



## Protection of Animated Cartoon Character: Copyright or Trademark?

I Gusti Ngurah Bayu Satriawan,<sup>1</sup> Marwanto<sup>2</sup>

<sup>1</sup> Faculty of Law, Udayana University, E-mail: [ngurahbayu97@gmail.com](mailto:ngurahbayu97@gmail.com)

<sup>2</sup> Faculty of Law, Udayana University, E-mail: [marwanto.jim@gmail.com](mailto:marwanto.jim@gmail.com)

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#### Corresponding Author:

I Gusti Ngurah Bayu Satriawan,  
E-mail: [ngurahbayu97@gmail.com](mailto:ngurahbayu97@gmail.com)

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### Abstract

Animated cartoon character is a character created or depicted in an animated story with the aim of supporting the story in an animated film. Currently, many children's clothes, bags, shoes or accessories include animated pictures from cartoons with the aim of attracting buyers' attention to increase sales of these products. The purpose of this writing is to identify, analyse and elaborate legal protections for animated cartoon characters based on the provisions in the copyright law, as well as legal protection for animated cartoon characters used as brands. This was normative legal research using a statutory, conceptual and analytical approaches. Animated cartoon characters as one of the objects of copyright protection, namely images, receive automatic protection based on the Copyright Law and can also be registered as Trademarks, as long as the image has distinctive power and has no similarity in substantial or in its entirety. However, if any parties who intend to use the animated cartoon characters that already classified as a well-known trademark, that party can propose a License to the owner of the trademark as regulated under the provision of Article 42 paragraph (1) of Trademark Law

## 1. Introduction

An animated cartoon character is a character created or depicted in an animated story with the aim of supporting the story in an animated film.<sup>1</sup> Animated cartoon characters can be categorized as fictional characters deliberately created by the Creator as the main characters in a story. Animated characters usually found in a cartoon.

Cartoons are familiar among children to adults. A lot of people are anticipating the show. As per today, cartoons continue to develop through various media, such as movies, which known as animation.<sup>2</sup>

<sup>1</sup> Devi Kumiawati Homan, "Eksplorasi Visual Diri Dalam Desain Karakter," *Humaniora* 5, no. 2 (2014): 729-36, <https://doi.org/https://doi.org/10.21512/humaniora.v5i2.3128>.

<sup>2</sup> Selma Intania Hafidha, "Potret Ilustrasi 6 Karakter Kartun Saat Dewasa Ini Kreatif Banget - Hot Liputan6.Com," 2020, <https://hot.liputan6.com/read/4340169/potret-ilustrasi-6-karakter-kartun-saat-dewasa-ini-kreatif-banget>.

The publication of an animated work often features an animated character as the main focus. Animated characters are generally made in funny, interesting and unique form in order to impressed the reader or audience.

Speaking of animation, there are several characters which is well-known in the world, namely: *Mickey Mouse, Minnie Mouse, Donald Duck, Goofy, Pluto* and other characters from Walt Disney which has been known by society as one of the animations that portray the meaning of genuine friendship.<sup>3</sup> Tracing back, the character of *Micky Mouse* and *Minnie Mouse* were first introduced in 1928 in the short film "*Steamboat Willie*".<sup>4</sup> Since then, the character *Mickey Mouse* character has appeared in 130 animated films and the animation has been shown on television since 1955.<sup>5</sup>

The characters were created by Walt Disney who was on a train from Manhattan to Hollywood at a time when Walt and his brother were at their lowest point.<sup>6</sup> As it has developed, *Mickey Mouse* is now even known as "*the most popular character of Walt Disney's animated cartoons and arguably the most popular cartoon star in the world*".<sup>7</sup>

The fame of *Mickey Mouse* characters and other animated characters is often used by the public in various ways. Nowadays, a lot of products of clothes, bags, shoes, or children's accessories that include animated images derived from cartoons.<sup>8</sup> It aims to attract buyers to increase the sales of these products.<sup>9</sup>

In 2019, Disney filed a lawsuit against an *online* clothing store in Orlando for copyright infringement.<sup>10</sup> Disney as a plaintiff filed a lawsuit against Eric Wichhart, owner of Mouseprint Media and disgeardesigns.com over the use of similar designs on his online goods and businesses.<sup>11</sup> Disney through its proxy filed a claim for damages and permanent injunctive relief.<sup>12</sup> According to Disney, the Disgear logo owned by the Defendant has similarities to the Disney logo. These similarities have an impact on consumers' belief that Disgear is part of Disney.<sup>13</sup>

Similar thing also happened in Indonesia. A lot of products with Disney characters such as *Mickey Mouse* and *Minnie Mouse* can be easily found on items in Indonesia.

