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Legal Hermeneutics of the Omnibus Law on Jobs Creation: A Case Study in Indonesia

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Abstract

This study aims to examine and interpret the legal hermeneutics of the Omnibus Law on Job Creation (OLJC) or the Job Creation Law Number 11 of 2020 in Indonesia, especially the labor cluster. This law has become a controversial issue, because the drafting process tends to be very short and rushed and ignores the involvement of the wider community. This research is normative juridical research using the hermeneutic method. Documents used in the form of scientific contribution data and others that have been published include primary data and secondary data. The results of this study conclude that OLJC from the perspective of legal hermeneutics is considered very contrary to the philosophy of Pancasila and the 1945 Constitution, Law No. 15/2019, and the legal system in Indonesia. OLJC tends to regard labor as a mere factor of production and not as an individual human being with all his values and dignity. The contribution of this research is expected to be of special concern to the government and legislators to be wiser in implementing this law, because the benefits and functions of this law are still far from the expectations of the sense of justice of the wider community in Indonesia.

Keywords

Legal Hermeneutics, Omnibus Law on Job Creation (OLJC) or the Job Creation Law Number 11 of 2020, Philosophy of Pancasila, 1945 Constitution, Law No. 15/2019, Indonesia

1. Introduction

The era of reform in Indonesia that occurred in 1998 began when President Suharto resigned on May 21, 1998, and was replaced by the then vice president, B.J. Habibie. The era of reform in Indonesia has had implications for a more open socio-political environment. This is marked by the impetus for implementing

stronger democracy and civil governance in various fields, especially in the fields of law and economics. In this case, changes in the legal order in the reform era are generally directed at accelerating Indonesia's economic growth, including the employment sector. This change can be seen in the changes to the Omnibus Law on Jobs Creation (OLJC) or Job Creation Law No. 11 of 2020 (Law Number 11 of 2020 concerning Job Creation or UUCK No. 11/2020), (*Undang-Undang Nomor* 11 *Tahun* 2020 *tentang Cipta Kerja* or UUCK No. 11/2020), Employment cluster. Omnibus Laws is a concept that officially combines or changes laws and regulations into a new form of law that aims to overcome overlapping regulations, and reduce problems in the bureaucracy where both of these are considered or proven to have hampered the implementation of the required policies (Anggono, 2020).

However, in this view, Hadjar (2020) in Waseso (2020) has a different opinion. OLJC will only waste time and money, because the current problem is in the coordination and supervision of the existing system. From the start, the way the preparation of the Job Creation Law seemed rushed and combined inappropriately. It is better to synchronize and shorten the bureaucracy, so there is no need to make new rules. This opinion is reinforced by Indrati and Asshidiqie (2020) in Hukumonline.com (31/1/2020) stating that the idea of forming an omnibus law is commonly applied in countries that adhere to a common law system, and if omnibus law is applied in countries that if you adopt a civil law system like Indonesia, this will create new problems in the system of drafting laws and regulations. According to Asshidiqie (2020) in Hukumonline.com (31/1/2020), the application of the idea of the Omnibus Law should not only be limited to issues of licensing and ease of doing business and this law ignores institutional and bureaucratic problems.

Then, the notion of legal hermeneutics can be interpreted as a textual discipline that studies the interpretation and meaning of written law in the context of interpreting phenomena and the process of law-making (Collier, 2020 in Anggono, 2020). Legal hermeneutics in interpreting phenomena and law-making processes is to use several methods including explanation, prediction, reasoning, and argumentation to assess the significance of the law (Hart, 1958). Referring to the opinion of the expert, the issue of OLJC or UUCK No. 11/2020, the employment cluster studied from the legal hermeutuka is that this law has become a controversial issue in Indonesia, because the application of the Omnibus Law concept in the manufacture and ratification of this law has been in the spotlight, sharpness and rejection from various circles of the wider community, including legal experts and other experts from academia. OLJC or UUCK No. 11/2020, the employment cluster is the latest labor legislation in force in Indonesia which has been approved and ratified at the plenary meeting of the House of Representatives of the Republic of Indonesia (DPR RI) on October 5, 2020 (Hakim, 2020). Furthermore, the President of the Republic of Indonesia, Joko Widodo signed this law with the title "The Law on Job Creation Is Officially Numbered as Law

Number 11 of 2020".

OLJC or UUCK No. 11/2020, employment cluster OLJC or UUCK No. 11/2020, especially the labor cluster effective since November 2, 2020. This law has removed, changed, and inserted a number of provisions in Law Number 13 of 2003 concerning Manpower (Law No. 13/2003) and also in a number of other laws (CNN Indonesia, com/ekonomi/2020). Therefore, this law is very influential and creates problems for the manpower sector, which has an impact on 76 (seventy-six) laws and one of them is especially Law No. 13 of 2003 concerning Manpower (*Undang-Undang No.* 13 *Tahun* 2003 *tentang Ketenagakerjaan* or UUK No. 13/2003) (Ady, 2020; Christina in Ady.2021). OLJC or UUCK No. 11/2020, the employment cluster has amended 31 articles, deleted 29 articles, and inserted 13 new articles in UUK No. 11/2003 (Thea, 2021). Various other crucial problems related to the OLJC or UUCK No. 11/2020, the employment cluster is that this law is interpreted to tend to not fulfill the theoretical aspects, doctrines, methods, and law-making processes as follows:

1) Theoretical aspects of law—The theory of Indonesian legislation refers to legal norms, Law No. 12 of 2011 concerning the establishment of laws and regulations that systematically regulate the basic materials on the principles of their formation and technically regulate the types, hierarchies, content materials and techniques for their preparation. However, the Omnibus Law as one of the principles in the source of law is not yet in the hierarchy and order of Indonesian laws and regulations (Arham & Saleh, 2019). OLJC or UUCK No. 11/2020, this employment cluster is designed to put the economic interests of an elite group above the interests of social and environmental protection, and this law has a big negative impact on society and the environment because we are still not convinced that the OLJC regulatory fiction for the welfare of society will be realized (Wardana, 2020).

2) Legal doctrine—Law and Development Doctrine used in the academic text of the formation of the OLJC or UUCK No. 11/2020 which is legal certainty is a veil to cover the agenda of legal instrumentalization in the context of capital accumulation so it is not surprising that the mantra "legal certainty" is most often recited by state and business (Wardana, 2020). In this context, the law is used as an instrument for the state and economic actors to predict the work of the law which in turn is used in calculating its business actions.

3) The legal method—the omnibus law method applied in the national legal system in Indonesia has been adapted through an approach to the theory of legal dualism and the theory of legal transplantation, which in essence is to align with the hierarchy of statutory provisions (Arham & Saleh, 2019). However, the adoption of the OLJC method, especially related to labor laws, is considered to tend to be contradictory, causing rejection from the wider community, such as cadets, students, workers, trade union organizations, NGOs and others.

4) He law-making process—the DPR and the government tend not to implement the principles of participation and transparency, which are very essential

principles in making laws (Cakra & dan Sulistyawan, 2020). Community involvement as stakeholders in OLJC or UUCK No. 11/2020 tends to be ignored, for example providing optimal information since the development of the OLJC formulation process until it is ratified and enforced as the latest labor law in Indonesia. The implications of this non-participatory and transparent legislative process are causing an increasing wave of controversy over this law in Indonesia.

Based on various descriptions related to the crucial issue of this law, it is of interest for researchers to interpret the legal hermeneutics of the OLJC or UUCK No. 11/2020, the employment cluster. This study is an in-depth and comprehensive critical study that aims to examine and interpret the legal hermeneutics of the OLJC or UUCK No. 11/2020, the employment cluster in order to prove the validity and reliability of the law through interpretation of the theoretical aspects of law, interpretation of legal doctrine, interpretation of legal methods, and interpretation of the legal process of making it.

