

Characteristics of Service Safe Deposit Box in Banking Activities

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Abstract: Provision of safe deposit boxes (SDB) is one of the services in banking activities. The SDB is in the form of a box with a certain size and is rented out to customers, which is used to store goods and securities without the bank knowing its mutation and contents. According to Law No. 7/1992 concerning Banking as amended by Law No. 10/1998, the activity of “providing a place” in the form of SDB is a bank activity that solely rents a place for storing goods and securities, so it is not a safekeeping of goods even though the existence of SDB is under the control and supervision of the bank. If so, it is necessary to investigate whether the provision of SDB services in banking activities is a legal contractual relationship or goods custody. Therefore, this study aims to analyze the characteristics of the legal relationship in the provision of SDB services in banking activities. This research is a normative legal research using legal construction methods and approaches to the application of laws and conceptual. The results showed that the construction of legal relations between the customer and the bank in the SDB rental contract made by the bank was not solely a rental contract, but contained elements of goods storage. This is because the SDB that is leased is not fully under the management of the lessee (customer), the SDB and its contents are under the management and supervision of the SDB owner’s bank. Therefore, the SDB rental contract for banking activities is a contract or a mixed agreement (contract sui generis).

Keywords: Safe Deposit Box Services; Storage Box Rentals

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INTRODUCTION

Economic and financial activities in developing countries, including Indonesia are generally still dominated by banking institutions. Even in developed countries, they are almost completely market oriented they still regard banking institutions as the heart of the economy. Apart from banking, its important function is to carry out financial activities, as well as a means of implementing monetary policy in a country.¹ In other words, banking institutions are the core of every country's financial system.² Therefore, these banking institution play a central role in the economic order of each country. When the bank life in a country is healthy, the economic condition will be strong.³ This banking institution has an important and strategic role in driving the wheels of a country's economy, it is one of the main pillars of a country's national economy.⁴

The business activities carried out by banks are not only collecting and distributing funds from and to the public, but also providing other services. This is confirmed in detail in Article 6 of Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia of 1992 Number 31, Supple-

ment to the State Gazette of the Republic of Indonesia Number 3472; hereinafter referred to as Law No. 7/1992) as amended by Law -Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790; hereinafter referred to as Law No. 10/1998). One of the banking services is "providing a place to store goods and securities", which is stated in Article 6 letter h of Law no. 7/1992 as amended by Law no. 10/1998. In other words, the business activities of commercial banks include the provision of a place store goods and securities. The limitation of "providing a place" in this provision is explained in the Elucidation of Article 6 letter h of Law no. 7/1992 as amended by Law no. 10/1998, namely "the activity of merely renting a place for storing goods and securities (*safety box*) without the bank knowing its mutation and contents". This article explains that the activity of "providing a place for the storage of goods and securities" is a rental transaction, not in the context of safekeeping of goods and securities, because the bank does not know the contents and mutations in the *safe deposit box* (SDB) that is being leased. It is emphasized here that the activity of providing a place for storing goods and securities is limited to only "providing" a place, not accepting the deposit of goods and securities. However, the management and supervision of the SDB is under the control of the bank that provides a place to store the goods and securities in question.

This SDB service is a service in the form of a box or place for storing assets or securities in the treasury of the bank concerned. SDB is indeed designed in such a way as to be

¹ Kusumaningtutit SS, *Peranan Hukum dalam Penyelesaian Krisis Perbankan di Indonesia*, (Jakarta: RajaGrafindo Persada, 2009), 22.

² Hermansyah, *Hukum Perbankan Indonesia*, (Jakarta: Kencana, 2009), 7.

³ Moch. Isnaeni, "Peran Hukum Jaminan Dalam Bisnis Perbankan," in *Proceeding (Paper Plenary Session) Konferensi Nasional Hukum Perdata: Mengevaluasi Kesiapan Hukum Perdata Nasional Indonesia Dalam Menghadapi Tantangan Masa Depan* (Banjarmasin: Asosiasi Pengajar Hukum Keperdataan dan Fakultas Hukum Universitas Lambung Mangkurat, 2014), 11.

