

THE STUDY ASSIGNMENT AGREEMENT IN THE PERSPECTIVE OF DISPUTE AGREEMENTS AND RESOLUTIONS

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Abstract

The legal issues in this study are aimed to determine the legal provisions for returning compensation to Yayasan Slamet Riyadi Yogyakarta (YSRY) in an overseas study assignment agreement. Furthermore, this study is to determine and analyze the dispute resolution efforts that best provide a sense of justice for both parties. This research is a normative juridical that uses secondary data and uses qualitative data analysis and deductive conclusion techniques. The results show that First, there is a need for material and good faith guarantees from employees who carry out the assignment agreements. Second, non-litigation efforts need to be done in addition to a litigation effort undertaken by YSRY.

Keywords: *assignment agreement; material guarantee; good intention; YSRY.*

A. Research Background

The lecturer profession demands the development of knowledge and knowledge, both through learning activities and independent research activities. As well as further studies through learning assignments by employers, in this case, the Slamet Riyadi Foundation Yogyakarta (after this referred to as YSRY) as the Manager of Atma Jaya University in Yogyakarta has made rules regarding the assignment of learning to all teaching staff (lecturers). The agreement was made between YSRY and the recipient of the study assignment/ lecturer concerned. In addition to

agreeing, YSRY also issued a decree from the management of Slamet Riyadi's foundation regarding the Granting of Learning Assignments.

The agreement stipulates the following conditions, firstly, article 3 paragraph (3) At the time of study assignments and secondly, the party has the right to receive a salary every month, plus educational and other benefits, except available allowances and permanent travel. Paragraph (6) the First Party can provide an additional period for 24 (twenty-four months) and is given every 6 (six) months. If the Second Party has not been able to complete the learning task within the specified time, with reasons that can be accounted for based on written recommendations

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from the Manager of the University Study Program concerned. Furthermore, in paragraph (8), After ending the learning assignment, the Second Party is required to carry out the task as before at least 2 (times) the length of the study assignment given, plus 1 (one) year. Paragraph (9) stipulates if after ending the study assignment, it turns out that the Second Party is not willing to carry out the assignment according to the terms of this agreement. According to paragraph (8), the teaching staff concerned must return 2 (two) times of all study fees, salaries, and benefits have been received from the First Party while carrying out study assignments. The purpose of this research result was determined to examine the implementation of the study assignment regulation from YSRY and to provide fairness within the dispute resolution according to good faith principle among the parties.

B. Research Methods

This research is legal in the realm of normative/doctrinal juridical study. Doctrinal law research attempts to analyze positive law, discover the principles, and practical legal philosophy. Normative legal research is a process to find the rule of law, legal principles, and legal doctrine to address the legal issues at hand. The legal issues found will be examined in the law's dogmatic level, legal theory, and legal philosophy. Then the type of data in this study is secondary data or literature data, or legal material. Legal Materials consist of primary, secondary, and tertiary legal materials.

Primary legal materials consist of the 1945 Constitution, *Wetboek Van Koophandel*, *Burgerlijk Wetboek*, Foundation Rules, University Statutes, Atma Jaya University Yogyakarta Staffing Regulations, YSRY Decree, YSRY Management Decree, YSRY Articles of Association. Secondary legal materials consist of legal opinions obtained through books, magazines, internet, journals, papers, research results, opinions of legal practitioners and legal experts, and Indonesian dictionaries and legal dictionaries.

This study's data collection techniques are conducted with literature studies, both primary legal materials, secondary legal materials, and materials tertiary law and interviews with resource persons who will supplement secondary data. The data will be strengthened by the presence of speakers from the Head of Legal Aid Center and the Secretary of Center Of Legal Aid. After the data is collected, the next step is to process and analyze the data. All available legal materials obtained from research results are needed to answer the problem. The data obtained will be analyzed using qualitative analysis. Drawing conclusions in this study will use deductive deduction.

