

# ***VERITAS***

**The Pursuit of Truth  
and Justice  
in  
BUYAT BAY**

**Response to Charges (Pledoi)**

Case Number: PDM / TDANO / 05 / 2005

by: **Richard B. Ness**

Defendant II

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**Pencarian Kebenaran  
dan Keadilan  
Dalam Kasus  
TELUK BUYAT**

**Nota Pembelaan (Pledoi)**

Nomor Kasus: PDM / TDANO / 05 / 2005

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Terdakwa II

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Terdakwa II

## 1. OPENING REMARKS

- I must ask the court's indulgence
- Request understanding that expressions of emotion are not directed at the court but at subject matter and at individual actions being discussed.
- Need to search for the truth and to separate facts from illusions.
- **The allegations that Buyat Bay is polluted are a sham**, supported by falsehood and error.

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## 1. OPENING REMARKS

- I am defending myself of a crime that never occurred.
- The issue of pollution was raised by Jane Pangemanan who reported to the police and sensationalized by the New Your Times.
- The allegations (not facts) led to detention of 5 of my employees and motivated a deputy in the Ministry of Environment to twist the facts – which led to an indictment in this case.

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## 1. OPENING REMARKS

- My freedom rests on the answer to the question - DID NMR POLLUTE BUYAT BAY?
- The answer is NO!
- UUD 1945 guarantees, *“every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law”*.

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# 1. OPENING REMARKS

- NMR held all valid permits and licenses and it's business activities were approved by the Government including those to place tailings in Buyat Bay.
- NMR followed "best mining practices"
- NMR and myself are being prosecuted on false grounds.
- If police and prosecution used proper methods, there would never have been an indictment or trial.

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# 1. OPENING REMARKS

- Performed Amdal Studies
- Voluntary TCLP Testing
- Monitored Detoxification
- Reported to Government
- Utilized Academics
- Used World Experts
- Operated Responsibly
- Prioritized Health, Safety & Environment
- Qualified Personnel
- Practiced Continual Improvement
- Commitment to Growth & Development

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# 1. OPENING REMARKS

- Tailings were not B-3
- Metals in Buyat Bay way below standards.
- Buyat Bay is cleaner than Atlantic and Pacific Oceans
- Communities healthier then national average.
- BUYAT BAY IS NOT POLLUTED.
- Without pollution there is no crime.
- Prosecutions sentencing request is a despicable act.

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# 1. OPENING REMARKS

- I nor NMR broke the law... but others violated the law in the pursuance of this case.....
- Wrongful allegation based on dr. Jane Pangemanan report.
- Wrongful detention of employees
- Wrongful investigative process
- Police breach of subsidiary principles

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# 1. OPENING REMARKS

- Denial of right of suspect to present evidence and witness in their defense.
- Police removal of favorable evidence and testimony.
- Imposition of an illegal travel ban.
- Prosecution continued with full knowledge of police investigative violations.
- Supreme Court overturned the Writ of Habeas Corpus which declared the investigation, detainment and travel ban illegal however the law prohibits the Supreme Court of issuing such a ruling.

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# 1. OPENING REMARKS

- Manado District Court's ordered the prosecution to resample Buyat Bay – however the prosecution illegally challenged and did follow the Courts instruction.
- These 10 illegal acts are just a few examples of the many violations of law in this case.
- NMR or myself did not violate any laws.

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# 1. OPENING REMARKS

- Ideally a democratic society will eventually achieve a legal and judicial system to protect the principles of fairness and equal treatment.
- This case is a clear example of wrongful application of law, unprofessional conduct, and bad ethics of several individuals.
- This case is a frame-up enmeshed with political interests, and based on perception – not facts.

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# 1. OPENING REMARKS

- The Government has failed to see the real issues and has not exercised control over political factions.
- One can reflect back on what happened in the evolution of this case but reality has us seated in court today with irrational and fictitious claims as the bases of charges against me.

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# 1. OPENING REMARKS

- *“On the other hand, the law enforcers should be careful in receiving and reviewing any reports, so as to not create wrongful law enforcement measures. We have to be able to prevent slander, and defamation of character of individual that may detrimentally affect the pride and dignity of innocent people. I have also instructed that the coordination of law enforcement shall be done properly so that it won’t result in repeated investigation by various institutions, as this matter may affect effectiveness in our work and the business sector”.* [ SBY-DPR- 16 August 2006]

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# 1. OPENING REMARKS

- *“Development in the field of law shall be in line with our joint commitment to honor fundamental human rights. We should be thankful that based on our joint efforts, the legal norms that relate to human rights have now been more complete. We had ratified the International Covenant on Civil and Political Rights and International Covenant on Economic, Social; and Cultural Rights. We have made genuine efforts to develop, protect and honor human rights. Praise be to Allah, during the last two years, there had never been any cases that may be classified as gross human rights violation. This good condition needs to be managed and maintained.”* [ SBY-DPR- 16 August 2006]

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## 2. THE CHARACTER AND INTEGRITY OF RBN

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## 2. THE CHARACTER AND INTEGRITY OF RBN

- President Director of NMR and Commissioner in other Newmont Indonesia companies. Married to a lovely lady named Nova, and we have five sons, Eric, Bryan, Aaron, Patrick and Maesa.
- Raised on a farm in Minnesota-USA
- Graduated from Technical Institute –worked for Caterpillar dealership – subsequent teacher at Technical Institute – developed technical programs and consultant.

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## 2. THE CHARACTER AND INTEGRITY OF RBN

- Executive Director & General Manager of Newmont Nusa Tenggara – President Director; Newmont Pacific, Newmont Mongondow Mining, Newmont Horas Nauli, Newmont Minahasa Raya.
- Nationally, Former Vice President of American Chamber of Commerce, Vice Chairman of Indonesian Mining Association, Currently Mining Chair for International Business Council and American Chamber of Commerce.
- International, Delegate to UN Summit for Sustainable Development and World Bank Extractive Industry Review.

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## 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

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## 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- My defense will determine the entire course of my life in the future.
- I nor NMR did anything that constitutes a crime.
- The prosecution has been negligent and reckless in accusing, indicting and charging me in this case.
- Most extreme conduct in Buyat case caused the tragic death of Baby Andini.
- My ultimate hope rests on the wisdom of the Honorable Panel of Judges to rectify the decision of the prosecution when rendering judgment.

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## 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- The Origin of the Case
  - continuing process of this criminal case has transpired because of a wrong perception, fiction, rumors and distorted and misleading facts
  - NGO's spread sensational accusations to the general public without any scientific and valid research evidence
  - sensational accusation was eagerly embraced by the mass media, including the New York Times
  - the Police Forensic Laboratory turning such rumors into an actual court case, by using samples that are not authentic
  - certain high-ranking government officials added to the chaotic mess

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### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- this criminal case is a court proceeding that is a cumulative result of false perception, empty imagination, rumor mongering, recklessness and the perpetuation of a sham of an investigation process
- This case is also the result of shallow understanding of the scientific aspects and other relevant aspects of mining operations.

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- **Legal Issues and Analysis**
  - Article 191 Paragraph (1) KUHP which states: *“In the event of from the court proceedings, the unlawful act of the defendant as indicated against him is not validly established and proven beyond reasonable doubts, then the defendants have to be acquitted by law.”*
  - (2): *“If the court should be of the opinion that the unlawful act as indicted against the defendant is indeed established, however such an act does not constitute as a criminal act, then the defendant has to be judged as being free from all charges.”*

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- *“Defendant Richard Bruce Ness is not proven to conduct any criminal acts and as such respectfully plea the Honorable Judges to decide that the defendant is to be rendered a judgment of acquittal or at least free from all charges.”*
- *The disposal of the NMR Tailings to the Buyat Bay seabed had always been permitted disposal, did not breach any laws and has no criminal element,*
- **Wrong Legal Basis of the Indictment and Charges** includes the indictment stating a violation of Law number 5 of 1994 on Industry while in fact is that Law number 5 of 1994 is on legalizing the United Conventions on Biological Diversity ???

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- Mining activities never resulted in pollution and therefore, I cannot be indicted and charged for a fact or event **that has never existed or occurred.**
- The investigative process should have followed the Subsidiary Principles *“which acknowledges that criminal law shall be applied only if other legal sanctions such as, administrative sanctions and civil sanctions, and alternative environmental dispute resolution are not effective”* – If these principles were followed there would not have been a criminal case.

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- With the **Signing of the Good Will Agreement** the government clearly acknowledged Buyat Bay is in fact an environmental dispute and that there is no proof or evidence of Pollution.
- **“I would like to simply to say just one more time, that if there is no Pollution and/or Environmental Damage, then there is no crime. “**

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- **Violation of the Constitution, Indonesian Laws and Regulations and Human Rights**
  - the investigation and prosecution on this Criminal Case should not have carried out before all efforts toward civil and administrative settlements and or alternative dispute resolution as provided in the Environmental Law have been exhausted.
  - criminal prosecution constitute defamation of those persons who were the objects of the investigation and prosecution
  - The process and execution of detention violated the procedures and requirements of detention as stipulated in the Criminal Procedural Law

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- **Denial of the Suspect’s Right to Propose Witness and Evidence** Human Rights Law states: *“every person without any discrimination, is entitled to justice by the right to submit proposal, complaint and claim.....*
- the denial to have evidence and witnesses was not a oversight by the investigator and the Police Headquarters, but a deliberate and intentional act to violate my basic right to have evidence and witnesses presented that would support my position.

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- **Unlawful and Inhuman Travel Ban** The Police disregarded the Habeas Corpus Writ and continued to detain and imposed a travel ban.
- Suspects filed an administrative suit against the Director General of Immigration in the Administrative Court and won .
- because as a result of such denial and refusal, I could not attend the funeral of my 20 months old only grandchild in the United States.

