

**THE LEGAL IMPLICATION OF THE CONSTITUTIONAL COURT'S
DECISION NUMBER 85/PUU-XI/2013 ON REGULATION AND CLEAN
WATER SUPPLYING SYSTEM IN INDONESIA**

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The Legal Implication of the Constitutional Court's Decision Number 85/PUU-XI/2013 on Regulation and Clean Water Supplying System in Indonesia

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ABSTRACT

The Constitutional Court's Decision Number 85/PUU-XI/2013 has abolished the Law No 7 of 2004 on Water Resources and reactivated the Law No 11 of 1974 on Irrigation. This decision has caused some legal implications for the regulation of Water and Clean Water Supplying System in Indonesia. This research is empirical and normative legal research. The result of this study shows that the constitutional court decision No 85/PUU-XI/2013 still leaves some problems. *First*, 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. *Second*, the constitutional court assumed that the Law No 7 of 2004 on Water Resources contained privatization opportunities in water resources management which are not in accordance with Article 33 Paragraph (3) of the 1945 Constitution. *Third*, the regulation of water and clean water supplying system in Indonesia still using the Derivative Regulation under the Law Number 7 of 2004 even though the law has abolished and has no legal binding anymore. *Fourth*, if the Law No 7 of 2004 and the Law No 11 of 1974 are compared. In similarity, both of these Laws are essentially the same, both Laws regulate water to endure the fulfillment of every citizen needs of water while in the differences, these Laws actually are very different. This research proposes a recommendation to the government to immediately make a new law related to the water resources management which is in accordance with the consideration of the Constitutional Court.

Keyword: Constitutional Court Decision, the Regulation of Water Resources, Legal Implications

1. INTRODUCTION

The Population growth has increased the need for clothing, food, clean water, and energy. The management of water resources in Indonesia is controlled by the

state. It has been clearly mentioned in Article 33 Paragraph (3) of the 1945 Constitution which states that the earth, water and natural resources contained therein are controlled by the state and used for prosperity people.¹ Therefore the 1945 Constitution is not only a constitution that regulates the legal and political order but also the economic constitution.

The water resources in Indonesia are one of the largest natural resources in ASEAN.² However, the management of water resources in Indonesia has shown some problems. This is indicated by various problems such as floods and droughts that are getting worse from year to year. On the other hand, there is a lack of our attention to the arrangements in the management of water resources itself. Therefore, water as the source of life for all living beings is important and so is the regulation on water resources management. The regulation on water resources management itself must be clear and in accordance with current conditions.

Based on the decision of the Constitutional Court Number 85/PUU-XI/2013 which has abolished the Law Number 7 of 2004 on Water Resources and reactivated the Law Number 11 of 1974 on Irrigation, the main reason for the cancellation of the Law No. 7 of 2004 on Water Resources was the involvement of the private sector in its management process. This cannot be separated from the shifting of the meaning of water that previously was public goods that turned into a commodity that is more concerned with economic aspects that ultimately oriented to get a profit.³

The Law Number 7 of 2004 on Water Resources also contradicts the 1945 Constitution precisely in Article 33 paragraph (3) stating that the earth, water and natural resources contained therein are controlled by the state and used for the greatest possible for the welfare of the people. The definition is contained in the constitutional mandate where the state is responsible for the availability and

¹ Article 33 Paragraph (3) of the 1945 Constitution

² Aji Sofyan Effendi, 2016, Transformasi Ekonomi yang Berbasis Sumber Daya Alam (SDA) dalam Rangka Penciptaan Nilai Tambah Ekspor dan Kompetitivnes Indonesia di Negara ASEAN, *Pusat Studi Universitas Mulawarman*, Samarinda, Kalimantan Timur, p. 3

³ Samsul Wahidin, 2016, *Hukum Sumber Daya Air*, Yogyakarta, Pustaka Pelajar, p. 28

distribution of potential water resources for all Indonesian and thus the utilization of water resources must be planned in such a way as to fulfil the principles of expediency, justice, independence, sustainability, and sustainability.⁴

Previously, in 2005 the Judicial Review of the Law No. 7 of 2004 had resulted in the decision of the Constitutional Court Number 008/PUU-III/2005. The court did not cancel the Law Number 7 of 2004 in the decision of the case; the court rejected the applicant's petition, but stipulates the provisions which petitioned as a conditional constitution.

