

THIRD-PARTY IN INTERNATIONAL COMMERCIAL ARBITRATION: INDONESIA PERSPECTIVE

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Abstract

An arbitration Agreement between the parties is an important source of law in the arbitration proceeding, especially in International Commercial Arbitration. Arbitration Agreements, which could be made before and after the dispute, provide jurisdiction to the arbitral tribunal to settle the dispute. Traditionally, the arbitration agreement provides that only the parties in the agreement could be bound by the arbitration proceeding. However, in commercial arbitration, there is a circumstance in which a third party could be bound to arbitration proceedings. Indonesia has an arbitration law based on Law No. 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution. This law stipulates how arbitration proceedings could proceed in Indonesia, including third-party issues in arbitration proceedings, as stipulated in Article 30. However, it depends on an arbitrator to settle since the Law itself does not explain further. The definition also does not govern in BANI Rules and Procedure as BANI procedural law. One opinion based on the Author's research shows that commercial arbitration in Indonesia could also consider Indonesian Civil Procedural Law, as well as the regulation toward third parties' involvement. Some of the mechanism of third parties' involvement that has been regulated in Indonesian Civil Procedural Law is Vrijwaring, Tussenkomst, and Voeging.

Keywords: *Arbitration Agreement, Third Parties, International Commercial Arbitration, BANI Rules and Procedure, Indonesia Civil Procedural Law.*

Intisari

Perjanjian Arbitrase di antara para pihak merupakan sumber hukum utama dalam proses arbitrase, khususnya dalam Arbitrase Komersial Internasional. Perjanjian Arbitrase dapat dibuat sebelum dan setelah sengketa, dan merupakan dasar kewenangan dari lembaga arbitrase untuk menyelesaikan sengketa. Secara konsep, perjanjian arbitrase hanya mengikat para pihak yang terikat dalam perjanjian arbitrase. Namun demikian, terdapat kondisi bilamana pihak ketiga dapat terikat dalam proses arbitrase. Indonesia mengatur arbitrase dalam UU No. 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa. Undang-undang ini mengatur bagaimana proses arbitrase di Indonesia, termasuk para pihak dalam proses arbitrase sebagaimana diatur dalam Pasal 30. Hal ini sangat tergantung

pada arbiter untuk memutuskannya karena undang-undang tidak memberikan penjelasan lebih lanjut. Penjelasan selanjutnya juga tidak diatur dalam Hukum Acara BANI. Berdasarkan hasil penelitian yang dilakukan, dalam arbitrase komersial di Indonesia, para pihak perlu mempertimbangkan Hukum Acara Perdata yang berlaku di Indonesia, khususnya mengenai pengaturan bagaimana pihak ketiga bisa terikat dalam proses arbitrase. Mekanisme keterlibatan pihak ketiga yang diatur dalam Hukum Acara Perdata Indonesia yaitu *Vrijwaring*, *Tussenkomst*, and *Voeding*.

Kata Kunci: *Perjanjian Arbitrase, Pihak Ketiga, Arbitrase Komersial Internasional, Peraturan dan Prosedur BANI, Hukum Acara Perdata Indonesia.*

A. Introduction

In Indonesia, there are two known methods of dispute resolution: dispute resolution within the national court and dispute resolution outside the national court. Dispute resolution within the national court has been recognized in Indonesia for a while. However, the development of dispute resolution outside the national court came to fruition when the government enacted Law No. 30/1999, which regulates Arbitration and Alternative Dispute Resolution (hereinafter “Indonesian Arbitration Law”). Before the Indonesian Arbitration Law, Indonesia did not have any regulation regarding dispute resolution outside of the national court, especially arbitration and alternative dispute resolution.¹ Increasing transnational commercial arbitration challenged the Indonesian law regime to better reflect the diversity of practices and perspectives in the whole region.²

The existence of Indonesian Arbitration Law has been widely accepted by international business actors in Indonesia. The nature of faster, cheaper, and simpler dispute resolution appears as the characteristic that’s desired and is available via arbitration and other alternative dispute resolution. For example, the arbitration proceeding has been regulated before in Article 620 of the RV (*Reglement op de vordering*).³ Similarly, Article 48 (1) of the Indonesian Arbitration Law also regulates that the whole process of arbitration

1 Muhammad Reza Syariffudin Zaki, *Pengantar Ilmu Hukum dan Aspek Hukum dalam Ekonomi* (Jakarta: Prenadamedia, 2022), 58.

