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The Inclusion of Third Parties (Joinder) in Multi-Party International Arbitration Cases: The Perspective of Indonesian Arbitration

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Abstract. *Indonesia also officially recognizes international arbitration, which is articulated in Article 1 paragraph (9) of the Arbitration Law, as amended following Constitutional Court Decision No. 100/PUU-XXII/2024. This provision states: "International Arbitral Award is an award rendered by an arbitral institution or a sole arbitrator outside the legal jurisdiction of the Republic of Indonesia, or an award by an arbitral institution or a sole arbitrator which, pursuant to the provisions of the law of the Republic of Indonesia, is deemed to be an International Arbitral Award" (Putusan MK No. 100/PUU-XXII/2024, 2024). The joinder of third parties presents a key challenge in international arbitration due to its conflict with the fundamental principle of party consent. This article examines joinder's application in Indonesian arbitration, specifically analyzing the principles of consent and public order. This research used a normative legal research method, the study analyzes relevant regulations to determine joinder's legality. The findings conclude that the joinder principle is implicitly acknowledged and enforceable in Indonesian arbitration. The article offers an understanding of its implementation and provides recommendations for regulators to ensure legal certainty in Indonesia.*

Keywords: *Arbitration; International; Joinder; Multi-Party.*

1. Introduction

The utilization of arbitration has significantly and rapidly developed, concurrently with a swift increase in its international adoption. Indonesia has participated in this development by establishing its own regulation, namely Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (the Arbitration Law). The Arbitration Law, which partially adopts the provisions of the United Nations Commission on International Trade Law (UNCITRAL Model Law), was formulated to support the business and investment ecosystem in Indonesia. Furthermore, it aims to provide disputing parties with a faster and more confidential option for dispute resolution, as compared to general court litigation. As a developing nation, Indonesia also plays a significant role in the foreign investment ecosystem within its territory. As evidenced by the 2024 realization data, investment reached IDR 431.48

trillion, marking an increase of 15.24% compared to the same period in the preceding year (Kementerian Investasi/BKPM, n.d.). In the implementation of commercial transactions, the involved parties often resort to arbitration as the method for dispute settlement, which is also underpinned by the procedural flexibility it affords.

Arbitration stands as a primary choice because it offers procedures that are more expeditious, efficient, and flexible compared to the litigation process in court (Fitriani et al., 2025, p. 25). Cases that may be settled through the arbitral forum are primarily those in the commercial field that are fully controlled and disposable by the disputing parties (UU No. 30 Tahun 1999, Pasal 5 ayat 1). Arbitration fundamentally operates on the principle of consensus (agreement between the parties). This agreement, which forms the basis for resolving a case through arbitration, can cover disputes arising in the future (future disputes) or those already existing, provided the parties consent to arbitration post-dispute. This core requirement is codified in Article 9 of the Arbitration Law, which explicitly mandates that consent to arbitrate must be formalized in a signed written agreement. Notably, if this written agreement is executed after the dispute has arisen, it must take the form of a notarial deed (UU No. 30 Tahun 1999, Pasal 9). The structure of an arbitration clause is delineated by specific formal and doctrinal elements. The formal aspects mandate both a written format and the requisite signed execution. Doctrinally, the clause possesses an autonomous quality (separability), enabling it to survive the invalidity of the primary contract. The characteristics further address the circumstances under which the clause may undergo dissolution (annulment), as well as the competence of national judicial bodies in assessing the presence or validity of the arbitration agreement (Adolf, 2014, p. 82).

While consent remains essential, arbitration's primary reliance is on the principle of autonomy of will. This foundational freedom invests the disputants with the authority to jointly decide the entire procedural framework for conflict resolution. Crucially, the parties maintain the liberty to stipulate the identity of the arbitrator or arbitral tribunal and the location of the proceedings (Fadhlul Wafi Ali, 2025, p. 3). This principle is further supported by Article 1338 paragraph (1) of the Indonesian Civil Code (KUHPer), which stipulates that: "All agreements lawfully entered into shall be binding upon the parties as laws" (KUHPer, Pasal 1338). This principle of freedom of contract is also known as *pacta sunt servanda*. In its context, the parties possess the liberty to determine the content of the agreement, which, upon signature, satisfies the condition of mutual consent outlined in Article 1320 of the Indonesian Civil Code (KUHPer), provided that it is executed in good faith and was not procured under duress. Furthermore, the principle of final and binding dictates that the award rendered by the arbitrators shall be conclusive and irrefutable. This correlation links to the principle of good faith, which serves as a legal instrument to limit the freedom of contract and govern the binding force of an agreement (Muljadi & Widjaja, 2002, p. 79). Once the award is rendered, there is generally no scope for appeal, except in specific instances, such as clear procedural violations or material errors within the award itself. This final and binding principle ensures legal certainty for the parties, as they can rely on the arbitral award to constitute the definitive conclusion of the dispute resolution process (Fitriani et al., 2025, p. 6). Arbitration also adheres to the principle of confidentiality, meaning that both the subject matter of the dispute