⁴ Andika Persada Putera, "Penyelesaian Sengketa Perbankan Dengan Mediasi," *Yuridika* 28, no. 1 (2013): 13, <https://e-journal.unair.ac.id/YDK/article/view/5713>.

sturdy and fire-resistant to maintain the safety of stored goods and provide a sense of security for its users. The provision of this SDB service allows the goods that are deposited to be safe from theft, fire, or other destructive things. This SDB is essentially a place for storing goods and securities to avoid unwanted things. The existence of SDB in the bank's treasury room means that the supervision and control of the use of SDB is carried out by the bank that provides SDB, including the security side. SDB tenant customers do not fully control the SDB leased by the bank. It can be said that the bank is located not only as the party that rents out SDB, but also as the recipient of the deposit of goods and securities whose contents and mutations are unknown.

Referring to Article 6 letter h of Law number 7/1992 as amended by Law number In 1998, the banking sector generally believes that the legal relationship between customers who use SDB services and the bank providing these services is based on an agreement, namely a lease agreement.⁵ In this regard, in practice, the legal relationship between bank and SDB users is usually stated in an agreement named "*Safe Deposit Box Lease Agreement*", for example Bank Syariah Mandiri and Bank Rakyat Indonesia. Named as a lease agreement, not called a safekeeping agreement, this is because the bank only provides "a place" as a place to store goods and securities for a certain period of time. Although the customer only rents a place to store goods and securities, the SDB in question is in the treasure room of the bank that rents out the

SDB, so that some people or customers think that the contract for using SDB services is a contract for the safekeeping of goods. This is because the position of the bank is not only to act as the party that rents out the SDB, but also to act as the recipient of the deposit of goods and securities which will later be stored in the SDB which is in the treasury of the bank that rents out the SDB. The SDB in the bank is kept safe by the bank and is under the control of the bank and the SDB is not fully under the control of the customer who rents the SDB. However, the banking side views that the form of the SDB usage contract is a lease contract in accordance with what has been regulated in Law number 7/1992 as amended by Law number 10/1998.

Legal certainty regarding the legal construction of the relationship between the customer and the bank in the transaction of providing SDB services in this banking activity relates to the party who is obliged to be responsible in the event of loss of goods and securities stored in the SDB, whether the bank as the provider of SDB services can be subject to liability sue. This is because banks do not only carry out SDB leasing activities, they also act as SDB service providers that manage, supervise and monitor SDB rentals. The bank does not only provide a place to store goods and securities, but is also obliged to provide a *safety box*, namely SDB that is safe from loss and theft of goods and securities that are deposited in the SDB.

Banks as SDB service providers must remain responsible based on the element of error in the event of loss of customer's belongings deposited in SDB. This is because, the bank as the SDB provider should apply the precautionary principle in safeguarding the custom-

⁵ Agung Mella and Ida Bagus Utama, "Perlindungan Hukum Terhadap Nasabah Bank Yang Dirugikan Dalam Perjanjian Sewa-Menyewa Layanan Safe Deposit Box," *Kertha Semaya* 8, no. 5 (2020): 748, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/59375>.

er's belongings that are stored in the SDB.⁶ Moreover, the enactment of Law Number 8 of 1999 concerning Consumer Protection (State Gazette of the Republic of Indonesia of 1999 Number 22, Supplement to the State Gazette of the Republic of Indonesia Number 3821; hereinafter referred to as Law No. 8/1999) provides logical consequences for banking services. Banking service business actors are therefore required to have good intentions in carrying out their business activities, provide correct, clear, and honest information regarding the conditions and guarantees for the services they provide, treat or serve consumers correctly and honestly and not discriminatory guarantee their banking business activities based on the provisions applicable banking standards.⁷

Based on the background of the problem, it is necessary to further question whether the contract for the use of SDB services does meet the elements of the lease as stipulated in the *BW*. From the contract for the use services SDB provided by the bank, there are various opinions, including those who argued that the SDB service contract was a rental contract as stated in the contract provided by the bank, but on the other hand there were those who argued that the SDB service was a contract for the custody of goods. Therefore, it is nec-

essary to examine the characteristics of SDB service provision transactions in banking activities.

