

Legal Compliance in Legal Due Diligence Practices

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Legal Compliance in Legal Due Diligence Practices¹

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Abstract

In conducting legal due diligence practices, legal consultants have obligations and duty of prudence based on the principles of disclosure and materiality. Compliance with all provisions in the capital market is a fundamental necessity so that legal consultants do not give misrepresentation or omission of material facts. Legal due diligence conducted by the legal consultants is a review of the Duty to Obey the Law or the Legal Compliance of a company. The Duty to Obey the Law tends to be based on impartial Natural Moral Duties. The impartial legal values such as justice and happiness are the core values of the individual's obligation to obey the law. This is in line with the independent and objective attitude of legal consultants in carrying out their profession.

Keywords: Legal Due Diligence, Legal Compliance, Natural Moral Duties.

1. Introduction

Capital Markets refers to the activities that involved public offering and Securities trading, Public Companies relating to the Securities issued, as well as institutions and professionals related to the securities.³ *Black's Law Dictionary* defined capital market as "Financial markets in which long term securities are bought and sold".⁴ From these definitions, it can be concluded that the capital market is a market or a meeting place for sellers and buyers who conduct transactions in long-term securities like stocks and bonds.⁵

Historically, the development of capital markets in Indonesia is different from that in liberal capitalist countries, where the capital markets in liberal capitalist countries develop evolutionarily, while the development of capital markets in Indonesia only occurs due to the national development policies of the government. This can be seen from the purpose of the capital market establishment in Indonesia that covering 3 basic aspects, which are:

1. Accelerate the process of expanding community participation in the ownership of company stocks;
2. Direct to the aspect of community income distribution through equal distribution of company stock ownership;
3. Excite public participation in mobilizing and raising funds to be used productively.⁶

From the perspective of economic development, the capital market aims to support the national development in improving national economic growth, equity, and stability for the social welfare. To achieve this goal, the capital market has a strategic role as one of the financial sources of the business world, including small and medium enterprises, for their business development, and on the other hand, the capital market is also a vehicle for investment of the community, including small and medium investors.⁷ Generally, the objectives of capital market development can be seen from the economic and socio-political aspects below:

1. Economic aspect, as a vehicle for raising funds, the capital market has an important role as a financial source for the small and medium enterprises in building the business world and as a vehicle for investment of the investors. To support this role, the capital market needs to be supported by these elements:
 - a. Adequate infrastructure;
 - b. A solid legal framework;
 - c. The professionalism of capital market players
2. The socio-political aspect, the capital market has a function as a means of democratizing the ownership of the company and expanding community participation in stocks as an effort to distribute income.⁸

In the practice of capital market activities, a company must involve supporting institutions and supporting professionals where one of the supporting professionals is a Legal Consultant. This is regulated in Article 64 of Law Number 8 of 1995 concerning Capital Market which states that the Supporting Professionals of Capital Market consist of:

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³ Article 1 number 13 of Act Number 8 of 1995 concerning the Capital Market

⁴ *Black Law Dictionary* 8th ed., Thomson/West, New York, 2008.

⁵ ELIPS, *ELIPS Economic Law Dictionary (Kamus Hukum Ekonomi ELIPS)*, First Edition, ELIPS, Jakarta, 2000, p.20.

⁶ Jasso Winarto, *Indonesian Capital Market, Retrospect on Five Years of JSX Privatization (Pasar Modal Indonesia, Retropeksi Lima Tahun Swastanisasi BEJ)*, Pustaka Sinar Harapan, Jakarta, 1997, p.32.

⁷ General explanation of Law Number 8 of 1995 concerning Capital Markets.

⁸ Irsan Nasarudin, Indra Surya, *Indonesian Capital Market Law Aspects (Aspek Hukum Pasar Modal Indonesia)*, Kencana Prenada Media Group, Jakarta, 2011, p. 32-37.

- a. *Accounting;*
- b. *Legal Consultant;*
- c. *Appraisal;*
- d. *Public Notary; and*
- e. *Other professions determined by Government Regulation*

From the description in the article 64 of the Capital Market Law, it can be said that the Advocates who function as a Legal Consultants can conduct activities outside the court as defined in Article 1 paragraph 1 of Law Number 18 of 2003 concerning Advocate (Advocate Law), which describes that:

An advocate is a person who has a profession to provide legal services, both inside and outside the court that meets the requirements under the provisions of this Law.

