
Venture Capital Law Renewal: A Solution for Business Convenience and Legal Certainty in Indonesia

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Abstract

Investing, for example, using venture funds, can now be done easily. Venture funds are raised by venture capital companies and given to investee companies. Problems can arise when the venture capital company does not have a license to operate but carries out activities as if it has a permit. Of course, this can have legal consequences for venture fund investors, investee companies, and venture capital companies. Another problem concerns the legal certainty of venture capital companies for foreigners who wish to invest in Indonesia; foreigners need to be able to judge the appropriateness of the legal products governing venture capital companies. This article is intended to determine the legal consequences facing unlicensed venture capital companies and the legal certainty for foreign investors. This research method uses a normative juridical method by conducting a literature study on the provisions of venture capital companies in Indonesia. Article VCC in Indonesia has contributed to the Indonesian economy by helping businesses grow. However, this growth must be in line with the harmonization of regulations regarding venture law and investment in Indonesia in order to provide legal certainty to prospective investors.

1. Introduction

Industrial revolution 4.0 has certainly resulted in disruption to several sectors. One consequence has been the digitalization of those sectors. This tendency can be seen, for example, in an easier economic transaction due to the presence of a computational technology system and the various conveniences that arose from this industrial revolution 4.0. One of the advantages of industrial revolution 4.0 is the ease with which investment permits can be obtained, both for domestic and foreign investments that are encouraged because of the digitized licensing system through the Online Single Submission (“OSS”) Integrated Electronic Business Licensing System implemented by the Ministry of Industry and Investment/Investment Coordinating Board (“Kemenves/BKPM”). Investment is also facilitated by Law no. 11 of 2020 Concerning Cipta Kerja (“Law 11/2020”). One of the instruments for investing in venture capital involves investors providing funding convenience to the investee company. This venture fund is provided by a Venture Capital Company (“VCC”) that is collected from investor funds provided to VCC. The VCC can support funding for companies that need certain and large-scale funding, which can foster economic dynamism.

In Indonesia, the VCC regulation is quite new because this provision was originally created in 1988 through Presidential Decree No. 61 of 1988 (“Keppres 61/1988”), which states that VCC is a financing institution. This provision establishes a clear legal standing to legal arrangements regarding VCC in Indonesia so that people who will implement the VCC do not have to worry about using VCC services to build their businesses. Existing regulation are no longer relevant to current conditions. This is, of course, due to the influence of globalization, which removes economic barriers between countries. In terms of business development, Indonesia has solid growth prospects, both for startups and for MSMEs; of course, this can be supported by VCC.¹ With the attractive benefits of this VCC, of course, some legal entities engage in VCC activities without clear legal direction from the government. This can be detrimental to the Business Partner Company (“BPC”) if the VCC that provides initial financial assistance does not have legal status. This, of course, can influence the legal

¹ Ambar Budisulistiyawati, “Karakteristik Modal Ventura Sebagai Lembaga Pembiayaan,” *Yustisia Law Journal*, no. 68 (2006): 57–62.

consequences that have been determined by both the VCC and the BPC, and if the VCC provides funds to BPC but does not have a license that carries high risk and legal uncertainty.² If an action is taken against the VCC who has carried out VCC activities with the BPC, will the state confiscate the funds that have been given by the VCC to the BPC? Of course, this should refer to the provisions of the achievements that have been made by BPC, both the achievements that have been implemented and those that will be implemented. As the ministry responsible for the implementation of this VCC, the Ministry of Finance has a mandate from the government to create an inclusive provision to regulate VCC. This mandate is also stated in the Financial Services Authority, which has its mandate to supervise VCC.

The provisions of this VCC are contained in Minister of Finance Regulation No. 18/PMK.010/2012 concerning Venture Capital Companies (“**PMK 18/2012**”), as well as various OJK regulations consisting of Financial Services Authority Regulation No. 34/POJK.05/015 concerning Business and Institutional Licensing for Venture Capital Companies (“**POJK 34/2015**”), Financial Services Authority Regulation No. 35/POJK.05/2015 concerning Business Conduct of Venture Capital Companies (“**POJK 35/2015**”), and Financial Services Authority Regulation No. 36/POJK.05/2015 concerning Good Corporate Governance for Venture Capital Companies and their amendments (“**POJK 36/2015**”). Of course, these provisions are enabled by Law no. 21 of 2011 concerning the Financial Services Authority and its amendments (“**OJK Law**”). This issue in relation to venture companies can be linked to New Institutional Economics economic theory, which uses non-market institutions, such as ownership rights, contracts, and revolutionary parties.³ New Institutional Economics also uses a multidisciplinary approach, including reviewing social aspects, legal aspects, and political aspects as part of the same analysis, so that venture aspects in Indonesia are seen through the lens of three qualitative methods: subjective, particular, and non-