Based on the reasons for the privatization in the management of water resources, the Constitutional Court has cancelled all articles in the Law No. 7 of 2004 on Water Resources. In order to avoid the legal vacuum that resulted in legal confusion in the management of water resources, the Constitutional Court reactivated the Law Number 11 of 1974 on Irrigation until the establishment of a new law that regulates water resources in Indonesia. Therefore, the author intends to research “The Legal Implications of the Decision of the Constitutional Court Number 85/PUU-XI/2013 on the Regulation and Clean Water Supply System in Indonesia”.

2. RESEARCH METHODS

2.1. Type of research

The types of this research are under normative research and empirical research. The normative research is based on the conceptual areas that use the library research, such as books, journals, and law regulations relating to the object of research while an empirical research is based on conceptual areas that use field research. So, the author interviewed directly to the respondents or informant in the field related to the object of research.

2.2. Research Location and Resopondent

The research was conducted in Special Region of Yogyakarta which is exactly in the Water Reosurces Management Agency in Yogyakarta. The

⁴ Upik Hamidah, 2015, “Pengaturan Hukum Pengelolaan Sumber Daya Air di Kota Bandar Lampung”, *Jurnal Cita Hukum*, FSH UIN Syarif Hidayatullah Jakarta, p. 314

respondent in the reasearch is people who are compentent in their field and may give information or data related to the problems that will be investigated.

The data of repondent or interview and data retrieval method:

1. Name : Mr Subarjo
- Position : Head of Section of the Data Management Operations 41
Irrigation areas
- Field : Irrigation Division
- Agency : Water Resources Management Agency

2.3. Type of Data

This research uses the primary and secondary data. Primary data is obtained from the result of empirical research, that is direct research conducted in the field. In this research, the researcher interviewed with water resources management agency in Yogyakarta, while secondary data was obtained by library research, namely the study of literature or references related to the issues consisting of primary legal materials, secondary legal materials, and tertiary legal material.

- a. Primary legal materials includes:
 - 1) The 1945 Constitution;
 - 2) The Law Number 11 of 1974 on Irrigation;
 - 3) The Law Number 32 of 2009 on Protection and Management of the Environmental;
 - 4) The Law No 7 of 2004 on Water Resources;
 - 5) The Decision of Constitutional Court Number 85/PUU-XI/2013;
- b. The secondary legal material consists of several documents which were related to the primary legal materials, as follows:
 - 1) Books related to the issue;
 - 2) Scientific Journals;
 - 3) Other legal documents related to the issue;

- 4) Trusted sites internet;
- 5) Other non-legal documents related to the issue;
- c. Tertiary Legal Material

The tertiary legal material included the English dictionaries and encyclopaedias.

2.4. Methods of Collecting Data

- a. Library research

The methods of collecting data with normative legal research are conducted through literature learning. It was conducted by reading, analyzing, and concluding from related documents such as constitution or laws, books, scientific journal, and others which related to the main as the object of this research.

- b. Interview with Respondents

This research is conducted by collecting data directly in the field by using an interview technique, which is questioned directly by the researcher to the respondent or informants to get the information.

2.5. Methods of Data Analysis

The method of data analysis used qualitative descriptive analysis. It means that the collected will be classified and related data will be elaborated through descriptive qualitative with the applicable law comprehensively.

3. DISCUSSION

3.1. The Legal Implications on Regulation and Clean Water Supplying System in Indonesia After the Constitutional Court Decision Number 85/PUU-XI/2013

3.1.1. The Cancellation of Law Number 7 of 2004 on Water Resources

Water is a natural resource that is absolutely necessary for human life.⁵ Indonesia is one of the five countries with the largest of water availability in the world. The main factors which can affect the

⁵ Abrar Saleng, 2013, *Kapita Selekta Hukum Sumber Daya Air*, Membumi Publishing, Makassar, p.165

availability of global water resources are population growth, economic growth, changes in production patterns and trade, increased competition over water due to increased demand for household, industrial and agricultural purposes and the manner in which various community sectors will respond to increasing water scarcity and pollution.⁶

Good water resources management also requires coordination between central and local government (provincial/district/city). However, the existence of excessive regional autonomy can lead to a less harmonious relationship between the central government and local governments (provincial/district/city), especially coordination in water resources management. Technically, each of department undertakes its interests without coordinating and integrating inter-agency, the coordination is only limited to coordination on paper. Therefore, with the huge problems occurred in the management of water resources, the Constitutional Court ruled that the management of water resources was submitted to the state in accordance with Article 33 Paragraph 3 of the 1945 Constitution with decision Number 85 / PUU-XI / 2013 in which the article states that Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”⁷