and the final award issued are kept confidential. This ensures that the reputation and image of the parties remain protected, and similarly, the proprietary trade information of business entities involved is maintained (Nugroho, 2015, p. 316) Arbitration also recognizes the principle of equality (or equal treatment). While party autonomy is considered the foremost principle governing the arbitral procedure, the equality of treatment (or equality of the parties) is regarded as the second principle of equal fundamental importance (Redfern, 2004, p. 317). The principle of equality is articulated in Article 17 of the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL Arbitration Rules), "*the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the partie's dispute*" (UNCITRAL Model Law, Pasal 17). The essence of this Article is the stipulation that the arbitral tribunal must guarantee equal opportunity for the parties to present their case, which is essential for ensuring a fair and streamlined dispute resolution. This stipulation is consistent with the principle of due process of law, as both concepts emphasize the accommodation of party interests with equivalent consideration and available procedural avenues.

The characterization of a proceeding as International Arbitration hinges upon the existence of two concurrent conditions at the time the agreement is made: the parties must be domiciled, via their places of business, in distinct countries, and the subject matter itself must possess demonstrable cross-border elements (Endah Trihandayani, 2025, p. 5). Arbitration may be deemed international if it satisfies several criteria, namely: (Sunarso et al., 2013, p. 2)

a. This situation occurs when the parties entering into the arbitration clause or agreement have their respective places of business located in different States at the moment the agreement is finalized.

b. The arbitration is deemed international where the seat of arbitration stipulated in the agreement is situated outside the State(s) where the parties maintain their respective places of business.

c. A further criterion is satisfied if the site where a significant part of the commercial contract is to be performed, or the location of the disputed subject matter bearing the closest connection to the agreement, is physically located outside the State encompassing the parties' operational places of business.

Furthermore, the concept of multi-party arbitration is recognized, which typically constitutes an aspect of international arbitration. Multi-party arbitration generally arises under several conditions, such as: (Webster & Bühler, 2014)

a. An agreement executed by several companies that belong to a group of companies and act in a single capacity.

b. An agreement signed by multiple parties, where some of these parties are independent entities.

c. An agreement between two parties, but the arbitration clause permits either or both parties to add or join other parties to the arbitration proceedings.

d. When multiple parties execute an agreement with another single party, and these parties possess the right to initiate a class action arbitration.

Indonesia also officially recognizes international arbitration, which is articulated in Article 1 paragraph (9) of the Arbitration Law, as amended following Constitutional Court Decision No. 100/PUU-XXII/2024. This provision states: "International Arbitral Award is an award rendered by an arbitral institution or a sole arbitrator outside the legal jurisdiction of the Republic of Indonesia, or an award by an arbitral institution or a sole arbitrator which, pursuant to the provisions of the law of the Republic of Indonesia, is deemed to be an International Arbitral Award" (Putusan MK No. 100/PUU-XXII/2024, 2024). Furthermore, Indonesia has also ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which was formalized through Presidential Decree Number 34 of 1981 (Keppres 34/1981). This ratification governs the recognition and enforcement of international arbitral awards, which is based on the principle of reciprocity stipulating that Indonesia shall recognize and enforce awards rendered in other signatory States (New York Convention, 1958). The principle of reciprocity, essential for validating and executing international arbitral awards, finds its statutory confirmation in Article 66 of the Arbitration Law. The said Article then comprehensively describes the criteria that must be satisfied to obtain enforcement of these awards within the courts of Indonesia, specifically: (UU No. 30 Tahun 1999, Pasal 66)

a. The International Arbitral Award must have been rendered by an arbitral body in a State that shares a binding bilateral or multilateral treaty with Indonesia regarding the mutual recognition and enforcement of international arbitral awards;

b. The International Arbitral Awards delineated in item (a) must satisfy the condition that their subject matter aligns with the scope of commercial law as defined by Indonesian statutes;

c. The International Arbitral Award mentioned in item (a) is only enforceable within Indonesia if its content and effect are not contrary to public policy (or public order);

d. Enforcement of the International Arbitral Award in Indonesia requires prior issuance of an exequatur (order for execution) from the Chief Judge of the Central Jakarta District Court; and

e. If the Republic of Indonesia is one of the disputing parties in the International Arbitral Award referred to in item (a), the award can only be enforced after an exequatur is first obtained from the Supreme Court of the Republic of Indonesia. This authorization is subsequently delegated to the Central Jakarta District Court for implementation.