C. Research Results and Analysis

1. Review of the Agreement

a. Definition and Arrangement

According to Article 1313 of the *Burgerlijk Wetboek*, the termination of the agreement, after this referred to as the *Burgerlijk Wetboek*, is "An act by which one or more persons commit themselves

to one or more persons". The word deed in that provision contains the meaning as a legal deed. The purpose of this legal action is that an agreement publishes an agreement between two people who made it and, in its form, contains promises or abilities that are read or written.¹

The understanding of this agreement is also translated by the opinions of other legal experts such as Subekti. Subekti states that an agreement is meant by an event where someone promises to someone else or where two people promise to do something with each other.² Then Sri Soedewi Masjchoen Sofwan interpreted the agreement as a legal act whereby someone or more tied himself to another or more people.³ Abdulkadir Muhammad explained that the agreement was an agreement between two or more people who bound themselves to carry out a matter in wealth.⁴ Based on the understanding of the agreement from the legal experts, it can be drawn an understanding that an agreement occurs from the existence of parties who bind themselves to each other so that it creates rights and obligations among the parties to carry out an achievement.

The agreement can be formulated with some elements—first, the existence of parties consisting of at least two people. Second, there is an agreement

between the parties; the objectives to be achieved; any achievements to be carried out. Third, the existence of certain forms, both oral and written. Fourth, the existence of certain conditions as the contents of the agreement. The statement shows that an agreement will result in legal consequences from an agreement arising between the parties.⁵

The provisions concerning agreements which are applicable and binding on the parties as law⁶ are regulated in Article 1338 of the *Burgerlijk Wetboek*, which reads as follows:

- 1) "All treaties made legally apply to the law of those who make them.
- 2) An agreement cannot be withdrawn other than by agreeing between the two parties or by law to be sufficient.
- 3) An agreement must be implemented in good faith."

Fulfillment of responsibilities for rights and obligations that arise must be fulfilled based on good faith that serves as a benchmark for each party.

b. Terms of Agreement

An agreement made between these parties must meet the provisions of Article 1320 of the *Burgerlijk Wetboek* regarding the legality of the agreement so that the agreement's implementation

¹ Subekti, 2002, *Hukum Perjanjian*, Intermedia, Jakarta, p. 1.

² Subekti, 2001, *Pokok-Pokok Hukum Perdata*, Intermedia, Jakarta, p. 36.

³ Sri Soedewi Masjchoen Sofwan, 1980, *Hukum Perutangan*, Liberty Press, Yogyakarta, p. 1.

⁴ Abdulkadir Muhammad, 2009, *Hukum Perikatan*, Alumni, Bandung, p. 78.

⁵ Cindawati, "Prinsip Good Faith (Itikad Baik) Dalam Hukum Kontrak Bisnis Internasional", *Jurnal Mimbar Hukum*, Vol. 26, No. 2, 2014, p. 183.

⁶ Taufiq Adiyanto, "Dealing With Unexpected Circumstance: Judicial Modification of Contract Under Indonesian dan Dutch Law," *Hasanudin Law Review*, Vol. 5, No. 1, 2019, p. 104.

does not cause legal consequences in the future. The terms of the agreement are based on Article 1320 of the *Burgerlijk Wetboek*, namely:

“For the validity of an agreement, four conditions are required first, agreed those who bound themselves; second, the ability to make an engagement; third, a particular thing; and finally a legal cause.”

The first and second conditions are also called subjective conditions; this is because these conditions govern the agreement's subject. While the third and fourth conditions are called objective conditions, the conditions govern the agreement itself or the promised legal action object.⁷ If these subjective conditions are not met, then this agreement can be canceled (voidable). Whereas if these objective conditions are not fulfilled, then the agreement is null and void or is considered to have never been given an agreement (null and void)⁸ The cancellation of a subjective condition means that the agreement is still considered to be valid unless one of the parties asks the judge to cancel the agreement because a subjective condition is not fulfilled. Meanwhile, if an agreement does not meet the objective conditions, the agreement is considered never to exist and was born because it is contrary to the law, decency, and public order. So it does not cause legal consequences among the parties that make it if there is an achievement that is not fulfilled.

