

**Research article**

# Debt Payment by Heir: A Study of Indonesian Legislation

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**Abstract.**

The application of the Personality Principle in Article 1315 BW jo. 1240 BW in relation to Article 833 paragraph (1) BW was examined in this study, as well as whether these articles conflict with one another. Data were collected through interviews with key informants, and from legislation, journals, books and articles from websites. The study found that Article 833 paragraph (1) does not conflict with the Personality Principle because if the debtor dies, the heirs have no obligation to pay off the debtor's debt, because an agreement only binds the parties who signed it, including the debt agreement. The bank would not declare the debt paid off until the insurance claim was settled.

**Keywords:** debt payment, principle of personality, agreement

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## 1. Introduction

Humans experience 3 phases of life in the world, namely birth, life, and death. The birth phase as the first step in life brings humans to the rights and obligations in the law. In navigating life, it is possible that humans will engage in engagements considering the nature of human life as social beings. This engagement between other parties gives rise to rights and obligations.

Engagements can arise because of laws and agreements. The relationship that arises because of the law, for example, is the relationship between parents and their children. Parents are obliged to provide for their children and children have the right to earn a living from their parents. While the engagement that arises because of an agreement/contract is an engagement that arises because the parties agree to bind themselves through a contract. This contract is then compiled and signed by the parties mentioned in the comparison and executed according to the clauses agreed in the contract. This clause later became the law for those who made it (Article 1338 (1) of the BW). This article is related to article 1315 of the BW related to the Principle of Personality.


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The principle of personality is regulated in Article 1315 jo. 1340 of the Civil Code. Article 1315 of the BW stipulates “In general, no one can bind himself in his own name or request the stipulation of a promise than for himself”. It is clearly stated in this article that to enter into an agreement, it must be for its own sake. Article 1340 of the BW stipulates “Agreement is only valid between the parties who make it”. This implies that the agreement made by the parties only applies to those who make it[1].

However, this article then provides legal uncertainty to the community when it is collided with Article 833 paragraph (1) of the BW which stipulates “The heirs, by law, have ownership rights over all goods, all rights and all receivables of the deceased”.

When the debtor dies, the burden of paying the debt is given to the heirs. This applies as described in article 833 paragraph (1) of the BW. So, the heirs not only receive the heir’s property but also the ongoing debts left by the testator. This creates a conflict with the Personality Principle which stipulates that no one can bind himself in his own name or ask for a promise to be made rather than for himself. This means that a person cannot make a contract on behalf of another person. In addition, a person cannot be held responsible for an engagement made by another person.

Based on the above background, the researcher discusses the application of the Personality Principle in Article 1315 BW jo. 1240 BW relates to Article 833 paragraph (1) BW and examines whether these articles conflict with each other. This study of principles and articles is important considering that principles are the basis for the birth of the rule of law.

## 2. Research Methods

Researchers use the type of normative research or library research. The approach method used is a study of articles in legislation, especially BW. Primary data sources are obtained from legislation, journals, books, and articles from websites. While secondary data comes from decisions and interviews with resource persons. The data analysis technique was carried out in 3 steps, namely data reduction, data presentation, and drawing conclusions.

## 3. Result and Discussion

### 3.1. Result

According to Patrick S. Atiyah, the purpose of the agreement is to enforce the implementation of a promise and protect the expectations that arise because of the agreement. In addition, the agreement prevents unfair attempts by either party to enrich themselves.

Another thing that is no less important is to prevent certain types of hazards. Herlien Budiono added that the purpose of the agreement is to achieve a balance between one's own interests and the interests of other parties in the agreement.[2]

Contract law recognizes many principles, including the following:

#### 1) The Principle of Consensualism

This principle discusses that every agreement made must be based on the agreement of the parties. This principle is then stated in Article 1320 BW concerning the conditions for the validity of the contract point 1 which requires an agreement to be made on the basis of the agreement of the parties. Agreements made not on the basis of an agreement can result in defects of the will in which the subjective terms of the agreement are lost. If it is like this then the agreement "can be canceled".

The Defect of will is regulated in article 1321 BW. There are 3 defects of will in BW while defects of will outside BW are 1. The details are as follows:

- a) Oversight (*dwaling*), mistake about what was promised
- b) Coercion (*dwang*), if one of the parties gives an agreement because of being pressured (psychologically forced), if physically forced it is already a threat and automatically the agreement is considered never existed because of the absence of good faith from one of the parties
- c) Deceit (*bedrog*), if one party actively influences the other party. something that should be underlined here is the word active. This means that something can be said to be in the category of fraud if one of the parties is active, if it is not active and the party is willing to sign the agreement then it is an oversight.
- d) Abuse of circumstances (*misbruik van omstandigheden*), This abuse is divided into 2, namely the abuse of economic advantage and the abuse of psychological advantage

#### 2) The Principle of Freedom of Contract

The meaning of this freedom is

- a) Freedom to decide whether to enter into an agreement or not;
- b) Freedom to decide with whom to make an agreement;
- c) Freedom to determine the contents or clauses of the agreement;
- d) Freedom to determine the form of the agreement.