The basic of the cancellation of the law based on the Constitutional Court Decision is because the government in terms of water resources management does not hold on the 1945 Constitution. This restriction is to ensure the right of the state control over water resources and also to

⁶ Hary Jacom *et al*, 2016, “Air dan Konflik: Studi Kasus Kabupaten Timor Tengah Selatan”, *Jurnal Ilmu Lingkungan*, Vol 14 No 1, p.56-61

⁷ This Article is a form of state control which is intended for the prosperity of the people who are insightful to a social environment. Therefore, Indonesia based its country on the sovereignty of the ecocracy which is restricted in use only for the sustainable welfare of the people. In Mohammad Toha Hasan, S. HI, *Pengelolaan Sumber Daya Air Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XI/2013*, Artikel, p. 3

eliminate privatization. The six limitations consist of the following explanations:⁸

- 1) Any exploitation of water shall not interfere with, exclude, furthermore exclude the people's right to water;
- 2) The state shall fulfil the people's right to water. As considered above, access to water is one of its own rights: Protection, Promotion, enforcement, and fulfilment of human rights are the responsibility of the state, especially the government";
- 3) The preservation of the environment must be encouraged;
- 4) As an important production branch and which controls the livelihood of the people that must be controlled by the state, the supervision and control of the state of water is absolute;
- 5) As a continuation of the right to control by the state and because water has an important role over the livelihood of the public, the main priority given by the exploitation of water is a state-Owned Enterprise or Regional-Owned Enterprise;
- 6) If all of the above restrictions have been fulfilled and there is still water availability, the government are allowed to grant licenses to private businesses as long as the government still conducts water on certain conditions and strict.⁹

The management of water resources itself is an effort to plan, monitor, and evaluate the implementation of conservation of water resources, utilization of water resources, and control the water damage. By the six principles, water resources need to be managed comprehensively, integrated to realize the benefits of sustainable water

⁸ Constitutional Court Decision No 85/PUU-XI/2013 concerning reviewing Law No 7 of 2004 on Water Resources

⁹ *Ibid*

resources for the maximum benefit of the people in accordance with the Article 33 Paragraph (3) of the 1945 Constitution.

3.1.2. The Reactivation of Law No 11 of 1974 on Irrigation

The reactivation of the Law No. 11 of 1974 on Irrigation, automatically, in the clean water supplying system itself has undergone many changes, not only changes in the clean water supplying system but also the decisions of the Constitutional Court Number 85/PUU-XI/2013 which resulted in the Law Number 7 of 2004 concerning the supplying water resources have consequences for the existence of the regulations below them, the implementation of the Government Regulations (PP). So, to avoid a legal vacuum, after the cancellation of Law No. 7 of 2004 on Water Resources, the government made a number of the Ministerial Regulations to regulate water resources. Among others are:¹⁰

- 1) Regulation of the Minister of Public Works and Public Housing Number 04/PRT/M/2015 on Criteria and Determination of River Region;
- 2) Regulation of the Minister of Public Works and Public Housing Number 06/PRT/M/2015 on Exploitation and Maintenance of Water Umber and Irrigation Building;
- 3) Regulation of the Minister of Public Works and Public Housing Number 07/PRT/M/2015 on Coastal Protection;
- 4) Regulation of the Minister Number 08/PRT/M/2015 on Stipulation of Line of Irrigation Network;
- 5) Regulation of the Minister of Public Works and Public Housing Number 09/PRT/M/2015 on the use of Water Resources;
- 6) Regulation of the Minister of Public Works and Public Housing Number 023/PRT/M/2015 on Management of Irrigation Assets;

¹⁰ Constitutional Court's Decision Number 85/PUU-XI/2013 regarding reviewing Law No 7 of 2004 on Water Resources

- 7) Regulation of the Minister of Public Works No.30/PRT/M/2015 on the Development and Management of Irrigation Systems;
- 8) Regulation of Minister of Public Works and Public Housing Number 27/PRT/M/2015 on Dams;
- 9) Regulation of Minister of Public Works and Public Housing Number 29/PRT/M/2015 on Swamp;
- 10) Regulation of the Minister of Public Works and Public Housing Number 13/PRT/M/2015 on Emergency Disaster Management;
- 11) Regulation of the Minister of Public Works and Public Housing Number 14/PRT/M/2015 on Criteria and Stipulation of Regional Status of Irrigation;
- 12) Regulation of the Minister of Public Works and Public Housing Number 26/PRT/M/2015 on the Transfers of River Flows and/or Utilization of River Sections.

