



# Cryptocurrency as an Islamic Financial Entity: The *Nahdliyin's Istinbath Fiqh* Approach

Suhirman<sup>1</sup>

<sup>1</sup>Fakultas Ekonomi dan Bisnis Islam UIN Walisongo, Indonesia  
suhirman@walisongo.ac.id

## Abstract

**Purpose** - This research aims to reveal and explain the possibility of cryptocurrency becoming an Islamic financial entity from the perspective of the *istinbath al-ahkam (fiqh)* method used by the *Nahdliyin* community at the Nahdlatul Ulama Lembaga Bahtsul Masail (LBM).

**Method** - This research is qualitative research designed descriptively and analytically. The data used are primary and secondary. Primary data is in the form of decisions of Mukhtamar, National Deliberations, and Large Conferences related to the method of *istinbath al-ahkam (fiqh)* carried out by the Pengurus Besar Nahdlatul Ulama (Nahdlatul Ulama Executive Board). Secondary data is data on legal issues extracted from the results of scientific thinking of NU figures scattered in various media and scientific work portals. Data analysis is done qualitatively and presented as content that explains the focus of the problem.

**Result** - This research shows that the *Nahdliyin's istinbath al-ahkam (fiqh)* method model makes it very possible to punish cryptocurrency as a financial entity that is agreed to be halal in accordance with Sharia principles.

**Implication** - Cryptocurrency experts, activists, and practitioners need to conduct massive socialization related to the characteristics of cryptocurrencies in terms of technology and as digital assets so that religious experts can understand cryptocurrencies comprehensively so that they can decide the law of cryptocurrencies as financial entities more objectively and fairly.

**Originality** - This research focuses on analyzing the possibility that cryptocurrency can be agreed upon as a halal financial entity by correlating the characteristics of the *Nahdliyin istinbath al-ahkam (fiqh)* method with those of cryptocurrency.

**Keywords:** nahdliyin, *istinbath al-ahkam*, cryptocurrency, financial entity, Islamic.



## Introduction

Cryptocurrency is emerging as a new phenomenon in the global financial discourse. Cryptocurrencies such as Bitcoin, Ethereum, and hundreds of other types of Cryptocurrencies have drawn responses from various circles since their emergence. Attention arises not only from economic, business and technology actors but also from other circles of society, including experts in Islamic law (*fiqh*). *Cryptocurrency* is a digital currency that utilizes the sophistication of blockchain technology as a security guarantor and provides transparency in transactions. As a financial entity in digital form, cryptocurrency offers various opportunities and challenges at once, both in economic and business aspects and in the perspective of Islamic law or *fiqh*, all of which need to be explored further.

The use of cryptocurrency as a transaction medium and as an asset globally has been widely practised. Using cryptocurrency as a medium of exchange in Indonesia is a problem because no regulations legalize its use (Musyafah, 2020). The policy towards cryptocurrency as a medium of exchange is vague (Usman et al., 2022). However, in some countries, such as El Salvador, cryptocurrency has been recognized as an official state currency. El Salvador is the only country today that legally recognizes Bitcoin as legal tender. According to the records of Crypto News, at least 111 countries recognize Bitcoin and Crypto legally and legally. Among these 111 countries, there are significant and developed countries, such as the United States, Canada, Australia, Belgium, United Kingdom, Switzerland, Germany, Italy, Japan, and other large countries that are pretty friendly to Crypto, especially Bitcoin (Crypto news, 2023).

Cryptocurrency, when viewed from various aspects, offers various benefits on the one hand and mafsadat on the other. In terms of benefits, using cryptocurrencies can speed up the transaction process at a lower cost and provide financial access to those who do not have access to traditional banking services (Radanliev, 2024). On the other hand, cryptocurrencies are potentially subject to high price volatility and security risks due to the open nature of the market. Cryptocurrencies also have the potential to be misused for illegal



purposes and activities (Arsi et al., 2021). In this context, it is essential to understand how cryptocurrency as a financial entity is viewed from a *fiqh* perspective. Financial entities from the perspective of *fiqh* cannot be separated from the analysis of the concepts of *riba*, *gharar*, *dharar*, *maysir*, and other prohibited principles in Islam.

The paradox contained in cryptocurrency has led to various responses from *fiqh* experts. Some of the responses that emerged were personal, and some were *jama'i* through fatwa institutions. Kusuma, et al. concluded that buying and selling transactions using Bitcoin-type cryptocurrencies are valid according to Islamic law (Kusuma et al., 2020). The decision of the *ijtima' ulama* of the Majelis Ulama Indonesia (MUI) came to another conclusion, explicitly forbidding cryptocurrencies as currencies and commodities or assets (MUI, 2021). However, under specific criteria, cryptocurrency can be used when it has a fundamental underlying, such as OneGram (Sholeh et al., 2022). In line with MUI, the Majelis Tarjih Muhammadiyah (Tarjih Council of Muhammadiyah) also decided that cryptocurrency is *haram*, both as a medium of exchange and as a commodity (Ilham, 2022).

