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Legal Analysis of Venture Capital Financing Agreements in Indonesia: A Case Study of PT Bahana Artha Ventura

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Abstract: Venture capital has been promoted in Indonesia since Keppres No. 61/1988 and KMK No. 1251/KMK.013/1988 to expand financing access for SMEs, yet the contractual balance between venture capital companies (PMV) and partner companies (PPU) often remains contested under KUHPerdata principles. This article examines (i) the allocation of rights and obligations in venture capital financing agreements, (ii) the positive law framework governing venture capital (KUHPerdata, UU 40/2007 on PT, Keppres 61/1988, KMK 1251/1988), and (iii) the effectiveness of legal protection for both parties. A normative juridical (doctrinal) approach with descriptive-analytical method is employed, complemented by a case study of PT Bahana Artha Ventura (BAV) to illustrate contractual practice (profit-sharing scheme, supervision rights, collateral, insurance, exit/divestment). The agreement structure reflects freedom of contract (Pasal 1338 KUHPerdata) but tends to be standardized by PMV, granting strong safeguards (collateral, monitoring rights, default remedies) while PPU bears bank-like burdens (periodic installments, asset security). Although the framework legitimizes venture capital and encourages managerial assistance, contractual weight often tilts toward PMV, potentially diluting the risk-sharing essence. Indonesia's legal framework adequately recognizes venture capital; however, to better align with risk-sharing objectives and protect weaker counterparties, standard-setting for core clauses (fair supervision costs, proportional profit-sharing, conditional collateral, restructuring options) and supervisory guidance are recommended to achieve more equitable partnerships.

Keywords: Venture Capital, Financing Agreement, Rights and Obligations, Legal Protection

INTRODUCTION

Venture capital has increasingly been recognized as an essential instrument for financing small and medium-sized enterprises (SMEs) and start-up companies that face structural barriers in accessing traditional bank credit. In Indonesia, the development of venture capital was formally recognized through Presidential Decree No. 61/1988 on Financing Institutions and further elaborated by Minister of Finance Decree No. 1251/KMK.013/1988. Together with the Civil Code (KUHPerdata) and the Company Law (Law No. 40 of 2007), these regulations form the legal framework for venture capital

companies (PMV) and their financing agreements with partner companies (PPU). These frameworks were designed to promote risk-sharing investments, where the venture capital company not only provides capital but also managerial guidance, thereby supporting entrepreneurial growth and innovation.

From a legal perspective, venture capital agreements are classified as innominate contracts under KUHPerdata. While valid under the freedom of contract principle (Article 1338 Civil Code), such contracts often face the challenge of imbalance, as standard-form agreements are commonly drafted unilaterally by PMV, leaving PPU with little bargaining power. This issue raises fundamental concerns regarding fairness, legal certainty, and the true nature of venture capital as risk capital rather than disguised debt financing.

Several Indonesian scholars have examined this problem. Setiady (2012) highlighted that many venture capital agreements in Indonesia impose collateral and repayment obligations similar to conventional loans, undermining the essence of risk-sharing. Lestari (2014) analyzed contracts at PT Bahana Artha Ventura (BAV) and noted that profit-sharing schemes often included additional burdens, such as mandatory insurance and supervision costs borne by PPU. Internationally, scholars such as Cumming and Johan (2017) emphasized that the defining feature of venture capital is equity participation and entrepreneurial partnership, not creditor-like obligations. Kaplan and Strömberg (2003) further demonstrated that in mature venture capital markets, contractual arrangements are tailored to balance monitoring rights with entrepreneurial freedom, ensuring both risk allocation and innovation incentives. This contrast illustrates a gap between global practices and Indonesian contractual realities.

Existing studies agree that Indonesian venture capital has been crucial in fostering SMEs, but they also reveal contractual practices that deviate from the risk-sharing principle. Few studies, however, have systematically combined a doctrinal legal analysis of Indonesian regulations with an in-depth case study of actual agreements at PT Bahana Artha Ventura. This gap provides an opportunity to examine whether the current legal framework sufficiently addresses issues of contractual imbalance and to propose improvements aligned with both Indonesian law and international best practices.

