

Legal Protection of Insurance Companies in Counter Insurance Products of Domestic Documentary Credit Letters (SKBDN) Containing Unconditional and Irrevocable Clauses

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Article Info

Received: 2024-09-13

Revised: 2024-12-12

Accepted: 2024-12-20

Keywords:

Domestic L/C; SKBDN;
Kontra SKBDN; Usance
SKBDN; Unconditional
and Irrevocable.

Abstract

In order to carry out business transactions, various types of payment instruments are known to accommodate the business interests of the parties. One of these means of payment is a Domestic Letter of Credit (SKBDN). SKBDN is a written agreement made by the Applicant and the Opening Bank, to make promises of payment to the Beneficiary as a result of the existence of a sales contract. There are several types of SKBDN, one of which is the Usance SKBDN, which is a type of SKBDN that provides the applicant with the opportunity to fulfill his obligations within a certain period of time. This obligation certainly contains risks. In order to avoid risks, the Issuing Bank then collaborates with Insurance to guarantee the Usance SKBDN through the Kontra SKBDN product. Generally, SKBDN contains unconditional and irrevocable clauses. This clause is absolutely binding, it does not give insurance the opportunity to avoid claims. Therefore, a comprehensive legal understanding is needed to understand the limits of the application of unconditional and irrevocable clauses in order to protect the legal interests of Insurance from various existing risks, including the risk of unlawful acts occurring in the process of issuing SKBDN and Kontra SKBDN.

I. Introduction

Insurance is a crucial necessity as it offers comfort and protection against potential future losses.¹ Insurance offers numerous advantages, the primary one being its ability to aid the community in resolving diverse issues at risk, thereby enhancing the confidence and tranquility of those who subscribe to it. Secondly, insurance serves as a tool to manage the diverse risks encountered during development projects. In addition, although there are various ways to deal with risk, insurance is the most commonly used way because insurance provides a promise of coverage to the insured party of the risks that will be undertaken personally or the risks that will be undertaken by the insurance institution.²

Insurance is formed on the basis of existing risks from each line of business. Risk can be defined as uncertainty of financial loss, in which there are two elements, namely uncertainty and transfer of losses.³ Specifically, the Commercial Code (hereinafter referred to as "KUHD") has regulated insurance, but the classification of insurance according to the KUHD is no longer in accordance with current conditions and needs to be updated.⁴ Therefore, the new legislation allows insurance companies to expand their scope of business in accordance with the needs of the community, referring to regulations from the Financial Services Authority (hereinafter referred to as "OJK"). This expansion in insurance is one of the doors of companies engaged in insurance in order to issue credit guarantee and suretyship products.

According to Article 1 paragraph 18 letter 23 of the Financial Services Authority Regulation No. 69/POJK.05/2016 about the Implementation of the Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies (hereinafter "POJK"), one of the ceding companies is suretyship. This is a general insurance business line that provides guarantees for the principal's ability to carry out its obligations in line with the main agreement between the principal and the obligee. Article 4 of the Insurance POJK reinforces this explanation by asserting that insurance or sharia insurance companies can broaden their business scope to encompass credit guarantee and suretyship activities.

In trade transactions, there is one payment instrument known as a Domestic Letter of Credit (hereinafter referred to as "SKBDN").⁵ SKBDN bears a resemblance to the Letter of Credit (L/C). SKBDN is an agreement where the

¹ Ni Putu Sintha Tjiri Pradnya Dewi and Desak Putu Dewi Kasih, "Pengaturan Lembaga Penjamin Polis Pada Perusahaan Asuransi Di Indonesia," *Jurnal Magister Hukum Udayana* 9, no. 4 (2020): 739–51.

² *Ibid.*

³ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2016).

⁴ Gunarto, *Asuransi Kebakaran Di Indonesia* (Jakarta: Logos Wacama Ilmu, 2003).