⁷ Subekti, *Op.Cit.*, p. 17.

⁸ *Ibid*, p. 20.

An agreement that arises must be based on an agreement from the parties and not just from one party. The parties must fulfill the right and obligation. Addition to the agreement agreed upon by the parties, the legal subjects who are parties to the agreement must meet the competent legal requirements as regulated in article 1330 of the *Burgerlijk Wetboek* regarding the inability to make an agreement or agreement, namely:

“Not capable of making agreements is people who are not yet mature; those under ability, and women, in matters stipulated by law, and in general all those to whom the law has prohibited making certain agreements or in this case married women.”

The current understanding itself has different provisions in each of the laws and regulations. There are depended on the legal action taken. However, as regulated in Article 330 of the *Burgerlijk Wetboek*, a person's adult age is already 21 years of age or married even though not yet 21 years old.⁹ Then what is meant by forgiveness is someone who, because of his characteristics, is considered incompetent or not in all things capable of acting alone; for example, people are in memory pain or wasteful.¹⁰ These married women have been removed as incompetent legal subjects based on SEMA No. 3 of 1963.¹¹ So with this provision, married women are considered as capable legal subjects to agree.

⁹ Abdulkadir Muhammad, *Op. Cit.*, p. 92.

¹⁰ H.F.A. Vollmar, 1983, *Pengantar Studi Hukum Perdata*, Rajawali, Jakarta, p. 176.

¹¹ R. Abdoel Djamali, 2007, *Pengantar Hukum Indonesia*, Raja Grafindo Persada, Jakarta, p. 152.

Besides the existence of a sure thing, the agreement made must contain a halal cause. The purpose of the existence of a halal cause is that the object of the law of an agreement must not conflict with the provisions prohibited by law, decency, and public order.¹² According to Nieuwenhuis, this provision functions as system development and, at the same time, forms a check and balance system to create a proportional contractual relationship between the parties.¹³ Therefore, if an agreement is made by fulfilling these elements, the agreement is valid and binding for the parties that made it.

c. Principles of Agreement

In agreeing, there are fundamental principles that form the basis of the agreement itself, including:

1) Principle of Freedom of Contract

In general, this principle is reflected in Article 1338 paragraph (1) of the *Burgerlijk Wetboek*, which states that all treaties made legally apply as a law for those who make them. According to Subekti, the principle of freedom of contract contains in the words “all.” It preceded the formulation of the Article. It will agree as long as it is legal and by the applicable provisions.¹⁴ The principle of freedom of contract is a principle that has a significant influence on the parties’ contractual relations. This principle was motivated

by the Epicuristen and developed rapidly during the Renaissance. This principle is the embodiment of free will that glorifies individual freedom.¹⁵ Therefore, with the enactment of this principle, the parties have the freedom to determine an agreement but still have a limitation that the agreement is not contrary to law, decency, and public order.

2) Principle of Consensual

This principle stipulates an agreement between the parties to bind themselves to each other and create a trust (*vertouwen*) between the parties. The parties will make the fulfillment of the agreement.¹⁶ According to Subekti, the principle of consensual is contained in Article 1320 and Article 1338 *Burgerlijk Wetboek*, which will result in invalid and not binding as law if there is a violation of this provision.¹⁷ Rutten also explained that the agreement made was generally not formally but consensually, meaning that the agreement was completed because of agreement or consensus only.¹⁸

3) Principle of *Pacta Sunt Servanda*

Provisions in Article 1338 paragraph (1) of the *Burgerlijk Wetboek*, which states that all treaties made legally apply as a law for those who make it, show that the law recognizes and places the parties’ position in the contract in line with the legislators.¹⁹ The intention is that for agreements that have been made legally

¹² Subekti, 2001, *Op. Cit.*, p. 137.