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- **Some of Unusual Procedures and Attitude of the Law Enforcers** include the prosecutor’s team prosecuted based on a **one sided police dossier**.
- The police did not fulfill the investigation process.
- Cancellation of the Habeas Corpus Writ by the Supreme Court.
- Indictment based of illegal and unlawful evidence – some one added 10 samples between the samples form Buyat Bay and the Laboratory, then lost 5 on the way to the court???????
- Prosecution failed to follow a court order.

### 3.LEGAL ISSUES/ RESPONSE TO REQUISITOR

- In summary - The indictment was based on a one sided police investigation.
- The police failed to fulfill the requirements of the prosecutor’s office
- Police appeal of the writ is prohibited under law
- The indictment is based on inadmissible evidence
- Prosecution failed to carry out a court order requiring them to resample Buyat Bay

### 4. RESPONSE TO CHARGES – TESTIMONY

Uses Audio / Visual Presentation

### 5. COMPARATIVE TABLE ON WITNESS TESTIMONY

The following section features the highlights of each witness’s testimony by subject. These tables were compiled in an effort to assist the Honorable Panel of Judges to compare the statements of both fact and expert witness presented by the Prosecution and the Defense

## 5. COMPARATIVE TABLE ON WITNESS TESTIMONY

- |  |                           |
|--|---------------------------|
| 1. Testimonies of Villagers              | 8. Fish                   |
| 2. Regulatory Compliance and Enforcement | 9. Surface Water          |
| 3. Sampling                              | 10. Thermocline           |
| 4. AMDAL                                 | 11. Marine Ecology        |
| 5. Permit                                | 12. Legal Experts         |
| 6. Perjury                               | 13. Metals in Blood       |
| 7. Toxic and Hazardous Waste (B-3)       | 14. Errors in Police Data |
|  | 15. Health Issues         |

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## 1. Testimonies of Villagers

### Prosecutor's Witness



**Rasit Rahmat:** He moved from Buyat and now lives in Dominanga. Witness stated that his income and the fish have decreased, and that he must move 5 miles into the sea before he can catch fish. Witness stated that strange diseases in Pantai Buyat appeared after PTNMR began its operation e.g. itchiness, headaches, lumps. He traveled to Jakarta with Dr. Jane for medical treatment but had never visited the local Dr. for medical treatment.



**Juhria Ratonbahe:** The Witness stated that prior to the presence of PTNMR, there was no diseases, however after the presence of PTNMR, the diseases began to appear. The Witness suffered from seasonal itchiness, it was healed at one point in time but it reappeared at other times. The Witness was examined at RSCM and MMC. The Witness did not know what disease she suffered from, but she knows that her body contained arsenic and mercury. Since the Witness is moved to Dominanga, she has completely healed.



**Ahyani Lombonaung:** The Witness stated that apart from suffering headaches, cramps, paralysis since 1999, her illness became worse and aggravated into what called as hematuria. Doctors who examined her gave different diagnosis. Some doctors informed her that it was kidney stone, others said that it was a tumor. Dr. Jane Pangemanan and, whom the witness referred to as "Savior Gods", brought the Witness to Cikini Hospital in Jakarta. The Witness did not know the result of her examination. The Witness revoked statement No.5 she made that was recorded in the dossier/BAP. The Witness stated that she ate vegetables and meat. This contradicts statement No.12 in her dossier/BAP.



**Masna Stirman:** Baby Andini was the Witness' daughter. Dr. Sandra Rotty, Dr. Winsy Waraouw and Dr. Feny (or PEDI) examined baby Andini but Andini died at the age of 5 months because her skin was scaly and blackish. The Witness said that she herself was examined at RSCM and MMC, the results of her blood examination indicated the presence of mercury and arsenic. The Witness was told that Andini should not take the medicine given by the doctor, because she could get poisoned. The doctor who advised her on the matter was Dr. Beny or Dr. Deny Up to now she never received information on what she has been diagnosed with.



**Marjan Ismail:** The Witness suffered dizziness, cramps and headaches. The Witness felt this illness after he moved to Buyat Pantai. The Witness' wife (Jane Rorong) also suffered from the same disease and she was subsequently brought to Jakarta. After the doctor in Jakarta gave her an injection, she immediately felt better. The Witness did not know the place where his wife was examined and did not know his wife's disease. The Witness said that PTNMR disposed waste to the Buyat River.



**Mansur Lombonaung:** The Witness stated that after PTNMR disposed of its waste, many fish died and the residents began to suffer from itchiness (since 1998), paralysis, headaches, cramps. The Witness [however] did not suffer from itchiness. The Witness stated that many doctors examined the Buyat residents, among others, doctors from WALHI. The Witness stated that the doctors did not mention the cause of the itchiness. According to the Witness, the Independent Team had stated that Buyat Bay was polluted and the residents must be removed, but the Government did not provide any facilities to move. In 2000, the Witness visited Jakarta for a seminar. During this visit, the Witness met with an American citizen named Kevin Dixon. Kevin Dixon was among the people in Anwar Stirman's photograph taken in the United States.



**Surtini Paputungan:** The Witness stated that she suffered paralysis (in 1998) and there is no information from doctors stating the cause of her paralysis. The Witness, her husband and her child did not suffer from itchiness. The Witness consumes medicine. The doctors from Mer-C provide the medicine. The Witness was examined at Cikini Hospital and St. Carolus Hospital. Dr. Jane Pangemanan accompanied the Witness. The Witness heard from doctors of Mer-C that the residents of Rataotok village also suffered from the same diseases as those of Buyat residents.



**Nurbaya Pateda:** Many doctors had examined the residents but there had not been any conclusion with regard to the cause of the diseases in Pantai Buyat. The Witness stated that she suffered from headache and stomach ulcer but she did not suffer from itchiness. Doctors have different diagnosis on the Witness' disease. Other than this, a doctor assigned by Ariyanti Baramuli had examined the Witness. However, the doctor

### Defense Witness



**Madjid Essing:** The Witness is a resident of Buyat Pantai since 1989, is a fisherman and he has never ever experienced health problems for as long as he lived in Buyat Pante. When he had itchiness, it was caused while catching nener (small young milkfish). The Witness stated that he never ever saw a fish with lumps or any dead fishes floating on the sea surface. The Witness also knows Rasit Rahmat, since they both originated from Bitung. According to the witness, Rasit Rahmat had his lump prior to moving to Buyat. The Witness stated that the LBH once brought him together with Mansyur, Anwar, Boni and Anton Pateda to Jakarta for 20 days to demand compensation of IDR 50,000 per day from PTNMR for each family. The Witness mentioned that in his visit to Jakarta, he took part in signing the demand letter, because he was afraid of being left in Jakarta. The Witness stated that in Buyat Pante a fishing competition was once held, where more than 300 kg almost 400 kg of fish were caught, and he did not find any fish with lumps.



**Robert Sasuhane:** The Witness is a fisherman who has lived in Rataotok Timur, Jaga 6, Pante Lakban since 1999. The Witness holds the position of Buyat Pante Village Head since March 2005. In March 2004, the Witness was invited by an NGO member by the name of Budi to attend a meeting at the house of Mansur Lombonaung. In that meeting the NGO representative explained that the Buyat Pante area has been polluted by mercury and that symptoms of the Minamata disease were present. Besides that announcement, there was discussion regarding compensation for the Buyat Pante community. The Witness was then included in one team with Mansur Lombonaung, Surtini Paputungan and Anwar Stirman to establish the Coordination of Mining Community Victims. The Witness then took part in the demonstration to Manado, where the Witness was appointed to be field coordinator. The Witness stated that in that demonstration, he was asked by Rignolda Djamaludin not to mention the name of the NGO, or KELOLA. The Witness stated that the baby Andini was included in that demonstration and when the Governor saw the baby Andini, the Governor asked for the baby Andini to be brought to the hospital and that an amount of IDR 300,000.- was given to the mother of the baby Andini to be used as transportation costs. However, after the demonstration was accomplished and they returned to the KELOLA office, the mother of baby Andini did not bring her baby to the hospital, and not until the Governor rang was the baby Andini brought to the hospital. The Witness stated that even though the issue of polluted fish or fishes with lumps existed, his family and he himself continued to consume fish and continued to sell fish at the Buyat Kampung as well as Rataotok markets. Moreover still, many fishermen from other villages are fishing in the Buyat Bay.



**Rahima Jumaidi:** The Witness is a resident of Buyat Pante since 1980. The Witness stated that everyday her family consumed fish from the Buyat Bay and had never experienced any illness. The Witness also stated that the fish in Buyat Bay did not diminish, but only fluctuated according season. The witness also corroborated the other witnesses who said that itchiness was caused during the season of milkfish seedlings because she had to stay in the seawater for long periods. The Witness also stated that many mothers of the Buyat community pretended to be ill when journalists were visiting the area. According to the Witness, Rignolda Djamaludin often came to Pante Buyat to visit Mansur Lombonaung, have meetings regarding moving the inhabitants of Buyat Pante to the region of Toli-Toli, for reasons that the Buyat Bay was polluted.



