Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.64, 2017

Legal Due Diligence and Virtual Law Office Services [1]

Budi Endarto[2]

Abstract
The study of Legal Due Diligence and Virtual Law Office Services illustrates that legal due diligence in the operational dimension is a legal compliance review activity. Deontology sees justice playing this role in the commonly used terminology of Kantian's is a categorical imperative based on the principle of universalizability that greatly affects the development of the need for legal due diligence. Legal due diligence as a legal compliance review, is a means to examine legal compliance and morally accountable standards for compliance with laws and regulations relating to corporate governance activities. Utilitarians see benevolence as the central moral virtue, and legal compliance review is implemented to minimize the potential legal problems that may affect the director and/or the corporation itself. Thus, legal due diligence is as the application of the rule utilitarianism theory, which means that a business activity, to be considered as good and based on juridical morals, must be seen from the perspective of the corporate's compliance to run its business activities for the benefit of the public. Furthermore, the factors that encourage the development of legal due diligence is the implementation of disclosure principle and materiality principle. The implementation of disclosure principle and materiality principle itself is driven by the change of doctrine of caveat emptor into caveat venditor. The change of doctrine aims to minimize the practice of fraud which became the main cause of the U.S. stock market crash (great depression) in 1929. In addition, the shift of corporate governance model from contractarian approach or shareholder approach into the company as corporate citizenship or team production is also a factor that encourages the development of legal due diligence.
Keywords: Virtual Law Office, Legal Services, Legal Due Diligence

1. Introduction

Granat and Kimbro has warned about a new paradigm for the legal profession and legal education, *"……..the employment needs and changing legal market law school"*.....[3]. The shift in the legal profession and legal education in recent decades has been driven by the development of systemic information and communication technology. To prepare law school graduates who are practice-ready, in today's digital age, students are not only equipped with an understanding of the principles and substance of law but also must be equipped with knowledge of practical management. In this regard, it is explained at length by the grenade and Kimbro as follows: *During the last decade, the rise of the internet has caused systemic changes in the way lawyers practice law. It has altered the demand for legal services from lawyers, which in turn, has impacted the employment prospects for lawyers. When a large percentage of graduating law students are faced with the prospect of starting their own practice upon graduation, rather than working as a lawyers for someone else, the need for being "practice-ready" upon graduation is now an imperative. Being "practice-ready"means more than just learning the principles of substantive law, it also means having essential knowledge in law practice management in a digital age which will become the basis for a successfull law career as private practitioners.*[4]

Granat and Kimbro not only warn about the emergence of a new paradigm of the legal profession and legal education, but they also provide the solution in which as a professional school, faculty of law is required to adjust its education and training (curriculum) and be inclusive to other disciplines, especially to management and technology, as stated *….."training in law practice management and law practice technology is a critical solution that will further align the skill that law student must have upon graduation with the employment needs of a radically changing legal market".* [5]

The idea of the emergence of a new paradigm for the legal profession and legal education has also developed in Indonesia. As an effort to develop legal education in the era of globalization today, Peter Mahmud Marzuki and Muchammad Zaidun provide a fairly progressive view by proposing the concept of revitalization of legal education as it is said that …"*revitalizing the current system needs to equip faculty of law with modern teaching instrument as well as increase teaching staff quality".*[6] Marzuki and Zaidun's thinking background is

[1] This program was funded by Directorate General of Research And Civil Service (*Direktorat Riset dan Pengabdian Masyarakat*), Ministry of Research, Technology and Higher Education (*Kemeristek Dikti*) Through funding scheme of Science and Technology for Campus Creativity and Innovation *(Iptek Bagi Kreatifitas dan Inovasi Kampus (PPUPIK))*, 2017.
[2] Faculty of Law, *Wijaya Putra University*, Surabaya, Indonesia.
[3] Rihard S Granat And Stephanie Kimbro *The Teaching Of Law Practice Managemement And Technology in Law School : A New Paradigm*, Chicago-Kent Law Review, Volume 88, Issue 3 Justice, Lawyering and Legal Education in the Digital Age, Juni, 2013, p. 757
[4] Ibid, p. 782
[5] Ibid
[6] Peter Mahmud Marzuki and Muchammad Zaidun, *Revitalization of Legal Education, Direction of Higher Education Law, Role of Legal Education & Law Enforcement in Indonesia (Revitalization of Legal Education, Arah Pendidikan Tinggi Hukum, Peran Pendidikan Hukum & Penegakkan Hukum di Indonesia)*, Setara Press, Malang, 2015, p. 19.