In essence, the parties are free to make any agreement with anyone as long as it does not conflict with public order, morality, and laws and regulations (article 1337 BW). This principle is also reflected in Article 1320 BW point 4 that the condition

for a valid agreement is a lawful cause. A lawful cause is an objective condition that if not fulfilled then the agreement is “brick by law” or from the beginning the agreement was considered never existed.

### 3) The Principle of Binding Contracts (*pacta sunt servanda*)

This principle is contained in Article 1338 (1) which stipulates that “all agreements made legally are valid as law for those who make them”. This means that the agreement made must be carried out wholeheartedly and its implementation is maintained by the parties as implementing the law.

### 4) The Principle of Good Faith

The principle of good faith is stated in article 1338 (3) BW which reads “agreements must be carried out in good faith”. Good faith is shown by the sincerity of the parties in fulfilling their achievements.

### 5) The Principle of Personality

The Principle of Personality is regulated in article 1315 jo. 1340 BW. The principle of personality underlines that a person cannot enter into an engagement or agreement other than for himself. When someone makes an agreement, the agreement only binds the party who promised, not involving a third party. For example, when a prospective customer comes to the bank to open a savings account, they will automatically ask for an identification card and NPWP (optional). This is a personality article application.

This also applies equally when someone applies for credit debt. Thus, the bank will facilitate the credit if the person who directly appears is the person himself without a representative from anyone except for things that are determined otherwise by law such as a person who is not legally capable such as a child or a person in custody. The legal consequences arising from the signing of the agreement, then article 1338 (1) applies. Article 1338 (1) stipulates that “all agreements made legally valid as law for those who make them.” This principle in BW is referred to as the principle of binding contracts (*pacta sunt servanda*). This means that the parties are bound to fulfill the contract because the contract contains promises that must be fulfilled and the promise binds the parties as a law[3], as the law when violated will result in sanctions for those who violate it as well as the agreement that is violated will result in the parties being violated. the violator becomes the party in default.

Then what if the party who made the credit agreement dies and the credit agreement has not been paid off. The question that then arises is who will pay off the remaining debt contained in the agreement.

If it is based on Article 833 paragraph (1) BW, the heirs must pay the debt because the inheritance is not only transferred assets but also liabilities. This later became a polemic

when it was clashed with the principle of personality as regulated in Article 1315 jo. 1340 BW. On the one hand, it stipulates that there is no handing over of obligations to the other party because the agreement on the other hand stipulates that inheritance in the form of liabilities is also passed on to the heirs.

However, article 1318 states “If a person asks to be agreed on something, it is considered that it is for his heirs and the people who have rights thereof, unless it is expressly stipulated or it can be concluded from the nature of the agreement, that this is not the case.” If you look at this article, then this article is clearly in line with article 833 paragraph (1).

The steps that the heirs must take if the debtor dies, are:

1. Visiting the bank concerned, the family must report the death of the debtor to the bank by bringing a death certificate
2. Confirmation of the remaining loan, this needs to be done so that the family can determine the next step
3. Checking whether the agreement is insured, this is so that it is clear and clear who will pay off the remaining credit

In point 2 above, it is mentioned about the next steps taken by the heirs. The next step referred to here is regulated in Article 1023 BW which the heirs can consider for 4 months to consider the inheritance. Considerations that can be made by the heirs are:

1. Receive the unconditional inheritance in its entirety

Receiving an inheritance means accepting the debtor’s assets and liabilities without exception. So that debt repayment will be made by the heirs

2. Receiving inheritance with conditions (*Beneficiaire aanvaarding*)

Article 1032 BW regulates:

- a. The heir is not obliged to pay the debt of the testator in excess of the amount of the inheritance he received;
- b. The heirs free themselves from the debt of the testator by handing over the inheritance to the creditor;
- c. The personal assets of the heirs with the inheritance he receives are separated and cannot be mixed. So if the creditor wants to sue and sue it is only limited to the amount of debt, and this debt is then paid with the inheritance of the testator, if there is any remaining then it becomes the right of the heir..

### 3. Refusing inheritance (*Verwerping*)

Article 1045 BW states that “no one is obliged to accept the inheritance that falls into his hands”. This article opens the opportunity for the heirs to refuse the inheritance which automatically makes the debt free from responsibility. However, this can harm the bank as a creditor. Therefore, the bank can ask the judge to be given the power to replace the heirs and obtain the inheritance in the name and for the position of the heirs.