**Hj. Dahlan Ibrahim:** The Witness is the Village Head of East Rataotok since 1997. The witness stated that there was never an announcement from the District Head, Sub-district Head, or from the Village Head that prohibited members of the community not to consume fish or drink water from their water source (well). The witness explained that information about fish having lumps was a rumor. The witness also stated that: (1) it is only the family of Pak Mansyur that had caught the fish with lump, (2) he and other Village Elders from Rataotok have been to Jakarta and visited the Ministry of Environment (KLH) with the intention to clarify the rumors whether the fish from Buyat Bay may be eaten, (3) he is also a signatory to the open letter—signed by the Sub-district Heads, the Traditional Heads, Chairman of the Belang Community Communication Forum, Chairman of the HNSI, Rataotok District community leaders and members—containing the declaration that the rumors of pollution in Buyat Bay were untrue, (4) the presence of PT NMR in Buyat and Rataotok has brought added value into the community, and (5) beside PT NMR, there exist a number of traditional miners that conduct illegal activity in South Rataotok, whereby these miners would dump their waste into the river side, and to this day these miners are still in operation.

did not inform the Witness about the disease.



**Juhra Lombonaung:** The Witness had examined her disease to the local Puskesmas. The Witness was hospitalized once at Bethesda hospital. The Witness had suffered from rheumatism of the joints until she could not move. The diagnosis from a doctor stated that the Witness suffered an infection. The Witness also suffered from a lump on her head. The Witness was examined once in Cikini Hospital, but the disease could not be diagnosed. The Witness's disease was seasonal.



**Sul Manoppo:** The Witness lived in Dominanga since 26 June 2005. The Witness stated that since Newmont disposed of the waste, her income decreased and [she] suffered from itchiness, cramps in the left leg. The Witness had gone to a doctor in Buyat Pantai [for a health examination], however the doctors could not provide diagnosis or the cause of the Witness' disease. The Witness' disease became healed when she took in medication.



**Herson Bawole:** The Witness currently lives in Dominanga. The Witness is a fisherman. The Witness stated that since Newmont disposed of the waste, his income decreased and the Witness suffered from itchiness and lumps. Both descendants of the Witness were ill too (they are 20 and 15 years of age). The Witness ate part of the fish catch and sold the remaining fish catch to Kampung Buyat.



**Jantje Aring:** The witness is a Traditional Head of South Ratatotok Area. In his knowledge and to this day the community of South Ratatotok Area is not suffering an increase in health problems. Witness stated that the presence of PT NMR has brought many benefit for his village, and he emphasized that the traditional miners dispose their waste straight into the river, and these traditional miners still exists to this day.







**Madjid Andaria:** The witness is a fisherman and former Traditional Head from 1973 until 1979. The witness stated that: (1) not a single of his family member is suffering from lumps, (2) the causes of itchiness are scabies or fungi, (3) the causes of cramps to some member of his community are those who utilize ice to store their fish, (4) the activity of PT NMR has not caused any changes to the fish population in Buyat Bay—this conclusion is based on the witness's experience that he has always been able to catch fish in Buyat Bay. The witness stated that he has accompanied other Elders to Jakarta to explain to the Minister (Central Government) that the news in regards to the pollution is untrue.









**Salam Ani:** The witness is a former Sangadi Interim Official since the 22 June 2004 until the 22 November 2005. The witness stated that even though there are rumours that the fish is polluted, he continue to consume fish. The witness stated that the community was not influenced by the rumours and the community continued to eat the fish from Buyat Bay. The witness expressed the attention of PT NMR towards to Buyat community in the areas of business development, road maintenance, Public Works Reconstruction, Village Hall, repair of water pipes, drainage, field sanitation facilities and waste disposal.

**Conclusions:** I found the testimonies of the prosecution's fact witnesses from Buyat well rehearsed. For instance all these witnesses stated they went out exactly five miles to sea to catch fish; all knew that the tailings pipeline was 82 meters below the sea; all had "symptoms" that were similar, and all their "symptoms" started with NMR starting operations. The full of extent of theatrics became obvious through the testimonies of respected village elders like Hadji Dahlan, Robert Sasuhane, Jante Aring and others. It is clear that the prosecutors' witnesses were coached, and their answers were well orchestrated and rehearsed. However under cross examination before the court their testimonies revealed significant inconsistencies. The accuracy of their testimonies was often in question and on more than one occasion the panel of judges had to remind the prosecution's witnesses that they were testifying under oath before God. It is clear that the poor villagers were used as a tool by NGO's, international activists and politicians like Aryanti Baramuli to promote their personal interests. I find it appalling that people like Rignolda Djamaludin would manipulate his own people. The role of NGO's that advised the poor villagers to discard proper medical treatment is contemptuous.





## 2. Regulatory Compliance and Enforcement

| Prosecutor's Witness   | Defense Witness   |
|--|---|
| <p> <b>Witoro Soelarno:</b> The Witness had been assigned as the Mine Inspector for PT Newmont Minahasa Raya (PTNMR), as a member of PTNMR's AMDAL technical team commission and as a member of PTNMR's mines closure. From his inspection, as a mine inspector he did not find anything which violated the regulations that could temporarily close down PTNMR's operation.</p> <p>The Witness stated that the tailings' concentrate is not very different from those of natural rocks in the mountain. The Witness also stated that there is no quality standard on heavy metal in respect of tailings before 11 July 2000.</p> <p>The Witness stated that the subject of his review is the monthly average of the detoxification performance as reported in the RKL/RPL. The monthly average figures come from the daily outcome of the detoxification performance.</p> <p> <b>Sigit Reliantoro:</b> The Witness is a staff of the Assistant Deputy at the environmental impact review unit-KLH. One of the Witness' duties is to evaluate the report of RKL/RPL performance. The Witness stated that at that time Masnellyarti Hilman established a team to handle PTNMR and requested the evaluation result of the RKL/RPL, so the Witness gave the evaluation result to Masnellyarti Hilman.</p> <p>The Witness admitted that he made errors in quoting the effluent result that exceeded the quality standard which was reported in the RKL/RPL, which quotation was need in the indictment. The Witness admitted that Attachment C to Kepmen 51/1995 does not regulate tailings parameters. There is not a single mine company in Indonesia which applies Kepmen 51/1995 as a standard. He also stated that there were no warnings to PTNMR with regard to the result of effluent evaluation that exceeded the quality standard. The letter of Deputy IV No. 533/Deputi LH/2002 dated 22 March 2002 was a recommendation.</p> <p> <b>Isa Karnisa:</b> Witness was Deputy VII of KLH in 1999-2001 the Witness's position was the Head of Air Pollution Directorate, which meant that during that period of time the Witness had no authority to conduct evaluations of RKL/RPLs as referred to in the Witness's letter No.B-533/Dep.IV LH/3/2002 dated 22 March 2002.</p> <p>The Witness stated that he had sent a reprimand letter No.B-533/Dep.IV LH/3/2002 dated 22 March 2002 to PT NMR concerning periodic evaluations of PT NMR's RKL/RPL reports between 1999 and 2001 which indicated that some sample measurements exceeded the quality standard. The Witness under cross examination acknowledged that the letter was in the form of a "recommendation" and not that of an official warning.</p> | <p><b>Washington Tambunan:</b> The Expert Witness works as an employee at the Department of Mining and Energy of North Sumatra and once held the position of Regional Office Head of the Department of Mining and Energy of North Sulawesi.</p> <p>The Expert Witness explained about the Mining Log Book, which is a book that contains instructions from the Mining Inspector who came from the central government (Jakarta) and one who came from the North Sulawesi Regional Office. Never ever was there in PT NMR's Mining Log Book any reprimands or warnings to the company. Based on the evaluation performed by the Department of Mining and Energy, there were no sufficiently strong reasons to issue a reprimand, what more the temporarily closing of PT NMR.</p> <p>PT NMR already obtained permit to perform activities of construction, exploitation, or production, and as such, the placement of tailing on the sea bottom like was noted in the AMDAL. PT NMR also obtains approval for the implementation since it would be impossible to perform construction activities and production activities without any approval on said AMDAL.</p> <p> <b>Ngaja Ginting Soeka:</b> The Witness is a Mines Inspector for the Department of Energy and Mineral Resources. The Expert Witness explained that inspection of the mine was performed by the Mining Inspector, any findings encountered by the Mining Inspector is reported to the Kepala Teknik Tambang to be followed-up and to implement any improvements if deemed necessary.</p> <p>The Expert Witness reiterated that the Chief Mining Inspector in accordance with Article 22 of the Decree of the Minister of Mining and Energy no. 1211/1995 is obliged to examine the tailings every 6 months while as concerned the RKL/RPL the monitoring is performed once in a three months.</p> <p>The Expert Witness also confirmed that as with regards to the RKL/RPL reports that are produced by Freeport, Arutmin and also Kelian Equatorial Mining, all used the monthly average values. The Expert Witness performed inspection of PT NMR's mining activity performance.</p> <p>The Expert Witness stated that during inspection of mining performance never found any conditions to be apprehensive about that needed to be followed-up and corrected by PT NMR. Should there be anything observed, during the implementation of the mining inspection, which was of danger, then the Expert Witness as Mining Inspector would have the authority to instruct the temporarily closing down of PT NMR's mine.</p> <p>The Expert Witness acknowledged taking samples of the tailings to be sent to Jakarta and analyzed at an independent laboratory, and from the results of the analyses it was found that this sediment sample never exceeded the standards set by the government.</p> |
| <p><b>Conclusions: The defense witness confirmed earlier testimonies that the person in charge and responsible for daily environmental management for the company was the "Technical Mine Manager" or the Kepala Teknik Tambang and that monthly averages were the correct regulatory reporting and evaluating measurement.</b></p> <p><b>With the Persecutions witness confirmed that Masnellyarti was the one who orchestrated the evaluation of the RKL-RPL reporting, even though it was not her primary area of responsibility and that Sigit had made mistakes in his evaluation of the RKL/RPL as listed in the indictment.</b></p> <p><b>The Prosecutions Witness admitted that Attachment C to Kepmen 51/1995 does not regulate tailings parameters for any mine as well as the infamous letter No.B-533/Dep.IV LH/3/2002 that Isa sent to Newmont was a letter of recommendation and not a warning letter.</b></p> <p><b>It can be also concluded from the Defense Witnesses testimony that the Government never found any significant issues during inspections and that the Government did act as a responsible regulator.</b></p>   |   |