In accordance with its function, Advocates as legal consultants can provide legal services in the form of consultation outside the court as described in Article 1 number 2 of the Advocate Law: "...services provided by the Advocates are in the form of providing legal consultation, legal assistance, exercising power, representing, accompanying, defending and carrying out other legal actions for the client's legal interests".

Furthermore, the regulation regarding legal consultant activities in the capital market was regulated through the Financial Services Authority Regulation, Number 66/POJK.04/2017: "...Legal Consultants are legal experts who conduct activities in the capital market by providing legal opinions to other parties and are registered in the Financial Services Authority". Legal Consultants who conduct activities in the capital market must fulfill the requirements as stipulated in the legislation governing the Legal Consultants that apply in the Financial Services Authority.

Therefore, the advocate function as a legal consultant has an important role in the capital market activities when the company will conduct a public offering or corporate action carried out by an issuer or public company. The roles of the legal consultant are in the form of legal audits and legal opinions or what is commonly called as legal due diligence.

In general, the due diligence process was defined by Alexandra Reed as a review of corporate compliance in the financial statements, operations and applicable legal rules as stated "...Due Diligence Process, including a review of financial statement, operational and management, and legal compliance....."¹ Next, in legal due diligence, Alexandra used the legal compliance review terminology as stated that "legal compliance review, responsible due diligence process that uncovers current and potential causes of financial, operational and legal problems. This process itself can eliminate about of potential suits against directors and officers".²

The description above illustrates that legal due diligence in the operational dimension is the legal compliance review activity. Therefore, from the definition and limitation that legal due diligence is a legal activity of compliance review, in this article will be discussed, first, about the existence, functions, and responsibilities of legal consultants who carry out legal practice activities in the capital market. Second, about compliance theory which is one of the theories in the implementation of legal due diligence in a theoretical perspective.

2. Legal Due Diligence Practices

Legal Due Diligence is a regulation adopted by countries that already have a fairly established capital market tradition. As is well known, the regulation of the capital market in Indonesia as stipulated in Law Number 8 of 1995 concerning the Indonesian Capital Market is the result of transplanting capital market structures, institutions, regulations, and instruments in the United States. Through the transplantations and the consequences of globalization, the application of capital market structures, institutions, regulations, and instruments is relatively the same. Besides that, as a separate system, the processes, methods, and culture of investing in the Indonesian capital market are not much different from the processes, methods, and organizational culture that exist in other capital markets in the world, especially in the United States.³

One form of legal services provided by Legal Consultants in the capital market transactions is to conduct an examination and submit a legal opinion regarding the fulfillment of the requirements of an offer, transaction, or investment activity conducted in the financial services sector. These examination and submission of legal opinions are commonly referred to as legal due diligence, but from various laws and regulations, the terminology of legal due diligence in Indonesian language has not been found yet. The legal due diligence terminology in Indonesia is found in the Professional Standards of the Capital Market Legal Consultant Association known as legal due diligence, which has a definition:

"A through legal examination by the legal consultant of a company or transaction object in accordance with the purpose of the transaction, to obtain information or material fact that can

¹ Alexandra Reed Lajoux, 2010, *ibid*

² Alexandra Reed Lajoux, 2010, p.95

³ Gunawan, Widjaja, *Trust Transplants in the Indonesian Civil Code, Commercial Code, and Capital Market Law (Transplantasi Trust dalam KUHPerdara, KUHD, dan Undang-undang Pasar Modal Indonesia)*, Rajawali Pres, Jakarta, p.36.

describe the condition of a company or transaction object”¹.

Legal Due Diligence is carried out by an advocate that functions as a legal consultant and is a capital market supporting professional, which is a professional that legally becomes part of a process of activities that exist in the capital market. These activities are activities that require services from legal consultants in addition to other capital market supporting professionals such as Accountants, Notaries, and Appraisers. Based on its function, as an advocate, a legal consultant, can provide legal services in the form of consultation, assistance, examination, and provide legal opinions based on the law, professional standards and best practices.² In the capital market activities, a legal counselor provides legal services in the form of advice, assistance or legal opinions that are used as the basis for conducting business activities, certain actions in the financial services sector that originate from fund management, product investment, corporate's action and trade in financial services products. In carrying out their profession in the capital market, legal consultants are subject to professional standards and professional codes of ethics as stipulated in article 66 of the Capital Market Law that:

“Every Capital Market Supporting Professional must comply with the code of ethics and professional standards set by their respective professional associations insofar as they do not conflict with this Law and/or the implementing regulations”.