that since faculty of law is a professional school, therefore it required a curriculum designed to prepare the professional competence of the students, as they explain "….*Since faculty of law is a professional school, curriculum may be designed as to prepare students with professional competency (expertise and skill) in addition to master theoretical matters. Theoretical courses should be made balance with courses dealing with practical affairs".*[1]

Furthermore, it is said that legal laboratories should be designed to solve practical legal problems. And so, educators collaborate as well as share experiences with legal practitioners, as written that:

> *There should be laboratory installed where students can handle practical legal matters. In this laboratory, practitioners are invited to teach their respective subjects. Teaching staffs who are mostly academicians may share experience and exchage ideas with practioners.*[2]

It is also should be applied to the teaching materials presented, in an effort to produce jurists, in addition to knowledge and skills, students are also given initial understanding of professional ethics. While teaching methods for knowledge and professional ethics can be held in large classes, for problem solving and experience sharing can be organized with FGDs, and laboratories are used as a means of skills transfer …"*the main objective of school of law is to produce jurist and as jurist, the are proficient in legal knowledge and skill and they are introduced ethics. A profesional school should have knowledge, skill, and ethics. Teaching method at school of law, therefore, include colossal class lecture for introducing knowledge and ethics, small group discussions for solving problems and sharing experiences, and laboratory utilization for transferring skill".*[3]

Departing from the background presented by Granat and Kimbro along with Marzuki and Zaidun, the initial hypothesis is that the era of globalization and the systemic development of information technology have an impact on the labor market in the field of law. With the shift in demand for labor markets in the field of law will automatically affect the orientation of the implementation of law school. Where the law school that is expected to create *legal praxis* should be inclusive to other disciplines, especially in the field of management and technology. In the field of management, students are taught through *Law Practice Management* courses with *Law Practice Technology* based learning model. As the implementation of these two fields, it is more ideal to create a law laboratory in the form of *Virtual Law Office*.[4]

By creating a legal laboratory in the form of Virtual Law Office, one of the most relevant curriculum materials to be presented in law school is *legal due diligence*. Legal due diligence is a practical legal skill in the legal profession. In the realm of private law, legal due diligence is commonly used in corporate actions. The implementation of legal due diligence initially developed in the area of capital markets, but along with its development, it has been widely used for other business transactions including but not limited to organizational restructuring and financial restructuring. In line with this, the relevant legal questions to be studied in this paper are the theoretical basis of legal due diligence and the factors that encourage the development of legal due diligence.

2. Theory Framework

The theoretical basis in writing this article is *Deontology* and *Utility*. Although in principle these two theories sometimes conflict with their implementation, where Kant sees justice plays this role, utilitarians see benevolence as the central moral virtue,[5], But in this writing, they will be used to complement each other for the studies and arguments that are built.

Deontology, this term is derived from the Greek word which means duty (deon). The pioneer of the theory of deontology is the great German philosopher, Immanuel Kant (1724-1804). Kant developed deontology started with the question of why an action is deemed as good? the action is deemed as good if done because it must be done, or in other words, done as a duty. [6] Furthermore, Kant said an action is good if done based on "*categorical imperative*" which obliges a person just like that, regardless of any conditions. Kant said that the categorical imperative contained in every moral act can be briefly formulated together with *Du Sollst* (You shalt).[7] The essence of the categorical imperative is to act morally. There are two aspects that need to be in the categorical imperative, first that it is a command, and secondly, that the command is categorical.[8] What is meant by Maxim is the subjective command in an action, the basic attitude of the heart in taking concrete attitudes and actions. Maxim is not all sorts of consideration but maxim is basic attitudes that provide common direction to a number