Thus, this article is entitled as follows: "Legal Hermeneutics of the Omnibus Law on Jobs Creation: A Case Study in Indonesia". Therefore, the focus of this research is to assess the operational significance of the OLJC or UUCK No. 11/2020, the employment cluster so that it can provide benefits to the workforce in Indonesia, which is very large in number according to the philosophy of Pancasila and the 1945 Constitution. The workforce in Indonesia is very large, the working population in February 2021 is 131.06 million people, and as many as 78.14 million people (59.62 percent) work in informal activities, and the average labor wage in February 2021 is 2, 86 million rupiah per month. Meanwhile, Indonesia's population in 2020 has reached 270,203,917 people (Badan Pusat Statistik Republik Indonesia, 2021). This article continues with the discussion and research results related to the review of legal hermeneutics and the questions posed in the 4 (four) research problem formulations and ends with conclusions. In the end, the results of this study are expected to attract the attention of the government and the DPR RI to be wiser in responding to and implementing the OLJC or UUCK No. 11/2020, the employment cluster, and the formulation of the research problem can be formulated as follows:

1) What is the interpretation of the Theoretical Aspects of OLJC Law?
2) What is the OLJC Legal Doctrine Interpretation?
3) What is the interpretation of the OLJC Legal Method?
4) How is the interpretation of the legal process for making OLJC?

2. Literature Review

The term hermeneutics comes from the Greek word, "hermēneuō" which means to interpret, and the technical term is hermeneia, which means to interpret or translate and represent (Bailesteanu, 2009). According to Zainol et al. (2018) and Palmer (1969), the hermeneutic method was introduced by western scholars including Friedrich Schleiermacher (1768-1834 AD), William Dilthey (1833-1911

M), Emilio Betti (1890-1968 AD), Erick D. Hirsch (1928), and Hans Georg-Gadamer (1900-1998), as well as in the twentieth century, Heidegger, Gadamer, Derida highlight the universal character of hermeneutics (Bailesteanu, 2009). Aristotle in Palmer (1969) states that in philosophy, hermeneutics can be interpreted as a methodology of interpreting and understanding texts to formulate correct judgments about a matter.

Hermeneutics is the study of methodological principles of interpretation such as those of the Bible (Palmer, 1969). Hermeneutics is not a marginal subject, but a key subject—the transformation of what is not clear into clear expression (Bailesteanu, 2009). Hermeneutics is the study of interpretation, and plays a role in a number of disciplines whose subject matter demands an interpretive approach (The Stanford Encyclopedia of Philosophy, 2021). As a discipline, and by analogy with the designations of other disciplines (such as "philosophy of mind" or "philosophy of art"), hermeneutics may be called "philosophy of interpretation". Hermeneutics philosophically, concerns the meaning of interpretation-its basic nature, scope, and validity, as well as its place in and implications for human existence; and treats interpretation in the context of fundamental philosophical questions about existence and knowledge of language and history, artistic and aesthetic experience, and practical life. According to experts, hermeneutics is the art of interpretation (Bingham, 2010) which refers to the theory and practice of interpretation (Ablett & Dyer, 2010) where the interpretation involves an understanding that can be accounted for to interpret texts, objects, and concepts and theories of understanding (Scholz, 2015). While the understanding of legal hermeneutics is studying the interpretation and meaning of written law, and is defined as a textual discipline derived from the classical codification of Greek and Roman law (Van Kleeck Sr, 2021).

Then, contemporary legal hermeneutics in the West operates in a constitutional democracy, which is aimed at ensuring the legal process by referring to pre-existing norms (Mootz III, 2015). Hermeneutics is the study of interpretation or interpretation and explanation plays a very important role in a number of disciplines whose subject matter requires an interpretive approach, specifically concerning the meaning of human intentions, beliefs, and actions, or the meaning of human experience as preserved in art and literature, historical testimony, and other artifacts (George, 2020). As with Gadamer's (1975) observation that hermeneutics is something that can be studied from a legal point of view (Poscher, 2018). But in the course of time, hermeneutics has undergone a definition of refinement, not only used for biblical interpretation but has been applied to the fields of philosophy and humanity (Zainol et al., 2018), and develop into a general theory related to the rules of interpretation.

Furthermore, hermeneutics is interpreted as a theoretical reflection on the work of interpretation (Bailesteanu, 2009). According to Gizo (1905) in Kozhevnikov (2019), modern hermeneutics is an understanding (interpretation) and becomes a fundamental characteristic to define humans and their thoughts. For

example, political science (law) became important for developing a new methodology of political analysis (law), called political hermeneutics (law). Furthermore, Gadamer (1975) states that what can be learned from the law is the application element that must be integrated into the concept of interpretation which has several application elements incorporated in it (Poscher, 2018). In contextualization, legal hermeneutics can be interpreted as an understanding (interpretation) of legal texts that is carried out holistically within the framework of the relationship between theoretical aspects, doltrin, methods and processes of law-making.

On the other hand, several theories have been discussing employment/job creation for years although classical economists always believed in the existence of full employment. Hence, Oluwakemi (2020) cites the opinion of Tadaro (1980) which states that some theories have been around for years even though classical economists have always believed in the existence of full employment. Their views are characterized by consumer sovereignty; individual utility and profit maximization, perfect competition and economic efficiency with so many "atomistic" producers and consumers, none of which are large enough to affect prices or wages. In his analysis, Oluwakemi (2020) only discusses employment/job creation, job creation issues, especially graduate unemployment in Nigeria and does not examine the concept and hermeneutics of omnibus law.

The concept of omnibus law has inspired many legislators in Anglo Saxon (Common Law System) areas, including the United States (The Omnibus Act of June 1868, The Omnibus Act of February 22, 1889), Canada (Criminal Law Amendment Act, 1968-69), Philippines (Tobacco Regulation Act of 2003), Argentina, Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta ,The Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan of China and Thailand. According to Supriyadi & Purnamasari (2021), the entry of the Omnibus law concept into Indonesia is oriented towards accelerating investment with the target of facilitating access for foreign investors to enter Indonesia.

OLJC, or UUCK No. 11/2020, the employment cluster is a policy step between the government and the legislature to form laws and regulations in the Indonesian legal system (SHI) to address various problems in the labor sector in Indonesia. This is stated in letter a in the preamble of UUCK No. 11/2020, that this statutory regulation needs to make various efforts to fulfill the rights of citizens to work and a decent living for humanity through creation of work based on Pancasila and the 1945 Constitution. (*Undang-Undang Dasar Tahun* 1945 or UUD 1945). While the letter b reads the consideration of UUCK No. 11/2020, that these laws and regulations are expected to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of globalization.

3. Materials and Methods

This study is a normative juridical research, a legal research method carried out by examining library materials or mere secondary materials (Qamar & Djanggih, 2017) and the secondary data used aims to support primary information that has been obtained in the form of library materials, literature, previous research, books and so on (Mirzaqon & Purwoko, 2017) which has been published. This study uses a qualitative methodology, as a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior (Moleong, 2017). This approach is directed at individuals and backgrounds holistically (whole). So in this case individuals or organizations should not be isolated into variables or hypotheses, but need to see them as part of a whole. Then, the hermeneutic approach as an interpretive analysis of the OLJC or UUCK No. 11/2020, especially the labor cluster in Indonesia, includes primary data and secondary data. The data collection technique used is library analysis which aims to record carefully, and is directed at primary sources (Al Ma'ruf, 2010). The data analysis technique used in this study is a content analysis method to obtain valid inferences and can be re-examined based on the context (Krippendorff, 2013) through the process of selecting, comparing, combining and sorting various meanings until they are found that are relevant (Mirzaqon & Purwoko, 2017).

