

## CHAPTER IV

### RESULT OF RESEARCH AND DISCUSSION

#### A. Result of Research

##### 1. General Condition of Research Location

Brondong Nusantara Fish Auction Centre in the system of management under the auspices of KUD Minatani Brondong which address in Raya Brondong street number 17, Brondong village, Brondong sub-district, Lamongan regency, East Java.

##### a. Vision, Mission, and Adjective of KUD Minatani

###### 1) Vision of KUD Minatani

Making Cooperative of Minatani Independent and Tough

###### 2) Mission of KUD Minatani

- a) Improving active role members
- b) Improving the quality of Human Resources.
- c) Improving business development in real sector and services.
- d) Improving cooperation with other parties in order to increase business.

###### 3) Adjective of KUD Minatani

- a) Improving the welfare of members in particular and society in general.
- b) Take an active role in the economic movement in order to build a national economy.

## **b. Brief History of KUD Minatani**

KUD Minatani or Minatani Village Unit Cooperatives inception beginning with the Business Entity Village Unit (BUUD) Tani Bahari with work areas including the Brondong sub-district. Then Based Presidential Instruction Number : 2/1978, Brondong sub-district breakaway from BUUD Tani Bahari and establish their own cooperatives. On May 24, 1980 formed the Village Unit Cooperatives (KUD), named "MINATANI" with obtain a Legal Entity Number 4716/BH/II/1980, dated December 22, 1980 of the Regional Office of the Department of Cooperatives East Java Province.

During the relatively short trip, KUD Minatani showed very rapid development. With the achievements which had gotten, the Government set KUD Minatani as KUD "MODEL" that are based on the Decree of the Ministry of Trade and Cooperatives C/q. Director General of Cooperation Number 2301/KP/KOP/XI/1982 dated November 27, 1982. In accordance with performance achieved by KUD Minatani during his stint as economic power which put the interests of its members and the community at large, then on the way KUD Minatani from year to year is always awarded / awards from the Institute of Cooperatives and the Government.

## **c. Structure of KUD Minatani**

### **1) Management**

- a) Ir. H. Sunardji, MM. : Chief 2010 – 2014

- b) Kasulasa, S.Pd, MM. : Vice 2010 – 2014
- c) Drs. Darwoto, MM : Secretary 2010 – 2014
- d) Drs. Mohamad Su'uddin, SH.MH. MM  
: Vice Secretary 2010 – 2014
- e) H. Sutiyono, SE. : Treasurer 2010 – 2014

2) Supervisor

- a) Agus Saiful Hadi, S.Pd. : Chief 2013 – 2015
- b) Suhardi, SH. :Vice 2013 – 2015
- c) Soemantri, BA. :Vice 2013 – 2015

3) Member

Work Areas of KUD Minatani including 12 Villages/Urban

Village which consist from:

- a) Brondong urban village
- b) Sumberagung village
- c) Sedayulawas village
- d) Sendangharjo village
- e) Lembor village
- f) Tlogoretno village
- g) Brengkok village
- h) Labuhan village
- i) Sidomukti village
- j) Lohgung village
- k) Blimbing urban village

## l) Kandangsemangkon village

**Table 4.1**  
**Members of KUD Minatani Brondong**

No	NAME	Member Amount			Korpok Amount		
		M	W	Amount	M	W	Amount
1	Brondong	2199	1108	3,302	31	2	33
2	Sumberagung	172	132	304	3	-	3
3	Sedayulawas	1286	885	2,171	16	2	18
4	Sendangharjo	301	287	588	6	-	6
5	Lembor	282	148	430	4	-	4
6	Tlogoretmo	180	183	363	3	1	4
7	Brengkok	1032	285	1,317	10	-	10
8	Labuhan	398	148	546	5	-	5
9	Sidomukti	186	164	350	4	1	5
10	Lohgung	122	228	350	4	1	5
11	Blimbing	1653	433	2,086	12	-	12
12	Kandangsema ngkon	988	70	1,058	10	-	10
13	etc	13	73	86		-	-
	Amount	8812	4,139	12,951	108	7	15

