

**THE HIGH PROSECUTOR OF NORTH SULAWESI  
MANADO**

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P-19

Number: : B- /R.1.4/Epp.1/10/2004 Manado, October 2004  
Nature : Ordinary  
Attachment : 2 (two) copies To:  
Subject : The return of dossiers in the name of the suspects Ir. Directorate V/Specific Offence  
JERRY WENNY KOJANSOW The Criminal Investigation Agency of the  
et. al. suspected of violating Police of the Republic of Indonesia  
Articles 41(1), 42(1), 43(1), In  
44(1) in conjunction with 46(1) JAKARTA  
of Law No.23 of 1997 to be  
completed.

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With regard to our letter Number B-1614/R.1/Epp.1/10/2004 dated 12 October 2004 in accordance with Article 110 paragraphs (2), (3) and Article 138 paragraph (2) of the Code of Criminal Procedure (CCP), we hereby return the dossiers in the name of the suspect Ir. JERRY WENNY KOJANSOW Police Number BP/12/X/2004/Tipiter dated 5 October 2004 that we receive on 7 October 2004, with the following directions:

1. The general elucidation of Law No.23 of 1997 states that the enforcement of penal law provisions shall continue to observe the subsidiary principle, namely that the penal law should be used if other legal penalties such as administrative penalties and civil penalties as well as environmental alternative dispute resolution are not effective.

**DIRECTION:**

- To enquire an environmental criminal law expert (Prof. DR. Muladi, SH) whether it is an absolute requirement that administrative penalty or civil penalty and environmental alternative dispute resolution are carried out before the penal law [provisions] are to be applied. Also, in what instances may the subsidiary principle be put aside?
- If in fact the expert testimony states that the subsidiary principle must be carried out, then the investigator must prove/describe by testimony of witnesses or other evidentiary instrument that the investigation was carried out because administrative penalty and civil penalty and environmental alternative dispute resolution reached a stalemate or were ineffective.
- If the expert testimony states that the subsidiary principle can be put aside after the requirements have been met, such as the level of guilt of the perpetrator is relatively serious, the consequences of his act is relatively huge, his act causes social unrest, then the investigator must also prove the presence of these requirements in this case. The

determination cannot be unilaterally made by the investigator but must be described in the expert testimony, witness testimony or other evidentiary instruments.

- To enquire an environmental law expert of what is meant by “the level of guilt of the perpetrator is relatively serious, the consequences of his act is relatively huge, his act causes social unrest”. Subsequently, please ask whether this case falls under all of the above categories or at least one of the categories. If it falls within one of the categories, proof of this must be supported by evidentiary instruments, among other things testimony either from the relevant local government or an environmental non-governmental organisation.
2. From the dossiers of investigation, the criminal offence in this case was in fact carried out by or on behalf of a legal entity/company (environmental corporate crime) as meant in Articles 45 and 46 of Law 23 of 1997. What constitutes an environmental crime committed by a company or an environmental crime is an environmental crime that is carried out by a person or several material perpetrators in the name of a company/legal entity or in the framework of carrying out the policies of a company’s or a legal entity’s management. Accordingly what constitutes a suspect and can be prosecuted and be subject to criminal punishment and administrative actions is a person who gave the instruction or who acted as the leader, and the legal entity itself. A staff who commits an environmental crime solely for the purpose of carrying out his superior’s [instruction] would not be included in those that can be prosecuted or be the subject the criminal punishment.

In the investigator deciding to make a person a suspect, as indicated in the dossiers, it is found that there are suspects that are not accountable for the corporate crime.

**DIRECTION:**

- In determining who is the suspect in a corporate crime in the case of Buyat bay pollution, if this refers to Article 46 paragraphs (1) and (2) of Law Number 23 of 1997, criminal accountability is present only in the following composition of suspects:
  - I. The legal entity, in this matter PT Newmont Minahasa Raya, which in the Minutes of Investigation is represented by one of the competent members of the Board of Directors, but is not declared a suspect.
  - II. RICHARD BRUCEE NESS, President Director of PT Newmont Minahasa Raya, who is qualified as the person who gave the instruction to commit the offence, because he has the authority to decide and has responsibility for production and waste management of PT Newmont Minahasa Raya which later became the offence.
  - III. PHILL TURNER, operational manager, who is qualified as the person who acted as the leader in the performance of the offence because he is in charge of and is

responsible for the field activities of PT Newmont Minahasa Raya including control/supervision of the detoxification process.

