

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

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ABSTRACT

The purpose of the research was to look for the suitable concept with the practice in Brondong Nusantara fish auction centre, 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 sosiologic juridic 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* concept 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 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 invoice so far was not suitable with the positive and Islamic law, however it could be suitable if the unfulfilled qualification could be met.

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

In line with development era which required everything running quickly, selling transaction also developed with many kinds of transaction, including of payment item such as credit transaction enclosing payment receipt in the form of invoice. One example was a transaction that occurred between seller and supplier conducting selling fish transaction was given only a piece of paper called the memorandum to be cashed in the next day to the supplier according to agreement. But the real significance of the memorandum in this case was invoice, this was

because of the evidence which was given in a credit transaction was called by invoice, while memorandum was evidence of transactions in cash trading.

In reality, cash in invoice in Brondong fishermen, Lamongan regency, usually indirectly to mentioned supplier, but rather exchanged the invoice to rich people or among other fishermen who had money more than nominal that was mentioned in the invoice, which then was called by a third party. Because the seller felt too long if he had to cash in to the supplier, so that seller could not turn over his money for trading, where supplier would pay the invoice when the fish which he brought had been sold or delivered to the factory or according to agreement of both parties.

On the case of cashing in invoice in Brondong Nusantara Fish Auction Centre as the description above, the mechanism resembled the type of factoring transaction, namely an activity which the purchase and/or transfer; as well as the management of receivables or receivables short-term of trade transactions from within or abroad,¹ but there was a difference regarding the third party, which in factoring its third party was factoring company, while in cashing in invoice in Brondong Nusantara Fish Auction Centre the third party was an individual.

The mechanism of cashing in invoice in Brondong Nusantara Fish Auction Centre resembled factoring mechanism, that is seller handed over or granted his receivable to charge supplier by submitting an invoice previously published or issued by supplier as evidence of the accounts receivable to third party. That practice in practicing was to obtain money for the survival of his business, but in its process, as the custom in Brondong, Brondong sub-district, Lamongan regency in cashing in invoice by third party was not 100% of the invoice value, but only 90% until 98%, and the rest belonged to the third party, although didn't use *aqad* before. The third party then became the owner of the invoice and exchanged it to supplier based on the agreed time by seller and supplier before, and the third party was in the position of seller, so he got the money as stated in that invoice value.

The Compilation of Sharia Economic Law classified cash in invoice as *Hawalah* contract, that was the transfer of debt from *muhil ashil* to *muhal al-*

¹ Suhrawardi K. Libis, *Hukum Ekonomi Islam*, (Jakarta: Sinar Grafika, 2000). p. 106

'*alah*.² In article 366 (1) which read "The loan is transferred, is obliged to pay back a loan to the recipient *hawalah*", had been described that its debts was transferred to the person who was obliged to pay to the recipient *hawalah*, as explained in the Hadith Narrated by Al-Bukhori Muslim:³

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ تَعَالَى عَنْهُ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "مُطْلُ الْعِنْيِ ظُلْمٌ وَإِذَا اتَّبَعَ أَحَدُكُمْ عَلَى مَلِي فَلْيَتَّبِعْ " مُتَّفَقٌ عَلَيْهِ . وَ فِي رِوَايَةٍ لِأَحْمَدَ " وَ مَنْ أُ حِيلَ فَلْيَحْتَلْ "

Abu Hurairah r.a. said, Rasulullah Saw said , "A delay of debt payment for those who already can afford is an error. And whoever among you debts delivered to people who are already able to, then accept it. " (Hadith Narrated Bukhari and Muslim). According to Ahmad, "whoever (debt) moved, should he receive".

