

# The Position of Beneficial Acceptance Heirs In the Settlement of Debtors' Unfulfilled Prestatie

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**Abstract-***Burgerlijk Wetboek's inheritance law grants heirs with the right to determine their position with regards to their in-heritance, namely those of absolute acceptance, rejection, or acceptance with reservation (beneficiare aanvaarding or beneficial acceptance). Problems arise when heirs choose the position of beneficiare aanvaarding, while their testators still have prestatie that need to be fulfilled to the creditors. In principle, a testator's prestatie will be imposed upon their heirs. Therefore, legal certainty is re-quired on the position of a beneficiare aanvaarding in the fulfillment of prestatie related to the defaulting party(debtor)'s heirs, as is legal protection for creditors. The methods used in this research consist of a statutory approach, conceptual approach and case-based approach. The resulting conclusion is aimed towards finding a legal construction and legal method to solve the legal problem between creditors and ex debtors (the heirs), so that in the future, no prolonged disputes will occur.*

**Keywords-***Beneficial Acceptance; prestatie; protection for creditors; inheritance.*

## I. INTRODUCTION

A contract (*verbintenis*) or the law of contract (*verbintenissenrecht*) governs the legal relationship between a debtor and creditor [1]. A legal relationship is formed as a consequence of a legal transaction, be it a sale, loan, authorization of agency, death, and so forth. The provision contained in Article 1234 of *Burgerlijk Wetboek* (hereinafter "BW") states that "every contract entails the obligation to hand something, perform something, or abstain from something." In the provision contained in Article 1235 of BW, it is mentioned that the acts of giving something, performing something, and abstaining from something are an obligation that must be undertaken. This obligation is also called *prestatie*, that is, something that must be fulfilled [2]. The party entitled to a *prestatie* is called a creditor. Meanwhile, the party required to fulfill a *prestatie* is called a debtor. In the fulfillment of *prestatie*, there are instances of debtors' refusal or inability to fulfill a previously agreed *prestatie*. The state of a failure to fulfill a previously agreed obligation by a debtor can occur in two circumstances. The first is default (*wanprestatie*). Article 1238 of BW states "A debtor is in default if he, with a letter of authority or a similar deed, has been stated as

being in default, or in the case of his own contract, if he sets that the debtor must be considered in default with the passing of a set amount of time." The second are exigent circumstances beyond the power of the debtor (*overmacht* or *force majeure*). Exigent circumstances under the law are circumstances which cause an inability to perform a right or obligation within a legal relationship. The causes of *overmacht/force majeure* could include an incident which destroys the object of contract, an occasion which prevents a debtor from fulfilling his obligations, or even the occurrence of a phenomenon which was unknown and unforeseen during the creation of the contract. *Overmacht/force majeure* could result in the termination or annulment of a contract. The termination or annulment of a contract as a legal repercussion is determined by whether the object of contract remains in existence. A contract is said to be annulled when the object of contract exists, but an event occurs that prevents a debtor from fulfilling his obligations. On the other hand, a contract is said to be terminated when the object of contract has perished, as there is no possibility for the fulfillment of obligations by the debtor.

The issue of *overmacht/force majeure* can occur when the debtor dies and leaves behind wealth (*activa*) that is valued at less than his obligation (*passiva*). When the debtor dies, in accordance with Article 1244-1245 of BW, the creditor cannot demand compensation as he could in a case of *wanprestatie*. This is due to the fact that in such circumstances, the debtor cannot fulfill his *prestatie* due to circumstances beyond his control. Therefore, a debtor cannot be sued for said obligations. An intriguing issue arises when a debtor's failure to pay due to his death is linked to the position of his heir. When an heir takes up a position of beneficial acceptance, said heir receives his inheritance with the reservation that he will do so without being bound by the obligation to repay the testator's debts exceeding his part in the inheritance. In a beneficial acceptance, an heir states only that he receives the inheritance and that he is able to fulfill the testator's unfulfilled obligations only to the extent of the amount of inheritance that he receives. This issue then begs the question of how a creditor can be legally protected in demanding debts that he is owed in such circumstances. Hence, in this paper, the authors will discuss the position of beneficial acceptance heirs, in relation to the legal protection of creditors for the fulfillment of an obligation in a contract which cannot be passed on to

the heir in the context of the law of inheritance in the *Burg-erlijk Wetboek*.