### 3. Sampling Issue

| Prosecutor's Witness   | Defense Witness  |
|--|--|
| <p> <b>Ricky Telleng:</b> The Witness's research showed that there are many fish in Buyat Bay. The Witness recorded around 72 species of fish found in Buyat Bay, comprising of surface and seabed living fish. The fish catch are [found] within a distance of 1 mile from the shore. The Witness once saw a fish with lumps, which according to rumor was caught by Yahya Lombonaung. According the Witness the lumps probably occurred because the fish reef unintentionally scraped and the skin got infected. According to the Witness, the definition of a fisherman is a person who for 60% of his activity go to sea. [By this definition] the Witness knew of only 3 people who are fisherman in Buyat Bay. The Witness knew that there were also many fishermen from Ratatotok Timur that went fishing in Buyat Bay. Witness stated that he was able to catch 200 fish in 2 hours in Buyat Bay.</p> <p> <b>Steven Kaunang:</b> The Witness accompanied 4 divers to take sediment and seawater samples. Of the four divers 2 were from NDC and the other two from UNSRAT (including Lamentik). The Witness went diving twice. The Witness stated there were four plastic bags taken from a depth of 30, 20, 10 m. The Witness confirmed that it was Rignolda who took the samples. The Witness knew that the samples are divided into two: one for the police and another for PTNMR.</p> <p> <b>Yahya Lombonaung:</b> In August, Mabes Polri requested the Witness to take fish samples. The Witness was able to see the fish clearly from above the surface of the water and he confirmed that the seawater was clear. The Witness took the fish at the edge of a reef.</p> <p> <b>Yogie Chrisswasono:</b> The Witness went diving to take samples of seawater. The Witness recalled that the sample taking was done only once. The Witness later corrected his statement and said that it was done two times (Note: His BAP/dossier stated that he went sample taking four times). The Witness went diving to take sediment samples. The Witness did not know the coordinates of the place where the samples were taken. The Witness was only told to swim to a place directed by Rignolda. The Witness admitted that the samples were handed over to Rignolda, who at that time was onboard. The Witness stated that he was requested by Rignolda (as a personal favor) to take samples. Other than this, [according to the Witness], Rignolda did not explain further with regard to the sample taking</p> <p> <b>Dolfi Nicolaas:</b> The Witness stated that the Witness knew Rignolda only after taking the samples after he landed [on the beach] because someone informed him and referred him to Rignolda [as the person who ordered him to dive] (Note: The BAP/dossier states that the Witness stated that Rignolda requested him to take the water samples).</p> | <p> <b>Jerry Kojansow:</b> As concerned the collection of samples by the Police in the Buyat Bay, the Witness stated following:</p> <ol style="list-style-type: none"> <li>1. That the sampling was performed during 4 days, from the 28th to 31th of July, and consisting of (i) taking of samples (28th – 30th July) and (ii) separation of samples (31st July).</li> <li>2. The samples were separated in 2, one for the forensic lab and the other for PT NMR. The Witness explained that PT NMR used sealed bottles to store the split samples, while the police did not. The samples taken were kept in a room at the local police station and were left on the floor without putting it a cooling box.</li> <li>3. The Witness explained that water / sediment samples taken, were directly separated and divided between the police and PT NMR on the boat, while those taken on the second day were divided at the Buyat Beach.</li> <li>4. To the samples that are taken on the first day were added drops of HNO<sub>3</sub> before performing filtration, while to this was not performed to the samples taken on the second day. According to the Witness, if dissolved metal was going to be measured, then the sample should actually first be filtered before the addition of HNO<sub>3</sub>.</li> <li>5. The Witness explained that there were 2 boats that were collecting the samples and that the Witness was only in one boat.</li> <li>6. The Witness explained that on the 28th of July, the Witness also accompanied the police to perform sampling of sea-water using the boat Nemira II. Then on the 29th of July, there were 2 boats that performed sampling, namely (i) Nemira II, and (ii) a tuna fishing boat. The Witness took part in the Nemira II and instructed other PT NMR's employees to take part on the tuna catcher boat, since the Witness could not be on 2 locations at the same time.</li> <li>7. The Witness that he was not aware of any reasons why two boats were used for sampling on the second day. The sampling done using the tuna fishing boat, was not performed using the go-flow instrument but by diving into the Buyat Bay. Diving is not the common method of taking such samples.</li> </ol> <p>The Witness provided information that a difference existed in the number/volume of samples taken between those reported in the Puslabfor report and the official report (BAP) signed by the Witness.</p> |
| <p>Conclusions: These prosecutions witnesses seem to be telling the truth. Ricky recorded 72 fish species in Buyat Bay with is similar to the National Geographic publication of August 2006 which recorded 84 species. One can only agree with the persecution witnesses statements that the water is clear with a visibility of several meters and that fish were abundant. This was proven by several of the prosecutions and defense witnesses, the results of a major fishing competition and the fact that it only took about 45 minutes for the prosecutions witness to catch all the fish samples used by the police.</p> <p>What is unclear is why was Rignolda involved in sampling? I thought that this was a police investigation. Also why were divers and plastic bags used to collect police evidence when modern sampling equipment and proper containers were available? Placing nitric acid (HNO<sub>3</sub>) into the sea water samples prior to filtering totally destroyed the validity of the evidence as samples must be filtered PRIOR to preservation with acid. A clear breach of sampling protocol and procedure. Nor has any one ever explained where the 10 extra samples came from.</p>  |  |

#### 4. AMDAL Issue

| Prosecutor's Witness   | Defense Witness  |
|--|--|
| <p> <b>Sigfried Lesiasel:</b> The Witness is the Chairman of PT NMR's AMDAL Drafting Team, the Witness supervised 16 people comprising experts in the relevant fields required for an AMDAL. The AMDAL was prepared from in 1992 to 1994. The Witness emphasized that without an AMDAL approval, it is impossible for PTNMR to place the tailings in the seabed of Buyat Bay. The tailings placed in the seabed of Buyat Bay would be a new habitat for benthos. A new colony of Benthos may appear after disposal of tailings ceases. The Witness stated that his findings showed that there is thermocline in the STP location. According to the Witness, tailings are not included in [the category of] B3 waste.</p> <p> <b>Witoro Soelarno:</b> The Witness was a member of PTNMR's AMDAL technical team commission. The Witness stated that the AMDAL approval means that it is proper to carry out mining operation particularly from an environmental aspect.</p> <p> <b>Masnellyarti Hilman:</b> Witness was Deputy IV Bapedal, Deputy for Legal Affairs and Environmental Management. The Witness stated that an activity which impacts the environment cannot be given a permit before its AMDAL is approved. The Witness stated that based on AMDAL, tailings can be disposed of at the depth of 82 meters, a zone below the thermocline.</p> | <p> <b>David Sompie:</b> The witness stated that PT NMR was obliged to perform an Environmental Impact Study – AMDAL, and it obtained a permit to perform production activities as well as construction activities. As concerned the AMDAL document, the Witness explained the following:</p> <ol style="list-style-type: none"> <li>1. The AMDAL document was preceded by a Feasibility study, AMDAL Term of References (1993) and the entire AMDAL document should obtain approval.</li> <li>2. The government requires that the party which performs the AMDAL, the AMDAL Terms of References, should possess an AMDAL certificate and being registered at the Department of Mining. To this purpose, PT NMR used the services of PT Dames &amp; Moore Indonesia, an AMDAL consultant possessing the certification and being registered at the Department of Mining.</li> <li>3. The AMDAL study that has been prepared by the AMDAL consultant should be presented by PT NMR at the AMDAL Commission of the North Sulawesi Provincial Government, comprising of the Department of Mining, NGO's, Community Representatives..</li> <li>4. The AMDAL document contains issues regarding environmental factors and the system for the placement of tailings. PT NMR is in possession of the permit for the placement tailing in the sea from the AMDAL document that has been approved. Further, since 1999 another Government Regulation (PP) number 19 of 1999 was issued that required a permit, PT NMR applied for a permit.</li> <li>5. AMDAL approved the placement of tailings in the sea over the land disposal.</li> <li>6. The AMDAL document also contains details regarding the treatment of the tailings before its placement in the sea, which is called the detoxification system.</li> <li>7. PT NMR is aware that the material mined by PT NMR is naturally rich in mineral elements such as mercury, arsenic and antimony. The deoxygenation process returns these minerals back into their natural form and other chemically stable compounds.</li> </ol> <p>With regards to the placement of tailing in the sea, the Witness explained a summary of considerations why it is more advantageous to place tailing on the bottom of the sea; PT NMR's tailing possesses a complex mineral composition which if placed on land may be easily undergo reduction reactions due to contact with the air, heat and acid. While on the seabed, the amount of air is small, no heat is available and the possibility of acidic reaction is impossible.</p> |
| <p><b>Conclusions:</b> It is my basic conclusion that the prosecutions witness confirmed the defense witness David Sompie's own testimony that Newmont had all completed all the necessary steps to evaluate the project and had the feasibility study, AMDAL, RKL-RPL, construction and operating permits necessary to operate the mine which includes the discharge of mine tailings into the sea at the location and depth specified in the AMDAL. If the government did not believe it was safe – the government would not have granted such approvals.</p>  |  |



