

Legal Protection for Micro, Small, and Medium Enterprises (MSMEs) in Receiving Capital Assistance from Venture Capital Companies

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ABSTRACT

The study discusses the responsibilities of venture capital companies in the context of delays in disbursing capital assistance and its impact on Micro, Small, and Medium Enterprises (MSMEs). The main focus is on the problem of default that occurs when venture capital companies fail to fulfill their obligations to disburse capital on schedule, resulting in financial losses and obstacles to business development for MSMEs. This study proposes legal reforms to improve regulations and enforcement related to venture capital company responsibilities, including setting disbursement deadlines, MSME protection mechanisms, and increasing accountability. The empirical normative research uses a combined method between legislative, case, and analytical approaches to explore and analyze legal issues comprehensively. The research finds that MSMEs engage in profit-sharing schemes with venture capital firms. In this arrangement, the venture capital company offers funds to a legal entity partner company, and the partner company reimburses the funds with predetermined rewards. These agreements are governed by the contract law provisions of the Civil Code and are updated by the Ministry of Finance Regulation. It emphasizes the significance of venture capital in addressing funding shortages for small businesses. These reforms are expected to reduce the risk of delays, ensure fair compensation for MSMEs, and support more sustainable business growth.

Keywords : MSMEs; venture capital companies; capital assistance receipts; default

INTRODUCTION

The existence of venture capital as an alternative financing is increasingly important, especially considering the limited funds available from banking institutions. Venture capital offers a solution for small and medium enterprises (SMEs) and the people's economy which often do not receive attention from banking institutions and other sources of financing (Martono, 2002). This is because banks tend to prefer investing in medium to large-scale businesses. Venture capital is present as an alternative that offers financial support that is often ignored by conventional banking institutions. In 2012, the Minister of Finance Regulation Number 18/PMK.010/2012 concerning Venture Capital Companies was issued, which brought significant updates to venture capital regulations (Fuady, 2016). This regulation replaces the Minister of Finance Decree No. 469/KMK.017/1995 and the Minister of Finance Decree No. 1251/KMK.013/1998. This change aims to improve the regulation of venture capital companies and is expected to increase the MSME sector as a whole. This update reflects the government's efforts to adapt provisions to the needs and challenges faced by MSMEs, as well as to improve their access to the capital needed to grow (Harvie, 2019).

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However, the implementation of this new policy does not immediately address all the problems faced by MSMEs in disbursing funds from venture capital companies. According to Hasanuddin Rahman, one form of financing offered by venture capital companies is capital participation (Chairi, Afrita, & Yudhistira, 2020). Although this should help MSMEs, the disbursement process often experiences obstacles. Many MSMEs experience difficulties when applying for funds from venture capital companies, which shows that even though the regulation has been updated, its implementation still faces various challenges (Maran, 2022). These obstacles include various administrative and operational aspects that hinder the flow of capital needed for the growth and development of MSMEs (Rahman, 2003).

Initially, the system for disbursing capital assistance to venture capital companies was implemented using retroactive Gyro bills. When a Partner Company (PPU) applies for capital assistance meets all the terms and conditions set, and is approved by the venture capital company, the PPU is required to deposit a Management Assessment Guarantee (JPM) (Hughes & Marzouk, 2021). After the JPM is deposited in the form of a post-dated Gyro, the PPU promises to receive capital assistance within a maximum of seven working days. However, this system faces serious problems (Sinha & Jha, 2021). It turns out that the gyro issued often cannot be cashed because the gyro is blank. This is because the available funds for disbursement have not been collected.

After all, the company relies on installment payments and investments from new customers for its cash flow. As a result, after issuing several gyro, the disbursement system with gyro was stopped. As an alternative, the capital assistance payment system was then changed to using the Statement of Guarantee of Certainty of Disbursement (SPJKP). In seven days after signing the capital assistance agreement, the PPU will receive the SPJKP. The issuance of this SPJKP is based on Article 41 of the Regulation of the Minister of Finance Number 18/PMK.010/2012, which allows venture capital companies to issue promissory notes. Thus, SPJKP functions as a guarantee of payment from venture capital companies to MSMEs that have met the requirements, including the submission of capital statements (Hetharie & Hetharie, 2020).