⁵ Muhammad and Abdulkadir, *Hukum Asuransi Indonesia* (Bandung: Citra Aditya Bakti, 2019).

agreement contains a promise of payment from the SKBDN applicant to the SKBDN recipient mediated by the bank as a payment implementing institution. L/C can be used as a transaction both at home and abroad, while for SKBDN it can only be used for domestic transactions. As stipulated in Bank Indonesia Regulation No. 5/6/PBI/2003 on Domestic Letter of Credit (PBI SKBDN), Article 1 states that Domestic Letter of Credit (SKBDN), also known as Domestic Letter of Credit (L/C), is any written promise made based on the applicant's written request that binds the issuing bank. This SKBDN stipulates that the opening bank has the obligation to make payment to the recipient or its order, or to accept and pay the draft drawn by the recipient; in addition, the opening bank may authorize other banks to make payment to the recipient or its order, or to accept and pay the draft drawn by the recipient, as well as authorize other banks to negotiate the draft drawn by the recipient, as long as the terms and conditions stipulated in the SKBDN are fulfilled.

In fulfilling the terms and conditions of SKBDN, there are certainly risks. The most significant risk is the default of SKBDN from the applicant to the issuing bank, which happens when the applicant fails to fulfill its obligations to the issuing bank, thereby forcing the issuing bank to make payments to the recipient. The bank mitigates this risk by seeking collateral from the applicant. If the applicant cannot fulfill these conditions, the applicant and issuing bank can involve the insurance company to cover or guarantee SKBDN. If SKBDN doesn't meet the requirements, the issuing bank can transfer the risk to the insurance company, acting as a risk guarantor against potential financial loss in SKBDN products, by issuing Kontra SKBDN insurance products.

Cooperation agreements between banks and insurance also often stipulate that Counter SKBDN is unconditional and irrevocable.⁶ Unconditional means that the guarantor is obliged to disburse the claim made by the issuing bank as the insured "without any other conditions" when there is a failure in the implementation of SKBDN by the applicant as the applicant SKBDN. On the other hand, the irrevocable principle dictates that the guarantor cannot unilaterally revoke, terminate, or terminate the guarantee agreement with the issuing bank as the obligee until the fulfillment of the SKBDN. Both principles are common and are often used in Kontra SKBDN products as best practices in the Kontra SKBDN guarantee business.

Based on the previously mentioned legal events, a case arose between Bank Mandiri and Askrindo, in which they entered into a Bank Cooperation Agreement with Insurance. In the agreement, Bank Mandiri assumes the role of SKBDN's issuing bank, while Askrindo serves as SKBDN's guarantor for Kontra SKBDN

⁶ Budiono and Herlian, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia Hukum Perjanjian Berlandaskan Asas-Asas Wiganti Indonesia* (Bandung: Citra Aditya Bakti, 2008).

products. The agreement between Mandiri and Askrindo guarantees the purchase of raw materials, machinery, and spare parts equipment in the Kontra SKBDN product.⁷ One SKBDN applicant, out of several, needs Kontra SKBDN to bolster its solar trade business activities. However, this applicant deals with trade goods, not raw materials, machinery, or spare parts equipment. Despite this, they still issue SKBDN and Kontra SKBDN. Askrindo issues SKBDN with a specific usage type, known as SKBDN, and ensures payment by the due date, providing assurance to the applicant in the event of non-payment. Over time, the SKBDN defaulted. Despite the applicant's product not falling under the regulated category in the cooperation agreement between the bank and insurance, Askrindo continues to pay the issuing bank's claim, specifically Bank Mandiri. What's interesting about the above is that there are indications of gratification and abuse of authority in the process of establishing the Counter SKBDN.

A problem arises from the events mentioned above. The bank deliberately did not apply the prudential principle or intentionally committed illegal acts or fraud in a structured manner together with the insurance company in the issuance of Kontra SKBDN. The insurance company still has the obligation to pay claims on Kontra SKBDN submitted by the issuing bank as an obligation due to the unconditional and irrevocable principle, even though Kontra SKBDN has been procedurally flawed from the start due to illegal acts.