Another institution that thoughtfully examines cryptocurrency from a *fiqh* perspective is the Nahdlatul Ulama (NU) Lembaga Bahtsul Masail (LBM). LBM thoughtfully discusses the issue of cryptocurrency from a *fiqh* perspective because this is included in the realm of *masail al-fiqhiyah*. Where in the NU institution, LBM is a scientific forum under the coordination of the NU *Syuriah* (legislative) institution, which has the main function of discussing and deciding Islamic laws relating to *masail al-fiqhiyah*, matters of monotheism and issues of *tasawuf* or *tarekat* (Mahfudz, 2011). In addition, NU, through the LBM, has an "interest" in this matter because of the large number of followers of this organization who need legal guidance on cryptocurrency.

In the *fiqh* tradition, NU consistently adheres to the opinions (*qaul*) of *madzhab* scholars (mainly the *Shafi'i madzhab*) contained in the *turats*. Contemporary issues that arise are approached by referring to the opinions of previous scholars through *qauliy* and *istinbath jama'im* methods (PBNU, 2011). Social, economic, political, and cultural factors are also considered when



formulating the law. No less important, legal analysis is also carried out as an inseparable series in drawing legal conclusions. This legal analysis is conducted to further explore the impact of *bahtsul masail* on the case under study. After that, then consider the background and impact in various fields while considering Islamic law and formal juridical law, such as legal status (*al-ahkam al-khamsah*), the basis of the teachings / *ahl al-sunnah wa al-jama'ah*, and positive law (*al-qanun al-wadh'i*) (PBNU, 2011).

This method and legal process is the *istinbath al-ahkam* method agreed upon by the 31st Nadlatul Ulama Congress in 2004 at the Asrama Haji Solo (PBNU, 2011). However, despite using the same methodology within NU itself, it is not uncommon for differences of opinion to occur in the same *fiqh* case, as in cryptocurrency law. Some Nahdliyin, through *bahtsul masail*, ruled cryptocurrency as a haram entity, while others ruled it halal. This is what makes it interesting to study the *fiqh* thinking of the Nahdliyin, such as in the context of the possibility of cryptocurrency as a final financial entity, without debating its law.

Cryptocurrency is still a debatable phenomenon in the social and economic context. According to Radanliev's records, there are currently around 22,250 cryptocurrencies in circulation. Therefore, he predicts, looking at the increasingly integrated phenomenon of Web3, assets, money, and markets, it could be that for the next ten years, transactions made by the community will no longer entirely use fiat money, and cryptocurrency will be one part of the transaction media (Radanliev, 2024). Indonesia, a country with the largest Muslim population in the world, has great potential to adopt new financial technologies such as cryptocurrency. However, this adoption must be done with due regard to the Islamic values and principles held by most of its population. Therefore, the views of *Fiqh Nahdliyin* can play a crucial role in shaping Indonesians' attitudes towards cryptocurrencies.

Seeing this phenomenon and the characteristics of the method of *istinbath al-ahkam* of the Nahdliyin, it is possible that there will be *ijma'* on the law of cryptocurrency among Nahdliyin. NU, as the most prominent religious organization in Indonesia, has distinctive and profound views on various



contemporary issues, including cryptocurrency. Therefore, through qualitative research of multiple data sources, this study will analyze how to compromise the *fiqh* opinions of the *Nahdliyin* on cryptocurrency as an agreed financial entity. In addition, this research will also explore various case studies and fatwas that have been issued by other religious organizations related to the use of cryptocurrencies. These case studies will provide practical insights into how *Nahdliyin fiqh principles* are applied in real contexts. For example, how about the use of cryptocurrency as a medium of exchange in daily commerce or as an asset to be traded and invested in?

In conclusion, this research is expected to significantly contribute to understanding the opportunities and challenges of cryptocurrency as a financial entity from the perspective of *Nahdliyin fiqh*. Thus, it can provide clear guidance for Muslims, especially in Indonesia, in utilizing this new financial technology in accordance with Sharia principles. This research is also expected to provide insights for policymakers in formulating regulations that support innovation while maintaining the integrity and values of Islamic finance.

## Literature Review

Cryptocurrency is a set of digital currencies that first appeared in 2009. Since its emergence, cryptocurrency has been traded in the form of tokens or digital coins on a distributed and decentralized ledger (Radanliev, 2024). Since its emergence, cryptocurrency has become a new economic entity whose price has risen dramatically even though, at the same time, the price has fluctuated. Such a phenomenon then attracts the attention of various groups to explore the risks and benefits, as well as the aspect of its legal status, both from the perspective of positive law (regulation) and Islamic law (*fiqh*). Various discussions and research were conducted personally by academics and in groups through fatwa institutions to explore the law from an Islamic perspective.

Cumming, et al. reveal the positives and negatives of cryptocurrencies. On the positive side, cryptocurrencies supported by blockchain technology will revolutionize in terms of reducing mistrust and reducing transaction costs



between venture capitalists and businesses. On the downside, cryptocurrencies are vulnerable to being used for fraud due to the absence of regulation to guarantee its legality (Cumming et al., 2019). In Indonesia, it is difficult for cryptocurrencies to be used as a means of payment because there are no regulations governing their use as a medium of exchange. However, in certain transactions, cryptocurrencies have been widely used with peer-to-peer mechanisms without third-party intermediaries (Dwicaksana & Pujiyono, 2020).