While the UNCITRAL Model Law separates international and commercial arbitration (with a broad trade focus), Indonesia imposes stricter constraints. Arbitration disputes are strictly

limited to commercial scope under Article 5 paragraph (1) of the Arbitration Law. This narrow definition is further reinforced by Article 66 paragraph (2), which restricts enforceable International Arbitral Awards exclusively to those consistent with Indonesian commercial law (UU No. 30 Tahun 1999, Pasal 66 ayat 2). This intended scope of commerce is specifically restricted to domains such as trade, banking, finance, investment, industry, and intellectual property rights (UU No. 30 Tahun 1999, Penjelasan Pasal 66 ayat 2). International arbitration, as conceptualized by the UNCITRAL Model Law, relies on three defining elements: (a) the parties must possess places of business in different States at the initiation of arbitration; (b) the seat of arbitration, the location of substantial performance, or the place of dispute occurrence must be geographically separate from the parties' places of business; or (c) the parties have mutually agreed upon the dispute's transnational relationship under certain conditions (Umar, 2013, p. 64). The provision in the Arbitration Law concerning the definition of international arbitration differs when compared to the UNCITRAL Model Law, particularly in the terminological difference between the UNCITRAL Model Law's use of 'commercial' and the Arbitration Law's use of 'trade' (perdagangan). The term 'commercial' as used in the Model Law encompasses any activity connected with commercial operations, such as banking and finance. This contrasts with the Indonesian approach, which has already classified specific sectors that may be resolved through arbitration.

Indonesia currently possesses its own forum for arbitration dispute resolution, namely the Indonesian National Arbitration Board (BANI), which established under the Arbitration Law and focuses on resolving both national and international arbitration disputes. Regarding international arbitral forums, several institutions exist, such as the International Centre for Settlement of Investment Disputes (ICSID), the Singapore International Arbitration Centre (SIAC), and the International Chamber of Commerce (ICC). Due to Indonesia's ratification of the New York Convention via Presidential Decree 34/1981 (Keppres 34/1981), awards issued by SIAC and ICC can be recognized and enforced in Indonesia, as these forums are associated with the New York Convention. Furthermore, Indonesia is a member of ICSID, and this forum is exclusively dedicated to resolving disputes between foreign investors and host States, as codified in Law No. 5 of 1968 concerning Settlement of Disputes between States and Foreign Nationals Regarding Investment.

The global adoption and utilization of arbitration inevitably raise expectations for the modernization of Indonesia's arbitration system, which has remained unchanged since the enactment of the Arbitration Law in 1999. Given the increasingly varied development of arbitration worldwide aimed at supporting the principles of effectiveness and efficiency for the parties, international arbitral forums have proactively addressed a key challenge: the inclusion of a third party or non-signatory party (known as joinder). Despite the absence of an explicit statutory definition, the practical implementation of joinder allows it to be characterized as the formal consolidation of a third party—a non-signatory to the arbitration agreement—into the arbitration process. The concept of joinder has a long history in arbitration, as evidenced by a 1936 study by Edward Q. Carr. The joinder mechanism is increasingly crucial in arbitration due to the heightened complexity of contractual relationships and the multitude of parties involved in commercial transactions (Strong, 2021, p. 915).

Indonesia previously recognized a system concerning the inclusion of third parties or intervention in legal proceedings, specifically through vrijwaring (impleader/warranty), tussenkomst (intervention), and voeging (joinder). The rules regarding the inclusion of third parties in a case are regulated under the Reglement op de Burgerlijke Rechtsvordering (Rv). Vrijwaring is the mechanism by which a third party enters the proceeding because they are impleaded by one of the litigating parties (the defendant). The third party, as an intervening party, acts as the warrantor or indemnifier for the defendant (Maria & Harjono, 2021, p. 58). The requirements for the entry of a third party through vrijwaring are: the existence of a claim of right, the defendant impleads the third party, and the entry is compulsory (involuntary), not undertaken on the third party's own initiative (Arto, 2007, p. 109). Tussenkomst (Intervention) is characterized as a third party's participation in a lawsuit to protect their own interest. In this instance, the subject matter of the dispute centers on the rights of the third party, entirely separate from the rights asserted by the original plaintiff or defendant (Abdulkadir Muhammad, 2015, p. 120). In the case of tussenkomst (Intervention), there are requirements that must be met by the third party, namely: the existence of a claim of right, the existence of a legal interest in the ongoing case, an interest clearly evident in the origin of the case, and the necessity of a legal relationship between the third party and the disputing parties (Abdul Hakim, 2014, p. 3). Furthermore, voeging (Joinder of a Supporting Party) is the entry of a third party into a civil case on their own initiative or volition, with the objective of supporting either the defendant or the plaintiff. In this context, the third party or the intervening party may elect to support one of the original parties, depending on their specific interest (Devi Siti Hamzah Marpaung, 2024, p. 19). The requirements for a third party to enter proceedings through voeging (Joinder of a Supporting Party) are established by the existence of a claim of right and a legal interest in protecting themselves by siding with one of the original parties (Abdul Hakim, 2014, p. 4). A clear correlation exists among these three intervention methods and joinder, primarily because each mechanism aims to legitimately expand the confines of the dispute resolution process, thereby facilitating a more efficient and comprehensive settlement. However, their application fundamentally differs from the principle of consensualism that underpins arbitration. In international commercial arbitration, there are several recognized mechanisms that permit the involvement of third parties in the arbitral process, namely joinder, intervention, and consolidation. While these three mechanisms are established in international commercial arbitration, they are not yet clearly recognized in the Indonesian Arbitration Law (Klas Laitinen, 2013, p. 48).