## 5. Permit

| Prosecutor's Witness   | Defense Witness   |
|--|---|
| <p> <b>Sonny Keraf:</b> The Witness is a (former) Minister of Environment and Head of Bapedal. The witness stated that when he was the Minister of Environment he heard of many claims, among others from NGOs, concerning the placement of tailings. In order to know for certain whether PT NMR tailings have polluted the sea or not, KLH asked PT NMR to conduct an Ecological Risk Assessment (ERA). While the ERA study was being conducted, the Witness stated there has to be a basis for PT NMR to be able to place tailings in the sea in that period of time. For that purpose, the Witness issued letter No.B-1456/Bapedal/07/2000 dated 11 July 2000, which, according to the Witness, was a temporary permit for PT NMR to place tailings in the sea. However, the Witness acknowledged that the letter No.B-1456/Bapedal/07/2000 did not say "temporary." The Witness also stated that the letter No. B-1456/Bapedal/07/2000 does not stipulate that after the ERA study is completed a new permit would be issued. Furthermore, the Witness stated the quality standards for tailings will be determined after the ERA study is completed.</p> <p>The Witness stated that there is no regulatory basis for ERA study. Nonetheless, the Witness stated that PT NMR has conducted the ERA study. The Witness stated that the ERA study was not yet acceptable, but he also stated that the ERA study was never rejected. The Witness has never issued a letter rejecting the ERA study. Afterwards PT NMR was asked to conduct joint sampling. Until the end of the Witness's term as Minister of Environment/Head of Bapedal, according to the Witness, that joint sampling was never conducted. PT NMR had a commitment to conduct the joint sampling. However, due to technical issues it was always postponed.</p> <p> <b>Masnellyarti Hilman:</b> In 2000 – 2002, the Witness was Deputy IV Bapedal, Deputy for Legal Affairs and Environmental Management. According to the Witness, the letter from Sonny Keraf No.B-1456/Bapedal/07/2000 dated 11 July 2000 was not a permit and automatically will not be valid after 6 months. But the Witness could not explain why after 6 months and with PT NMR still continuing to dispose of tailings there was no action at all from KLH.</p> <p> <b>Asep Warlan Yusuf:</b> The Expert Witness explained that the Letter of the Minister of Environment Number 1456 was not a permit but only an ordinary letter sent by the Minister of Environment to PT NMR.</p> <p>The Judge questioned the Expert Witness as whether the information provided by Witness Sonny Keraf, stating that the Minister's Letter Number 1456 is a temporary permit. Responding to this question, the Expert Witness explained that in the administrative law concept no provision for temporary permit exists. The Expert Witness explained that if the government did not respond through Minister's Letter Number 1456, and does not issue a permit in a certain time, then this would not mean that the government permits however, since based on Article 3 of Law Number 5 of 1986 regarding State Administrative Court Procedures, the government on the contrary rejects the application.</p> | <p> <b>Nabel Makarim:</b> The Witness is a former Environmental Minister for the period of 2001 – 2004. The witness clarified to the court that PTNMR had a permit, and it didn't need a permit on top of a permit.</p> <p>The Witness also stated he verified the conclusions of the ERA as Minister of the Environment by sending a team in cooperation with the Baruna Technical Implementation Unit, BPPT to conduct sampling in Buyat Bay in 2003. The Witness explained that the examination conducted by KLH in 2003 found that As and Hg does not exceed the standard. The KLH 2003 report is published for the general public.</p> <p>The Witness explained that in 2004, KLH conducted examination in Buyat Bay, in cooperation with 14 other agencies. The 2004 study was approved during cabinet session of Coordinating Ministry for People's Welfare.</p> <p>The Witness Explained the final result of the 2004 report, which included 14 agencies and 7 Laboratories has shown that (i) The water in Buyat Bay is not polluted (ii) Hg contents on fish sample is below the standard set by the WHO. This reported in KLH report dated 14 October 2004.</p> <p>In relation to the Letter by Isa Karmisa, the Witness stated that the letter is a form of recommendation. The Witness stated that during his position as the Minister of Environment, he has never sent a caution / notice to PT NMR.</p> <p>The Expert Witness explained that exceedances were measured based on monthly averages. The Witness also confirmed that he had been examined by the Police in relation to this case, gave testimony that Buyat Bay was not polluted and that he had signed the minutes of examination.</p> <p> <b>Safri Nugraha:</b> The Expert Witness is an expert in the area of Government Administration Law. The expert witness has been a Lecturer in the Faculty of Law at The University of Indonesia. The Expert Witness was of the opinion that Letter No.B-1456/Bapedal/2000 dated 11 July 2000 as an official judgement made by the appointed public official, Mr. Sonny Keraf, The Minister of Environment, The Head of Indonesian Environmental Impact Management Agency (Bapedal). The Expert Witness also believed that Letter No. B-1456/Bapedal/2000 dated 11 July 2000 also acts as reply to the request made by PT NMR to dispose tailing waste, and was a permit to dispose tailing waste into the sea.</p> <p>Regarding the request made by PT NMR that was forwarded earlier than the specified time in Law No. 23 of 1997 regarding Environmental Management, the Expert Witness was of the opinion that PT NMR has shown good will in fulfilling its legal obligations in the new law by carrying out its legal obligation earlier than expected. The Expert Witness is of the opinion that in the article of the Environmental Management Act, the Government specify 75 days in which one may respond whether or not one agree or disagree. However if the Government does not respond, then it will considered as an agreement.</p> <p>The expert witness is of the opinion that Letter No. B-1456/Bapedal/2000 is not a temporary permit, because it does not specify a temporary amount of time, or other clauses that specify it being a temporary permit, therefore the Expert Witness is of the opinion that the permit has a permanent characteristic.</p> |
| <p><b>Conclusions: Ministers Sonny Keraf and Nabel Makarim stated that PTNMR had the tailings permit. Minister sonny Keraf stated that the permit was temporary but agreed that the word temporary is not stated in the permit. However Mr. Makarim stated that the permit was permanent. The only outstanding issue at the end of Sonny Keraf's term was re-sampling that could not be completed during his term because the BPPT equipment was defective. Nabel Makarim did resample Buyat Bay in 2003 and found no evidence of pollution. The Minister also re-sampled Buyat Bay 2004 and again found no evidence of pollution. Minister Makarim also testified that he had given a sworn signed testimony to the Police. However, his testimony was later removed from the BAP by the Police. Both the Ministers agreed that the ERA study is not a legal requirement.</b></p>   |   |




## 6. Perjury by Masnellyarti Hilman

| Prosecutor's Witness  | Defense Witness  |
|---|--|
|  <p><b>Masnellyarti Hilman:</b> The witness, when shown the Minister of Environment's October 2004 report on Buyat Bay she stated she had never seen the report.</p> <p>The Witness presented a slide in which she acknowledged that the data was taken from the 2004 Integrated Team Report however, the basis for that slide was the October 2004 report which she had not seen.</p>   |  <p><b>James Paulus:</b> The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology and a member of the KLH Integrated Team producing the Environmental Quality Data Analysis Report of the Buyat Bay and Totok Bay of the Ministry of Environment, 14 October 2004. The Witness acknowledged that the previous witness of the General Prosecution, namely Masnellyarti Hilman was the person who gave the KLH October 2004 report to him at a meeting in Jakarta.</p> |
| <p><b>Conclusions:</b> Masnellyarti Hilman committed perjury in court because she lied under oath that she has never seen the Buyat Bay report issued by KLH on 14 October 2004. Two witnesses testified that they received a copy of this report from Masnellyarti Hilman. Further Masnellyarti Hilman acknowledged that she used the data from this report that she denied having seen at all, as well as commented on the report she testified she never seen in Tempo on 31 October 2004 (see attachment 12-E). Her not acknowledging that report denied me the right to cross examine here on the difference between the KLH October and November reports, which are material to the case.</p>   |  |
|  <p><b>Inneke Rumengan:</b> The Expert Witness is Lecturer at the Faculty of Fisheries and Marine Sciences of the UNSRAT and also Head of the Laboratory of the Faculty of Fisheries and Marine Sciences of the UNSRAT and a member of the Integrated Team. The Expert Witness acknowledged the slide that was shown was contained in the Report of the Ministry of Environment dated 14 October 2004 and compared that with the slide which was shown by the Expert Masnellyarti Hilman</p> <p>The Expert Witness acknowledged that the evidence, the Minister of the Environment report dated 14 October 2004 were obtained at the Technical Team meeting in Jakarta chaired by Masnellyarti Hilman.</p> |  |