METHOD

This research is a legal research with the type of *reform-oriented research*, where this legal research is directed to evaluate the relationship of the rule of law between Law number 7/1992 as amended by Law number 10/1998 with *Burgerlijk Wetboek (Staatsblad Year 1847 Number 23*; hereinafter referred to as *BW*) and recommends as a follow-up to the results of the evaluation of the legal rules for making SDB lease contracts by banks.

Meanwhile, the approaches used in this research are the statutory *approach* and the *conceptual approach*. The statutory approach is used to examine the laws and regulations related to the arrangement of SDB rental contracts, namely: Law number 7/1992 as amended by Law number 10/1998 and *BW*, so that the characteristics of the SDB rental contract will be found. Then a conceptual approach is used to analyze and understand the concept of lease agreement and custody agreement in *BW*.

The collection of legal materials in this research is carried out through *library research*, which includes documentary studies and literature studies. Documentary studies are carried out by taking an inventory of the laws and regulations and a number of other official documents related to the problem under study. Then the literature study is carried out by studying and reviewing various library materials related to the problem under study. The study of collecting legal materials was carried out using a *card system*, namely making notes on cards. The cards are arranged based on the author's name to facilitate the processing of

6 Dheana Kartika and Pranoto, "Tanggung Jawab Pihak Bank Dalam Perjanjian Sewa Menyewa Safe Deposit Box Yang Diduga Didalamnya Terkandung Klausula Eksonerasi (Studi Di Pt. Bank Panin Surakarta)," *Jurnal Private Law* 6, no. 2 (2018): 193, <https://jurnal.uns.ac.id/privatlaw/article/view/25582>.

7 Devina Janice, Rinitami Njatrijani, and Aminah, "Aspek Perlindungan Hukum Perjanjian Sewa-Menyewa Safe Deposit Box Pada Bank Maybank Indonesia," *Diponegoro Law Journal* 5, no. 3 (2016): 10, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/11383>.

legal materials that can be used as a reference for the analysis step, then in the discussion they are arranged based on the subject matter.

The next step is to process and analyze available legal materials through text or content analysis (*content analysis*) or interpretation (*interpretation*). Analysis of legal materials is based on reasoning/logic and legal argumentation, using deductive and inductive reasoning to produce propositions and concepts.⁸ From the results of the study, it is expected to provide prescriptions, so that there is a need for reinterpretation and reorientation of understanding of SDB service agreements in banking activities.

ANALYSIS AND DISCUSSION

The business activities of commercial bank are not limited to collecting and distributing funds, but also providing SDB services, where the public can store their goods and securities, such as jewelry, money, certificates, diplomas, documents. other important documents in a safe storage area (*safety box*) that has been provided by the bank for customer use.

SDB is a bank service provided to its customers. SDB is in the form of a box with a certain size and is rented out to interested customers to store documents or valuables. Opening using two keys, one held by the bank and the other held by the customer.⁹ Valuables that can be stored in SDB can be in the form of securities, certificates, important documents, currency, precious metals (jewelry) or all kinds of goods that are con-

sidered important and prone to theft or other dangers. In SDB there are also items that are prohibited from being stored such as firearms, explosives, narcotics, chemical substances, or other items prohibited by the applicable laws and regulations.¹⁰

Bank customers use SDB in storing goods and securities due to several advantages that are considered in the use of bank SDB, namely:

1. Safe. The sturdy storage room is equipped with a continuous security system for 24 hours. To open it requires a key from the tenant and a key from the bank.
2. Flexible. Available in various sizes to suit the needs of both individual tenants and business entities.
3. Easy. The terms of the lease are enough to open a savings or checking account (there are banks that do not require this, but charge a different rate).¹¹

For the bank, the benefits are in the form of rental fees for SDB and the security deposit is deposited with the bank. Meanwhile, the advantages for customers are:

- a. The confidentiality of the goods stored in the SDB is guaranteed, because the bank does not need to know the contents of the SDB as long as the goods stored are not goods that violate the rules previously stated by the bank;

8 Philipus M. Hadjon and Tatiek Sri Djatmika, *Argumentasi Hukum*, (Yogyakarta: Gajah Mada University Press, 2000), 13-14.

