

**THE PRACTICE OF CASHING IN INVOICE IN BRONDONG
NUSANTARA FISH AUCTION CENTRE UNDER PERSPECTIVE OF
BURGERLIJK WETBOEK AND FATWA DSN MUI CONCERNING
HAWALAH**

THESIS

By:

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**SHARIA BUSINESS LAW DEPARTMENT
SHARIA FACULTY
MAULANA MALIK IBRAHIM
STATE ISLAMIC UNIVERSITY OF MALANG**

2015

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THESIS

Presented to

**Fulfillment of the requirements for the degree of
Bachelor of Islamic Law (S.HI) in Sharia Faculty
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**SHARIA BUSINESS LAW DEPARTMENT
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2015**

STATEMENT OF THE AUNTENTICITY

In the name of Allah (swt),

With conciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE PRACTICE OF CASHING IN INVOICE IN BRONDONG
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Malang, 16th of February 2015

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MOTTO

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

فَكِّرْ قَبْلَ أَنْ تَعْمَرَ

*Berpikirlah dahulu sebelum kamu berkemauan
(merencanakan).*

مَنْ صَبَرَ ظَفَرَ

Barang siapa sabar, beruntunglah ia.

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Malang, 16th of February 2015

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TRANSLITERATION GUIDANCE

Process of writing Arabic transliteration in this thesis used transliteration guidance based on decision of minister of religion and minister of education and culture Republic of Indonesia number 158 year 1987 and number 0543 b/U/1987 which can be explained like this:

A. Letter

ا	=	a	ز	=	z	ق	=	q
ب	=	b	س	=	s	ك	=	k
ت	=	t	ش	=	sy	ل	=	l
ث	=	ts	ص	=	sh	م	=	m
ج	=	j	ض	=	dl	ن	=	n
ح	=	h	ط	=	th	و	=	w
خ	=	kh	ظ	=	zh	ء	=	'
د	=	d	ع	=	'	ي	=	y
ذ	=	dz	غ	=	gh			
ر	=	r	ف	=	f			

B. Long Vowel

Vowel (a) long	=	â
Vowel (i) long	=	Î
Vowel (u) long	=	Û

C. Diftong Vowel

أُو	=	aw
أَي	=	Ay
أُو	=	Û
إَي	=	Î

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ABSTRACT

Muhammad Aufarul Mawahib, 11220101, *The Practice of Cashing in Invoice in Brondong Nusantara Fish Auction Centre under Perspective of Burgerlijk wetboek and Fatwa DSN MUI Concerning Hawalah*. Thesis, Sharia Business Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University of Malang, Supervisor, Iffaty Nasyi'ah, MH.

Key Word: Invoice, *Burgerlijk Wetboek*, Fatwa DSN MUI

In this era, the payment devices become so many kinds and vary, such as the payment device used in Brondong Nusantara fish auction centre, the supplier and the seller used invoice in doing the transaction as payment device at credit transaction in which on the next day, it will be cashed or invoice clearing. However, at cashing in invoice, the seller usually didn't give directly to the supplier, but changing the invoice to the third party. Because the seller felt that it was too long if he had to cash in the invoice to the supplier, so the seller could not turn over his money for trading, then the thing becoming the problem focus here is unclear concept, because it was not based on any kind of agreement however there was cutting of invoice value by the third party, so it was needed to be evaluated through *Burgerlijk Wetboek* as positive law prevailed in Indonesia and fatwa DSN MUI.

The purpose of the research was to look for the suitable concept with the practice in field so it could be suitable with prevailed regulation both positive and Islamic law. This research was Empiric Legal research. The approach used in this research was sociologic legal approach. It was studying about social phenomenon and the cause of unsuitability with prevailed rule.

From this research could be seen that the practice of cashing in invoice in Brondong Nusantara fish auction centre was inappropriate with the *cessie* concept in *Burgerlijk Wetboek* and *hawalah* in fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *Hawalah* and Number 58/DSN-MUI/V/2007 on *Hawalah bil ujroh*, where in reality or in its practice did not meet the qualification of authentic deed or in under hand deed in exchanging the invoice, unclear *ijab-qabul*, unwritten document, unwritten note in exchanging claim from the seller to the third party, and *muhil* or the supplier did not know this matter. So the practice of cashing in invoice so far was not suitable with the positive and Islamic law, however it could be suitable if the unfulfilled qualification could be met.

الخلاصة

محمد اوفار المواهب، 11220101، الممارسة في إذابة الفاتورة في مكان بيع السمك بالمزاد العلني (TPI) نوسانتارا باروندونج في المنظور *Burgerlijk Wetboek* وفتوى *DSN MUI* عن الحوالة. الرسالة، ناحية الحكم والشغل الشرعي، كلية الشريعة، الجامعة الاسلامية الحكومية مالك إبراهيم مالانج، المشرفة، عفتي نشيعة، م.هـ.