¹³ Agus Yudha Hernoko, 2011, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*, Kencana Prenada Media Group, Jakarta, p. 108.

¹⁴ Subekti, 2014, *Aneka Perjanjian*, Cetakan Kesebelas, Alumni, Bandung, p. 4-5.

¹⁵ Agus Yudha Hernoko, *Op. Cit.*, p. 108-109.

¹⁶ *Ibid.*, p. 121.

¹⁷ Mariam Darus Badruzaman, 1991, *Perjanjian Kredit Bank*, Citra Aditya Bakti, Bandung, p. 37.

¹⁸ Purwahid Patrik, 1994, *Dasar-Dasar Hukum Perikatan*, Mandar Maju, Bandung, p. 66.

¹⁹ Agus Yudha Hernoko, *Op. Cit.*, p. 127.

and agreed upon by the parties. The validity is obligatory and binding on the parties. According to Grotius, based on the teachings of natural law, the promise is binding (*pacta sunt servanda*). We must fulfill our promise (*promissorum implendorum obligatio*).²⁰ Alternatively, in other words, a promise is a debt that must be repaid, so that if someone promises, then that promise is a debt that must be fulfilled and is binding or attached to it until that person fulfills the debt.

4) Good Faith Principle

The principle of good faith in an agreement is regulated in Article 1338 paragraph (3) of the *Burgerlijk Wetboek*, which states that the agreements must be implemented in good faith. This notion of good faith is not further explained in the legislation. According to the Big Indonesian Dictionary, what is meant by faith is trust, firm conviction, intentions, and (right) will.²¹ Meanwhile, according to the Black's Law Dictionary, what is meant by good faith is:

“Good faith is a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek an unconscionable advantage. [...] good faith

*performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the other party”.*²²

Based on the things mentioned above, good faith must be interpreted throughout the contractual process, where good faith must underlie the relations of the parties at the pre-contractual, contractual, and contractual stages so that this good faith function covers the entire contract process. Besides, this principle of good faith means that a contract must be interpreted appropriately and reasonably. Adding and completing the wording in the agreement if the rights and obligations between the parties are not expressly stated in the contract and limiting or negating the agreement's substance containing a sense of injustice.²³

The judge, in his decision, has the authority to interpret an agreement. It is made by the parties based not to give a sense of injustice to the other party. Therefore good faith is not only implemented at the moment before an agreement is made. The good faith must be carried out when an agreement has been agreed upon and implemented.²⁴ So that if a dispute occurs, the settlement must be seen again at the beginning of the agreement.

²⁰ Mariam Darus Badruzaman, 1996, *Kitab Undang-Undang Hukum Perdata Buku III Tentang Hukum Perikatan Dengan Penjelasannya*, Alumni, Bandung, p. 110.

²¹ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan, 1995, *Kamus Besar Bahasa Indonesia*, Edisi II. Jakarta, Balai Pustaka, p. 369.

²² Bryan A. Garner, 2004, *Black's Law Dictionary*, Eighth Edition, Thomson Reuters, United States of America, p. 2038.

²³ Agus Yudha Hernoko, *Op. Cit.*, p. 140.

²⁴ Rizky Amalia, “The Principle of Good Faith in The Choice of Law of Foreign Direct Investment Contract in Indonesia”, *Fiat Justitia*, Vol. 12, No. 2, 2018, p. 176.

d. Consequences of the Agreement.

Refer back to Article 1338 paragraph (1), paragraph (2), and paragraph (3) of the *Burgerlijk Wetboek*. The existence of this Article causes the legal consequences of an agreement for parties who agree to bind themselves to it. These legal consequences include that (1) all agreements are legally made the provisions governing agreements in general. This employment agreement is born if fulfilled based on Article 1320 of the *Burgerlijk Wetboek*. Without the agreement's right conditions in the employment agreement, the employment relationship element between the employer and the work recipient will not occur.²⁵ A working relationship between the parties must be based and outlined in an agreement that aims to determine the parties' rights and obligations.²⁶ Therefore, the parties must submit and become bound by the work agreement that is the basis for implementing the agreement.