9 Johannes Ibrahim, *Bank Sebagai Lembaga Intermediasi dalam Hukum Positif*, (Bandung: Utomo, 2004), 128.

10 Ida Nurhayati, "Tinjauan Yuridis Perjanjian Sewa Menyewa Safe Deposit Box Pada PT Bank Negara Indonesia, Tbk (Persero) Kantor Cabang Utama Melawai Jakarta Selatan," *Account: Jurnal Akuntansi, Keuangan dan Perbankan* 1, no. 1 (2013): 35.

11 "Safe Deposito Box-Sikap Uangmu," *Otoritas Jasa Keuangan*, accessed January 17, 2022, <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/77>.

- b. The safety of the goods stored in the SDB is guaranteed because it is supported by sophisticated equipment, the SDB box is made of fire-resistant steel. In addition, it can only be opened with two keys, namely the key that is on the customer and the bank, so it cannot be opened by either party.¹²

Observed in Law number 10/1998 does not regulate the legal relationship between banks and customers. Therefore, to find out what is the basis for tracing the legal relationship between the bank and the customer, according to S. Twum stated: *The relationship between a banker and his customer is also one of contract. It consist of a general contract and special contract (such as giving advice on investment to the customer and other duties, e.g. the banker duty of secrecy.* Departing from this thought, it can be seen that the relationship between a bank and a customer based on a contract is a contract, both general and in particular, Try Widiana shared a similar opinion, the relationship between banks and customers is based on the principle of trust (*fiduciary relationship*). The relationship between banks and customers is contained in forms that have been filled out by customers and approved by the bank.¹³

Based on these two opinions, the legal relationship between the bank and the customer are based on a trust that is contractually bound through a contract. In accordance with the na-

ture of the contract, the parties, in this case the bank and the customer, have the rights and obligations to enter into the legal relationship in question. Departing from this thought, it is not exaggeration if it is stated in banking law in Indonesia that the relationship between banks and customer is a contract.¹⁴ The legal relationship between the customer and the bank in the SDB transaction begins with a contractual relationship (contract), which is stated as “*Safe Deposit Box*” or “*Safe Deposit Box Lease Agreement*”. The legal consequences of the SDB service relationship is based on a *Safe Deposit Box rental contract*, so the bank is the party that rents out and the user’s customer is the lessee, so that the legal relationship between SDB user customers begins with a lease contract as regulated in Article 1548 BW.

Article 1548 BW defines lease as an agreement, whereby one party binds himself to provide enjoyment of an item to another party for a certain period of time, with the payment of a price agreed by the latter party. Goods that can be rented are specified in Article 1549 BW which stipulates that people can rent out various types of goods, both fixed and movable. So, in a lease, there is a delivery of goods to be enjoyed by another party where the lessee pays a certain amount of money as the rental price. As long as an agreement is reached on the goods and the price, a rental contract has been entered into, which is a consensual agreement. The object of the lease in this case is goods, both movable and immovable. The party who rents out has the obligation to deliver the goods that are the object of the lease, while the lessee is obliged to submit the payment as the rental price for the goods in question. Here there is no transfer of ownership

¹² Yastina Faradila, Azhari Yahya, and M. Adli, “Pelaksanaan Perjanjian Sewa Menyewa Safe Deposit Box (Suatu Penelitian Pada Bank Mandiri Cabang Kota Banda Aceh),” *Syiah Kuala Law Journal* 3, no. 2 (2019): 242, <http://jurnal.unsyiah.ac.id/SKLJ/article/view/12135>.

¹³ Sentosa Sembiring, *Hukum Perbankan*, (Bandung: Mandar Maju, 2012), 168-169.

¹⁴ *Ibid.*

rights to the leased goods. The delivery of the leased goods is carried out in order that the goods can be enjoyed by the lessee.

