

# Authority of Government Discretion of the Pentakosta Trademark

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## ABSTRACT

The trademark of the Pentakosta is registered in class 45 which is a class of religious organization services. In accordance with Law No. 20 of 2016 concerning Trademarks and Geographical Indications, as a registered trademark, Pentakosta has legal protection in its use. However, Pentakosta trademark is problematic. The first problem arises when church management changes. The new management wants to delete the registered trademark. Removal of registered marks as mandated by Law No. 20 of 2016 can be carried out according to applicable regulations. In practice, the removal of Pentakosta trademark was also problematic. One of the policies carried out by the Directorate of Trademark and Geographical Indication to overcome the problem was to revive the deleted trademark. This research emphasizes the discussion on the authority of the Directorate General of Intellectual Property which ultimately freezes the trademark of the Pentakosta. The study was conducted by analyzing the decisions of the State Administrative Court that tried this case. The results of the study found that the authority of the Directorate General of Intellectual Property to abolish the Pentakosta trademark still depends on the interpretation of judges.

**Keywords:** *discretion, authority, trademark, Pentakosta, intellectual property*

## INTRODUCTION

The Pentakosta mark is registered in the Directorate Trademark and Geographical Indication on October 23, 2012. The mark is registered in the name of the Pentakosta Church which is located at Jl. linga No. 24-A, Pematang Siantar. Based on Article 35 paragraph (1) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications (UUMIG), registered trademarks are legally protected for a period of 10 (ten) years from the date of receipt. That can be interpreted the Pentakosta trademark has legal protection up to October 23, 2022.

Trademark rights are exclusive rights granted by the state to registered trademark holders for a certain period of time by using the trademark themselves or giving permission to other parties to use them as stated in Article 1 number 1 UUMIG. Based on these provisions, the Pentakosta Church as registered trademark owner has the right to use it alone or give permission to other parties to use it.

The problem arose when the ownership of the Pentakosta trademark was questioned. Based on Article 4 paragraph (8) UUMIG, the terms and conditions of application must be accompanied by a statement of ownership of the trademark. In the event that the owner of a registered trademark is an institution or legal entity, ownership depends on the legal document of the

institution or legal entity as proof of ownership of the mark concerned.

## CASE POSITION

On September 26, 2017, there was an entry request from Rev. Ev. Diane Evapora Siburian, S.Th (Chair of the Pentakosta Church Leaders) and Rev. Ev. Drs. K. Siburian, S.Th (Chief Executive Officer of the Pentakosta Church) who claimed to be the owner of the Pentakosta trademark. In the letter, the owner filed for the removal of the Pentakosta trademark, for the following reasons:

1. The Applicant is the legal owner of the Pentakosta trademark;
2. The Pentakosta Church headquartered on Jl. Lingga No. 24 A - Pematangsiantar is lawful and the applicant is the leader of a legitimate Pentakosta Church;
3. After the existence of the Pentakosta trademark, based on data and facts it is felt that it has made an impact that can disrupt public order that is not in accordance with religious morality both internally and externally;
4. Internally, the existence of understanding / interpretation and the use of trademark rights differently has led to unrest and legal uncertainty, even there have been acts that constitute spiritual

criminalization submitted to the police because of the interpretation of the rights of the trademark;

5. Externally, there are various opinions about the problem of registering church marks by other church denominations.

The Trademark and Geographical Indications Directorate followed up on the letter by recording the deletion of the Pentakosta trademark. Based on Article 72 paragraph (1), the deletion of registered trademarks can be submitted by the relevant trademark owner to the Minister. The intended Minister is the Minister of Law and Human Rights through the Director General of Intellectual Property and Director of Trademark and Geographical Indications. The abolition turned out to be a problem because of objections from the parties who also claimed to be the legal owners of the Pentakosta trademark and claimed that the party who proposed the deletion of the trademark was an illegal party.

