

Research Article

Legal Implications of the Implementation of the Financial Services Authority Licensing Requirement for Foreign Venture Capital Companies under the P2SK Law

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Abstract: The growth of the digital economy in Indonesia has positioned Foreign Venture Capital Companies (FVCCs) as a fundamental pillar within the startup financing ecosystem. However, the legal landscape has undergone a significant transformation with the enactment of Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law). This regulation mandates that all financial services business actors, including foreign entities, obtain business licenses from the Financial Services Authority (Otoritas Jasa Keuangan/OJK). This study aims to analyze the legal implications of this licensing requirement on business certainty for foreign investors and to examine the normative inconsistencies between the Investment Law and the P2SK Law. This research employs a normative juridical method with a statutory approach and a conceptual approach. The findings reveal the existence of normative ambiguity (vagueness of norms) concerning the operational status of FVCCs utilizing offshore structures during the regulatory transition period, which is set to expire in January 2026. Such legal uncertainty has the potential to hinder the inflow of Foreign Direct Investment (FDI) if not promptly addressed through adaptive implementing regulations, such as the optimization of regulations governing Foreign Representative Offices. On the other hand, the licensing obligation enhances legal certainty by providing preventive legal protection for Business Partner Companies through contract standardization and integrated supervision. In conclusion, this study recommends cross-sectoral regulatory harmonization and the issuance of clear technical guidelines to ensure a balanced approach between prudential supervision and investment facilitation.

Received: July 23, 2025

Revised: September 18, 2025

Accepted: November 21, 2025

Online Available: January 29, 2026

Curr. Ver.: January 29, 2026

Keywords: Foreign Venture Capital; Investment Law; Legal Certainty; OJK License; UU P2SK.

1. Introduction

Over the past two decades, Indonesia has undergone a significant economic transformation driven by the growth of the middle-class population, rapid urbanization, and the massive adoption of digital technology. As the fourth most populous country in the world and the largest economy in Southeast Asia, Indonesia offers a vast and dynamic market for global investors. One of the most prominent sectors is the technology and startup sector, in which Foreign Venture Capital Companies (FVCCs) play a highly vital role. Based on digital economy data, Indonesia's digital economy valuation is projected to continue increasing, requiring substantial capital injections that often cannot be fully met by conventional banking institutions or domestic venture capital firms (Atmadja & Budiarta, 2016). The presence of FVCCs not only provides capital liquidity but also facilitates technology transfer, access to global networks, and the introduction of modern corporate governance standards for local startups.

However, the rapid growth of foreign investment activities has generated complex regulatory challenges for state authorities. Prior to the enactment of Law Number 4 of 2023



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on the Development and Strengthening of the Financial Sector (P2SK Law), the regulatory regime governing FVCCs in Indonesia was considered relatively lenient and fragmented across various unintegrated regulations. Many FVCCs operated through offshore or cross-border structures without establishing a physical presence (Permanent Establishment) in Indonesia. They directly injected capital into Indonesian startups as ordinary foreign shareholders under the Investment Law regime, thereby avoiding the stringent supervision of the Financial Services Authority (Otoritas Jasa Keuangan/OJK). This condition raised government concerns regarding consumer protection, tax compliance, and the mitigation of systemic risks within the financial sector, all of which necessitated centralized regulatory oversight (Hadjon, 1987).

The legal dynamics fundamentally shifted with the implementation of the P2SK Law in January 2023. This law was designed as an omnibus financial sector regulation aimed at strengthening the financial system safety net. One of its most significant implications is reflected in Article 113 paragraph (1) in conjunction with Article 106, which stipulates that “any person” engaging in financing service business activities—including venture capital—must obtain a business license from the OJK (Otto, 2003). This provision creates a normative conflict, or antinomy, with the investment facilitation principles enshrined in the Investment Law. FVCCs that previously operated securely under the foreign investment legal framework are now confronted with strict sectoral licensing requirements, accompanied by severe criminal sanctions as regulated under Article 298 of the P2SK Law (*Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan*, 2023).

The issue becomes increasingly critical considering the three-year transitional period granted by the P2SK Law, which will expire in January 2026 (*Undang-Undang Republik Indonesia Nomor 25 Tahun 2007 Tentang Penanaman Modal*, 2007). During this period, normative ambiguity arises regarding the operational boundaries for offshore FVCCs. Questions persist as to whether they are required to establish a limited liability company (Perseroan Terbatas) in Indonesia, open a Representative Office, or cease their operations altogether. This lack of clarity generates legal uncertainty that is counterproductive to the investment climate. Therefore, this study aims to comprehensively analyze the legal implications of the OJK licensing requirement, identify the existing normative conflicts, and formulate an ideal legal protection framework capable of balancing state supervisory interests with the need to maintain foreign capital inflows. This analysis is essential to provide legal prescriptions for both regulators and business actors in anticipation of the full implementation deadline of the P2SK Law.