The cryptocurrency business is no different from investing in other foreign currencies (forex); it has the profit potential and, at the same time, has risks. Regarding financial returns, cryptocurrency investments have greater returns than other foreign currencies or stocks. Meanwhile, regarding risk, cryptocurrency investment has a high potential loss due to its volatility clustering or heteroscedasticity (Setiawan, 2020). According to Selçuk and Kaya, the characteristics of cryptocurrencies must be analyzed one by one because each cryptocurrency has different properties and characteristics. Therefore, the law of using cryptocurrencies according to Islamic law (*fiqh*) cannot be generalized. There are haram types of cryptocurrency, and certain types are halal and legal to trade according to Islamic *fiqh* (Selçuk & Kaya, 2021).

Regarding the type of cryptocurrency that is halal according to Islamic law, Asrorun Niam Sholeh et al. revealed that cryptocurrencies that have tangible assets as their support, such as OneGram, are *halal*, otherwise they are *haram* (Sholeh et al., 2022). In addition to its halal legal status, cryptocurrency as a financial entity also requires regulation as a guarantor of legal certainty. The existence of binding legal certainty will make the cryptocurrency ecosystem more orderly so that it can respond to the increasingly widespread use of cryptocurrencies as it is today (Tauda et al., 2023).

## Methods

The research method used is qualitative with a descriptive-analytical design. Descriptive-analytical is a step to describe factually, accurately, and



systematically the facts about the situation or object of research (Sukmadinata, 2008). Descriptive-analytical in this context describes and illustrates all types of qualitative data, both primary and secondary, used in this research. The qualitative data in question are thoughts related to the nahdliyin *istinbath fiqh* method contained in various kinds of literature. Qualitative data is taken from various sources: primary sources (Bungin, 2005) are obtained from the Decisions of the Congress, National Conference (Munas), and Great Conference (Konbes) of Nadlatul Ulama (NU). While secondary sources (Bungin, 2005) are obtained through a review of *turats* (Classic / Yellow Books); and the thoughts of NU figures related to the method of *istinbath fiqh* of the nahdliyin, both contained in works in the form of books, scientific journals, and online media that are considered authoritative.

Data analysis techniques are carried out qualitatively by organizing data, breaking it down into units, synthesizing, compiling into patterns, selecting which ones are important and which ones will be studied, and making conclusions (Sugiyono, 2016) which are then presented as content. From the data analysis, the *characteristics* of the nahdliyin are obtained through the *istinbath* method used. Based on these findings, a conclusion is found that explains the possibility that cryptocurrency can become a financial entity whose halalness is agreed upon, where currently its halalness is still disputed, especially by the nahdliyin. On the other hand, the MUI fatwa institution, the Lembaga Tarjih Muhammadiyah, agreed to punish the *haram* of cryptocurrency, as well as the majority of fatwa institutions of Islamic religious organizations and scholars forbid it (Selçuk & Kaya, 2021).

## Results and Discussion

### *Istinbath Fiqh* Methods of the Nahdliyin

The standardized method of *istinbath fiqh*(law) of the Nahdliyin is the method that has been formulated and agreed upon through the NU Congress, National Conference, or Great Conference. The formulated method then becomes a guide in resolving legal issues, especially by the NU Lembaga Bahtsul Masail (LBM), from the level of the Majelis Wakil Cabang (MWC) /



Deputy Branch Assembly to the level of the Pengurus Besar Nahdlatul Ulama (PBNU). All new issues that require legal status are resolved through this method, including cryptocurrency law.

The *istinbath* method is technically-procedurally carried out through two mechanisms, the *qauliy* (textual) method and the *istinbath jama'i* (manhaji) method to one of the four *madzhab* (*al-madzahib al-arba'ah*): Hanafi, Maliki, Shafi'i, and Hanbali *Madzhabs* (PBNU, 2011). The *qauliy* method, according to the Decision of the NU National Conference of Alim Ulama in Bandar Lampung in 1992, is carried out by following the existing opinions within the scope of one of the four *madzhabs* (PBNU, 2011). The *qauliy* method can be said to be an effort to determine legal status by taking the opinions of scholars in *kutub al-mu'tabarah* (Ahyani, 2021). The *qauliy* method is implemented through one of two predetermined mechanisms.

Firstly, if the answer to a problem is found in *aqaul* (the opinion of the founder of a *madzhab*, such as Imam Shafi'i) or a *wajah* (the opinion of one of the *madzhab's* imams, such as Imam Nawawi), then that will be the legal conclusion (PBNU, 2011). The answer will not be sought from other *shar'i* arguments (Suhirman, 2024). Secondly, if in one legal case there is a *qaul* / *face* in *'ibarat kitab* but in this case there is more than one *qaul* / *face* then one of two methods will be adopted: the *taqrir jama'i* method and the *ilhaq al-masail bi nazha'iriha* method (PBNU, 2011).