² Hendri Sita Ambar K and Bianca Belladina, “Permohonan Pernyataan Pailit Terhadap Perusahaan Modal Ventura Yang Tidak Memiliki Izin,” *ADHAPER: Jurnal Hukum Acara Perdata* 6, no. 1 (July 16, 2020): 165–83, <https://doi.org/10.36913/jhaper.v6i1.107>.

³ Wihana Kirana Jaya, “New Institutional Economics of the State: An Alternative Approach to Regional Autonomy in Indonesia,” *Journal of Indonesian Economy and Business (JIEB)* 19, no. 4 (June 30, 2015), <https://doi.org/10.22146/jieb.6607>.

predictive.⁴ New Institutional Economics theory is intended to address institutional economic problems that are linked to laws and regulations related to economic actors in the market.⁵

According to development economic theory, which can be related to law, new institutional theory can be related to venture capital companies in Indonesia because this new institutional theory was originally born out of competition policy and inter-industry regulation in the United States. This theory is in harmony with the VCC due to problems that frequently arise, namely, market failures that occur because of errors in contracts made by the parties, governing laws, and regulations from the authorities. This new institutional theory exists so that institutions (companies) can increase efficiency in their implementation and minimize overall costs in implementing VCC. If this theory is related to the VCC, then the VCC is included in the microenvironmental stage, namely, the institutional arrangement, in which an agreement is reached to be implemented and managed by two or more economic units, so that economic units can move, either through follow management at BPC or also based on decisions from VCCs. If we look at economic development in Indonesia, which is currently attracting overseas investors, the Indonesian people are also, of course, trying to innovate in business. Examples include motorcycle taxi services that can be ordered online or virtual tutoring by teachers for students. With many such opportunities, individuals frequently want to fund companies/individuals who have these innovative ideas. However, sometimes the individual is considered incompetent or the funds provided inadequate and is also only legally binding; therefore, the VCC is present. Thus, we need a company that can raise funds from these investors and inject funds into companies that have achieved these innovations through VCC. Providing funds through a VCC, of course, is different from borrowing funds from a bank, because in this VCC, the interest policy is returned to the agreement that has been implemented, and the VCC will enter BPC management, unlike in the case of a bank. This research is intended to provide

⁴ Rudolf Richter, "The New Institutional Economics: Its Start, Its Meaning, Its Prospects," *European Business Organization Law Review (EBOR)* 6, no. 2 (June 2005): 161–200, <https://doi.org/10.1017/S1566752905001618>.

⁵ Richard A. Posner, "The New Institutional Economics Meets Law and Economics," *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft* 149, no. 1 (1993): 73–87.

legal certainty for BPC, which will cooperate with the VCC and provide views on national and foreign investors who wish to invest in Indonesia.

2. Problem Statement

The existence of this VCC may pose a problem if a company operates legally as a VCC or if a company carries out venture activities but is not registered as a VCC. Therefore, how do we resolve a legal issue when a VCC has declared itself as a venture but is not registered as a venture company? If, for example, a VCC has been deemed to have violated the provisions and does not have a license to operate, how is legal certainty achieved regarding the funds that have been given to BPC? Do the funds to invest in shares have to be returned to the VCC that does not have a permit or to the authorities? A further question concerns whether the guarantee of legal protection for BPC and VCC that cannot complete the achievements that arise and problems arising from the existence of this VCC whether VCC can be declared a savior of the economy in general or not. This situation arises due to legal uncertainty regarding the implementation of this VCC because, basically, a VCC is a company that carries out investments, so it should be organized around the principle of legal certainty.

3. Methods

This study used a statute approach. It collects data by searching for literature from the three sources of legal materials and then looking for the literature that is most relevant to current and future circumstances. It employs a normative analysis method that uses legal products and legal principles to solve a problem.

4. Discussion

To describe the analysis of the problem that was stated previously, this article conducts a broad examination from the perspective of company law, financial service authority regulations, and regulations regarding investment companies in the form of positive law, and compares Indonesia with other countries to create safe investments in Indonesia.

