

# Arbitration in Indonesia -Japanese Investors Perspective-

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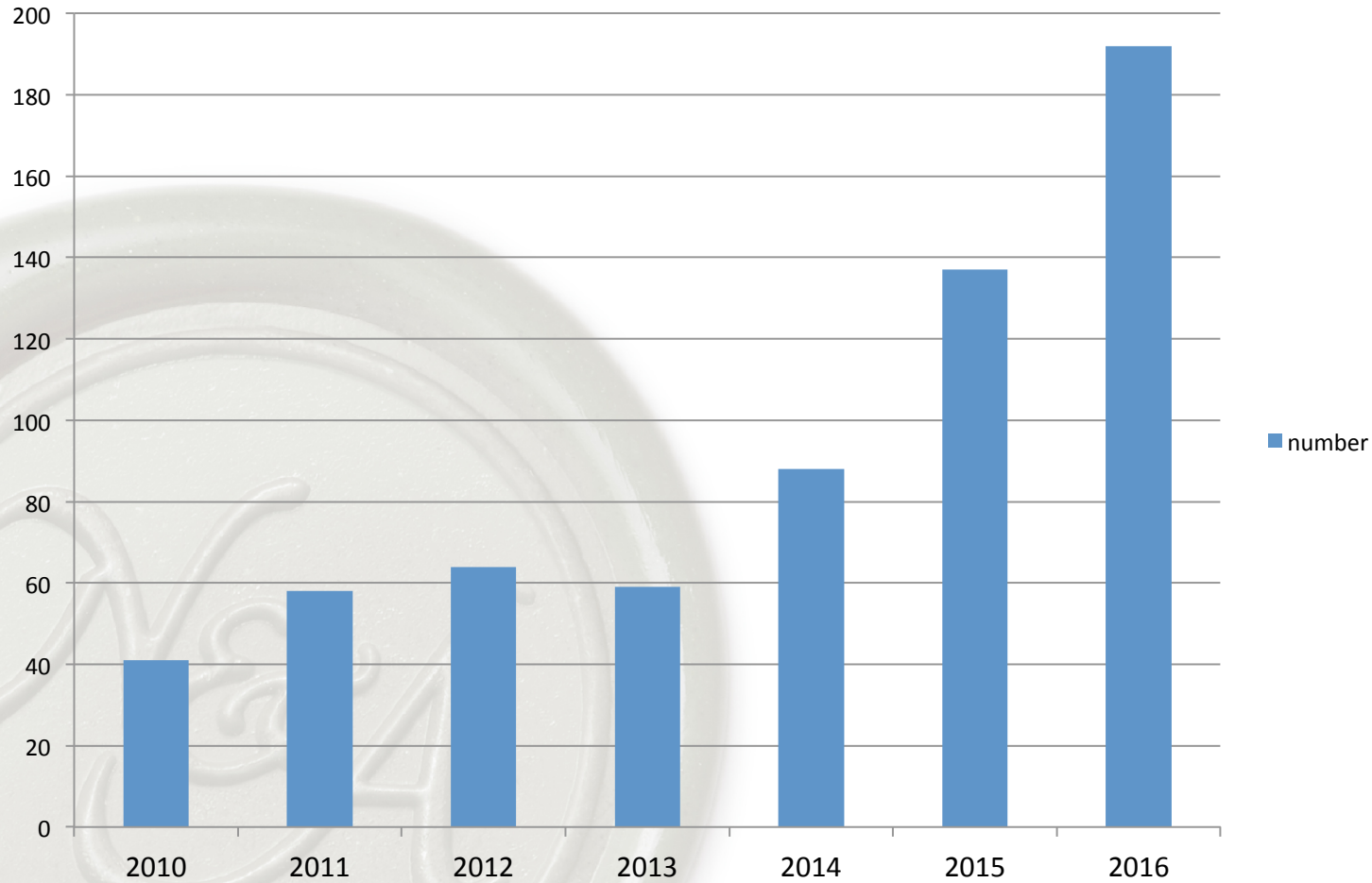
# Arbitration in Indonesia

- Dispute resolution forum is critically important for foreign investors including Japanese investors:
  - A foreign investor prefers arbitration
  - Trend is to choose either BANI or SIAC

