

**LEGAL REVIEW OF FREEDOM OF CONTRACT IN VENTURE
CAPITAL INVESTMENT AGREEMENTS**

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ABSTRACT

An agreement is a legal relationship between two or more parties who agree to carry out an action. An agreement begins with a statement of commitment from the parties. One of the principles that must be respected when drafting an agreement is freedom of contract, which means giving the parties the opportunity to reach an agreement. However, freedom of contract raises legal challenges, especially because it protects the interests of the parties. Therefore, legal review of freedom of contract in venture capital investment agreements has an important role in ensuring that freedom of contract and adequate legal protection are balanced to avoid disputes that may arise.

The type of research used is normative, employing qualitative analysis techniques, which are then described and analyzed using descriptive methods. The approach used in this study is a statutory approach, namely by understanding and reviewing regulations related to this research. The results of the research and discussion in this study are that the principle of freedom of contract in venture capital investment agreements is implemented through the freedom of the parties in determining the form of the agreement content, capital participation, profit sharing and the mechanism for terminating the agreement. Legal protection for the parties is also realized through the principle of good faith and the principle of balance from the formation stage of the agreement to its termination. Freedom of contract in venture capital investment agreements is also limited by applicable legal provisions including, among others, the requirements for the validity of the agreement as regulated by the Civil Code and special regulations in the field of venture capital.

Keywords: Legal Review, Agreement, Freedom of Contract, Capital Venture

A. Introduction

In the life of a country, regulations play a role in ensuring that there is Protection, security, peace, and order, with the hope of achieving justice and tranquility for all. Relationships based on mutual respect and agreement between one or more individuals and another party have a beneficial impact. This demonstrates that both parties are striving to reach an agreement that leads to justice and peace.¹

A contract is an agreement between two or more parties to perform a specific act. It is also known as a covenant because it requires the consent of at least two parties to carry out an action. This agreement places obligations on each party to fulfill the agreed-upon terms.²

The rights and obligations arising from an agreement give rise to legal consequences for the parties. In an agreement, each party has equal rights and responsibilities. The rules in Book III of the Indonesian Civil Code regarding agreements are currently the most commonly applied rules in contract law in this country. Freedom of contract is a fundamental principle that forms the basis of contract law.

The principle of freedom of contract is one of the main principles of contract law. In English-language literature, terms such as "freedom from contract," "freedom to contract," or "equal freedom" describe the central idea of freedom of contract. The second and third terms are more commonly used than the first. The concept of "freedom of contract" refers to the development of Adam Smith's thinking on free markets. His laissez-faire economic theory became the foundation for the thinking of Jeremy Bentham, who is known for his utilitarian views. The classical theory of laissez-faire is believed to be mutually beneficial and in line with liberal ideas.³

The economic sector is a crucial element in a country's progress; it serves as an indicator of the success or failure of that development. The government, businesses, and individuals in other economic sectors are crucial to the economic process. Businesses operate at the local level, while the government and other key stakeholders regulate economic activity. Businesses and their companies are significantly affected by the country's economic conditions, necessitating active participation in the national economy. Therefore, all business owners,

¹Atmoko, D. 2022. Application of the Principle of Freedom of Contract in *A Standard Agreement*. Binamulia Law, Vol.11. No.1. page 82.

²Ibid. page 82.

³Ibid. page 73.

regardless of their size, need to be able to develop and strengthen their businesses through access to financing.⁴

Financial institutions are companies that have assets in the form of investments or financial assets used to carry out activities in the financial services sector, including non-financial services and the provision of funds to finance both productive and consumptive projects. In Indonesia, financial institutions consist of banks, which are regulated in Law No. 10 of 1998 in conjunction with Law No. 7 of 1992 which has now been updated again by Law No. 4 of 2023 concerning Banking, Pawnshops, which are regulated according to the provisions of Articles 1150-1160 of the Civil Code, Insurance, which is regulated according to the provisions of Articles 246-286 of the Commercial Code and Law No. 40 of 2014 concerning Insurance Business, Pension Funds, which are regulated in Law No. 4 of 2023 concerning Pension Funds, Financing Institutions, which are regulated in Presidential Regulation Number 110 of 2020 concerning financing institutions which were then updated through various regulations of the Financial Services Authority (OJK) such as OJK Regulation Number 47/POJK.05/2020 and OJK Regulation Number 46 of 2024. Then also regulated in Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (UU P2SK).