The Trademark and Geographical Indications Directorate responded to the objection by issuing a recall letter which essentially revived the Pentakosta trademark that had been previously deleted. Based on Article 93 of the MIG Act, in addition to the settlement of the claim as referred to in Article 83 the parties can resolve the dispute through arbitration or alternative dispute resolution. "Alternative dispute resolution" referred to in the Article includes negotiation, mediation, conciliation, and other means chosen by the parties. In the context of the mediation, the Director General of Intellectual Property issued a freeze letter on the Pentakosta trademark.

### **3. DUALISM OF OWNERSHIP ON RIGHTS**

One of the reasons the Director of Trademark and Geographical Indications gave a letter of recording the deletion is the existence of a Supreme Court ruling which has permanent legal force, namely the Supreme Court Decision Number: 497 PK / PDT / 2015 which confirms the decisions at the previous level. The essence of the verdict was to declare the plaintiffs as top leaders of the 2008-2012 Pentakosta Church with all their legal consequences. The plaintiffs in this case were Rev. Ev. Diane Evapora Siburian, S.Th and Pdt. Ev. Drs. K. Siburian, S.Th, both of them are parties who proposed the removal of the Pentakosta trademark to the Directorate Trademark and Geographical Indications. In the concept of trademark rights, the registered owner for a certain period of time can use the trademark himself or give permission to other parties to use it. Therefore, it can be understood when the Pentakosta is registered on October 23, 2012, the owner of the registered trademark is the parties who also submitted a record of the removal of the mark. However, it cannot be denied that there is a legal loophole that can lead to different interpretations as well as questions about the validity of recording the deletion of registered

trademarks submitted by trademark owners who have changed in the context of legal entities.

A trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, arrangement of colors, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by a person or legal entity in the activity of trading goods and / or services as stipulated in Article 1 point 1 of the MIG Law. People in this context is understanding as an individual or legal entity as stipulated in Article 1 number 19 of the MIG Law.

A name or business registered as a trademark at the Directorate General of Intellectual Property in the name of a legal entity is considered as an asset of the legal entity concerned, no longer an asset of each investor or founder unless otherwise agreed by the founders of legal entities. However, in the case of the deletion of registered trademarks, the founders of legal entities cannot carry out the elimination of registered trademarks directly on personal behalf [1]. Legal entities as legitimate trademark owners, in this case are the only parties that can carry out the submission of requests for deletion of registered trademarks to the Directorate General of Intellectual Property in accordance with Article 72 of the MIG Act as follows:

- 1) Removal of registered Marks can be submitted by the relevant owner to the Minister.
- 2) Application for deletion as referred to in paragraph (1) may be submitted by the Trademark owner or through his Proxy, both for part or all types of goods and / or services.
- 3) In the event that the mark as referred to in paragraph (1) is still bound by a licensing agreement, deletion can only be made if it is approved in writing by the licensee.
- 4) Exceptions to the approval as referred to in paragraph (3) are only possible if in the License agreement, the licensee expressly agrees to override the existence of the agreement.
- 5) Elimination of Trademark registration as referred to in paragraph (1) shall be recorded and announced in the Official Gazette of Marks.
- 6) Removal of registered Marks can be done on the initiative of the Minister.
- 7) Deletion of registered mark on the Minister's initiative can be done if:
  - a. It have similarities in principle and / or the whole with Geographical Indications;
  - b. Contrary to state ideology, legislation, morality, religion, decency and public order; or
  - c. Has similarities in its entirety with traditional cultural expressions, intangible cultural heritage, or names or logos that have been hereditary traditions.
- 8) Elimination as referred to in paragraph (6) and paragraph (7) can be done after obtaining a

recommendation from Trademark Appeal Commission.

- 9) The Trademark Appeal Commission provides recommendations as referred to in paragraph (8) at the request of the Minister.

#### **4. AUTHORITY OF GOVERNMENT DISCRETION**

Discretion is generally defined as the power to make decisions that cannot be determined correctly or incorrectly objectively. Lord Diplock stated as follows, "The very concept of administrative discretion involves a right to choose between a possible course of action on which there is a reasonable people to hold differing opinions as to which is to be preferred" [2]. Said discretion lies in the choice inherent in the rights on the actions of the state administration.