In addition to being subject to the code of ethics and professional standards, the legal consultants in carrying out their profession in the capital market is required to act independently as confirmed in Article 67 of Law Number 8 of 1995 concerning Capital Market which stated that *“In conducting business activities in the Capital Market sector, Capital Market Supporting Professionals must provide an independent opinion or assessment.”*

In order to be able to provide an independent opinion or assessment, the legal services provided can be a measure that can be accounted for and trusted for the benefit of the client and other public interests. The duties of legal consultants in carrying out activities in the financial services sector include:

1. *providing legal advice and consultation needed by each party because the laws or regulations stipulated by the FSA are required to comply with the applicable legal provisions;*
2. *providing legal assistance to each party whose actions, transactions or investments are allegedly violating the law so that they become the object of the process and examination conducted by the FSA;*
3. *conducting an examination and submit a legal opinion regarding the fulfillment of the requirements of an offer, transaction or investment activity carried out in the financial services sector;*
4. *ensuring that all actions are in accordance with the Code of Ethics established by Capital Market Legal Consultants Association; and*
5. *ensuring and mastering the Professional Standards and their amendments in the context of running and processing legal services provided as evidence that the legal consultant has acted professionally.³*

Furthermore, the responsibilities of legal consultants in carrying out activities in the financial services sector include:

- a. *Responsible in constantly improving the quality and competence so that the quality of the provision of legal services provided to the clients can be guaranteed and measured as a form of professional responsibility;*
- b. *Responsible in always applying the principle of independence and acting in accordance with the position as responsible law enforcement; and*
- c. *Responsible in being part of the financial services industry supporting professionals that can provide protection to consumers and society.⁴*

The practice of legal due diligence develops to meet the need for the development of the principle of obligation to deliver information. The principle of managing corporate information today, especially in public companies or issuers⁵ in the capital market, has the obligation to implement the disclosure principle and the materiality principle. *Disclosure principle is the general guideline that requires an Issuers, a Public Company, and other person subject to this Law, to disclose to public within a certain time, material information with respect to their business or Securities, when such Information may influence decisions of investor in such Securities and/or the price of the Securities.⁵ Meanwhile material information is any important and relevant fact concerning events, incident or data that may effect the price of a Security on an Exchange or that may influence the decisions of investor, prospective investors or others that have an interest in such information⁶.*

Materiality in legal due diligence must be seen from its influence on the operations or business continuity of

¹ Capital Market Legal Consultants Association, Professional Standards for Capital Market Legal Consultants Association : 2012

² Indra Safitri, *Capital Market Legal Consultant Profession in the Era of the Financial Services Authority (FSA)*, Journal of Law & Capital Market, Capital Market Legal Consultants Association, Volume V/6th Edition, July-November 2013, Jakarta, p. 9

³ Indra Safitri, *op.cit*, p. 12

⁴ *ibid*

⁵ Article 1 (25) A Law Of The Republic of Indonesia, Number 8 Year 1995, Concerning The Capital Market

⁶ Article 1 (7) A Law Of The Republic of Indonesia, Number 8 Year 1995, Concerning The Capital Market

the company. Both of these principles must underlie the application of the entire standard developed in the management of information for the public interest. There are at least three functions of the disclosure principle, (1) to maintain public trust in the market, (2) to create efficient markets and (3) to prevent fraud.¹

In the capital market in Indonesia, the accurate full disclosure of material facts is expected to realize the objectives of the disclosure principle and anticipate misleading statements for investors.

Referring to the practice of legal due diligence law which is a professional activity of a Legal Consultant, in carrying out a thorough and in-depth examination of a company or object of a transaction according to the purpose of the transaction and to obtain information and material facts about a company or object of a transaction. Material information and facts are expected to provide a legal representation of the condition of a company or object of a transaction. Legal consultants are obligitory to submit material information and facts independently meaning that they don't give misrepresentation or omission.