Venture capital is an alternative financing option that can be utilized by both companies and the public. Based on the Regulation of the Minister of Finance of the Republic of Indonesia Number 18/PMK.010/2012, which was subsequently replaced by Government Regulation Number 25 of 2023, which is under the supervision of the Financial Services Authority (OJK) concerning Venture Capital Companies, it is emphasized that Venture Capital Companies (PMV) are business entities that provide funds or investments to partner companies for a certain period of time, either in the form of share participation, participation, or other forms of financing in accordance with the provisions of laws and regulations.⁵

However, freedom of contract poses legal challenges, primarily due to protecting the interests of the parties, contractual fairness, and the high risks inherent in venture capital. Based on these issues, the research aims to examine the legal review of freedom of contract in venture

⁴Windhatria, I., Santosa, I., & Muda, I. (2024). "Venture Capital Investment In the RegionDKI Jakarta is associated with the role of notaries as official law-making bodies. Authentic Deed". FAIR: Journal of Law, Vol.15, No.2. page 191.

⁵Edy Nurcahyo. 2022. Sharia Venture Capital Law (Legal Aspects of Compliance) *Sharia*. Yogyakarta. Deepublish. page 41.

capital investment agreements, which is very important to ensure that freedom of contract and adequate legal protection are balanced, and to avoid disputes that may arise.

B. Research Methods

A study cannot be called research if it does not have a research method.⁶ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.⁷

C. Discussion

1. Application of the Principle of Freedom of Contract in Venture Capital Investment Agreements

In venture capital investment practice, the principle of freedom of contract is applied from the beginning of the legal relationship, namely during the negotiation process and signing of the investment agreement. PMVs and PPU's have the freedom to determine and agree on the investment capital to be used. They also have the freedom to determine the form of shareholder agreement, profit sharing, and other agreed-upon financing options. This freedom also includes determining the amount of capital, investment term, management oversight mechanisms, and termination provisions for the partnership.

However, the reality on the ground shows that contractual freedom in this context is often unbalanced. Many business contracts are standard contracts. Standard contracts are agreements drafted unilaterally by one party, usually a large company or system administrator, and provided to the other party in a finalized version. Often, parties in weaker economic or legal positions, such as consumers or small business partners, have no opportunity to negotiate or amend the agreement. As signatories, they can only choose "agree or disagree" and have no role in determining the agreement's content.

This situation is concerning because, under Indonesian contract law, contracts should be drawn up fairly and should not be unduly detrimental to either party. Therefore, articles that

⁶ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

⁷ Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

create a clear imbalance between rights and obligations could be considered a violation of public norms and ethical principles, as stipulated in Article 1337 of the Indonesian Civil Code. Furthermore, pursuant to Article 18 of Law Number 8 of 1999 concerning Consumer Protection, unilateral standard clauses that limit or eliminate a company's liability could be deemed invalid.

Nevertheless, venture capital agreements are still considered legally valid as long as they meet the valid conditions of an agreement stipulated in Article 1320 of the Civil Code, namely the existence of an agreement between the parties, capacity, a specific object, and a lawful cause. Although agreements do not always arise from an equal bargaining position, in this case, the agreement is considered the PPU's formal approval of the contract clauses proposed by the PMV. This indicates that the principle of freedom of contract in venture capital agreements is more formal and legal than fully substantive.

The application of contractual principles is also reflected in the regulation of the rights and obligations of the parties. PMV is given the right to supervise PPU's business activities and can provide suggestions and decisions for business development and PPU is obliged to report business developments periodically. This is part of the freedom of the parties to the agreement. Although in practice it reflects the interests of investors more than the interests of the company.