**Table 4.2**  
**Quantity of Permanent Worker**

UNIT NAME	MEN	WOMEN	AMOUNT
Manager Utama	-	-	-
TPI	17	2	19
STAF Kaisftor	10	5	15
Saving and Loan (Sp)	4	2	6
General Trade (Pu)	6	6	12
Health Care	1	9	10
Unit Skt	15	22	37
Swamitra Mina	5	1	6
Cold Storage	2	2	4
Ice factory	1	1	2
Security TPI etc.	11	-	11
Security Skt	11	6	17
AMOUNT	83	56	139

**Table 4.3**  
**Quantity of Contract Worker**

UNIT NAME	MEN	WOMEN	AMOUNT
Kuli Timbang	35	-	35
Serabutan Tpi	1	-	1
Serabutan Pu	3	-	3
Giling Skt	-	1,009	1,009
Gunting Skt	-	213	213
Packing Skt	-	294	294
Bandrol Skt	-	140	140
Serabutan Skt	19	45	64
Mandor Skt	-	86	86
Cold Storage	41	34	75
JUMLAH	99	1,821	1,920

**d. Business Unit of KUD Minatani**

In conducting its business KUD Minatani has several business units that support the conduct of KUD Minatani, including:

- 1) Fish Auction Centre Unit
- 2) Hand Clove Cigarettes Unit
- 3) General Trade Unit
- 4) Savings and Loans Unit
- 5) Health Care Unit
- 6) Fish Freezing Unit (COLD STORAGE)
- 7) Factory Ice Unit
- 8) Swamitra Mina Unit

**e. Brondong Nusantara Fish Auction Centre**

Brondong Nusantara Fish Auction centre is one of the business units which is run by KUD Minatani Brondong, in business unit of

Brondong Nusantara Fish Auction centre, KUD Minatani gain from levy release fish from Brondong Nusantara Fish Auction centre by the suppliers who will send fish to the factories that buy fish, and also from the fish auction process that occurs in Brondong Nusantara Fish Auction centre by the sellers who are in Brondong Nusantara Fish Auction centre.

**Table 4.4**  
**Result of Brondong Nusantara Fish Auction centre**

No	Explain	Year 2011	Year 2012
1	Fish Production	15.761.144	14.611.649
2	Auction Value	30.178.213.199	29.532.664.600
3	Levy Service 3%	905.346.396	885.979.938

**f. Location of Brondong Nusantara Fish Auction Centre**

**Picture 4.1**  
**Lamongan Regency Map**



**Picture 4.2**  
**Brondong Sub-District Map**



**Table 4.4**  
**Data of Brondong sub-district civil**

No.	Village	Extensive Km2	Civil Amount	Family Head Amount	Densities/ Km2
1	Brondong	2,34	10.529	3.652	4.215
2	Sumberagung	4,16	2.433	1.161	567
3	Sedayulawas	10,64	11.844	4.054	1.055
4	Sendangharjo	7,44	5.179	1.837	669
5	L e m b o r	16,07	2.472	1.027	144
6	Tlogoretno	3,48	1.291	775	348
7	Brengkok	10,57	9.951	3.399	864
8	Labuhan	6,43	6.731	1.819	1.028
9	Sidomukti	6,09	3.858	2.287	606
10	Lohgung	2,91	2.696	1.137	869
	Amount	70,43	56.984	21.148	769

## 2. Result of Research Data

In the method of data collection, the researcher used the direct interview method, where direct interviewed in the collection of social facts as a matter of empirical law study, carried out by means of direct questioning where all the questions were arranged in a systematic, clear and focused in accordance with the legal issue, which was raised in research. Interview was intended to obtain the correct and accurate information from sources previously defined. In the interview, all information obtained about what was desired noted or recorded with either.<sup>75</sup>

From interview result which the researcher did to the parties associated with the practice of cashing in invoice in Brondong Nusantara fish auction centre, the researcher could determine that the main substance which caused this practice occurred was because of the slow pace of payments made by the supplier to the seller in credit transaction which they did. In interview with the third party, the researcher knew that the third party was there because of the need of seller to obtain capital for business continuity which they were doing, which at the time the seller could not rotate their capital because the money of payment had not cashed in by the Supplier.<sup>76</sup>

According to the third party, the seller reason cash in invoice to the third party because the seller needed money to paid the caterer and his

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<sup>75</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, p.167-168.