## II. RESULT AND DISCUSSION

There are three elements in the law of inheritance contained in BW, namely: (1) The testator (*erflater*); (2) The heir (*erfgenaam/erfgenaamen*); (3) The assets (*Nalaten Schap*). The three elements must exist in an inheritance. If even one element is missing, an inheritance cannot be conducted. When the element of an heir is missing (*onbe-heerde nalatenschap*) due to an absence (*afwezigheid*) as set out in Articles 467-468 of BW, it results in the safe-keeping of the wealth by the Office of Inheritances (*Balai Harta Peninggalan*) (Articles 1126-1127 of BW). An inheritance can be given to two types of heirs, namely *ab intestato* or an heir under the law, from blood ties or marriage as stipulated in Article 832 of BW; and *testamenter* or an heir who obtains an inheritance from a will, as stipulated in Articles 874-875 of BW.

According to the provision in Article 836 of BW, keeping in mind the provision in Article 2 of BW, in order to be able to act as an heir, a person must have been born when an inheritance is made. Article 2 of BW states that a child in the womb is considered to have been born if the interest of the child warrants it, but if he dies upon being born, he is considered to never have existed. Therefore, in accordance with the above articles, the criteria for an heir are: (1) He has the right to the assets left behind by the testator, be it due to blood ties (Article 832 of BW); marriage; or a will (Article 875 of BW); (2) He must have existed, and remains in existence, when the testator passes (Article 836 of BW), keeping in mind the provision under Article 2 of BW; (3) He has neither been declared inept to receive the inheritance (*onwaardig*) nor rejected the inheritance. If capable heirs are nonexistent, then in accordance with the provision in Article 873 section (1) of BW, the whole of the inheritance can be demanded by a child born out of wedlock who has been recognized (prior to the marriage of his parents). Because Article 862 *jo.* 280 of BW sets down that only validly recognized children born out of wedlock may have relations with their parents, said children may receive an inheritance. If these children do not exist, then in accordance with the terms in Article 832 section (2) of BW, the whole of the inheritance will pass onto the State.

### A. Beneficial Acceptance Heirs within the Context of the Law of Inheritance in the *Burgerlijk Wetboek*

Article 1023 of BW provides that all heirs are free to determine whether they will accept an inheritance absolutely, accept it beneficially, or reject it. With regards to the debts of the testator, whereupon the issue is analyzed through the lens of BW, an heir can choose to whether he will accept or reject the inheritance through other means, that is, through accepting it with the reservation that he will not be obliged to repay the existing debts beyond his part in the inheritance. Further, it is laid down that an absolute acceptance (*zuivere aanvaarding*) can be done explicitly or implicitly (*stilzwijgende aanvaarding*). An absolute acceptance is said to be explicit if someone, with a deed, accepts his position as an heir. Meanwhile, an implicit ac-

ceptance (*stilzwijgende*), which may occur if someone performs an action, such as taking hold of or selling the inherited goods, or repaying the debts of the testator, can also result in the recognition of an absolute acceptance (*zuivere aanvaarding*). The law does not set down a time limit by which a person must show his acceptance or rejection of an inheritance. However, interested parties may bring an action against the heirs to declare their stance. An heir who has had legal proceedings instituted against him to declare his stance is entitled to request a period of deliberation (*termijn van beraad*), for up to four months [3].

After the passing of the time set by the law, an heir can choose between three possibilities: (a) Accepting the inheritance absolutely (*zuivere aanvaarding*); which can be done explicitly or through other means. An acceptance is said to be explicit if the acceptance is materialized in a deed which contains his acceptance as an heir. It is said to be implicit, if the heir performs a conduct as an heir, which must amount to an acceptance of the inheritance, that is, through obtaining or selling the inheritance, or repaying the debts of the testator; (b) Accepting the inheritance, with the reservation that he will not be obliged to pay the debts of the testator beyond his part in the inheritance, known as *voorrecht van boedel beschrijving* or *beneficiare aanvaarding* or “an acceptance of the inheritance beneficially”; This matter must be declared to the Clerk of the District Court where the inheritance was made. The most vital legal consequence of beneficial acceptance is that the obligation to repay the debts and obligations of the testator are limited in such a manner that any settlement is limited in accordance with the extent of the inheritance, which in this case means that the heir is not required to bear the repayment of the testator’s debts using his own assets even if the debt of the testator is greater than the inheritance received by the heir. The legal consequences of beneficial acceptance are: (a) The whole of the inheritance is made separate from the personal assets of the heir; (b) The heir has no need to undertake the repayment of the testator’s debts using his own assets, as the settlement of the testator’s debts is done only to the extent of the existing inheritance; (c) There is no confusion of assets between the personal assets of the heir and the inheritance;

(d) If the debts of the testator have been settled and some assets remain, than that is the portion of the inheritance to which the heir is entitled; (c) Rejecting the inheritance (*verwerpen*), which is the act of relinquishing the right to an inheritance, as in the relinquishing of other rights. The rejection has the force of law when a declaration is made to interested parties, in this case by the heir.