From this, it is necessary to protect the insurance company that guarantees SKBDN through the Kontra SKBDN product based on the cooperation agreement between the bank and the insurance, which contains the unconditional and irrevocable clause, which contains a legal defect at the stage of issuing the Kontra SKBDN that originates from a tort resulting in harm to the insurance company.

2. Research Method

The author employs a doctrinal research approach, akin to normative judicial research, to assist in formulating solutions to the primary issues. This research employs a statutory approach to scrutinize laws and regulations pertaining to the legal issues under discussion, as well as a conceptual approach that deviates from the perspectives and doctrines of jurists and legal scholars. These approaches are beneficial in generating ideas and formulating concepts, notions, and principles that align with legal arguments, which the author can then utilize to address and resolve the issues discussed in this study.⁸ In compiling the research, the author needs legal sources. The legal sources are composed of three types: primary legal sources,

⁷ Marbun and Riris Marito, "Mengenal Prinsip Unconditional Pada Bank Garansi Dan Polis Surety Bond," *Jurnal Ilmu Sosial Dan Pendidikan* 6, no. 4 (2022).

⁸ Fajar Mukti and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka, 2010).

secondary legal sources, and tertiary or non-legal sources.⁹

3. Results and Discussion

Limitation of Unconditional and Irrevocable Clause in Contra SKBDN Insurance Policy

An engagement, the core of a business transaction relationship, encompasses a multitude of interests that a single individual cannot accomplish alone.¹⁰ Business relationships arise from the rights and obligations of the parties involved in an engagement, which is aimed at fulfilling a specific interest.¹¹

In order to carry out business transactions, various kinds of payment instruments are used to accommodate the parties' business interests.¹² One of these payment instruments is the Domestic Letter of Credit (SKBDN). The definition of SKBDN is regulated in Article 1 point (1) of Bank Indonesia Regulation Number 5/6/PBI/2003 concerning Domestic Documented Letter of Credit (PBI SKBDN). SKBDN, also known as Domestic Letter of Credit (L/C), is any written promise made based on the applicant's written request that binds the issuing bank. This promise stipulates that the Issuing Bank has the obligation to make payment to the Beneficiary or its order, or to accept and pay the draft drawn by the Beneficiary.¹³ In addition, the Issuing Bank may also authorize other banks to make payments to the Beneficiary or its orders, or to accept and pay drafts drawn by the Beneficiary. The Opening Bank is also authorized to negotiate drafts drawn by the Recipient upon submission of documents, as long as the terms and conditions stipulated in the SKBDN are fulfilled.

Referring to the definition of SKBDN as explained above, it can be understood that SKBDN is a written agreement made by the applicant and the issuing bank to make payment promises to the recipient as a result of a sales contract. The SKBDN is issued based on a sales contract between the applicant and the SKBDN recipient is the basis for the issuance of SKBDN. The sales contract functions as the primary agreement, while the SKBDN is an additional/accessory contract, as emphasized in Article 9 point (1) of PBI SKBDN, which states that "SKBDN is a separate contract

⁹ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2010).

¹⁰ Ni Ketut Supasti Dharmawan et al., "Digital Management of Traditional Cultural Expressions: Why It Is Needed in the Context of Gaining the Benefit-Sharing," in *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, 2023, 1156–66, https://doi.org/10.2991/978-2-38476-180-7_117.

¹¹ I Gede Agus Kurniawan, Putu Aras Samsithawrati, and Lourenco De Deus Mau Lulo, "Eksistensi Sanksi Administratif Bisnis Digital Dalam Perspektif Economic Analysis of Law," *Jurnal Ius Constituendum* 8, no. 1 (March 20, 2023): 115, <https://doi.org/10.26623/jic.v8i1.6281>.