4.1. Venture Capital Companies as Current and Future Economic Movers

Venture capital companies are intended to provide easy business solutions for creative economy players in Indonesia. The company concept is based on a fair, open, and

competitive business system in accordance with free market principles.⁶ Meanwhile, the purpose of establishing a VCC is to increase a country's economic value by making high-risk investments in new or developing companies (startup companies).⁷ VCCs can also provide the impetus for technological innovation and create new jobs.⁸ Until now, VCCs in Indonesia have not received clear legal treatment because they are only regulated by POJK 35/2015, which is a derivative of the OJK Law, so it is essential to update this legal product to create a conducive investment climate for creative economy actors in Indonesia. VCCs play a very important role as an economic driver in encouraging innovation and providing the impetus for a country's economic growth.

The VCC business model is based on a partnership system. Under that system, every human resource from VCCs will have the opportunity to 1) access BPC resources and technology, and 2) provide business and management training for BPC from VCC human resources to assist them in developing their business such as through the partnership system implemented by the Inti-Plasma agreement.⁹ VCCs can be described as an economic driver because of the large amount of money injected by investors into BPCs. They can also provide innovations that can be implemented in this business. VCCs earn profit from the business they invest in, so as more and more VCCs operate in Indonesia, Indonesia will experience further economic growth. In addition, venture capital companies make other positive contributions to Indonesia's economy such as providing job opportunities for many people and improving people's welfare.

4.2. Development of Regulations for Venture Capital Companies in Indonesia

The development of venture capital regulations in Indonesia as a developing country presents its own challenges. Therefore, related parties must work together to provide the best solution for business people, in accordance with the conditions and realities of Indonesia. Efforts to develop venture capital regulations in Indonesia as a developing

⁶ Wahyu Purhantara, "Kepemimpinan Bisnis Indonesia di Era Pasar Bebas," *Jurnal Ekonomi dan Pendidikan* 7, no. 1 (2010): 18–33, <https://doi.org/10.21831/jep.v7i1.575>.

⁷ Safrina Safrina, "Peranan Modal Ventura sebagai Alternatif Pembiayaan Usaha Kecil dan Menengah," *Kanun Jurnal Ilmu Hukum* 15, no. 1 (April 1, 2013): 135.

⁸ Ibid.

⁹ Tami Rusli, "Prosedur Kemitraan Dan Proses Pembiayaan Perusahaan Modal Ventura Terhadap Perusahaan Pasangan Usahanya (Studi Pada PT. Sarana Lampung Ventura)," *Keadilan Progresif* 5, no. 1 (2014).

country started with plans to provide fiscal incentives to companies, such as eliminating the VAT or cutting income tax.¹⁰ This was done to boost interest in investment and bolster business convenience. Efforts were also made to simplify the process of establishing a company, so that more people would be interested in investing in Indonesia. Etymologically, “venture capital” comes from the Latin term for “opportunity money.” Venture capital is a form of investment in which investors provide funds to companies or businesses with high growth potential but that also carry high risk. Venture capital investors will get returns based on the success of the company or business.¹¹

Initially, VCC in Indonesia was only known through Government Regulation no. 18 of 1973 concerning State Capital Participation for the Establishment of Companies owned by the Indonesian government that focus on equity participation to enable companies to engage in business development and do business through equity financing so that BPCs have a healthy company equity value and also be involved in BPC management. Next came Presidential Decree 61/1988 regarding financing institutions. It enabled companies for capital participation to provide venture capital to MSMEs to engage in business activities. Thanks to Presidential Decree 61/1988, venture capital began to develop and became known to business actors in Indonesia. During the initial reform period, the Indonesian government introduced VCC principally by issuing Minister of Finance Decree No. 469/KMK.017/1995 (“**KMK 469/1995**”) concerning more in-depth regulations regarding ventures. Together with the Decree of the Minister of Finance authorizing the VCC to operate in Indonesia but not yet in a comprehensive manner, it only serves as the basis for implementing VCC in Indonesia. The legal basis for this VCC is set forth in Financial Services Authority Regulation no. 18/POJK.010/2012 of 2012 (“**POJK 18/2012**”) as the main rule for conducting venture business in Indonesia by explaining in greater depth the applicable rules. Venture capital regulations in Indonesia began to be developed in 2015 when the OJK

¹⁰ Edi Suwiknyo, “Skema Insentif Bagi Modal Ventura Masih Dikaji,” *Bisnis.com*, February 26, 2018, <https://ekonomi.bisnis.com/read/20180226/9/742958/skema-insentif-bagi-modal-ventura-masih-dikaji>.