The sociological essence of the Statement of Guarantee of Certainty of Disbursement (SPJKP) is to provide certainty to MSMEs who apply for capital assistance. The aim is to ensure that capital assistance will be received as part of efforts to develop their business and increase profits. With SPJKP, MSMEs should receive a guarantee that capital assistance will be disbursed according to the promised time, which is expected to support the growth and success of their business (Aryastini, Wairocana, & Sarjana, 2018). However, in practice, problems often arise when PPU is about to disburse capital assistance. Often, the disbursement of approved capital is delayed. The announcement of the delay from the venture capital company causes MSMEs to encounter delays in obtaining the funds they need. It damages their business development process, which can result in lost profits that could have been obtained if capital assistance had been received on time. In business transactions, the time factor plays a critical role (Indrawati & Rachmawati, 2021). For example, if a bakery entrepreneur has ordered a bread-making machine but the machine is seven days late from the promised time, the entrepreneur will experience a loss of production for seven days. As a result, the potential profits from bread production are also lost during the period. Delays in disbursement of capital assistance have a similar impact, where MSMEs lose the opportunity to utilize the funds needed promptly to improve their business operations and profits (Apriani & Said, 2022).

From the description above, it is clear that sanctions against venture capital companies that delay the disbursement of capital assistance, even though the capital applicant has fulfilled obligations such as depositing capital participation, have not been regulated in the Regulation of the Minister of Finance (Permenkeu) Number 18/PMK.010/2012 concerning Venture Capital Companies. This means that this regulation still leaves a gap in norms regarding the imposition of sanctions on venture capital companies that do not meet the deadline for capital disbursement. Permenkeu Number 18/PMK.010/2012 does regulate various aspects related to the operations of venture capital companies, including procedures and obligations in the capital disbursement process. However, the deficiency in this regulation is the absence of provisions that specifically regulate sanctions for venture capital companies that delay the disbursement of funds. This creates a loophole in the regulation that can be exploited by venture capital companies to delay the disbursement of assistance without clear legal consequences.

The presence of empty norms in this regulation means the need for updates or additional rules that regulate sanctions for venture capital companies that do not fulfill their obligations to disburse funds on time. With clear sanctions provisions, it is hoped that capital applicants can be protected from detrimental delay practices, and venture capital companies will be more motivated to comply with their commitments in disbursing capital.

While venture capital has been extensively studied as a financing alternative for Micro, Small, and Medium Enterprises (MSMEs), there remains a lack of research addressing the specific legal challenges MSMEs face in cases of delayed disbursement by venture capital companies. Existing studies often focus on the potential benefits of venture capital and the operational challenges for MSMEs but fail to explore the legal voids and their implications for MSME development. This research aims to fill that gap by examining the intersection of venture capital operations, MSME needs, and the legal protections required to mitigate risks associated with funding delays.

The timely disbursement of venture capital is critical for MSMEs, as delays can directly impact their operational continuity, market competitiveness, and growth potential. Given the significant role MSMEs play in driving economic development, particularly in developing countries like Indonesia, addressing delays in venture capital funding has become urgent. Regulatory inconsistencies and inadequate legal mechanisms exacerbate this issue, highlighting the need for immediate reforms to ensure that venture capital companies fulfill their commitments and that MSMEs are adequately protected against financial risks and uncertainties.

This research introduces a novel perspective by focusing on the legal accountability of venture capital companies in cases of delayed fund disbursement. Unlike previous studies that primarily address financing schemes and MSME development, this study highlights the contractual and legal obligations of venture capital firms under the Civil Code and Ministry of Finance regulations. It also proposes specific legal reforms, such as enforceable timelines, penalty structures, and enhanced protection mechanisms for MSMEs, providing a comprehensive framework for improving the venture capital ecosystem.