Administrative discretion involves almost every aspect of public administration. Discretion also provides a big dilemma, because it is considered important but problematic. In fact, although there are many political influences that try to control discretion, administrative organs often use discretion in relation to officials and the court. In addition, the government also uses discretion regarding mandate policies and bureaucratic rules. At present, perception of discretion involves solving social problems, the dominant political climate and the role of information on internet-based technology [3].

In Cartier's dissertation [4], discretion is considered unsatisfactory because it is an unclear concept. Therefore, Cartier proposes two understandings of discretion: seen from the point of view of the decision maker and the individual who is the object. Both perspectives are not clearly determined, but the existence of both is important in law. In the case cited by Cartier, there were differences of opinion among the judges who decided. Judge Rand argues that discretion cannot be seen as purely from the use of executive power; Discretion must be in accordance with existing rules and situations involving the affected individuals.

A different opinion can be seen from the judgment of Judge Cartwright, that the decision maker has the authority of a discretionary delegation that cannot be controlled by the court as long as the decision is within the limits clearly defined in the regulation. If there is no decisive formal regulation and the delegation rules give discretion to the decision maker then it is a self-formed rule, with a law unto itself. The two judges' perspectives are the views in discretion, namely the 'bottom-up' and 'top-down' approaches.

In administering government affairs, the law is based on laws and regulations in accordance with the principles adopted in a legal state, namely the principle of legality. However, written legislation often contains shortcomings and weaknesses so discretion is needed.

Limitation of discretion for state administration before the existence of Law No. 30 of 2014 concerning Government Administration are still unclear.

Discretion is a decision and / or action determined and / or carried out by Government Officials to overcome the concrete problems faced in the administration of government in terms of legislation that provides choices, does not regulate, is incomplete or unclear, and / or there is government stagnation. The provisions of Article 1 number 9 of Law No. 30 of 2014 provide clear limits on the regulation of discretion as follows [5]:

- (1) Discretion can only be done by authorized Government Officials.
- (2) Every use of Government Official Discretion aims to:
  - a. Launch governance operational;
  - b. Fill in the legal vacuum;
  - c. Provide legal certainty; and
  - d. Overcome the stagnation of government in certain circumstances for the benefit and public interest.

Furthermore, Government Official Discretion includes [6]:

- a. Decision making and / or action based on the provisions of legislation that gives a choice of decision and / or action;
- b. Decision making and / or action because the laws and regulations do not regulate;
- c. Decision making and / or action because the legislation is incomplete or unclear; and
- d. Decision making and / or action because of government stagnation for wider interests.

In addition, Government Officials who use Discretion must fulfill the following conditions [7]:

- a. In accordance with the objectives of Discretion as referred to in Article 22 paragraph (2);
- b. Not contrary to the provisions of the legislation;
- c. In accordance with general principle of good governance;
- d. Based on objective reasons;
- e. Does not cause Conflict of Interest; and
- f. Done in good faith.

#### **5. INTERPRETATION OF LAW**

Everyone who understands law certainly understands the importance of the role of interpretation in law. Laws and regulations consist of many words; as well as policies, contracts, testing and consideration of judges. Therefore, the real law results from the interpretation of these texts. The method of interpretation of legislation is a means or tool to find out the meaning of the law. The justification lies in its use to implement concrete provisions and not for the sake of the method itself. Therefore it is assessed with the results obtained [8].