Hawalah in practice had two types if it was viewed from object of *Hawalah*, namely *hawalah al-haqq* (transfer of rights demands a debt/Bill) and *hawalah ad-dain* (transfer of the obligation to pay the debts), both of which had to be based on a *aqad tabarru'*. Beside both types, if it was viewed from *hawalah's* kind of contract, that was divided into two types, namely *Hawalah al-Muqayyadah* and *Hawalah al-Muthlaqah*. *Hawalah al-Muqayyadah* was transfer as changing from debt payment of *muhil* (first party) to *muhal*/second party (conditional transfer). While *Hawalah al-Muthlaqah* was transfer the debt which not defined to exchange compensation from payment the debt of *muhil* (first party) to *muhal*/second party (absolute transfer).⁴

In *Burgerlijk Wetboek* regarding cash in invoice, as happened in Brondong Nusantara fish auction centre classified under receivables or *cessie*, in article 613 (1) *Buergerlijk Wetboek* was stated that "Submission of receivables on behalf and other material disembodied, was done by making an authentic act or under hand

² PPHIMM, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Kencana, 2009), p.103

³ Ibnu Hajar Al-Asqalani, *Bulughul Maram min Adillatil Ahkam*, Translated by Harun Zen and Zenal Mutaqin, *Bulughul Maram pesan-pesan Nabi untuk perbaikan Akhlak, Ibadah, dan Kebahagiaan Dunia Akhirat*, (Bandung: Jabal, 2013), p.419

⁴ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2000), p. 222

act, with the rights on property was delegated to others”, then article 613 (2) *Burgerlijk Wetboek* stated that,” The submission like that there wasn’t effect, but after submission was informed to him, or in writing approved and acknowledged.”⁵ From both articles could be known that transfer of receivable had to be done with the consent of all parties, or in writing approved and recognized by the parties.

In transfer of receivables or *cessie* from the seller to the third party to charge to supplier, as the case of cashing in invoice in Brondong Nusantara Fish Auction Centre had to be based on the collaboration or agreement, which in article 1320 *Burgerlijk Wetboek* explained that, "For the legitimacy of an agreement needed four conditions, namely: (1) Agree those tying him; (2) Qualification to make an Alliance; (3) A certain thing; (4) A cause of halal.”⁶

In practice of cashing in invoice in Brondong Nusantara Fish Auction Centre if it was reviewed from *Burgerlijk Wetboek*, there were two forms of cooperation, i.e. between a seller with supplier about the credit purchase agreement, and also an agreement between seller and the third party about the transfer of receivables, whereas in that case the seller was still in agreement with the supplier.

Hawalah contract if it was viewed from fatwa DSN MUI, was stated in Fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *Hawalah*, and Fatwa DSN MUI Number 58/DSN-MUI/V/2007 on *Hawalah bil Ujroh*, which both of them explained about *Hawalah* contract based on actual situation, as like explained in that fatwa, that *Hawalah* contract had to be consent and approved by all parties.

In the fact, the researcher found some facts that were not in accordance with the Sharia and legislation in Indonesia, where in the case between a seller with supplier and third-party should be in transfer of receivable according to *Burgerlijk Wetboek* and *hawalah* contract according to Fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *Hawalah*, and Fatwa DSN MUI Number

⁵ *Burgerlijk Wetboek*, Translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang-Undang Hukum perdata dengan tambahan Undang-Undang Pokok Agraria dan Undang—Undang Perkawinan*, (Jakarta: Pradnya Paramita, 2004), p.179

⁶ *Burgerlijk Wetboek*, Translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.339

58/DSN-MUI/V/2007 on *Hawalah bil Ujroh* had to be done with consent of all parties, not arbitrarily. Then in that case researcher found out that there were still many people who doing transaction using invoice, but impatient to wait for cash in invoice by supplier, so, arise a case like this.

DISCUSSION

A. The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre

Based on observation and result of interview which conducted by the researcher, the following practice of cashing invoice in Brondong Nusantara fish auction centre, that was:

1. The seller sold fish to the Supplier with un cash transaction and agreed to be paid on the day agreed with the invoice provided by the supplier.
2. The Supplier bought fish from the seller by un cash transaction with provided an invoice to the seller for payment according to the agreement.
3. The seller required capital or funds to paid for fish purchased from the caterer, then cash in invoice to the third party because the related supplier invoice had not cashed in, without notice to the supplier and the seller lose his right to billed to the supplier.
4. The third party then cash in invoice owned by the seller, with pieces of Rp.150 / kg for small type of fish, or 2% -10% according to the agreement between the seller and the third party.
5. The third party then a position as the seller in the billing of receivable to the supplier in accordance day had been agreed between the seller with the supplier.
6. The Supplier received invoice billed by the third party on behalf of the seller, then match of the authenticity of the invoice with proof owned by the supplier or by contacting the seller in advance to ensure the authenticity of the invoice and pay for it if it matched.