The statement shows that each form of work agreement made and agreed by each party is based on the existence of a principle or principle of good faith.²⁷ The principle of good faith is not intended to limit the rights and obligations for achievements. The principle relates to the implementation of rights and obligations.

²⁵ Abdulkadir Muhammad, *Op. Cit.*, p. 97.

²⁶ Lalu Husni, 2007, *Pengantar Hukum Ketenagakerjaan Indonesia: Edisi Revisi*, Jakarta, Raja Grafindo Persada, p. 55.

²⁷ N. Ike Kusmiati, "Legal Standing Of Pre-Contractual Good Faith Principle as a Law Reformation of Indonesian Contract Law", *International Journal of Science and Society*, Vol. 2, Issues 1, 2020, p. 79.

The implementation of agreement agreed upon by the parties to all the contents of the provisions.²⁸ As well as in this case, among the parties obliged to obey all provisions.

2. Overview of Alternative Dispute Resolutions

a. Litigation

The parties have provisions for submitting to and be bound by the agreements made. However, in reality, there are often provisions in agreements violated by the parties resulting in legal consequences. The settlement of the dispute consists of court or litigation and non-litigation. The settlement of civil disputes in court is generally based on two patterns²⁹:

- 1) There is a breach of contract of one of the parties, as stipulated in Article 1243 of the *Burgerlijk Wetboek*. Where there is a contractual relationship between the parties; and
- 2) The existence of an unlawful act (*onrechtmatige daad*), as regulated in Articles 1365 and 1366 of the *Burgerlijk Wetboek*, does not need to be preceded by the emergence of a contractual relationship. But the existence of unlawful acts, the loss and the causal relationship between unlawful acts with the loss.

²⁸ Steven Reinhold, "Good Faith in International Law", *UCL Journal of Law and Jurisprudence*. Vol. 2, 2013, p. 58.

²⁹ Agus Yudha Hernoko, *Op. Cit.*, p. 308.

However, this step through the court was felt ineffective and inefficient, and often criticism of judicial institutions that could not guarantee the creation of a legal certainty wasted too much time, was unpredictable, and too expensive.

M. Yahya Harahap says that the handling of dispute resolution through the judiciary was deemed ineffective. It because It runs slow and long. It is an expensive cost. Then the judiciary is not responsive to the public interest. Fourth, court decisions do not resolve disputes, the ability of judges to be general. Court decisions are often rendered without sufficient rational judgment so that the court is seen as “the last resort,” as the last place to seek truth and justice.³⁰

b. Non-Litigation

Dispute settlement conducted through a judicial institution is felt not enough to meet the sense of justice among the parties to the dispute, especially if the parties are equally hoping for a win-win solution for the case being faced. There is a dispute resolution out of court or often known as Alternative Dispute Resolution (ADR), which includes negotiation, mediation, and arbitration.³¹

This pattern is felt to be better because it is informal. The settlement is carried out cooperatively by the parties to the dispute. The costs are lower than litigation. The resolution is fast. The dispute is resolved while also improving relations between the parties. The settlement is done in a compromise,

the results achieved together to win, relations between the parties become better than by litigation, do not cause feelings of revenge between the parties, and fulfillment is done voluntarily.³²

Negotiations as an alternative dispute resolution are a means for the parties to discuss their settlement without third parties or third-parties as decision-makers. So that if a negotiation can go well, it is required that the parties negotiate voluntarily based on full awareness, the parties are ready to negotiate, the negotiator has the authority to make decisions, create interdependence between the parties due to balanced power. The parties have the will to resolve the problem.³³

The dispute resolution pattern by using Alternative Dispute Resolution (ADR) is expected to bring dispute resolution to a better stage as desired by the parties. In implementing agreements between the parties, one must know the rights and obligations of each party. Besides, the implementation of the agreement based on good faith between the parties needs serious attention. It because many agreements were initially carried out in good faith but ended in a problem or dispute, so legal efforts were carried out both litigation and non-litigation to simply remind again that the parties to the dispute had previously bound themselves to submit to an agreement.