The *taqrir jama'i* method, in the Decision of the *Bahtul Masail al-Diniyyah al-Maudhu'iyah* Commission of the National Conference of Alim Ulama and Konbes NU at the Sukolilo Surabaya Hajj Dormitory in 2006, is a collective effort to determine the choice of one among several opinions. The procedure for selecting opinions from several *qaul* / *faces* is done by identifying the opinions of scholars on the issues discussed. Then, choose the most superior opinion with the following criteria:

1. The opinion that has the most substantial evidence;
2. The opinion that has the most benefit (*ashlah*);
3. The opinion supported by the majority of scholars (*jumhur*);





4. The opinion of the most pious scholar; and
5. The opinion of the most *wara'* scholar.

In addition to the above procedures, in choosing *qaul/wajah*, one must also pay attention to the provisions of each *madzhab* for the opinion that is favored from among them, namely the Hanafi *Madzhab*, Maliki *Madzhab*, Shafi'i *Madzhab*, and Hanbali *Madzhab*. Especially for the Shafi'i *Madzhab*, the selection of *qaul/wajah* has its own procedures in *bahtsul masail*. This procedure is in accordance with the Decision of the 1st NU Congress in 1926, which was then reaffirmed in the Decision of the NU National Conference of Alim Ulama in Bandar Lampung in 1992 and the Decision of the *Bahtsul Masail al-Diniyyah al-Maudhu'iyah* Commission of the National Conference of Alim Ulama and NU Grand Conference at the Sukolilo Hajj Dormitory in Surabaya in 2006 (PBNU, 2011).

Prosedur pengambilan *qaul/wajah* terhadap adanya perbedaan pendapat dalam suatu permasalahan, dalam *Madzhab* Syafi'i, dilakukan dengan menjadikan pendapat yang disepakati oleh Syaikhani (Al-Nawawi dan Al-Rafi'i) sebagai rujukan pertama dan utama jika sesuai dengan konteks permasalahan yang sedang dibahas. Apabila tidak ditemukan kesepakatan di antara keduanya maka yang menjadi pegangan pertama adalah pendapat Imam Nawawi saja, kemudian pendapat Imam Rafi'i saja, baru kemudian pendapat yang didukung oleh mayoritas ulama, pendapat ulama yang terpandai, dan pendapat ulama yang paling *wara'* (PBNU, 2011).

The procedure for taking *qaul / face* as described above, in the Decision of the *Bahtsul Masail al-Diniyyah al-Maudhu'iyah* Commission of the National Conference of Alim Ulama and the NU Grand Conference at the Sukolilo Surabaya Hajj Dormitory in 2006 was further expanded by not detailing the opinions of scholars after Syaikhani's opinion. In the decision of this Congress, it was stated that if the opinion of Syaikhani is not in accordance with the context, then what is used as a guide is the opinion of other scholars in the Shafi'i Madhhab. Without having to specify the criteria of scholars as before, but using the keyword "scholars who are considered to be clever."



The expertise of the scholars in question can be seen from the testimony of other scholars who were contemporaries with him or after him (his students). It can also be assessed through the works he produced from the aspects of methodology and the thoughts contained therein (PBNU, 2011). The search and study of the works of these scholars is certainly carried out by kiai and NU intellectuals who have been recognized for their knowledge. Within NU, there are many human resources that meet these criteria. Such human resources continue to emerge from generation to generation, especially those born from pesantren affiliated with NU (Suhirman, 2024).

While *ilhaq al-masail bi nazhairiha* is used when the problem is not found in its law through *taqrir jama'i*, as described above, the problem is resolved through *ilhaq al-masail bi nazhairiha jama'i*. *Ilhaq* is an effort to equate the law of a case that is being sought with a case that has legal provisions in the book. *Ilhaq* is done by paying attention to *mulhaq bih* (something that already has legal provisions in the book), *mulhaq alaihi* (the case that will be found equivalent in the book or a case that has no legal provisions in the book), and *wajh al-ilhaq* (the existence of similar factors between *mulhaq bih* and *mulhaq ilaihi*) carried out by *mulhiq* (the subject who performs *ilhaq*) who is an expert (PBNU, 2011).

The *ilhaq* procedure is carried out through a correct understanding of a case (*tashawwur al-masalah*) that will be *mulhaq*. Then look for its equivalent in the book to be *ilhaq (mulhaq bih)* on the basis of the similarities between the two (*wajh al-ilhaq*). After both are done, the *mulhaq* law is determined like the *mulhaq bih* law (PBNU, 2011). According to Moqsith Ghazali, this *ilhaq* method was raised in *bahtsul masail* supposedly to avoid doing *qiyas*. *Qiyas*, according to NU scholars, is the domain of *mujtahid* scholars. While they feel they have not met the level of *mujtahid* (Ghazali, 2015).

The *ilhaq* method, continued Moqsith, actually has a weakness from the aspect of the legal basis on which it relies (*mulhaq bih*). Because in *ilhaq*, what becomes *mulhaq bih* is *aqwal al-ulama*. *Aqwal al-ulama* itself is the result of *ijtihad*, which is closely related to space and time. Therefore, *mulhaq bih* in *ilhaq* is dynamic and changing (*mutaghayyirat*). Here is the basis of the problem: *mutaghayyirat* is used as a basis for responding to *fiqh* issues which



characteristically continue to develop according to the context of the times (Ghazali, 2015).