To qualify that the offences are corporate crime offences, there must be Minutes of Investigation in which PT Newmont Minahasa Raya (the legal entity/corporation) is the suspect, Suspect I, and questioning be made against one of the members of its Board of Directors representing the legal entity as Suspect I (see Law No.23 of 1997 Article 46 paragraphs (3) and (4)).

3. The laboratory that analyses the samples does not have the capacity to make a conclusion whether the result of its analysis constitutes a criminal offence. The laboratory can only provide a report of the result of the lab's analysis of samples checked/analysed and cannot provide any comments/information regarding the result of the analysis. The comments/information regarding the lab's analysis result can only be given by experts in accordance with their respective fields.

**DIRECTION:**

- The laboratory's analysis result be presented to experts (in accordance with their expertise) and request their comments/opinions on whether the tailing disposed by PT Newmont Minahasa Raya is considered to be hazardous and toxic waste and whether disposal of the tailing carried out by PT Newmont Minahasa Raya could have polluted Buyat bay. And, whether waters of Buyat bay has been polluted.
4. Since there are no parameters in the samples taken from the marine biota and human/society that are allegedly polluted, it is advisable to have a comparison from other places/areas where the marine biota and human/society samples are not polluted, to identify whether the marine biota and human/society around Buyat bay has been exposed to pollution.

**DIRECTION:**

- The investigator to take samples of marine biota and human/society from unpolluted areas to be analysed in a laboratory to serve as comparison.
  - The investigator to present to experts (each expert) both samples (i.e. the samples exposed to pollution and their comparison) for their opinions.
5. In accordance with the testimony of Ir. SOFIAN SIMANGUNSONG who carried out laboratory examination on gold contents in the raw material or final product and also on the result of detoxification of the tailing to be disposed to Buyat bay.

**DIRECTION:**

- The investigator to investigate PT Indoassay (ERDIANSYAH TAHIR) for information regarding the result of laboratory examination on the detoxification of tailing that is disposed to Buyat bay.

The result of the laboratory examination to be confirmed by experts whether the tailing that to date is disposed to the Buyat Bay continues to contain hazardous and toxic wastes and could pollute the Buyat Bay.

6. The examination of the sample of the polluted environmental media (sea water, mud, etc) for chemical traces must be carried out by an accredited laboratory of chemicals of national or international repute.

DIRECTION:

- The examination of the sample to be carried out by a laboratory accredited for chemical examination. If it is true that the Forensic Laboratory of MABES POLRI has such accreditation, evidence of this is to be attached to the dossiers.
7. Article 75 paragraph (1) letter k CCP states that "Minutes shall be prepared in respect of each other acts in accordance with the provisions of this law". Having examined the dossiers, the minutes of delivery of sample by the investigator to the laboratory are not found, and also the Minutes of the taking of the analysis of the remaining sample and the result thereof by the investigator from the laboratory that made the analysis of the sample.

DIRECTION:

- The investigator to prepare the minutes in respect of the delivery of the sample by the investigator to the laboratory and the retaking of the remaining sample and the result of the analysis thereof by the investigator from the laboratory.
8. In the dossiers, particularly in the Minutes of Investigation (Expert Witnesses) Dra. MASNELLYARTI HILMAN, M.Sc. and Ir. ISA KARMISA ARDIPUTRA it is found that Dra. MASNELLYARTI HILMAN, M.Sc. and Ir. ISA KARMISA ARDIPUTRA provided information on what they have seen, heard and experienced so that their information are not to be classified as testimony of experts but to be classified as testimony of prosecution witnesses.
  - The investigator to replace the title of the Minutes of Investigation of Expert Witnesses with Minutes of Investigation of Witnesses Dra. MASNELLYARTI HILMAN, M.Sc. and Ir. ISA KARMISA ARDIPUTRA.
  9. In the dossiers, there is a Minute of Confiscation/ Labelling of Evidence carried out on Friday, 30 July 2004 regarding 1 plastic tube of tailing waste, with a volume of 2,5 litre,

from the final tailing (Tank 33) of PT Newmont Minahasa Raya, marked OT, however a Minute of Taking of Sample Evidence was not prepared.