4. Results and Discussions

This article, in turn, discusses the juridical review; and the researcher uses four interpretive instruments as his analytical knife, which consists of the interpretation of legal theoretical aspects, interpretation of legal doctrine, interpretation of legal methods, and interpretation of the legal process for making OLJC, employment clusters in Indonesia from the perspective of legal hermeneutics and this article ends with a conclusion as follows:

4.1. Juridical Review

OLJC or UUCK No. 11/2020, the employment cluster was formed and enforced by the government together with the DPR RI which aims to be the right solution to answer various problems related to the overlapping of several laws and regulations in Indonesia. However, in reality, this law is strongly opposed by the wider community from various circles in Indonesia (Hamid, 2021) to date. This law is considered likely to be inconsistent with the Pancasila philosophy and the Indonesian constitution and legal system. On the other hand, this law is considered as an effort to delegitimize the rights of every sector of the nation's life, especially regarding employment and other sectors that can be affected by the enactment of the law (Fitryantica, 2019).

Then, more ironically the implication of OLJC or UUCK No. 11/2020, the employment cluster has deleted, changed, and inserted several provisions previously regulated in UUK No. 13/2003. UUK No. 13/2003 is a labor law that was

in force in Indonesia before the existence of OLJC or UUCK No. 11/2020, the employment cluster. The Job Creation Law (OLJC or UUCK No. 11/2020) changes a number of articles in the Manpower Law, and this is regulated in Article 81 which includes the following: Article 59 of the Job Creation Law abolishes the rules regarding the period of a certain time work agreement (PKWT) or contract workers. Article 81 number 15 of the Job Creation Law amends the provisions of Article 59 paragraph (4) of Law Number 13 of 2003 concerning Manpower. The Employment Creation Law which amends Article 59 paragraph (4) of the Manpower Law regulates that further provisions regarding the type and nature or activity of work, the time period, and the time limit for extending work agreements for a certain period of time are regulated by government regulations. Article 79 The right of workers to get two days off in one week which was previously regulated in the Manpower Law was trimmed. Then UUCK Mp.11/2020 inserts Article 88A, Article 88B, Article 88C, Article 88D, and Article 88E which regulates the issue of wage determination.

The implications of deleting, changing and inserting articles in UUCK No. 11/2020 for workers include giving employers the power to maintain the status of temporary contract workers for an indefinite period, removing the City/District minimum wage (UMK) as the basis for the minimum wage worker. This can lead to the imposition of a minimum wage that is hit evenly across all cities and districts, regardless of regional differences in the cost of living. Article 88D in the Job Creation Bill, the inflation rate is no longer a consideration in setting the minimum wage. The provisions reduce the minimum wage level of workers, and the consequence is that workers are no longer able to meet their daily living expenses. In this way, workers' rights to a decent standard of living will be affected so that they are in direct conflict with the philosophical foundations of Pancasila and the 1945 Constitution and international human rights standards (United Nations, 2016).

This new law (OLJC or UUCK No. 11/2020) has become a very controversial issue related to employment in Indonesia. For example, outsourcing workers, termination of employment, severance pay, conditions for termination of employment (*pemutusan hubungan kerja* or PHK), holidays and overtime. The implications of, deletion, change, insertion are as follows:

1) Outsourcing Workers: Elimination of articles and amendments to articles that have been the basis for the management of outsourced workers in Law No. 13/2003 on manpower. The abolition of article 65 paragraph 2 regarding the limitation of outsourced workers. This will have an impact on the regulations under it, among others, Regulation of the Minister of Manpower and Transmigration (*Peraturan Menteri Tenaga Kerja dan Transmigrasi* or Permenakertrans) No. 19/2012. In Permenakertrans No. 19/2012, 5 areas other than the main work that may be outsourced are regulated, namely cleaning services, security, transportation, catering and oil and gas mining services Contracts and outsourcing workers for life means no job security or no job security for Indonesian workers

(Password, 2020).

2) Termination of Employment (*Pemutusan Hubungan Kerja* or PHK): Several articles related to layoffs in UUK No. 13/2003 have been deleted, and amended in OLJC or UUCK No. 11/2020, employment cluster. For example: Article 151 UUK No. 13/2003 was amended, Article 152 UUK No. 13/2003 was deleted, Article 153 UUK No. 13/2003 was amended, Article 154 UUK No. 13/2003 was deleted but one article was inserted, namely Article 154A, Article 155 UUK No. 13/2003 is abolished. The rules regarding the obligations that must be carried out by entrepreneurs and workers/laborers during the process of industrial relations disputes are regulated in Article 157A. Article 156 of UUK No. 13/2003 amended (Al Faqir & dan Moerti, 2020).

3) Severance pay, Terms of Termination of Employment (PHK), Holidays and Overtime (Al Faqir & dan Moerti, 2020): Severance pay—Article 157 of UUK No. 13/2003 adds one article, namely Article 157A in the OLJC which regulates that the wage component used as the basis for calculating severance pay and service pay is only the basic salary and fixed allowances; Termination of layoffs—Article 158 UUK No. 13/2003 deleted. Termination of layoffs is included in Article 154A of the OLJC. Then, Article 159, Article 160, Article 161, Article 162, Article 163, Article 164, Article 165, and Article 166 of UUK No. 13/2003 were deleted; Holidays and Overtime—Article 78 of the UUK, Article 79 No. 13/2003 amended in the OLJC which includes a paragraph that stipulates that the company can provide rest time according to the work agreement or company regulations.

Furthermore, Christina in Thea DA (2021) stated that other differences between UUK No. 13/2020 and OLJC or UUCK No. 11/2020, especially the employment cluster as follows (Thea, 2021):

1) Job Training: UUK No. 13/2003 stipulates that private job training institutions are required to obtain a permit or register with the agency responsible for manpower affairs in the district/city. OLJC or UUCK No. 11/2020, especially the employment cluster, did not change this provision much, only adding to the obligation to fulfill business permits issued by the central government if there is foreign investment.

2) Placement of Manpower: UUK No. 13/2003 regulates the implementation of manpower placement consisting of government agencies in the field of manpower and private institutions with legal entities that have permission from the minister of manpower or appointed officials. OLJC or UUCK No. 11/2020, the employment cluster makes it clear that private employment placement agencies must fulfill business permits by meeting the norms, standards, procedures, and criteria set by the central government. The provisions regarding this business permit are further regulated in PP No. 5 of 2021 and Permenaker No. 6 of 2021.

3) Use of Foreign Workers (*Tenaga Kerja Asing* or TKA): UUK No. 13/2003 requires employers who employ foreign workers to have a written permit. OLJC or UUCK No. 11/2020, the employment cluster changed that obligation and now employers who employ foreign workers are required to have a plan for the use of

foreign workers (*Rencana Penggunaan Tenaga Kerja Asing* or RPTKA) approved by the central government. The RPTKA is exempted for directors or commissioners with certain shareholdings; diplomatic and consular employees at the representative offices of foreign countries; or foreign workers required by the employer in the type of production activity that is stopped due to an emergency; vocation; technology-based start-ups, business visits, and research for a certain period of time.