[1] Ibid
[2] Ibid
[3] Op cit, p. 13
[4] Budi Endarto,et al., *Re-orientation the Teaching of High Legal Education in Indonesia, Study in Law Faculty of Wijaya Putra University*, Journal of Law Policy and Globalization Vol.52, IISTE, 2016, p. 117.
[5] Russ Shafer-Landau, *Ethical Theory, An Anthology*, Second Edition, John Wiley& Sons, Inc. 2013, p. 482.
[6] Kees, Bertens, *Introduction to Business Ethics* (*Pengantar Etika Bisnis)*, Revision Edition, Kanisius, Yogyakarta, 2013, p. 67
[7] Bertens, 2013, ibid
[8] 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

of purposes and concrete action.[1]

Accordingly, Frans Magnis Suseno interprets the categorical imperative: "act solely in accordance with the principle (maxim) which you may wish to become common law".[2] What Kant means: An underlying consideration of decision and attitude making is morally legitimate only when universalized, so it can be prosecuted from anyone, anywhere, under the same conditions[3].

Similarly, Meuwissen conveys the opinion that the content of the law must fulfill (in accordance with) the highest ethical rules, namely *categorical imperative*. It means that we are ethically bound (obliged) to fulfill the rules of law solely based upon respect for ethical obligations. Moreover, the content of the rule of law itself must qualify as "*universalizable*".[4]

Comprehensively Russ Shafer-Landau in his book, *Ethical Theory, An Anthology* gives the view that …."*Kant offered different accounts of the content of the ultimate moral standard, what he called the Categorical Imperative (as opposed to the many more specific such imperatives that constituted the variety of moral rule).* The two versions of the *Categorical Imperative* that have attracted by far the most attention are *Principle of Universalizability*, and the *Principle of Humanity*.[5] The Prinsciple of *Universalizability to act only on the maxim*[6] *that one can will to be a universal law.*[7] The Prinsciple of *Universalizability is essentially a requirement not to make an exception of oneself, a demand that one live according to principle that one can coherently see other living by.*[8] *And The Principle of Humanity as the best expression of the ultimate moral standard. This principle counsels us to treat humanity as an end, and never as a mere means.*[9]

The *utilitarianism* originated from the tradition of moral thought in the United Kingdom and found its more mature form after the English philosopher *Jeremy Bentham* (1748 - 1832) published *Introduction to the Principle of Moral and Legislation* (1789). According to this theory an action is good if it brings benefits to society as a whole. In the framework of utilitarianism the criterion for determining the good or not of an action is known as the adage "*the greatest happiness of the greatest number"*.[10]

Although the doctrine which was later called "utilitarianism" was originally proposed by Hutcheson earlier in 1725, but it is more inherent to the Bentham. Bentham's superiority is not in his doctrine, but in his powerful application to practical problems.[11] Bentham not only views that goodness is happiness in general, but also that every individual always hunts what they believe is their own happiness. Therefore, the legislature's task is to generate harmony between public interest and self-interest.[12] And so, Bentham proposed various arguments in line with the view that public happiness is the highest good (*summum bonum*).[13]

Initially, the utilitarian thinking was only based on the actions that are judged whether they are beneficial or less beneficial. However, in its development, if it only relies on action as an assessment of benefit in the law, then there is a deficiency in its application. For that the utilitarians developed this theory into two, the first, *act utilitarianism* is a benefit based on the actions and those actions can provide benefits to the community. Second, *rule utilitarianism*, it means that the basic principle of utilitarianism should not be applied only to the actions done, but to the moral rules which are accepted together in society as guidelines for behavior.[14] The moral rules we receive together in society as guidelines for behavior include the written law (positive law) that is applicable to a country.