¹¹ Indrajaya Indrajaya, “Analisis Yuridis Kontrak Pembiayaan Modal Ventura Dengan Pola Bagi Hasil Pada Pelaku Usaha Kecil Dan Menengah,” *Wajah Hukum* 5, no. 2 (October 15, 2021): 556–61, <https://doi.org/10.33087/wjh.v5i2.713>.

issued POJK 34/2015, which is an implementing regulation with more regulatory power than POJK 18/2012. This was intended to increase Indonesia's competitiveness as a developing country and to facilitate businesses that have the potential to grow rapidly. Of course, if one examines the provisions in relation to these ventures, the regulation is based only on POJK 35/2015 for the implementation of VCCs in Indonesia because there are only a few regulations governing VCCs.¹²

Given Indonesia's status as a developing country, VCCs provide particular challenges to business people. Therefore, related parties must work together to provide the best solution for VCC actors, according to local conditions and realities in Indonesia. The development of venture capital regulations in developing Indonesia is quite interesting to observe. There are several reasons for this:

1. Global economic conditions that are evolving rapidly and providing sizable investment opportunities for foreign venture capitalists as well as BPC in Indonesia;
2. The launch of policies of the Indonesian government that support foreign investment in this country; and
3. Along with the advancement of technology, the easing of requirements for starting a venture business in support of Indonesia's economic system.

To take advantage of this positive momentum, it is very important to develop venture capital regulations in Indonesia. This will make it easier for venture capitalists to invest there. In addition, clear and consistent regulations will make it easier for venture capitalists to manage their businesses in Indonesia. Expectations for the development of venture capital in Indonesia are very high. As a developing country, Indonesia has the potential to attract investment from foreign investors. A wealth of innovations and government-provided legal products that support the implementation of VCCs are among the main reasons why Indonesia has attracted foreign investment.

4.3. Ease of Foreign Investment for Venture Capital Companies in Indonesia

In order to support the startup ecosystem in Indonesia, the government has made

¹² M. Zamroni, *Perlindungan Hukum: Pembiayaan Modal Ventura di Indonesia Kontemporer* (Surabaya: Media Sahabat Cendekia, 2019), 78.

several efforts to increase access to venture capital. One of the innovations it has made is to prepare regulations that are more conducive to foreign investment. This effort is intended to provide convenience and legal certainty for business actors, so as to enhance cooperation with foreign companies. Ultimately, this is expected to spur overall economic growth in Indonesia. Foreign investors often complain about the difficulties they face in investing in Indonesia, such as the difficulty in obtaining investment permits from the government, regulatory changes, and the lack of legal certainty. Therefore, in 2020, the Indonesian government will update laws relating to foreign investment in Indonesia that will provide opportunities for foreign companies to operate in Indonesia.¹³

Venture capital companies are established with the aim of building, establishing, or acquiring new businesses with high growth potential. Usually, these companies are founded by a group of people or individuals with innovative business ideas, and they tend to be high risk. For this reason, the investment regulations that apply to these companies are different from the investment regulations that apply to other companies. To understand foreign investment in Indonesia, it is necessary to look at the history of foreign investment starting with the issuance of Law no. 1 of 1967 concerning foreign investment (“**Law 1/1967**”) in which foreign investment is referred to only as funding that includes foreign capital provided directly by foreign investors to operate in Indonesia. Foreign capital according to Law 1/1967 is based on the substance of the funding provided by foreign investors as determined by the provisions in force in Indonesia.¹⁴

Regarding this definition, it was replaced by Law no. 25 of 2007 concerning Investment and its amendments (“**Law 25/2007**”) that defined foreign investment as an activity to capitalize on another activity undertaken by foreign investors as a whole or jointly undertaken together with domestic investors. Therefore, foreign investment has a

¹³ Mireza Fitriadi and Sinung Driyo Subanar, “Kedudukan Otoritas Jasa Keuangan Terhadap Perusahaan Modal Ventura Asing Dalam Melakukan Pembiayaan Secara Langsung Di Indonesia,” *Jurnal Penelitian Hukum Gajah Mada* 1, no. 2 (2017): 77–86.