<sup>76</sup> Khoirul, *Interview* (Brondong, 19 Desember 2014).



money had not been cashed in by the supplier, because from the supplier/buyer that money was not directly cash in, at the latest a month, and the fastest a week. While from the seller to the caterer must immediately, as caterer to fishermen must directly, fishermen was not willing to wait a week, because fishermen usually stay on the ground before at sea again the latest a week. That case also justified by the sellers who the researcher interviewed, according to Anas and Marto, the sellers who the researcher interviewed, they said that the reason they cash in invoice to the third party was because the capital needed to paid the fish to caterer who prior they buy, but they were not feel the loss because that practice.<sup>77</sup>

Different case delivered by Umar, a another the seller who the researcher interviewed, the seller according to him actually suffered a loss because of cut 150 rupiah/kilo of weight of fish in that invoice, but if the seller cash in into the mentioned supplier, of course, the amount would not be reduced.<sup>78</sup>

From interview result that researcher did, the researcher also learned that in practice cashing in invoice by the seller to the third party, the supplier did not know that practice before, the Supplier knew that invoice had been transferred to the third party was when the third party cash in to the supplier. In the cashing in that invoice if the third party had been known by the supplier, the supplier just matching invoice which was brought by the third party with a copy of invoice which was brought by the

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<sup>77</sup> Anas and Marto, *Interview* (Brondong, 19 Desember 2014).

<sup>78</sup> Umar, *Interview* (Brondong, 19 Desember 2014).

supplier. However, if the third party had not known by the supplier, the supplier would check the truth of that third party with contacting the mentioned seller, in order to ensure the correctness of the third party.<sup>79</sup>

## **B. Discussion**

### **1. The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre**

In the transfer process or buying and selling fish from the fishermen to the factory or traditional markets and restaurants, preceded by some interested parties. Based on observation and interviews which the researcher did, the researcher concluded that the transaction fish there were two pathways, namely;

*First*, from the fisherman then was bought by the caterer, where the caterer gave cash directly to the fisherman on the spot, after fish in the caterer, then fish was distributed to the sellers by the caterer according to the seller needed, because the seller usually just buy fish according to the specifications his determined, because the caterer did not have only one type of fish, then the caterer was supplying the fish to other sellers on demand, in transaction between the caterer and the seller usually is done in credit, after the fish was in the seller, then the seller sold it to the Supplier by used credit transaction which then would be paid after the supplier gotten money from the factory, because after fish was in the supplier, the supplier then send it to the factory for sale and the

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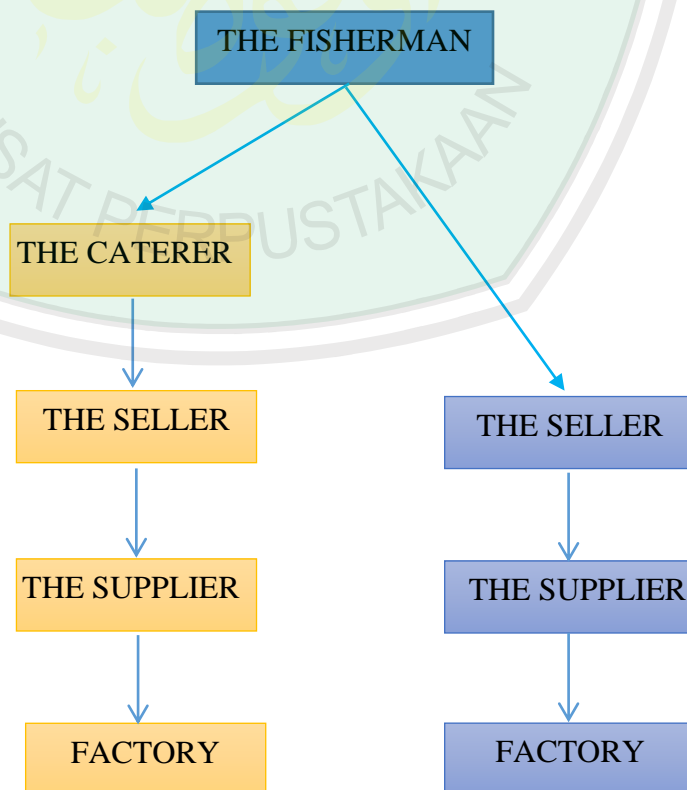
<sup>79</sup> Khoirul, *Interview* (Kandangsemangkon, 5 Desember 2014).

transaction was done in credit. Regarding the payment system from the factory to the supplier, just as in the early weeks of transaction with the supplier, the factory conduct transactions in cash, but after long time did it with credit transaction, and it was a usual thing, even though it was detrimental to the supplier.