In accordance with the obligations of the lease contract according to *BW*, The lessee is obligated to deliver the leased goods to the lessee. In the SDB contract, the goods or objects that are leased to the lessee are not fully in the hands of the lessee, as in the rental contracts that commonly occur in the community, for example, the rental contract for renting a house, renting a car and others. Therefore, according to *BW*, the lessee is obligated to use the rented goods as a good housewife in accordance with the purpose given to the goods according to the lease contract. In contrast to the SDB contract, where the object of the lease is a safe deposit box, it is not entirely in the control of the customer, but the SDB is in a bank in a special room that is guarded by the bank, and the customer cannot freely use the SDB he rented, but must go through procedures determined by the bank. To open the SDB box, you have to use two keys, each held by the customer and the bank. The bank holds the master key from the SDB box, where the customer can only open the SDB together with the bank officer, by entering the master key and the key held by the customer together. At any time the customer can open the SDB by returning to the bank and together with the bank officer to open the safe deposit box using the key held by the customer and the key held by the bank officer.

On the other hand, some customers think that the SDB service supply contract is a contract for the safekeeping of goods, not a lease as the bank assumes, this is considering that the valuable goods and documents stored in the SDB box in the bank are kept safe and are under the control of the bank. In response

to this opinion, it is necessary to first examine whether the SDB usage contract can be constructed as a goods safekeeping contract as regulated in Articles 1694 to 1739 *BW*. The term custodial of goods is a translation of the term *bewargeving*.

BW does not mention the meaning of safekeeping of goods, only explaining the momentum when goods are deposited. Safekeeping of goods occurs when a person receives an item from another person, on the condition that he will keep it and return it in its original form, as stipulated in Article 1694 *BW*. Algra provides the understanding of *bewargeving* as a contract to keep someone else's goods and return them either with or without payment. The essence of this understanding is the storage of other people's goods, the storage of those goods can be done without payment or payment.¹⁵

Custody occurs when a person receives an item from another person, on the condition that he will keep it and return it in its original form. This definition is formulated in Article 1694 *BW* regarding the safekeeping of goods. According to the words of the article, that safekeeping is a real contract which means that it only occurs when a real action is taken, namely the delivery of the goods that are deposited, so it is not like other contracts which in general are usually consensual, namely those that have been born on when an agreement is reached on the main points of the contract.¹⁶

Safekeeping of goods is divided into two types, namely pure (true) safekeeping and

¹⁵ Salim HS, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, (Jakarta: Sinar Grafika, 2003), 76-77.

¹⁶ R. Subekti, *Aneka Kontrak*, (Bandung: Citra Aditya Bakti, 1995), 41.

secession safekeeping (custody in disputes). Pure custody can be done free of charge only for movable goods. There are two kinds of pure safekeeping, namely:

- a. Voluntary, meaning that the safekeeping of goods occurs because there is a reciprocal agreement between the person who entrusted the deposit and the party who receives the deposit. This deposit is carried out by people who are capable of carrying out legal actions;
- b. Forced, namely care that is forced to be carried out by someone because of a disaster, such as fire, flood, and others.

Secession is the safekeeping of goods to a third party, which is caused by a dispute between the custodian and another party or because of an order from a judge (Article 1730 *BW*). The cause of secession is the existence of a dispute and a judge's order.¹⁷

The contractual relationship between the *bewaargever* and the *bewaarnemer*, will give rise to the rights and obligations of the parties in the contract of safekeeping of goods. Obligations for those who keep the goods (*bewaarnemer*), include:

- a. Maintain goods as well as possible;
- b. Returning the item to the custodian; and
- c. Maintenance must be carried out with care. This obligation must be carried out carefully if:
 1. The recipient of the deposit first offers to keep the goods;
 2. Deposits are promised for a reward;
 3. Custody occurs for storage purposes; and
 4. It has been agreed that the recipient of the deposit will bear all negligence (Article 1707 *BW*).¹⁸

¹⁷ Salim HS. *Loc.Cit.*, 77.