2. Literature Review

The Concept of Venture Capital and Foreign Venture Capital Companies

Venture capital is defined as an investment in the form of equity participation in a private company as a business partner (investee company) for a specified period of time (OJK, 2025a). Unlike bank financing, which is collateral-based, venture capital financing is characterized by equity participation and risk sharing. Foreign Venture Capital Companies (FVCCs) are venture capital entities originating from abroad that conduct investment activities in Indonesia. In practice, FVCCs frequently utilize financial instruments such as convertible bonds or preference shares, which possess hybrid characteristics combining elements of debt and equity (OJK, 2025b).

Legal Certainty Theory

The theory of legal certainty proposed by Gustav Radbruch asserts that law must possess four fundamental elements: the law must be positive in nature (statutory law), it must be based on facts, such facts must be formulated in a clear manner, and positive law must not be easily altered (OJK, 2023b). Jan M. Otto further elaborates this concept by emphasizing that legal certainty requires rules that are clear, consistent, and enforceable by state authorities. In the context of investment, legal certainty constitutes a primary variable influencing investor decision-making (predictability) (Matheus, 2021). Normative inconsistencies between the P2SK Law and the Investment Law may undermine this principle, thereby creating heightened regulatory risk for investors.

Legal Protection Theory

This study also adopts the Legal Protection Theory advanced by Philipus M. Hadjon, which classifies legal protection into two forms: preventive and repressive (Lin, n.d.). Preventive legal protection aims to prevent disputes by providing clear regulatory guidelines and granting legal subjects the opportunity to raise objections. In contrast, repressive legal protection functions to resolve disputes that have already arisen. The OJK licensing requirement may be viewed as an instrument of preventive legal protection designed to screen credible business actors, while the criminal sanctions stipulated under the P2SK Law serve as a form of repressive legal protection (Johnson & Wong, 2023).

3. Method

The type of research employed in this study is normative legal research (doctrinal research), which examines law as an autonomous system of norms (Coumans, 2024). The research focuses on the inventory of positive law, regulatory synchronization, and the identification of legal principles.

The approaches used in this study include:

1. **Statutory Approach:** This approach examines relevant regulations, primarily Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (P2SK Law), Law No. 25 of 2007 on Investment (Investment Law), Financial Services Authority Regulation (POJK) No. 35 of 2025, and POJK No. 41 of 2025 (OJK, 2023a).
2. **Conceptual Approach:** This approach analyzes legal concepts such as licensing, jurisdiction, and cross-border investment in order to examine issues of normative ambiguity (Arifuddin et al., 2025).

4. Results and Discussion

Normative Inconsistencies between the Investment Law and the P2SK Law

The core legal issue identified in this study is the existence of normative inconsistencies between the investment law regime and the financial sector law regime. Law Number 25 of 2007 on Investment (Investment Law) adopts the principles of openness and equal treatment (national treatment), under which foreign investors are granted broad discretion to invest in Indonesia as long as the relevant business sector is not closed. Under this regime, Foreign Venture Capital Companies (FVCCs) have often operated as either passive or active shareholders without being classified as financial services institutions subject to supervision by the Financial Services Authority (Otoritas Jasa Keuangan/OJK), requiring only a principal investment license from the Investment Coordinating Board (BKPM), now the Ministry of Investment.

However, the P2SK Law fundamentally shifts this paradigm from an “investment” approach to a “financial services” approach. Article 106 of the P2SK Law defines the scope of financing service business activities broadly, explicitly encompassing equity participation. Consequently, Article 113 paragraph (1) mandates that “any person” engaging in such activities must obtain a business license from the OJK (Mukhlas, 2025). The phrase “any person” includes both individuals and corporate entities, whether domestic or foreign.

Normative ambiguity arises in the implementation of Article 113 with respect to FVCCs operating under offshore structures. From the perspective of private international law, a foreign entity is subject to the law of the jurisdiction in which it is incorporated (place of incorporation). However, when conducting business activities in another country, it is also subject to the laws of the host state. The problem lies in the fact that the P2SK Law has not explicitly regulated licensing mechanisms for entities that are not incorporated under Indonesian law. This raises the question of whether offshore FVCCs are required to establish a foreign investment limited liability company (Perseroan Terbatas Penanaman Modal Asing/PT PMA) in Indonesia.

Referring to recent regulations, such as Financial Services Authority Regulation (POJK) Number 35 of 2025 on the Development and Strengthening of Venture Capital Companies, there are strong indications that the regulator is encouraging the localization of venture capital entities. Nevertheless, the transitional period mandated under Article 319 of the P2SK Law until January 2026 has created a temporary legal vacuum. Foreign investors are thus placed in a state of legal uncertainty: if they continue operating under their existing structures, they face the risk of criminal sanctions under Article 298—imposing fines of up to IDR 5 billion—

once the transitional period expires. Conversely, restructuring into a PT PMA entails substantial compliance costs and a minimum paid-up capital requirement of IDR 50 billion, which may be burdensome for small-scale FVCCs or micro-venture capital firms.