Regulations relating to the responsibility of misrepresentation and omission are determined in Article 80 of Act Number 8 of 1995 concerning Capital Markets which stated that:

When the Registration Statement of a Public Offering contains false Material Information or is misleading because of the omission of Material Information required by this Law and its implementing regulations, then the following Persons: each Person that signs the Registration Statement; the Issuer's directors and commissioners at the time the Registration Statement became effective; the Managing Underwriter; and Capital Market Supporting Professionals and other Persons that consented to provide an opinion or information included in the Registration Statement, shall be jointly and severally liable for losses that are a consequence of such actions,

Furthermore, the Article 81 stated that:

- (1) A Person offering or selling Securities by Prospectus or by other means, either written or verbal, with Material Information that he knows or should know to be false or to have been omitted, shall be liable for losses resulting from his actions.*
- (2) A buyer of Securities that is aware that information is false or misleading prior to completing the purchase cannot claim reimbursement for losses arising from the transaction.*

Both articles governing the responsibility of Legal Consultants adopted provisions in Section 11 of the United States Securities Act of 1933. This provision imposes compensation obligations on certain parties who fail to do due diligence, which results in giving misrepresentation or omission of the material facts in the registration statement. The responsibility due to giving misrepresentation or omission of the material facts in the registration statement after the registration statement is declared effective by the SEC is borne by the parties who sign the registration statement which includes, directors, commissioners, underwriters and supporting professionals including Legal Consultants.

Based on the description relating to the implementation of the disclosure principle and materiality, as well as regulations as the implementation of the disclosure principle and responsibility for the registration statement, it shows that legal consultants in carrying out their profession have obligations and duty of prudence in carrying out legal due diligence. Compliance with all provisions in the capital market practice is highly needed. Besides, commitment is required with the issuer or public company, so that the legal consultants do not give misrepresentation or omission of material facts..

3. Legal Compliance in Legal Due Diligence Practices

In accordance with their role, legal consultants are required to be independent, objective, and professional so they can meet the needs of service users and carry public trust, especially in the capital market sector and in other financial services sectors.² In line with the attitude standards set by the FSA, the Capital Market Legal Consultants Association in Indonesia has also set the standards required for Legal Consultants in carrying out their activities including legal due diligence. The general standards required are Expertise, Independence and Objectivity, and also Professional Attitude.³

Expertise, a Legal Consultant must have the expertise to carry out activities in the capital market area. No matter how skilled a person is in other legal fields, a legal consultant needs expertise capability to conduct activities in the field of capital markets. In carrying out activities in the field of capital markets, Legal Consultants must have sufficient control over various fields of law. Only understanding the regulations in the capital market sector is still not sufficient in carrying out activities in the capital market sector. The achievement of the aforementioned expertise is obtained from formal and professional education so that a legal consultant is considered as eligible to carry out activities in the capital market sector. In addition, to maintain the quality of

¹ Bismar Nasution, *The Disclosure in the Capital Market (Keterbukaan dalam Pasar Modal)*, University of Indonesia, Faculty of Law, Postgraduate Program, 2001, p. 9-11

² The explanation of the Financial Services Authority Regulation, Number 66/POJK.04/2017, concerning Legal Consultants who Conduct Capital Market Activities, which was stipulated on December 21, 2017, and promulgated on December 22, 2017.

³ Capital Market Legal Consultants Association, Professional Standards for Capital Market Legal Consultants Association: 2012, p. 14-15

the profession, a Legal Consultant must undergo sufficient continuing legal education and follow developments related to the Legal Consultant profession.

Independence and Objectivity it means that "Legal Consultants must be independent and always act objectively in carrying out their profession." Legal Consultants must be free from the influence of anyone and anything. They do not own stocks or hold positions in the Company to be examined or affiliated, and is not an affiliated party of the director, commissioner or controlling shareholder of the Company and the company to be examined. If in the past the Legal Consultant also acted as a legal consultant to the company to be examined or is the affiliate, these relationships must be disclosed by the Legal Consultant in the report and legal opinion issued. Independent and objective attitudes must be prioritized because the Legal Consultants carry out their work for the public interest. Public trust in the independence and objectivity of Legal Consultants is very important for the role of the Legal Consultant profession. Legal Consultants are not only obliged to maintain their independence and objectivity, but they must also avoid circumstances that can cause the public to doubt their independence and objectivity.

Professional attitude, it means that "Legal Consultants must be professional in carrying out their profession." Professional attitude requires the "level of skills that should be owned" by Legal Consultants in carrying out their profession. The level of skills that should be owned by Legal Consultants includes the ability to act carefully and attentively. A careful and attentive professional attitude is an attitude that always questions, evaluates, and critically analyzes various facts, evidence, and information that is known, accepted or obtained by Legal Consultants. In carrying out their profession, Legal Consultants must demonstrate their integrity, which is by honestly and transparently disclosing the truth of information or material facts obtained, known, or duly known so that the information presented is not misleading.