The study aims to analyze the legal gaps in existing venture capital regulations and propose actionable reforms to enhance the accountability of venture capital companies. By addressing these gaps, the research seeks to minimize delays in fund disbursement, safeguard MSMEs' financial interests, and promote sustainable business growth. The

findings are expected to benefit policymakers by offering insights for regulatory improvements, venture capital firms by providing clearer operational guidelines, and MSMEs by ensuring fair and timely access to capital. This contributes to a more equitable and efficient financial system, fostering broader economic development and innovation.

RESEARCH METHOD

The empirical normative research method combines approaches like the legislative, case, and analytical approaches to explore and analyze legal issues comprehensively. The legislative approach focuses on the study of applicable legal norms, rules, and regulations to understand the legal basis and regulations governing an issue. The case approach involves the analysis of relevant concrete cases to gain insight into how the rules are applied in practice. Meanwhile, the analytical approach to interpret and evaluate data and information from the two previous approaches to identify patterns, problems, and possible solutions. The combination of these three approaches allows for in-depth and holistic research on legal aspects and their application in an empirical context.

RESULT AND DISCUSSION

Regulations on Venture Capital Company Financing for Micro, Small and Medium Enterprises (MSMEs)

A financing agreement with a profit-sharing scheme involves the first party providing funds or goods as capital for the second party's business, with the obligation for the second party to return the funds and provide a reward according to the agreed terms, including the amount, method, and time of payment (Puspitasari, 2022). As a contract, the general provisions regarding contract law contained in the Third Book of the Civil Code, such as the requirements for a valid agreement and the principles of contract law, also apply. In this agreement, there are two main parties: (1) the venture capital company, which provides the funds and can only be operated by financing companies, and (2) the business partner company, which must be in the form of a company, meaning that individual persons cannot access capital assistance through venture capital (Pinkow & Iversen, 2020).

According to Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, there are three categories of businesses with different criteria. Micro Enterprises are productive businesses owned by individuals or individual entities with net assets not exceeding IDR 50,000,000 and annual sales not exceeding IDR 300,000,000. Small Enterprises are businesses owned by individuals or business entities, not subsidiaries or branches of medium or large businesses, with net assets between IDR 50,000,000 and IDR 500,000,000 or annual sales between IDR 300,000,000 and IDR 2,500,000,000. Medium Enterprises are independent businesses, not subsidiaries or branches of other businesses, with net assets between IDR 500,000,000 and IDR 10,000,000,000 or annual sales between IDR 2,500,000,000 and IDR 50,000,000,000 (Tambunan, Enuh, Ubaidullah, & Tamba, 2022).

As a developing country, Indonesia is actively striving to strengthen its economy through the development of Micro, Small, and Medium Enterprises (MSMEs). One of the government's main strategies to promote MSME growth is through capital policies, especially by expanding access to financial institutions such as venture capital financing. Venture capital is a crucial financing option due to limited funding from banking institutions and as a commitment to develop small and medium enterprises as well as the people's economy, which is often neglected by conventional banking and financing

sectors. It is related to the fact that banks tend to support medium to large-scale businesses, while venture capital serves as an alternative to reach smaller businesses.

Since 1995, the presence of venture capital in Indonesia has increased and expanded, including to regions, to meet the capital needs of entrepreneurs, especially MSMEs. The increase in the number of venture capital companies reflects efforts to address the financing gaps faced by small and medium enterprises. The Ministry of Finance Regulation Number 18/PMK.010/2012 concerning Venture Capital Companies is an important step in updating regulations governing venture capital. This regulation replaces Minister of Finance Decree No. 469/KMK.017/1995 and Minister of Finance Decree No. 1251/KMK.013/1998, aiming to improve and refine the regulation of venture capital. The implementation of this policy is expected to bring significant changes to the MSME sector, increasing their access to financing, and supporting more equitable business growth and development.