Implications of the OJK Licensing Requirement as an Instrument of Legal Protection

Notwithstanding the existing administrative uncertainty, the implementation of the OJK licensing requirement carries significant positive implications for the structure of legal protection in Indonesia. This analysis may be examined from two perspectives: protection for Business Partner Companies (BPCs) and startups, and the stability of the financial system.

a. Preventive Legal Protection for Business Partner Companies and Startups

Prior to the enactment of the P2SK Law, the legal relationship between Foreign Venture Capital Companies (FVCCs) and local startups was purely private-to-private in nature, grounded in the principle of freedom of contract. This condition frequently placed startups in a weaker bargaining position (unequal bargaining power). Investment agreements often contained highly onerous clauses, such as forced liquidation provisions or unilateral takeovers of intellectual property assets.

By requiring FVCCs to obtain an OJK license, the state assumes an active role in providing preventive legal protection. Licensed FVCCs are obliged to comply with standards of Good Corporate Governance and prudential principles. The OJK is vested with the authority to regulate standardized contract provisions and to supervise market conduct. These measures minimize the risk of startups becoming trapped in predatory financing schemes. Clear legal status of FVCCs also enhances certainty regarding incoming funds, thereby preventing money laundering practices that could otherwise expose startups to legal liabilities (Andiono, 2025).

Article 298 of the P2SK Law, which stipulates criminal sanctions, functions as an instrument of repressive legal protection. Such sanctions serve as an *ultimum remedium* to take enforcement action against illegal entities that undermine the financial ecosystem. In this context, the legal implication is a shift in the allocation of responsibility. FVCCs are no longer accountable solely to their shareholders, but also bear public accountability to Indonesian financial regulators.

Regulatory Solutions: The Role of Representative Offices (POJK No. 41 of 2025)

In response to the normative ambiguity surrounding offshore Foreign Venture Capital Companies (FVCCs), the issuance of implementing regulations such as Financial Services Authority Regulation (POJK) Number 41 of 2025 on Representative Offices of Financing Institutions and Foreign Venture Capital Companies constitutes a middle-ground regulatory solution. This regulation allows foreign FVCCs to establish a “Representative Office” in Indonesia as an initial step toward regulatory compliance prior to forming a fully incorporated legal entity or as a liaison mechanism.

The establishment of a representative office provides a legal footing for FVCCs operating in Indonesia. Although representative offices are generally prohibited from engaging in revenue-generating business activities, their presence enables FVCCs to be administratively registered with the OJK, conduct market research, and legally supervise their Business Partner Companies. This arrangement reduces the risk of being classified as engaging in “illegal investment” activities. Nevertheless, this study finds that such a solution remains partial in nature, as it does not fully accommodate the dynamic business model of FVCCs, which requires rapid execution of funding decisions. Further regulatory harmonization is therefore necessary, either by expanding the functional scope of representative offices or by simplifying cross-border licensing mechanisms.

5. Conclusion

Based on the analysis conducted, it can be concluded that the implementation of the OJK licensing requirement under the P2SK Law has resulted in a fundamental paradigm shift from a regime of “investment freedom” to one of “prudential supervision,” thereby creating legal uncertainty for offshore Foreign Venture Capital Companies (FVCCs) during the regulatory transition period (2023–2026) due to normative inconsistencies with the Investment Law, particularly concerning the scope of licensing jurisdiction. From the perspective of legal protection, this licensing requirement serves as a vital instrument of preventive legal protection by legitimizing investment contracts, safeguarding Business

Partner Companies from unfair business practices, and maintaining the integrity of the national financial system; however, the effectiveness of this protective framework remains constrained by the potential application of repressive criminal sanctions, which may lead to the criminalization of investors if administrative barriers are not promptly and adequately addressed.

Based on the findings of this study, several policy recommendations are proposed to address the identified legal and regulatory challenges. First, the Financial Services Authority (Otoritas Jasa Keuangan/OJK) is advised to promptly issue a circular letter or technical guidelines that provide a clear classification of the criteria for “continuous business activities” applicable to foreign Foreign Venture Capital Companies (FVCCs). Consideration should also be given to the introduction of a simplified registration mechanism, rather than full licensing, for FVCCs engaging solely in passive equity participation, in order to preserve Indonesia’s investment competitiveness. Second, the Government is encouraged to undertake regulatory harmonization between the Ministry of Investment/BKPM and the OJK by ensuring that the Single Submission System is fully integrated, so that foreign investment approvals are automatically aligned with financial services sector requirements, thereby preventing bureaucratic overlap. Finally, business actors, particularly FVCCs, are advised to utilize the remaining transitional period until January 2026 to undertake institutional restructuring, either by establishing a foreign investment limited liability company (PT PMA) in Indonesia or by opening a Representative Office in accordance with POJK No. 41 of 2025, as a measure to mitigate future criminal law risks.

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