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Legal Analysis of the Use of Personal Identity as Guarantee in Online Loans

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Informasi Artikel	Abstrak
Histori Artikel: Diterima : 25-06-2024 Direvisi : 20-04-2025 Disetujui : 12-05-2025 Diterbitkan : 28-06-2025	<i>Dalam era digital yang berkembang pesat, praktik pinjaman online menjadi hal yang baru di kalangan masyarakat karena kemudahan dan cepat diakses. Penggunaan identitas diri/KTP sebagai jaminan dalam pinjaman online telah menjadi topik yang menarik dalam konteks hukum. Penelitian ini bertujuan untuk menganalisis bisakah Identitas Diri/KTP dapat dikategorikan sebagai dokumen yang dapat dijadikan jaminan. Metode penelitian yang digunakan adalah analisis normatif terhadap peraturan perundang-undangan dan aturan lainnya yang dapat dijadikan dasar hukum. Karena pada dasarnya ktp merupakan dokumen kependudukan yang berfungsi sebagai alat identifikasi diri seseorang, bukan sebagai bukti kepemilikan harta benda. Namun, dalam praktiknya Identitas diri/KTP terkadang digunakan sebagai salah satu syarat untuk mendapatkan pinjaman online. Hal ini dilakukan untuk memverifikasi identitas peminjam dan meminimalisir risiko penipuan Hasil analisis menyoroti berbagai isu hukum yang terkait dengan penggunaan identitas diri sebagai jaminan dalam pinjaman online, termasuk aspek perlindungan konsumen, keabsahan kontrak, dan tanggung jawab hukum dalam kasus penyalahgunaan identitas. Penelitian ini memberikan wawasan yang mendalam tentang kerangka hukum yang mengatur praktik ini serta tantangan yang dihadapi dalam penegakan hukum dan perlindungan konsumen di era digital.</i>
Kata Kunci: Kartu Identitas; Jaminan; Pinjaman Online	
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Article Info	Abstract
Article History: Received : 25-06-2024 Revised : 20-04-2025 Accepted : 12-05-2025 Published : 28-06-2025	<i>In the developing digital era, the practice of online lending has become a new thing among the public due to its ease and quick access. The use of ID cards as collateral in online lending has become an interesting topic in the legal context. This research aims to analyze whether ID cards can be categorized as documents that can be used as collateral. The research method used is a normative analysis of laws and regulations and other rules that can be used as a legal basis. Because basically ktp is a population document that functions as a means of identifying a person, not as proof of property ownership. However, in practice, personal identity/KTP is sometimes used as one of the requirements for obtaining</i>
Keywords: Identity Card; Guarantee; Online Loan	

online loans. This is done to verify the borrower's identity and minimize the risk of fraud. The analysis highlights various legal issues related to the use of ID as collateral in online lending, including aspects of consumer protection, contract validity, and legal liability in cases of identity misuse. This research provides a deep insight into the legal framework governing this practice as well as the challenges faced in law enforcement and consumer protection in the digital age.

INTRODUCTION

Identity Card or Identity is a legal document that contains personal data owned by every resident living in the territory of the Unitary State of the Republic of Indonesia, Article 1 paragraph 1 of Law no 27 of 2022 concerning Personal Data Protection states Personal Data is data about natural persons who are identified or can be identified separately or combined with other information either directly or indirectly through electronic or non-electronic systems.¹ Based on the provisions of Law no. 24 of 2013 Article 63, the Identity Card (KTP) which is now called Electronic KTP is a mandatory document issued by the Population and Civil Registration Office / authorized agency, this document must be owned by Indonesian Citizens and Foreigners who have a Permanent Stay Permit who are 17 (seventeen) years old or have been married or have been married².