¹² I Gede Agus Kurniawan, "Klausula Eksonerasi Dalam Bisnis Perspektif Hukum Progresif," *Istinbath : Jurnal Hukum* 19, no. 02 (December 31, 2022): 187–204, <https://doi.org/10.32332/istinbath.v19i02.4784>.

¹³ Agus Yudha Hernoko, *Hukum Perjanjian - Asas Proposionalitas Dalam Kontrak Komersial* (Jakarta: Kencana Prenada Media Group, 2014).

from the sales contract or other contracts that serve as the basis for the issuance of SKBDN."

The SKBDN payment promise is binding between the applicant, the issuing bank, and the recipient, so that each party has their respective rights and obligations to fulfil the engagement as agreed in the SKBDN. The binding nature is emphasised in Article 5 point (2) PBI SKBDN, as quoted as follows: "SKBDN can only be issued with unchangeable and irrevocable or irrevocable conditions without the consent of the opening bank, confirming bank if any, and recipient."

The PBI SKBDN, as stated in Article 2 point (3), exclusively applies to trade in goods transactions. However, if there is a trade in services in the transaction, this is not possible unless the service becomes a unity, which is a connection with the trade in goods, provided that the value of the service cannot be greater than the value of the goods, as stipulated in Article 2 point (4) PBI SKBDN, namely, "In the event that the goods trade transaction is related to a service trade transaction that cannot be separated from one another, the value of the goods must be greater than the value of the service."

According to Article 2 point (4) of PBI SKBDN, only domestic goods movement transactions are eligible for SKBDN. However, SKBDN is still possible if the movement of goods from domestic to overseas is based on a Letter of Credit (L/C) for export purposes. The most significant issue is that the parties can discuss the period of SKBDN and the period of postponement of SKBDN payment. Article 5 paragraph (1) PBI SKBDN regulates this, stating that the agreement between the applicant and the opening bank determines the SKBDN period and the SKBDN payment postponement period.

In addition, Article 6 point (2) of PBI SKBDN stipulates that the Issuing Bank can only accept an application for the issuance of SKBDN if the Applicant contains at least the following: Article 6 point (2) PBI SKBDN Banks can only accept an application for the issuance of SKBDN if the application contains at least the following matters: a. clear name and address of the Applicant; b. clear name and address of the Recipient; c. SKBDN value; d. terms of payment on show, acceptance or Negotiation; e. details of documents, such as goods transportation documents and or other documents required; f. last date of submission of documents; g. place of submission of documents for payment on show, acceptance or Negotiation; h. date of issuance and maturity date of SKBDN. date of issuance and due date of SKBDN; i. medium of SKBDN issuance: letter, telex, swift or other means; j. description of goods; k. last date of delivery of goods; l. destination of goods delivery; m. statement of being subject to the Bank's general conditions for the issuance of SKBDN.

Thus, SKBDN is a form of additional/accessory contract that is born due to the existence of the main agreement, namely the trade agreement. SKBDN is fulfilled based on a series of freedom of contract described by containing an exchange of interests based on a promise to pay and delivery of trade goods carried out between

the applicant and beneficiary facilitated by the issuing bank. Each party has rights and obligations in accordance with its portion. The parties are bound to comply with the contents of the SKBDN as a form of contract that must be obeyed like a law or *pacta sunt servanda*.

The birth of SKBDN is a concrete form to bind the interests of trade in goods between the applicant and beneficiary facilitated by the SKBDN issuer, namely the opening bank, hereinafter referred to as the issuing bank. The promise to pay contained in writing in the SKBDN contains legal consequences that cannot be avoided unilaterally by the parties involved in the SKBDN. This interest is philosophically based on the trust of the parties to be fully implemented. However, the issue lies in the inability to completely eliminate potential future risks.