## 7. B-3 Waste

| Prosecutor's Witness   | Defense Witness  |
|--|--|
|  <p><b>Sulistiowati:</b> In 2001-2004 the Witness was the Head of the Sub-Directorate for Environmentally Friendly Technologies and her expertise is not related to mining B3 waste. The Witness had never published writings or scientific works related to B3 waste. Her S2 (graduate level) education was not related to B3 waste. The Witness explained that to determine if a certain waste is B3 waste can be done by checking (1) whether that waste is listed in Appendix I of PP No.85/1999, (2) the characteristics of that waste, whether it is explosive, flammable, infectious, reactive or corrosive; (3) whether the waste is toxic using a Toxicity Criteria Leaching Procedure (TCLP) test, where the TCLP must be below the quality standard according to the table in PP No.85/1999. In that case the waste is not considered B3 waste. If the TCLP is above the quality standard, then:</p> <ol style="list-style-type: none"> <li>i. A characteristics test is performed using a lethal dosage 50 test. If the results is below 50 mg per kg of body weight then that waste is not considered B3 waste. If the Lethal Dosage is above 50 mg per kg body weight, then;</li> <li>ii. The chronic or acute toxic characteristics of that B3 waste must be checked.</li> </ol> <p>The Witness furthermore stated that based on regulations it could be either TCLP or characteristics test that is conducted.</p> <p>The Witness stated that B3 waste cannot be disposed directly into the environment without first processing it, such as disposing of it in the landfills. The B3 elements must first be stabilized until they meet TCLP quality standards.</p> <p>Witness also stated that metals could be released from tailings in ACIDIC sea water.</p> |  <p><b>James Paulus:</b> The Witness worked as a lecturer at the Faculty of Fisheries and Marine Sciences of the Sam Ratulangi University. The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology.</p> <p>The Witness stated that he studied the composition of tailings in the Buyat Bay. The Witness explained that the Integrated Team tested the sediments and tailings by applying the TCLP test to check arsenic, and found that arsenic concentration in the Buyat Bay varies from below the detection limit up until 2.9 ppm, which is far below the allowable limit of 5 ppm allowed by Government Regulation (PP) No. 18 of 1999. While mercury was below the detection limit of the equipment used in the study.</p> <p>The Witness stated, that he concluded that tailings were not Toxic and Hazardous Wastes since he performed the TCLP testing. The Witness explained that TCLP or toxicity testing is performed to test stability of the material.</p> <p>The TCLP test done on PT NMR's tailing was performed by applying shaking for 18 -20 hours using a pH of 4.5 which is the most extreme toxicity test. The condition of the shaking was performed in an extreme rigorous manner to test for the stability of the tailing, should there occur extreme conditions.</p> <p>Results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.</p> |
| <p><b>Conclusions:</b> Prosecution witness had no expertise on B-3 waste yet the she testified on behalf of the government. In addition to the lack of expertise, Sulistiowati had never reviewed the data on TCLP tests conducted by academic researchers and the North Sulawesi Governor's team that had conclusively established that tailings are not B-3 waste. I have struggled as to why, 10 years after the AMDAL was approved which incorporated a toxic analysis of mine tailings - with the determination that PT NMR's mine tailings were inert and would not release metals into the environment. After years of TCLP testing by the company some one from KLH would now question if tailings were a toxic and hazardous substance is outrageous. KLH had the TCLP results from the North Sulawesi Governors team from 2000 which classified tailings as a non-B-3 substance. In fact the compliance of TCLP test with the standard was the basis for issuing the tailings permit on 11-July-2000.</p>  |  |



**8. Fish Issue**

| Prosecutor's Witness  | Defense Witness  |
|---|--|
|  <p><b>Rachmansyah:</b> Witness is an expert in fish cultivation and Researcher at the Research Center for Brackish Water Fisheries. For certain types of fish, such as selar, swangi, kerapu, kuwe (that are demersal fish) from Buyat Bay, the concentration of Hg was higher than that in the same type of fish from Ratatotok Bay. But there are certain types of fish, such as tetengke from Ratatotok that has a higher level of Hg compared to similar fish from Buyat Bay.</p> <p>For the MPC value, most fish samples, both from Ratatotok Bay (335) or Buyat Bay (333.5) were below the maximum allowable concentration criterion (based on standard reference issued by WHO for FAO), which is 500 ppb. Therefore, if the average concentration for Hg in Totok Bay and Buyat Bay is taken, it would still be within the safe limits. The Hg concentration for water samples in Ratatotok Bay and Buyat Bay was above 0.01 ppb.</p> <p>The Witness confirmed that the seawater samples were filtered and preserved in acidic conditions. The Witness did not know whether the AAS instrument used to analyze seawater samples has cold vapor. The Witness acknowledged that when the result of that research was presented in a seminar in UNSRAT there were people who disagreed about the results of that research. The Witness reaffirmed that the pH for seawater in Buyat Bay was above 8.</p> |  <p><b>L.T.X. Lalamentik:</b> The Expert Witness is a lecturer at the Faculty for Fisheries of the Sam Ratulangi University, and the Expert Witness together with his team performed research and monitoring of coral reefs. The Expert Witness performed research at one site in the Buyat some time before the issues raised about pollution of the Buyat Bay.</p> <p>The Expert Witness performed research to obtain base line data in 1992 for the AMDAL, and further during the years 1996-2005 the Expert Witness performed monitoring. The Expert Witness stated that the monitoring of the coral reefs that were performed before PT NMR was in operation until 2006 showed that these were in stable condition.</p> <p>The Expert Witness showed a video clip that contained views from coral reefs living in the Buyat Bay for 20 years, where the condition of those coral reefs were still stable and did not experience any changes that were drastic in nature. The Expert Witness also showed the existence of sea biota in particular fishes that were still available in the Buyat Bay.</p> <p>The Expert Witness found that the coral reefs in the Buyat Bay lived at a depth of 3 down to 12-15 m, and that during the monitoring that was performed by the Expert Witness during the years PT NMR was in operation, the Expert Witness never encountered any tailings at the coral reef monitoring location.</p>  <p><b>James Paulus:</b> The Witness is an expert in the field of environmental toxicology and has performed more than 50 studies in the field of environmental toxicology. Results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.</p> |
| <p><b>Conclusions:</b> First, the Prosecutions witness was from my perspective an honest man trying to do his job but without adequate experience and expertise. His experience and laboratory are established for fresh water research and not salt water. His laboratory was not equipped with proper equipment. Nor was he familiar with the details of the WHO guidelines which are to be applied as the mean or average from a sampling of a group of fish – not to each and every fish. The prosecution witness agreed that his own AVERAGE VALUE of 334 ppb is well below the guideline limits which proves the fish in Buyat Bay are fine. The one thing that this witness did was confirm that the sea is basic and that the testimony of Sulistiowati which referred to acidic sea water conditions as impossible. The Defense witnesses confirmed that based on several studies through out the life of the mine, Buyat Bay remained a vibrant ecosystem with no significant impacts. The witness also showed a video before the court that the coral reefs even near the tailings remained un-impacted by mining activities</p>   |  |

## 9. Surface Water

| Prosecutors' Witness  | Defense Witness   |
|---|---|
|  <p><b>Yudi Prabangkara:</b> The Witness is the Head of Mining Environmental Management Technology at BPPT since 2001 and was a member of the KLH Peer Review Team. The Witness has never been to Buyat Bay or Buyat Village. The Witness stated that hydrological research conducted in Buyat Village was not thorough and must be followed with continued, deeper research involving drilling process.</p> <p>The Witness acknowledged that the detoxification technique employed by PT NMR is modern technology and is usually safe for the environment. The success of the detoxification process is evident from the waste produced, that is, tailings. If the process is good then the tailings produced will meet the standards required.</p> |  <p><b>Rudy Sagoya:</b> The Expert Witness is a lecturer at Bandung Institute of Technology (ITB) and an expert in the field of Hydrogeology. It is a field that tests water contents in soil or water below the surface, with background knowledge in geology and hydrology. The field of Hydrogeology conducts numerous tests in relation to water contents in soil.</p> <p>The Expert Witness visited Buyat Village with LPPM ITB and Technical Faculty of the Gajah Mada University (UGM) to conduct Hydrogeology test and examination at Buyat Village. The objective of conducting these tests was to assess the hydrogeology condition in the Buyat Village, which includes water quality and groundwater flow patterns in the soil at Buyat Bay.</p> |
| <p><b>Conclusions: The prosecutions witness was a reasonable professional who had never been at the mine location. He stated that more research that was recommended by the defense witness needed to be conductive involving additional drilling and field work. The defense witness testified that he had conducted a full hydrogeology testing and determined that arsenic originates from natural rocks and is very localized with no connection to PTNMR's mining operation.</b></p>   | <p>The Expert Witness stated that according to the results of this examination, mercury was not detected in the flow of water in the soil. Based on the analysis of 29 water wells, the study concluded that arsenic originates from natural rocks and is localized with no connection to PT NMR's mining operation.</p> <p>This team also delivered the result of these examinations at a meeting with Local Governments of North Sulawesi, Bolaang Mongondow District and South Minahasa District as well as presented at the UNSRAT international seminar in the month of June (2005) in Manado.</p>   |

## 10. Thermocline

| Prosecutor's Witness   | Defense Witness  |
|--|--|
|  <p><b>Abdul Ganie Ilahude:</b> The Witness stated that he had never dived or conducted research in Buyat Bay. But the Witness insisted that around 1972 he conducted research in Maluku Sea and found that the thermocline was at the depth of between 100 to 350 meters.</p> <p>The Witness stated that by using his own techniques and interpolating the temperature readings and by looking at the depth of the sea, drawing a straight line to the point in question, the result is that there is no thermocline in Buyat Bay. In other words, the basis for the Witness stating that there is no thermocline in Buyat Bay was interpolation and was not based on research.</p>     |  <p><b>Andojo Wurjanto (ITB):</b> The witness is a Marine Expert and a lecturer at the Marine Engineering Study Program of the Bandung Institute of Technology. He is member of the Association of Hydraulic Engineering Experts and Coastal Engineering Experts.</p> <p>The Witness performed the measurement of temperature and the assessment of Buyat Bay data. The Witness stated that he performed the temperature measurements to assess the existence of a thermocline using equipment called CTD or Conductivity Temperature and Depth. The Witness explained that he already made a presentation of his measurements in front of the Special Team of the Ministry for Research and Technology.</p> <p>The Witness stated that the position of disposal was in the thermocline, since the mixed layer was found to be at a depth of 43 meters while tailings were placed at a depth of 82 meters.</p> |
| <p><b>Conclusions: This particular segment is very straight forward. A thermocline has been measured in Buyat Bay during base line and for the next 12 years thereafter.</b></p> <p><b>The prosecutions witness never measured for a thermocline in Buyat Bay but merely did an extrapolation from some of his measurements in the Maluku Sea in 1972 or 14 years prior to the mine even starting and his testimony was virtually destroyed by the Defense witness who had examined about 10,000 measurements in Buyat Bay which indicated the presence of a thermocline at an average depth of 43 meters or 39 meters above the tailings discharge depth of 82 meters. Real data means real conclusions, and this means that the thermocline is around 43 meters.</b></p> | <p>The witness explained that up-welling is form of buoyancy and is process in sea-water where lower layers are going up.</p> <p>The Witness explained that up-welling is only capable to lift sediments with a velocity of one over ten thousand centimeters per second. And as such, theoretically it may be able to lift something however since its velocity is so small, practically the particles will not be lifted, as before they are lifted they sink again due to gravitational force. Based on the monitoring and profile measuring, the Witness came to the conclusion that tailings were stable on the bottom of the Buyat Bay sea.</p> <p>The Witness underlines that sediments that are near the tailing placement pipe are stable tailings. The Witness added that the season, currents and waves that occur near the tailings mound are similar to those that have been going on for the past 10 years, and then in the future the tailings mound will be stable as well.</p>    |