This paper addresses three central issues: (i) the allocation of rights and obligations between PMV and PPU in venture capital financing agreements; (ii) the regulation of venture capital under Indonesian positive law; and (iii) the adequacy of legal protection for both parties. By employing a normative juridical approach complemented with a case study of PT Bahana Artha Ventura, this article contributes to the literature by bridging doctrinal legal analysis with contractual realities. The novelty lies in its integrated approach: identifying how legal doctrines on freedom of contract and company law interact with the practical clauses of venture capital agreements, and highlighting areas where Indonesian practice diverges from the international concept of venture capital.

The findings of this research are significant both academically and practically. Academically, it adds to the limited scholarship on Indonesian venture capital law by linking normative doctrines with empirical contract patterns. Practically, it provides recommendations for regulators and practitioners to develop fairer, more balanced contracts that reflect true risk-sharing, thereby enhancing venture capital's role as an engine of SME growth and innovation.

METHOD

This research employs a normative juridical approach (doctrinal legal research) combined with a descriptive-analytical method. A normative juridical approach is appropriate for examining legal issues by analyzing statutory regulations, legal doctrines, and judicial principles, rather than conducting field experiments. In the context of venture capital, this

method allows the study to systematically interpret how the Civil Code (KUHPerdata), Company Law (Law No. 40/2007), Presidential Decree No. 61/1988, and Minister of Finance Decree No. 1251/KMK.013/1988 govern venture capital companies and their contractual relations with partner enterprises.

a. Sources of Data

The research relies primarily on secondary legal materials, including:

1. Primary sources of law – legislation and regulatory instruments such as the Civil Code, Company Law, Keppres No. 61/1988, KMK No. 1251/KMK.013/1988, and relevant Financial Services Authority (OJK) regulations.
2. Secondary sources – legal textbooks, journal articles, theses, dissertations, and previous empirical studies that analyze venture capital practices in Indonesia and abroad.
3. Tertiary sources – legal dictionaries, official reports, and credible online resources providing supporting information on venture capital.

b. Case Study Component

To contextualize doctrinal analysis, this research incorporates a case study of PT Bahana Artha Ventura (BAV), one of Indonesia's earliest and most prominent venture capital companies. The case study examines the structure and content of BAV's financing agreements—particularly the profit-sharing scheme (pola bagi hasil)—to identify how rights and obligations are allocated between venture capital companies (PMV) and partner enterprises (PPU). This approach allows the research to bridge normative legal doctrines with the practical reality of contractual arrangements.

c. Method of Analysis

Data were analyzed qualitatively through two logical reasoning methods:

1. Deductive reasoning, moving from general legal principles (such as freedom of contract in Article 1338 KUHPerdata) to specific applications in venture capital agreements.
2. Inductive reasoning, drawing conclusions from observed contractual clauses at PT Bahana Artha Ventura to evaluate whether they conform to or deviate from legal principles and international best practices.

The descriptive-analytical nature of the study ensures that the findings do not merely restate existing laws, but also interpret and critically assess how those laws operate in practice. This methodology is designed to reveal the extent of legal protection afforded to both PMV and PPU, and to provide recommendations for achieving more balanced and equitable contractual relationships in venture capital financing.

RESULT AND DISCUSSION

1. Rights and Obligations of the Parties in Venture Capital Financing Agreements

In venture capital financing, the legal relationship between the venture capital company (PMV) and the partner enterprise (PPU) is established through a contractual agreement. Since venture capital agreements are categorized as innominate contracts under the Indonesian Civil Code (KUHPerdata), their validity and enforceability depend on compliance with the general provisions of contracts in Articles 1320 and 1338 of the Civil Code. The principle of freedom of contract (pacta sunt servanda) grants the parties the autonomy to define the terms of cooperation, provided such terms do not contravene statutory provisions, public order, or morality.

Based on doctrinal analysis and the case study of PT Bahana Artha Ventura (BAV), the rights and obligations can be summarized as follows:

a. Obligations of PMV:
1. To provide capital financing according to the amount and timeline agreed in the contract.
2. To deliver managerial and technical assistance aimed at strengthening the business capacity of PPU.
3. To supervise the implementation of the financed project in order to safeguard the investment.

b. Rights of PMV:
1. To receive returns on investment, either through profit-sharing arrangements or capital gains at the time of divestment.
2. To monitor PPU's business operations, including access to financial reports and managerial information.
3. To divest its participation after the contract period ends or under conditions set forth in the agreement.

c. Obligations *of PPU:*
1. To utilize the venture capital strictly for the purpose specified in the agreement.
2. To share profits with PMV in accordance with the agreed ratio and schedule.
3. To provide transparency through regular reports and grant supervisory access to PMV.

d. Rights *of PPU:*
1. To receive capital funding that enables the enterprise to grow and innovate.
2. To benefit from managerial support and business networking facilitated by PMV.
3. To request fair treatment in contractual performance, including renegotiation in case of unexpected hardship.