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<sup>3</sup> "Mickey Mouse & Friends | Disney UK," n.d., <https://disney.co.uk/mickey-mouse>.

<sup>4</sup> Trammell Kendall, "Mickey Mouse's History Explained in 6 Facts - CNN," 2017, <https://edition.cnn.com/2017/11/18/entertainment/mickey-mouse-fun-facts-trivia-trnd/index.html>.

<sup>5</sup> Kistyarini, "Menjaga Warisan Walt Disney Dengan Inovasi Dan Teknologi," 2017, <https://entertainment.kompas.com/read/2017/08/06/113631110/menjaga-warisan-walt-disney-dengan-inovasi-dan-teknologi>.

<sup>6</sup> Keith Gluck, "The Birth of a Mouse | The Walt Disney Family Museum," 2012, <https://www.waltdisney.org/blog/birth-mouse>.

<sup>7</sup> Disney, "Mickey Mouse | Cartoon Character | Britannica," n.d.

<sup>8</sup> Persekutuan Perdata Doni Budiono & Rekan, "Penggunaan Gambar Karakter Animasi Pada Kemasan Produk | Persekutuan Perdata Doni Budiono & Rekan," 2020, <https://pdb-lawfirm.id/penggunaan-gambar-karakter-animasi-pada-kemasan-produk/>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Jankowski Jon, "Disney Files Lawsuit against Online Clothing Shop for Copyright Infringement," 2020, <https://www.clickorlando.com/news/local/2019/12/11/disney-files-lawsuit-against-online-clothing-shop-for-copyright-infringement/>.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

Characters resembling *Mickey Mouse* are also sold through *e-commerce* by several online stores.<sup>14</sup> There is no guarantee that it is done with permission from Disney.

Based on the background abovementioned, it is important to examine in depth the legal issues related to the protection of animated cartoon characters based on copyrights law and how it is protected as trademarks.

The aims of this study were to identify, analyze, and elaborate the legal protection of animated cartoon characters according to copyright law, as well as the protection based on trademark law. In order to emphasize the purpose of writing, this paper will discuss the relevant substance with the focus of the problem orderly. First, it is presented regarding the legal protection of animated cartoon characters based on the provisions of the Copyright Law. Second, it is presented about the legal protection of animated cartoon characters used as trademark.

Compared to some previous studies, this research has similarities in terms of topics, namely discussing animated cartoon characters, but with a different study focus. This paper emphasizes on the protection of animated cartoon characters based on the provisions in copyright law and the protection of animated cartoon characters that used as trademark.

Previous study was carried out by Al-Farouqi, A., & Riswandi, N. S. B. A. that examined *the Law of Anime: Otaku, Copyright, Fair Use and Its Infringement in Indonesia*. In this study, the author focus was on *anime*, copyright infringement of *anime*, copyright issues faced by Indonesia, copyright protection of *anime* in Indonesia as well as provisions on Fair Use.<sup>15</sup> In 2017, Setyanata, M also examined *the United States of America Addressing Intellectual Property Piracy in Creative Economy: Measure Taken on Movie Piracy in Indonesia during Jokowi Era (2014-2016)*. In this study, the focus was about the protection of copyright in the United States namely on actions to reduce piracy of copyright products, especially Hollywood films and discussions or workshops with Indonesian representatives to raise awareness of the importance of intellectual property rights to protect creative economic products.<sup>16</sup>

## 2. Research Method

This study was normative legal research using a statutory, conceptual, and analytical approach. The technique of tracing legal materials used document study techniques, and analysis of studies used qualitative analysis. Referring to the thoughts of Peter Mahmud Marzuki, normative research is carried out to find out the solution for legal

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<sup>14</sup> Shopee, "Tas Sekolah Anak Laki-Laki Branded - Catenzo Junior Crz 207 RU355 Karakter Mickey Mouse | Shopee Indonesia," n.d., <https://shopee.co.id/Tas-Sekolah-Anak-Laki-Laki-Branded-Catenzo-Junior-Crz-207-RU355-Karakter-Mickey-Mouse-i.130383030.7342354604>.

