered a threat to the stability of asset values and has the potential to trigger unfair losses for one of the parties. With strict requirements for valid commodities, which require the existence of underlying assets and clear benefits for tradable crypto commodities, this fatwa seeks to tie the value of digital assets to real-world values (Karim, 2018).

This effort aims to reduce pure speculation and create a more stable and transparent value base, which ultimately protects public assets from irrational market volatility. This approach does not immediately close the door to digital financial innovation, but opens it very carefully and selectively to ensure that such innovation does not sacrifice the basic principles of asset protection. The MUI also identifies *maysir* (gambling) as pure speculative motivation through analysis of the motives and results of transactions, not just the form of the transaction, but two things, namely: First, zero-sum speculation, crypto transactions without underlying assets are often purely exchange rate games (Qadri et al., 2023). Profits are derived from the losses of others due to speculative price changes. This activity resembles gambling because profits are not generated from value-added or productive business risks, but rather from luck (Karim, 2018).

Such speculation can be intoxicating and distract the mind from its primary function of rational and productive thinking. In the context of crypto assets, *maysir* is identified from investment motives dominated by the hope of profiting from pure price fluctuations (zero-sum gain). Second, *sadd al-dzariah* (prevention of harm), DSN-MUI uses the principle of prevention. Although cryptocurrency trading is not traditional gambling, the potential for excessive uncertainty (*gharar fahisy*) and dominant speculative motivation make it a means (*dzariah*) leading to gambling (*qimar*) and significant social harm. Therefore, *sadd al-dzariah* is applied to prevent greater harm from occurring (Mansoor, 2025).

The MUI's decision to prohibit cryptocurrencies that do not have underlying assets is a direct manifestation of efforts to realize *maqashid sharia*, particularly *hifzh al-mal* (Ramadhan & Sukti, 2025). The consequences of the MUI's ban on

crypto can prevent assets that have no real value from damaging people's wealth through wild volatility and fraud. Meanwhile, from the perspective of *ḥifz al-'aql*, it can protect the mind from speculative urges that resemble gambling addiction (*qimar*), encouraging rational rather than emotional investment decisions. The MUI's prohibition of cryptocurrency could open the door for Sharia-compliant cryptocurrency (asset-backed tokens) as an effort to attract the benefits of technological innovation, as long as the risks of *gharar* and *maysir* can be eliminated.

Thus, the MUI fatwa uses *gharar fahisy* and *maysir* as fiqh indicators to achieve the higher goal of Islamic law, which is to protect society from unfair financial losses. Although not explicitly mentioned in the fatwa, the emphasis on the underlying asset requirements and clear benefits creates a need for education for the public. Encouraging the public to understand the basis of an asset before trading is a form of protecting the mind from ignorance (Zahrah, 1997). These educational efforts are in line with study findings that highlight the importance of digital and sharia literacy in the development of healthy cryptocurrencies (Hasanudin et al., 2025).

With the issuance of the DSN-MUI fatwa, which provides clear legal guidance on cryptocurrency, it is important to consider and design how to implement it in the face of several challenges ahead. The operational criteria for Sharia-compliant cryptocurrency have not been detailed in the fatwa, such as the criteria for underlying assets and clear benefits, as well as which institutions are authorized to verify and audit them. The development of technical standards and Sharia governance for these digital assets is a joint task for authorities such as DSN-MUI and Bappebti (Bappebti, 2024). In other words, specific regulations and innovations are needed so that fatwas do not remain mere discourse. Technical regulations from the government are needed to support the creation of a sharia-compliant crypto ecosystem, including asset-backed tokens and smart contracts that comply with sharia principles. Collaboration between scholars, regulators, and sharia fintech industry players is greatly needed (Sadaryun, 2024).

Conclusion

DSN-MUI Fatwa Number 140/2021 accurately identifies *gharar fahisy*, which stems from the absence of underlying assets, and *maysir*, which stems from pure speculation, as the basis for prohibiting crypto assets traded as general commodities. This legal ruling is an implementation and reflection of the commitment to realize the objectives of Sharia law, particularly to protect property and intellect (*ḥifz al-mal* and *ḥifz al-'aql*). The prohibition of crypto as a currency and its invalidity as a general commodity is a preventive measure against *mudharat (sadd al-dzariah)*. The flexibility of the fatwa that allows Sharia-compliant crypto with underlying assets shows a balance between prudence in fiqh and is a form of dynamic adaptation to innovation and technological advances. To strengthen the implementation of the fatwa, it is recommended that: The DSN-MUI and relevant authorities immediately develop detailed technical guidelines and sharia standards regarding the criteria for underlying assets, audit mechanisms, and governance for crypto assets that are free from elements of *gharar* and *maysir*. For the government/regulators (OJK, Bappebti) to align digital finance regulations with this fatwa and encourage Sharia-compliant crypto-fintech innovation, including through strict supervision. For academics, further research is

needed to develop a quantitative gharar model that integrates blockchain and smart contract risks to scientifically validate the criteria for *gharar fahisy*.

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