Applying for capital assistance from MSMEs to venture capital companies, it involves several important steps. First, after the application for capital assistance is approved by the venture capital company and the MSME has submitted its capital contribution, a cooperation agreement between the two parties must be made. Only after this agreement is established can the capital assistance be disbursed. The disbursement procedures can vary between venture capital companies. Some companies may disburse funds by providing cash directly to MSMEs, while others may use bank transfers or payment methods such as checks or promissory notes.

For example, a venture capital company operating in Bali since 2011 has over 2,000 borrower clients. Initially, the capital assistance disbursement system was carried out through backward promissory notes. After the applicant met all the requirements and obtained approval, they were required to deposit Management Assessment Collateral (JPM). The capital assistance would then be received by the applicant within a maximum of seven working days after JPM was deposited in the form of a backward promissory note. However, backward promissory notes in capital disbursement sometimes cause problems, such as uncertainty in fund disbursement and potential delays, which could affect the effectiveness of the financing process.

The capital assistance disbursement system using backward promissory notes faced serious problems because the promissory notes issued were often not redeemable due to insufficient available funds. This issue arose because venture capital companies relied on the turnover of funds from installment payments and new investor client capital investments. As a result, the capital assistance disbursement using promissory notes had to be discontinued after the company issued around 400 problematic promissory notes. In response to this problem, the venture capital company replaced the capital assistance payment system with a Guaranteed Assurance of Disbursement Statement (SPJKP). In this new system, after the capital applicant signed the capital assistance agreement, they would receive the SPJKP within seven days. Although efforts were made to improve the process through SPJKP, new issues arose, such as delays in disbursing approved funds. Venture capital companies are often notified that approved capital disbursements have to be postponed, adding further obstacles to the disbursement process.

The Guaranteed Assurance of Disbursement Statement (SPJKP) serves as a guarantee for MSMEs that have met the requirements and submitted their capital participation to obtain capital assistance from the venture capital company, in this case, the venture capital company being PT. Futurindo Ventura Sejahtera. According to Article 1314 of the Civil Code, the SPJKP is a legal declaration in which the venture capital

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company commits to disburse assistance to MSMEs. It means that SPJKP is an official promise that binds the venture capital company to fulfill its obligation to disburse funds as agreed.

From a legal standpoint, SPJKP is considered a one-sided legal act. A one-sided legal act is a legal action that only requires the will of one party to produce a certain legal effect. In this context, PT. Futurindo Ventura Sejahtera unilaterally declares a guarantee to disburse funds to MSMEs without requiring approval or action from the other party to create this legal effect. It means that the obligation to disburse capital depends entirely on the declaration and commitment of the venture capital company. Therefore, although the SPJKP is designed to provide certainty to MSMEs regarding the disbursement of capital assistance, problems may arise if the venture capital company does not fulfill its promise according to the agreed terms. In this case, the one-sided legal act carried out by the venture capital company must be fulfilled to ensure that the guarantees provided through SPJKP are fully implemented, so that the rights of MSMEs as recipients of capital assistance are well protected.

The Guaranteed Assurance of Disbursement Statement (SPJKP) functions to affirm, strengthen, and regulate the capital assistance agreement approved between the venture capital company and MSMEs. The main function of SPJKP is as an additional document that strengthens the main agreement, namely the capital assistance or capital participation agreement. In other words, the existence and validity of SPJKP are highly dependent on the existence of the main capital assistance agreement. Without the main agreement, the SPJKP does not have an independent basis or existence.

As a non-independent statement, SPJKP does not stand alone without the underlying capital assistance or participation agreement. SPJKP only serves as a reinforcement of the main agreement and has no separate legal force if the capital assistance agreement does not exist. Conversely, the capital assistance agreement as the main agreement does not depend on the existence of SPJKP, as the agreement already stands and functions independently. As a one-sided legal act, SPJKP has a legal obligation to fulfill what is stated in the document. If SPJKP fails to fulfill its obligations or does not disburse funds as promised, this is considered a legal violation. Article 1365 of the Civil Code stipulates that any act that violates the law and causes harm to another party must compensate for the damage. Thus, if SPJKP does not fulfill its obligation to MSMEs, the venture capital company can be held responsible for the resulting damages.