4) Specific Time Work Agreement (*Perjanjian Kerja Waktu Tertentu* or PKWT): UUK No. 13/2003 stipulates sanctions in the form of switching PKWT into an indefinite time work agreement (*Perjanjian Kerja Waktu Tidak Tertentu* or PKWTT) if there is a violation related to the type of work, period of time and extension or renewal of the PKWT. OLJC or UUCK No. 11/2020, the employment cluster only opens up opportunities for the transition from PKWT to PKWTT for violations related to the type of work. PKWT is based on 2 things, namely the time period or completion of a particular job. UUK No. 13/2003 prohibits the probation period in the PKWT mechanism. This is also regulated in the OLJC or UUCK No. 11/2020, the employment cluster and it is emphasized that in addition to the probationary period being null and void by law, the working period is still counted. The new thing that is regulated by the Employment Cluster in the Omnibus Law (OL) is that there is compensation for workers at the end of the PKWT or the completion of a certain job.

5) Wages: OLJC or UUCK No. 11/2020, the labor cluster still regulates the provincial minimum wage and the regency/city minimum wage, but removes the sectoral minimum wage. This law also stipulates that minimum wages for micro and small businesses are set based on an agreement between employers and workers. Regarding the structure and scale of wages, this law stipulates that employers are obligated to draw up the structure and scale of wages in companies and conduct periodic wage reviews by taking into account the company's capabilities and productivity. Previously, UUK No. 13/2003 stipulates that employers should prepare the structure and scale of wages by taking into account class, position, years of service, education, and competence and conducting periodic wage reviews by taking into account the company's capabilities and productivity.

6) Criminal and Administrative Sanctions: There are several changes related to criminal and administrative sanctions in the OLJC or UUCK No. 11/2020, the employment cluster which was previously regulated by UUK No. 13/2003. For example, UUK No. 13/2003 stipulates criminal sanctions in the form of imprisonment of 1 to 4 years or a fine of Rp. 10 million to Rp. 400 million to be imposed on any party who violates provisions related to strikes.

Furthermore, OLJC or UUCK No. 11/2020, the employment cluster that has been ratified and enforced by the Indonesian House of Representatives (*Dewan Perwakilan Rakyat Republik Indonesia* or DPR RI and the government has deleted, changed, and inserted several provisions stipulated in UUK No. 13/2003. Therefore, the OLJC or UUCK No. 11/2020, especially the employment cluster is

considered to tend to ignore the philosophical aspects of legal hermeneutics in Indonesia which are based on the Pancasila philosophy and the 1945 Constitution. In this context, the legal hermeneutics regarding OLJC or UUCK No. 11/2020. The employment cluster is considered to be aimed not only at increasing investment, but not at the harmonization of various laws and regulations. However, there is a tendency that this law was formed and passed in a hurry by the government together with the legislature. As a result, this raises a very significant question, whether the Indonesian people, especially Indonesian workers, need the OLJC or UUCK No. 11/2020, the employment cluster.

Based on these various descriptions, legal hermeneutics as a textual discipline that studies the interpretation and meaning of written law in order to interpret phenomena and the law-making process includes explanations, predictions, reasoning, and arguments to assess the significance of laws. To assess the significance of OLJC or UUCK No. 11/2020, especially the employment cluster from the perspective of legal hermeneutics in Indonesia, the researcher interprets or interprets it by referring to the philosophy of Pancasila and the 1945 Constitution.

Thus, the four interpretive instruments used in this study are due to the Omnibus law concept which is the basis for the formation of OLJC or UUCK No. 11/2020, an employment cluster which in principle is unknown in the Indonesian legal system or legal order. The legal system in Indonesia adheres to the Continental European legal system or Civil Law when viewed from the history and politics of law in Indonesia, both legal sources and law enforcement systems (Welianto, 2020). Therefore, the legitimacy and reliability of the OLJC or UUCK No. 11/2020, the employment cluster must be in accordance with the Pancasila philosophy and the 1945 constitution. The interpretation, OLJC or UUCK No. 11/2020, the employment cluster must have an operational meaning to provide benefits to The number of workers in Indonesia is very large and the workforce is a human resource that can contribute significantly to national economic growth.

4.2. Interpretation of Theoretical Aspects of Law OLJC

One of the goals of the State of Indonesia as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) is to protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, lasting peace and social justice. In order to achieve this goal, it must be supported by the development of all areas of life based on Pancasila as the basis of the state. One area that is quite influential in national development is the development of law to accelerate economic development within the framework of a system of legal norms. The system of legal norms of the Republic of Indonesia is legal norms that apply in a system that is layered and tiered, as well as in groups, where a norm is always valid, sourced, and based on a higher norm,

and so on, arrived at a basic state norm (Staatsfundamentalnorm) of the Republic of Indonesia, namely Pancasila (Indrati, 2012).

In this context, the interpretation of the theoretical aspects of law in Indonesia can be interpreted as a theory of Indonesian legislation which refers to the Legal Norms, namely Law of the Republic of Indonesia No. 12 of 2011 concerning the Establishment of laws and regulations (*Undang-Undang Republik Indonesia No.* 12 *Tahun* 2011 *Tentang Pembentukan peraturan perundang-undangan* or UU No. 12/2011) as amended by Law Number 15 of 2019 (*Undang-Undang Nomor* 15 *Tahun* 2019 or Law No. 15/2019) concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation Invitations that systematically regulate the main materials regarding the principles of their formation and technically regulate the types, hierarchies, content materials and techniques for their preparation. The definition of legislation according to experts in Soegiyono (2015) is as follows: 1) Every written decision issued by an authorized official or office environment containing rules of conduct that are general or binding in nature; 2) Are rules of conduct that contain provisions regarding rights, obligations, functions, and status or an order; and 3) Regulations that have general-abstract or general-abstract characteristics, meaning that they do not regulate or are not directed at certain concrete objects, events or phenomena; and by taking an understanding in the Dutch literature, laws and regulations are commonly referred to as wet in materiële zin or often also referred to as *algemeen verbindende voorschrift*.

According to Article 1 number 2 of Law No. 12/2011 as amended by Law No. 15/2019 that written regulations containing legally binding norms are generally binding and are established or stipulated by state institutions or authorized officials through the procedures stipulated in the Legislation. Then, Article 7 of Law No. 12/2011 as amended by Law No. 15/2019 regulates the hierarchy of laws and regulations as follows: 1). Types and hierarchies of laws and regulations consist of: a). UUD-1945; b). Stipulations of the People's Consultative Assembly; c). Laws/Government Regulations in Lieu of Laws; d). Government Regulations; e). Presidential Regulations; f). Provincial Regulations; and g). Regency/City Regional Regulations; and 2). The legal power of laws and regulations in accordance with the hierarchy as referred to in paragraph (1).

Then, if it is studied from the interpretation of the theoretical aspects of law, the concept of Omnibus Law is developed in a country that adheres to the legal culture of the Common Law System (Cakra & dan Sulistyawan, 2020). The formation of laws using the Omnibus Law method and technique which has characteristics, namely one of the highlighted characteristics is the speed in the formation of legislation and is very different from the system of law formation in the Civil Law System (Cakra & dan Sulistyawan, 2020). According to Hamzah et al. (2021) in Hamid (2020a), the process of forming legislation in a Civil Law System country generally takes a relatively longer time. Indonesia is a country that adheres to the Civil Law System, so that the contradictory legal cultures

clearly have different characteristics, including in the making of OLJC laws and regulations. For example, in the process of forming laws, countries that adhere to the legal culture of the Civil Law System prioritize the principle of legal certainty through a thorough legislative process so that as a consequence it will have an impact on a relatively longer timeframe for formation.