DIRECTION:

- The investigator to prepare Minutes of Taking of Sample Evidence of tailing with a volume 2,5 litre from the final tailing (Tank 33) of PT Newmont Minahasa Raya.
- 10. To ensure the accuracy and validity of the testimonies of witnesses and suspects, Article 75(3) CCP states that the in addition to being signed by the official referred to in paragraph (2), the minutes must also be signed by all the relevant parties that were involved in the action meant in paragraph (1). Confronted with the fact that the Minutes of Investigation of the witnesses and suspects do not comprise of only 1 page but several pages. For the examination result to be valid as stipulated in the CCP, each page must be signed/initialled by the person examined. From our examination of the dossiers, the Minutes of Investigation of the Witnesses MASNA STIRMAN, Ir. S. WITORO SOELARNO, M.Si and the Suspect Ir. JERRY WENNY KOJANSOW, the other pages [in those minutes] have not been signed/initialled by the party concerned.

DIRECTION:

- For the Minutes of Investigation of Witnesses MASNA STIRMAN, Ir. S. WITORO SOELARNO, M.Si, and Suspect Ir. JERRY WENNY KOJANSOW, each page of the relevant Minutes of Investigation must be signed/initialled by the party concerned.
- 11. Article 116 paragraph (3) CCP states in the examination of a suspect, he is to be asked whether he wishes to have witnesses in his favour to be heard, and if there are, this must be recorded in the minutes. Furthermore Article 116 paragraph (4) CCP states that if what is mentioned in paragraph (3) occurs, the investigator must summons and examine the witnesses.

The Minutes of Investigation of the Suspect (all of the Suspects) the investigator did not ask the suspects whether there are witnesses that are in their favour.

DIRECTION:

- The Investigator to ask each suspect (all of the suspects) whether there are witnesses that are in his favour. If a suspect says there are witnesses in his favour, the investigator must summon and examine such witnesses.
- 12. Based on the fact existing on site, there are in fact two rivers around Buyat bay, namely, Totok River and Buyat River. Besides that, there are also in fact illegal gold miners around PT. Newmont Minahasa Raya.

DIRECTION:

- To investigate the location where the Buyat river and Totok river empty into and the location where the tailing of illegal gold miners are disposed. If it is true that the tailing of

the illegal gold miners is disposed into the Buyat river and Totok river that finally empty into Buyat bay, then the tailing is to be measured for comparison with the tailing of PT. Newmont Minahasa Raya. This is important and necessary to be carried out in the framework of revealing whether the pollution of Buyat Bay is solely caused by the tailing of PT. Newmont Minahasa Raya, taking into account the tailing disposed by the illegal gold miners which does not go through detoxification.

13. In accordance with the testimony of Ir. SOFIAN SUMANGUNSONG, an employee of PT. Newmont Minahasa Raya, Metallurgist Division, point 9 of the Minutes of Investigation dated 29 July 2004 states that the result of monitoring cyanide, arsenic and mercury levels existing in the tailing is in accordance with standards stipulated by the plant.

DIRECTION:

- To ask the witness what is the standard of measurement stipulated by the plant for cyanide, arsenic and mercury levels that exist in the tailing and disposed into the sea.
- Who stipulates the standard and what is the mechanism for determination of the standard, and what is used as standard reference.

Once completed in accordance with the above directions, please deliver them to us for further action.

Thus to be noted.

On behalf of  
 THE HEAD OF THE HIGH PROSECUTOR OF NORTH  
 SULAWESI

**ALFRED NAPITUPULU, SH**

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1. The Attorney General of the Republic of Indonesia (as a report)
  2. The Head of the Police of the Republic of Indonesia
  3. The Deputy Attorney General for General Crimes
  4. The Head of the Criminal Investigation Agency of the Police of the Republic of Indonesia
  5. The Head of Regional Police of North Sulawesi
  6. FILE.