<sup>15</sup> Akhmad Al-Farouqi and Nandang Sutrisno Budi Agus Riswandi, "The Law Of Anime: Otaku, Copyright, Fair Use, And It's Infringements In Indonesia," *JIPRO: Journal of Intellectual Property* 1, no. 1 (2020): 42-60.

<sup>16</sup> Maretha Setyanata, "The United States Of America Addressing Intellectual Property Piracy In Creative Economy: Measure Taken On Movie Piracy In Indonesia During Jokowi Era (2014-2016)" (President University, 2017).

problems that occur and are faced by exploring legal rules, legal principles, or legal doctrines.<sup>17</sup>

### 3. Result and Discussion

#### 3.1. Protection of Animated Cartoon Characters Based on Copyright Law

Animated cartoon characters are known as a character which is a product of human creativity and intelligence. The animate cartoon characters are classified as an intellectual property right, which is protected under the copyright regime.

In Indonesia, the protection of animated cartoon characters is protected under the Law No. 28 of 2014 concerning Copyright (hereinafter referred to as "Copyright Law"). According to Cambridge Dictionary, "animation is also the process by which an animated movie, especially a cartoon is made from drawings done by hand or by a computer". This definition emphasizes that animated cartoon characters can be classified as animation which is made by hand through a computer program.

Principally, the protection of animated cartoon characters is protected under the copyright regime as stipulated under the provision of Article 40 point-4, which includes "fine art works in any forms such as paintings, **drawings**, engravings, calligraphy, carvings, sculptures, or collage".

According to the copyright regime, the protection of **drawings** is given automatically after it is declared in an expressed work. This principle is stipulated in Article 1 point-1 of the Copyright Law, as follow:

"Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations."

The protection of copyright is known as *automatically protection*.<sup>18</sup> The concept is adopted from the Berne Convention.<sup>19</sup> According to this concept, the recordation of works and related rights products is not a requirement to obtain Copyright and Related rights, hence it is optional and not mandatory.<sup>20</sup> Although in Copyright Law is given automatically protection and recordation is not mandatory, but if the Author or Copyright Holder choose to conduct the recordation, it will certainly be more beneficial since the recordation may prove the ownership to the work concerned in

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<sup>17</sup> ND Mukti Fajar and Y Achmad, *Dualisme Penelitian Hukum: Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2013).

<sup>18</sup> David R Carducci, "Copyright Registration: Why the US Should Beme the Registration Requirement," *Ga. St. UL Rev.* 36 (2019): 873.

<sup>19</sup> Putri Triani Dwijayanthi and Ni Ketut Supasti Dharmawan, "The Responsibilities of Influencers in Promoting Tie-Dye Motif Products Based on Copyright Law," *Substantive Justice International Journal of Law* 3, no. 2 (2020): 167-79, <https://doi.org/http://dx.doi.org/10.33096/substantivejustice.v3i2.90>.

<sup>20</sup> Ni Ketut Supasti, "Relevansi Hak Kekayaan Intelektual Dengan Hak Asasi Manusia Generasi Kedua," *Jurnal Dinamika Hukum* 14, no. 3 (2014): 518-27.

case of impersonation or plagiarizing of the work itself.<sup>21</sup> More over, the Copyright Law also recognized the principle of first to use.<sup>22</sup>

The concept of protection embraced in the Bern Convention is a basic right principle originally embraced by French copyrights that prioritize scientific rights as embraced in the mahzab of natural law that essentially believes that copyright is not a gift from others, but is born naturally and attached to an individual.<sup>23</sup> It is in accordance with John Locke's idea that mainly expressed that a natural right will naturally be born on a creation derived from the investments made by individuals, hence the intellectual property is considered as an individual rights of the Author or Creator.<sup>24</sup>

As a part of expressed work, the protection of animated cartoon characters is closely related to the theory of intellectual property protection as stated by Robert M. Sherwood, namely reward theory, recovery theory, risk theory, incentive theory, and economic stimulus theory.<sup>25</sup> According to reward theory, the Author or Creator should be given the opportunity to be rewarded for their works.<sup>26</sup> The implementation of this theory can be found in the provision of Article 4 of Copyright Law, which mainly regulated the exclusive rights comprising moral rights and economical rights. The moral rights as stipulated in the Copyright Law is eternally inherent to the Author and cannot be transferred as long as the Author is alive.<sup>27</sup>

The protection of moral rights is regulated under the provision of Article 5 of Copyright Law, which stated that it is eternally inherent to the Author to do several things, namely:

- a. "continue to include or to exclude their name on the copy with respect to the public use of their Works;
- b. use an alias or pseudonym;
- c. change their Works to comply with appropriateness in society;
- d. change the title and subtitle of their Works; and
- e. defend their rights in the event of a distortion of Works, mutilation of Works, modification of Works, or other acts which will be prejudicial to their honor or reputation."