B. Practice of cashing in invoice in Brondong Nusantara fish auction centre under perspective of *Burgerlijk Wetboek*

1. Must be based on the existence of a valid agreement, article 1320 *Burgerlijk Wetboek*
2. Create authentic deed or under hand deed, article 613 (1) *Burgerlijk Wetboek*
3. Notified to the party who has owed and approval,
4. Submit a letter of that receivable, after gotten approval of the debtor or in this case the related supplier

So, in this practice of cashing invoice doesn't accordance with the provision stated that the transfer of receivable must be accompanied by authentic deed or under hand deed.

C. Practice of cashing in invoice in Brondong Nusantara fish auction centre under perspective of Fatwa DSN MUI about *Hawalah*

1. In the practice of cashing invoice in Brondong Nusantara fish auction centre must accordance with pillars of *hawalah*, that are *muhil*, *muhal*, *muhal 'alaih*, *muhal bih*, *ijab-qabul*, and *sighat*
2. *Ijab-qabul* expressed,
3. The contract should be written,
4. Known and approved by all parties,
5. Position and obligations of the parties must expressly stated in the contract.
6. If the transaction *hawalah* has been done, so, the third party position change the seller or *muhal* position.

So, the researcher concluded that practice of cashing invoice in Brondong Nusantara fish auction centre which conduct during this time isn't accordance with fatwa DSN MUI No.12/DSN-MUI/IV/2000 of *hawalah* and No.58/DSN-MUI/V/2007 of *hawalah bil ujroh*, because there are some decision which loss or isn't accordance with that fatwa, that are: *ijab-qabul* isn't clearly, the contract isn't written in transfer of receivable from the seller to the third party, *muhil* or the supplier does not know the contract.

CONCLUSION

Based on observation and result of interview which conducted by the researcher, the following practice of cashing invoice in Brondong Nusantara fish auction centre, that was:

First, The seller sold fish to the Supplier with un cash transaction and agreed to be paid on the day agreed with the invoice provided by the supplier.

Second, The Supplier bought fish from the seller by un cash transaction with provided an invoice to the seller for payment according to the agreement.

Third, The seller required capital or funds to paid for fish purchased from the caterer, then cash in invoice to the third party because the related supplier invoice had not cashed in, without notice to the supplier and the seller lose his right to billed to the supplier.

Fourth, The third party then cash in invoice owned by the seller, with pieces of Rp.150 / kg for small type of fish, or 2% -10% according to the agreement between the seller and the third party.

Fifth, The third party then a position as the seller in the billing of receivable to the supplier in accordance day had been agreed between the seller with the supplier.

Sixth, The Supplier received invoice billed by the third party on behalf of the seller, then match of the authenticity of the invoice with proof owned by the supplier or by contacting the seller in advance to ensure the authenticity of the invoice and pay for it if it matched.

Then, The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre under Perspective of *Burgerlijk Wetboek* according *Burgerlijk Wetboek* the practice of cashing in invoice in Brondong Nusantara fish auction centre, that were:

First, must be based on the existence of a valid agreement, that was in accordance with requirement provision of the validity of agreement in article 1320 Civil Law, in this case which based on presence of cash in invoice in Brondong Nusantara fish auction centre was un cash transaction.

Second, create authentic deed or under hand deed, in accordance with article 613 (1) *Burgerlijk Wetboek*, a transfer of receivable must be made with an

authentic deed or under hand deed, So, the transfer of receivable between the seller and the third party must include authentic deed or under hand deed.

Third, notified to the party who has owed and approval, so in this case the supplier as the party who owed had to be known and approve the transfer of receivable which was made by the seller to the third party because it was still bound to an agreement with the seller.

Fourth, submit a letter of that receivable, after gotten approval of the debtor or in this case the related supplier, so the seller submit a letter of receivable or invoice to the third party as proof that the seller had transferred his receivable to the third party, and then the third party billed cash in that invoice to the related supplier accordance initial agreement between the seller and the supplier.