¹⁸ *Ibid.*

The rights of the custodian of the goods:

- a. Reimbursement of costs for maintaining goods;
- b. Compensation for losses suffered in the storage of goods; and
- c. Retain goods before reimbursement of costs and losses is received from the depositor.

Meanwhile, the right of the custodian basically receives the goods that have been deposited in full, with the following obligations:

- a. Paying wages to the depositors; and
- b. Provide reimbursement of costs and losses to the depositor.¹⁹

Referring to the elements of Article 1694 *BW* regarding the contract for safekeeping of goods, then in the contract for the provision of SDB services it is "unable to fulfill the element of returning the goods to the custodian in their original form". In the contract for the provision of SDB services, the bank does not accept the delivery of the goods to be stored in the SDB, even the bank does not know the contents of the safe at all, the contents are only known by the customer himself, whether the type of goods or valuable documents, the amount and the mutation of its contents. contained in the SDB, the bank does not know about it. In contrast to the contract of safekeeping of goods, the party receiving the deposit knows for sure about the type and amount of the goods deposited by the depositor and the party receiving the deposit will return the goods that were deposited in their original condition when the goods were deposited and in the contract of safekeeping of goods it has been agreed that the recipient of the deposit will bear the responsibility. all negligence. Although the SDB contract in the banking world is a lease contract, if further

¹⁹ *Ibid.*

examined, the SDB rental contract has several characteristics that distinguish it from the rental contracts that are usually held by the public in general.

The public's purpose of using the service or renting SDB from a bank is of course based on the public's belief that the bank's SDB is a safe place to store valuables or documents. The name implies "*safe deposit box*", which means a safe deposit box. Also in several brochures or information from several banks which stated that the bank provides SDB which provides security of valuables from theft, fire and others, although the SDB rental contract does not include a security guarantee from the SDB provided by the bank. In principle, the SDB rental contract contains elements of space rental, as well as safekeeping and trust in the bank which will maintain the security of the customer's place of storage at the bank's premises. However, in the practice of the banking world, banks are not willing to be responsible when the goods that have been stored in the SDB are lost, damaged, or the quantity and quality of the goods changed from the storage box. Moreover, in SDB rental agreements, a clause is often found to the transfer of responsibility to their customers, that the bank is not responsible for the truth, changes in quantity and quality, lost, damaged, or other similar matters on deposited goods and the bank is released from prosecution. or claims from any party.

In accordance with the provisions of *BW*, another obligation of the lessee is to maintain the leased property so that it can be used for the intended purpose. Provide the tenant with a serene enjoyment of the goods being rented for the intended purpose. From this provision, if applied to the SDB rental contract, it is the obligation of the leasing party (bank) to

maintain security and comfort for customers in using SDB. Therefore, banks are obliged to maintain the security of SDB that has been leased in various ways and with maximum efforts. For example: implementing strict procedures and a good security system, so that the safety and comfort of using SDB is guaranteed according to the purpose of using SDB for the community as a safe storage place. In the SDB lease contract, valuable goods or documents stored in the SDB are only known by the customer, while the bank does not know the contents of the SDB leased by the customer. Since the SDB is confidential, only the lessee knows the contents or mutations or changes in the contents of the SDB concerned, so that in the future this will become the reason for the bank to be free from liability if the customer's goods or documents are lost, damaged, destroyed or reduced. If this occurs during the SDB lease contract, in practice the SDB lease contract, there is usually a clause that eliminates the liability of the bank, that the bank is not responsible for the truth, changes in quantity and quality, lost or damaged or other similar matters. for goods stored in SDB, caused either due to *overmacht* or not, so that all risks rest with the SDB tenant.