2 Muhammad Reza Syariffudin Zaki, Prita Amalia, Ardiansyah, dan Mursal Maulana, *Pengantar Hukum Transaksi Bisnis Transnasional* (Bandung: Refika, 2022), 12.

3 Sudargo Gautama, *Undang-undang Arbitrase Baru 1999*, (Bandung: Citra Aditya Bakti, 1999), 7.

proceedings must have been done in 180 days since the arbitral tribunal was formed.⁴

According to its title Indonesian Arbitration Law regulates two matters, which are arbitration and alternative dispute resolution. Despite that fact, of all 82 articles, most of those articles regulate arbitration and only one article, Article 6, which governs other means of alternative dispute resolution. The further question is whether arbitration is included as a part of alternative dispute resolution or not, which unfortunately is not regulated by the Indonesian Arbitration Law. However, author's stance is if the title of the Indonesia Arbitration Act exclude arbitration from alternative dispute resolution, then arbitration is a dispute resolution outside national court that have different characteristic or has its own characteristic which differs from the characteristics of other means of alternative dispute resolution.⁵ The stance is based on 1(10) of the Indonesian Arbitration Law in regard with the definition of alternative dispute resolution, which states that the methods of alternative dispute resolution include consultation, negotiation, mediation, conciliation dan scholars/experts' judgment, while arbitration has its own definition in Article 1(1) as follows:⁶

“Arbitration shall mean a mechanism of settling civil disputes outside the general courts based upon an arbitration agreement entered into in writing by the disputing Parties;”

Based on the definition, it is clear that arbitration is a dispute resolution on civil disputes and it based on arbitration agreement.

Indonesian Arbitration Law does not regulate or set the boundaries on what can be considered a civil dispute. However, in Article 5(1) of the Indonesian Arbitration Law states that the disputes which can be settled in arbitration is if the dispute concerning trade or commerce and concerning

4 See Article 48 of Indonesian Arbitration Law No. 30/1999.

5 Arbitration is one of alternative dispute resolution. Regarding previous statements, there are two opinions, which if seen as alternative dispute resolution outside the national court, then it could be categorized as alternative dispute resolution. However, if seen from its characteristics arbitration is municipal alternative dispute resolution (*sui generis*), therefore it distinct itself from other alternative dispute resolution. See Huala Adolf, *Dasar-dasar, Prinsip dan Filosofi Arbitrase* (Bandung: Keni Media, 2013), 4.

6 Article 1 No. 1, Indonesia Arbitration Law No. 30/ 1999.

rights that according the law and regulations wholly controlled by the parties in dispute.⁷ Based on previously mentioned articles, the arbitration which recognized by Indonesian Arbitration Law could be concluded as a form of commercial arbitration which is also regulated in UNCITRAL Model Law on International Commercial Arbitration 1985 (amended as adopted in 2006).⁸ However, Indonesian Arbitration Law never uses the term commercial arbitration, different from the practice of international arbitration which always uses the term *international commercial arbitration*⁹ in order to distinct itself with public arbitration, likewise the Permanent Court of Arbitration (PCA).¹⁰

Furthermore, regarding the definition of arbitration, the Indonesian Arbitration Law states that an arbitration proceeding is a process of dispute resolution that's based on the existence of the arbitration agreement between the parties in dispute. Generally, the parties could create an arbitration agreement or draft an arbitration clause, whether agreeing towards an arbitration institution or not. Those arbitration agreements could be made before the dispute arises or when the disputes have arisen between the parties. The standing of the arbitration agreement as the basis for the parties to settle their dispute is governed in Article 2.