³⁰ M. Yahya Harahap, 2012, *Hukum Acara Perdata*, Jakarta, Sinar Grafika, p. 160.

³¹ Agus Yudha Hernoko, *Op. Cit.*, p. 310.

³² M. Yahya Harahap, *Op. Cit.*, p. 169.

³³ Agus Yudha Hernoko, *Op. Cit.*, p. 311-312.

3. Characteristics of Learning Assignment Agreement Made by YSRY

The overseas study assignment agreement made by YSRY has the characteristics of the contents of the agreement where YSRY as the assignor is the first party and the teaching staff/lecturers as the recipient of the learning assignment as the second party. The Rules or regulations relating to education and training is first, Decision of the Management of Slamet Riyadi Foundation Number 04/YSR/2000 Regarding the Basic Staffing Regulations of the Slamet Riyadi Foundation; second, Decision of the Management of Slamet Riyadi Foundation Number 13A/YSR/2005 concerning Education and Training of Slamet Riyadi Foundation Employees; third, Decision of the Slamet Riyadi Foundation in Yogyakarta Number 76/HP/I/2010 Regarding the Regulations on the Cost of Studying Task Costs for the Atma Jaya University Yogyakarta; and fourth, Decree of the Chancellor of Atma Jaya University Yogyakarta Number 31/HP/K/2010 Regarding the Awarding of Employees Who Have Completed an Advanced Study of S1, S2, and S3 Level Education Programs with Cum Laude Graduation Results. Based on the statement, the characteristics of this agreement can be analyzed:

a. The contents of the agreement are a manifestation of the provisions. Whereas what distinguishes between the provisions above is the provisions concerning sources of financing. It has juridical consequences for the

parties. While the education and training arrangements issued by foundations and universities are more general. It is poured into the form of agreements that are private and bind the employee as a law;

- b. The contents of the agreement give more obligations to lecturers as employees. Obligations, on the other hand, will give rise to the rights of the foundation as the assignor;
- c. The form of an agreement is a standard agreement whose contents and forms are prepared in advance by a party with better bargaining power. From the aspect of the terms of the agreement based on the 1320 *Burgerlijk Wetboek*, the standard agreement is considered valid until one of the parties requests a cancellation;
- d. The type of agreement of the overseas study assignment agreement is “accessory”³⁴ or a complement to the work agreement, which is the main agreement between YSRY as the employer and the lecturer as the recipient of work. This agreement’s nature is a form of “obligatory”³⁵ agreement whereby the parties must comply with the agreement that has been made and agreed upon and applies as a law for the parties who made it as stipulated in Article 1338 paragraph 1 of the *Burgerlijk Wetboek*. In general, the parties agree

³⁴ Debora Manurung, “Perlindungan Hukum Debitur Terhadap Parate Eksekusi Obyek Jaminan Fidusia”, *Jurnal Ilmu Hukum Legal Opinion*, Ed. 2, Vol. 3, 2015, p. 2.

³⁵ Rose Panjaitan, “Pengaturan dan Pelaksanaan Parate Eksekusi Diluar Hukum Acara Perdata”, *Jurnal Notaire*, Vol. 01, No. 01, 2018, p. 136.

to expect that the agreement can be terminated and closed. According to the contents or conditions stated in the agreement.³⁶ The agreement can be terminated and closed. The Study assignment agreement is an engagement of the parties. In other words, a promise related to a timetable does not suspend the engagement but only postpone its implementation.³⁷ It is regulated in Article 1268 of the *Burgerlijk Wetboek*. In the learning assignment agreement, Article 3 number 7 states that after ending the learning assignment, the second party is required to carry out the assignment as at least 2 (two) times the study assignment is added plus 1 (one) year. Article 3 number 8 also states that if the second party, after completing a study assignment, willing not to carry out tasks following this agreement, then [...] is required to return 2 (two) times all costs incurred by the foundation, including salary paid received while carrying out study assignments.