The case study of BAV's financing agreements reveals that although labeled as profit-sharing contracts, the agreements often incorporate clauses similar to debt financing, such as mandatory collateral, insurance on financed assets, and monthly installment payments combining principal and profit-sharing components. These provisions reflect a significant shift from the theoretical essence of venture capital as risk capital—where PMV should share entrepreneurial risks—to a more creditor-like posture.

This contractual imbalance illustrates the dominant position of PMV in drafting agreements, with PPU frequently having little bargaining power to negotiate more favorable terms. From a legal standpoint, while such agreements remain valid under KUHPerdata, they raise concerns regarding fairness and the actual realization of the risk-sharing principle.

2. Legal Framework of Venture Capital in Indonesian Positive Law

The legal basis for venture capital in Indonesia is not contained in a single codified statute, but rather spread across several layers of legislation. These legal sources interact to define the nature, scope, and operation of venture capital companies (PMV) and their contractual relations with partner enterprises (PPU).

a. Indonesian Civil Code (KUHPerdata)

The Civil Code forms the fundamental basis for all contractual relations. Venture capital agreements fall under the category of innominate contracts, meaning they are not explicitly regulated in the Code but are recognized as binding under the general principles of law. Article 1320 stipulates the conditions for a valid agreement (consent, capacity, a certain subject matter, and lawful cause), while Article 1338 affirms the principle of freedom of contract and the binding force of agreements (pacta sunt servanda). These provisions provide flexibility for PMV and PPU to design contractual structures that suit their commercial needs,

yet they also open the possibility of imbalance when one party dominates the drafting process.

b. Company *Law (Law No. 40 of 2007 on Limited Liability Companies)*

Venture capital companies typically adopt the corporate form of a limited liability company (PT). Under this law, PMV must comply with corporate governance standards, including shareholders' rights, transparency, and fiduciary duties of directors and commissioners. This law also becomes relevant when venture capital financing is executed through equity participation, making PMV a shareholder in PPU. In such cases, the rights and obligations of PMV are not only defined by contract but also by corporate law provisions, such as voting rights, dividend distribution, and rights of minority shareholders.

c. Presidential *Decree No. 61 of 1988 on Financing Institutions*

This decree marked the official recognition of venture capital as a distinct category of financial institution in Indonesia. It defines PMV as an entity engaging in financing by way of equity participation in PPU for a certain period of time. The decree emphasizes the role of venture capital in supporting innovative enterprises, especially those unable to secure bank loans, thereby positioning PMV as an engine for economic development and entrepreneurship.

d. *Minister of Finance Decree No. 1251/KMK.013/1988*

As the implementing regulation of the presidential decree, this decree provides more detailed provisions on the establishment, licensing, and operational requirements of PMV. It specifies the permissible forms of financing, which include:

1. Direct equity participation in PPU's shares.
2. Profit-sharing financing without equity ownership.
3. Convertible bonds, which give PMV the option to convert debt into equity.

The decree also sets requirements for minimum capital, reporting obligations, and supervisory mechanisms. Although these rules laid the foundation for the Indonesian venture capital industry, they were drafted in the late 1980s and are considered outdated in the face of modern venture capital practices.

e. Recent *Regulatory Developments under the Financial Services Authority (OJK)*

Since the establishment of OJK in 2011, the supervision of venture capital institutions has shifted from the Ministry of Finance to OJK. Regulations such as OJK Regulation No. 35/POJK.05/2015 and OJK Regulation No. 25/POJK.05/2023 modernize the legal framework by aligning it with international standards and introducing consumer protection elements. These regulations clarify the scope of permissible activities, corporate governance, capital requirements, and reporting standards. Importantly, they highlight OJK's role in ensuring fairness and transparency in contractual dealings between PMV and PPU.