So, in this practice of cashing invoice doesn't accordance with the provision stated that the transfer of receivable must be accompanied by authentic deed or under hand deed.

While In the practice of cashing in invoice in Brondong Nusantara fish auction centre under perspective of Fatwa DSN MUI No.12/DSN-MUI/IV/2000 on *Hawalah* and No.58/DSN-MUI/V/2007 on *Hawalah bil Ujroh* was like this:

First, in the practice of cashing invoice in Brondong Nusantara fish auction centre must accordance with pillars of *hawalah*, that are *muhil*, *muhal*, *muhal 'alaih*, *muhal bih*, *ijab-qabul*, and *sighat*, in this case which be *muhil* is the supplier, *muhal* is the seller, *muhal 'alaih* is the third party, and *muhal bih* is receivable. But if accordance with fatwa No.12/DSN-MUI/IV/2000, so *muhil* or the supplier must have debt to *muhal 'alaih* or the third party because in that fatwa is *hawalah muqayyadah*, transfer as changing from debt payment of *muhil* (first party) to *muhal*/second party (conditional transfer). While according fatwa DSN MUI No.58/DSN-MUI/V/2007, so *muhil* isn't have debt to *muhal 'alaih*, because of *Hawalah mutlaqah*, that is *muhil* isn't have debt to *muhal 'alaih*.

Second, *ijab-qabul* expressed, in cash in invoice by the seller to the third party must be accompany with *ijab-qabul* which clear about transfer of receivable.

Third, the contract should be written, after *ijab-qabul* is expressed, so that contract must be written through correspondence, or use of modern means of communication

Fourth, known and approved by all parties, in practice of cashing invoice in Brondong Nusantara fish auction centre must be known by the supplier, the seller and the third party, to clarify and strengthen that the transfer of receivable have been approved by all parties.

Fifth, position and obligations of the parties must expressly stated in the contract. In written contract must be include of position and obligation all parties clearly.

Sixth, if the transaction *hawalah* has been done, so, the third party position change the seller or *muhal* position.

The practice of cashing in invoice in Brondong Nusantara fish auction centre in fatwa DSN MUI No.12/DSN-MUI/IV/2000 of *hawalah* and No.58/DSN-MUI/V/2007 of *hawalah bil ujroh*, so, the researcher concluded that practice of cashing in invoice in Brondong Nusantara fish auction centre which conduct during this time isn't accordance with fatwa DSN MUI No.12/DSN-MUI/IV/2000 of *hawalah* and No.58/DSN-MUI/V/2007 of *hawalah bil ujroh*, because there are some decision which loss or isn't accordance with that fatwa, that are: *ijab-qabul* isn't clearly, the contract isn't written in transfer of receivable from the seller to the third party, *muhil* or the supplier does not know the contract.

SUGGESTION

After conduct research on practice of cashing invoice in Brondong Nusantara fish auction centre, then the results of this research, researcher can provide some suggestions for improvement in the concept of transfer of receivable so in accordance with the existing rules and sharia.

1. For The Seller

- a. The seller in un cash transaction, should take into account the capital which he had, so undercapitalized doesn't occurred when invoice not yet cash in.
- b. If has already occurred the shortage of capital, should in practice of cashing invoice in the third party have to be done according to the agreement and the conditions is not forced in the transaction and also have to ask permission to related the supplier beforehand.

- c. In conduct transfer of receivable to the third party must provide authentic deed or under hand deed as proof.
2. For The Third Party
- a. The third party in cashing invoice to the seller should had been more careful, by asking authentic deed or under hand deed to the seller, to prevent fraud by the seller.
 - b. In a transaction with the seller, the third party should have to check the validity of invoice which is given to him, that that invoice is genuine and real.
 - c. Should be known by the related supplier, for the validity of the transaction
3. For The Supplier
- a. The supplier had to check the validity of the invoice that was brought by a third party that the original invoice, by contacting the related seller.
 - b. Should be more careful in cashing invoice, so it did not cause any harm to all parties.

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