*Second*, as first transaction model, this second transaction model also involved several parties before fish up to the factory. However, in this transaction model there wasn't the caterer party therein, among others just the seller, the supplier and the factory.

The following scheme of fish transaction flow in Brondong Nusantara fish auction centre.

**Picture 4.3**  
**Scheme of transaction in Brondong Nusantara fish auction centre**



Regarding the practice of cashing in invoice in Brondong Nusantara fish auction centre was begun with a transaction that occurred between the seller and the 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 the evidence which was given in a credit transaction is called by invoice, while memorandum was evidence of transactions in cash trading.

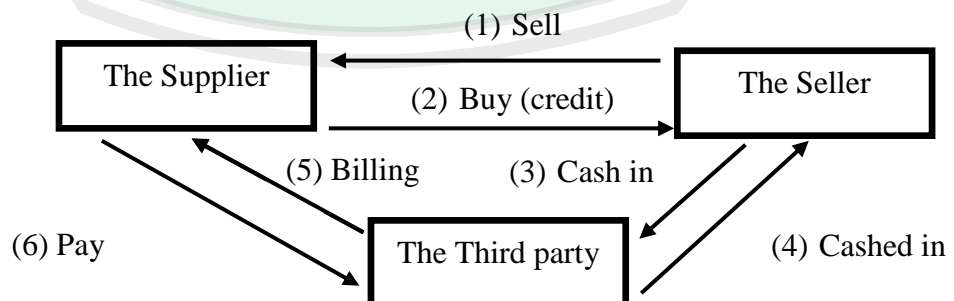
In reality, cash in invoice in Brondong fishermen, Lamongan regency usually indirectly to mentioned supplier, but rather exchanged the invoice to rich people or among other fishermen who had money more than nominal that was mentioned in the invoice, which then was called by a third party. Because the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

The mechanism of cashing in invoice in Brondong Nusantara Fish Auction Centre resembled factoring mechanism, that is the seller handed over or granted his receivable to charge the supplier by submitting an invoice previously published or issued by the supplier as evidence of the accounts receivable to the third party, and that practice in practicing was to obtain money for the survival of his business, but in its process, as the

custom in Brondong, Lamongan regency in cashing in invoice by the 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 the supplier based on the agreed time by the seller and the supplier before, and the third party was in the position of the seller, so he got the money as stated in that invoice value.

In case cut the value of invoice, there were two matter which was done by the third party.<sup>80</sup> *First*, that was pieced 2% until 10% as agreement between the seller and the third party to big type of fish.<sup>81</sup> *Second*, that was pieced 150 rupiah/kilogram from amount of fish weight in that invoice as custom, for example Kurisi fish weight in invoice was 1 ton with price Rp.10.000.000, then the third party would cash in only Rp.9.850.000, that result was gotten from all price reduced Rp.150 x 1000 Kg, and cutting 150 Rupiah/Kilo just to small type of fish.<sup>82</sup>

**Picture 4.4**  
**Scheme of cashing in invoice in Brondong Nusantara Fish Auction Centre**



<sup>80</sup> Khoiril, *Interview* (Brondong, 19 Desember 2014).

<sup>81</sup> Fish which include into this kind, that are: Kakap Merah Fish, Krapu Fish, Kue Fish, Crese Fish, Lody Fish, Tongkol Fish, and Tenggiri Fish

<sup>82</sup> Fish which include into this kind, that are Kurisi Fish, Swanggi Fish, Kapasan Fish, Rambangan Fish, and Ayam-ayam Fish.

Here's explanation of that picture are:

- (1) The seller sold fish to the Supplier with credit 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 credit 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.

In practice of cashing in invoice in Brondong Nusantara fish auction centre, in reality detrimental to the supplier and the seller, because in practice the seller transferred the right to billed his receivable to the

supplier, accompanied by nominal cut in invoice by the third party, it was detrimental to the seller because the seller should be able to obtain more money or nominal valued at invoice when cash in in the mentioned supplier. Then the supplier also prone to become a victim, because could be there was the third party who claims to be a substitute for the seller but in reality didn't so, then the supplier also still required to paid his debt to the seller when it happens.