In general, legal theory can be interpreted as matters relating to legal conceptions, legal principles, schools or ideas in law. According to Sidharta (1999), legal theory is a study of the essential characteristics of the legal system, with an interdisciplinary method of studying legal phenomena, both theoretical and practical aspects with the aim of being able to explain and master clearly and well the general symptoms of positive law. For this reason, building a legal theory requires the formulation of a clear concept or understanding, consistent building, simple arrangement, careful and clear formulation or formulation. Legal theory has an influence on the legal construction of how to describe the ideal law of das sollen, and how it relates to law in the real world or based on its application, das sein (Isdiyanto, 2018), which can be applied and described as in **Figure 2** below as follows:

Based on **Figure 1** and various descriptions related to the interpretation of the theoretical aspects of the law, it can be interpreted that the interpretation of the formation of the OLJC or UUCK No. 11/2020 which uses the Omnibus Law concept as one of the principles in the legal source is actually not in the hierarchy and order of laws and regulations. Indonesian invitation (Arham & Saleh, 2019) which is regulated in Article 1 number 2 and Article 7 of Law No. 12/2011 as amended by Law No. 15/2019. This view is in line with Wardana (2020) which states that the OLJC or UUCK No. 11/2020, the employment cluster in principle is designed to put the economic interests of an elite group above the interests of social and environmental protection so that it has a large negative impact on society and the environment because we are still not convinced that the OLJC regulatory fiction is for the sake of social welfare will be realized. Planning, discussing, and ratifying this law has crucial problems when viewed from the methodological aspect, paradigm, and substance of regulation in the policy sector (Hamid, 2021).

OLJC or UUCK No. 11/2020, the employment cluster does not at all reflect

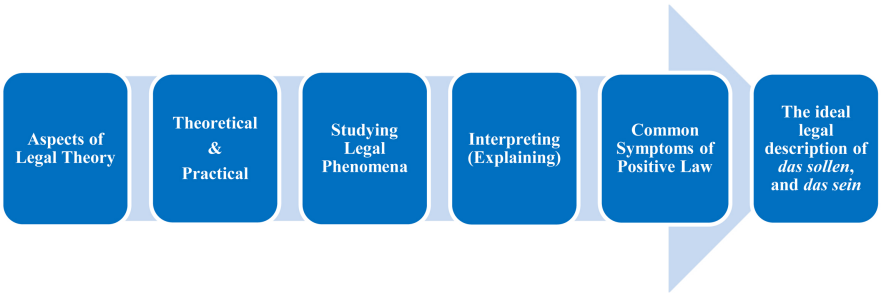

Figure 1. Interpretation of Aspects of Legal Theory (processed).

the ideal legal picture, das sollen and, das sein. In this context, the OLJC is interpreted as very controversial with the values of Pancasila contained in the preamble of the 1945 Constitution. Pancasila is a manifestation of Indonesian legal ideals and must be internalized in the life of the nation and state, including legal development. According to Latif (2011) Pancasila contains five principles as follows:

1) The Principle of God Almighty—This principle is stated in the Preamble of the 1945 Constitution in the fourth paragraph, namely "…then the independence of the Indonesian nationality is drawn up in an Indonesian Constitution which is sovereign by the people based on the One Godhead. Based on this statement, Indonesia is a country that believes in God, religion is carried out in a civilized manner, relations between religious communities, worship activities and tolerance must be based on God. Freedom of religion must be implemented based on three pillars, namely freedom (freedom), rule of law (rule of law) and tolerance.

2) Universal humanitarian principle—This principle recognizes and treats humans according to their dignity as God's creatures, also recognizes equality, equality of rights and human obligations without discriminating against ethnicity, ancestry, religion, race, skin color, social position, and others. In the Preamble to the 1945 Constitution, it is the embodiment of the principle of humanity in Indonesian positive law in everyday life, this can be seen in the institutions established to accommodate all imbalances in social life.

3) The principle of nationality or unity in diversity—Every citizen has the same position, rights and obligations. This principle shows that the Indonesian nation is free to determine its own destiny and is sovereign, so it does not allow interference from other nations in matters concerning domestic affairs.

4) The principle of deliberation democracy or people's sovereignty—The embodiment of this principle can be seen in the approval of the people on the government, it can be shown that the president cannot establish a government regulation, but first the existence of a law means that without the consent of the people the President cannot establish a government regulation. The principle of social justice is manifested, among other things, in the provision of social security and state institutions engaged in social affairs that organize social problems in the state.

Therefore, in order to realize Indonesia as a state of law, the formation of laws and regulations must be implemented in an integrated and sustainable manner in the national legal system to ensure the protection of the rights and obligations of every citizen. In the context of employment, normative protection of workers' rights has been regulated both in the constitution and in the form of laws and regulations. However, the issue of protecting workers' rights continues to cause problems to this day (Hamid, 2019).

Thus, Pancasila is a philosophical foundation, namely a view of life, awareness and legal ideals that form the basis for regulating state government and also as a

basis for regulating state administration. Therefore, Pancasila must be internalized and implemented in the formation of legislation, for example the establishment of the OLJC legislation or UUCK No. 11/2020, employment clusters. Pancasila should not be used only as a preamble but must be reflected in this law. In the end, the interpretation of the theoretical aspects of OLJC law or UUCK No. 11/2020, the employment cluster can be interpreted that this labor law should be able to provide benefits to workers in accordance with Pancasila which is the philosophy of the state (*philosofische gronslag*) in the life of the nation and state, and also in accordance with the 1945 Constitution.

4.3. Interpretation of OLJC's Legal Doctrine

The task of the state is to create laws, which must be carried out by leaders or rulers who are carefully chosen by the people (Sidharta, 1999). In an orderly society that is politically organized in the form of a state, the process of law formation takes place through a political process that produces legislation, a judicial process that produces jurisprudence, government bureaucratic decisions that produce decisions and create precedents, legal behavior of citizens in everyday life—the day that gave rise to unwritten law, and the development of legal knowledge, the formation of doctrines (Sidharta, 1999). Some legal doctrine terms that exist in Continental European countries are *scientia iuris*, *rechtswissenschaft*, *rectsdogmatik*, doctrine of law, legal dogmatics which is *a faux ami*, such as jurisprudence, namely the opinion of legal writers/scientists or the writings of legal scientists (Sofian, 2016).

Doctrine is one of the sources of law in Indonesia, but legal practitioners in Indonesia are not used to using doctrines from countries that have different legal systems, such as the civil law system, and the application of common law doctrine in Indonesia is not implemented directly, but through other countries that adopt common law doctrine like the Netherlands (Cahyono, 2019). The provisions of the Civil Code governing contract law or the law of obligation still use the old provisions of the Dutch heritage, the judge through his decision can create new legal norms of jurisprudence, and jurisprudence is not the main source of law in Indonesia, but the use of jurisprudence can exclude the validity of the provisions of the law if deemed not to be again in accordance with the values prevailing in society (Cahyono, 2019).

Legal doctrine can be interpreted as an effort to systematize and interpret the same law (Peczenik, 2008), for example, widely accepted legal principles (Garner & Black, 2004), Some of the meanings put forward by legal experts consisting of professional legal writings include handbooks, monographs, and others to systematize and interpret or provide valid interpretations (Peczenik, 2003). According to experts in Ciongaru (2020), the notion of legal doctrine is an opinion issued about the law, which is expressed about certain issues by people who study it, eg: judges, lawyers, etc., and related to legal phenomena, and has a role to promote justice and morality (Pattaro et al., 2009).

Legal doctrine aims to explain the law in a coherent manner which includes legal principles, regulations, meta-rules including exceptions at an abstract but interconnected level (Sofian, 2016). David and de Vries quoted by Peter de Cruz (2010) in Sofian (2016) say that the term doctrine has been used in French law since the 19th century which is defined as a collection of opinions on various legal issues that are expressed in books and articles and are used to collectively characterize the people involved in the analysis, synthesis, and evaluation of legal source material, members of the legal profession who pay special attention to scientific works and have a reputation as an authority. While the concept of legal doctrine according to experts in Collier (2020) can be seen from several pragmatic or philosophical approaches, and broadly speaking, the sources of formal law are as follows: 1) customary law-customs, 2) court practice-jurisprudence, 3) legal precedents, 4). Legal doctrine, 5). Normative contract, and 6). Normative action.