*Ilhaq*, operationally-technically, is the same as the *qiyas* method. The difference between the two is in the legal basis on which it relies (*mahkum bih*). In *ilhaq*, as explained earlier, the *mulhaq bih* is characterized by *mutaghayyirat*, while *qiyas*, *maqis 'alaihi* (*ashl* law) is *tsawabit* (fixed) because it comes from the text (Alqur'an and Hadith) and *ijma'* (al-Ghazali, t.t.). The ruling of something that has been mentioned textually (*qath'i al-dalalah*) in the *nash* and *ijma'*s *tsawabit*, such as the prohibition of alcohol which has been explained in the Qur'an.

The second *istinbath* method that is taken when it is not found *qauliy* is the *istinbath jama'i* method. The *istinbath jama'i* method, according to the Decision of the *Bahtsul Masail al-Diniyyah al-Maudhu'iyah* Commission of the National Conference of Alim Ulama and Grand Conference NU at the Sukolilo Surabaya Hajj Dormitory in 2006, is a collective effort to extract the *shara'i* law from its arguments using *qawa'id ushuliyah*. *Istinbath jama'i*, in its implementation, is carried out using the *manhaji* method, namely by using the methodology commonly used by *madzhab* scholars in order to explore the law directly from its main sources, the Qur'an, hadith, and other *shar'i* arguments (PBNU, 2011). In the tradition of *istinbath al-ahkam bahtsul masail*, the *manhaji* method is carried out after the case to be determined does not have a legal equivalent in the *'ibarah kutub al-mu'tabarah* through the *qauliy* method.

The *manhaji* method, in practice, is carried out collectively by the *mubahitsin*. Textually, the *manhajimethod* is carried out through three methods, *bayani*, *qiyasi*, and *istishlahi/maqasidi*. The *Bayani* method is a way of *istinbath al-ahkam* that relies on the rules of *lughawiyah* or the meaning of *lafaz*. This method explains how to understand a *nash*, both *nash* al-Qur'an and hadith. The technical use of the *bayani* method to understand the *nashis* through various approaches, which include (1) the meaning of the *lafaz* in accordance with its form, namely *'am*, *khas*, *muthlaq*, *muqayad*, *amr*, *nahi*, and *musytarak lafaz*; (2) the meaning of the *lafaz* in accordance with its meaning, namely *haqiqi* and *majaz*; (3) analysis of meaning, namely *mahkum*, *mufassar*,



*nas and zhahir*, or *mutasyabbih, mujmal, musykil*, and *khafi*; and (4) analysis of the *dalalah* of a *lafaz* on meaning (Zaydan, 1987). The *bayani* method, in the discourse of *usul fiqh*, is also referred to as *ushuliyah* rules which are tools for understanding the sources of Islamic law. According to Nafis, the *bayani* method is used in *istinbath* only on sources of law that have been agreed upon by scholars, namely the Qur'an, Sunnah, Ijma', and Madzhab Shahabi / fatwa companions (Nafis, 2011).

The second methodological approach is the method of *qiyas*. *Qiyas* is a method used after the *bayani* method in extracting legal rulings (*istinbath*) from definitive texts (*nash qath'iy*) related to law. Linguistically, *qiyas* means estimation. As a technical term, *qiyas* is widely known to compare an unknown matter with another equivalent matter (al-Jurjani, 1421). Ulama has presented various definitions of *qiyas* from a terminological perspective. According to Imam al-Ghazali, *qiyas* can be simply defined as establishing the ruling for a case that has no explicit ruling based on the ruling of a case that has already been determined in the texts (Qur'an and/or hadith) due to the presence of a shared '*illah* (underlying reason) between the two, which serves as the basis for determining the ruling (al-Ghazali, tt.).

The final methodological approach is the *istislahi* method. The *istislahi* method is a mechanism for determining the ruling on an issue based on general evidence, as there is no specific evidence to serve as the legal basis for the matter in question. It is grounded in the principle of *maslahah* in line with the *maqasid al-shar'ah*, which includes three primary needs: *dlaruriyat, hajiyat*, and *tahsiniyat* (Al-Shathibi, 2004). The scope of the *istislahi* method covers *al-adilat al-ijmaliyyah*, which remains disputed among scholars of *usul al-fiqh*. This means that some of the general evidence is recognized as valid legal proof and used by certain scholars, while others do not acknowledge it, such as *al-maslahah al-mursalah, istihsan, istishab, sadd al-dhara'i*, and '*urf* (Nafis, 2011).

The arrangement of methods mentioned above is the approach used by the Nahdliyin community to resolve all legal matters they face, whether in the areas of *masail diniyah waqi'iyah, maudu'iyah*, or *qanuniyyah*. These three major themes represent the contemporary issues developing within society



that require legal certainty from a *fiqh* perspective. In *bahtsul masail*, these three major themes have their own specific commissions: the Commission of *Bahtsul Masail Diniyyah Waqi'iyah*, the Commission of *Bahtsul Masail Diniyyah Maudu'iyah*, and the Commission of *Bahtsul Masail Diniyyah Qanuniyyah* (Syakir, 2021). Thus far, through these three commissions, legal matters faced by the community in various fields have been addressed using both *qauliy* and *manhaji* approaches, as outlined above.