In that article, besides strictly mentioning that an arbitration proceeding is based on the arbitration agreement between the parties, this article also interprets further that only the parties that are bound by an arbitration agreement could settle their dispute in the chosen arbitration forum. It could be concluded that the parties who are not bound by the arbitration agreement could not utilize arbitration as their dispute settlement mechanism.

Despite that fact, in practice, there are certain situations and conditions which creates a possibility for third parties, besides the parties who are

7 Before the Indonesian Arbitration Law was enacted, based on Article 616 of the RV, it is stated that an arbitration agreement is not permitted for disputes concerning alimony, property, divorce or other marital matters, concerning the legal standing of a certain person or in a general concerning dispute where the law prohibited any conciliation. See Gatot P. Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), 22.

8 Hereinafter "UNCITRAL Model Law".

9 See Article 1 (1) UNCITRAL Model Law, which uses the term *international commercial arbitration* and defines the term *commercial* widely, not only limited to trading.

10 See www.pca-cpa.org; Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta: Sinar Grafika, 2004), 39.

bound by the arbitration agreement, who had an interest to be involved in the arbitration proceeding. There are two kinds of third parties, parties who signed the agreement (*signatories parties*) and the parties who did not sign the agreement (*nonsignatories parties*). However, the Indonesian Arbitration Law does not regulate and defines whomever could be considered as a third party. This Act only regulates the involvement of third-party in arbitration proceedings in 1 article, which is Article 30, as follows:¹¹

“Third parties outside the arbitration agreement may participate and join themselves into the arbitral process, if they have related interests and their participation is agreed to by the parties in dispute and by the arbitrator or arbitration tribunal hearing the dispute.”

From the provision above, and taking notes from Article 2, which only regulates that only the two parties bound by an arbitration agreement could be involved in dispute resolution under arbitration, it is clear that Article 30 creates the possibility that the arbitration agreement could be expanded to extends the jurisdiction of a certain arbitration institution, not only toward the parties in an arbitration agreement, but also the parties outside the arbitration agreement. Despite that fact, the expansion of the arbitrations agreement’s jurisdiction must occur without destroying the consent that existed between the parties as consent is indeed the “*cornerstone*” of arbitration proceedings.¹²

B. Definition Of Arbitration, Commercial Arbitration, And International Commercial Arbitration

Arbitration is a method of dispute resolution that existed since the Greek age. Basically, arbitration is involving a third person to adjudge certain disputes. Many scholars have been trying to find the true definition of arbitration from different perspectives. However, when observed more carefully, the essence of the many definitions of arbitration is not significantly different. Since all of those definitions aim towards commercial dispute resolution based

¹¹ Article 30, Indonesia Arbitration Law No. 30/1999.

¹² Slavomir Halla, “Creeping Consensus on the Extension of Arbitration Clauses in International Commercial Arbitration”, *COFOLA 2011: The Conference Proceeding, First Edition, Masaryk University*, 2.

on consent. Arbitration is a process where two parties or more submit their dispute to certain impartial person (arbitrator) to obtain an award which final and binding. Indonesian Arbitration Law define arbitration as a method of civil dispute resolution outside national court which based on the arbitration agreement that made in written form by the parties in dispute.¹³

Different from other foreign literature,¹⁴ Indonesian Arbitration Law only recognized arbitration as one of dispute resolution, without adding the term ‘commercial’ before it. In the international arbitration world, an arbitration institution which has jurisdiction over commercial matters is called international commercial arbitration.

Indonesian Arbitration Law does not define regarding international commercial arbitration and international arbitration. Instead, the Act only defines what could be considered as an international arbitration award, as follows:¹⁵

“International Arbitration Awards shall mean awards handed down by an arbitration institution or individual arbitrator(s) outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration institution or individual arbitrators(s) which under the provisions of Indonesian law are deemed to be International arbitration awards.”