Then, Wardana (2020) stated that the legal doctrine and legal development used in the academic text of the formation of the OLJC or UUCK No. 11/2020 which should be legal certainty, but in reality, the legal doctrine and development of this law have been transformed as a veil to cover the agenda of legal instrumentalization. Furthermore, Wardana (2020) states that the legal doctrine of OLJC or UUCK No. 11/2020 is used as a cover in the context of capital accumulation so it is not surprising that the mantra "legal certainty" is most often recited by the state and business actors. Therefore, the legal doctrine of the OLJC or UUCK No. 11/2020 is only used as an instrument for the state and economic actors to predict the work of the law, and in turn it is used in order to calculate its business actions (Wardana, 2020).

Based on these various descriptions, the interpretation of legal doctrine can be interpreted as an effort to systematize valid law including legal principles, regulations and others through a pragmatic and philosophical approach by legal experts to ensure legal certainty based on justice and morality. In this context, the interpretation of the legal doctrine of OLJC or UUCK No. 11/2020 is considered not in accordance with Article 1 number 2 and Article 7 of Law No. 12/2011 as amended by Law No. 15/2019 that at the planning and preparation stage it turns out Academic manuscripts and the basis for the preparation of the National Legislation Program do not have legal force, especially in the legal system in Indonesia.

Thus, the interpretation of the legal doctrine of the OLJC is considered to tend to ignore broad public involvement, namely the public does not know the standard and official text related to the law so that this is very contrary to the constitutional rights as citizens regulated in the constitution, the 1945 Constitution. As Article 28D paragraph (1) of the 1945 Constitution stipulates that: (1) Everyone has the right to fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law. Then, Article 28D paragraph (3) stipulates that: (3) every citizen has the right to have equal opportunities in govern-

ment.

4.4. Interpretation of the OLJC Legal Method

Legislation in Indonesia is normative-cognitive which covers 3 important areas: the legislative process; statutory methods and statutory techniques. The conception of the Omnibus Law method and consolidation law are considered as appropriate solutions for simplifying regulations and the concept of a constructive method for drafting laws and regulations without overriding the order in Law No. 12/2011 as amended by Law No. 15/2019. The legal method—the omnibus law method applied in the national legal system in Indonesia has been adapted through an approach to the theory of legal dualism and the theory of legal transplantation, which in essence is to align with the hierarchy of statutory provisions (Aedi et al., 2020).

However, the adoption of the Omnibus Law method and the consolidation law in the formation of the OLJC is considered to be counterproductive, causing rejection from the wider community, such as cadets, students, workers, trade union organizations, NGOs and others. Chairman of the Center for Anti-Corruption Studies (*Pusat Kajian Anti Korupsi* - Pukat) Universitas Gadjah Mada (UGM), Oce Madril in Mukaromah (2020) state that:

1) OLJC has a disability, both formally and materially;

2) The process of forming this law is very fast, closed, and has minimal public participation so that there are problems in terms of process, method, and substance; and

3) Substantially, the OLJC leads to a centralization of power that is vulnerable to potential corruption, and there is a potential for abuse of authority in the discretionary provisions, and this law removes the "not contrary to law" requirement that previously existed in the law, Government/State Administrative Law.

State administrative law/administrative law, namely the state is in a state of motion (staat in beweging) or when the state apparatus begins to carry out work in carrying out their duties, as stipulated in constitutional law (Asshiddiqie, 2009). According to experts in Syamsuddin and Aris (2014) whereas the principles that are often found in government/state administrative law include: 1). Legality principle: every act of state administration is based on law; 2). The principle of freedom or freies ermessen: the state administration is given the freedom to on its own initiative to solve problems that grow in society quickly, precisely, and beneficially for the public interest, without waiting for a prior order from the law caused the law does not yet exist or does not clearly regulate the matter; and 3). General principles of good governance and others.

Then, various rejections are against OLJC from NGOs, because this law is not in accordance with the methods, techniques and processes of the legislation. The implication is that the OLJC has violated the principle of non-retrogression, ignored the public's voice as a democratic space and was carried out in a hurry. According to Mukaromah (2020), significant assessments of the OLJC are as

follows:

1) Amnesty International Indonesia—Amnesty International Indonesia considers that the OLJC which has just been passed by the DPR RI is not very progressive. On the other hand, many provisions in the law violate the principle of non-retrogression, thus leading to setbacks in terms of fulfilling the rights of the community. Amnesty highlighted a number of provisions that are considered problematic in the law, ranging from those related to certain time work agreements (PKWT) to environmental clusters. Regarding these problems, Amnesty International asked the government and the DPR to revise the Job Creation Law and fix the problematic provisions.

2) WALHI—The Indonesian Forum for the Environment (*Wahana Lingkungan Hidup Indonesia* or Walhi) said that it regretted the ratification of the OLJC because it ignored the public's disapproval, and since the beginning this regulation has indeed become a red carpet for the ease of investment, especially the extractive industry.

3) PSHK—Center for the Study of Indonesian Law and Policy (*Pusat Studi Hukum dan Kebijakan Indonesia* or PSHK) considers that the OLJC legislation process is an example of bad practices carried out by the government and the DPR RI. The process of discussing this law from the start ignored the democratic space and was carried out in a hurry. There are three reasons underlying this statement as follows: a). Discussed during recess and outside working hours; b). The draft law and minutes of the meeting have never been submitted to the public; and c). There is no decision-making mechanism based on the majority of votes (voting) in the plenary meeting of OLJC approval.

In this context, the OLJC is prepared and made into scenarios so that it does not conflict with the law and the principles of Government/State Administrative Law. However, behind this scenario, if it is examined in terms of methods, the OLJC or UUCK No. 11/2020 was compiled with normative juridical research, and this type of research focuses entirely on the answers to the problems studied on secondary data which can contain bias because the data is disaggregated and selected in such a way (cherry picking) solely to justify the assumptions and hypotheses of the compilers (Wardana, 2020). Furthermore, Wardana (2020) stated several points related to the academic texts used in making OLJC as follows:

1) The secondary data used in the OLJC Academic Paper is the dominant statistical data as a reference to show Indonesia's performance in the global economy, one of which is the World Bank's Ease of Doing Business. The Ease of Doing Business rating is often referred to by the government to indicate the level of ease of investing in Indonesia, which is much lower than neighboring countries. The problem is, because of its quantitative nature, Ease of Doing Business is unable to provide an in-depth explanation of the causal relationship between the legal design in a country and its economic development, and is unable to prove that the variables used to measure do not contain bias (Trebilcock & Prado, 2014).

2) The arguments in the OLJC Academic Paper are only based on assumptions because there is no empirical research to collect primary data. This is clearly seen in the OLJC Academic Manuscript on page 181 which states that, "community involvement is considered by some to be a limiting factor for investment". The OLJC Academic Manuscript from the beginning has been co-opted by the interests of "some parties" who view public participation as a barrier to investment.

Based on these various descriptions, the interpretation of the OLJC legal method as a legal product is considered full of controversy because it is felt by the community that it is very quickly legalized and the lack of public involvement so that the public should suspect a legal product like this because it is feared to have procedural and substantial problems (Muqsith, 2020). In this context, the interpretation of the legal method can be interpreted as an effort to make the legal function effective to answer the gap between law at the theoretical level and law at the practical level so that the legal function is able to meet the needs of the community in the form of certainty and accommodation for the sense of justice that develops in the midst of society. According to Roscoe Pound in Pandey (2014) that there are four main functions of law, namely:

1) Maintenance of law and order in society,
2) Maintain the status quo in society,
3) To ensure maximum individual freedom, and,
4) Fulfillment of the basic needs of the community.