Furthermore, from the definition conveyed by Alexandra Reed Lajoux who stated that Legal Consultant's activities in carrying out legal due diligence were considered as a *legal compliance review*. The definition of Compliance in the Black's Law Dictionary itself is the same as Obedience "*Compliance with a command, prohibition, or known law and rule of duty prescribed; the performance of what is required or enjoined by authority, or the abstaining from what is prohibited, in compliance with the command or prohibition.*"

From this definition, it is very clear that obedience is compliance with orders and prohibitions. This means that everyone ideally must obey every command or law and avoid any prohibition in the law. Some experts used the term *obey the law*,¹ in the context of law enforcement, the term *duty to obey the law* is often used, it means the obligation to obey the law. Therefore in this article what is meant by compliance is equivalent to the obedience and obey the law.

Conservative view of Legal Compliance in the basic perspective is divided into two, *instrumental* and *normative*.

The instrumental perspective on the citizen underlies what is known as the deterrence literature : people are viewed as shaping their behavior to respond to changes in the tangible, immediate incentives and penalties associated with following the law-to judgment about the personal gains and loss resulting from different kind of behavior. While **Normative Perspective**, it is concerned with the influence of what people regard as just and moral as opposed to what is in their self-interest. It also examines the connections between normative commitment to legal authorities and law-abiding behavior.²

Next, this normative commitment can involve personal morality or legitimacy. Normative commitment through personal morality means obeying a law because one feels the law is just; normative commitment through legitimacy means obeying a law because one feels that the authority enforcing the law has the right to dictate behavior.³

This view is widely used in the fields of psychology and social sciences which are oriented to the internal aspects of individuals and individual behavior. But in the present, this view is less relevant to be used as a theory in the study of law with considerations: first, the theory puts individual compliance in the behavioral dimension to the state; and second, it is less able to accommodate the development of modern business that is increasingly complex, especially in the field of capital markets.

Therefore this article refers to a contemporary view relating to the obligation to obey the law, a contemporary philosopher A. John Simmons in his essay, *Is There a Duty to Obey the Law?*, proposed a view on the question "*Is it obligatory to obey the law?*" Each answer was based on these three theories:

1. **Associative Theory**, account ground our duty to obey in our nonvoluntary occupation of certain duty-laden social roles;⁴
2. **Transactional Theory**, account ground our duty (or obligation) to obey in our morally significant

¹ M.B.E. Smith, *The Duty to Obey the Law, A Companion to Philosophy of Law And Legal Theory*, edited by Dennis Patterson, Blackwell Publishing, Oxford, UK, 2010.

² Tom R Tyler, *Why People Obey the Law*, Yale University Press, Michigan, 1990, p.3

³ Tom R Tyler, *Op.cit*, p.4

⁴ Christopher Heath Wellman & A John Simmons, *Is There a Duty to Obey The Law?* Cambridge University Press, New York, 2005, p.102

*interactions with our states or fellow citizen;*¹

3. **Natural Duties Theory**, of the duty to obey the law are those that ground our duty to obey not in who we are (as in Associative accounts) or in what we've done or enjoyed (as in Transactional accounts), but rather either (a) in the moral importance of advancing some impartial moral good or (b) in some moral duty thought to be owed by all persons to all other as moral equal, regardless of roles, relationship, or transaction.²

Andre Ata Ujan outlined Simmons's basis for thinking about the legitimacy of the state which depends on the moral relations between the citizens. A person has a moral obligation to obey the state law or not, it really depends on whether someone as a citizen has a certain moral obligation to the other citizens or not. Thus the moral obligation towards fellow citizens is the basis of the legitimacy of political authority and at the same time a moral basis for compliance with the state law. Simmons emphasized the principle of justice as a moral value that enables the establishment of harmonious relations among citizens. Moral relations between the individuals, or the importance of the principle of justice in relations between citizens is a legitimacy to give certain powers to the state and at the same time to gain compliance with the state. Compliance with the state as a moral demand is not a consequence of moral relations between the citizens and the states, but between the citizens themselves. Moral relations that bring a person's moral obligations towards fellow citizens require compliance with the law. A person's obligation to act fairly to the fellow citizens requires the compliance with the state law.³

Simmons' argument asserts that moral obligation to the state is actually derived from a more basic moral obligation, which is a natural moral obligation to uphold or to promote justice. The citizens' juridical duties are to encourage respect for the value of justice. Simmons' justice term follows Kant's teaching that the most fundamental meaning of justice is respecting the rights of others. The respect for the right of others is the basis of legitimacy to obey the law.⁴