¹⁴ Anak Agung Sagung Ngurah Indradewi, “Kedudukan Otoritas Jasa Keuangan Pada Perusahaan Modal Ventura Asing,” *Jurnal Aktual Justice* 3, no. 2 (December 15, 2018): 79–96, <https://doi.org/10.47329/aktualjustice.v3i2.536>.

fairly broad meaning because, on the one hand, foreign capital is a transfer of capital in an unreal or real way to another country with the intent of achieving profits by using capital between countries. Foreign investors in this VCC can of course be implemented by complying with the applicable provisions of the Financial Services Authority (“OJK”) as PMW supervisors in Indonesia. OJK has an important role because OJK supervises the financial sector, such as the capital market, banking, financial service institutions, and financing institutions as with this VCC. Foreign investors invest in investee companies that have been regulated by the Ministry of Finance Regulation no. 18/PMK.010/2012 for the Year 2012 Concerning Venture Capital Companies (“**PMK 18/2012**”) and POJK 34/2015. PMK 18/2012 regulated VCC before the supervisory authority for financing institutions shifted to the OJK because POJK 35/2015 succeeded the OJK Law, so authority over-regulation and supervision is delegated to OJK. Unfortunately, PMK 18/2012 has not been explicitly revoked by the Indonesian government, which confuses investors who are planning to invest in Indonesia. The Indonesian government should decide to revoke PMK 18/2012 and adhere to only one rule because of differences between these regulations such as the following:

Table 1. *Venture Capital Company Regulations: Comparison between PMK 18/2012 and POJK 34/2015.*

No.	Content of Article	Provision		Term Analysis
		PMK 18/2012	POJK 34/2015	
1.	Paid-Up Capital	30 billion	50 billion	This provision is the minimum paid-up capital to the government when there is additional capital for foreign investors who invest in this VCC. It is hoped that this additional capital will allow VCC to have strong capital funding to invest in investee companies.
2.	Supervisor	Capital market regulatory agency and financial institutions	Financial Services Authority	The previous supervisor was replaced with OJK because the previous supervisor was

				disbanded and replaced with OJK.
3.	Foreign shareholders restrictions	85%	Foreign shareholders restrictions	This provision remains the same, limiting foreign ownership.
4.	Foreign workers	Unregulated	Regulated	Prior to POJK 34/2015, provisions for the use of foreign workers were not regulated, so VCC could employ foreign workers in companies freely.

Source: PMK 18/2012 and POJK 34/2015

The existing provisions regarding foreign investment for VCC holdings in Indonesia must be based on the following POJK 34/2015 that sets a minimum limit for depositing capital, and restrictions are also placed on share ownership and on VCC activities by foreigners under OJK supervision. However, the situation is different when foreign VCCs that have legal standing abroad invest in investee companies in Indonesia. This, of course, does not result in any direct oversight by the OJK because direct supervision by the OJK is only for foreign investors who establish companies under Indonesian positive law, and direct foreign VCC supervision of investee companies should be undertaken by the supervisory agency of the investee company, namely, the Investment Coordinating Board of Capital (“BKPM”), due to sharing participation so that share ownership is owned by foreigners.

4.4. Comparison of Venture Capital Company Laws in Other Countries

To implement laws regarding ventures in Indonesia, a comparable legal system is needed in other countries so that legal reform in Indonesia can progress. The following discusses developments in venture law in other countries.

a) China

China began using the venture capital legal system in 1984 by adopting New Technology and China’s Countermeasure to develop a technology that was spun off into a company, namely, China New Technology Venture Investment Corp. After the company was founded, China established a Technology Venture Development Center

as a venture center in China with a focus on science and technology to ensure that venture fund investments were right on target.¹⁵ After this development, VCCs in China experienced rapid development because China paid attention to the latest technological innovations.¹⁶ The Companies Act 2006 provides the legal basis for making VCCs.

b) India

Venture law in India has its origins in the development of MSMEs in 1972 because MSMEs contributed to India's foreign exchange and its economic development.¹⁷ In 1975, the Indian government created the Risk Capital Foundation, intended to fund companies that showed potential.¹⁸ Initially, VCCs have attracted less interest in India due to several constraints, such as insufficient maximum investment value and the requirement that the business to receive venture funding be in the form of a technology startup and that the owner of the business have sufficient experience.¹⁹ In subsequent years, the Indian government updated the legislation by ensuring that the regulations adopted were more profitable for investors. As a result, many invested in VCCs, including in the entertainment, pharmaceuticals, and biotechnology sectors.²⁰ For many of these MSMEs, the Micro, Small and Medium Enterprises Development Act 2006 has served as a milestone in their development, and the Limited Liability Partnership Act 2008 has served as the legal basis for creating companies.