Therefore, when applying the principle of freedom of contract, which remains the main basis of contract law, it is important to pay attention to balance, good intentions and protection for the more vulnerable parties in the business world.⁸

2. Legal Limitations on Freedom of Contract in Venture Capital Investment Agreements

Considering the problems that arise from the practice of the principle of freedom of the parties in drafting and agreeing on venture capital contracts which ignores the principle of balance of position between the Venture Capital Company and the Business Partner Company which causes certain parties to become dominant. So freedom of contract in venture capital agreements is often formal, but does not necessarily represent significant freedom. So, to

⁸Jatmiko, EH (2025). Application of the Principle of Freedom of Contract in Contracts Business in Indonesia. *Innovative Law: Journal of Social Law and Humanities*. Vol. 2. No. 3. pages 94 – 95.

prevent the more dominant party from taking advantage of it, legal restrictions are needed on the principle of freedom of contract.⁹

Furthermore, there are provisions governing venture capital business activities, namely the principle of prudence and protection for partner companies. These provisions limit contractual freedom in venture capital investment agreements. These regulations are issued by the Financial Services Authority (OJK). Financial Services Authority Regulation Number 34/POJK.05/2015 concerning Business Licensing and Institutionalization of Venture Capital Companies regulates the venture capital industry. This is the second limitation. This regulation limits contractual freedom by specifying permitted types of financing, such as investment in shares, convertible bonds, and financing based on a profit-sharing mechanism. This regulation also stipulates a maximum investment period of 10 years, and once the partner company has successfully developed, the venture capital company must divest. Venture capital companies are prohibited from taking over full management of the partner company. Therefore, they must maintain a temporary investment and allow the partner company's management to function.

Article 1337 further limits this by stating that a reason cannot be justified if it conflicts with statutory provisions, public order, or morality. When freedom of contract is used to support agreements that conflict with fundamental societal principles, this provision serves as a barrier.¹⁰

Law Number 8 of 1999 concerning Consumer Protection establishes restrictions consistent with civil law provisions. Article 18 prohibits the inclusion of standard clauses that release or transfer liability to business actors or grant unilateral rights to terminate agreements. This regulation is specifically intended to protect consumers, who are generally in a weaker position and lack bargaining power in unilaterally drafted standard agreements.¹¹

The next legal limitation is contained in Article 1338 paragraph (3) of the Civil Code which stipulates that every implementation of an agreement must be based on good faith, which is an additional legal limitation. The principle of good faith helps improve inappropriate contracts, especially in venture capital investment agreements which often involve differences in interests and bargaining positions. The obligation to act in good faith requires that the parties

⁹Hariato, D. (2016). The Principle of Freedom of Contract: Problems Its Application in Standard Contracts Between Consumers and Actors Business. *Journal Ocean of Justice Law*. Vol.11. No. 2, page 152.

¹⁰Gumanti, R. Op.cit. pages 4 – 8.

¹¹Jatmiko, EH Op.cit. page 96.

not only follow the formal wording of the agreement, but also consider justice, propriety, and the interests of the other party when the agreement is implemented.

There are also specific regulations in the venture capital sector, particularly those established by the Financial Services Authority (OJK), that restrict contractual freedom in venture capital investment agreements. These regulations govern the scope of venture capital business activities, the types of financing permitted, the investment period, and prohibit companies from taking over the full management of their joint venture companies. These regulations are designed to ensure that joint venture companies are not unduly influenced and to maintain the stability of the venture capital industry.

Furthermore, within the dispute resolution system, there are legal limitations on freedom of contract. In an agreement, the parties are free to choose the method of dispute resolution. However, this freedom is limited by legal provisions establishing the absolute competence of the courts and the recognition of alternative dispute resolution. Therefore, applicable laws and regulations need to regulate the forum or provisions for arbitration in venture capital investment agreements.