Technological advances have changed many aspects of human life, including the way we access financial services. One of the latest innovations to revolutionize the traditional lending system is online lending platforms. The platform provides easy and fast access to loans without the complicated processes often found in banks and traditional financial institutions. Online loan platforms allow individuals to apply for loans quickly and easily through apps and websites. Using advanced technology and algorithms, the loan application process can be completed in minutes or even seconds, and money can be transferred directly to the borrower's account in a short time after approval. The existence of an online loan platform provides a solution for many people who need fast funds for urgent needs such as medical expenses, bill payments, business financing, and other needs. These platforms also often offer more competitive interest rates and more flexible terms

¹Tamaulina Br. Sembiring Rizka Putri Febritama, "Kajian Hukum Perdata Terhadap Pelaksanaan Pasal 1131 KUHPerdata Atas Jaminan Debitur Di Indonesia," *Indonesian Journal of Law* 1, no. 1 (2024): 38–44, <https://jurnal.intekom.id/index.php/inlaw>.

² Akhir Nazli Khatami and Arifuddin Muda Harahap, "Penyalahgunaan KTP Masyarakat Untuk Pinjaman Dana Pnm Mekaar Perspektif Sadd Adz-Zariâ€™ Ah Di Kota Tanjungbalai," *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam* 7, no. 01 (2023).

compared to traditional methods, making it easier for people with imperfect or inadequate credit histories to secure traditional loans.³

In the rapidly developing digital era, online lending practices are becoming new and increasingly commonplace among the public because of the ease and fast access, online loan platforms must also be used carefully. One of the things that has become public attention is the rampant misuse of self-identity as collateral in online loan transactions. Most of these platforms offer unsecured loans with enough identity to be used instead of collateral, this can expose borrowers to higher risks.⁴ Please note that in lending and borrowing activities, especially money, there are requirements in the form of transferring debt guarantees from creditors to debtors, this collateral can be in the form of goods or objects, this is a means to protect creditor security, namely the certainty of repayment of debtor debtors by debtors or debtor guarantors⁵. The existence of collateral is very important in order to minimize the risk of loss of debtors to creditors when paying off their loans, Foreclosure contracts called guarantee contracts, are made using the debtor's goods as collateral. Every loan and borrow, receivable debt certainly has a legal basis that can be used as a reference when there is a dispute / default, namely in the form of a loan agreement or credit agreement, the agreement is the main agreement which is followed by guarantees arising from the principal agreement, which is in the form of a loan and loan agreement, the guarantee agreement cannot stand alone, but always follows the principal agreement. If the principal agreement expires, the guarantee agreement will also end⁶.

The Novelty in this journal needs increased supervision and law enforcement by OJK to avoid fraudulent practices and protect the personal data of online loan users. In addition, educating the public about the risks of using personal data and the importance of understanding the terms and conditions of online lending services is also a major focus to improve the digital and financial literacy of the community. This phenomenon raises various questions related to the legal aspects

³ Ruth Ben-Yashar, Miriam Krausz, and Shmuel Nitzan, "Government Loan Guarantees and the Credit Decision-Making Structure," *Canadian Journal of Economics* 51, no. 2 (2018): 607–25, <https://doi.org/10.1111/caje.12332>.

⁴ Bao Wu et al., "Underdog Mentality, Identity Discrimination and Access to Peer-to-Peer Lending Market: Exploring Effects of Digital Authentication," *Journal of International Financial Markets, Institutions and Money* 83, no. January (2023), <https://doi.org/10.1016/j.intfin.2022.101714>.

⁵ Ade Junuchandrasari Astawa and I Wayan Wiryawan, "Perlindungan Hukum Terhadap Penerima Fidusia Apabila Benda Jaminan Fidusia Musnah Dalam Perjanjian Kredit," *Jurnal Kertha Semaya* 8, no. 5 (2020).