An action is considered illegal under Article 1365 of the Civil Code if it satisfies various crucial criteria. Initially, it must involve an action carried out by a specific party. Additionally, the action must contravene the relevant legal regulations and the perpetrator must demonstrate fault in their behavior. Furthermore, the action must result in harm to another party and there must be a distinct causal link between the action and the resulting harm. Therefore, an act is unlawful if it meets these elements. In the case of the Guaranteed Assurance of Disbursement Statement (SPJKP), the act can be categorized as unlawful if the venture capital company violates its obligations stated in the SPJKP. It means that the venture capital company has failed to fulfill the promises stated in the SPJKP, which can harm the capital applicant. The fault must be proven by showing a causal link between the violation and the harm experienced by the MSME.

In this context, SPJKP as a one-sided legal act creates an obligation for the venture capital company to disburse capital funds according to the promised terms. If the venture capital company does not disburse the capital assistance stipulated in the SPJKP after MSMEs meet all requirements, the act can be considered unlawful. The reason is that the

venture capital firm did not fulfill its responsibilities, resulting in harm to MSMEs as the affected party. As such, the venture capital company can be deemed to have violated the legal principles of the Civil Code and can be held legally responsible for compensating the resulting damages.

Responsibility of Venture Capital Companies that Fail to Provide Assistance to MSMEs

Micro, Small, and Medium Enterprises (MSMEs) often seek funding from venture capital firms to support their working capital and business development. In many cases, the primary use of these funds is to enhance working capital, which is essential for financing business operations, including the purchase of goods and raw materials necessary for the production process until the final product is sold. The principle of working capital is that the funds provided are utilized within one business cycle, beginning with receiving the funding, purchasing raw materials, processing them into finished goods, and ultimately selling them to recoup cash. Sufficient funding is crucial for MSMEs to maintain their business continuity and growth.

In a venture capital scheme, funding provided to MSMEs is accompanied by capital contributions from the MSMEs themselves. This means that both the venture capital firm and the MSME provide funds; the funds from the venture capital firm are called capital assistance, while the funds provided by the MSME are called capital contributions. MSMEs make these contributions with the expectation of receiving additional funds for working capital or business development. However, these expectations are not always met on time.

Even though venture capital firms issue a Statement of Assurance of Funding Disbursement (SPJKP) to guarantee the disbursement of funds, this guarantee is not always fulfilled on schedule. Delays in fund disbursement can significantly impact MSMEs, causing them to miss potential profits they could have earned if the funds had been disbursed on time. According to Soedikno Mertokoesumo, time is a critical factor in business transactions. For example, if a bread manufacturer orders a bread-making machine and its delivery is delayed by seven days, the business loses seven days of production and potential profit. Similarly, delays in disbursing capital assistance hinder MSME business development, leading to substantial losses.

Consider an MSME engaged in selling motorcycles. Before applying for capital assistance, it could sell 25 units monthly. With the anticipated funding, the MSME hoped to increase sales to 50 units per month. To qualify for the application, the MSME provided total cash as capital participation and received an SPJKP from the venture capital firm. However, the funds were only disbursed six months after the participation payment. This delay caused significant financial losses, including the missed opportunity to sell an additional 25 units monthly over six months and the potential earnings from bank interest had the participation funds been kept in a bank. The delay affects not only missed sales volumes but also the opportunity for additional income if the funds had been productively used or saved.

The SPJKP should provide MSMEs with a guarantee regarding the needed fund disbursement. However, in practice, it often fails to ensure timely realization. When MSMEs attempt to facilitate disbursement, they frequently encounter obstacles, such as delays communicated by the venture capital firm. This demonstrates that, despite the SPJKP's existence, the promised funds are often not disbursed as scheduled.

From a civil law perspective, delays in disbursing funds can be viewed as a breach of the venture capital firm's obligations. The SPJKP is a binding promise, and failure to

fulfill it constitutes a breach of contract, or "wanprestasi." A breach occurs when one party in a contract fails to perform the agreed obligations, performs them late, or performs them inadequately as per the agreement's terms.