These Ministerial Regulation are made to provide legal certainty for the utilization of water resources. The reactivation of the Law Number 11 of 1974 on Irrigation makes the Government Regulation under the Law No 7 of 2004 concerning the water resources is losing its legal basis or legal strength. However, this cannot defeat the rules easily because the constitutional court does not have the authority to examine the regulation under the law, so it cannot invalidate the legislation other than the law. The six Derivative Regulation are among others:

1. Government Regulation No 16 of 2005 on the development of Drinking Water Supply System as the implementation of article 40 of the Water Resources Law;
2. Government Regulation No 20 of 2006 on Irrigation as the Implementation of Article 41 of the Law of Water Resources;

3. Government Regulation No 42 of 2008 on Water Resources Management as the implementation of Article 11 Paragraph (5), Article 12 Paragraph (3), Article 13 Paragraph (5), Article 21 Paragraph (5), Article 22 Paragraph (3), Article 25 Paragraph (3), Article 27 Paragraph (4), Article 28 Paragraph (3), Article 31, Article 32 Paragraph (7), Article 39 Paragraph (3), Article 42 Paragraph (2), Article 43 Paragraph (2), Article 53 Paragraph (4), Article 54 Paragraph (3), Article 57 Paragraph (3), Article 60 Paragraph (2), Article 61 Paragraph (5), Article 62 Paragraph (7), Article 63 Paragraph (5), Article 64 Paragraph (8), Article 69, Article 81, dan Article 84 Paragraph (2) Law of Water Resources;
4. Government Regulation No 43 of 2008 on Ground Water as the Implementation of Article 10, Article 12 Paragraph (3), Article 13 Paragraph (5), Article 37 Paragraph (3), Article 57 Paragraph (3), Article 58 Paragraph (2), Article 60, Article 69, and Article 76 Law of Water Resources;
5. Government Regulation No 38 of 2011 on River as the implementation of Article 25 Paragraph (3), Ground Water as the Implementation of Article 36 Paragraph (2), and Ground Water as the Implementation of Article 58 Paragraph (2) Law of Water Resources;
6. Government Regulation No 73 of 2013 on a swamp as the Implementation of Article 25 Paragraph (3), Ground Water as the Implementation of Article 36 Paragraph (2), and Ground Water as the Implementation of Article 58 Paragraph (2) Law of Water Resources;

This condition has the potential to cause problems in the management of water resources based on the Law No 11 of 1974 on the

Irrigation of which the law is a substitute of Law No. 7 of 2004 on Water Resources. Due to unclear decisions of the non-enforcement of the Derivative Regulation, then the formal juridical, Derivative Regulation of the Law No. 7 of 2004 is still valid even though it has no legal force. Although in the end, it will be in accordance with the principle of *lex superiori derogat legi inferiori*. It means that the regulation which has high power is applicable, so the Law of Irrigation will avoid the existence of the six of implementing regulation under the Law of Water Resources. Therefore, the six of Derivative Regulation to Law No 7 of 2004 will be declared that it is not lined with the basic principle of water resources management restrictions will not running well.

3.1.3. The Clean Water Supply system in Indonesia

Article 11 of the Law of Water Resources states that to ensure the implementation of water resources management, especially clean water that can provide the greatest benefit for the interests of the community in all areas of life, the arrangement of water resources management pattern arranged based on river basin with the principle of integration between surface water and groundwater. The pattern of management itself is based on the balance principle between conservation efforts and utilization of water resources.

Clean water is the one used to meet daily needs and its quality meets the health requirements and can be drunk after the process. Therefore, the management system should be done well. The management of water resources itself is an effort to plan, implement, monitor and evaluate the implementation of conservation of water resources and control of water damage.¹¹

¹¹ Article 8 Law No 7 of 2004 on Water Resources

Provision of clean water in Indonesia, especially for urban areas has existed since the Dutch colonial era. After independence, most of the provision of clean water needs in Indonesia is done by Local Water Company (PDAM) in every province, district, and city in Indonesia. Water supply systems in urban areas usually use piped networks that are below ground level. The advantage of using this method is that the distributed water has a safer and healthier quality.