⁶ Ni Made Rastiti Budi and Anak Agung Istri Ari Atu Dewi, "Pelaksanaan Pendaftaran Jaminan Fidusia Kendaraan Bermotor Pada Bank Perkreditan Rakyat Sewu Bali Di Kabupaten Tabanan," *Kertha Semaya: Jurnal Ilmu Hukum*, 2015.

involved in the use of self-identity, especially in the form of ID cards documents that are very important in everyday life in their use of online loans, On the other hand, the concept of collateral has become a crucial instrument in the context of lending and borrowing which is legally regulated in civil law, providing protection and guarantees for parties involved in various transactions and agreements. The question arises whether identity or ID cards can be categorized as documents that can be used as collateral in the context of civil law. This thinking raises a number of complex considerations, including legal, security, and business practices. Whether the KTP can meet the necessary criteria to be a valid and effective guarantee in protecting the interests of the parties involved, it is also necessary to pay attention to the legal implications of using self-identity as collateral. How appropriate guarantee mechanisms can be implemented taking into account the interests of all relevant parties, including guarantors, collateral recipients and third parties. Therefore, this study aims to conduct an in-depth analysis of the legal aspects involved in the use of self-identity as collateral in online loans. Therefore, this research is important to find out whether Personal Identity / KTP can be categorized as a document that can be used as collateral in a loan. A comprehensive legal analysis is needed to understand the legal implications of this practice, for both lenders and borrowers.

METHOD

Legal research methods are systematic approaches to collecting, analyzing, and interpreting legal data or information. Legal research involves a variety of methods for understanding, analyzing, and evaluating legal issues with the aim of understanding, explaining, or solving a legal problem⁷. In this study, the author uses normative legal research methods that put law as a system of norms. By using the Statutory Approach (*Statue Approach*) which aims to analyze legal rules regarding the use of self-identity as collateral in loans. The data used in this existing research is Secondary Data obtained from literature reviews obtained through research results, laws and regulations, books and scientific journals.

⁷ F C Susila Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (2019): 697–709.

DISCUSSION AND ANALYSIS

Legal Basis of Debt Lending Guarantee

Guarantees in debt lending are regulated in various laws and regulations in Indonesia, both based on civil law, laws, and several other legal bases such as supreme court decisions or other rules. Here is an explanation of some of the legal bases. Based on Civil Law, in the Civil Code (KUHPer). In Article 1131 of the Civil Code which reads: "All the property of the debtor, both movable and immovable, both existing and new will exist in the future, shall be dependent for all his individual engagements."⁸

Article 1131 of the Civil Code is an important principle in engagement law in Indonesia. This principle aims to protect the rights of creditors and ensure that debtors will fulfill their obligations. This article regulates the general security attached to the debtor's property. This general guarantee means that all of the debtor's property, both existing and future, automatically becomes collateral to pay off all his personal debts.⁹ As a consequence of Article 1131, the creditor (lender) has the right to sell the debtor's property if the debtor defaults (is unable to pay his debt). The creditor's right to the debtor's property precedes the rights of the other parties who have a right to the property, unless the right is registered with the land registry office or the competent institution. The debtor cannot sell or transfer his property to another party without the creditor's consent, if it will harm the creditor's right to obtain debt payments.

Rights and Obligations of Guarantees aim to protect the interests of both parties, both the guarantor and the recipient of the guarantee.¹⁰ The right of the guarantor is the right to take reimbursement of the object used as collateral if the debt is not repaid and the right to sell the collateral object by auction if the debtor does not pay off the debt within the specified time. This right is the main right of the guarantor in the debt loan guarantee agreement.¹¹ That is, if the debtor (borrower) does not pay off his debt to the guarantor, the guarantor has the right to take reimbursement of the object used as collateral. These replacements can be:

⁸ Republik Indonesia, Undang Undang Hukum Perdata (KUHPER), Pasal 1131 tentang Jaminan Umum yang melekat pada harta kekayaan debitur.

⁹ Rizka Putri Febritama, "Kajian Hukum Perdata Terhadap Pelaksanaan Pasal 1131 KUHPerdata Atas Jaminan Debitur Di Indonesia."

¹⁰ Djoni Sumardi Gozali, "Dasar Filosofis Dan Karakteristik Asas Publisitas Dalam Jaminan Kebendaan," *Jurnal Hukum Dan Kenotariatan* 5, no. November (2021): 590–609.

¹¹ Marc Cowling et al., "The Hazards of Delivering a Public Loan Guarantee Scheme: An Analysis of Borrower and Lender Characteristics," *International Small Business Journal: Researching Entrepreneurship* 42, no. 2 (2024): 212–45, <https://doi.org/10.1177/02662426231181455>.