### ***Characteristics and Phenomena of Cryptocurrency***

Money has undergone various transformations throughout human history. Cryptocurrency is one of the newest forms of currency that is currently developing. Cryptocurrency can be defined as a virtual currency that is not tied to any central bank or Government authority. It can be used as a means of payment, just like standard currencies, without needing service fees (Tauda et al., 2023).

Cryptocurrency can function as a currency for payments, a commodity in the form of digital assets (crypto assets), or as securities. Cryptocurrency assets on a blockchain can be exchanged through user transfers within a network, allowing it to serve as a payment method. As a crypto asset, cryptocurrency can be redeemed to access various predetermined products or services. When used as crypto securities, cryptocurrency offers future returns through investments (Giudici et al., 2020). Due to its diverse functions, there is still no consensus on a standard definition of cryptocurrency. From a technological perspective, cryptocurrency uses blockchain technology in the form of a distributed ledger that operates on a peer-to-peer basis, consisting of sequential blocks stored within a computer network (Selçuk & Kaya, 2021).

Cryptocurrency is not only a digital asset for investment but also used to facilitate the trade of goods and services and is traded through online platforms. As a means of payment, cryptocurrency is more efficient because it is free from third-party fees. This absence of third-party fees is possible due to using a peer-to-peer distributed timestamp server. Additionally, this system automatically generates chronological proof of transactions through



computational evidence, preventing fraud (Nakamoto, 2008). However, cryptocurrency requires legal certainty through regulation to become a facilitator of entrepreneurship, which is a crucial part of economic growth. Such regulation is essential to ensure the secure use of cryptocurrency, as not all blockchain applications are positive. It is often used to fund illegal activities and other illicit markets (Cumming et al., 2019).

Regulatory certainty is increasingly needed because cryptocurrency is open, allowing it to be issued by individuals or anonymous groups independently without being tied to the authority of any country. This independent characteristic presents opportunities, leading to more than 7,000 types of cryptocurrencies circulating in the market, which can be traded or invested in online platforms (Selçuk & Kaya, 2021). For example, in 2020 and 2022, the value of cryptocurrency investments surged significantly. Although the cryptocurrency market experienced a drastic downturn at the end of 2022, investment in cryptocurrencies continues (Radanliev, 2024), with global cryptocurrency users now exceeding 100 million people (Tauda et al., 2023).

The unique characteristics of cryptocurrency since it was first launched by Satoshi Nakamoto (Bitcoin) in 2009 (Nakamoto, 2008), have raised concerns among many people regarding its use. Its existence has received mixed responses, both positive and negative. Those in favor view cryptocurrency as providing a fast and secure payment and transaction system, avoiding monopolies, and reducing the roles of banks and credit cards. On the other hand, critics argue that the nature of cryptocurrency is unstable, more akin to pure speculative assets than a new form of currency (Giudici et al., 2020). Despite these varying responses, many countries have officially legalized the use of cryptocurrency (Radanliev, 2024) or various economic transaction functions.

### ***Moderate Fiqh of Nahdliyin and the Probability of Cryptocurrency as an Islamic Financial Entity***

Abdurrahman Wahid (Gus Dur) described the principles adhered to by Nahdlatul Ulama (NU) in deriving Islamic legal rulings (*istinbath al-ahkam*).



First, NU views social matters as not being normative issues that are believed to be accurate. Second, religious obligations must be fulfilled by Muslims according to their capacity, considering various hindering factors. Third, if Muslims are only able to fulfill part of their obligations, then their responsibility is limited to what they are capable of. Fourth, the ability to carry out obligatory commands must consider both the positive and negative impacts. Fifth, it is inappropriate to perform an obligatory act if it results in negative consequences or harm to oneself or others. Sixth, when faced with multiple choices, a Muslim must choose the option that causes the least *harm* (Wahid, 1999).

In their implementation, the legal principles outlined above are applied by the Nahdliyin community, as discussed earlier, through at least three methods: *qauliy*, *ilhaqiy*, and *manhajiy* (Suhirman, 2024). The *qauliy* method allows for quoting the opinions of scholars as contained in authoritative texts, particularly those from the four primary schools of thought (*madzhab*). The *ilhaqiy* method involves drawing analogies between new issues that have not been discussed and similar issues that have already been addressed in the works of scholars from the four madzhab. The *manhajiy* method, on the other hand, involves conducting comprehensive research on the existing issues and then deciding based on the process of *istinbath al-ahkam* from the four madzhab to resolve legal matters that cannot be addressed through the *qauliy* and *ilhaqiy* methods (Saenong, 2021).

As outlined above, the method of *istinbath al-ahkam (fiqh)* used by the Nahdliyin community allows for greater flexibility and moderation in responding to contemporary issues, particularly in matters of *muamalah* (economics). This means that the paradigm of *istinbath al-ahkam (fiqh)* developed in *muamalah* is highly dynamic, not rigid, and this is how *fiqh* should be—flexible. According to Ma'ruf Amin, flexibility is the true nature of *fiqh* (مرونة الفقه الاسلامي), as it does not restrict or limit, thereby preventing the development of economic practices. *Fiqh* serves as a solution, providing a way to ensure that financial practices align with the principles of *shariah* while at the same time not neglecting fundamental economic principles (Amin, 2018).