Arrangements related to the risk of the lease contract, in *BW* there is no clear stipulation regarding the risk of loss to the parties. Risk is the obligation to bear losses if there is an event outside of one of the parties that befalls the object intended in the contract. According to Article 1553 *BW* it is only stated that the risk of the goods being leased is borne by the owner of the goods. Article 1553 *BW* only regulates the risk of the goods being leased, not the content of the goods being leased. The text of Article 1553 *BW* is as follows: "if during the rental period the goods being leased

are completely destroyed due to an unintentional incident, then the lease agreement is null and void by law". So, it is clear that this Article *BW* only regulates a consequence of a lease contract, which if the object that is the object of the lease is destroyed not because of the fault of both parties, then the contract is said to be null and void by law. Fall by law means that the agreement is considered never existed if the event occurs.²⁰

Regarding the risk of lost, or reduced, damaged items or documents stored in the SDB, no settings were found. In banking practice, the bank is not responsible for the correctness, changes in quantity and quality, lost or damaged or other similar things on the goods stored in the SDB, whether caused by *overmacht* or not, so all liability risks from lost, reduced, damaged or destroyed goods or valuable documents belonging to the customer are with the SDB tenant (the customer). In other words, the SDB rental contract contains an exoneration clause (*exemption clause*), namely an agreement containing the transfer of responsibility for business actors. This exoneration clause can exist in the SDB rental contract, because the SDB lease contract agreed between the bank and its customers is a standard contract, a contract that has been unilaterally determined by the bank.

The exoneration clause in a contract where it is stipulated that there is an exemption or limitation from certain liability, which normally according to law should be the responsibility.²¹ According to Rijken, that the clause contained in the contract in which one

party avoids fulfilling its obligations by paying full or limited compensation, which occurs because of a broken promise or an unlawful act. This exoneration/exemption clause can occur at the will of one party as stated in the contract individually or in bulk. This mass nature has been prepared in advance and reproduced in the form of a form called a standard contract.²² Mariam Darus Badruzaman said that the standard agreement with an exoneration clause which eliminates or limits the obligation of one party (the creditor) to pay compensation to the debtor, has the following characteristics:

- a. The contents are determined unilaterally by the creditor whose position is relatively stronger than the debtor;
- b. The debtor does not participate in determining the contents of the agreement;
- c. Driven by his need, the debtor is forced to accept the agreement;
- d. The form is written;
- e. Prepared in advance in bulk or individually.²³

The existence of certain goals such as practicality between the parties, the exoneration clause is used by business actor, because it requires a long time and process for the bank to negotiate one by one with all customers regarding the contents of an agreement to be mutually agreed upon. This condition allows banks to take advantage of the situation by making clauses that impose burdens on customers, resulting in an imbalance in position between the parties where the bank as the provider of SDB services is in a dominant

²⁰ A. Qiram Syamsudin Meliala, *Pokok-Pokok Hukum Kontrak Beserta Perkembangannya*, (Yogyakarta: Liberty, 1985), 74.

²¹ Zakiyah, *Hukum Kontrak Teori dan Perkembangannya*, (Yogyakarta: Pustaka Felicha, 2011), 81.

²² Mariam Darus Badruzaman, *Aneka Hukum Bisnis*, (Bandung: Alumni, 1994). 47.

²³ Ahmadi Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen*, (Jakarta: Raja Grafindo Persada, 2014), 115.

position while the customers who need these services seem forcing to sign the agreement.²⁴

In Article 18 paragraph (1) letter a, Law no. 8/1999 stipulates that business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in each document and/or agreement when stating the transfer of responsibility for business actors. It has been clearly determined that a bank may not declare a transfer of responsibility. The party who made a mistake should not benefit from the agreement and the party who did not make a mistake should not be harmed by the agreement. Standard clause that has been set by business actors in documents or agreements that meet the provisions as referred to in Article 18 paragraph (1) of Law no. 8/1999 declared null and void.²⁵

Some characteristics of the SDB's lease contract that have occurred in the banking business practice, are not a pure lease contract as regulated in *BW*. However, there are elements that are not fulfilled, namely the goods being leased are not fully under the power of the lessee. In addition, the SDB lease contract contains elements of a lease contract and a goods custody contract, so that the SDB lease contract can be categorized as a mixed contract (*contract sui generis*).