3. Evaluation of the Legal Framework

The Indonesian legal framework provides sufficient recognition of venture capital as a legitimate financing mechanism. However, the multiplicity of sources and the reliance on old decrees (1988) create fragmentation and inconsistencies. While OJK has taken steps to update the regulations, gaps remain, particularly concerning standard contractual protections for PPU. This regulatory gap allows PMV to impose creditor-like obligations within venture capital agreements, which contradicts the theoretical model of risk-sharing.

4. Legal Protection for the Parties in Venture Capital Agreements

Legal protection in venture capital agreements must address both sides of the contractual relationship: the venture capital company (PMV) as the provider of funds and the partner enterprise (PPU) as the recipient of financing. Ideally, protection should ensure that PMV's capital investment is safeguarded, while at the same time preventing the imposition of excessive burdens on PPU that would undermine the principle of risk-sharing, the essence of venture capital.

a. Preventive Protection

Preventive protection is implemented through regulatory requirements and contractual arrangements designed to prevent disputes before they occur.

1. For PMV: The regulatory framework allows PMV to impose safeguards such as collateral, insurance of financed assets, and mandatory reporting obligations. These mechanisms serve to minimize the risk of loss if PPU fails to perform its obligations. Moreover, PMV has the right to supervise the use of funds and even place representatives in the management structure of PPU, ensuring continuous oversight of its investment.
2. For PPU: In theory, PPU should be protected by the principle of good faith (Article 1338(3) Civil Code), which requires that contracts be executed fairly and reasonably. PPU also benefits from general corporate law protections when financing takes the form of equity participation, such as minority shareholder rights under the Company Law. However, in practice, PPU's preventive protection is weak. Standard contracts drafted by PMV often limit PPU's ability to negotiate and impose obligations resembling conventional credit arrangements (collateral, fixed installments, insurance premiums), thereby shifting risks disproportionately to PPU.

b. Repressive Protection

Repressive protection comes into play when disputes arise.

1. For PMV: If PPU defaults, PMV has strong contractual remedies. For instance, PT Bahana Artha Ventura's contracts typically include powers of attorney allowing PMV to execute collateral without going through lengthy court procedures. PMV may also bring claims for damages under Articles 1243 and subsequent Civil Code provisions on breach of contract.
2. For PPU: PPU theoretically has the right to seek judicial remedies if PMV fails to disburse funds as agreed or acts in bad faith. PPU can bring claims for performance or damages, or challenge unfair contract clauses under general principles of contract law. Additionally, since OJK regulates venture capital as part of the financial services sector, PPU may file complaints to OJK or pursue mediation facilitated by the authority. Nevertheless, in practice, PPU rarely has sufficient bargaining power or legal resources to pursue such remedies, which makes their repressive protection less effective compared to PMV.

c. Case Study Insights from PT Bahana Artha Ventura

The agreements of PT Bahana Artha Ventura illustrate the imbalance in legal protection. Clauses often include:

1. Mandatory collateral to be held by PMV.
2. Insurance policies listing PMV as beneficiary.
3. Supervision rights exercised at PPU's expense.
4. Monthly installments covering both capital and profit-sharing.

While these provisions protect PMV's investment, they effectively transform the venture capital scheme into a hybrid resembling secured lending. For PPU, the protection is limited mainly to access to funding and managerial support. In the event of business failure,

PPU not only risks losing the venture financing but also the collateral pledged, which contradicts the essence of venture capital as shared risk capital.

d. Evaluation

From a doctrinal standpoint, Indonesian law provides the instruments for both PMV and PPU to claim legal protection. However, the asymmetry of bargaining power results in contracts that overwhelmingly favor PMV. This imbalance indicates that existing laws and regulations, while adequate for recognizing venture capital as a financing institution, do not yet provide sufficient safeguards for weaker parties.

To enhance protection, future reforms should consider:

1. Standard contractual guidelines issued by OJK to ensure fairness in venture capital agreements.
2. Restrictions on collateral requirements to preserve the essence of risk-sharing.
3. Mechanisms for PPU to renegotiate obligations in cases of hardship, aligning with principles of fairness and equity.

CONCLUSION

This study has examined venture capital financing agreements in Indonesia through a normative juridical approach combined with a case study of PT Bahana Artha Ventura (BAV). Three central issues were analyzed: the allocation of rights and obligations between parties, the legal framework under Indonesian positive law, and the adequacy of legal protection for both PMV and PPU.