An heir who has accepted an inheritance beneficially, according to Subekti, has several duties, namely: (a) Performing a registration of the existence of inheritance within four months after a declaration of his stance to the Clerk of the District Court, that he has accepted the inheritance beneficially; (b) Tending to the inheritance to the best of his ability; (c) Swiftly take care of all matters pertaining to the inheritance (*de boedel tot effenheid brengen*); (d) If demanded to do so by all creditors, give security for the price of moveable or immovable goods which have not been handed over to creditors with the right of hypothec; (d) Perform responsibilities to those dunning their debts and those who have received legacy rights. These responsibilities take the form of calculating the price

and income which may be obtained if the inherited goods are sold, and calculating the extent to which the debts and legacies may be fulfilled; (e) Call on unknown creditors in an official newspaper [4].

*B. The Legal Protection of Creditors for the Fulfillment of an Obligation in a Contract which cannot be Be-queathed to an Heir*

In day-to-day life, both persons (*natural person*) and legal bodies (*legal entity*) have their own needs, be it pressing, long-term, or temporary. There are times when not all of these needs can be fulfilled, and there are times when this is the case due to a lack of funds. This situation is the underlying cause for persons and legal bodies to take on loans, be it from banks or other entities, to fulfill their own needs [5].

A credit agreement is an agreement which is made by a creditor and debtor on the basis of consent. Any discussion on a credit agreement or a loan agreement must always bear in mind the provisions contained in Book III of BW on the law of contracts. As they are regulated under Book III of BW, the agreements made are personal in nature, which in turn gives birth to a personal right, that is, the right of dunning. This is in accordance with the principle of personal agreements, that they are binding only between the contracting parties (*in casu* creditors and debtors only). If examined, the rights that are born from a credit agreement, which is a personal right or private right, is relative in nature and can thus only be enforced against the contracting party. Private rights are themselves contained in Article 1315 *jo.* 1340 of BW. However, the provisions contained in Articles 1317 and 1318 of BW also stand. With the creation of a contract, not only is the legal subject bound against his counterpart, but also the assets in his possession. This can be seen in the provision contained in Article 1131 of BW, that all moveable or immovable property, in existence or existing in the future, will become security for any contract made by its owner. This means that if said parties have not fulfilled a *prestatie* in a contract which he has made, then the law can force him to auction his goods to settle the contractual obligations which have been agreed upon.

If a creditor relies only on the provision in Article 1131 of BW, then his position is only that of a concurrent creditor. Therefore, to change his position to that of a preferential creditor, a security in the form of property security is needed to guarantee the fulfillment of debts due to him. Prayitno Iman Santosa stated that the position of security goods is to act as a guarantee for the obligation of the debtor against the creditor. To protect the position of the debtor, which generally is weaker than that of the creditor, so that no abuse of circumstances occur for the creditor to obtain irregular profit from the debtor, the security goods of the debtor may not be given to the creditor immediately as the fulfillment of debts by the debtor to the creditor, as it would be valued as low as possible by the creditor. To maintain objectivity, the law decrees that the security goods are publicly auctioned (to obtain the maximum objective price), after which the proceeds of sale are given to fulfill the obligations of the debtor to the creditor. If the proceeds exceed the debt, the remainder will be returned to the debtor, while if the proceeds are less than the debt,

then the difference becomes the remaining debt of the debtor to the creditor [6].

In general civil law, creditors are divided only into *preferential* creditors and *concurrent* creditors. *Preferential* creditors, in general civil law, encompass creditors who have property security rights, and creditors who under the law must be repaid foremost. However, in the case of insolvency, what is meant by *preferential* creditors are only those who under the law must be repaid foremost, like the holders of *privilege* rights, holders of lien, and so forth. Meanwhile, creditors who have property security, in the case of insolvency, is classified under the title of *separatist* creditors [7].