---

[1] Ibid
[2] 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.
[3] Ibid
[4] 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 Pengembanan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum), 4th prints*, PT. Refika Aditama, Bandung, 2013, p. 16.
[5] Russ Shafer-Landau, *Ethical Theory, An Anthology*, Second Edition, John Wiley& Sons. Inc, 2013, p. 481.
[6] **A maxim** *is a principle of action that that one gives oneself, stating what one is going to do, and why one is going to do it*. (ibid)
[7] Ibid
[8] Russ Shafer-Landau, 482, ***The Universalizability Principle*** *... "the standards or norms which serve as the basis for decision-making or action taking can only be accepted as morally accountable standards if it is believed as the common standards or norms that will be used by others when they are in a more or less similar situation"*. See Andree Ata Ujan, *Philosophy of Law Building The Law, Defending Justice* (*Filsafat Hukum Membangun Hukum, Membela Keadilan)*, Kanisius, Yogyakarta, 2009, p. 165.
[9] Ibid
[10] Bertens, 2013, p. 63-64
[11] Bertrand, Russel, *Sejarah Filsafat Barat, kaitannya dengan kondisi sosio-politik zaman kuno hingga sekarang*, translated by Sigit Jatmiko, Agung Prihantoro, Imam Muttaqien, Imam Baihaqi, dan Muhammad Shodiq, from the original title *"History of Western Philosophy and its Connection with Political and Social Circumstance from the Earliest Time to the Present Day*", Pustaka Pelajar, Yogyakarta, 2016, p. 1008.
[12] Ibid
[13] Op.cit, p. 1011
[14] Bertens, 2013, op.cit, p. 65-66

3. Legal Due Diligence

German Proverb as conveyed by *Ohne Fleiss dan Kein Preis,* "*Without diligence, no prize*"[1] gives an idea of the importance of diligence coupled with the value of a corporation. Black Law Dictionary defines due diligence as " *the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation*".[2]

The concept of diligence clearly goes back to the Roman law concept of diligentia. Roman law distinguished two main types of diligence: diligentia quam suis rebus atau the care that and ordinary person exercise in managing his or her own affairs, and diligentia exactissima or diligentia boni patrisfamilia, a more exacting type of care exercised by the head of a family.[3]

While the purpose of legal due diligence (legal compliance) is part of the due diligence as presented by Gordon: ".....Due Diligence process, including a review of financial statement, operational and management, and legal compliance.[4] Due diligence is the first step in planning a due diligence program is to define its objectives. There your investor group may have various and different priorities. Some of the more common objectives are :

1. *verification that the business is essentially what it seems to be (determining this, by means of interviews, document study and on – site inspection, is the fundamental objective of due due diligence.)*
2. *verification that the invesment complies with investors criteria.*[5]

In the operational dimension, the legal due diligence process is defined by Alexandra Reed as a review of corporate compliance to financial statements, operational and to applicable legal rules, as already stated, "…*Due Diligence Process, including a review of financial statement, operational and management, and legal compliance*….." .[6] While in the context of business transactions, legal due diligence purpose by a purchaser (*buyer*) or party entering a joint venture is to ensure that :

1. *the aset of the value that the vendor (seller) has given them;*
2. *the vendor has good title to those assets free from encumbrances, including intellectual property and in particula the key assets that are being acquired;*
3. *there are no risk, liabilities or commitments that reduce the value or use of the assets, for example another party having the right to use them ;*
4. *there are no other existing or potential liabilities that may adversely affect the object of the due diligence (the target or candidate)*[7]

In legal due diligence perspective, Alexandra uses the terminology of legal compliance review 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 againt directors and officers.*[8] While in Indonesia legal due diligence is known as *uji tuntas dari segi hukum* (due diligence in terms of law), which means:

> "*A thorough 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 facts that can describe the condition of a company or transaction object"*.[9]

The description above illustrates that legal due diligence in the operational dimension is the activity of *legal compliance review*. Deontology sees justice playing this role in the commonly used terminology of Kantian's is a *categorical imperative* based on the principle of *universalizability* greatly influences the development of the need for legal due diligence. Legal due diligence as a means of examining legal compliance and morally accountable standards for compliance with laws and regulations relating to corporate governance activities. *Utilitarians see benevolence as the central moral virtue,* and legal compliance review is implemented to minimize potential legal issues that may affect the director and/or the corporate itself. Thus *legal due diligence* is the application of the theory of *rule utilitarianism* that is a good business activity within juridical morals must be seen from the perspective of the company's compliance to run its business activities for the benefit of public.