Interpreting the law to find the law is not only carried out by judges, but also by law scholars. However, from the reasons or considerations that are often used by the

judge in finding the law, it can be concluded that the following methods exist:

- a. Interpretation according to language  
The interpretation of the law will basically always be a language explanation. This method of interpretation called grammatical interpretation is the simplest way of interpreting or explaining the meaning of the provisions of the law by describing it according to language, word order or sound. Here the meaning or purpose of the provisions of the law is explained according to common everyday language. The method of grammatical interpretation is also called the objective method.
- b. Teleological or sociological interpretation  
The meaning of the law is determined based on community goals. Through this teleological interpretation, laws that are still valid but outdated or no longer appropriate, are applied to current events, relationships, needs and interests, even though at the time the law was promulgated, the event does not yet exist or is unknown. This teleological interpretation is also called sociological interpretation. This method is only used when the words in the law can be interpreted in various ways.
- c. Systematic or logical interpretation  
Interpreting the law may not deviate from the legal system. The occurrence of a law always relates to or connected to other laws and regulations, and there is no stand-alone law completely separated from the overall legislation. Each law is part of the whole system of legislation. Interpreting the law as part of the whole system of legislation by connecting it with other laws is called systematic interpretation or logical interpretation.
- d. Historical interpretation  
There are two kinds of historical interpretations, namely interpretations according to the history of laws and interpretations according to legal history. By interpreting according to the history of the law, the purpose of the provisions of the law is to be sought as seen by the legislators at the time of its formation. The thought underlying this method of interpretation is that the law is the will of the legislators listed in the text of the law. The historical interpretation of this law is also called subjective interpretation, because the interpreter places himself in the subjective view of the legislator.  
Interpretation methods that want to understand the law in the context of all legal history are called interpretations according to legal history. The law did not just happen. Laws are always a reaction to social needs to regulate, which can be explained historically. Each arrangement can be seen as a step in the development of society. A step whose meaning can be explained if the previous steps are known too. This includes all institutions involved in implementing the law.

- e. Comparative interpretation  
Comparative interpretation or interpretation by comparison is an explanation based on legal comparison. Through comparison, clarity is needed on a statutory provision, especially for laws arising from international agreements. A uniform implementation realized through the unity of law, gave birth to international agreements as objective law or legal principles for several countries.
- f. Futuristic interpretation  
Futuristic interpretation or anticipatory method of legal discovery is an explanation of the provisions of the law by referring to laws that do not yet have legal force.

The above interpretations came from judges' considerations. Furthermore, there are other interpretations which came from the results of legal findings that can be distinguished between restrictive and extensive interpretations. Restrictive interpretations are limiting explanations or interpretations, to explain a statutory provision the scope of the provisions is limited. On the contrary, extensive interpretation transcends the boundaries set by grammatical interpretation. General rules regarding the question of interpretation method which, in what concrete event, should be used by the judge does not exist. The methods of interpretation are often used together or alternately. It can be said that in each interpretation or explanation of the law there are grammatical, historical, systematic and teleological elements.

## 5. ANALYSIS AND DISCUSSION

### 1. *Decision Number 112 / G / 2018 / PTUN-JKT*

In their defense at the first-level State Administrative Court, the Defendant's attorney, namely the Directorate General of Intellectual Property, uses the reason that the object of dispute letter No. HKI.HI.06.03-03 regarding the freezing of registered Pentakosta IDM000461745 on 15 February 2018 was published because of a conflict in the management of the Pentakosta church over the use of the Pentakosta mark. Furthermore, the Director General of Intellectual Property helps resolve conflicts that occur in the management of the Pentakosta church because the conflict affects the disruption of public order in carrying out worship for the Pentakosta church congregation [9].

The purpose of temporarily freezing is that the parties to the conflict within the Pentakosta church can make peace for the benefit of the people, especially the congregation of the Pentakosta church itself. The following are the legal processes that occur within the authority of the Director General of Intellectual Property:

- a. Before the Pentakosta trademark number IDM000461745 was registered, the Directorate General of Intellectual Property (DJKI) would check the completeness of the application for registration, such as: trademark declarations for which the application was requested belonged to the applicant, trademark etiquette, power of attorney if submitted through an attorney and proof of payment, as regulated in Law No. 15 of 2001 concerning Trademarks and Geographical Indications in conjunction with Government Regulation (PP) No 23 of 1993 concerning Procedures for Request for Trademark Registration;
- b. If the completeness of formalities is declared complete, a substantive examination of the Pentakosta mark will be carried out. If during a substantive examination, the Pentakosta mark is declared registered, then the mark will be announced. If there are no objections to the mark's registration, the mark will be given a certificate. Conflicts within the Pentakosta church management were only discovered after the Pentakosta mark was declared registered and given a certificate;
- c. On September 12, 2017 a meeting was held between the Directorate of Trademarks and the Pentakosta church, represented by Ps. Ev. Diane Evapora Siburian, Sth and entourage. During the meeting, Rev. Ev. Diane Evapora Siburian requested the removal of the Pentakosta mark IDM000461745 at the Minister's initiative;
- d. The Pentakosta mark IDM000461745 was removed on its own initiative by the Pentakosta church represented by Pdt. Ev. Diane Evapora Siburian, Sth, based on a court decision that has permanent legal force, that is decision No. 497 PK / Pdt / 2015 jo 3060 K / Pdt / 2013 jo 148 / Pdt / 2013 / PT-Mdn jo 34 / Pdt.G / 2012 / PN.Pms;
- e. On September 26, 2017, the Directorate of Trademark and Geographical Indications received a letter requesting the removal of a mark from Pdt. Ev. Diane Evapora Siburian, Sth, and Pdt. Ev. Drs. K. Siburian, Sth. Based on the letter, through the Director of Trademark and Geographical Indications No. HKI.4.HI.06.59558 / 2017, the removal of the Pentakosta mark was carried out;
- f. Based on a letter issued by the Director of Trademark and Geographical Indications, the Pentakosta church law firm sent an objection letter with the abolition of the Pentakosta mark through letter No. 040 / BH / GP / Advocad / XI / 2017 dated October 30, 2017. The reason for the objection because the mark was removed without being known by Pdt. Jarasman Sihombing as the head of the Pentakosta church leadership. The objection letter was submitted by attaching evidence related to the Pentakosta church which was led by Ps. J. The Sihombing;
- g. Based on the evidence presented by the Pentakosta church led by Pdt. J. Sihombing, Directorate of

Trademarks and Geographical Indications issued a letter of withdrawal of a removal of a Pentakosta mark through letter No. IPR.4.HI.06.06.03-522 / 2017 dated 17 November 2017;

- h. In its development, the conflict that occurred between Pentakosta church officials increasingly uncontrolled so that the DJKI took the initiative to conduct hearings to the warring parties. On January 8, 2018 through a letter from the Director of Trademarks and Geographical Indications on December 21, 2017, the Director General of Intellectual Property invited parties to the conflict to discuss the Pentakosta mark;
- i. The hearing did not produce positive results because the parties remained in their respective positions. Therefore, the Director General of Intellectual Property through the letter No. HKI.HI.06.03-03 on 15 February 2018 froze the Pentakosta mark to create peace between the conflicting parties.

The authority of the Director General of Intellectual Property is based on the provisions of Article 691 jo Article 692 Ministerial Regulation (Permenkumham) No. 29 of 2015 concerning the Organization and Procedures of the Ministry of Law and Human Rights Republic of Indonesia. One of the tasks of the DJKI is to solve dispute resolution and complaints of intellectual property violations. In this case, the DJKI seeks to resolve disputes that occur in the management of the Pentakosta church, especially in the field of trademark, in the hope that the parties can make peace.

The interesting thing from the judge's consideration in assessing DJKI efforts to resolve disputes between Pentakosta church officials is to categorize it as discretion. In Decision No. 112 / G / 2018 / PTUN-JKT, the panel of judges stated, "As for the discretion given by the legislation in the field of trademarks to the Minister / Director General only in the case of deletion of the mark as stipulated in Article 61 paragraph (2) Law No. 15 of 2001 and Article 72 paragraph (6) and paragraph (7) of Law No. 20 of 2016. "

Furthermore, the judges also base their considerations on the principle of legality. Based on the principle of legality, the actions of the Minister / Director General allowed by statutory regulations only publish a mark and delete and cancel a registered mark only, so the exercise of authority outside the authority stipulated by applicable laws and regulations is invalid. The principle of legality is regulated in Article 5 of Law No. 30 of 2014 which states that: "The administration of government is based on: a. Principle of legality, b. The principle of protection of human rights, and c. general principles of good governance (AUPB) ".