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<sup>21</sup> M Febry Saputra, "Hak Cipta Dance Challenge Yang Diunggah Ke Aplikasi Tiktok," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 69-91, <https://doi.org/https://doi.org/10.51749/jphi.v2i1.16>.

<sup>22</sup> *Ibid.*

<sup>23</sup> Inda Nurdahniar, "Analisis Penerapan Prinsip Perlindungan Langsung Dalam Penyelenggaraan Pencatatan Ciptaan," *Veritas et Justitia* 2, no. 1 (2016): 231-52, <https://doi.org/https://doi.org/10.25123/vej.v2i1.2073>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Siti Asyfiyah, "Perlindungan Hukum Potensi Indikasi Geografis Di Kabupaten Brebes Guna Pengembangan Ekonomi Masyarakat Lokal," *Jurnal Idea Hukum* 1, no. 2 (2015), <https://doi.org/http://dx.doi.org/10.20884/1.jih.2015.1.2.17>.

<sup>26</sup> Ni Ketut Supasti Dharmawan, *Harmonisasi Hukum Kekayaan Intelektual Indonesia* (Swasta Nulus, 2018).

<sup>27</sup> Lidya Shery Muis, Ari Purwadi, and Dwi Tatak Subagiyo, "Perlindungan Hukum Hak Cipta Fesyen Terhadap Ekonomi Kreatif Dalam Masyarakat Ekonomi ASEAN," *Perspektif* 22, no. 2 (2017): 172-79, <https://doi.org/http://dx.doi.org/10.30742/perspektif.v22i2.618>.

In accordance to the idea of Sherwood, namely incentive theory, the Copyright Law also regulated about the protection of economical rights of the Author or Copyright Holder as stipulated under the provisions of Article 8 and Article 9 of Copyright Law. According to Article 9 paragraph (1) of the Copyright Law, it is stipulated that “the Author or the Copyright Holder has the economic rights to engage in publication of the Works; Reproduction of the Works in all its forms; translation of the Works; adaptation, arrangement, or transformation of the Works; Distribution of the Works or their copies; performance of the Works; Publication of the Works; Communication of the Works; and rental of the Works.”

Further, the provision of Article 9 paragraph (2) of Copyright Law stipulates that “Every Person who exercises the economic rights as referred to in section (1) is obligated to obtain permission from the Author or the Copyright Holder”. More over, the Copyright Law also regulated a prohibition from exercising Reproduction and/or Commercial Use without any permission from the Author or the Copyright Holder as mentioned in Article 9 paragraph (3) of the Copyright Law.

According to the Copyright Law, the protection of animated cartoon characters which is considered as works of drawings endures of the life of the Author and still protected for another 70 (seventy) years after the Author’s death, commencing from 1<sup>st</sup> January of the year following the event. This provision is regulated under the Article 58 paragraph (1) of the Copyright Law. In the event that copyright protection of the work is owned or held by legal entity, the protection endures for 50 (fifty) years since its Publication.

Besides, the Copyright Law also protected any “translations, interpretations, alterations, anthologies, databases, adaptation, arrangement, modification and other works resulting from transformation” without prejudicing the Copyright on the original Works as stipulated in Article 40 paragraph (2) of Copyright Law. This provision has been acknowledged internationally as “derivative works”.<sup>28</sup>

The regulation concerning “*derivative work*” is stipulated under *Article 2 paragraph (3) Berne Convention*, which stated that “*derivative works as translations, adaptations, arrangements of music and other alterations of a literary or artistic work, which shall be protected as original work without prejudice to the copyright in the original work*”. The provision emphasizes that the transformed work is understood as a derivative work in the form of translation, adaptation, arrangement, and other alterations of a literary or artistic work remain protected as the original work without prejudice to the copyright on the original work.