According to J. Satrio, that a mixed contract is a contract that has the characteristics of two or more named contracts, where the characteristics or elements are interwoven into one, so that it cannot be separated as a stand-alone contract. For example, a lease-purchase

contract, this contract contains elements of a contract named, namely: a lease contract because while paying the installments, the lease buyer may use the object purchased by the lease. A sale and purchase contract because finally after the seller of the lease has received the payment, the buyer turns into the owner.²⁶

A mixed contract is a contract that contains various elements of a contract. There are several understandings of this mixed contract, namely: *first*, the provisions regarding the special contract are applied analogically, so that every element of the special contract remains (*combined contractus*) and *secondly*, the provisions used are the provisions of the most decisive contract. (*absorption theory*).²⁷

Furthermore, according to J. Satrio, who put forward theories about mixed contracts, there are three theories:

1. Combination/ cumulation theory

This theory states that the elements of the contract are separated first, then for each element, the contract term that are suitable for the element are applied. The weakness of this theory is when the terms of the contract conflict with each other.

2. theory *Absorption*

This theory states that for mixed contracts, it is first seen which element in the contract is the most prominent, then contract rules are applied according to the most dominant element, while the other elements are defeated as if the element was exploited by the dominant element. The weakness of this theory is that there is no definite benchmark in deciding which ele-

²⁴ Metya Janastu, "Tanggung Gugat BII Terhadap Hilangnya Barang Dalam Safe Deposit Box," *Perspektif: Kajian Masalah Hukum dan Pembangunan* 25, no. 3 (2020): 154, <https://jurnal-perspektif.org/index.php/perspektif/article/view/720>.

²⁵ *Ibid.*

²⁶ *Ibid.*, 13.

²⁷ Mariam Darus Badruzaman, dkk, *Kompilasi Hukum Perikatan Dalam Rangka Memperingati Memasuki Masa Purna Bakti Usia 70 Tahun*, (Bandung: Citra Aditya Bakti, 2001), 69.

ment is the most dominant in the contract.

3. The theory that views mixed contracts as separate contracts (*sui generis* contracts or contracts that have their own characteristics). The named contract rules whose elements appear in the contract are applied analogously.²⁸

Based on several kinds of mixed contract theory, the SDB rental contract can be categorized as a mixed contract as a separate contract (*sui generis*), namely a contract that has its own characteristics. The SDB rental contract has its own characteristics that are different from the general rental contracts that occur in the community. There is another element, where the SDB is under the management and supervision of the bank that provides a place to store the goods and securities, even though the bank does not know about the mutation and its contents. Banks only provide storage areas that can be used by SDB tenant customers to store their goods and securities for or in accordance with the term of the lease. In other words, the goods and securities are in the control of the SDB tenant customers, not under the control and supervision of the bank. It is natural for the bank to enter into a clause stating that it is not responsible for the loss or damage to the goods and securities belonging to the SDB tenant who are in the SDB, because the bank never knew about the mutation and contents of the SDB, the condition of the goods and securities stored, whether there were or not There were goods and securities in the SDB which the bank never knew. A list of goods and securities kept in the SDB has never been made. In accordance with its business activities, the bank in this case “only” provides a “storage place” for goods and securities, meaning that what is rented here is

a safe box or place for storage. Its contents are confidential, only SDB’s tenant customers know about it, so it is only natural that the bank does not want to be responsible if the goods and securities stored in the SDB are lost, damaged, or destroyed because of it. Because it is confidential, the loss of goods and securities is the responsibility of the SDB tenant customers themselves.

CONCLUSION

The transaction for provision of SDB services is a mixed contract (*contract sui generis*), in which the legal relationship between the customer and the bank in the SDB contract contains an element of a “custodial contract”, not merely an SDB rental contract, because the goods and securities stored in the SDB it turns out that it is in the power and management of the bank, the SDB is at the domicile of the bank that rents out the SDB, provided that the bank does not know the mutation and its contents. SDB customers receive guarantees from the bank to maintain their security, so it requires the bank to guarantee the security of SDB. Since the legal relationship in the SDB rental contract contains a custody contract, the SDB rental contract should be specifically regulated in banking regulations, in order to guarantee legal certainty regarding the rights and obligations of the parties in the SDB leasing legal relationship.

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²⁸ Zakiyah. *Loc.Cit.*, 13-14.

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