In correlation with joinder at the national level, Article 30 of the Arbitration Law stipulates: "A third party who is not a party to the arbitration agreement may participate and join the dispute resolution process through arbitration, provided that there is a related element of interest and their participation is agreed upon by the disputing parties and approved by the sole arbitrator or arbitral tribunal examining the dispute" (UU No. 30 Tahun 1999, Pasal 30). Referring to Article 9 paragraph (3) of the BANI Arbitration Rules, which stipulates: "*The third parties as the non-parties in the arbitration agreement may participate and join in the process of arbitration if there is an element of interests involved and their involvement are agreed by the parties and approved by the arbitration tribunal*" (BANI Rules, 2025, Pasal 9 angka 3).

Regarding domestic regulations, the concept of joinder is, in fact, recognized for its application both nationally and internationally. When linked to the rules of international arbitral forums, the SIAC has recognized joinder, which is stipulated in Article 18.1 of the SIAC Arbitration Rules 2025 (SIAC Rules 2025). This provision outlines two distinct mechanisms for joinder: firstly, the inclusion of a third party based on the consensual agreement of the original parties; and secondly, the addition of a third party even without the original parties' consent, relying instead on a prima facie determination—meaning the existing evidence clearly demonstrates the necessity of the additional party's participation in the arbitration (SIAC Rules, 2025, Pasal 18.1). Similarly, the ICC also recognizes joinder, as stipulated in Article 7 of the ICC Rules 2021. This is subject to the condition that the applicant must submit the request for an additional party before the arbitral tribunal is constituted. If the arbitral tribunal is already in place, the tribunal, subsequent to obtaining party agreement and arbitrator approval, must engage in a prima facie evaluation of the joinder request. This evaluation necessarily covers the extent of the tribunal's jurisdiction, the possibility of conflicts of interest emerging, and the procedural consequences the joinder may impose on the arbitration (ICC Rules, 2021, Pasal 7). It is clearly evident that international forums have provided their own regulations governing the principle of joinder in fulfillment of the principles of effectiveness and efficiency for the parties.

The significant development of arbitration is evidenced by international arbitral forums beginning to regulate the implementation of joinder. However, its complex application can potentially hinder the dispute resolution process due to the principles of consensualism and confidentiality inherent in arbitration. Considering the principle of confidentiality, an illustration of the application of joinder may be provided: Party A and Party B (Parent Company), and Party C (a subsidiary of Party B) is a beneficiary of the agreement between Party A and Party B. Upon filing with SIAC, Party C may join based on the prima facie principle, which was previously regulated under Article 8 of the SIAC Rules. This illustration demonstrates procedural efficiency by avoiding the necessity of resolving the same dispute twice, even through arbitration. Furthermore, the implementation of joinder can prevent the inconsistency of arbitral awards. Consequently, the role of joinder in multi-party arbitration resolution constitutes a fundamental function categorized as a key development in international arbitration. Therefore, Indonesia should consider adopting this mechanism in its domestic application to foster the development of its trade and/or business sectors and enhance the existing principle of arbitral efficiency.

2. Research Methods

This article employs a normative legal research methodology, specifically utilizing the statute approach. The research relies on key legal instruments, including the Indonesian Arbitration Law and the UNCITRAL Model Law, supplemented by the regulations of prominent national and international arbitration institutions such as SIAC, ICC, and ICSID. Data collection was performed via a documentary study, primarily yielding secondary data encompassing official documents, scholarly texts, research reports, journals, and other pertinent sources.