4.5. Legal Consequences of an Agreement for Venture Capital Companies That Do Not Have Permits to Operate

Basically, VCCs can carry out their business by fulfilling the provisions contained in POJK 34/2015 and POJK 25/2015, which must meet capital requirements, company structure provisions, the required use of venture words in company names, and several

¹⁵ David Ahlstrom, Garry D. Bruton, and Kuang S. Yeh, "Venture Capital in China: Past, Present, and Future," *Asia Pacific Journal of Management* 24, no. 3 (September 1, 2007): 256, <https://doi.org/10.1007/s10490-006-9032-1>.

¹⁶ Ibid.

¹⁷ I. M Pandey, "The Process of Developing Venture Capital in India," *Technovation* 18, no. 4 (April 1, 1998): 259, [https://doi.org/10.1016/S0166-4972\(98\)00003-0](https://doi.org/10.1016/S0166-4972(98)00003-0).

¹⁸ Ibid.

¹⁹ Rafiq Dossani and Martin Kenney, "Creating an Environment for Venture Capital in India," *World Development* 30, no. 2 (February 1, 2002): 232, [https://doi.org/10.1016/S0305-750X\(01\)00110-3](https://doi.org/10.1016/S0305-750X(01)00110-3).

²⁰ Ibid.

predetermined arrangements. Of course, if a VCC does not meet these conditions, it will be deemed not to have fulfilled the requirements for its establishment, and a legal void will arise when a VCC is subject to legal problems, for example, by going bankrupt or defaulting on an investee company and being sued in court. VCC business activities must be undertaken with a written agreement with the investee company for the venture funds to be disbursed. If the VCC does not implement the written agreement with the investee company, a problem will arise that will lead to a warning by the OJK or the OJK will freeze its business activities. The real problem will arise when the investee company files a lawsuit in court. Therefore, this article will refer to two possible legal events:

First, to file a civil lawsuit, every individual can, of course, file a lawsuit if they feel that their rights have been violated. For example, in this case, the VCC files a default lawsuit when it does not satisfy the content of the agreement that has been reached. This can happen to the investee company, because the VCC has the right to enter into management and of course has the authority to manage the finances of the investee company. This happens if the VCC continues to take advantage and violates the agreement, so that the investee company files a lawsuit. To understand this requires an understanding of the basic terms of the legal agreement listed in Article 1320 of the Civil Code, namely:²¹

1. Agreement made and binding for both parties;
2. The ability to make an engagement;
3. There are certain main issues that are addressed; and
4. A lawful cause.

For the agreement to be valid, of course, it is necessary to fulfill these four conditions so that the agreement can be implemented. However, in this case, the two legal subjects, namely, the VCC and the investee company, have met the requirements for the

²¹ Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau Dari Kuhperdata)," *Jurnal Pelangi Ilmu* 5, no. 01 (January 1, 2012), <https://ejurnal.ung.ac.id/index.php/JPI/article/view/900>.

agreement to be considered valid in accordance with Article 1320 of the Civil Code.²² In response, of course, the agreement can be canceled according to Article 1321 of the Civil Code because no agreement has legal effect if it is reached by force or fraud. With these provisions, of course, VCC is considered to have committed fraud against the investee company, and the agreement entered into by both parties can be canceled.²³ This causes the profit that has been obtained as the object of the problem at the origin of the lawsuit to be deemed to have merged with the agreement that has been made so that the default submitted by the investee company is considered not to exist. Therefore, to get around this, unlawful acts can be used for actions committed by the VCC.

Second, a venture fund investor can apply for bankruptcy to the VCC, where the VCC cannot pay the rights of investors whose funds have been used. Of course, this VCC bankruptcy application can be implemented because it has been stipulated in POJK 34/2015, but a problem arises when a VCC bankruptcy filing by a venture fund investor does not have a permit. VCC is a financing institution that can invest funds in investee companies, so it is supervised by the OJK, and, of course, the bankruptcy application process can only be implemented by the OJK in accordance with the provisions of Article 2 paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (“**KPPU Law**”). Therefore, if there are creditors who apply for bankruptcy against VCC, they will necessarily be rejected because of these provisions.²⁴ Of course, this is different when the VCC does not have a permit to operate. Because the VCC does not have a license, of course, the venture funds provided to the investee company are only limited to a written agreement and do not have binding legal force as a VCC. Thus, if a creditor applies for bankruptcy against a VCC, it

²² Deviana Yuanitasari and Hazar Kusmayanti, “Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual,” *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (June 29, 2020): 292–304.