According to Pandey (2014), the function of law can be interpreted as an instrument to improve economic and social justice that touches various aspects of human life to achieve goals, ensure justice.

Thus, the interpretation of the OLJC legal method is assessed using Omnibus Law methods and techniques that are not known in the Indonesian legal system that adheres to Civil Law, and the OLJC legal method tends not to use metaphysical (rationalism), normative (legal positivism) and legal paradigms as normative phenomena for the effectiveness of the legal function. This is very important because the legal function in the OLJC must be able to respond to the sense of justice that develops in the community, especially for workers in Indonesia as referred to in the Pancasila philosophy and the 1945 Constitution, just a mere factor of production, but as an individual human being with all his worth and dignity (Rumimpunu, 2014), and see that the relationship between workers and employers does not have conflicting interests, but has the same interests, namely to increase the productivity of workers and companies simultaneously.

4.5. Interpretation of the Legal Process for Making OLJC

In its implementation, the constitutional system of the Republic of Indonesia cannot be separated from the teachings of Montesquieu's trias politica (Soediman, 1965). The trias politica teaching is a teaching on the separation of state power into three, namely the Legislative, Executive, and Judicial, which in its implementation is handed over to an independent body, meaning that each of

these bodies cannot influence each other and cannot influence each other, hold each other accountable (Soediman, 1965). In this case, the 1945 Constitution of the Republic of Indonesia (UUD 1945) can be interpreted as adhering to the tri-aspolitical teaching, because state power is separated in the 1945 Constitution, and each state power is exercised by a state apparatus.

The Constitution of the Republic of Indonesia has regulated the legal process for making laws in Indonesia. Referring to Article 20 paragraph (1) of the 1945 Constitution, the power to form laws (UU) rests with the House of Representatives (DPR) of the Republic of Indonesia. Then, Article 20 paragraph (2) of the 1945 Constitution stipulates that each draft law (*Rancangan Undang-Undang* or RUU) is discussed by the DPR and the president for mutual approval. The process of forming laws is regulated in Law Number 12 of 2011 concerning the Establishment of Legislations (*Undang-Undang Nomor* 12 *Tahun* 2011 *tentang Pembentukan Peraturan Perundang-Undangan* or Law 12/2011) as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations -Invitation (*Undang-Undang Nomor* 15 *Tahun* 2019 *tentang Perubahan atas Undang-Undang Nomor* 12 *Tahun* 2011 *tentang Pembentukan Peraturan Perundang-Undangan* or Law 15/2019).

The process of forming the Law (*Undang-Undang* or UU) is also regulated in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (*Undang-Undang Nomor* 17 *Tahun* 2014 *tentang Majelis Permusyawaratan Rakyat*, *Dewan Perwakilan Rakyat*, *Dewan Perwakilan Daerah*, *dan Dewan Perwakilan Rakyat Daerah* or UU MD3) and its amendments. Based on Article 10 paragraph (1) of Law 12/2011 as amended by Law 15/2019, the contents that must be regulated through the Act are:

1) Further regulation of the provisions of the 1945 Constitution;

2) An order for a law to be regulated by law;

3) Ratification of certain international agreements; and

4) Follow-up on the decision of the Constitutional Court; and/or fulfillment of legal needs in society.

Furthermore, the process of making laws is regulated in Article 16 of Law 12/2011 s.d. Article 23 of Law 15/2019, Article 43 of Law 12/2011 s.d. Article 51 of Law 12/2011, and Article 65 of Law 12/2011 s.d. Article 74 of Law 12/2011 as amended by Law 15/2019. The law-making process carried out by the DPR RI and the government tends not to implement the principles of participation and transparency, which are very essential principles in making laws, namely the formation of the OLJC or UUCK No. 11/2020 which is considered not to heed the aspirations and participation of the community (Article 96 Law Number 12 of 2011 as amended by Law 15/2019). Community involvement as stakeholders in OLJC or UUCK No. 11/2020 tends to be ignored, for example providing optimal information since the development of the OLJC formulation process until it is ratified and enforced as the latest labor law in Indonesia. The implications of

this non-participatory and transparent legislative process are causing an increasing wave of controversy over this law in Indonesia.

Stufenbau theory, a written legal system and requires a hierarchical tiered regulation initiated by Hans Kelsen, a tiered legal system theory in which the provisions of the regulations below must not conflict with those above it (Susanto et al., 2021). *Stufenbau theory* as a legal system is a tiered rule system in which the lowest legal norms must adhere to higher legal norms, and the highest legal norms (such as the constitution) must adhere to the grundnorm, Pancasila (Gultom & Reresi, 2020). Then, the government regulations used to correct the law conflict with the legal principle, namely *lex superior derogat legi inferior* (lower laws may not conflict with higher laws). In Article 1 point 1 of Law No. 12/2011 as amended by Law No. 15/2019, what is meant by the establishment of laws and regulations is the making of laws and regulations which include the stages of planning, drafting, discussing, ratifying or determining, and promulgation. The stages of forming laws and regulations are generally carried out as follows:

1) Stages of Planning for Drafting the Law

2) Preparation for the Formation of Law

3) Submission of Draft Law.

In this context, the process of forming the OLJC is carried out in the same way as the formation of laws in general in Indonesia. However, the steps taken by the government as the proposer, and the DPR RI as the maker of the OLJC in the preparation and ratification tend to be not optimal and ignore the steps that must be taken to ensure what and how the OLJC can be effective and not misused as follows:

1) The Indonesian House of Representatives (*Dewan Perwakilan Rakyat Republik Indonesia* or DPR RI) together with the government must involve the public in every stage of its preparation. The broad scope of the Omnibus Law requires lawmakers to reach out and involve more relevant stakeholders.

2) DPR RI and government must be transparent in providing any information on the progress of the OLJC formulation process as a legislative process so as not to cause controversy.

3) DPR RI and government are the constituents of the OLJC. As a drafter, you must be able to map regulations in detail, strictly harmonize both vertically with higher regulations and horizontally with equivalent regulations, and conduct previews to assess the impact that will arise from the enacted Law.

Based on **Figure 2**, it can be described that the legal process for making OLJC carried out by the Indonesian House of Representatives (DPR) together with the Government can be interpreted as tending to ignore the laws and regulations regulated in Article 1 number 1 of Law No. 12/2011 as amended by Law No. 15/2019. Then, the Omnibus Law methods and techniques used are unknown in the Indonesian legal system that adheres to Civil Law and the OLJC legal method tends not to use the metaphysical (rationalism), normative (legal positivism) and