3. Results and Discussion

3.1. The Inclusion of joinder is in conflict with the principle of public policy

Indonesia has established domestic regulations governing the enforcement of arbitral awards, incorporating a mechanism whereby all awards presented for execution must be scrutinized. This scrutiny falls under the authority of the chief judge of the district court, whose role is to verify compliance with principles of public policy and morality (UU No. 30 Tahun 1999, Pasal 62). This principle of public policy is a mandatory requirement stipulated in Article V paragraph (2) sub-paragraph (b) of the New York Convention, which explicitly states that the international arbitral award must adhere to public policy (New York Convention, 1958). Nevertheless, the phrase 'public policy' has subsequently been utilized as a shield by Indonesia to refuse the recognition of arbitral awards. Considering what is required, international arbitral awards are final and binding, a status supported by the principle of reciprocity. Fundamentally, there should be no grounds whatsoever, save for public policy and morality, upon which the recognition and enforcement of an international arbitral award can be refused. This public policy is frequently associated with public interest. Public interest refers to matters concerning the welfare of society at large or common interests, as opposed to the interests of a group, class, or individual (Oppunsunggu, 2015, p. 3). Furthermore, it is declared that while a relationship does exist between public policy and mandatory rules (kaidah memaksa), not all mandatory rules constitute public policy (Gautama, 2004, p. 137). Mandatory rules are legal provisions that cannot be violated or deviated from. Therefore, in conclusion, public policy and public interest are distinct from mandatory rules, which do not always prejudice the public interest (Gautama, 2004, p. 6). Generally, public policy is something deemed to be contrary to the public order of a specific environment (State) if it contains elements or conditions that contravene the fundamental tenets and core values of that nation's legal system and national interests (Harahap, 2006, p. 39). Supreme Court Regulation Number 3 of 2023 concerning the Procedures for the Appointment of Arbitrators by the Court, Right of Refusal, Examination of Applications for Enforcement and Annulment of Arbitral Awards (Perma 3/2023) provides a definition for public policy in Article 1 paragraph (9), stating that it is: “Everything that constitutes the fundamental tenets necessary for the functioning of the legal system, economic system, and social and cultural system of the Indonesian society and nation” (Perma No. 3 Tahun 2023, Pasal 1 angka 9). The regulation of public policy is not explicitly detailed in the rules to serve as a guideline for judges, thereby placing Indonesia in a vulnerable position globally, leading it to be labeled as an “unfriendly arbitration state” due to the numerous cases of refusal of recognition and enforcement of international arbitral awards (Githa Bianti, 2023, p. 65). The absence of a clear public policy benchmark to orient the district court in its decision-making creates an inherent obstacle to the efficiency of arbitration. Separately, the New York Convention strictly mandates that any application to annul (set aside) an arbitral award may only be entertained by the courts in the State of the arbitral seat (Anomsari et al., 2025, p. 5).

Article 34 (2) (b) (ii) of the UNCITRAL Model Law sets the standard that an arbitral award may be set aside or refused enforcement on the basis of public policy, often referred to as public

policy or public order. This leads to the conclusion that a State has the liberty to define its own public policy and morality so that it can be adapted to the specific conditions of the respective State, including the underlying legal system, economic situation, and political circumstances. There are three main characteristics of public policy (Oppunsunggu, 2015, p. 63). First, it contains normative regulation because public policy operates within predetermined rules. Second, it is results-oriented, meaning that an execution always aims to achieve a specific objective. Finally, public policy is administered by the judicial institution, although judges retain the authority to interpret or manifest the meaning of public policy itself.

Furthermore, several definitions of public policy are also stated as follows: (Gautama, 2004, p. 56–57).

1) Public policy in contract law constitutes a limitation on the principle of freedom of contract.

2) Public policy as a fundamental element of order, welfare, and security.

3) Public policy as the counterpart to "good morality".

4) Public policy as a synonym for "legal order".

5) Public policy as justice.

6) Public policy as a concept in criminal procedure law concerning the operation of fair trial.

7) Public policy represents the judge's obligation to apply specific articles from certain statutory regulations.

In light of the definitions presented, public policy holds an extremely broad interpretation and is frequently linked to legal order, social order, and economic order that have national ramifications, and may also be subject to political influence. The definition of public policy provided in Perma 3/2023 does not fully accommodate a meaning that can serve as a comprehensive reference for judges in arbitration annulment cases. Consequently, the aforementioned theories and characteristics serve as supporting material to gain a clearer understanding. Furthermore, based on the jurisprudence of PT Sumi Asih v. Vinmar Overseas, Ltd., and quoting one of the judge's considerations in defining public policy, it was stated—based on a grammatical interpretation—that public policy concerns the interests of the public in a State, relates to matters of state security, and affects the livelihood of the people at large (Wijaya, 2021, p. 59).

Based on the definitions of public policy derived from regulations and expert opinions, it can be concluded that public policy represents the interests of many parties, potentially encompassing the general public in Indonesia and influencing the economy, legal system, and socio-culture. This interpretation certainly results in an extremely broad scope, especially given the lack of further elaboration in Article 1 paragraph (9) of Perma 3/2023. As is known, with this broad definition, international awards are highly susceptible to conflicting with the concept of public policy.

The framework of arbitration is strongly underpinned by the principle of party autonomy (autonomy of will), vesting the parties with the prerogative to determine the applicable arbitral procedures as they jointly deem fit (Born, 2009, p. 2068). This is supported by Article 31 paragraph (1) of the Arbitration Law, which allows the parties to determine the arbitral procedure to be used through an agreement. Hence, adherence to principle mandates that every decision related to arbitral procedure, extending even to the joinder of a third party not bound by the original arbitration agreement, must be finalized through the mutual consent of the disputing parties (UU No. 30 Tahun 1999, Pasal 31 angka 1). As an instrument recognized by the Civil Code (KUHPer), the arbitration agreement substantiates the execution of arbitration predicated on the parties' mutual consent. This requirement applies equally to issues concerning joinder.