- 1) Money, If the collateral object can be cashed, the guarantor has the right to sell the object and take the proceeds of its sale as compensation for the unpaid debt.
- 2) Thing, If the collateral cannot be cashed, the guarantor has the right to take ownership of the thing as a replacement for the unpaid debt.

The obligation of the guarantor is, Maintain the collateral object properly, that is, the collateral must be stored in a safe place and avoid damage, loss, or theft. The guarantee provider must take care of the collateral object so that its condition remains good. Using collateral objects in accordance with their designation, may not use collateral objects for personal purposes. Collateral items should only be used for reasonable purposes and do not endanger their condition. Provide compensation to the debtor if the collateral object is damaged or lost due to the negligence of the guarantor. If the collateral is damaged or lost due to the negligence of the guarantor, the guarantor is obliged to provide compensation to the debtor. This compensation must be in accordance with the value of the damaged or lost collateral object.¹²

The right of the recipient of the guarantee is to take reimbursement of the collateral if the debt is not repaid and sell the collateral at auction if the debtor does not pay off the debt within the specified time. The main obligation of the collateral recipient (borrower) in the debt loan guarantee agreement is to pay the debt to the guarantor (lender). Payment of this debt must be made in accordance with the agreement that has been agreed between the two parties, including regarding the amount of debt, the term of payment, the method of payment, and whether there is interest to be paid by the recipient of the guarantee to the guarantor, and how much interest is.¹³ If the recipient of the guarantee wants to pay off the debt early, he has the right to redeem the collateral object from the guarantor. This redemption must be made in accordance with the agreement that has been concluded between the two parties

Then based on the Law, Law Number 42 of 1999 concerning Fiduciary Guarantee Article reads:¹⁴

¹² Sawitri Putri Nursakti, "Jaminan Hak Tanggungan Pada Produk Pembiayaan Murabahah Dan Musyarakah Di Bank Muamalat Indonesia," *Jurnal Ilmu Hukum* 14 (2018): 81–98, <https://doi.org/10.5281/zenodo.1188360.81>.

¹³ Lidya Mahendra, R.A. Retno Murni, and Putu Gede Arya Sumertayasa, "Perlindungan Hak-Hak Kreditur Dalam Hal Adanya Pengalihan Benda Jaminan Oleh Pihak Debitur," *Acta Comitatus*, 2016, 267–80, <https://doi.org/10.24843/ac.2016.v01.i02.p13>.

¹⁴ Undang Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia

- (1) A Fiduciary means the transfer of ownership rights of the Thing to the Fiduciary on the basis of trust with the assurance that the Thing will be returned to the Fiduciary after the Fiduciary's obligations to the Fiduciary are fulfilled.
- (2) The object of the Fiduciary Guarantee as referred to in paragraph (1) may be:
 - a. Moving objects, both tangible and intangible;
 - b. Objects do not move;
 - c. Rights to movable and immovable objects;
 - d. Objects to come; and/or
 - e. Bank accounts and/or securities.

Article 1 explains the definition of Fiduciary, namely the transfer of ownership rights of an object on the basis of trust provided that the object whose ownership rights are transferred remains in the possession of the owner of the object. The object of Fiduciary Guarantee is a movable and/or immovable object, whether tangible or intangible, both existing and future. Differences with conventional guarantees, Fiduciary guarantees are different from conventional guarantees, such as liens and mortgages. In fiduciary guarantee, ownership of the fiduciary property remains in the hands of the debtor, but the creditor has property rights to the object. The application of fiduciary guarantees can be used for various types of financing, such as micro business loans, home ownership loans, and motor vehicle loans.¹⁵

Also explained in the Collateral according to Law Number 10 of 1992 concerning Amendments to Law Number 7 of 1992 concerning Banking regulates the requirements and procedures for providing guarantees in financing by finance companies. Types of collateral that can be used in financing by finance companies. First, movable property guarantees, namely material rights to movable objects that are the object of debt repayment guarantees, such as motor vehicles, machinery, electronic equipment, and so on. Second, immovable property security is a material right to immovable objects that are the object of debt repayment guarantees. Immovable