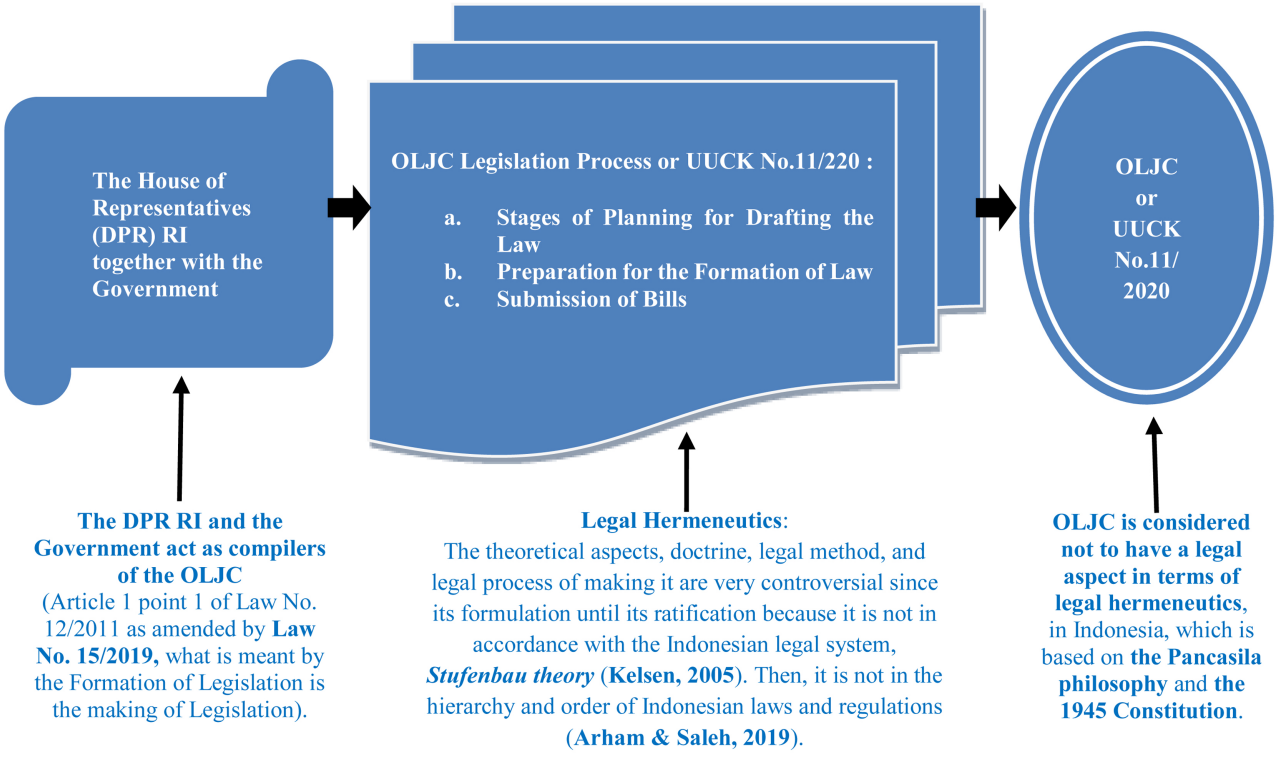

Figure 2. Interpretation of aspects of legal theory (processed).

legal paradigm approaches as normative symptoms for the effectiveness of legal functions. Furthermore, the legal process for making OLJC or UUCK No. 11/2020 does not optimally involve broad public participation as stakeholders in this law, ignores the principle of transparency (tends to be closed and hasty), and tends not to preview accurately, in every stage of preparation to approval.

The philosophy of Pancasila and the 1945 Constitution contain norms that oblige the entire contents of laws and regulations to oblige the government and other state administrators both at the central and regional levels, as well as party organizers, to be able to be oriented and have implications for the formation of a just life structure, for everyone covering ideology, politics, economy, social, culture, law, and human rights (Sihombing, Harahap, & Hamid, 2020). In this context, the interpretation of the legal process for making the OLJC is considered to be prone to failure, viewing the workforce as individual human beings with all their dignity and worth but viewing labor only as a factor of production. Mahasin et al. (2020) in Hamid (2020a) stated that a decent living for workers is one form of embodiment of the mandate of the 1945 Constitution. This is considering that Indonesia is a country that has a large workforce in the productive age category which is quite high at 67.59% of the total productive age population, and the potential this will continue to grow to be even bigger in the future (Hamid, 2020b). Therefore, legal protection for workers is an absolute and important issue in the context of the perspective of labor law in Indonesia (Hamid & Hasbullah, 2021).

Thus, the hermeneutics of the OLJC or UUCK No. 11/2020 critically shows that the interpretation of theoretical aspects, the OLJC legal method is assessed using Omnibus Law methods and techniques that are not known in the Indonesian legal system that adheres to Civil Law, and the OLJC legal method tends not to use metaphysical paradigm approach (rationalism), normative (legal positivism) and law as a normative symptom for the effectiveness of the legal function. This is very important because the legal function in the OLJC must be able to respond to the sense of justice that develops in the community, especially for workers in Indonesia as referred to in the Pancasila philosophy and the 1945 Constitution. The interpretation of the legal process for making OLJC is considered to have no meaning as a function real law when viewed from the perspective of legal hermeutics which includes interpretation of legal theoretical aspects, interpretation of legal doctrine, interpretation of legal methods and interpretation of the legal process for making OLJC or UUCK No. 11/2020. This law is a product of legislation, in fact it must be able to accommodate the sense of justice that develops in the community, especially for workers in Indonesia as referred to in the Pancasila philosophy as contained in the fourth paragraph of the opening of the 1945 Constitution and Article 27 paragraph 2 and Article 28D paragraphs 1 and 2 of the 1945 Constitution related to the protection of workers/laborers.

Furthermore, Article 27 paragraph 2 of the 1945 Constitution reads: "Every citizen has the right to work and a decent living for humanity". Meanwhile, Article 28D paragraphs 1 and 2 of the 1945 Constitution read: "1) Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law.**); 2) Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship.**)". In the end, protection of workers can be interpreted as an effort to increase the recognition of human rights, physical and socio-economic protection through applicable norms. Therefore, the OLJC needs to be a very serious concern for the government and the DPR RI to be more prudent in operating it and be more careful in making laws in Indonesia in general, and making labor laws in particular in the future.

5. Conclusion

OLJC or UUCK No. 11/2020, the employment cluster is the latest regulation related to labor law in Indonesia. This law is a government policy together with the legislature to form laws and regulations in the Indonesian legal system (*Sistem Hukum Indonesia* or SHI) as an effort to answer various problems in the labor sector and efforts to improve the investment ecosystem in Indonesia. However, ironically, OLJC or UUCK No. 11/2020, the employment cluster is studied from the perspective of legal hermeneutics, including the interpretation of theoretical aspects, interpretation of legal doctrine, interpretation of legal methods, and interpretation of the legal process for its manufacture, which is interpreted as very

controversial because of this law from its formulation to its ratification. For example, the OLJC or UUCK No. 11/2020 tends to ignore the Legal Norms in Indonesia, UU No. 12/2011 as amended by Law No. 15/2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislation that regulates systematically the main materials about the principle of its formation and technically arranged about the types, hierarchies, content materials and techniques of preparation.

The legal construction of OLJC or UUCK No. 11/2020 tends to ignore das sollen, das sein. This has very implications for the OLJC or UUCK No. 11/2020 of the labor cluster as a legal product of the results of the National Legislation Program (*Program Legislasi Nasional* or PROLEGNAS) where this law has no legal force, especially in the legal system in Indonesia. Furthermore, the OLJC or UUCK No. 11/2020 has lost its soul, because this law does not have a legal function in the true sense, as an instrument to improve economic and social justice that touches various aspects of human life to achieve goals and ensure justice. Thus, the OLJC or UUCK No. 11/2020 is considered likely to be counterproductive and not in accordance with the Pancasila philosophy as contained in the fourth paragraph of the preamble to the 1945 Constitution and Article 27 paragraph 2, Article 28D paragraphs 1 and 2 of the 1945 Constitution. Therefore, the government is expected to be wiser in implementing the OLJC or UUCK No. 11/2020 which is full of controversy so that in the future, the government and the DPR RI are expected to be more prudent and no longer perform political acrobatics in making laws.

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OLJC or UUCK No. 11/2020, employment clusters tend to have no significant operational meaning in order to provide benefits to workers in Indonesia according to the philosophy of Pancasila and the 1945 Constitution.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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