From the previous description, it can be said that *Natural Duties Theory*, proposed by Simmons, is a derivative of Kant's teaching which says that an action is good if it is done based on a categorical imperative that requires someone to do something as it is, it does not depend on any conditions. Kant said that the categorical imperative contained in every moral act can be formulated briefly in the same way as Du Sollst (You shalt).⁵ The essence of the categorical imperative is to act morally. *The categorical imperative is divided into two aspects, first, it is a command, and second, the command is categorical.*⁶

Frans Magnis Suseno interpreted the categorical imperative: "to act solely according to the principle (maxim) that you can decide to be a general law".⁷ What Kant means is: A consideration that underlies decisions and an attitude is only morally valid if it is universalized, so it can be prosecuted by anyone, anywhere, and under the same conditions. What is meant by Maxim is the subjective command in the act, the basic attitude of people's hearts in taking concrete attitudes and actions. Maxim is not all kinds of considerations but maxim is basic attitudes that give a common direction to a number of concrete purposes and actions.⁸

In the same manner, Meuwissen expressed his opinion that the legal content must fulfill (according to) the highest ethical rules, the categorical imperative. That means that we are ethically bound (obliged) to fulfill legal principles solely based on respect for ethical obligations. Moreover, the contents of the legal rules themselves must meet the "universalizable" requirements.⁹

From the discussion related to Duty to Obey the Law, in carrying out legal due diligence a legal consultant is based on the Natural Duties Theory in the form of impartial general moral norms. The impartial legal values such as justice and happiness are the core values of the individual's obligation to obey the law. These impartial values are the basis for the demand for legal compliance. This is in line with the independent and objective attitude of a legal consultant in carrying out his profession. In conducting the legal compliance review. An ideal legal consultant has the obligation to use the standard **reasonable investigation** or the standard of "prudent man in the management of his own property".¹⁰

¹ ibid

² Op.cit., p. 103

³ Andre Ata Ujan, *Philosophy of Law Building The Law, Defending Justice (Filsafat Hukum Membangun Hukum, Membela Keadilan)*, Kanisius, Yogyakarta, 2009, p.221.

⁴ Andre Ata Ujan, Op.cit., p.222

⁵ Bertens, ibid

⁶ Franz Magnis-Suseno, *13 People of Ethics: From the Age of Greece Until the 19th Century (13 Tokoh Etika: Sejak Jaman Yunani Sampai Abad ke-19)*, Kanisius, Yogyakarta, 1997, p. 147

⁷ Franz Magnis-Suseno, *Morality and Autonomy: Immanuel Kant (Moralitas Dan Otonomi : Immanuel Kant)*, second series paper, General Lecture of Ethical Philosophy from Classical Greece to Java, Theater of Salihara, 2013, p. 3.

⁸ ibid

⁹ Meuwissen, D.H.M., *Vijf Stellingen Over Rechtsfilosofie (Five Principles on the Philosophy of Law)*, translated by Bernard Arief Sidharta, *Meuwissen About Legal Constitution, Jurisprudence, Legal Theory, and Philosophy of Law (Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum)*, 4th print, PT. Refika Aditama, Bandung, 2013, p. 16.

¹⁰ Stigler, *Public Regulation of the Securities Markets*, 19 BUS. LAW.721.725-727, 1964, as quoted by Asril Sitompul, *Due Diligence and Responsibility of Supporting Institutions in the Public Offering Process (Due Diligence dan Tanggung Jawab Lembaga-Lembaga Penunjang*

4. Conclusion

Legal Consultants in carrying out their activities including in legal due diligence must refer to the standards requirements of *Expertise, Independence and Objectivity*, and also *Professional Attitude*

In carrying out their profession, Legal consultants have obligations and duty of prudence to conduct legal due diligence practice. Compliance with all provisions in the capital market is a fundamental necessity. In addition, the commitment of the Issuers or public companies, Supporting Institutions, and other Supporting Professionals is needed so as not to give misrepresentation or omission.

The concept of the Compliance or Duty to Obey the Law, in carrying out legal due diligence a legal consultant is based on the Natural Duties Theory in the form of impartial general moral norms. The impartial legal values such as justice and happiness are the core values of the individual's obligation to obey the law. These impartial values are the basis for the demand for legal compliance. This is in line with the independent and objective attitude of a legal consultant in carrying out his profession. In conducting the legal compliance review. An ideal legal consultant has the obligation to use the standard **reasonable investigation** or the standard of "*prudent man in the management of his own property*".

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