---

[1] Quoted from Linda S Spedding, *Due Diligence Handbook, Corporate Governance, Risk Management and Business Planning*, Cima Publishing, Hungary, 2009,p. 6.
[2] Black Law Dictionary, 8th ed., Thomson/West, New York, 2008.
[3] Alexandra Reed Lajoux, *The Art Of M& A Due Diligence, Navigating Critical Steps and Uncovering Crucial Data*, Mc Graw Hill, New York, 2010, p. 6.
[4] Gordon, Bing, *Due Diligence, Techniques and Analysis, Critical Questions for Business Decisions*, Quorum Books, Wesport, Connecticut, London, 1996, p. 2.
[5] *Ibid*
[6] Alexandra Reed Lajoux, 2010, Op. cit
[7] Linda S Spedding, *Due Diligence Handbook, Corporate Governance, Risk Management and Business Planning*, Cima Publishing, Hungary, 2009, p. 6.
[8] Alexandra Reed Lajoux,2010, Op Cit, p. 9
[9] Professional Standards of Capital Market Legal Consultants Association, Decree of HKHPM Number 04/HKHPM/XII/2012, 30 Oktober 2012, p. 13.

4.Legal Due Diligence Principle

Legal due diligence itself evolved to meet the need for the development of the principle of the obligation to deliver information and the shift the corporate governance model. The current principles of corporate information management, especially on public companies or issuers in the capital market, have an obligation to apply the principle of *disclosure* or *duty to disclouse.* The Disclosure Principle *is the general guideline that requires an Issuer, a Public Company, and other Persons subject to this Law, to disclose to the public within a certain time, material information with respect to their business or Securities, when such Information may influence decisions of investors in such Securities and/or the price of the Securities*.[1] 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 information*.[2].

Disclosure Principle in legal due diligence is done to protect the public interest. In this context, legal consultants should disclose any abuses, negligences, and unconventional provisions in corporate documents, information or other materiality facts which may pose a risk to the company. Whereas *Materiality Principle* is information or facts of relevant materiality about events, occurrences, or facts that may affect the condition of the company. Materiality in legal due diligence must be seen from its effect on the operational or business continuity of the company. Both principles should underlie the application of the overall standards developed in the management of information for the benefit of the public. There are at least three functions of the principle of openness, (1) serves to maintain public confidence in the market, (2) creates efficient markets and (3) plays an important role in preventing fraud.[3]

In the capital market law in Indonesia,[4] accurate and full disclosure of material facts is expected to realize the objectives of the principle of openness and to anticipate the emergence of misleading statements for investors. At least there are three objectives in the establishment of the disclosure principle in the capital market. First, to maintain investor confidence, second, to create an efficient market, and third to provide protection against investors. [5] The juridical characteristic of disclosure obligation for a company is:

1. *The principle of height of degree of the information accuracy;*
2. *The principle of height of degree of the information completeness; dan*
3. *The principle of equilibrium between the negative effects to the issuer on the one hand, and on the other hand a positive effect to the public if the information is disclosed. [6]*

Disclosure principles and materialitas principle, which are applied in Indonesia are adopted from Securities Act of 1933 ("SA 1933")[7] and Securities Exchange Act of 1934 (SEC 1934)[8] Issued by the United States Congress. The background of the issuance of SA in 1933 began with the crash of the American stock market in October 1929, known as the *Great Depression*. The stock market crash in October 1929 was partly due to fraud practices, so that the President of the United States at the time, Franklin D. Roosevelt proposed a change of doctrine to the United States Congress. The fundamental doctrinal change was from the doctrine of *caveat emptor* into *caveat venditor*.[9] *Caveat emptor* is a doctrine that requires buyer to be careful (*let the buyer beware*), while *caveat venditor* has the opposite meaning, that is the seller who must be careful (*let the seller beware*). The purpose of this doctrinal change is to prevent the fraud (*anti fraud*) committed by the seller. Thus the seller bears the burden of obligation to disclose the products sold.

In addition to the disclosure principles, the perspective of corporate governance model also experienced a shift, where at the beginning of the establishment governance model was considered limited to the capital alliance influenced by *shareholder approach*, but at the time of the implementation of the activity, turned into a company as *corporate citizenship* or *team production*. *Corporate citizenship theory*, views that the governance of the company in addition to having financial goals in the form of profits,[10] should also be oriented to meet the social, economic, and environmental interests and establish a balance between the rights and obligations inherent in the legal and social status of enterprises in society.[11] While team production theory sees that company has