Indonesian Arbitration Law only sets boundaries of international arbitration award without governing international arbitration in a more substantive way. This is very different from what is regulated in UNCITRAL Model Law which gives a definition of international arbitration or arbitration

13 Article 1(1) of Indonesian Arbitration Law No. 30/1999.

14 See Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge: Cambridge University Press, 2012), 1. In her book Margaret L Moses uses the term ‘International Commercial Arbitration’, even so, Moses did not give to what extent of definition of ‘International Commercial Arbitration’. Moses only gives boundaries that the limit of ‘International Commercial Arbitration’ is *private system of adjudication*. See also Gary B. Born, *International Arbitration: Law and Practice* (Netherlands: Kluwer Law International, 2012), 3. Born uses the term ‘International Arbitration’, however in his book Gary Born gives boundaries that what could be considered as ‘International Arbitration’ is an international arbitral tribunal with commercial competence dan expertise.

15 Article 1(9), Indonesia Arbitration Law No. 30/1999.

with international nature if it fulfils the following requirements:¹⁶ 1) The parties who formed the arbitration agreement, when the arbitration was formed, had a different place of business in different state; 2) The place where the arbitration is held and the place of transaction or dispute matters is located in a different place from the place of business, or in certain situations when the parties reach an agreement that the disputes are connected transnationally.

Besides creating a boundary to what could be considered as international arbitration, UNCITRAL Model Law also creates a boundary regarding the term “*commercial*”. The term “*commercial*” is defined in UNCITRAL Model Law widely as follows:¹⁷

“The Term ‘commercial’ should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency, factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.”

The meaning or interpretation of the term “*commercial*” defined by UNCITRAL Model Law¹⁸ has been widely adapted and accepted by many countries as a reference.

Furthermore, in the Indonesian Arbitration Law, it is regulated that the dispute that could be submitted to arbitration is only disputes concerning commercial and certain rights that according to the law are fully controlled by the parties in dispute.¹⁹ In Article 5, the definition of commercial itself is not

16 UMAR, M. (2013) *BANI dan Penyelesaian Sengketa*. Penerbit Fikahati Aneska. Jakarta. Pg. 64.

17 See note Article 1(1) UNCITRAL Model Law.

18 UNCITRAL Model Law 1985 (Amended as adopted in 2006) could be used by countries as a guide to practice commercial arbitration in their respective country or to form national law in regard to arbitration in their countries.

19 Article 5 Indonesian Arbitration Law No. 30/1999.

sufficiently provided. The definition of the scope of commercial can be found in Article 66(b) of The Indonesian Arbitration Law in regard to international arbitration, it is stated that the award that could be enforced are those that concern commercial dispute that covers, commerce, banking, finance, investment, industries, and intellectual property. That provision is different from the provision in UNCITRAL Model Law. The term ‘*commercial*’ or trading must be defined extensively to cover every activity that is connected with commerce activities such as banking and finance. Author also compares it with the value of *Freedom of Commerce* that must be defined vastly, not only limited to the definition of commercial but also every variable that has a connection with the term ‘*commercial*’.

C. Arbitration Agreement and its Connection with Arbitration Jurisdiction

Every definition of arbitration, whether domestically or internationally, always emphasizes that arbitration proceedings can only be held based on the written consent between the parties.²⁰ An arbitration tribunal only has jurisdiction over parties who are bound to the arbitration agreement in question. Whether by mentioning certain arbitration institution or not, the arbitration agreement does not only bind the parties but also the arbitration tribunal. These facts cause the existence of *separability principle*, which means, an arbitration agreement is completely separate from the whole contract or agreement.²¹

Indonesian Arbitration Law defines arbitration agreement as follows:

“An arbitration agreement could be in the form of an arbitration clause which includes a certain written agreement that formed by the parties for a future dispute or a municipal agreement that created by the parties for an existing dispute.”

Based on that definition, arbitration proceedings could only take place based on an arbitration agreement formed before or after the dispute occurs.

