

CHAPTER I

INTRODUCTION

A. Background of The Research

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*

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

al-'alaih.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 "مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا اتَّبَعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلْيُتْبِعْ " مُتَّفَقٌ عَلَيْهِ . وَ فِي رِوَايَةٍ لِأُحْمَدَ " 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-Muthlqah*. *Hawalah al-Muqayyadah* was transfer as changing from debt payment of *muhil* (first party) to *muhal*/second party (conditional transfer). While *Hawalah al-Muthlqah* was transfer the debt which not defined to exchange compensation

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

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) *Burgerlijk Wetboek* was stated that “Submission of receivables on behalf and other material disembodied, was done by making an authentic act or under hand 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

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

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

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 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.

Based on the description, researcher was interested in discussing these issues in the form of a thesis entitled, “*The Practice of Cashing In Invoice in*

Brondong Nusantara Fish Auction Centre Under Perspective of Burgerlijk Wetboek and Fatwa DSN MUI Concerning Hawalah”.

B. Problem of The Research

In this research, researcher formulated some formulation of problems, that were:

1. How is The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre?
2. How is The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of *Burgerlijk Wetboek*?
3. How is The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of Fatwa DSN MUI Concerning *Hawalah*?

C. Objective of The Research

Objectives of The Research of this research were:

1. To know The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre
2. To know The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of *Burgerlijk Wetboek*
3. To know The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of Fatwa DSN MUI Concerning *Hawalah*

D. Significance of The Research

Significance of the research from this research was:

1. For The Seller and The Supplier

Provide knowledge of the law in cashing in Invoice based on the existing regulations, and also provide insight in cashing in Invoice according to sharia rule.

2. For The Researcher

Become insight of how to cash in Invoice appropriate with existing rules.

E. Definition of The Key Term

The definition of the key term in the research with the title *The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of Burgerlijk Wetboek and Fatwa DSN MUI Concerning Hawalah*” They are:

1. Invoice

Invoice is payment receipt which is done in credit transaction. And also invoice is commercial document that itemizes a transaction between a buyer and a seller. An invoice will usually include the quantity of purchase, price of goods and/or services, date, parties involved, unique invoice number, and tax information. If goods or services are purchased on credit, the invoice will usually specify the terms of the deal, and provide information on the available methods of payment.

2. Brondong Nusantara Fish Auction Centre

Brondong Nusantara Fish Auction Centre (Tempat Pelelangan Ikan) is place to dock the fishermen's ships which is used by fisherman to sell their fish catch and the place of Brondong Nusantara Fish Auction Centre in Raya Brondong Street no.17 Brondong sub-district Lamongan Regency.

3. *Burgerlijk Wetboek*

Burgerlijk Wetboek is the provision that governs the rights and importance between individuals in society. In the tradition of the law in mainland Europe (civil law) known legal division into two i.e. public law and private law or civil law. In Anglo-Saxon systems (common law) is not known to the Division of this kind. What is meant by Indonesia civil law is civil law which apply to all areas in Indonesia.

4. Fatwa DSN MUI Concerning *Hawalah*

Fatwa is legal answer for a problem, phenomena, case which is asked.⁷ Then, Majelis Ulama' Indonesia (MUI) is non-governmental organization that embodies the clerics and scholars of Islam in Indonesia. They served to guide, nurture, and protect the Muslims of Indonesia. In this research, the researcher used two Fatwa DSN MUI Concerning *Hawalah*, they were 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*. So, Fatwa DSN MUI is legal answer for problem, phenomena, case which is

⁷ Nasrun Haroen, *Ushul Fiqh 1*, (Jakarta: Logos Wacana Ilmu, 2001) ,p.203.

asked and in this case is answered by MUI although Dewan Syariah Nasional (DSN) as section which handling of fatwa.

F. Writing Systematic

Chapter I Introduction:

In this chapter will be explained about Background of the Research, Problem of the Research, Objective of the Research, Significance of the Research, Definition of the Key Term, and Writing systematic.

Chapter II Review of Related Literature:

This chapter which include Review of Related Literature, is used as theory framework from research which will explain about The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre Under Perspective of *Burgerlijk Wetboek* and Fatwa DSN MUI Concerning *Hawalalah*.

Chapter III Research Method:

And in third chapter is about Research Method it will discuss about Location of Research, Type of Research, Approaches of Research, Data Sources, Technique of Exploring Data, and Data Analyze Method.

Chapter IV Result of Research and Discussion:

In this chapter, will explain about data which is gotten by researcher when does the research by using procedure and method which has explained in third chapter and also in this chapter will explain about data which found as long as do the research, and will discuss about “*The Practice of Cashing In*

Invoice in Brondong Nusantara Fish Auction Centre, The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre under Perspective of Burgerlijk Wetboek, and The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre under Perspective of Fatwa DSN Concerning Hawalah”.

Chapter V Conclusion and Suggestion:

In the last chapter will be concluded from all thing which has explained on chapters before it, which include two main idea, are: conclusion and suggestion.