SKBDN, in principle, has similarities with L/C. The similarity between L/C and SKBDN is that both are promises to pay. However, there is also a difference between SKBDN and L/C, which lies in the limitation of its use. Referring to Article 3 PBI SKBDN, SKBDN can only be used for domestic trade transactions. In addition, SKBDN can be used for export trade purposes or the movement of goods from within the country to abroad. In contrast to L/C, which is used for cross-border transactions, it can be used as a document for export and import transactions. In addition, normatively, L/C provisions are subject to the Uniform Customs and Practice for Documentary Credits (hereinafter referred to as "UCP 600").

There are several types of SKBDN in a variety of implementations to facilitate existing trade needs. Some types of SKBDN are as follows:

1. Irrevocable SKBDN Referring to Article 5 point (2) of PBI SKBDN, this type of SKBDN can only be issued with unchangeable and irrevocable or irrevocable conditions without the approval of the Issuing Bank, Confirming Bank (if any), and Beneficiary. Irrevocable SKBDN is the same as irrevocable L/C. Referring to UCP 600, this type of L/C cannot be changed or cancelled by the customer as well as by the issuing bank, the confirming bank, and the L/C beneficiary unilaterally.
2. Red Clause SKBDN is a SKBDN that requires an advance payment made by the applicant before the issuance of the SKBDN. This is regulated in Article 5 points (4) and (5) of PBI SKBDN, which states that "In issuing SKBDN, the bank may determine the amount of collateral and/or cash deposit by considering the bona fides of the applicant." In the event that SKBDN is issued with advance payment terms (red clause), the bank is obliged to determine an adequate cash deposit by taking into account the amount of the advance drawn." Cash deposits for the issuance of SKBDN with advance payment terms (red clause) are required considering that payment in this way requires payment before the realisation of the delivery of goods. With the cash deposit, the risk of the recipient not delivering the goods to the applicant can be avoided even though partial or full payment has been received by the recipient.

3. SKBDN back to back (on the basis of Master L/C) The issuance of SKBDN relies on a foreign master L/C, serving as the foundation for domestic trade transactions, a process known as the back-to-back method. Article 25 PBI SKBDN stipulates that one cannot use SKBDN as a master to open a Letter of Credit abroad.
4. Transferable SKBDN Referring to Article 21 of PBI SKBDN, transferable SKBDN is SKBDN where the applicant (first recipient) has the right to apply to the issuing bank that pays, accepts, or negotiates to transfer the SKBDN, either in whole or in part, to one or several second recipient parties (or other third parties).
5. Sight SKBDN Namely, SKBDN is issued with a scheme such as Sight L/C. PBI SKBDN does not specifically regulate the type of Sight L/C, which is SKBDN based on the payment period. However, conceptually, the issue of Sight SKBDN involves the applicant making payment at the time of SKBDN issuance, which the issuing bank then forwards to the SKBDN recipient. Since the SKBDN applicant has already fulfilled their obligations, this type of SKBDN does not require special regulatory criteria.
6. Usance SKBDN shares similarities with Sight L/C, as PBI SKBDN does not specifically regulate it. Therefore, the Usance SKBDN type is conceptually identical to Usance L/C, where the SKBDN Recipient (seller) issues the SKBDN and the SKBDN Applicant (buyer) receives and sends the goods.

As risk emerges, it gives rise to the concept of risk management. Insurance is primarily concerned with risk management. Insurance, along with its guiding principles, came into existence. There are several principles that apply to insurance, specifically:

1. The indemnity principle, which emphasizes the existence of compensation, forms the foundation of the insurance agreement. The main objective of the insurance agreement is for the insurer to provide compensation to the insured party.¹⁴ This principle aims to provide a solution: in the event of an evolving risk, the insurance acts as a risk manager, ensuring that the insured continues to receive benefits in the form of compensation, even in the face of uncertain events.
2. The principle of interest is called insurable interest. Each party intending to enter into an insurance agreement must have an insurable interest.¹⁵ An event that causes damage or loss to the insured object only gives rise to an insurable interest.¹⁶ Insurable interest is one of the most important principles in insurance agreements.