An arbitration agreement formed by the parties is a practice of self-governing the dispute resolution between the parties by appointing an arbitrator

20 See the definition of arbitration in Indonesian Arbitration Law No. 30/1999.

21 See Article 10 of Indonesian Arbitration Law No. 30/1999.

or arbitrators.²² Based on the arbitration agreement the parties also will obey the arbitral award that is *final and binding*. An arbitration agreement between the parties is built upon the principle of *freedom of contracts* mentioned in Article 1338 of the Indonesian Civil Code, which states that what has been agreed by the parties also bind the parties as the law between them. An arbitration agreement could be formed by two ways namely:²³ 1) *Pactum de compromittendo*, the form of agreement that formed before the dispute arises and is included within the main agreement ; and 2) *Akta Kompromis*, the form of agreement that formed after the dispute occurred and municipal from the main agreement. Both *pactum de compromittendo* and *akta kompromis* does not distinct in the status of arbitration agreement.²⁴

In a broad sense, Huala Adolf gives certain limits in regard to the characteristics of an arbitration clause, as follows:²⁵ 1) Arbitration clause written requirement; 2) Signature requirement on arbitration clause; 3) The autonomy nature or the separability of arbitration clause; 4) Dismantlement of arbitration clause; 5) The competence of National Court in regards with the existence of arbitration agreement/clause.

The characteristic that exists in the arbitration agreement makes arbitration agreement stands as its own agreement and morphed into the most crucial source of law in an arbitration proceeding.

D. The Mechanism of Third Parties Involvement in Indonesia Commercial Arbitration Proceeding

Dispute resolution through arbitration especially commercial arbitration is a process of dispute resolution that could only be conducted if the parties had an arbitration agreement. This arbitration agreement shows that, previously, the parties had obtained mutual consent to settle their future disputes, that arise in connection with the performance of a contract, in arbitration. The scope

22 Soemartono, *Arbitrase dan Mediasi di Indonesi* 21., compared with William W. Park, "Non-Signatories and International Contracts: An Arbitrator's Dilemma", *Boston Univ. School of Law, Public Law Research Paper No. 17-27* (2008).

23 See Article 9 of Indonesian Arbitration Law No. 30/1999. This particular Article regulates on how arbitration agreement is made and the substance of the arbitration agreement.

24 Huala Adolf, *Dasar-dasar, Prinsip dan Filosofi Arbitrase*, 82.

25 *Ibid.*, 83.

of jurisdiction of this agreement is limited to the parties in the arbitration agreement. As governed in Article 2 of the Indonesian Arbitration Law as follows:²⁶

“This Act shall regulate the resolution of disputes or differences of opinion between parties having a particular legal relationship who have entered into an arbitration agreement which explicitly states that all disputes or differences of opinion arising or which may arise from such legal relationship will be resolved by arbitration or through alternative dispute resolution.”

Based on the provision of that article, an arbitration agreement disallowed parties outside the arbitration agreement to be involved in an arbitration proceeding. However, recent development shows that there is a certain dispute that requires third parties to be involved in the arbitration proceeding. In Indonesian Arbitration Law, certain elements need to be fulfilled for third parties to be involved in Indonesian arbitration proceedings, namely: 1) The element of related interest; 2) Consent between the parties; 3) Approval by the arbitral tribunal

Despite those facts, Indonesian Arbitration Law does not further define how far those requirements need to be taken into account by third parties. Since a proper definition is absent in Indonesian Arbitration Law, an arbitrator must be able to judge and interpret to what extent the requirements have been fulfilled by the parties. For instance, to what extent the interest of the third parties could be considered as a related interest toward the dispute. There are no defined limits regarding that problem. As well as the element of consent between the parties regarding the involvement of third parties in arbitration proceedings, how consent could be shown by the parties has also not been facilitated in Indonesian Arbitration Law whether it must be express consent or implied consent. To interpret those two, it seems that it is the responsibility of arbitrator in certain case to decide whether the involvement of third parties in arbitration proceeding could be approved or denied.