A breach of contract gives the aggrieved party the right to claim damages. The law aims to ensure that no party suffers without appropriate remedies. In this case, if the party promising the funds fails to deliver, the aggrieved MSME is entitled to compensation for the losses incurred. Timing is crucial in agreements because timely performance is a key element of compliance. The time specified in an agreement not only sets the deadline for fulfilling obligations but also serves as an indicator of adherence to the established terms.

In this scenario, the breach involves delayed fund disbursement, directly harming the applicant's MSME. If the venture capital firm fails to meet its obligations promptly, it can be held accountable for the breach. Losses caused by the delay can be attributed to the venture capital firm, especially if there was intentional misconduct or negligence that could be legally substantiated. Intentionality occurs if the firm desired or anticipated the losses, while negligence occurs if the firm failed to actively acknowledge or foresee the potential losses, though it reasonably should have.

Thus, the venture capital firm's liability is rooted in its breach of promise regarding the timely disbursement of funds. Even though the SPJKP was issued to guarantee fund disbursement, the firm failed to honor its pledge, necessitating compensation for the potential losses incurred by the MSME due to the delay. Moreover, the firm must also return the capital contribution provided by the MSME. However, if the disbursement eventually occurs, the breach related to the delay is considered nullified. Nonetheless, in this case, the venture capital firm did not compensate for the delay, indicating that the applicant MSMEs have not yet received adequate legal protection. In other words, the SPJKP has not effectively safeguarded MSMEs, as the venture capital firm has not fulfilled its obligations fairly and on time.

Legal reforms regarding the responsibilities of venture capital firms concerning delayed fund disbursement are crucial for ensuring justice and protection for MSME applicants. One major reform that should be considered is the strengthening of regulations and law enforcement regarding venture capital firms' obligations in fund disbursement. Stricter regulations must include clear timelines for fund disbursement and firm penalties for companies that fail to comply. This aims to prevent harmful delays and ensure that venture capital firms act professionally and transparently.

Additionally, legal reforms should introduce more effective protection mechanisms for MSMEs, such as efficient and accessible complaint and dispute resolution procedures. These procedures should enable MSMEs to file claims for losses caused by delayed disbursement and receive fair compensation without going through cumbersome and lengthy legal processes.

Reform should also include stricter requirements for the SPJKP to ensure it serves as a reliable guarantee for fund disbursement. Regulations should set minimum standards regarding the content, format, and obligations outlined in the SPJKP, as well as clear legal consequences for failure to fulfill the promise. This would ensure that the SPJKP is not just a formality but an effective protective tool. Reforms must also enhance the transparency and accountability of venture capital firms. Firms should be mandated to provide regular updates on the distribution of funds and maintain transparent communication with MSMEs regarding the advancement and obstacles encountered. It would help MSMEs better monitor the process and avoid prolonged uncertainty. These

reforms are expected to create a fairer and more orderly environment for MSMEs and improve the relationship between venture capital firms and fund applicants.

CONCLUSION

The main challenge is to ensure that venture capital companies fulfill their obligations promptly to protect the interests of MSMEs. Delays in capital disbursement not only harm MSMEs financially but can also hinder their business growth and development. Venture capital companies, as the party that swears to provide capital assistance, have a legal responsibility to fulfill this promise according to the agreed terms, including the timing of disbursement. Failure to fulfil this obligation leads to default which can cause significant losses to MSMEs.

To address this problem, there is a need for legal reforms that strengthen regulations and enforcement related to the responsibilities of venture capital companies. These reforms should include a clear time limit for capital disbursement, an effective protection mechanism for MSMEs, and strict requirements for the Statement of Guarantee of Certainty of Disbursement (SPJKP). The implementation of these reforms aims to minimize the potential for delays, guarantee fair compensation for MSMEs, and enhance transparency and accountability in the interaction between venture capital firms and MSMEs. These steps will create a fairer environment and support the sustainable growth of MSMEs.

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