The development of the economy is closely linked with the aspect and purpose of the granting of credit, as a real attempt to elevate the aspects of capital growth and investment in the business world among businessmen. The greater the amount of credit given, the greater the possibilities of risk [8]. Credit transactions comprise most banking transactions, and thus the management of credits requires utmost care. From credit transactions, banks obtain operational income in the forms of interest, provision, and commission. Interest income is obtained from every installment of credit paid by the debtor within agreed intervals, usually monthly. Credit services offered by banks are one of the largest sources of income and profit for banks. Banks' income from credit services is their primary source of income, but simultaneously, credits are also a form of investment which often become the primary cause of banks' major problems [10].

Problematic or defaulted credits have a damaging impact to the State, society, and banking industry of Indonesia. To prevent the possibility of a credit risk, the Banking Law has made it compulsory for banks to apply prudential banking principles. One requirement imposed by the law is credit assessment using "5C" principles: C-1: *Character*, C-2: *Capital*, C-3: *Capacity*, C-4: *Collateral*, C-5: *Condition of Economy*. Outside of the banking law, there also exists an analysis of credit based on the principles of studies of appropriateness with the "6A" principles, which are: A-1: analysis of juridical aspects, A-2: analysis of market and marketing aspects, A-3: analysis of technical aspects, A-4: analysis of management aspects, A-5: analysis of financial aspects, A-6: analysis of socio-economic aspects [11]. Another analysis outside of the above principles is based on the "7P" principles of analysis, namely: *Personality*, *Party*, *Purpose*, *Prospect*, *Payment*, *Profitability*, and *Protection* [12]. Based on a technical approach, different banks could have different analyses of the credit application of potential debtors, but essentially the foundation and purpose of analysis are uniform among those banks. Generally, there are several steps that a bank performs in the granting of credit. The first step in a credit-granting process is a credit application by the potential debtor. This application could be made in writing, but in practice is more often done orally. In this phase the bank (*account officer*) gets to know the potential debtor, especially if the potential debtor is not a customer of the bank

[13]. A bank loan in the form of credit contains a risk when a debtor is yet unable to fulfill the obligation to pay loan installments, be it by credit or settlement. Examination in the analysis of loans by bank customers (potential debtors) must be cautious and accurate in order to minimize risks,

so that the bank's funds can at least be repaid, even if only partially [14].

It is common knowledge that in Indonesia, security in a credit agreement is divided into two categories, general security and specific security. General security is contained in Article 1131 of BW, which provides that this general security does not compel an agreement between the parties (creditor and debtor) as it is born by virtue of the law (automatically), and states the position of a creditor holding this general security is that of a concurrent creditor. Meanwhile, a specific security is a security agreement made between a creditor and debtor, which is a supplementary agreement from the core agreement (a credit agreement/borrowing agreement) and is an exception to the provision in Article 1131 of BW. The position of a creditor holding this specific security is as a *preferential* creditor, or a creditor whose settlement is prioritized in comparison with other creditors. This specific security is divided into two, property security and personal security. Property security could take the forms of a pawn, hypothec, mortgage, or fiduciary security, while personal security could take the form of a guarantee agreement which is commonly known as *borgtocht* or *personal guarantee* or *corporate guarantee*.

Article 1236 of BW, briefly, carries the provision that when a debtor is unable to hand over his property, he is obliged to compensate the creditor in costs, losses, and interest. It is further explained in Article 1238 of BW that a debtor is considered to be in default when there has been a deed providing that he is, and also when he is behind in the fulfillment of his *prestatie* from a previously agreed time period. An initial attempt by a creditor could be to demand the immediate fulfillment of the *prestatie* due to him from the creditor. If the creditor remains in default, then Article 1243 of BW clearly stipulates a compensation for costs, losses, and interest. This condition only occurs when, after a debtor has been declared as being in default, he remains so for the second time.

If creditors wish to bring the matter before a court due to the debtor's failure to fulfill his obligations, then each creditor can institute legal proceedings to obtain a court's judgment. Courts with the competence to resolve and handle credit disputes or the nonfulfillment of *prestatie* are General Courts, by means of a civil suit, and Commercial Courts, by means of an insolvency suit. If eventually, in spite of the handing down of a judgment which is final and binding, the debtor still fails to fulfill his *prestatie*, the judgment can be enforced with the basis of an order and with the supervision of the Head of the District Court which examined the suit in the first instance, in accordance with the provisions in Article 195 of HIR, and subsequently, under the orders of said Head, a confiscation of the debtor's assets for auction through the auction office as an intermediary is done, the proceeds of which are given to creditors for the fulfillment of his *prestatie*.