- e. Some sanctions can only be applied if the employee (lecturer/educator) concerned returns as an employee at the University. However, there are staff lecturers who did not fill in the agreement in reality, but they did not return to the University. There are difficulties in applying these

sanctions because the agreement's implementation is carried out in good faith. A principle is a general guideline that is abstract. The principle of good faith is a principle that existed before and after the agreement. The absence of good faith will be an obstacle to the implementation of the contents of the agreement.

4. Difficulties in Implementing Learning Assignment Agreements Faced by YSRY

- a. **That is the learning assignment agreement. There is no surrender of objects/collateral if the second party (YSRY employee) defaults.**

Signing an overseas study assignment agreement, the contents of the agreement do not require collateral provides. Especially for recipients of study assignments abroad to provide collateral that serves as collateral, if the recipient of an overseas study assignment has defaulted and or broken a promise to the agreement, he has agreed with YSRY. This agreement, which witnessed and signed, was the Dean of the unit leader and the Chancellor of UAJY.

As a case in point is the recipient of a study assignment from YSRY abroad had completed a Strata-3 study. However, on October 30, 2013, he wrote a letter requesting resignation from his employment status from YSRY. Then, on March 1, 2019, the settlement was brought to justice by giving attorney superior power to 4 lawyers of Legal Aid Center FH UAJY. The person concerned has not paid legal obligations at all for

³⁶ Lidya Mahendra *et al*, "Perlindungan Hak-Hak Kreditur Dalam Hal Adanya Pengalihan Benda Jaminan Oleh Pihak Debitur", *Acta Comitatus: Jurnal Hukum Kenotariatan*, Vol. 2, 2016, p. 272.

³⁷ Herlien Budiono, "Perikatan Bersyarat dan Beberapa Permasalahannya," *Veritas et Justitia*, Vol. 2., No. 1, 2016, p. 89.

2 (two) times the cost of study and salary received according to the existing agreement. Likewise, it is also associated with the obligation to carry out duties 2 (two) n+1, which is still empty even though the funds he received for his study were YSRY's funds obtained from UAJY students.

Reflecting on the above case, a period of 6 (six) years to resolve this problem will undoubtedly be complicated, burdensome, even detrimental to YSRY. The collateral will not be guaranteed if the employees have no good faith (*goede trouw*). These guarantees include submitting a Strata-1 & Strata-2 diploma to YSRY when signing a study assignment agreement (before the study) and submitting a Strata-3 diploma to YSRY after completing studies to carry out the service period.

b. The second party has no good intention in carrying out the contents of the agreement.

By analyzing the agreement between YSRY and its employees assigned to study abroad, especially if the Second Party does not carry out the obligation to pay a loss to YSRY 2 (two) times the cost of further study and its salary received. YSRY Parties so far have only made administrative efforts to collect payments from Second Parties that have defaulted. They only remind the concerned to pay their obligations through officials at the Faculty, University, and Foundation levels.

YSRY will not issue a Termination Decree as an employee before the

commitment is concerned to return the cost of further study and salary received 2 (two) times. The experience so far has not been issued a Termination Decree as an employee, especially the employee concerned, can still get a job abroad. On the other hand, in terms of YSRY's interests, this is detrimental to what should have been received following the agreed agreement's contents, which cannot be carried out correctly. When billing efforts made at the Faculty, University, and Foundation level were unsuccessful, the final solution was delegated through a legal mechanism, giving power to the "lawyers" Center of Law Aid.