First, the analysis shows that while venture capital agreements are legally valid under the principle of freedom of contract in the Civil Code, in practice they often deviate from the theoretical essence of venture capital as shared risk capital. BAV's contracts, for example, frequently include collateral requirements, insurance, and installment payments that resemble conventional credit arrangements. This indicates a shift toward creditor-dominated agreements, leaving partner enterprises (PPU) with limited bargaining power.

Second, Indonesia's legal framework—comprising the Civil Code, Company Law, Presidential Decree No. 61/1988, Minister of Finance Decree No. 1251/KMK.013/1988, and recent OJK regulations—has provided legitimacy and regulatory clarity for venture capital. However, the reliance on older decrees and the absence of standardized contractual safeguards contribute to inconsistencies in protecting both parties fairly.

Third, legal protection is stronger for PMV than for PPU. Preventive protection largely benefits PMV through supervision rights, collateral, and contractual remedies, while PPU's protection is limited and often only accessible through costly judicial or administrative processes. This imbalance undermines the purpose of venture capital as an instrument for fostering entrepreneurship and SME growth.

In conclusion, while Indonesia has established a functional legal foundation for venture capital, the contractual practices reveal significant imbalance and weak protection for PPU. To address this gap, reforms are needed, including: (i) the development of standard contractual guidelines by OJK; (ii) limiting excessive collateral requirements to preserve the principle of risk-sharing; and (iii) introducing mechanisms for renegotiation under hardship conditions. Strengthening these aspects would not only enhance fairness and legal certainty but also reinforce venture capital's role as a genuine catalyst for innovation and SME development in Indonesia.

REFERENCES

Santoso, F. Setiawan (2016). Analisis Perjanjian Modal Ventura Pola Bagi Hasil antara Kitab Undang-Undang Hukum Perdata dan Kompilasi Hukum Ekonomi Islam. *Jurnal Muqtasid*, 7(2), 139-152.

Setiady, Tri (2012). Perlindungan Hukum terhadap Perusahaan Pasangan Usaha dalam Pembiayaan Modal Ventura terhadap Usaha Kecil dan Menengah. *Jurnal Ilmu Hukum Tambun Bungai (FH UNISBA)*, 13(1). 76-100.

Cumming, D., & Johan, S. (2017). The Problems with and Promise of Entrepreneurial Finance. *Strategic Entrepreneurship Journal*, 11, 357-370. https://doi.org/10.1002/sej.1265

Kaplan, S. N., & Strömberg, P. (2003). Financial Contracting Theory Meets the Real World: An Empirical Analysis of Venture Capital Contracts. *The Review of Economic Studies*, 70, 281-315. https://doi.org/10.1111/1467-937X.00245

Saptomo, A. (2009). *Pokok-pokok Metodologi Penelitian Hukum Empiris Murni*. Jakarta: Penerbit Universitas Trisakti. ISBN 978-979-26-8942-6

Indonesian Civil Code (Burgerlijk Wetboek voor Indonesië) – Book III on Obligations (Kitab Undang-Undang Hukum Perdata – Buku III tentang Perikatan).

Law No. 40 of 2007 on Limited Liability Companies (Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas).

Presidential Decree of the Republic of Indonesia Number 61 of 1988 on Financing Institutions (Keputusan Presiden RI No. 61 Tahun 1988 tentang Lembaga Pembiayaan).

Minister of Finance Decree of the Republic of Indonesia Number 1251/KMK.013/1988 on Provisions and Procedures for the Implementation of Financing Institutions (Keputusan Menteri Keuangan RI No. 1251/KMK.013/1988 tentang Ketentuan dan Tata Cara Pelaksanaan Lembaga Pembiayaan).

Latief, Rachmalia Intasari (2006). Perlindungan hukum bagi perusahaan modal ventura dalam perjanjian pembiayaan antara perusahaan pasangan usaha dengan perusahaan modal ventura (Tesis Magister Kenotariatan UI). Fakultas Hukum UI, Depok.

Lestari, Nurana Sekar (2014). Analisis kegiatan modal ventura antara perusahaan modal ventura dan perusahaan pasangan usahanya: studi pada PT Bahana Artha Ventura. (Skripsi S1 FH UI). Fakultas Hukum UI, Depok.