BW lists 3 different groups who are bound by an agreement, which are: (a) The parties who made the agreement themselves; (b) Their heirs and those who have obtained rights from them; (c) Third parties. An agreement is only enforceable towards parties who made the agreement by themselves. This is the principle contained in Article 1315 *jo.* 1340 of BW. Parties cannot make agreements that bind third parties, with the exception of the condition set

in Article 1317 of BW, which is if an agreement that is made by a party for himself or a grant which he gives to another does contain such an agreement. A party who creates a agreement is purported to have created it for his heir and those who have obtained rights from him, unless expressly provided for otherwise, or it can be inferred from the nature of the agreement that such is not the parties' intention. This provision is contained in Article 1318 of BW. The passing of title to an heir occurs as a consequence of the passing of a general title (*onder algemene titel*) to an heir. The passing of an agreement to those who have obtained rights from the contracting parties is based on a specific title (*onder bijzondere titel*), such as in the case of a person who takes the place of a buyer obtaining the latter's title as an owner [14].

All the assets left behind by a testator are not necessarily allotted to his heirs. There are times when a testator leaves behind an inheritance in the form of debts. Upon the passing of a testator, his debts are then dispersed among his heirs. This causes problems for the creditors, as it would be easier to dun the whole of the debt from one person rather than several people for their own portion thereof. Still, the law (*vide* Article 1147 of BW) grants a right to creditors of inheritances to demand the entire debt due to him as a single unit within one year of the passing of the testator, notwithstanding his right to dun each heir for his part.

In relation with the credit agreement made by the testator (debtor) with the creditor, although the agreement may have fulfilled the conditions for the validity of an agreement as contained in Article 1320 of BW, and is supported by the principle of *privity of contract* as contained in Article 1315 *jo.* 1340 of BW, which at its core outlines that 'no one may contract against his own name or require the creation of an agreement other than for himself, and an agreement only has the force of law between the contracting parties (*in casu*, creditors and debtors only), the provision in Article 1318 of BW which states 'should a person create an agreement, then it is considered to have been done for his heir and all those who have obtained rights from him, unless expressly provided for otherwise or it can be concluded from the nature of the agreement that it is not the parties' intention' is, therefore, an exception from the principle of *privity of contract* (*vide* Article 1315 *jo.* 1340 of BW). This provision is in line with Article 833 section

(1) of BW which stipulates that heirs, naturally and by virtue of the law, obtain ownership over all of the goods, rights, and credits owing to the testator.

In relation to such an explanation, if a testator (debtor) passes and leaves behind debts/*passiva*, then in accordance with Article 833 section (1) *jo.* Article 1318 of BW, then all heirs will receive the debts/*passiva* and are to fulfill the *prestatie* of the testator (debtor) which has been imposed on them. If all heirs accept their inheritance fully, then the provision still holds the force of law. However, an issue arises when all heirs determine that they will reject the inheritance (*verwerpen*) or accept it beneficially. If an heir rejects his inheritance, they are considered to never have existed (*vide* Article 1058 of BW). However, if they opt to accept beneficially, the *prestatie* of an heir is limited only to the assets left behind by the testator. This is to say, if the debtor's inheritance are insufficient to fulfill his obligations, then a creditor cannot enforce his right to 'force'

a beneficial acceptance heir to fulfill the obligations of the testator.

If, after a public auction is held for the security goods of a debtor, the price of the security goods exceed the debts, the remainder becomes the right of the *beneficiary* heir. However, if there remains a deficit, then there can be no suit for the remaining debt remaining due from a beneficial acceptance heir, bearing in mind that his obligation is only to fulfill all of the debts of the debtor to the extent of his inheritance. The provision in Article 1131 BW cannot be enforced, as in this is case, it is as though the testator does not have an heir as his *passiva* (debt obligation) is greater compared to his *activa* (inheritance), and the role of the Office of Inheritances (*Balai Harta Pening-galan*) cannot be performed as the inheritance of the testator is in a negative balance.