Such flexibility can be seen from the principles that serve as the foundation for the development of *fiqh* itself. Among these principles, for example:

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال والنيات والعوائد

The meaning is: "*the change of law due to changes in time, place, circumstances, intentions, and customary practices.*"

الحكم يدور مع علته وجودا وعدمًا

The meaning is: "*The law revolves around its 'illah (underlying reason), existing or not based on the presence of the 'illah.*"

These principles demonstrate one of the characteristics of *fiqh*, which is flexible and contextual, in line with the dynamics and development of the times, especially in responding to new and emerging issues/المسائل الجديدة والمستجدة (Amin, 2018).

In the Nahdliyin tradition, these and other *fiqhiah* principles are widely used when conducting *istinbath al-ahkam* (deriving legal rulings). The use of these principles and the diverse opinions of scholars from various schools of thought make Nahdliyin *fiqh* highly flexible, often resulting in differing opinions among Nahdliyin on the same issues. In the case of cryptocurrency law, for example, the Nahdliyin community is divided into two groups: one group permits it (*halal*), while the other prohibits it (*haram*) (Sholeh et al., 2022). Even though they use the same *istinbath al-ahkam* methodology, differences arise due to varying interpretations of the '*illat* present in cryptocurrency, as cryptocurrency itself possesses diverse characteristics (Suhirman, 2024). Besides differences in interpreting the '*illat*, according to Irwan Masduki, there is a lack of comprehensive understanding among Nahdliyin *fiqh* experts regarding cryptocurrency, especially from the technological perspective, which tends to lead them to view it as an entity with *gharar*(excessive uncertainty) (I. Masduki, personal communication, September 12, 2022).





## Conclusion

The *istinbath al-ahkam (fiqh)* practiced by the Nahdliyin community, particularly within the Lembaga Bahtsul Masail (LBM), through the *qauliy*, *ilhaqiy*, and *manhajiy* methods, allows for greater flexibility and openness in addressing contemporary *fiqhiyah(muamalah)* phenomena. Unlike other *fatwa* institutions, the LBM can produce different legal rulings (*fiqh*) on the same issue, as seen in the case of cryptocurrency. The divergence in legal conclusions occurs partly due to the flexibility of *fiqh* embraced by the Nahdliyin due to the *istinbath* methods used. Moreover, cryptocurrency, as the subject of legal judgment, is a contemporary *fiqh* issue with diverse characteristics. Therefore, the intersection of a flexible and contextual *istinbath al-ahkam* method with the eclectic nature of cryptocurrency makes it highly possible for cryptocurrency to be recognized as an Islamic financial entity among the Nahdliyin. This probability becomes even more likely if there is a shift in perspective and a comprehensive understanding of cryptocurrency, particularly in terms of its technology and its potential to impact economic growth when considered as a financial entity.

## References

- Ahyani, H. (2021). *Metode Istimbath Hukum Bahstul Masail Nahdlatul Ulama*.
- al-Ghazali, A. H. M. bin M. (t.t.). *Al-Mustashfa min 'Ilm al-Ushul*. Dar al-Fikr.
- al-Jurjani, 'Ali bin Muhammad. (1421). *Kitab al-Ta'fifat*. al-Haramain.
- Al-Shatibi, A. I. (2004). *Al-Muwafaqat Fi Ushul al-Shari'ah*. Dar al-Kutub al-'Ilmiyah.
- Amin, M. (2018). *Makharij Fiqhiyyah: Penopang Arus Baru Ekonomi Indonesia*. Stif Syentra.
- Arsi, S., Khelifa, S., Ghabri, Y., & Mzoughi, H. (2021). *Cryptocurrencies: Key Risks and Challenges* (pp. 121-145). [https://doi.org/10.1142/0000000000000000\\_0007](https://doi.org/10.1142/0000000000000000_0007)



- Bungin, B. (2005). *Metodologi Penelitian Kuantitatif: Komunikasi, Ekonomi, dan Kebijakan Publik*. Kencana Prenadamedia Group.
- Cryptonews. (2023, October 5). Negara-negara yang Melarang dan Melegalkan Bitcoin di Tahun 2023. *Cryptonews Indonesia*. <https://id.cryptonews.com/guides/countries-in-which-bitcoin-is-banned-or-legal.htm>
- Cumming, D. J., Johan, S., & Pant, A. (2019). Regulation of the Crypto-Economy: Managing Risks, Challenges, and Regulatory Uncertainty. *Journal of Risk and Financial Management*, 12(3), Article 3. <https://doi.org/10.3390/jrfm12030126>
- Dwicaksana, H., & Pujiyono. (2020). Akibat Hukum Yang Ditimbulkan Mengenai Cryptocurrency Sebagai Alat Pembayaran Di Indonesia. *Jurnal Privat Law*, 8(2), Article 2. <https://doi.org/10.20961/privat.v8i2.48407>
- Ghazali, A. M. (2015, July 15). *Metode Bahtsul Masa'il NU*. <https://islamlib.com/lembaga/nahdlatululama/metode-bahtsul-masail-nu/>
- Giudici, G., Milne, A., & Vinogradov, D. (2020). Cryptocurrencies: Market Analysis and Perspectives. *Journal of Industrial and Business Economics*, 47(1), 1–18. <https://doi.org/10.1007/s40812-019-00138-6>
- Ilham. (2022). *Pandangan Majelis Tarjih Terkait Mata Uang Kripto*. Muhammadiyah. <https://muhammadiyah.or.id/2022/01/pandangan-majelis-tarjih-terkait-mata-uang-kripto/>
- Kusuma, T., Zainal, V., Subagja, I., Basalamah, S., & Suharto, S. (2020). The Perspective of Islamic Law on Cryptocurrency for Commodity Future Exchange in Indonesia. *Journal Of Islamic Studies And Culture*, 8(1), 2333–5912. <https://doi.org/10.15640/jisc.v8n1a1>
- Mahfudz, MA. S. (2011). Bahtsul Masail dan Istinbath Hukum NU: Sebuah Catatan Pendek. In *Ahkamul Fuqaha: Solusi Probelematika Aktual Hukum Islam, Keputusan Muktamar, Munas, dan Konbes Nahdlatul Ulama (1926-2010 M)*. Khalista.