The concept was applied in practice of cashing in invoice in Brondong Nusantara fish auction centre when viewed from *Burgerlijk Wetboek*, so it could be classified resemble transfer of receivable or *cessie* (Article 613), in which there was an agreement between the seller with the supplier in the credit transaction, and agreement between the seller with the third party in the transfer of receivable, and in Fatwa DSN MUI, the practice of cashing in invoice resemble *Hawalah*. which in fatwa DSN MUI there were in fatwa Number 12/DSN-MUI/IV/2000 on *Hawalah* and Number 58/DSN-MUI/V/2007 on *Hawalah bil Ujroh*.

## **2. The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre under Perspective of *Burgerlijk Wetboek***

In the practice of cashing in invoice in Brondong Nusantara fish auction centre classified into the transfer of receivable, which is described in *Burgerlijk Wetboek* article 613 (1) that:

“Penyerahan akan piutang-piutang atas nama dan kebendaan tak bertubuh lainnya, dilakukan dengan jalan membuat sebuah

akta otentik atau akta di bawah tangan, dengan mana hak-hak atas kebendaan itu dilimpahkan kepada orang lain.”

From that case can be learned that are provided in Article 613 (1) is submission of bill on behalf and objects other disembodied,<sup>83</sup> which then called *Cessie*.

Then in article 613 (1) more explained by article 613 (2) which stated that:

“Penyerahan yang demikian bagi si berutang tiada akibatnya, melainkan setelah penyerahan itu diberitahukan kepadanya, atau secara tertulis di setujui dan di akuinya.”<sup>84</sup>

In Article 613 (2) was clearly explained that the transfer of receivable would take effect when it was known by who owe money, in other words the transfer of receivable should be known by all parties and approved, not only by the party who had receivable to the third party.

From both of that articles, we can know that in the practice of receivable transfer to the third party must be done by including authentic deed or under hand deed, and also that practice will be conducted when the debtor has known and agreed that his debt has been transferred to the third party. In the transfer of receivable as like explained in article 613 (1) there was an agreement, because in transfer of receivable involved some parties in that practice, and also transfer of receivable needed approval from the debtor, or in other word needed an agreement. According article 1320 *Burgerlijk Wetboek*, in transfer of receivable also had to be there was agreement between all parties, in article 613 *Burgerlijk Wetboek*, the proof

<sup>83</sup> *Burgerlijk Wetboek*, translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.179

<sup>84</sup> *Burgerlijk Wetboek*, translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.179



of agreement had to be there, there was in paragraph 1 and 2, where in paragraph 1 stated that transfer of receivable had to included by authentic deed or under hand deed, that was a proof which authored because there was an agreement, then paragraph 2 explained that the debtor had to knew and approval that transfer of receivable, that means there was agreement between all parties in its practice.

In practice cash in invoice in fish auction centre Nusantara Brondong if viewed in *Burgerlijk Wetboek*, there were two forms of cooperation, that was between the seller with the supplier regarding the buy-sell agreement credit, and also the agreement between the seller with the third party regarding the transfer of receivable agreement, whereas in that case of the seller still was in agreement with the supplier.

In an agreement of buy-sell or transfer of receivable had to appropriate with valid requirement of an agreement, where valid requirement of an agreement described in *Burgerlijk Wetboek* in article 1320. The following valid requirement of an agreement:

a. Presence of the Word Agree

According to Subekti, which is meant by the word "agree" is rapprochement of desire between the two sides, namely what the desired by the parties to one also desired by the other party and both of them want the same thing in reciprocity.<sup>85</sup> On *Burgerlijk Wetboek* is not explain about the word "agree" in detail, but in the article 1321

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<sup>85</sup> Subekti, *Bunga Rampai*, p. 4.

tells that there isn't legitimate agreed if agreed it was given because of the mistaken, or acquired by force or fraud.<sup>86</sup>

So, in agreement of sale or agreement of receivable transfer, the agreement must be done by principle of freedom from force and fraud.

b. Qualification to Make Agreement

On article 1329 *Burgerlijk Wetboek* mentions that everyone is qualified to make an agreement with the provisions of the Act not specified else i.e. defined as people who are not qualified to make such a the agreement.