¹⁵ Andi Wahyu Agung Nugraha, 'Prinsip-Prinsip Hukum Jaminan Fidusia Dalam Perspektif Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia' (2018) 1 Lex Privatum 1 <<http://www.fao.org/3/I8739EN/i8739en.pdf>�Ahttp://dx.doi.org/10.1016/j.adolescence.2017.01.003�Ahttp://dx.doi.org/10.1016/j.chilyouth.2011.10.007�Ahttps://www.tandfonline.com/doi/full/10.1080/23288604.2016.1224023�Ahttp://pdx.sagepub.com/lookup/doi/10>.

objects that are commonly used as collateral include land, buildings such as houses, apartments, shophouses, and so on.¹⁶

Third, securities guarantees are material rights to securities that are the object of debt repayment guarantees. Common securities are used as collateral such as Stocks, Bonds, Sukuk funds. Fourth, a personal guarantor is a third party who is willing to guarantee the repayment of the debtor's debt if the debtor defaults. The personal guarantor must meet certain requirements, such as having adequate income and a good credit reputation. Fifth, Bank guarantee is a guarantee from the bank that guarantees the repayment of the debtor's debt if the debtor defaults. Banks usually provide this guarantee to their customers who have a good relationship with the bank.¹⁷

It is also explained based on Supreme Court Decision Number 11/Pdt.Sus/2019. In the case of a debtor, borrow money from creditors and provide collateral in the form of a piece of land. The creditor then sells the collateral land without the debtor's consent. The debtor sued the creditor to court and requested that the sale of the collateral land be canceled. Judgment: The Supreme Court ruled that the sale of collateral land by creditors without the debtor's consent was invalid. This ruling strengthens the legal argument that creditors may not sell collateral without the debtor's prior consent.

Legal principles are general and fundamental rules of law. These legal principles can be the legal basis for assessing the validity and fairness of a guarantee agreement, in addition to statute and jurisprudence. Here are some examples of legal principles relevant to debt loan guarantee agreements. **First**, the Good Faith Principle requires that the parties to the agreement act honestly, fairly, and appropriately. This principle requires the parties to provide true and complete information to the other, respect the interests of the other and not act in a fraudulent or deceptive manner. An example of application is that a debtor must provide correct information about his financial condition to creditors and a creditor must not provide misleading information to debtors. The parties must act with mutual respect and respect.¹⁸

¹⁶ Fathul Hamdani and Ana Fauzia, "The Urgency of Legal Protection for Online Loan Service Users," *Proceedings of the 2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)* 592, no. Iclhr (2021): 215–21.

¹⁷ Putri Ayu Winarsasi, S.H., M.H., M.Kn 'Hukum Jaminan di Indonesia (Perkembangan Pendaftaran Jaminan Secara Elektronik)'

¹⁸ Zhibin Niu et al., "IConViz: Interactive Visual Exploration of the Default Contagion Risk of Networked-Guarantee Loans," *Proceedings - 2020 IEEE Conference on Visual Analytics Science and Technology, VAST 2020*, 2020, 84–94, <https://doi.org/10.1109/VAST50239.2020.00013>.

Second, the Principle of Legal Certainty, requires that the law be known and understood by all. This principle requires laws to be clear and understandable, consistent and unchanging and to be enforced fairly and equitably. An example of its application of the guarantee agreement should be made clearly and easily understood by the parties. The terms of the guarantee agreement must be clearly defined, and the guarantee agreement must be enforced fairly and equitably by the courts. **Third**, the Principle of Freedom of Contract gives the parties the right to enter into agreements according to their own will. This principle obliges the parties to enter into voluntary agreements, have the legal capacity to enter into agreements and not to make agreements that contradict the law or moral norms. An example of its application is that the parties are free to determine the type of guarantee to be used in the agreement, are free to determine the term and interest of the loan and the guarantee agreement must not contain clauses that unreasonably incriminate either party.¹⁹

Can Personal Identity / KTP Be Categorized as a Document that Can Be Used as a Guarantee?