²³ Agus Suwandono, “Peningkatan Kapasitas Usaha Kecil Menengah Melalui Pelatihan Penyusunan Kontrak Bisnis,” *Jurnal Pengabdian Kepada Masyarakat* 2, no. 5 (May 4, 2018): 377–80.

²⁴ Tri Afiani, Ety Susilowati, and Moch Djais, “Penyelesaian Sengketa Sebagai Akibat Ditolaknya Permohonan Pailit Pada Perusahaan Modal Ventura,” *Diponegoro Law Journal* 5, no. 2 (March 29, 2016): 1–15, <https://doi.org/10.14710/dlj.2016.11025>.

is considered a bankruptcy application for an ordinary company, and the special provisions governing a VCC bankruptcy application are abolished.

5. Conclusion

The existing provisions regarding foreign investment for VCC holdings in Indonesia must be based on the following POJK 34/2015 that sets a minimum limit for depositing capital, and restrictions are also placed on share ownership and on VCC activities by foreigners under OJK supervision. However, the situation is different when foreign VCCs that have legal standing abroad invest in investee companies in Indonesia. This, of course, does not result in any direct oversight by the OJK because direct supervision by the OJK is only for foreign investors who establish companies under Indonesian positive law, and direct foreign VCC supervision of investee companies should be undertaken by the supervisory agency of the investee company, namely, the Investment Coordinating Board of Capital. For the legal consequences, VCC business activities must be undertaken with a written agreement with the investee company for the venture funds to be disbursed. If the VCC does not implement the written agreement with the investee company, a problem will arise that will lead to a warning by the OJK or the OJK will freeze its business activities. The real problem will arise when the investee company files a lawsuit in court. Therefore, the legal consequences will refer to two possible legal events, **first**, to file a civil lawsuit, every individual can, of course, file a lawsuit if they feel that their rights have been violated, based on article 1320 of the Indonesian Civil Code. **Second**, a venture fund investor can apply for bankruptcy to the VCC, where the VCC cannot pay the rights of investors whose funds have been used. In summary, VCC in Indonesia is an economic innovation because it can help businesses grow. However, this must be in line with the harmonization of regulations regarding venture law and investment in Indonesia in order to provide legal certainty to investors who wish to invest.

References

Afiani, Tri, Ety Susilowati, and Moch Djais. "Penyelesaian Sengketa Sebagai Akibat Ditolaknya Permohonan Pailit Pada Perusahaan Modal Ventura." *Diponegoro Law Journal* 5, no. 2 (March 29, 2016): 1–15. <https://doi.org/10.14710/dlj.2016.11025>.

Ahlstrom, David, Garry D. Bruton, and Kuang S. Yeh. "Venture Capital in China: Past, Present, and Future." *Asia Pacific Journal of Management* 24, no. 3 (September 1, 2007): 247–68. <https://doi.org/10.1007/s10490-006-9032-1>.

Budisulistiyawati, Ambar. "Karakteristik Modal Ventura Sebagai Lembaga Pembiayaan." *Yustisia Law Journal*, no. 68 (2006): 57–62.

Dossani, Rafiq, and Martin Kenney. "Creating an Environment for Venture Capital in India." *World Development* 30, no. 2 (February 1, 2002): 227–53. [https://doi.org/10.1016/S0305-750X\(01\)00110-3](https://doi.org/10.1016/S0305-750X(01)00110-3).

Financial Services Authority Regulation Number 18/POJK.010/2012 of 2012

Financial Services Authority Regulation Number 34/POJK.05/015 concerning Business and Institutional Licensing for Venture Capital Companies

Financial Services Authority Regulation Number 35/POJK.05/2015 concerning Business Conduct of Venture Capital Companies

Financial Services Authority Regulation Number 36/POJK.05/2015 concerning Good Corporate Governance for Venture Capital Companies and their amendments

Fitriadi, Mireza, and Sinung Driyo Subanar. "Kedudukan Otoritas Jasa Keuangan Terhadap Perusahaan Modal Ventura Asing Dalam Melakukan Pembiayaan Secara Langsung Di Indonesia." *Jurnal Penelitian Hukum Gadjah Mada* 1, no. 2 (2017): 77–86.