Next Article 1330 *Burgerlijk Wetboek* mention that people who are not qualified to make an appointment:

- 1) People who are immature
- 2) Those who are under the Trusteeship and/pardon
- 3) Women/wives in terms established by the legislation and all those to whom the law has banned certain agreements made.<sup>87</sup>

So, all parties who involve in an agreement of sale or transfer of receivable must legal proficiency when conduct transaction.

c. The presence of a particular thing;

On the *Burgerlijk Wetboek* article 1333, paragraph (1) States that an agreement should has a certain thing as the subject of the Treaty namely the stuff at least determined type. Then in article 1333

<sup>86</sup> *Burgerlijk Wetboek*, translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p. 339

<sup>87</sup> *Burgerlijk Wetboek*, translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p. 341

paragraph 2 is stated that, regarding the amount does not matter provided at a later date can be determined.

So, the object in agreement of sale and also in agreement of receivable of transfer must clear.

d. Existence of a cause of halal.

On article 1337 *Burgerlijk Wetboek* mentions that "one reason is forbidden, if prohibited by law, or if contrary to good morality or public order." So one reason or cause is halal if not prohibited by law, it is not contrary to public order and morality, as well as the Treaty has no reason not to clean will result in an agreement that annulled by law, because it does not meet the terms of the agreement.<sup>88</sup>

So, in agreement of sale and also in agreement of receivable of transfer must have cause of halal, that is a cause which legality isn't forbidden.

According to *Burgerlijk Wetboek* the practice of cashing in invoice in Brondong Nusantara fish auction centre must appropriate substances of *cessie*, that were:

- a. *Cessie* always occur because of agreement
- b. *Cessie* always required a deed
- c. In the role of *Cessie* creditor absolutely necessary
- d. *Cessie* can be based on a variety of civil events, such as the sale or debts;

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<sup>88</sup> *Burgerlijk Wetboek*, translated by R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.342

e. *Cessie* only applies to the debtor after the notification.<sup>89</sup>

So, the practice of cashing in invoice if viewed from *Burgerlijk Wetboek* had to applied the provisions of *Burgerlijk Wetboek* into its practice.

The following flow of the practice of cashing in invoice in Brondong Nusantara fish auction centre accordance with *Burgerlijk Wetboek*:

*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 *Burgerlijk Wetboek*.<sup>90</sup> An agreement if it is not meet the requirements that article, the agreement will void, and also a transfer of receivable must be preceded by the agreement, in which case the underlying presence of cash in invoice in Brondong Nusantara fish auction centre was credit 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, where authentic deed in accordance with Article 1868 *Burgerlijk Wetboek* is the deed which its shape according to the law and created by or in front of notary or an public employee who ruling about it in the place of deed was made,<sup>91</sup> and under hand deed in accordance with Article 1874 *Burgerlijk Wetboek* is a

<sup>89</sup> Suharnoko, *Doktrin Subrogasi*, p.102

<sup>90</sup>Untuk sahnya suatu perjanjian diperlukan empat syarat, yaitu: (1) sepakat mereka yang mengikatkan dirinya;(2) kecakapan untuk membuat suatu perikatan;(3) suatu hal tertentu;(4) suatu sebab yang halal.”

<sup>91</sup> *Burgerlijk Wetboek*, Translate by, R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.475

deed or evidence which is made and signed by the party who is agreed without intermediaries notary or public employees.<sup>92</sup> 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, in the buy-sell agreement on credit between the seller and the supplier have not completed before the payment agreement was fulfilled,<sup>93</sup> 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, so that there was clarity for the supplier to make payment to the third party, not to the seller, and reduce the risk of fraud to the supplier.

*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.

In practice, cash in invoice in Brondong Nusantara fish auction centre when is viewed from *Burgerlijk Wetboek*, so not in accordance with the provision stated that the transfer of receivable must be accompanied by authentic deed or under hand deed, where in the practice

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<sup>92</sup> *Burgerlijk Wetboek*, Translate by, R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.476

<sup>93</sup> Article 1381, *Burgerlijk Wetboek*, Translated by, R.Subekti and R.Tjitrosudibio, *Kitab Undang*, p.349

of cashing in invoice or transfer of receivable from the seller to the third party conduct without provide authentic deed or under hand deed. In that case to accordance with the provisions of *Burgerlijk Wetboek*, so the seller must be provide authentic deed or under hand deed to the third party to proof that the seller had transferred his receivable to the third party and as proof that the supplier must paid his debt to the third party.