كلمة الاقفال: الفاتورة، *Burgerlijk Wetboek*، فتوى *DSN MUI*

اللة تثبيت الدفع اي العملة الرسمية في زمان الان كثيرة ومتنوعة. احدها كما وقع في مكان بيع السمك بالمزاد العلني (TPI) نوسانتارا باروندونج. هناك المزود والبائع يستعملان الفاتورة في معاملتها التي كانت تذاب في ايام المستقبلية. لكن في اذابتها البائع عادة لم يأت الى المزود اولا بل يذوبها الفريق الثالث لانه يشعر بالبطيء إذا يذوبها الى المزود مع انه يحتاج الى ان يدور رأس مال سعييه. وبعد المسئلة هي عدم الفكرة البينة في تلك الممارسة لان فيها لم تأسس بالعقد الخاص لكن يوجد قطع قدر الفاتورة للفريق الثالث. لذلك يحتاج الى ان يدارس با *Burgerlijk Wetboek* مثل قانون وضعي الذي يجري في اندونيسيا وفتوى *DSN MUI*.

المراد عن هذا الفحص هو ان يستعلم الفكرة المناسبة بالممارسة الت توجد في الميدان حتى تكون مناسبة بالتنظيم المستعمل اي قانون وضعي وحكم الشريعة.

كان هذا الفحص فحضا قانونيا تجريبيا. هذا الفحص يستعمل منهج القانوني الاجتماعي. يعني ان يفحص بادرة الاجتماعية التي كانت وسبب الذي تسبب غير مناسب بالقانون الذي كان.

يعرف من هذا الفحص ان الممارسة في إذابة الفاتورة في مكان بيع السمك بالمزاد العلني (TPI) نوسانتارا باروندونج غير مناسبة بفكرة *Cessie* في *Burgerlijk Wetboek* وحوالة وفتوى *DSN MUI* رقم 2000/IV/DSN-MUI/12 عن الحوالة ورقم 2007/IV/DSN-MUI/58. عن الحوالة بالاجرة. لان فيها غير تأدي الشرط عن وجود العقد المعتمد او العقد تحت اليد عن تحويل تلك الفاتورة. والايجاب والقبول غير ايضاح. والعقد غير مكتوب. ولم تعامل التقييد في تحويل الدين من البائع الى الفريق الثالث. والمحيل او المزود لم يعرفا العقد. فصارت الممارسة في إذابة الفاتورة التي تجري حتى الان غير مناسبة بالقانون الوضعي وحكم الشريعة. بل كانت هذه الممارسة مناسبة بالقانون الوضعي وحكم الشريعة اذا كانت الشروط التي غير مملوء كانت بتؤدي.

ABSTRAK

Muhammad AUFARUL MAWAHIB, 11220101, *Praktek Pencairan Faktur di Tempat Pelelangan Ikan Nusantara Brondong Perspektif Burgerlijk Wetboek dan Fatwa DSN MUI Mengenai Hawalah.* Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syari'ah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing, Iffaty Nasyi'ah, MH.

Kata Kunci: Faktur, *Burgerlijk Wetboek*, Fatwa DSN MUI

Alat bukti pembayaran di era seperti sekarang jenisnya semakin banyak dan beragam, seperti halnya alat bukti pembayaran yang digunakan di TPI Nusantara Brondong, dimana dalam prakteknya antara *supplier* dan penjual dalam transaksinya menggunakan faktur sebagai alat bukti pembayaran dalam transaksi tidak tunai yang kemudian hari akan dilakukan pembayaran atau pencairan faktur. Namun dalam pencairannya penjual biasanya tidak langsung kepada *supplier* terkait, melainkan menukarkan faktur tersebut kepada pihak ketiga. Karena penjual merasa terlalu lama jika harus mencairkan kepada *supplier*, sehingga penjual tidak bisa memutar modalnya untuk usaha, kemudian yang menjadi fokus masalah dalam praktek pencairan tersebut adalah konsepnya tidak jelas, karena tanpa didasari akad apapun namun terdapat pemotongan nilai faktur oleh pihak ketiga, sehingga perlu dikaji melalui *Burgerlijk Wetboek* selaku hukum positif yang berlaku di Indonesia dan melalui Fatwa DSN MUI.

Tujuan dari penelitian ini yaitu untuk mencari konsep yang sesuai dengan praktek yang terdapat di lapangan sehingga dapat sesuai dengan regulasi yang berlaku, baik hukum positif dan hukum Islam. Penelitian ini merupakan jenis penelitian *juridic empiris*, penelitian ini menggunakan pendekatan *Juridic sosiologis* yaitu menelaah gejala sosial yang ada dan sebab terjadinya ketidaksesuaian dengan peraturan yang ada.

Dari penelitian ini dapat diketahui bahwa praktek pencairan faktur di TPI Nusantara Brondong tidak sesuai dengan konsep *Cessie* dalam *Burgerlijk Wetboek* dan *Hawalah* dalam Fatwa DSN MUI No.12/DSN-MUI/IV/2000 tentang *Hawalah* dan No.58/DSN-MUI/V/2007 tentang *Hawalah bil ujroh*, dimana dalam prakteknya tidak memenuhi syarat adanya akta otentik atau akta dibawah tangan dalam pengalihan faktur tersebut, *ijab-qabul* tidak jelas, akad tidak tertulis, tidak dilakukan pencatatan dalam pengalihan piutang dari penjual ke pihak ketiga, dan pihak *muhil* atau *supplier* tidak mengetahui akad. Jadi praktek pencairan faktur selama ini tidak sesuai dengan hukum positif dan hukum Islam, namun bisa menjadi sesuai apabila syarat-syarat yang tidak terpenuhi bisa di laksanakan.