In general, when certain disputes appoint one of the arbitrational institute

²⁶ Article 2 of Indonesia Arbitration Law No. 30/ 1999.

in Indonesia and are held in Indonesia, for example, when the arbitration agreement appoints BANI (Indonesia National Board of Arbitration) or appoints BANI Arbitration Rules and Procedure as the procedural law of the arbitration, the arbitration proceeding must be based on BANI rules and procedure. However, BANI Rules and Procedure does not provide detailed regulations on third parties involvement. BANI Rules and Procedure only regulates arbitration proceedings that involve multiple parties in Composition Tribunal Rules Article 10 (5) as follows:

“In case there are more than two parties in the dispute, then all the parties acting as claimant(s) shall be considered as a single party claimant with regard to the designation of arbitration, and all parties being claimed against shall be considered as a single party respondent for purposes of designation of an arbitrator. In the event that such multiple parties cannot agree upon the designation of an arbitrator within the allocated time frame, the selection of an arbitrator shall be deemed to have been left to the chairman of BANI, who shall make a selection on their collective behalf. In special situations, if requested by the majority of the parties in dispute, the chairman of BANI may approve the formation of tribunal comprising more than 3 arbitrators. Additional third parties may join in an arbitration case only in so far as this is allowed based on the stipulation of Article 30 of Indonesia Arbitration Law No. 30/1999.”

In that particular article, it's defined that the involvement of other parties beside the parties in dispute is possible as long as it does not contradict the provision in Article 30 of Indonesian Arbitration Law.

In regards to the involvement of third parties in the process of commercial arbitration practice in Indonesia, arbitration often takes consideration from Civil Procedural Law that is applied in Indonesia besides BANI Rules which are used as procedural law in BANI. Author believes that, certain justified reasons on why Indonesian Civil Procedural Law could be used in the process of commercial arbitration in Indonesia is based on the definition of

arbitration which has been regulated in Indonesia Arbitration Law. Arbitration is considered as one of dispute resolution on civil disputes held outside the civil court, hence in some ways, Indonesian Civil Procedural Law is also taken as guidance towards arbitration proceedings in Indonesia.

Indonesian Civil Procedural Law regulates the involvement of third parties in a court proceeding whether by inclusion of the third parties in the proceeding (*vrijwaring*) or intervention by third parties (*tussenkomst*). One of the source of Indonesian Civil Procedural Law is the Regulation of Procedural Law in the court or *Herzien Inlandsch Reglement* (HIR). In the beginning HIR does not govern concerning the involvement of third parties, however Article 392(2) regulates that the provision of HIR is no longer in line with the development of civil law, and there's a necessity to renew and enact other provisions outside HIR, especially in regards with the involvement of third parties.²⁷

Vrijwaring occurs when a certain dispute, there is a third party interested in being involved in that particular dispute. To submit *vrijwaring* the respondent in that dispute will make a request towards the court, whether orally or written, to be able to summon third parties in order to protect the respondent. This request could be considered as an incidental claim and with certain provisional measures it would be decided whether the incidental claim will be rejected or accepted, and the award of the provisional measures is called incidental award.²⁸

Where *vrijwaring* is the involvement of a third party by the parties in dispute request, then intervention or *tussenkomst* is the inclusion of a third party based on its willingness. The third party in this particular scenario does not consider the claimant's or respondent's importance, it pleads for it's own interests.²⁹

The other form of third parties' involvement in Indonesian Civil Procedural Law is consolidation *Voeging*. Consolidation is the inclusion

27 Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek* (Bandung: Mandar Maju, 2002), 50.

28 Ibid, 51.

29 Ibid, 52.

of third parties who had an interest towards the dispute and filed a request towards the tribunal or judge to be involved as joining parties with one of the parties.³⁰

Based on the aforementioned definitions, the involvement of third parties could be differentiated into the involvement of third parties based on the request, whether from one of the parties in dispute or from its own request. The rejection or approval of the request itself depends on the tribunals or judges who settle the dispute; one of the considerations is the existence of a related interest in that particular dispute. However, the interpretation of related interests remains at the judges' hands to decide through provisional measures.

The absence of a definition or further explanation on how third parties are involved in commercial arbitration proceedings in Indonesia, shows that it seems the creator of Indonesia Arbitration Law at that time, misjudged those limits and boundaries on third parties' involvement is crucial matters to be regulated. It is based on the fact that arbitration is one of dispute resolution that is always based on arbitration agreement. Without an arbitration agreement the arbitration proceeding could not be held.

In practice, third parties' involvement in commercial arbitration proceedings are often found. This is decided upon the position of the third parties in the dispute between the parties. However, to determine to what extent does third parties has a related interest is not an easy task for the arbitrator. Therefore, the limits and further definition on third-party involvement in commercial arbitration proceeding is a crucial matter to be governed.