### **3. The Practice of Cashing In Invoice in Brondong Nusantara Fish Auction Centre under Perspective of Fatwa DSN MUI Concerning *Hawalah***

The practice of cashing in invoice in Brondong Nusantara fish auction centre in Fatwa DSN MUI perspective, the researcher classified into *hawalah*, that was the transfer of debt or receivable from who owed or has receivable to other person who require to receive it.<sup>94</sup> Where in Fatwa DSN MUI there was in fatwa Number 12/DSN-MUI/IV/2000 on *Hawalah* and Number 58/DSN-MUI/V/2007 on *Hawalah bil Ujroh*.

In the practice of cashing in invoice in Brondong Nusantara fish auction centre in Fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *Hawalah* and Number 58/DSN-MUI/V/2007 on *Hawalah bil Ujroh* perspective was like this:

*First*, in the practice of cashing in invoice in Brondong Nusantara fish auction centre must accordance with pillars of *hawalah*, that are *muhil*, *muhil*, *muhil 'alaih*, *muhil bih*, *ijab-qabul*, and *sighat*, in this

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<sup>94</sup> Ascarya, *Akad & Produk*, p.107

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 Number 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).<sup>95</sup> While according fatwa DSN MUI Number 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*.<sup>96</sup>

*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, as proof that the contract actually exists, so clear it is, it is also in accordance with the word of Allah in Surat al-Baqarah verse 282, which reads;

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

Meaning: O you who have believed, when you contra a debt for a specified term, write it down.

*Fourth*, known and approved by all parties, in practice of cashing in invoice in Brondong Nusantara fish auction centre must be known by

<sup>95</sup> Nasrun, *Fiqh Muamalah*, p.222

<sup>96</sup> Nasrun, *Fiqh Muamalah*, p.222

the supplier, the seller and the third party, to clarify and strengthen that the transfer of receivable have been approved by all parties. But about cuts imposed by the third party to the nominal value of the invoice, in accordance with fatwa DSN MUI Number 58/DSN-MUI/V/2007 on *hawalah bil ujroh* is permitted by note that only conduct in *Hawalah muthlaqah* and the amount of that fee have to be set at the time the contract is clear, firm and definite as agreed by the 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, the parties who involved just *muhtal* and *muhal 'alaih*; and the billing right *Muhal* move *Muhal 'alaih*, so, the third party position change the seller or *muhal* position.

The practice of cashing in invoice in Brondong Nusantara fish auction centre under perspective of fatwa DSN MUI concerning *Hawalah*, 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 Number 12/DSN-MUI/IV/2000 on *hawalah* and Number 58/DSN-MUI/V/2007 on *hawalah bil ujroh*, because there are some decision which loss or isn't accordance with that fatwa, that are:



*First, ijab-qabul* isn't clearly, in practice of cashing in invoice in Brondong Nusantara fish auction *ijab-qabul* isn't expressed clearly about that transfer of receivable.

*Second*, the contract isn't written, in practice contract which conduct in Brondong Nusantara fish auction centre isn't written in transfer of receivable from the seller to the third party, but only written in transaction between the supplier to the seller, and that is written in credit transaction regarding sale transaction, isn't transfer of receivable.

*Third, muhil* or the supplier does not know the contract, in decision of fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *hawalah* and Number 58/DSN-MUI/V/2007 on *hawalah bil ujroh* require that the transfer of receivable have to be done with known and approval by all parties, without exception, so that clarity regarding the transfer of receivable become clear that there are no raises the possibility of a loss for all concerned in it, because of ignorance the supplier in the transaction.

In that case to according with decisions of fatwa DSN MUI Number 12/DSN-MUI/IV/2000 on *hawalah* and Number 58/DSN-MUI/V/2007 on *hawalah bil ujroh*, so in practice all parties have to conduct *ijab-qabul* clearly and also that's contract must be written according decisions of transfer of receivable, then in transfer of receivable must be known all parties.