## 11. Marine Ecology

### Prosecutor's Witness



**Rignolda Djamaludin:** In response to the Legal Counsel's question, the Witness stated his thesis and dissertation to earn his S2 and S3 [graduate and doctorate] degrees were about mangrove. The Witness even went on to say that the letter from the Dean at UNSRAT, which stated that the Witness's expertise was in the field of mangrove forestry, as wrong. The Witness has never published his writings in a book.

The Witness acknowledges of being associated with the group of individuals calling themselves Mangrove Action Project. The Witness also stated that the studies he conducted himself included scoping and the geomorphology of Buyat and Ratatotok, health, fisheries, seagrass fields and tailings. In conducting that research the Witness was assisted by nine individuals and it was conducted in six months. The Witness refused to tell what the source of funds to conduct that research was. For the health aspect, the Witness received data from Mer-C doctors, and the activity which the Witness refers to as health "research" was how to make a medical record based on people's complaints.

The Witness could not explain who took the pictures of the seagrass field, which according to the Witness is found in the waters of Buyat Bay. The Witness also could not explain when and where that picture of the seagrass field was taken.

The Witness could not tell at which coordinate and at what depth the pictures of sediment coral reefs were taken. In that picture there was only information that the coral reef image was from WALHI documentation and a Swiss television. The Witness also did not take part in the dive to record the image of those coral reefs. The Witness stated that the images of damaged coral reefs were taken from a book. So those were not original images of coral reef conditions in Buyat Bay. Note: In previous explanations, the Witness very clearly explained that those damaged coral reefs came from Buyat, and not just images taken from a book.

The Witness could not explain with certainty where the studied fish were taken from. The Witness did say that there were a number of fish taken from Buyat Bay by Buyat residents at his request. But the Witness could not explain where and when exactly the fish were taken. Several photographs of fish turned out to be from WALHI and not from his field research.

The Witness confirmed a photograph which showed the Witness on the boat receiving police seawater samples as evidence, and closing the plastic containers containing seawater samples. The Witness stated that with the presence of Ratatotok Peninsula, the water from Ratatotok Bay cannot enter or mix with the water in Buyat Bay.

The Witness acknowledges that the method used in the mapping of species and fish migration was his own method, and not following literature. The Witness in his testimony stated that he had never made statements regarding mercury content. And then the Witness acknowledged that the voice in a Voice of America (VoA) interview played for the court by the defense which he claimed to be a medical doctor and he accepted under cross-examination that he made statements regarding mercury in the VoA interview.

### Defense Witness



**L.T.X. Lalamentik:** The Expert Witness is a lecturer at the Faculty for Fisheries at Sam Ratulangi University, and the Expert Witness together with his team performed research and monitoring of coral reefs. The Expert Witness performed research at one site in the Buyat some time before the Buyat Bay pollution issue started.

The Expert Witness found that the coral reefs in the Buyat Bay lived at a depth of 3 down to 12-15 m, and that during the monitoring that was performed by the Expert Witness during the years PT NMR was in operation, the Expert Witness never encountered any tailings at the coral reef monitoring location.



**James Paulus:** Witness stated that results from the test showed that arsenic, mercury and iron in the tailing did not undergo reaction that would prove that tailings were a Toxic and Hazardous Waste, hence if placed on the bottom of the Buyat Bay, the tailings would not disturb benthos organisms, and could even be used as a place for benthos organisms.

**Conclusions:** The Prosecution's expert witness Rignolda Djamaludin represented himself as a medical expert, a toxicologist, a marine fishery and coral expert, a geo chemist, a bio chemist and a oceanographer, a sociologist and a medical doctor. In short he represented himself as a super expert. In reality the only expertise this witness showed before the court was to misrepresent science and confuse the general public. This witness, along with a few others, made outrageous claims without any evidence that fueled the media frenzy in Jakarta in 2004. This witness has continually lied and has disrupted lives and caused hardship to the community around our mine including fear, confusion and economic losses.

The witness testified that he was working with the medical doctors from Mer-C which aided his research in the determination that people were contaminated with heavy metals. I have struggled to understand the research association between Mer-C and Rignolda because Mer-C has the dubious record of making presentation to the Parliament where they claimed that 80% of Buyat Bay community is sick when in the reality medical expert Dr Sandra explained that people of Buyat are normally healthy. It was further proven in court that Rignolda misrepresented himself as a medical doctor and aided by his Mer-C counterparts spread the misinformation that 30 persons had died of Minamata Disease.

The outrageous allegations by Rignolda fell apart under cross-examination and it became clear that Rignolda's only goal is create a conflict in Buyat. The Defense witnesses who were experts in the field of toxicology and marine sciences decisively countered every of the Prosecutions witnesses absurd allegations. At the end of the day, Rignolda only discredited himself and groups he is associated with. It is not a surprise that Rignolda completely humiliated himself during his testimony.

## 12. Legal Experts

### Prosecutor's Witness



**Muladi:** The Witness, prior to testifying in court, has spoken on local television about this case. This was brought up by the Legal Counsel pointing to Article 221 of KUHAP. Subsidiary Principle cannot be applied to the category of independent crime, or in other words, the law enforcement towards independent crime is premium remedium by nature. The subsidiary principle only applies to dependent crime.

The Witness stated that there is a certain measure to judge whether an act of crime is an independent crime, which is by the presence of public unrest. The measuring stick for that public unrest is by looking at the social reaction and public focus on that case, the number of reports that are filed, public debate and the intense attention from the press, and everything that pertains to social and psychological characteristics.

The Judges asked the Expert's opinion about the background to the use of the words "environmental dispute" in Environmental Law, and that the Environmental Law does not use the term crime of environmental pollution. In response to the Judge's question, the Witness explained that disputes, as referred to in the Environmental Law tend to be of civil and administrative nature. But as far as Articles 44 and regarding corporate criminal responsibility, Articles 46 and 47 of the Environmental Law, the Witness provided the following explanation:

The requirements for a corporation to be held accountable are: (1) There is an official with a leading position; (2) It has committed an act or a crime; and (3) That act or that crime has benefited the corporation.

A leading position in a corporation is reflected in three instances: (i) power of representation; (ii) authority to make decision; (iii) authority to exercise control. Therefore, corporate accountability lies with the corporation itself and the officials in it. In addition, there has to be other elements, such as intent, negligence, and knowledge of wrongdoing. The conscience lies with the officials. The punishment of the corporation and its officials is called punishment provision.

While environmental destruction is an act that can cause the environment to stop functioning. The measure for environmental quality standard, besides referring to existing regulations, could also adopt international standards. The Witness explained that the "element of intent" as referred to in Article 41 paragraph 1 of the Environmental Law is to be aware or at least to have the reason to be aware. The Witness stated that the purpose of criminal law in the Environmental Law is to back up the administrative law.

The Witness could not answer with certainty why investigative institution of environmental crimes did not refer to the KUHAP, but rather to PPNS Public Officials. The Witness stated that Faure said that Article 41 and Article 42 of the Environmental Law are about dependent crimes. Therefore, for the law enforcement there's no need to have violations of other laws and that the crime is relatively severe. But when he was shown Faure's paper which stated that "Article 41 of Environmental Law depends on administrative law" the Witness provided no answer. The Witness opined that a regulation of law applies the moment it is promulgated, even though there is an article of transition that provides a 5 year's time to adjust.



**Asep Warlan Yusuf:** The Expert Witness explained that the content of Ministerial Letter Number 1456 is an answer to the application submitted by PT NMR's President Director to the Minister of Environment, and that PT NMR was allowed to dispose its wastes provided it fulfilled the provisions set in said Minister of Environment's Letter.

The Expert Witness explained that the Letter of the Minister of Environment Number 1456 was not a permit but only an ordinary letter sent by the Minister of Environment to PT NMR.

The Judge questioned the Expert Witness as whether the information provided by Witness Sonny Keraf, stating that the Minister's Letter Number 1456 is a temporary permit. Responding to this question, the Expert Witness explained that in the administrative law concept no provision for temporary permit exists.

The Expert Witness explained that if the government did not respond through Minister's Letter Number 1456, and does not issue a permit in a certain time, then this would not mean that the government permits however, since based on Article 3 of Law Number 5 of 1986 regarding State Administrative Court Procedures, the government on the contrary rejects [the application].

The Expert Witness explained that the Indonesian Law provides the standard spelling of the [Indonesian] word permit using the letter z. The reason for this, is according to the Expert Witness, that the use of the word i-z-i-n provides for a legal meaning, [the word] izin is valid as a governmental instrument, and hence the understanding of "izin" should be distinguished from the word izin that we daily use.