According to Mr. Subarjo, regarding the clean water supplying system in Indonesia, said that:

“Although the Constitutional Court has ruled that the Law No. 7 of 2004 has been abolished and reactivated the Law No. 11 of 1974 on irrigation, the water management system itself still use the system of Law No. 7 of 2004”. (Subarjo:2018).¹²

In his opinion, we can conclude that the water resources management system in Indonesia still use the Law No 7 of 2004 on Water Resources although that Law has abolished and re-activated the Law No 11 of 1974 on Irrigation.

Based on data analysis and facts in the field, it is stated that the legal implications on the regulation and water management system in which Derivative Regulation such as government regulations, Ministerial regulations, and regulations under the Law No. 7 of 2004 on water resources are still being used, the law has been cancelled as a whole by the Constitutional Court with a decision No 85/PUU-XI/2013. Based on the legal aspects in Indonesia, the actual Derivative Regulation under Law No. 7 of 2004 should not be used anymore.

¹² Subarjo, “*Direct Interview*”, Balai Pegelolaan Sumber Daya Air, Yogyakarta, interviewed on July 16th, 2018 at 09.29 p.m.

The reason that the Derivative Regulation under the Law No. 7 of 2004 should not be used again is strengthened by the principle of *the Lex superiori derogate inferiori* which means that high regulation overrides the low regulation.

In knowing the type and hierarchy of legislation, it cannot be separated from the explanation of the *Theory of Aquo* by Hans Kelsen, where this theory discusses the level of legal norms. He argues that the legal norms are tiered and layered in a hierarchy which is used if there is a conflict, in this case, that must be considered in the hierarchy of legislation. For example when there is a conflict between Government Regulation and the Law, then the Law is used because Law has a higher position than the Government Regulation.

The theory above is increasingly clarified in the positive law in Indonesia in the form of Law on the establishment of Legislation according to the provisions of Law No. 12 of 2001, the type and hierarchy of Legislation consist of:

- a. The 1945 Constitution;
- b. The Provision of the People's Consultative Assembly;
- c. Law/Government Regulation in lieu of Law;
- d. Government Regulations;
- e. President Regulations;
- f. Provincial Regulations, and
- g. The Regulations of District/City

Therefore, based on the existing facts, legally, Derivative Regulation under the Law No. 7 of 2004 on Water Resources is declared invalid and not applicable. This is because the Law No. 11 of 1974 on Irrigation which has been re-activated by the Constitutional Court based

on the principle *lex superiori derogate legi inferiori* has a higher position than government regulations.

3.2. The Similarities and Differences between the Law No 7 of 2004 on Water Resources and the Law No 11 of 1974 on Irrigation

3.2.1. The Similarities between Law No 7 of 2004 on Water Resources and Law No 11 of 1974 on Irrigation

To know the similarities between the Law No 7 of 2004 on Water Resources and the Law No 11 of 1974 on Irrigation, we can read and analysis of both. In this research, both Laws are regulating the same thing, which is water. Referring to article 2 of Law No. 11 of 1974, it states that water and its resources, including natural resources contained therein, have social functions and are used for the greatest prosperity of the people. This is the same as what stated in article 5 of the Law No. 7 of 2004 that the state guarantees the right of everyone to get water for a minimum of basic daily needs to fulfill a healthy, clean and productive life. The two articles contained in both of these Laws are essentially the same. It is emphasizing that the state has an obligation to endure the fulfillment of every citizen needs of water for their life continuity.

The second is both legislations also have a similarity in regulating on the water resources management, such as

- 1) Like in the Article 51, Article 52, Article 53 Article 64 of Law No 7 of 2004, in Article 13 of Law No 11 of 1974 on Irrigation also regulate the protection of water and the sources, such as:
 - a) Conducting an effort to save water and its sources;
 - b) Conducting supervision and control water damage to water sources and surrounding areas;
 - c) Preventing the occurrence of water contamination which can harm the use and the environment;

- d) Conducting supervision and prevention of the water and its sources;

3.2.2. The Differences between the Law No 7 of 2004 on Water Resources and the Law No 11 of 1974 on Irrigation

The difference between the Law No. 7 of 2004 on Water Resources and the Law No. 11 of 1974 on Irrigation conclude that:

- 1) The Water Resources Management Principles contained in the Law on Water Resources and Law of Irrigation are very different:
 - a) The Water Resources Law embraces the principle of decentralization in water resources management while the Law of Irrigation embraces the centralized principle in the management of water resources and their sources. In this case, the meaning of the Water Resources Law embrace the decentralization principle since the existence of Government Regulation No 16 of 2005 on the Development of Drinking Water Supply System.