Following the ratification of Bern Convention through Presidential Decree No. 18 of 1997 on the Ratification of the Berne Convention for the Protection of Literary and Artistic Works, Indonesia is obliged to protect all works and related rights which related to copyright. Along with the ratification of Bern Convention, Indonesia also a member of Agreement on Trade-Related Aspects of Intellectual Property (hereinafter TRIPs Agreement). According to TRIPs agreement, Indonesia as one of its member countries

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<sup>28</sup> Ari Mahartha, “Pengalihwujudan Karya Sinematografi Menjadi Video Parodi Dengan Tujuan Komersial Perspektif Perlindungan Hak Cipta,” *Jurnal Kertha Patrika* 40, no. 1 (2018), <https://doi.org/https://doi.org/10.24843/KP.2018.v40.i01.p02>.

have to harmonize regulatory standards regarding copyright protection in order to comply with the provisions in the TRIPs Agreement.<sup>29</sup>

The protection of animated cartoon characters made by other countries shall be given considering the provisions stipulated in Article 2 point-c of the Copyright Law, which emphasizes the protection is given to “all Works and Related Rights products of Indonesian nationals, residents and legal entities, non-Indonesian nationals, non-Indonesian residents and non-Indonesian legal entities making their first Publication in Indonesia; and all Works and/or Related Rights products and users of Works and/or Related Rights products of non-Indonesian nationals, non-Indonesian residents, and non-Indonesian legal entities, provided that:

- a. their State has a bilateral agreement with the Republic of Indonesia regarding the protection of Copyrights and Related Rights; or
- b. their State and the Republic of Indonesia are State parties to or Contracting States to the same multilateral agreement regarding the protection of Copyrights and Related Rights.”

The obligation to protect any Creation or work in the form of drawings or any transformation shall be given by Indonesia to all creation or work of non-Indonesian national, non-Indonesian residents, and non-Indonesian legal entities. The protection is provided as the application of the principle of reciprocity, which is generally recognized in international law.<sup>30</sup> This principle is applied generally, hence all works and related rights from Indonesian national, residents and legal entities are also protected by other countries.

The protection of animated cartoon is also given in fields of content in information and communication technology. According to Article 54 of Copyright Law, supervision, cooperation and coordination of each stakeholders is needed in order to prevent the infringement copyright and its related right in any form of media, especially in information and communication field.

Based on the abovementioned, it can be understood that animated cartoon characters are known as one of the objects of copyright protection. the protection is given automatically, which is known as automatically protection. Copyright owned by the Creator is an exclusive right, namely moral and economic rights. The period of protection of the Creation endures of the life of the Author and still protected for another 70 (seventy) years after the Author’s death. However, if copyright protection of the work is held by a legal entity, the protection is valid for 50 (fifty) years from the first publication.

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<sup>29</sup> Ni Ketut Supasti Dharmawan, “Protecting Traditional Balinese Weaving Trough Copyright Law: Is It Appropriate?,” *Diponegoro Law Review* 2, no. 1 (2017): 57-84, <https://doi.org/https://doi.org/10.14710/dilrev.2.1.2017.57-84>.

<sup>30</sup> Sufiarina Sufiarina, “Hak Prioritas Dan Hak Eksklusif Dalam Perlindungan Hki,” *ADIL: Jurnal Hukum* 3, no. 2 (2012): 265, <https://doi.org/https://doi.org/10.33476/ajl.v3i2.57>.

### **3.2. Protection of Animated Cartoon Characters as Trademark**

The protection of Trademark is regulated under the Law No. 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as Trademark Law). According to the provision of Article 1 point-1 of Trademark Law, it is stipulated that:

“Mark means any sign capable of being represented graphically in the form of drawings, logos, names, words, letters, numerals, colors arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by a person or legal entity in trading goods and/or services.”

Any mark used for goods traded and services are playing important role to distinguish people goods and/or services produced by a person or legal entity in trading goods and/or services.<sup>31</sup> As applied in copyright regime, the design of mark is produced from the intellectuality of human, investment of time, energy and cost, hence it is acknowledged as a part of intellectual property.<sup>32</sup>

According to Article 3 of Trademark Law, it is stipulated “A Right on Mark is obtained after the Mark is registered”.<sup>33</sup> This provision emphasizes that the protection of mark is given under the principle of first to file system, means that the protection of Mark is obtained after the application for registration of mark is completed and it is approved by the Minister proven by the issuance of mark certificate.