¹⁴ Sri Rejeki Hartono, *Hukum Asuransi Dan Perusahaan Asuransi* (Jakarta: Sinar Grafika, 1995).

¹⁵ Agoes Parera, *Hukum Asuransi Di Indonesia* (Sleman: Kanisius, 2019).

¹⁶ Agus Prawoto, *Hukum Asuransi Dan Kesehatan Perusahaan Asuransi* (Yogyakarta: BPFE, 2019).

3. The principle of trustworthy faith plays an important role in insurance. The honesty inherent in the act of good faith can be seen in two ways, namely at the time of the entry into force of a legal relationship or at the time of the implementation of the rights and obligations contained in the legal relationship. In addition, good faith is required because the law cannot cover future circumstances.¹⁷ No human action is perfect. Since human beings are the only ones who create the aforementioned regulations, they can only encompass situations that were known to be possible at the time of their formation. Only later did it turn out that there were circumstances that, if known to be possible, would or should have been included in the regulatory environment. In such circumstances, the honesty of the interested party plays an important role.¹⁸
4. The subrogation principle aims to provide compensation for insured losses to the party responsible for the loss. Subrogation is the savior of the indemnity principle because it obligates the insurer to compensate the insured. When indemnity occurs, it must be a direct result of an uncertain event.¹⁹

A set of principles enables insurance to manage risks that arise from uncertain events associated with SKBDN issued by the issuing bank. Therefore, insurance provides coverage in the event of an uncertain risk from SKBDN in the form of Kontra SKBDN. Kontra SKBDN originated as a means of safeguarding the interest of the issuing bank, which assumes the risk of the applicant against the beneficiary.

In writing, Kontra SKBDN contains clauses to avoid risk (risk avoidance), reduce risk (risk reduction), hold risk (risk retention), share risk (risk sharing), and transfer risk (risk transfers). Since the insurance policy is a type of insurance agreement, it must meet the legal requirements of the contract, as outlined in Article 1320 BW. These requirements include a description of the applicant, the issuing bank, the SKBDN issued, the SKBDN recipient as the obligee, and the coverage conditions. Should a default occur, Kontra SKBDN serves as the foundation for the issuing bank to submit a claim against the insurance, acting as the SKBDN guarantor. The insurance must satisfy this claim while still adhering to the terms outlined in Kontra SKBDN.

SKBDN is binding between the applicant, issuing bank, and beneficiary. Referring to Article 1821 BW, "There is no coverage if there is no principal obligation that is valid according to law. However, people can enter into a guarantee in an obligation, even though the obligation can be canceled by an objection regarding the debtor's person, for example in the case of a minority." Because of its nature as an additional agreement/accessory to the main agreement, namely SKBDN, the provisions of Kontra SKBDN cannot exceed the contents of the SKBDN itself.

SKBDN is a product issued by the bank. Banks are financial institutions in which

¹⁷ Prodjodikoro and Wirjono, *Hukum Asuransi Di Indonesia* (Bandung: Sumur, 1992).

¹⁸ Chumaida and Zahry Vandawati, *Prinsip Itikad Baik Dalam Perjanjian Asuransi Yang Berkeadilan* (Surabaya: Revka Putra Media, 2014).

¹⁹ Spencer L. Kimball and Don A Davis, *The Extension of Insurance Subrogation*, *Michigan Law Review*, 1962.

every regulation of their business activities is subject to applicable regulations. The legal relationship of SKBDN issuance refers to PBI SKBDN. Meanwhile, the legal relationship of counter SKBDN issuance refers to the agreement outlined in the Cooperation Contract between the SKBDN Issuing Bank and Insurance (Cooperation Agreement between Bank and Insurance). The cooperation agreement between the bank and the insurance must, of course, fulfill the legal requirements of an agreement based on BW.