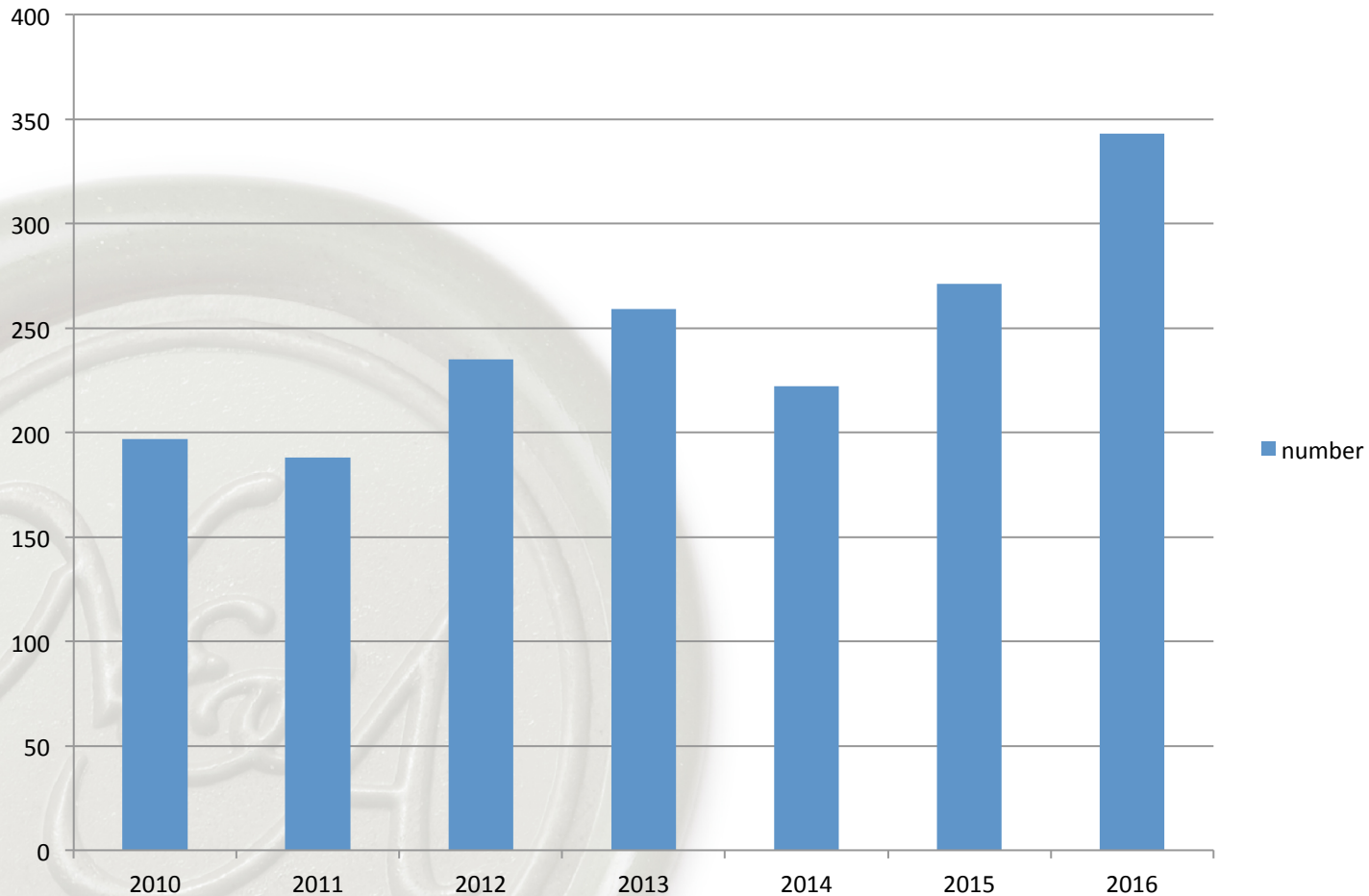
# Dispute Resolution

- This is a competition between Indonesian arbitration and Singapore arbitration
- It is dispute resolution clauses of the contract in relation to investment in Indonesia.
- However, certain numbers of the contracts choose SIAC, arbitration in Singapore.