Based on national and international perspectives, the concrete role of the principle of consensualism in the application of joinder can be further explored. As previously stated, for an arbitration clause to be valid, the principle of consensualism is paramount or primary. For recognition, especially under Indonesian law, the agreement between the parties must be formally documented in writing. Furthermore, the practice of joinder presents a vulnerable position regarding the application of the public policy principle. This vulnerability is particularly acute when joinder is permitted based merely on a prima facie determination, which significantly risks contravening the fundamental principles of audi et alteram partem (the right to be heard) and due process of law. This principle establishes a legitimate expectation that any party appearing before a decision-maker is entitled to protection against arbitrary, discriminatory, or inequitable treatment (Davidson & Genest, n.d.). This principle becomes relevant with the entry of a third party based on prima facie grounds, which could lead to differing perspectives among the parties in interpreting a case, including the involvement of another party that might potentially violate the principle of confidentiality. Furthermore, the principle of equality found in the UNCITRAL Model Law seemingly becomes a shock or impediment to the implementation of joinder, especially its collision with Indonesia's principle of public policy, despite the lack of clear governing regulations. The application of the principle of equality, as it aligns with due process of law, must be recognized and implemented, particularly when the parties feel that the situation has become unbalanced toward another party. Looking at the example case of the Westland Helicopters Case (Westland Helicopters Ltd v Arab Organization for Industrialization, United Arab Emirates, Saudi Arabia, Qatar, Egypt, and Arab-British Helicopter Co), the four States were also sued because they established a commercial cooperation encompassed within the Arab Organization for Industrialization. As a result of these countries being part of the Arab Organization for Industrialization, the four States were also bound by the arbitration obligation created by the Arab Organization (Collier, 1999, p. 208). This case represents the application of the principle of equality from another perspective, beyond the principles related to due process of law or audi et alteram partem. Regarding the principle of confidentiality, it is stipulated in Article 27 of the Arbitration Law, which states: "All examinations of disputes by a sole arbitrator or arbitral tribunal shall be conducted in camera (privately)" (UU No. 30 Tahun 1999, Pasal 27). Although confidentiality is not explicitly mentioned, the use of the term in camera (tertutup) implies that every arbitral

proceeding, from the hearing process up to the issuance of the award, must be conducted privately and exclusively by the parties. The application of this principle also serves as a benchmark in implementing dispute resolution through arbitration, particularly for safeguarding trade secrets and the business activities of the parties, primarily to protect their reputation and as an execution of good faith to maintain sustainable business relationships (Muhamad Dzadit Taqwa & Anangga W. Roosdiono, n.d.). In practice, the existence of the principle of confidentiality is increasingly fading. One reason is the requirement that the award must be registered with the district court to obtain executorial power. Furthermore, several arbitration cases have been published as studies, although without full case details, such as the arbitration case of PT Pertamina v. Karaha Bodas Company L.L.C., which is widely used as a case study. Furthermore, stated that when significant public interest is at stake, the prevailing issues necessitate a substantial reduction in the degree of confidentiality traditionally afforded to both the arbitration proceedings and the final awards. This statement fundamentally focuses on utilizing the award in rulings concerning public policy, as well as the confidentiality that has historically been the desired process of the parties (Wautelet, 2008, p. 5). The interpretation of the principles utilized is a key aspect to ensure that the parties do not feel that the situation is unduly favoring one side. Compelling a party to submit to the arbitral jurisdiction without their consent constitutes a violation of a fundamental right and may substantially be deemed contrary to public policy (Adolf, 2011, p. 210).

The Indonesian Arbitration Law establishes three required elements for the participation of a third party in the domestic arbitration process, which proof of a related interest (unsur kepentingan terkait), a consensual agreement between the original parties, and the requisite approval granted by the arbitral tribunal (Prita Amalia & Muhammad Faiz Mufidi, 2023, p. 10). Certainly, there are differences in the interpretation and fulfillment of the elements outlined above when compared with the SIAC Rules 2025 and the ICC Rules 2021 as benchmarks. Given the understanding that international arbitral awards should not be subject to annulment by the host country, and supported by international arbitral forums regarding the implementation of joinder, the resulting arbitral award from a proceeding involving joinder should not contravene the principle of public policy, unless there is another aspect in the execution of the award that relates to the essential livelihood of the many people.