If we return to the concept of credit, which has its roots in the Roman language, *credere* or trust, then in this case creditors, in spite of having performed the principles of caution in the granting of credit, which are the 5C, 6A, and 7P principles, are not guaranteed to be able to enforce his rights due to a hindrance by an unexpected event, that is, the decision of the heirs to assume the role of *beneficiary* heirs or reject their inheritance, which could not have been foretold by the creditor in the beginning of the credit-granting process to the debtor (*in casu*: a credit agreement). In relation to such a matter, the law has set an option that beneficial acceptance heirs may be liberated from having to repay the debts of the testator beyond the value of the inheritance that he receives (exceeding the inheritance).

The method of legal protection for creditors for the fulfillment of a *prestatie* in an agreement which cannot be bequeathed to an heir is the performance of an in-depth credit analysis in the event that a creditor is about grant a credit (loan) to the debtor. Aside from performing credit analysis as aforementioned in the previous sub-chapter with regards to the credit analysis principles of 5C, 6A, and 7P, the heir of a potential debtor can be bound also into the agreement, one of the means of which is making a debtor's heir a guarantor (*borgtocht*).

In the positivistic legal system in Indonesia, the guarantee of debts (*borgtocht*) is regulated in Chapter XVII, Articles 1820-1850 (including Article 1316) of BW. Article 1820 of BW states that a guarantee is an agreement whereby a third party, in the interest of the creditor, binds himself to fulfill the obligations of the debtor in the event that the debtor cannot fulfill it himself. This guarantee agreement (*borgtocht*) is an additional agreement or supplementary agreement (*accessoir*) from the core agreement, that is the credit agreement. However, this guarantee agreement by nature is a complementary agreement, aside from a creditor's other security rights (e.g. pawn, mortgage, hypothec, and fiduciary securities). It must be re-membered that a guarantee agreement is a private agreement, the object of which is an obligation. Therefore, if a debtor fails to pay with regards to his *prestatie*, then the *borg* (guarantor) is the party who will perform the fulfillment of the *prestatie* promised between the creditor and debtor.

Hence, in a guarantee agreement, there exist conditions that it must be made under an agreement, and the party who acts as a guarantor (*borg*) is a third party outside

of the creditor and debtor. This guarantee agreement is given in the interest of the creditor as an enhancement to the principles of caution by the creditor in the granting of credits (loans) to potential debtors. According to Article 1826 of BW, all of the contracts of guarantors pass on to their heirs. It is well-recognized under the principle of the law of inheritance, heirs inherit all of the rights (*activa*) or obligations (*passiva*) from the testator. Therefore, in the event of the passing of a guarantor, his rights and obligations, in accordance with the guarantee agreement, passes onto the guarantor's heir, and if there are multiple heirs, the obligations pass on each heir to the proportion of their rights in the inheritance (*vide* Article 1100 of BW: certainly only if the heir accepts it). Therefore, even if the guarantor dies, his personal security remains, and the rights can now only be enforced against the guarantor's heirs.

### III. CONCLUSION

When a testator who has the position of a debtor dies and leaves behind debts/*passiva*, then in accordance with Article 833 section (1) jo. Article 1318 of BW, all heirs who will receive the debts/*passiva* are to fulfill the obligations of the testator (debtor) which have been imposed to all heirs as an exception to the principle of *privity of contract*. If all heirs accept their inheritance absolutely, then that provision still has the force of law. What becomes an issue is when all heirs determine that they reject the inheritance (*verwerpen*) or accept it beneficially. If an heir rejects his inheritance, then he is purported to never have existed (*vide* Article 1058 of BW), while if he chooses to be a beneficial heir, then the obligations of the heir is limited only to the inheritance left behind by the testator, meaning that if the inheritance of the debtor are insufficient to fulfill his *prestatie*, then the creditor cannot enforce his right to 'force' the heir to fulfill the *prestatie* of the testator.

### IV. RECOMMENDATIONS

Ideally, before a creditor grants a credit loan to a potential debtor, aside from paying heed to the credit analysis principles of 5C, 6A, and 7P, they need to perform an in-depth analysis regarding the responsibility of the heir in the fulfillment of a deceased debtor's unfulfilled obligations. The means to do so is by making a clause in the credit agreement which binds heirs as an exception to Article 1318 of BW. If considered necessary, an heir can be bound to be a guarantor in a guarantee agreement (*borgtocht*) in the contract made by the debtor to further guarantee legal certainty and legal protection for creditors.

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