In the explanation of Article 5 letter a of Law No. 30 of 2014, it is stated: "What is meant by the "principle of legality" is that the administration of government puts forward the legal basis of a decision and / or action made by government bodies and / or officials". Therefore, the judge's judgment assesses the object of

dispute issued by the DJKI regarding the temporary suspension of Pentakosta marks that have been registered with IDM000461745 based on the principle of legality that binds the administrators of government administration in exercising their authority, having no legal basis in doing so as to exceed their existing authority.

According to the panel of judges, if the DJKI's actions and / or decisions to issue the object of the dispute are based on discretion on the basis of the decision-making grounds and / or actions because the laws and regulations do not regulate as referred to in Article 23 letter b of Law No. 30 of 2014, then the discretion taken must meet the requirements, one of which must be in accordance with the purpose of discretion as referred to in Article 22 paragraph (2) of Law No. 30 of 2014. One of the conditions that must be met in taking a discretion is to provide legal certainty, by taking into account these provisions and relating to the issuance of the object of the dispute, the panel of judges argued that the issuance of the object of the dispute had caused the absence of legal certainty over the Pentakosta trademark that was registered and that the registered trademark owner did not get legal protection and exclusive rights from the state even though it was guaranteed by law and regulation.

Based on the judge's consideration that the use of discretion is not in accordance with the purpose of the discretionary authority granted to the DJKI, the decision must be canceled. According to the panel of judges, the reasons for the internal conflict that occurred among Pentakosta church officials over the use of the Pentakosta mark cannot be legally justified. The issue of the use of the Pentakosta mark which is questioned by the Pentakosta church officials, in Law No. 15 of 2001 concerning Trademarks as well as in Law No 20 of 2016 concerning Trademarks and Geographical Indications, the mechanism is to regulate, namely by filing a lawsuit within the Commercial Court.

## **2. *Decision on Appeal Number 67 / B / 2019 / PT.TUN-JKT***

In its consideration, the panel of judges stated that the Pentakosta church represented by Pdt. Ev. Jarasman Sihombing as the pastor / top of the Pentecostal church leadership, as well as the Pentakosta church represented by Pdt. Ev. Diane Evapora Siburian, Sth. also as a priest / top Pentakosta church leader with the same address, namely in Jalan Lingga Number 24-A, Pematang Siantar, North Sumatra. Therefore, from this situation both parties have claimed to be the top leaders of the Pentakosta church, so it can be ascertained that an internal conflict in the management of the Pentakosta church has occurred at the same time [10].

Furthermore, the judge's consideration also stated that there were two management boards so that one of the

two parties must be legally established as the head of the church. Resolution of this problem is based on the Articles of Association (AD) / Bylaws (ART) that exist and act as legal instruments for resolution because the articles of association are basic rules of management in the church, including conflict resolution techniques. If the settlement of this problem is not reached by peace, then it is resolved to the competent District Court, in accordance with Article 1365 of the Indonesian Civil Code (KUHPer).

The differentiate of the interpretation of judges in the first level, which states that there is no civil problem that must be resolved first because the Plaintiff in the first level is the Pentakota church represented by Pdt. Ev. Jarasman Sihombing and the Rev. Ev. Jarasman Sihombing also registered the Pentakosta mark IDM000461475. Therefore, as long as there is no civil court ruling regarding his position as the head of the Pentakosta church based on the decision of the Pentakosta church Synod No. 002 / XXXIX / PP / GP / UM / VI / 2016 dated June 30, 2016, the argument is not based on law.

Based on the appeal decision, it turns out that there has been Pematang Siantar District Court No 34 / PDT.G / 2012 / PN.PMS dated 25 March 2013 juncto Medan High Court Decision No 148 / PDT / 2013 / PT-MDN dated 12 August 2013 juncto Cassation Decision The Supreme Court of the Republic of Indonesia No. 3060 K / Pdt / 2013 dated March 25, 2014 juncto Decision on Review of the Supreme Court of the Republic of Indonesia No. 497 PK / Pdt / 2015 dated March 16, 2016 and a reprimand has been made to the losing party in the decision.