Gumanti, Retna. "Syarat Sahnya Perjanjian (Ditinjau Dari Kuhperdata)." *Jurnal Pelangi Ilmu* 5, no. 01 (January 1, 2012). <https://ejournal.ung.ac.id/index.php/JPI/article/view/900>.

Indradewi, Anak Agung Sagung Ngurah. "Kedudukan Otoritas Jasa Keuangan Pada Perusahaan Modal Ventura Asing." *Jurnal Aktual Justice* 3, no. 2 (December 15, 2018): 79–96. <https://doi.org/10.47329/aktualjustice.v3i2.536>.

Indrajaya, Indrajaya. "Analisis Yuridis Kontrak Pembiayaan Modal Ventura Dengan Pola Bagi Hasil Pada Pelaku Usaha Kecil Dan Menengah." *Wajah Hukum* 5, no. 2 (October 15, 2021): 556–61. <https://doi.org/10.33087/wjh.v5i2.713>.

Investment is also facilitated by Law Number 11 of 2020 Concerning Cipta Kerja

Jaya, Wihana Kirana. "New Institutional Economics of the State: An Alternative Approach to Regional Autonomy in Indonesia." *Journal of Indonesian Economy and Business (JIEB)* 19, no. 4 (June 30, 2015).

<https://doi.org/10.22146/jieb.6607>.

K, Hendri Sita Ambar, and Bianca Belladina. "Permohonan Pernyataan Pailit Terhadap Perusahaan Modal Ventura Yang Tidak Memiliki Izin." *ADHAPER: Jurnal Hukum Acara Perdata* 6, no. 1 (July 16, 2020): 165–83. <https://doi.org/10.36913/jhaper.v6i1.107>.

Law Number 1 of 1967 concerning Foreign Investment

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt

Law Number 25 of 2007 concerning Investment and its amendments

Law Number 21 of 2011 concerning the Financial Services Authority

Minister of Finance Decree Number 469/KMK.017/1995

Minister of Finance Regulation Number 18/PMK.010/2012 concerning Venture Capital Companies

Pandey, I. M. "The Process of Developing Venture Capital in India." *Technovation* 18, no. 4 (April 1, 1998): 253–61. [https://doi.org/10.1016/S0166-4972\(98\)00003-0](https://doi.org/10.1016/S0166-4972(98)00003-0).

Posner, Richard A. "The New Institutional Economics Meets Law and Economics." *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft* 149, no. 1 (1993): 73–87.

Presidential Decree Number 61 of 1988

Purhantara, Wahyu. "Kepemimpinan Bisnis Indonesia di Era Pasar Bebas." *Jurnal Ekonomi dan Pendidikan* 7, no. 1 (2010): 18–33. <https://doi.org/10.21831/jep.v7i1.575>.

Richter, Rudolf. "The New Institutional Economics: Its Start, Its Meaning, Its Prospects." *European Business Organization Law Review (EBOR)* 6, no. 2 (June 2005): 161–200. <https://doi.org/10.1017/S1566752905001618>.

Rusli, Tami. "Prosedur Kemitraan Dan Proses Pembiayaan Perusahaan Modal Ventura Terhadap Perusahaan Pasangan Usahanya (Studi Pada PT. Sarana Lampung Ventura)." *Keadilan Progresif* 5, no. 1 (2014).

Safrina, Safrina. "Peranan Modal Ventura sebagai Alternatif Pembiayaan Usaha Kecil dan Menengah." *Kanun Jurnal Ilmu Hukum* 15, no. 1 (April 1, 2013): 131–44.

Suwandono, Agus. "Peningkatan Kapasitas Usaha Kecil Menengah Melalui Pelatihan Penyusunan Kontrak Bisnis." *Jurnal Pengabdian Kepada Masyarakat* 2, no. 5 (May 4, 2018): 377–80.

Suwiknyo, Edi. "Skema Insentif Bagi Modal Ventura Masih Dikaji." *Bisnis.com*, February 26, 2018. <https://ekonomi.bisnis.com/read/20180226/9/742958/skema-insentif-bagi-modal-ventura-masih-dikaji>.

Yuanitasari, Deviana, and Hazar Kusmayanti. "Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (June 29, 2020): 292–304.

Zamroni, M. *Perlindungan Hukum: Pembiayaan Modal Ventura di Indonesia Kontemporer*. Surabaya: Media Sahabat Cendekia, 2019.