# Number of New Cases in BANI year 2010 to 2016



# Number of New Cases in SIAC year 2010 to 2016



# Foreign Party

- 18% of the parties of BANI are foreign
- Top users (2010-2016)
  - Singapore 12
  - Korea 12
  - Japan 11
  - Malaysia 10
  - USA 7
  - German 6
  - UK, China and Hong Kong 3



# If Indonesian arbitration is chosen

- There are huge benefits for PERADI(Indonesian lawyers)
  - All of BANI case are represented by at least one Indonesian lawyer
  - Most of the legal counsels are Indonesian lawyers
  - Most of arbitrators are Indonesian

# Greatness of BANI arbitration

- Strong local(Indonesian) features
- Procedure modeled after Indonesian civil litigation
- Most of BANI cases are conducted in Bahasa Indonesia
- Fast, cheap and punctual
- Simple procedure without documents disclosure
- Very weak European/American influence
- Few European/American lawyers involved

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# Greatness of BANI arbitration

- Neutral and impartial procedure even in the case of Indonesia companies vs. foreign companies
- BANI has been successful in managing the dispute cases while it keeps Indonesian tastes, and rejecting European/ American influence
- Be proud of it!

# Problem of BANI

- Disputes between BANI Mampang vs BANI Sovereign
- This is a serious problem and mistake.
- **Who is the real loser of this disputes?**

the real loser of this disputes  
may be

PERADI (Indonesian lawyers)

# What happens after BANI dispute?

- All disputes arising from this contract shall be binding and be finally settled in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") ~~under the administrative and procedural Rules of Arbitration of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said rules~~”

# What happens after BANI dispute?

- Japanese Investors tend to avoid Indonesia arbitration because of the BANI disputes
- Instead, Japanese Investors are choosing Singapore arbitration



# Unfortunate Effects of BANI disputes

- Shift of the legal works from Indonesia to Singapore
  - Indonesian lawyers are losing so much legal works in relation to arbitration.
  - Singapore lawyers are gaining so much legal works in relation to arbitration



# Suggestion

- The disputes between BANI Mampang vs BANI Sovereign should be immediately amicably settled.
- Otherwise, Indonesian lawyers will lose more works, while lawyers in Singapore will be happy.

# Other Suggestions

- Suggestions to improve Indonesian arbitration
  - To determine a timetable of the whole procedure at the early stage
  - To reduce last-minute change of the schedule
  - More flexible language and timetable so that a foreign arbitrator can easily work



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**Main Area of Practice:**

Construction and Infrastructure Projects in  
 Indonesia and other Asian countries  
 Construction Dispute, International  
 Arbitration

**Credentials**

2015	Arbitrator, the Kuala Lumpur Regional Centre for Arbitration (KLRCA)
2015	Arbitrator, the Indonesia National Board of Arbitration (BANI)
2014	Fellow of the Singapore Institute of Arbitrators (FSI Arb)
2014	Fellow of the Chartered Institute of Arbitrators (FCI Arb)
2013	Certified Adjudicator, the Kuala Lumpur Regional Centre for Arbitration (KLRCA) (CIPAA)
2011 - 2013	Legal counsel, Global business department of Japanese corporation (Singapore)
2010 - 2011	Shearman & Sterling (San Francisco)
2010	University of California Berkeley (LLM)

**Professional Experiences**

Arbitration and DAB on Construction and infrastructure projects
Advice on Construction and Infrastructure contracts such as FIDIC MDB, Yellowbook, Silverbook

**Recent Seminars**

Sep. 2017	Present and Future of FIDIC – Comparison of Red, Silver and Yellow, Main legal issues in SouthEast Asia, FIDIC 2017- (Singapore)
Sep. 2017	FIDIC Yellowbook Commentary (Tokyo)
Dec. 2016	A clause-by-clause commentary on FIDIC 1999 Red book, (Phnom Penn, HCMC, Hanoi)
Sep. 2016	FIDIC Silver book Commentary (Tokyo)
Sep. 2016	Regional Emergency Arbitration, Wolters Kluwer (Jakarta)
Aug. 2016	Dispute Resolution in Construction and Infrastructure projects in Indonesia (Jakarta)
Jan. 2016	A clause-by-clause commentary on FIDIC 1999 Red book, (Jakarta, HCMC, Hanoi)