- Masduki, I. (2022, September 12). *Hukum Cryptocurrency sebagai Aset dan Mata Uang* [Personal communication].
- MUI. (2021). *Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia VII tentang Masalah Fikih Kontemporer (Masail Fiqhiyyah Mu'ashirah)*. Ijtima' Ulama Komisi Fatwa Se-Indonesia VII.
- Musyafah, A. A. (2020). Transaksi Bitcoin Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia. *Diponegoro Private Law Review*, 7(1), 60–72.
- Nafis, M. C. (2011). *Teori Hukum Ekonomi Syariah*. UI-Press.
- Nakamoto, S. (2008). *Bitcoin: A Peer-to-Peer Electronic Cash System* (SSRN Scholarly Paper 3440802). <https://doi.org/10.2139/ssrn.3440802>
- PBNU, L. T. wa N. (LTN). (2011). *Ahkamul Fuqaha: Solusi Probelematika Aktual Hukum Islam, Keputusan Mukhtamar, Munas, dan Konbes Nahdlatul Ulama (1926-2010 M)*. Khalista.
- Radanliev, P. (2024). The rise and fall of cryptocurrencies: Defining the economic and social values of blockchain technologies, assessing the opportunities, and defining the financial and cybersecurity risks of the Metaverse. *Financial Innovation*, 10(1), 1. <https://doi.org/10.1186/s40854-023-00537-8>
- Saenong, F. F. (2021). Nahdlatul Ulama (NU): A Grassroots Movement Advocating Moderate Islam. In M. A. Upal & C. M. Cusack (Eds.), *Handbook of Islamic Sects and Movements* (pp. 129–150). Brill. <https://www.jstor.org/stable/10.1163/j.ctv1v7zbv8.11>
- Selçuk, M., & Kaya, S. (2021). A Critical Analysis of Cryptocurrencies from an Islamic Jurisprudence Perspective. *Turkish Journal of Islamic Economics*, 8, 137–152. <https://doi.org/10.26414/A130>
- Setiawan, E. (2020). Analisis Potensi dan Risiko Investasi Cryptocurrency di Indonesia. *Jurnal Manajemen Teknologi*, 19(2), 130–144. <https://doi.org/10.12695/jmt.2020.19.2.2>
- Sholeh, M. A. N., Faiz, M. F., & Anwar, M. M. (2022). A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama') on A Gold-Backed Cryptocurrency (OneGram).



- AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 17(2), Article 2.  
<https://doi.org/10.19105/al-lhkam.v17i2.6511>
- Sugiyono. (2016). *Metode Penelitian Kombinasi*. Alfabeta.
- Suhirman. (2024). *Hukum Bisnis Cryptocurrency di Indonesia: Perdebatan Pemikiran Kaum Sarungan*. Wawasan Ilmu.
- Sukmadinata, N. S. (2008). *Metode Penelitian Pendidikan* (2nd ed.). Remaja Rosda Karya.
- Syakir, M. (2021). *Beda Bahtsul Masail Waqi'iyah, Maudhu'iyah, dan Qonuniyah*. NU Online. <https://nu.or.id/nasional/beda-bahtsul-masail-waqi-iyah-maudhu-iyah-dan-qonuniyah-hChpD>
- Tauda, G. A., Omara, A., & Arnone, G. (2023). Cryptocurrency: Highlighting the Approach, Regulations, and Protection in Indonesia and European Union. *BESTUUR*, 11(1), Article 1. <https://doi.org/10.20961/bestuur.v11i1.67125>
- Usman, M., Suji'ah, U., & Nashirudin, M. (2022). Cryptocurrency In Islamic Law. *Jurnal Multidisipliner Bharasa*, 1(1), 45–56. <https://doi.org/10.56691/jurnalmultidisiplinerbharasa.v1i1.6>
- Wahid, A. (1999). *Islam, Negara, dan Demokrasi: Himpunan Percikan Perenungan Gus Dur*. Penerbit Erlangga.
- Zayda>n, A. al-Karim. (1987). *Al-Wajiz fi Us}u>l al-Fiqh*. Mu'assasah al-Risalah.