Government Regulation No. 16 of 2005 is the implementation of Article 40 of the Law on Water Resources. Here it contains the principle of privatization in the development of the Water Supply System and causes a mindset where water managers always benefit and will provide the maximum profits for shareholders, so this situation clearly contradicts the 1945 Constitution.

The purpose of this Irrigation Law is to apply Article 33 Paragraph 3 of 1945 Constitution, where natural resources are controlled by the state for the greatest possible prosperity of the people. As long as the state has the capability of both capital, technology, and management in managing water resources, therefore, the state must directly to manage of water

resources. With direct management, it is ensured that all the results and profits obtained will become state benefits which will automatically benefit the people.

The direct management should be better carried out by the state through state-owned enterprises or regionally owned enterprises. This is because if the state provides management of water resources to be managed by private companies or other legal entities outside the country, profits for the country will be divided so that the benefits for the people are also reduced.

- b) In the Law No 7 of 2004 there is a principle of privatization in the water resources management process, while the Law No 11 of 1974 has no principle of privatization or involvement of the private sector in the water resources management process.

The meaning of privatization refers to the following articles:

- (1) Article 6, Article, Article 26, Article 45, Article 46, and Article 80 Law of Water Resources contain the content of control and monopoly on water resources that contradict the principle controlled by the state and used for the greatest prosperity of the people.
- (2) Article 6, Article 7, Article 8, Article 9, and Article 10 of the Law on Water Resources contain the content which positions the use of water for commercial interests.
- (3) Article 29 Paragraph 2, Article 48 Paragraph 1, Article 49 Paragraph 1 of Law of the Water Resources contain water resources contain of the content that triggers horizontal conflict. This conflict occurred between river areas, especially identical river areas with administrative areas. This suggests that it is more important and prioritizing to

exploit water for the activities of a business and export of water out of the country as it is possible according to article 49 of water resources rather than distributing water to other river communities who need water especially for basic needs.

- (4) The Law on Water Resources eliminate the responsibility of the state to meet water needs for the people.

In the Law No. 7 of 2004 concerning Water Resources, the implementation of the private sector can be carried out if there is no State-Owned Enterprise or Regionally-Owned Business Entity in the area that provides water fulfillment services for the community. With these rules, it is clear that the Law No. 7 of 2004 opens opportunities for the involvement of the private sector in the provision of water for its people. Giving opportunities to private business entities in the provision of raw water for the community will obviously eliminate the state's control over water resources. This contradicts the constitutional mandate in Articles 33 Paragraph (3) which states that the earth, water, and natural resources contained therein are controlled by the state and used for the prosperity of the people.

- (5) Article 92 Paragraph 1 of Water Resources Law is a discriminatory article. The inclusion of a word that is an organization engaged in the field of water resources, as stated in Article 92 of the Law on Water Resources, has violated the main principles in law enforcement based on Article 28I Paragraph 2 of the 1945 Constitution namely

recognition and guarantee, fair legal protection and certainty, and equal before the law.

- c) The Law No 7 of 2004 on Water Resources contradicts the 1945 Constitution. While the Law No 11 of 1974 does not contradict the 1945 Constitution. Apart from there is privatization of the water resources management process contained in the Law No. 7 of 2004, another reason is the Law No 7 of 2004 itself contradicts the 1945 Constitution.

Basically, the 1945 Constitution does not close the private sector in the implementation of production resources that control the lives of many people, including in the provision of drinking water. However, the private sector must not eliminate the meaning of controlled by the state.

From the data analysis on the similarities and differences between the Law 7 of 2004 and the Law No 11 of 1974, it can be concluded that in the similarity between those Laws is concerned about water regulation, but there are differences between the Law No 7 of 2004 and the Law No 11 of 1974. As water resources embrace the principle of privatization and many articles are contradicted with the 1945 Constitution, the Constitutional Court stipulates that the water resources are removed and reactivated through the Law No. 11 of 1974 on Irrigation to fulfill the legal vacuum until the new law about water resources and management systems is established.

4. CONCLUSION AND SUGGESTION

4.1. 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.
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.

- 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.
- 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.

4.2. 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.

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