Other differences in the interpretation of judges can be found in the argument regarding the authority of the court in this case. The appeals panel of judges considered that regarding the legal status of the object of the dispute, it was indeed the letter of IPR No.HI.06.03-03 dated February 15, 2018, regarding the registered Pentakosta mark IDM000461745 which was issued by the DJKI and could be qualified as a state administration decision. Therefore, it can be disputed in the State Administrative Court because it has fulfilled the elements cumulatively as determined in Article 1 number 9 of Law No. 51 Year 2009.

However, the resolution of the dispute has been specifically regulated in the provisions of Article 83 paragraph (1), (2) and (3) of Law No. 20 of 2016 and the Commercial Court that has the authority to adjudicate matters relating to trademark disputes. In addition, the appellate law council also uses the principle of *litis finiri oportet* which basically means that every case must have an end. This principle is also related to the principle of legal certainty so that in spite of the disagreement regarding the validity of the decision as the object of the dispute, the appeals judges are of the opinion that the substance / material of this case is an internal conflict of management in the Pentakosta church which must be resolved based on the

provisions of the prevailing AD / ART for the Pentakosta church itself.

Although in essence, the two judges who decided on this case agreed for the sake of legal certainty, but apparently the two judges differed in terms of interpretation, especially when using the principle related to the decision. The first-level panel of judges linked the principle of legal certainty with the principle of legality so that when the DJKI was deemed not to have legality in issuing the disputed object, the DJKI decision must be canceled. On the contrary, the appeals panel of judges linked the principle of legal certainty with the principle of *litis finiri oportet* as explained above.

In the characteristics released by UNESCAP [11], the principle of legal certainty can be seen in the principle of rule of law where good governance requires a fair legal foundation and can be enforced as a whole. When compared with *Algemene Beginselen van Behoorlijke Bestuur* (ABBB) in the Netherlands as (formerly) regulated in *Wet Administratieve Rechtspraak Overheidsbeschikkingen* (AROB) and *Algemene wet bestuursrecht* (AWB) today, the principle of legal certainty can be interpreted as legal certainty in the material and formal sense. The aspect of legal certainty in the material sense emphasizes the certainty of protection of the rights of citizens and the fulfillment of expectations that have been fostered by government organs [12].

Formally, the principle of legal certainty means that provisions whose material content is burdensome or beneficial to certain parties, then the formulation of the provisions must be prepared in clear words or may not be multi-interpreted. The essence and vital spirit built in the principle of legal certainty actually require respect for the legal rights obtained by citizens based on a policy decision, so as to create legal stability, in the sense that a decision issued by the state / organization must contain certainty and is not so easy to repeal [13].

## 6. CONCLUSION

DJKI's decision to reconcile Pentakosta church officials by issuing a Pentakosta mark freezing letter was apparently interpreted differently by the two panel of judges who examined this case. The first level of judges stated that the object of the dispute had fulfilled all the elements of a state administrative decision while the appeals panel concluded that this case was an internal dispute over the management of the Pentakosta church even though the object of the dispute was a decree.

In the context of the dualism of ownership of rights, it turns out that the two panel of judges also differed in opinion that the appeals panel judged the internal problems of the Pentakosta church management should be resolved based on the AD / ART that applies to the Pentakosta church itself. On the contrary, the first-rate panel of judges considered that as long as there were no

civil court decisions regarding the top office of the leadership of the Pentakosta church, what would apply was the decision of the Synod of the Pentakosta Church. At present, the Pentakosta trademark case has entered the cassation stage in the Supreme Court. Therefore, it is very interesting to wait for the Supreme Court's decision especially regarding the use of the principle of legal certainty used by the two judges, but it is interpreted differently. The first-level panel of judges linked the principle of legal certainty with the principle of legality while the appeals panel of judges linked the principle of legal certainty with the principle of *litis finiri oportet*.

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