One of the arrangements included in the Kontra SKBDN is the existence of a clause containing the policy's terms of validity, where unconditional and irrevocable provisions are required. Unconditional means that in any condition and regardless of any condition, the SKBDN issuing bank can submit a claim against the risk covered in the Kontra SKBDN, or, in other words, the insurance company has no right to reject the claim. As long as the Kontra SKBDN remains valid, both the SKBDN Issuing Bank and the Insurance cannot withdraw the Kontra SKBDN product until they fulfill the conditions outlined in the Kontra SKBDN.

This occurs in the cooperation agreement between PT Bank Mandiri (Persero) and Askrindo in the Commercial Line for Counter L/C Issuance (Cooperation Agreement between Bank and Insurance). Referring to the Cooperation Agreement between the Bank and the Insurance, Askrindo is required to guarantee 100% (one hundred percent) of the issuance of Counter L/C or SKBDN from Bank Mandiri. This guarantee is unconditional and cannot be changed or revoked for any reason, making it irrevocable. Additionally, Askrindo releases all rights owned by the debt insurer, which must be included in the Counter L/C or SKBDN Certificate. Askrindo must deposit a marginal deposit (deposit money) to Bank Mandiri as part of the Cooperation Agreement between the Bank and Insurance. If the SKBDN guaranteed by Kontra SKBDN matures and no payment has been received from the SKBDN applicant, Bank Mandiri has the right to deduct the funds, given the unconditional and irrevocable nature of the guarantee.

This condition becomes very absolute and seems to be regardless of any conditions in the event of a claim request from the SKBDN issuing bank to the insurance due to the default of the SKBDN applicant against the issuing bank. If an error arises, exposing the SKBDN Applicant to default risk and resulting in a claim against the Kontra SKBDN, both parties are obligated to proceed with the claim, which cannot be canceled until the conditions outlined in the Kontra SKBDN are fulfilled. This negative aspect has the potential to lead to fraud.

The legal construction of the unconditional and irrevocable clause is a key to ensuring that the implementation of the contract on the guarantee in the form of SKBDN can actually be implemented without any obstacles. Conditions bind the SKBDN Applicant, Issuing Bank, Recipient, and SKBDN Guarantor, namely Insurance, to their respective rights and obligations, thereby providing legal certainty in the event of a default by one of the parties due to an uncertain condition,

also known as evanement. The clause carries a legally binding effect. Even absolutes can have potential shortcomings.

When there is a default that leads to a claim, it is necessary to review whether this happened intentionally by the applicant or indeed occurred due to an uncertain event. One cannot separate Kontra SKBDN from the main agreement, SKBDN, as it functions as an additional agreement or accessory. The issuance of Kontra SKBDN against SKBDN relies on the existence of a Cooperation Agreement between the Bank and Insurance, which serves as the foundation for the validity of Kontra SKBDN within the contractual framework. The Cooperation Agreement between the Bank and Insurance must reveal any mistakes, errors, and/or legal defects in Kontra SKBDN.

The legal construction of the unconditional and irrevocable clause is critical to ensuring that the contract on the guarantee in the form of SKBDN can actually be implemented without any obstacles. Conditions bind the SKBDN Applicant, Issuing Bank, Recipient, and SKBDN Guarantor, namely Insurance, to their respective rights and obligations, thereby providing legal certainty in the event of a default by one of the parties due to an uncertain condition, also known as evanement. The clause carries a legally binding effect. Even absolutes can have potential shortcomings.

When there is a default that leads to a claim, it is necessary to review whether this happened intentionally by the applicant or indeed occurred due to an uncertain event. It cannot be separated that Kontra SKBDN is a form of additional agreement (accessoir) to the main agreement, namely SKBDN. The issuance of Kontra SKBDN against SKBDN relies on the existence of a Cooperation Agreement between the Bank and Insurance, which establishes the validity of Kontra SKBDN within the contractual framework. Since the Cooperation Agreement between the Bank and Insurance stipulates that Askrindo guarantees the purchase of raw materials or production machinery, both imported and local, it is necessary to examine the errors, mistakes, and/or legal defects in the Kontra SKBDN.

