

Aspek hukum modal ventura sebagai upaya pemberdayaan usaha kecil dan menengah

Sihabudin, author

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Abstrak

The purpose of development is to reach justice and prosperity in all aspects of life by establishing amongst others small and medium companies both private and state companies. Therefore, certainty of law and adequate protection are needed to support their activities and consequently law must be obeyed by all stakeholders.

Establishing a company needs capital for all its business activities. The opportunity to get capital for small and medium companies differ from that of big companies. Since, the bigger ones have many sources to obtain capital, the smaller ones have not many options to enlarge their capital. This condition brings in balance and thus unfairness when small companies are dealing with big ones. Venture capital is one of the alternatives to help small and medium companies to get proper sources of capital.

The development of venture capital in Indonesia is meant to open new opportunities to all business stakeholders for enlarge their companies, as they usually face many obstacles when borrow from a bank. Therefore, the existence of venture capital should be supported especially by government and business stakeholders as well as society at large better the venture capital is growing the more small and medium companies can be helped by preserving capital for them.

The system of finance order of the venture capital can be done by depositing capital into an investee company so that investment law and banking law will apply on those activities. The venture capital is based on the future prospect of the company rather than the collaterals. Consequently the venture capital has greater risk than ordinary loans, but also opens new market opportunities for the investor/lender.

Administrative law has regulated the venture capital as a financing institution by enacting President's Decree No. 61/1988. However, the substantive law still uses the KUH Perdata (Civil Code). On the other hand venture capital agreements usually use standard contract which has not yet been regulated by the civil code, even though the regulation No. 8/1999 concerning Consumer Protection has been regulated in a simple way. Therefore both our contract law as well as our corporate law need improvement.

Cooperation agreement between the venture capital (venture capitalist) and the investee company is a mutual agreement, whereby the bargaining position of both the parties are not equal. The venture capitalist who has capital has a stronger position than the investee company who is the borrower whereas freedom of contract can only be applied properly when both parties have equal positions.

The venture capitalist, however, tends to protect his interest (capital) by special clauses, including his/her responsibilities thereby disturbing the equilibrium even further. Therefore, our laws should protect the weaker party but the government should also supervise and guard for such unscrupulous practices, like providing a "black list" or "grey list" of such special clauses, condemning them null and void or voidable (as the case may be) such as is done by the New Civil Code of the Netherlands on "Algemene Voorwaarden".