The explanation above sheds light on the fact that inheritance can also be rejected. However, those who want to receive it must also bear the debt from the debtor (heir). Article 1100 BW stipulates “Heirs who are willing to receive an inheritance must share in paying debts, testaments and other burdens, in balance with what each of them receives from the inheritance.”

This article provides provisions regarding debt payments based on the inheritance received by each heir. Examples A, B, and C get 20%, 30, and 50% inheritance shares, respectively. So based on the provisions of article 1100 BW, A, B, and C must pay the debt as much as they receive.

## 4. Discussion

### The Discussion about The Role of Insurance in the Credit Agreement

Insurance is one of the steps taken by most people because it can guarantee life protection, education, and so on. For example, a policyholder dies while still having debt. Death occurs against the will of the parties. A secret that only the owner of the universe knows and humans cannot fathom. When the debtor dies before he has time to pay off the debt, the debt can be paid off or not, the payment must be charged to the heirs if the clause in the agreement made there is a clause regarding insurance as a risk transfer institution, provided that the debtor regularly pays premiums along with monthly credit installments. However, if there is no clause in the agreement regarding insurance, then article 833 (1) applies.

This is supported by the results of an interview with Irul, Bank Mandiri Syariah, stating that if a customer dies, the risk is handed over to insurance. The bank will not declare the debt paid off before there is payment of a claim from insurance. The bank can declare paid if the claim has been paid. Furthermore, the informant added that almost all of the financing was covered by insurance as a third party for risk transfer.

Payment of debt by insurance is regulated in article 1400 BW related to subrogation or transfer of creditor rights to third parties in this case insurance. If an event occurs

that poses a risk, then the insured will be paid compensation in the amount equal to the amount of the insurance.[4]

Insurance is known as an institution that serves to bear the risk of default by debtors. However, insurance is not mandatory, depending on the bank's policy and the debtor's approval whether to use insurance or not. So, the debtor must state that he is willing to take insurance because there is a premium that must be paid along with the debt bill every month. With this insurance, if something unwanted arises, the insurance will pay the remaining debt of the debtor.

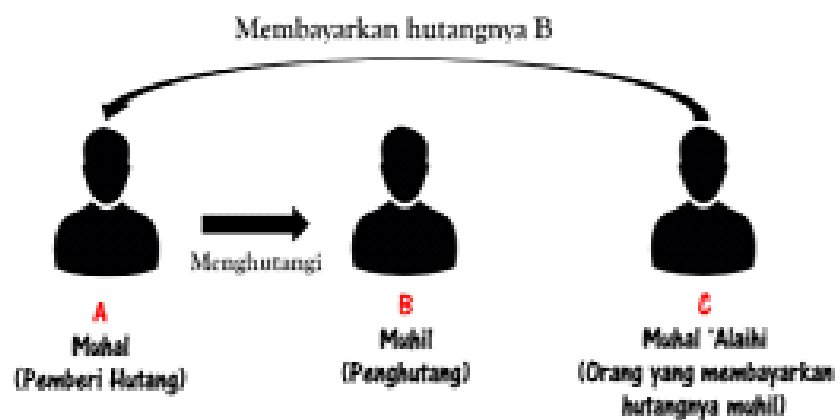


Figure 1: Illustration of Debt Transfer.

Insurance is regulated in Law Number 40 of 2014 concerning Insurance, hereinafter referred to as the Insurance Law. According to Article 1 number 1 explains that insurance is an agreement between two parties, namely the insurance company and the policy holder which is the basis for receiving premiums by the insurance company in return for providing payments based on the death of the insured or payments based on: (a). Provide compensation to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or (b). Providing payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management.

The Insurance Law reflects great attention and support as the state's efforts to protect consumers of insurance services, efforts to anticipate a more open service trading environment at the regional level, and adjustments to best practices at the international level for the implementation, regulation and supervision of the insurance industry. The legal position of the insurance policy holder is the person who is the insured who is entitled to receive premiums, to provide compensation to him for a loss, damage, loss

of profit that may be suffered due to an unspecified event, such as death. The insurance agreement can only be executed if the beneficiary of the policy has suffered a loss or risk.[5]

## 5. Conclusion

The results showed that between Article 833 paragraph (1) BW and the Personality Principle did not experience a collision. Further matters are regulated in Article 1318 BW. If you only read Article 1315 BW, it can result in a rigid interpretation and conflict. However, it is different when reading article 1318 BW which provides legal certainty. In addition to submitting debt payments to the heirs, you can also provide insurance as a third party who pays the debt claim. So, in this case the heirs are free from the obligation to pay off the debt.

Basically, debt remains debt even if the debtor dies. In this case, insurance plays an important role to minimize losses that will occur between the two parties – read: creditors and debtors. Debts or debtor obligations can be written off if the debtor dies and there are no heirs or third parties who can pay off the debt.

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