In essence, the application of legal restrictions on freedom of contract in venture capital investment agreements requires serious attention from all parties involved. The investment business world is increasingly evolving with the emergence of various new and creative methods and forms of financing. Therefore, both investors and entrepreneurs receiving investments need to continuously learn and stay abreast of the latest applicable regulations. These restrictions are intended to ensure that venture capital agreements are not only formally valid but also reflect the principles of partnership, balance, and legal protection for the Joint Venture Company. If subjective requirements are not met, the agreement can be canceled, while if objective requirements are not met, the venture capital agreement is declared null and void.

The law must create justice because that is its primary purpose. Therefore, legal provisions governing investment agreements are necessary to ensure fairness for all parties involved. Justice can be achieved when all parties receive legal protection.

3. Legal Protection for Parties in Venture Capital Investment Agreements Prepared Based on the Principle of Freedom of Contract

Considering that legal relationships in venture capital financing inherently involve high risk and occur over the medium to long term, it is necessary to analyze the form of legal

protection for venture capital companies if their partner companies are in a state of force majeure. In civil law, force majeure or force majeure is understood as a condition that arises beyond the control and will of the parties, resulting in one party being unable to fulfill its obligations as agreed. Provisions regarding force majeure are regulated in Articles 1244 and 1245 of the Civil Code, which essentially emphasize that debtors cannot be burdened with the obligation to pay compensation if their inability to fulfill their obligations is caused by an unforeseen event for which they cannot be held responsible.

NoAs in conventional debt agreements, force majeure cannot be understood simply in venture capital investment agreements. This is due to the fact that the legal relationship between a venture capital firm and a partner company is not limited to the obligation to return capital; this relationship also encompasses the principles of capital participation, risk sharing, and the venture capital firm's involvement in the business development of the partner company, each of which has legal interests that must be protected, especially regarding the continuity of the investment and the protection of the agreed capital. Therefore, venture capital firms retain legal interests that must be protected if a partner company experiences a force majeure that hinders the fulfillment of its obligations under the agreement. These interests primarily relate to the continuity of the investment and the safeguarding of the invested capital.

Furthermore, in venture capital financing practices, there is a possibility that the venture capital company as the funder may not fulfill its obligations as agreed. As a consequence, the implementation of the venture capital company's responsibilities towards the partner company needs to be analyzed and carefully examined. In the realm of civil law, default is defined as a situation where one party does not fulfill its obligations as agreed, either because it does not perform the performance at all, performs but not in accordance with what was agreed, or commits an act expressly prohibited in the agreement. Provisions regarding default are implicitly regulated in Articles 1238 and 1243 of the Civil Code, which essentially emphasize that a party who is negligent in fulfilling its obligations can be held legally responsible for losses arising as a result of such negligence.

On Venture capital investment law, the obligations of venture capital companies are not solely limited to providing funds or capital investment, venture capital companies can also be responsible for business supervision, management assistance, and disbursement of funds in accordance with the steps agreed in the agreement. If a venture capital company does not fulfill these obligations, for example by delaying the disbursement of funds without a clear reason,

then the company is considered to have violated the law. The partner company is legally entitled to protection of its interests as the injured party in this condition.

Venture capital investment agreements essentially provide legal protection to the joint venture company against the failure of the venture capital company. Based on the provisions of Article 1338 paragraph (1) of the Civil Code, every legally made agreement has the binding force of law for the parties who agree to it. Thus, the joint venture company has the right to demand the implementation of the performance of every obligation that has been agreed if the venture capital company is negligent or does not fulfill its responsibilities. In addition, the joint venture company can also file a claim for compensation as long as it can prove the existence of real losses, both material and immaterial, as well as a causal relationship between the violation committed and the losses incurred.¹²

The legal bond formed between a venture capital company and its business partners generally provides legal guarantees to all parties in a venture capital agreement according to the principle of freedom of contract. In accordance with the provisions of Articles 1320 and 1338 paragraph (1) of the Civil Code (KUHPer), this legal relationship arises from an agreement between parties who consciously and willingly enter into a contract. Therefore, legal protection is intended to protect not only after a dispute occurs, but also to protect from the beginning of the agreement.