The formulation of the contents of the overseas study assignment agreement will be ineffective and detrimental.³⁸ When The Second Party does not have good intentions and has the awareness to carry out its efforts to pay its obligations to YSRY, it becomes ineffective and detrimental. Therefore, it is necessary to look for the improved formulation of the agreement's contents to preventively condition that the Second Party will carry out its obligations.

5. Dispute Resolution Efforts That Provide a Sense of Event for Both Parties

Resolving the issue of implementing the study assignment agreement's contents is resolved through deliberation and consensus through the unit's head, where the employee works. Efforts to

³⁸ J. Andy Hartanto, "The Legal Development of Guarantee in Indonesia", *Journal of Law, Policy and Globalization*, Vol. 36, 2015, p. 57.

resolve the problem with deliberation and family are taken to begin communicating the difficulties or problems encountered until the discussion about how sanctions in the form of an obligation to return various kinds of costs. In this stage in practice, the faculty leader will do it. It does not produce results; the foundation will provide a letter asking questions related to the implementation of the obligations following the agreement's contents.³⁹

The non-litigation efforts were carried out to force employees who did not fulfill the contents of the agreement in points 1 and 2 above to fulfill their obligations. This effort has not been made because of several factors. First, the employee does not return to the Institution to work again, and the address is difficult to know. Second, the employee does not return to the Institution to work again. The address is known but does not respond. Third, the employee does not return to the Institution to work again. Fourth the address is known, then gives an answer asking for a postponement of obligations.

Non-litigation efforts undertaken by the foundation are not an easy effort, especially to fight for the foundation's rights. This effort requires a lot of time, money, energy, and mind sacrifice. So far, the settlement efforts through the legal process, although clearly stated in the agreement, have never been made. So

this situation will undoubtedly be very detrimental to the foundation.

Efforts to resolve litigation and non-litigation in practice have an adverse effect, especially for the injured party. Although conceptually, efforts to resolve non-litigation disputes are felt to be better, in practice, non-litigation efforts are not easy to do that are sourced from the lack of good faith from the party that failed to promise.⁴⁰ Litigation efforts also contain the potential for a prolonged conflict, and there are difficulties in the execution of civil decisions that will not necessarily obtain the implementation of obligations by the recipient of the learning task. The shortcomings and strengths of non-litigation and litigation dispute resolution efforts, the foundation as the injured party should take a non-litigation dispute resolution effort, provided good faith from the recipient of the learning task to carry out the agreement.

D. Conclusion

According to the research result, it can be concluded that the provisions for returning compensation to YSRV cannot be implemented as it should be due to the contents of the agreement formulation, which does not require collateral and the lack of good faith from employees who do not carry out the agreed agreement. Furthermore, legal efforts to resolve disputes that most provide a sense

³⁹ Niken Prasetyawati *et al*, "Jaminan Kebendaan dan Jaminan Perorangan Sebagai Upaya Perlindungan Hukum Bagi Pemilik Piutang", *Jurnal Sosial Humaniora*, Vol. 8, No. 01, 2015, p. 130.

⁴⁰ Siti Malikhatus Badriyah *et al*, "Execution of Fiducia Guarantee in Government Pawnshop Companies in Semarang City", *International Journal of Recent Technology and Engineering*, Vol. 8, Issues 4, 2019, p. 4197.

of justice for the parties, namely that with the shortcomings and advantages of dispute resolution efforts, both non-litigation and litigation between foundations and employees relating to the study assignment agreement. As a disadvantaged party, the foundation should take efforts to resolve disputes that are non-litigation provided that there is good faith from the recipient of the learning task to carry out the agreement.

The assignee is given the obligation to submit a Strata-1 and Strata-2 diploma to the assignor when the learning assignment is signed. The transfer of Diploma-3 degrees after the employee or lecturer is assigned to finish his studies by previously serving a period of official ties with the assignor (2n+1) as promised in the agreement signed by the previous parties. Moreover, the recipient of the task is given the obligation to submit material guarantees that can be burdened with mortgage rights so that there is an ease in executing the guarantee if the assignment's recipient breaks the promise.

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