Recent developments show that third-party involvement in international commercial arbitration proceedings is often found arose from multi contract agreement. In international commercial arbitration, there are some recognized mechanisms that third party could be involved in an arbitration proceeding, namely *joinder*, *intervention*, and *consolidation*.³¹ Those three mechanisms

³⁰ Ibid, 53.

³¹ Klas Laitinen, "Multi Party and Multi Contract Arbitration Mechanisms in International Commercial Arbitration" (Master's Thesis, University of Helsinki, 2013), 48. See also James M. Hosking. "The Third Party Non-Signatory's Ability to Compel International Commercial Arbitration: Doing Justice without Destroying Consent". *Pepperdin e Dispute Resolution Law*

are known in international commercial arbitration, but is not certain that it is known in domestic Indonesian commercial arbitration. So far it's not regulated definitively in the Indonesian Arbitration Act. Despite that fact, the legal void can be filled by looking at the Indonesian Civil Procedural Law that distinguishes between *Vrijwaring*, *Tussenkomst*, and *Voeging*.

Multi-contract and *multi-party* disputes in international commercial arbitration is one of the most recent developments that occurred. The uprose development of international business practices that involves Indonesian business actors creates the possibility that commercial arbitration law in Indonesia must be prepared for it to be chosen as the forum to settle disputes between parties.³² The absence of a definition or lack of commercial arbitration law in Indonesia is expected not to become an obstacle for business actors to proceed in arbitration in Indonesia by using institutional arbitration in Indonesia, such as BANI.

Regulation of third parties' involvement in arbitration proceedings, especially in connection with arbitration agreements, is a crucial matters. However, it would be more crucial if the validity or ability of third parties to be involved in a commercial arbitration proceeding could affected by whether the arbitral award could be enforced or not. The problem could lead to potentially causing the inability of an arbitral to be enforced due to the fact that it breaches a general provision, more specifically on international arbitration awards.

E. Conclusion

Indonesia governs commercial arbitration in Indonesian Arbitration Law. Even if this regulation does not use the term '*commercial*', the scope of arbitration in the Law is limited in settling disputes arising from commerce disputes. Arbitration is one of dispute resolution outside the court that is known as a method of dispute resolution that could only be held based on an

Journal Vol. 4, No 3 (2004).

³² More about Multiparty and Multicontract, see Bernard Hanotiau, *Complex Arbitrations: Multiparty, Multicontract, Multi-Issue and Class Actions* (Netherlands: Kluwer Law International, 2020).

arbitration agreement. Arbitration agreement as the most crucial source of law, becoming the foundation for an arbitral tribunal to have jurisdiction over the dispute and to diminish the rights of another forum to settle it.

In a philosophical sense, an arbitration agreement only binds the parties that are mentioned in that particular arbitration agreement. However, in practice and development, third parties may be involved in an arbitration proceeding. Indonesian law governs that matter through Article 30 of Indonesian Arbitration Law, which states that third parties could be involved in an arbitration proceeding if it has *related interest* and obtain *consent between the parties*. In regard to how these two elements could be interpreted depends on the arbitrator, since the law itself does not further explain. This is also not mentioned in BANI Rules and Procedure as BANI procedural law.

One of opinion based on Author's research shows that in practice commercial arbitration in Indonesia also considers Indonesian Civil Procedural Law, as well as the regulation toward third parties' involvement. Some of the mechanism of third parties' involvement that has been regulated in Indonesia Civil Procedural Law is *Vrijwaring*, *Tussenkomst*, and *Voeging*.

Studies or modification on Indonesian Arbitration Law is needed, especially regarding third party's involvement, noting that from its development, arbitration practice has started to recognize arbitration proceeding based on multi contract that resulted in a multi-party arbitration. Explanation in regard to the boundaries on to what extent third parties could be involved in commercial arbitration proceeding in Indonesia seems eagerly to become more important, specifically to guaranteeing the certainty of law and the enforcement of arbitral award.

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