[1] Article 1 (25) A Law Of The Republic of Indonesia, Number 8 Year 1995, *Concerning The Capital Market*.
[2] Article 1(7) A Law Of The Republic of Indonesia, Number 8 Year 1995, *Concerning The Capital Market*.
[3] Bismar Nasution, *Transparency in Capital Market,* University of Indonesia, Faculty of Law, Postgraduate Program, 2001, p. 9-11
[4] A Law Of The Republic Of Indonesia, Number 8 Year 1995, *Concerning The Capital Market*, Proclaimed by Publication in the State Gazzette of The Republic of Indonesia, on November 10,1995.
[5] Bismar Nasution, 2001, Op.cit, p. 31-70
[6] Munir Fuadi, *Modern Capital Markets: Legal Review (Pasar Modal Modern: Tinjauan Hukum)*. PT. Citra Aditya Bakti, Bandung, 2001, p. 79
[7] United States of America, Securities Act of 1933, dated 27 May 1933 as amended through P.L. 112-106, approved April5, 2012.
[8] United States of America, Securities Exchange Act of 1934, dated 6 June 1933 as amended through P.L. 112-106, approved April5, 2012.
[9] Bismar Nasution, 2001, op.cit p.6
[10] A. J. Vogl, *Does It Pay To Be Good?*, Across The Board 2003, p. 17-23, quoted from Wahyu Kurniawan, 2012, *Corporate Governance, In Corporate Legal Aspects* (*Corporate Governance, Dalam Aspek Hukum Perusahaan)*, Grafiti, Jakarta, 2012, p. 87.
[11] Trevor Goddard, *Corporate Citizenship: Creating Social Capacity in Developing Countries*, Development in Practice Vol. 15 No. 3&4 p. 433-438, 2005, p. 434.

three basic elements: (i) using a lot of resources; (ii) those resources used to produce one product; (iii) the resources used in the production process are not owned by a single party.[1] Three elements are very concrete in which the company needs a variety of resources to produce its products. These resources include capital, debt, personnel, raw materials, expertise, and so forth. Those various resources are not owned only by one party but various parties also contribute and each has their rights and obligations.

The shift in corporate governance model is influenced by corporate governance approach. The concept of corporate governance as a governance model is divided into two, they are, *contractarian approach* or *shareholder approach* and *communitarian approach* or *stakeholder approach*. *Shareholder approach* is a governance model that is oriented only for the benefit of shareholders. The essence of this approach is that company as capital associations are formed only to achieve shareholder profits.[2] Thus the interests of shareholders as the most important party and a top priority to gain the maximum profits. On the other hand, *the communitarian* or *stakeholder approach* is oriented not only for the benefit of shareholders only. It is also oriented to meet the interests of various parties involved, including, but not limited to, shareholders, laborers, consumers, creditors, communities, and the companies themselves as legal entities.

From the description of the legal due diligence principle, it shows that the factors that encourage the development of legal due diligence are the implementation of the *disclosure principle* and *materiality principle*. The implementation of *disclosure principle* and *materiality principle* itself is driven by the change of doctrine of *caveat emptor* into *caveat venditor*. The change of doctrine aims to minimize the practice of fraud which became the main cause of the U.S. stock market crash (*great depression*) in 1929. In addition, the shift of corporate governance model from *contractarian approach* or *shareholder approach* into the company as *corporate citizenship* or *team production* is also a factor that encourages the development of legal due diligence.

5. Conclusions

The result of the study shows that legal due diligence in the operational dimension is a *legal compliance review* activity. Deontology sees justice playing this role in the commonly used terminology of *Kantian's* is a *categorical imperative* that based on the principle of *universalizability* that greatly affects the development of the need for legal due diligence. Legal due diligence as a means to examine legal compliance and morally accountable standards for compliance with laws and regulations relating to corporate governance activities. *Utilitarians see benevolence as the central moral virtue*, and legal compliance review is implemented to minimize the potential legal problems that may affect the director and/or the corporation itself. Thus, *legal due diligence* is as the application of the *rule utilitarianism* theory, which means that a business activity, to be considered as good and based on juridical morals, must be seen from the perspective of the corporate's compliance to run its business activities for the benefit of the public.