However, there are several conditions under the provision of Article 20 of Trademark Law that regulated about mark that cannot be registered if it:

- a. “contradicts to the State ideology, laws and regulations, morality, religion, decency, or public order;
- b. is similar to, related to, or merely mentioning the goods and/or services being applied for registration;
- c. contains any element which may mislead the public in respect to its origin, quality, type, size, variety, intended use of goods and/or services being applied for registration or constitute a name of protected plant variety for similar goods and/or services;
- d. contains description that does not correspond to quality, or efficacy of produced goods and/or services;
- e. is devoid of any distinctive character; and/or
- f. constitutes a generic name and/or public sign”.

The provision of Article 21 paragraph (1) of the Trademark Law also regulated about the application of any mark is possible to be refused if the mark is substantively similar

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<sup>31</sup> Asma Karim, “Legal Standing Pemegang Hak Merek Terdaftar Yang Belum Dimohonkan Perpanjangan,” *Jurnal Yudisial* 13, no. 1 (2020): 107-24, <https://doi.org/http://dx.doi.org/10.29123/jy.v13i1.359>.

<sup>32</sup> *Ibid.*

<sup>33</sup> Safira Jihan Aliandani and Kami Hartono, “Tinjauan Yuridis Perlindungan Hukum Terhadap Merek Terkenal (Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis),” *Prosiding Konferensi Ilmiah Mahasiswa Unissula (KIMU) Klaster Hukum, 2020*.



to or identical to the previous registered mark. According to the provision, it emphasizes that:

- a. "a prior registered Mark of other parties or prior Mark application in respect of similar goods and/or services;
- b. a well-known Mark of other parties for similar goods and/or services;
- c. a well-known Mark of other parties for different goods and/or services complying with certain requirements; ..."

An animated cartoon character can be registered as a Trademark which depicts a particular good and/or services considering that it meets the elements as stipulated under the provision of Article 1 point-1 of Trademark Law. The registration of mark shall meet the requirement and condition under the provisions of Article 20 and Article 21 paragraph (1) of the Trademark Law. If the animated cartoon character which is registered as trademark entirely or substantially contains similar element with a prior registered Mark of other parties or a well-known mark of other parties as stipulated under the provision of Article 21 paragraph (1), then there is possibility that the registration to be refused.

According to the provision of Article 35 paragraph (1), it is stipulated that the protection of a registered mark shall be enjoy for a period of 10 (ten) years as of the filing date. The protection can be renewed for the same period as stipulated under the provision of Article 35 paragraph (2) of Trademark Law.

In accordance with Ivan Hoffman, B.A.,J.D., a legal practitioner which emphasizes that *"refer to the legal doctrine that when a consumer sees the particular character, it associates it with a particular source. The best example would be Mickey Mouse. Everyone on the planet knows that that character stems from a particular source, Disney."* The idea of Hoffman is in accordance with the provision of Article 21 paragraph (1) that forbid any similarity between trademarks.

In international law, Indonesia is known to be a member of *Paris Convention for the Protection of Industrial Property* (hereinafter referred to as "Paris Convention"). As a party of the Paris Convention, Indonesia is obliged to give same protection and without prejudice to the rights provided by the Paris Convention. The provision is regulated in Article 2 paragraph (1) Paris Convention, which stipulated that:

*"National of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with."*

Based on the abovementioned, it can be understood that animated cartoon character can be registered as mark or trademark as long as it has distinctive element compare to the prior registered mark. However, if any parties who intend to use the animated cartoon characters that already classified as a well-known trademark, that party can propose a License to the owner of the trademark as regulated under the provision of Article 42 paragraph (1) of Trademark Law. License shall be means as any permit that

granted by the owner of a registered Mark to another party based on written agreement in accordance with prevailing law.

#### **4. Conclusion**

Based on the explanation abovementioned, the animated cartoon character which is classified as drawing is automatically protected, as applied in copyright regime. Copyright owned by Author or Creator is considered as an exclusive right, consists of moral right and economical right. The protection endures of the life of the Author and still protected for another 70 (seventy) years after the Author's death. However, in the event that copyright protection of the work is owned or held by legal entity, the protection endures for 50 (fifty) years since its Publication. The animated cartoon character can be registered as Trademark as long as as long as it has distinctive element compare to the prior registered mark. However, if any parties who intend to use the animated cartoon characters that already classified as a well-known trademark, that party can propose a License to the owner of the trademark as regulated under the provision of Article 42 paragraph (1) of Trademark Law.

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