3.2. The Practice of Joinder in International Arbitration for the Amendment of the Arbitration Law

In conducting business, the occurrence of conflicts and/or disputes among the parties is certainly highly possible. Furthermore, the aspect of dispute resolution plays a major role in the continuity of international business contracts, which tend to involve multiple parties. Within the scope of business transactions, particularly international business transactions, the arbitral forum is one of the options widely used and often becomes the primary choice for dispute resolution (Wijaya, 2021, p. 2). The use of the phrase 'forum' itself distinguishes arbitration as a dispute resolution option from litigation (pengadilan). A forum is an institution or platform, which implies the necessity of establishing a place to discuss mutual interests (KBBI, n.d.). In contrast, litigation (pengadilan) is known for its rigid and often stringent nature

toward the parties involved. Furthermore, one of the principles in arbitration that significantly contrasts with litigation is efficiency. Efficiency in arbitration is focused on the prompt resolution of disputes and a process that is generally less rigid than the courts. This adherence to the principle of efficiency is coupled with flexibility for the parties to determine the timeframe for dispute resolution, which is customized and mutually agreed upon with the appointed arbitrator and by the parties during the dispute resolution process.

Regarding the regulatory framework, Indonesia's Arbitration Law not only embraces the principle of efficiency but also demonstrates familiarity with the joinder system. This recognition is specifically codified in Article 10 letter (e), which maintains the validity of an arbitration agreement even if the contractual performance is assigned to a third party, provided the original party to the arbitration agreement has consented to the assignment (UU No. 30 Tahun 1999, Pasal 10 huruf e). Furthermore, under Article 30 of the Arbitration Law, a non-signatory third party is permitted to participate in the arbitration proceedings, provided three cumulative conditions are met: first, the third party demonstrates a related element of interest in the dispute. The second condition requires the consent of the original disputing parties for the third party's participation, and the third mandates the final endorsement (approval) by the sole arbitrator or the arbitral tribunal responsible for the dispute (UU No. 30 Tahun 1999, Pasal 30). The element of related interest implies that the rights and obligations of either the original disputing parties or the joining third party will be impacted by the substantive examination and the subsequent award of the dispute. Consequently, the criterion for related interest in joining a third party to arbitration is only satisfied if that third party's interest is intimately connected to the rights and obligations of one of the existing disputing parties. This required relatedness must form a legitimate foundation for the third party's entry, provided that the contested interest remains within the category of disputes suitable for resolution through arbitration. In practice, this related interest commonly originates from the contractual relationship between the parties, specifically where the underlying contract contains an arbitration clause (Blackaby et al., 2009, p. 92). The agreement of the parties is also a fundamental principle, especially emphasized in the arbitration agreement which is based on the Arbitration Law, and forms the basis for dispute resolution in arbitration. As is known, the agreement can be stipulated in a contract before the dispute occurs and after the dispute has occurred. This is why the element of agreement must exist when joining a third party into dispute resolution through arbitration, because the arbitration agreement initially only involved the original parties. Consequently, this can be declared contrary to the international principle of joinder, specifically the prima facie standard. However, the implementation of joinder, as regulated in international arbitral forums, is treated as separate rules that can serve as a guide. Nevertheless, if the regulation of joinder were explicitly governed, it would create legal certainty for the parties. From the outset, the Arbitration Law has implicitly recognized the existence of joinder, but its application is very minimal. With such minimal regulation, this certainly impacts the efficiency of arbitration dispute resolution. The principle of efficiency exists to address the challenge that dispute resolution through litigation often consumes a long period of time. Furthermore, in court litigation, there are many mechanisms for consolidation or intervention that allow a third party to join the dispute, as

previously described: the mechanisms of voeging, tussenkomst, and vrijwaring. Generally, courts have broad authority to order the consolidation of disputes, joinder, or intervention with the aim of ensuring a fair and efficient judicial process (Born, 2009, p. 2069). Arbitration, on the other hand, offers a process that is significantly more efficient and faster, with dispute resolution achievable in a matter of months. The joinder of a third party into the arbitration process offers advantages, particularly in the application of the principle of efficiency, which can save costs for arbitrator fees and legal counsel, and save time and effort expended on other preparations. The second consideration is that an arbitration involving a third party results in a unified award that determines the rights and obligations of all relevant disputants. If the third party refrains from joining the original arbitration and initiates a parallel, subsequent process, the outcome could be the issuance of inconsistent awards by the distinct arbitral tribunals (Born, 2009). In international arbitral forums, the majority have regulated joinder. The rules of arbitral institutions such as the London Court of International Arbitration (LCIA), BANI (Indonesian National Arbitration Board), and SIAC (Singapore International Arbitration Centre) are some of the forums that have regulated joinder. Furthermore, in the arbitration laws generally applicable in most countries, even if joinder is not specifically regulated, it can be executed with the consent of all parties, in line with the generally applicable principle of arbitration: the necessity of party consent in all aspects of the proceeding (Hackman, 2009). Pursuant to Article 18.1 of the SIAC Rules 2025, a party holds the right to submit an application for the inclusion (joinder) of one or more additional parties to the Registrar, provided this occurs prior to the formation of the arbitral tribunal. This application is admissible based on one of two alternative prerequisites: either the mutual consent of all existing parties to the joinder, or a prima facie determination that the additional party is bound by the arbitration agreement (SIAC Rules, 2025, Pasal 18). Arbitration embraces the competence-competence principle, and the use of the prima facie standard constitutes its practical embodiment. The principle of competence-competence dictates that the arbitral tribunal is vested with the authority to ascertain its own jurisdiction; consequently, the tribunal has the legal power to issue a decision regarding its competence to adjudicate the dispute (Moses, 2012, p. 91). Furthermore, prima facie serves as a derivative of the competence-competence principle held by the arbitrator, which is to determine the joinder of a third party based on a first-impression view (*pandangan pertama*) or the direct or indirect relevance of the third party's connection to the dispute resolution process. Article 7 of the ICC Rules 2021 states: "*A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the "Request for Joinder") to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party*. *Unless all parties, including the additional party, otherwise agree, or as provided for in Article 7(5), no additional party may be joined after the confirmation or appointment of any arbitrator. The Secretariat may fix a time limit for the submission of a Request for Joinder"* (ICC Rules, 2021, Pasal 7). In conclusion, a non-signatory party in a dispute resolved by the ICC may enter the arbitral forum by submitting an application to the arbitral tribunal before the arbitrator is appointed. Considering the joinder provisions in the Indonesian Arbitration Law (UU Arbitrase), which are limited and rarely utilized in practice,