Furthermore, the factors that encourage the development of legal due diligence is the implementation of *disclosure principle* and *materiality principle*. The implementation of *disclosure principle* and *materiality principle* itself is driven by the change of doctrine of *caveat emptor* into *caveat venditor*. The change of doctrine aims to minimize the practice of fraud which became the main cause of the U.S. stock market crash (*great depression*) in 1929. In addition, the shift of corporate governance model from *contractarian approach* or *shareholder approach* into the company as *corporate citizenship* or *team production* is also a factor that encourages the development of legal due diligence.

Refference

Berle Jr., A. A., 8 Mei 1932. *For Whom Corporate Managers are Trustee?*, Harvard Law Review Vol. XLV No. 7.

Bertens, Kees, 2013, *Introduction to Business Ethics (Pengantar Etika Bisnis),* Revision Edition, Kanisius, Yogyakarta.

Bing, Gordon, 1996, *Due Diligence, Techniques and Analysis, Critical Questions for Business Decisions*, Quorum Books, London.

Blair, Margaret M. dan Lynn A. Stout, 1999, *A Team Production Theory of Corporate* Law, Virginia Law Review Vol. 85 No. 2.

Fuadi, Munir, 2001, *Modern Capital Markets: Legal Review (Pasar Modal Modern: Tinjauan Hukum).* PT. Citra Aditya Bakti, Bandung.

Goddard, Trevor, 2005, *Corporate Citizenship: Creating Social Capacity in Developing Countries*, Development in Practice Vol. 15 No. 3&4.

Himpunan Konsultan Hukum Pasar Modal (Capital Market Legal Consultants Association), 2012, Professional

[1] Margaret M. Blair dan Lynn A. Stout, *A Team Production Theory of Corporate* Law, Virginia Law Review Vol. 85 No. 2. p. 248-328, 1999, p. 265, quoted from Kurniawan, 2012, Op. cit., p. 37.

[2] A. A. Berle Jr., *For Whom Corporate Managers are Trustee?*, Harvard Law Review Vol. XLV No. 7 p. 1145-1163, 1932, p. 1160, quoted from Kurniawan, 2012, Op,cit, p. 36

Standards of Capital Market Legal Consultants Association (*Standar Profesi Himpunan Konsultan Hukum Pasar Modal), Appendix of Decree of HKHPM No.04/HKHPM/XII/2012*, Jakarta.

Kurniawan, Wahyu, 2012, *Corporate Governance, In Corporate Legal Aspects (Corporate Governance, Dalam Aspek Hukum Perusahaan),* Grafiti, Jakarta.

Lajoux, Alexandra Reed, 2010, *The Art Of M& A Due Diligence, Navigating Critical Steps and Uncovering Crucial Data*, Mc Graw Hill, New York.

Meuwissen, D.H.M., 2013, *Vijf Stellingen Over Rechtsfilosofie* (*Lima Dalil tentang Filsafat Hukum*) , translated by Bernard Arief Sidharta, *Meuwissen About Legal Constitution, Jurisprudence, Legal Theory, and Philosophy of Law (Meuwissen Tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum),* 4th prints, PT. Refika Aditama, Bandung.

Russ Shafer-Landau, 2013, *Ethical Theory, An Anthology*, Second Edition, John Wiley& Sons, Inc,West Sussex, UK

Maan, R.A. & Roberts, B.S. 2009, *Smith and Roberson's Business Law*, OH : Cengage Learning.

Marzuki, Peter Mahmud, 2005, *Legal Research (Penelitian Hukum)*, Kencana Prenada Media Group, Jakarta.

Marzuki, Peter Mahmud and Muchammad Zaidun, 2015, *Revitalization of Legal Education, Direction of Higher Education Law, Role of Legal Education & Law Enforcement in Indonesia (Revitalization of Legal Education, Arah Pendidikan Tinggi Hukum, Peran Pendidikan Hukum & Penegakkan Hukum di Indonesia)*, Setara Press, Malang.

Nasution, Bismar, 2001, *Transparency in Capital Market,* University of Indonesia, Faculty of Law, Postgraduate Program, Jakarta.

Spedding, Linda. S, 2009, *Due Diligence Handbook, Corporate Governance, Risk Management and Business Planning*, Cima Publishing, Hungary.

Suseno, Franz Magnis, 1997, *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.

Suseno, Franz Magnis, 2013, *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*.

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

Vogl,A. J., 2003, *Does It Pay To Be Good?, Across The Board*.