KSE is a trading company that purchases diesel fuel instead of raw materials or production machinery, whether imported or local. Interestingly, even though the Cooperation Agreement between the Bank and Insurance did not include KSE's goods in its category, Askrindo nonetheless provided a guarantee by issuing a counter-use SKBDN against Bank Mandiri, which is the SKBDN issuing bank. Bank Mandiri's use of SKBDN against KSE is valid for 180 (one hundred and eighty) days. At the end of 180 (one hundred and eighty) days, KSE defaulted or failed to fulfill the SKBDN payment. Consequently, an unconditional and irrevocable clause obligated Askrindo to pay Bank Mandiri. The incompatibility of the guaranteed object, as per the scope of the cooperation agreement between the bank and the insurance, rendered the counter-SKBDN invalid, null, and void from the outset, complicating the problem. However, the unconditional and irrevocable clause obliged Askrindo to pay the claim. The main problem in the SKBDN guarantee stems from the legal

construction of the unconditional and irrevocable clause, which obligates Askrindo to pay claims due to KSE's default as the SKBDN applicant.

In terms of the agreement's validity and the way to end or cancel the contract with the unconditional and irrevocable clause, as well as the understanding of how to end and cancel the contract,²⁰ if the Kontra SKBDN was flawed from the start because of illegal acts, then it is not valid according to Article 1320 BW. When the contract does not meet the objective requirements, namely the *causa* (goods) that are allowed to be guaranteed (referring to the legal relationship and scope stipulated in the Cooperation Agreement between the Bank and the Insurance), the procedure for canceling the contract will be the answer before the Kontra SKBDN claim occurs. However, if a claim arises due to the unconditional and irrevocable clause binding the guarantor, the insurance can legally exercise its subrogation rights to protect its position and interests as the guarantor.

The limitation of the unconditional and irrevocable clause is based on the agreement's validity and legal requirements, as stipulated in Article 1320 BW. As long as the Kontra SKBDN fulfills the legal requirements of the agreement, there is no reason for the guarantor to deviate from the unconditional and irrevocable clauses. However, in the event of a mismatch, particularly in the guaranteed object of the Kontra SKBDN, which pertains to the Cooperation Agreement between the Bank and the Insurance, the unconditional and irrevocable clauses become inapplicable, rendering the Kontra SKBDN null and void. This is because the Kontra SKBDN fails to meet the objective requirements, which are a necessary condition for the formation of an agreement, as outlined in Article 1320 BW.

4. Conclusion

The unconditional and irrevocable clause in the Kontra SKBDN, which seems unlimited and absolute, normatively still has legal limitations. Although the clause appears unrestricted and unchangeable, it is subject to certain restrictions. For example, it only applies when the Kontra SKBDN is legally issued and meets the legal requirements of an agreement based on Article 1320 BW. In addition, Kontra SKBDN must also fulfill the insurance principle of good faith and not be based on the existence of an illegal act. Unlawful acts, particularly those that prevent the fulfillment of the Kontra SKBDN's objective elements, render the unconditional and irrevocable clause null and void. After reviewing the existing case, it becomes clear that the Kontra SKBDN never existed. As stipulated in Article 1320 BW, the Kontra SKBDN step that can be taken by the insurance is to cancel if the Kontra SKBDN does not meet the objective requirements and is null and void. The limitation of the unconditional and irrevocable clause lies in the validity of the contract underlying the birth of the Kontra SKBDN.

²⁰ Ni Luh Irma Aryani and Putu Aras Samsithawrati, "KEABSAHAN DAN KLAUSUL PENTING DALAM PERJANJIAN KERJASAMA BRAND AMBASSADOR DENGAN PERUSAHAAN PRODUK KECANTIKAN," *Kertha Negara : Journal Ilmu Hukum* 12, no. 1 (2024): 1–16.

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