

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

A. Conclusion

Based on the description in the analysis of the results of the research, then the author can conclude that:

1. There are some legal implications after the issuance of the Constitutional Court's Decision Number 85/PUU-XI/2013 on regulation and clean water supply system in Indonesia, namely:
 - a. The Law No 7 of 2004 on Water Resources was cancelled and has no legal binding anymore;
 - b. The reactivation of the Law No 11 of 1974 on Irrigation by the Constitutional Court was carried out;
 - c. The provisions of the derivative regulation of the Law No 7 of 2004 on Water Resources which is still used until now, including Government Regulation, Ministerial Regulation, and others derivative regulation did not have a legal basis, considering that the Law No 7 of 2004 on Water Resources which was declared invalid by the Constitutional Court and this had caused debate among legislation experts. Therefore, the researcher argues that the derivative regulations of the Law No 7 of 2004 were not valid.
 - d. Based on philosophy, legal politics, the provisions of the derivative regulations between the Law No. 7 of 2004 and the Law No. 11 of 1974

are different. Therefore, the derivative regulations of the Law No. 7 of 2004 automatically cannot be encoded and used as a reference for the Law No 11 of 1974 which has been re-enacted by the Constitutional Court;

- e. In this research, the researcher find that based on the principle of *lex superiori derogate inferiori* which means that the higher regulation overrides the low regulation, the existing derivative regulations of the Law No 7 of 2004 should not be applied since they contradicted with the Law No 11 of 1974 on Irrigation as the prevailing legislation.
2. The comparison between the Law No 7 of 2004 on Water Resources and the Law No 11 of 1974 on Irrigation is as follow:
 - a. There are some similarities of both legislation, such as:
 - 1) Like the Law No 7 of 2004 on Water Resources, the Law No 11 of 1974 on Irrigation also regulate about water. Both of these Laws are essentially the same in that it is emphasizing that the state has an obligation to endure the fulfillment of every citizen needs of water for their life continuity;
 - 2) Like in the Article 51, Article 52, Article 53 Article 64 of Law No 7 of 2004, Article 13 of Law No 11 of 1974 on Irrigation also regulates the protection of water and the sources, namely conducting prevention, supervision, protection, and controlling water damage to water resources.

- b. However, both Legislations differ in some aspects such as:
- 1) The Law of Water Resources embraces the principle of decentralization while the Law of Irrigation embraces the principles of centralization in the management of water resources. The meaning of this principle of decentralization here is in the management and supply of the water should be in accordance with the 1945 Constitution which states that the water resources are controlled by the state and used for the prosperity for the people. Actually, the state does not close the private sector in implementing of the water resources, but they must follow the rules and the limitations that have been determined by the government.
 - 2) In the Law No 7 of 2004 there is a principle of privatization in the water resources management process, while the in the Law No 11 of 1974 has no principle of privatization or involvement of the private sector in the water resources management process. This is not separated from the shift in the meaning of water which previously was a public good turned into a commodity which is more concerned with economic aspects that are ultimately oriented towards looking for profits.
 - 3) The Constitutional Court Decision No 85/PUU-XI/2013 determines that the Law No 7 of 2004 on Water Resources is unconstitutional and has no legal binding anymore, which in the sometimes it determines that the Law No 11 of 1974 on Irrigation is reactivated.

B. Recommendation

In this research, the author will provide a recommendation to the government. Here, the President and House of Representatives should immediately create a new Law which is able to cover the principles that are required in the management and supply system of water resources in Indonesia in accordance with the consideration of the decision of Constitutional Court that should limit of privatization of this section.