The principle of freedom of contract gives parties the authority to choose whether to enter into an agreement with a particular party and the content and form of that agreement. Because the nature of venture capital financing differs from conventional financing, this principle is crucial for venture capital investments. Venture capital carries high business risks and typically focuses not on material collateral, but on business potential and trust between the parties. Therefore, the rights and obligations in a venture capital investment agreement are highly dependent on the contractual agreement made based on the principle of freedom of contract.

Legal guarantees for investor rights provide legal protection for venture capital firms. This is achieved through clauses relating to capital participation, oversight systems, and reporting obligations for the partner company. Furthermore, these clauses also regulate profit sharing and exit strategies. To ensure that invested capital is managed responsibly and in accordance with investment objectives, these clauses protect the interests of the venture capital

¹²Edy Nurcahyo, Ahmad Rosidi, Hudali Mukti. Op.cit. pages 98 – 101.

firm. Furthermore, venture capital agreements typically include provisions regarding default, allowing for demand for fulfillment of obligations, compensation, or termination of the agreement if the partner company fails to fulfill its obligations as agreed.

Conversely, freedom of contract also carries a legal protection dimension for joint venture companies. Given their dependence on venture capital financing, joint venture companies often find themselves in an unbalanced bargaining position. Therefore, to avoid burdensome or exploitative clauses, freedom of contract must be limited by the principles of balance and good faith. Limitations on abuse of circumstances, clarity of rights and obligations, transparent business management, and certainty regarding the investment period and termination of the agreement provide legal protection for joint venture companies.

Legislation strengthens the legal protection of venture capital investment agreements beyond the protection provided by the parties' agreements. Article 1337 of the Civil Code, which prohibits agreements based on actions that conflict with legal provisions, moral norms, or public order, and Article 1338 paragraph (3) of the Civil Code, which requires the implementation of contracts in good faith, control freedom of contract in agreements. In addition, regulations from the Financial Services Authority offer legal protection to venture capital companies by limiting the type of financing and duration of investment, and prohibiting venture capital companies from controlling the entire management of partner companies.

Given these limitations, legal protection in venture capital investment agreements is substantive and formal. In other words, legal protection is not limited to a written agreement. More importantly, the agreement must ensure fairness, balance, and legal certainty for all parties involved. Furthermore, legal protection includes dispute resolution mechanisms agreed upon in the agreement, both through the courts and alternative dispute resolution mechanisms, as repressive measures to prevent breaches of the agreement.

D. Conclusion

In venture capital investment agreements, the principle of freedom of contract gives venture capital companies and partner companies the freedom to freely determine the form, content, and method of implementation of the investment agreement. Determining the type of financing, the amount of capital participation, the investment period, the method of profit sharing, the right of supervision, and the requirements for termination of the agreement and dispute resolution are all examples of this freedom. As stipulated in Article 1338 paragraph (1) of the

Civil Code, freedom of contract is the legal basis that makes the venture capital investment agreement a law for the parties who make it. Freedom of contract in venture capital investment agreements is limited by applicable law. One of these limitations is the requirement for a valid agreement as stipulated in Article 1320 of the Civil Code, the prohibition of agreements for reasons contrary to law, morality, or public order as stipulated in Article 1337 of the Civil Code, and the obligation to execute agreements in good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. In addition, venture capital laws and regulations made by the Financial Services Authority limit freedom of contract. These regulations are made with the aim of protecting the interests of all parties and maintaining the stability of the venture capital industry. Parties involved in a venture capital investment agreement are legally protected by the parties' freedom to draft the agreement. Investment safeguards, capital security, and oversight rights legally protect venture capital firms. Meanwhile, clarity of rights and obligations within the agreement, restrictions on disproportionately burdensome clauses, and legal certainty regarding the duration and termination process provide legal protection for the partner company. Therefore, the purpose of legal protection in a venture capital investment agreement is to ensure that the contractual relationship between the parties is established in a fair and balanced manner.

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