Based on the legal analysis above, it can be seen that personal identity / ID card cannot be categorized as a document that can be directly used as collateral in borrowing debt. Because personal identity / KTP is a residence document that functions as a person's self-identification, not as proof of property ownership. However, in practice Personal identity / KTP is sometimes used as one of the requirements to get an online loan. This is done to verify the identity of the borrower and minimize the risk of fraud. It is also important to note that the use of personal identity / ID card as collateral in online lending does not have a strong legal basis. Therefore, borrowers and lenders need to be careful in using ID cards as collateral in making online loans

Some considerations that need to be considered are the risk of misuse of personal data, Personal identity / ID card contains sensitive personal information, such as name, address, and date of birth. The use of ID cards as collateral has the potential to open the risk of misuse of personal data by lenders. Then also related to legal uncertainty, if the borrower cannot pay off the debt, the lender cannot immediately confiscate the borrower's property based only on the ID card. This can create legal uncertainty in the debt settlement process. Alternatively, online lenders may

¹⁹ Jasman et al., "Online Loans during the Covid-19 Pandemic for the Batam Community," *Economic and Business Management International Journal* 4, no. 2 (2021): 107–12, <https://doi.org/10.556442/eabmij.v4i02>.

consider using other guarantees that are stronger and have a clear legal basis, such as land certificates, vehicle BPKB, or other securities. Borrowers also need to be careful in choosing a trusted and reputable online loan platform. By law, the use of KTP as collateral in Online Loans is not allowed. This has been confirmed by the Directorate General of Population and Civil Registration (Ditjen Dukcapil) of the Ministry of Home Affairs through various official statements, including the Press Release of the Directorate General of Dukcapil Number 470/Pen/03/2023 concerning the Prohibition of Detention of KTP and KK.

The Financial Services Authority (OJK) through the Financial Services Authority Regulation (POJK) Number 70 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services. Provide information regarding the reasons for banning KTP as collateral in Online Loans because KTP is an important document that must be owned by every Indonesian citizen, KTP has no monetary value and cannot be traded. Misuse of ID cards can endanger their owners, such as identity theft, fraud, and so on. This regulation also regulates several matters related to guarantees in online loans, including online loan operators are not allowed to ask for guarantees in the form of ID cards, family cards, or other personal documents. Online Loan Providers are only allowed to request guarantees in the form of personal data, work data, and/or financial data. Online Loan Providers are required to maintain the confidentiality of borrowers' personal data. Although prohibited, in practice, there are still many online loan operators who ask for ID cards as collateral. This is due to the lack of public understanding of the applicable rules, urgent community needs and irresponsible online Loan Operator business practices.

CONCLUSION

Based on the legal analysis above, it can be seen that personal identity / ID card cannot be categorized as a document that can be directly used as collateral in borrowing debt. Because personal identity / KTP is a residence document that functions as a person's self-identification, not as proof of property ownership. However, in practice Personal identity / KTP is sometimes used as one of the requirements to get an online loan. This is done to verify the identity of the borrower and minimize the risk of fraud. Based on the definition of movable objects in accordance with the articles governing objects in civil cases, KTP cannot be categorized as movable objects as well as the category of immovable objects and based on the provisions of the Financial Services Authority

(OJK) through the Financial Services Authority Regulation (POJK) Number 70 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services. Provide information regarding the reasons for banning KTP as collateral in Online Loans because KTP is an important document that must be owned by every Indonesian citizen, KTP has no monetary value and cannot be traded. So that the validity of the ID card as a guarantee does not have a strong legal proposition. The importance of a deep understanding of the legal framework governing this practice, including aspects of consumer protection, contract validity, and legal liability in cases of identity abuse. There needs to be efforts to ensure the security of personal data and the privacy of borrowers, as well as minimize the risk of misuse of information related to the use of Personal Identity / KTP as collateral.

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