these provisions can be contrasted with the SIAC Rules 2025 and the ICC Arbitration Rules 2021, which explicitly regulate the joinder mechanism in a detailed and flexible manner. Other international arbitral institutions, such as the LCIA, have also adopted a similar approach, demonstrating a global trend toward strengthening the joinder mechanism as an essential instrument for efficiency in the arbitration process (Strong, 2021, p. 970).

This joinder approach is also driven by the increasing complexity of legal relationships among parties in international projects, such as joint ventures, consortia, and cross-border infrastructure development. The joinder mechanism is believed to be compatible with the characteristics of business disputes in this modern era, which can involve more than two parties with a high degree of complexity (Born, 2009, p. 2067). Therefore, the amendment of the Indonesian Arbitration Law needs to consider international developments, including more explicit and procedural regulation related to joinder. Furthermore, there is a common issue in arbitration, which is the low understanding of arbitral procedures by the parties, often becoming an obstacle in dispute resolution (Sinambela, 2024, p. 4). Regulatory improvements in the arbitration system concerning the joinder of third parties must also be accompanied by a supportive training system for arbitrators, as well as judges, should there be an arbitral award annulment process. These regulatory enhancements are, naturally, designed to bolster Indonesia's competitiveness as an international arbitration venue and to furnish parties with greater legal certainty. Ultimately, the goal is to uphold the fundamental principles of efficiency and justice in the resolution of multi-party disputes via arbitration.

4. Conclusion

Issues within the scope of arbitration, such as the joinder of third parties, have become a global development issue that Indonesia can address appropriately by emphasizing the fundamental principles of arbitration, namely efficiency. To date, the Arbitration Law has not provided an explicit explanation of joinder, yet it has been recognized by Indonesia from the outset in Article 10 and Article 30 of the Arbitration Law. Due to the existing problems, the enforcement of international arbitral awards often clashes with the principle of public policy. As previously described, it has been established that the international application of joinder cannot be considered contrary to public policy because its principle is based on the element of related interest and the agreement of the parties, unless it interferes with the essential livelihood of the many people, or disrupts the legal system, economy, or prevailing social norms in Indonesia. The Arbitration Law, enacted in 1999, is appropriately due for an amendment to maintain its relevance with contemporary issues. Regarding joinder, Indonesia can look to international arbitral forums, such as SIAC and ICC. Although the Arbitration Law implicitly regulates joinder, it must be further emphasized for the public and clearly stipulated so that its application is precise, based on the legal certainty of the Arbitration Law. Furthermore, there are increasingly distinct guidelines among international arbitral forums, notably concerning prima facie joinder based on the arbitrator's competence-competence. The Arbitration Law requires three elements to be fulfilled for joinder: the element of interest, the agreement of the parties, and the approval of the arbitrator. This is highly vulnerable and will be very difficult to enforce if all three principles must be met, which could lead to delayed

awards or inconsistency in arbitral awards if separate hearings are conducted for the same interest. Reflecting on the SIAC Rules 2025, joinder is permitted provided that all parties consent to the additional party and/or the additional party is prima facie (at first glance) bound by the arbitration agreement. The distinction created by the phrase 'and' in the Arbitration Law versus 'and/or' in the SIAC Rules 2025 demonstrates that the SIAC Rules 2025 are believed to align with the principle of arbitral efficiency and support the execution of arbitration with consistent and prompt awards, thus serving as a model guideline for regulators in amending the Arbitration Law.

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