### Defense Witness



**Daud Silalahi:** The Witness is a Doctor of Philosophy (DR) and Senior Lecturer (Professor) in the field of Environmental Law, a former expert staff secretary at the Justice Department, as well as former head of an expert team of Law experts in KLH who designed the framework of Environmental Law No. 23 of 1997.

Relating to Law No. 23 - the management of environment must be first and foremost placed as an administrative problem, such as the issuance of a permit. Legal Action is only a last resort, once all attempts of Administrative Law have been exhausted. In other words, the terminology of "Environmental Action" would not be used, because in reference to the philosophy, Environmental Law is a part of development, and is not directly connected to individuals, but the environment itself.

The Witness stated that the principle of Environmental Law are polluter pays principle and polluter preventive principle, what is referred to here is, in the event of a pollution, there is compensation in relation to the preservation of the environment, and will be dealt with according in a legal settlement, through civil recourse and not criminal action. The civil recourse must be of the highest priority, commonly referred to as "the principle of subsidiary".

The Witness explained that what is termed by "creating public unrest" must always be based on the basis of the amount of damage to the environment. The statements that were publicized in the media (television or newspapers) must not be taken as an "actual unrest", this unrest/problem" must relate to the conservation of environment.

The Witness stated that the Government must also take responsibility in order to make companies conduct their business responsibly. Therefore, the Government must be able to lead by utilizing the tools to guide, improve, and motivate that company. This is an instrument of administrative law

The Witness stated there are 3 things that must be noted on any environmental case; (i) The doctrine of prime major jurisdiction, that it must be submitted to the agency which issued the permit, (ii) there must be facts that indicate the destruction of the environment before it reaches criminal action. Facts of destruction / pollution to the environment must be issued by the official agency, (iii) the Environmental Law clearly stressed that subsidiary principle must be a majority, before other factors before it reaches criminal action.

The Witness explained there are three types or methods to prove corporate crime according to the government administration Act: (i) there is a cause and effect relationship by obtaining legal sample according to regulations; (ii) utilizing legal laboratory for analysis, officially authorized laboratory appointed by the government to conduct analysis; (iii) all analysis must be interpreted by the respective experts.



**Andi Hamzah:** The Witness is an expert in criminal law.

The Witness stated that he was indirectly involved in the formulation of Draft Environmental Law No. 23 of 1997 (UULH) According to the Witness, subsidiary principle in relation to criminal law, is the last application of criminal law [it acts as a last resort in enforcing environmental law] where as the application of administrative law, must firstly be done. The Witness explained that if the application of civil action does not have any "effect" then the application of criminal law may be taken.

The Witness explained the exceptions to the validation of subsidiary are as follows:

If (the accused) is a repeat / habitual offender.

If the administrative instrument and / or civil law is not effective, such as the collusion between the accused and the Minister of Environment;

If there is a serious intentional mistake such as what happened in Bhopal, India, there was a chemical leak at a factory, resulting in death, injuries and damage to the environment.

In relation to the Buyat Bay case, the Witness believe that if there is an individual that claims he/she has itchiness or lumps, then a cause and effect relationship must first be proven and it must be examined by a qualified expert, only then it may be declared that there is a pollution and its cause. In other words, it may not be looked at individually, but other elements in the ecosystem / environment also.

## 12. Legal Experts

**Conclusions: The prosecution witness Muladi was most impressive by his flamboyant arrival with a police escort, a full motorcade and the Minister of the Environment – The Governor of North Sulawesi – People of the Attorney Generals Office – and General Suharto of the Police all in his procession.**

**His testimony was less impressive and the witness had to catch an airplane and therefore the defense did not have the opportunity to complete there cross examination as well as myself as a defendant was denied the right of cross examination. The witness testified under oath that he would return the following week to complete the examination; however he failed to do so – and never even notified the Judges or the Prosecutors Office -therefore Dr. Muladi did not live up to his commitment to this court. Therefore I request that this witnesses testimony be removed from the court record, thus there is no need for further comment on my Part.**

**As it seems both the Prosecution and Defense witnesses agree on the point that law 23 is indeed an administrative law with criminal provisions if the administrative efforts or even alternative dispute resolution efforts fail to resolve or mitigate the environmental issue.**



In other words, exception to the principle of subsidiary may not be used as a justification when an individual claims that he or she has itchininess or lumps.

The Witness emphasized his believe that in order to prove corporate crime, it must be proven that an order from a superior exists, and that the contents the order results in a benefit for the company, then the corporation would be the subject of a criminal investigation.




The Witness explained that “with intent” in the contents of Section 41 of the Environmental Law (UULH), it is related with corporate responsibility and the core of Section 41 of the Environmental Law, and must be interpreted as an Act to Actively carry out an Action with intent (wilful Act) or in other words it cannot be interpreted as an omission or an intentional oversight.

The Witness added that when a director is unaware that pollution has been committed by someone else (subordinates), and as a result he has not done anything about it, then the director is not liable to criminal prosecution, as stated in Section 41, because it does not fulfil the element of “unintentional intent” and also the “Act of carrying out Action Actively” (wilful Act).

### 13. Metals in Blood

| Prosecutor's Witness  | Defense Witness   |
|---|---|
|  <p><b>Dr. Budiawan:</b> The Witness stated that he is an expert in toxicology at the University of Indonesia. The Witness stated that in October 2004 he conducted an examination of the blood of four Buyat Bay residents (Rasit Rahmat, Juhria, Masna Stirman and Srifika). The Witness stated that the study analyzed only for total mercury. The Witness stated that based on the reference used by WHO, IPCS (International Program on Chemical Safety), mercury level that could be tolerated by human body is 8 ppb</p> <p>The Witness confirmed that the mercury level of 8 ppb is an average number for communities that eat fish less than once per week. The Witness rejected the procedure for sampling as provided by the California Poison Action Line of 22 January 2002 which states that before conducting examinations for mercury levels in blood, it is important to note that the subjects do not consume seafood for at least 30 hours prior to testing. Witness's statements in the BAP that mercury levels of between 200 to 500 micrograms per liter of blood could potentially cause indications of neurological disease. Regarding the report from Minamata Institute and CSIRO, the Witness agrees that there is no Minamata disease in Buyat Bay. The Witness had difficulties to respond to a statement by the Legal Counsel that Minamata Institute concluded that the total concentrations of mercury in the hair samples of Buyat and Ratatotok residents was not sufficient to cause poisoning.</p> |  <p><b>Keith Bentley:</b> The Expert Witness is an expert in the field of environmental toxicology, who performs examination and studies on the effects of heavy metals on the human body. Member of the supervisory board for the IPCS or International Program on Chemical Safety (documents that have been issued by the IPCS have become part of the information referred to in the court session of the criminal case No. 284/Pid.B/PN.MDO/2005, i.e. IPCS of year 1990 and 1996)</p> <p>The Witness was also a consultant to institutions on the United Nations, World Health Organization, International Labor Organization, Environmental Programs of the United Nations and Technical Expert for the WHO.</p> <p>The Expert Witness acknowledged the information presented in the International Conference Seminar Report on "Mining Environment and sustainable development, A lesson from Gold Mining Company in Buyat Bay, North Sulawesi, Indonesia UNSRAT 2005", and stated that the average concentration of all heavy metals studied, in this case mercury in blood, hair, body of the inhabitants around the Ratotok Village, Buyat Pante and Belang, is lower than the concentration tolerated by the IPCS.</p> <p>There is no significant relation between heavy metals concentration Hg &amp; As in the body and the diseases suffered by the community, in particular as concerned Neuropathy, Lumps, Fungi, Lymphoma, Cysts, Vibroma, Papylooma, and Neurofibratosis</p> |
| <p><b>Conclusions: The prosecutions witness Dr. Budiawan's sworn testimony both in the BAP and before the court were deceptive and misleading. Under cross examination he admitted that the average of 8 ppb of mercury in blood applied to people who consume less than one fish meal per week. Therefore this reference does not apply to the Buyat community because they consume more than one fish meal per week. How a toxicologist could cite such a wrong reference to the public both in the press and on televisions is beyond my understating.</b></p> <p>The defense witness Keith Bentley had a much higher understanding of the subject matter, as he was a member of the supervisory board of the who issued the IPCS reference the prosecutions witness was quoting. The defense witness testified that <i>the levels of the people in Buyat had results a 100 times below the levels required to have the most sensitive clinical effects of arsenic intoxication.</i> When asked about metals contamination of the people from Buyat he <i>stated "They are certainly not contaminated by arsenic and mercury."</i> The defense witness commented that the scientific quality of the KLH Tech Team Report published in November 2004 is the poorest piece of scientific work product he had seen. The Technical Team report contained data manipulations, misapplication of scientific formulas, ridiculous assumptions such as Buyat Bay people eating 10 meals a day, consuming one half kilo of fish per meal (15kg/Day), resulting in estimations of over 4,500%</p>                              | <p>The Expert Witness is of the opinion the mercury concentration value in normal human blood does not apply the value of 8 as an IPCS 1990 standard, since this value is an average value. However with the published revision of the 1996 IPCS document, the normal mercury concentration in humans with a low fish consumption rate ranges between 2 and 20 and hence the digit 8 does not show any peculiarity and does not have any relation to human health for which the concentration that has is 20. For communities that consume fish in large quantities the mercury concentration would be 50 micrograms/L.</p> <p>The Expert Witness is of the opinion that concentration levels of mercury and arsenic of the Buyat community does not differ with those of communities in other regions in Indonesia and even in the world. The level of mercury and arsenic concentration in fish and other sea-food in the Buyat Bay are not different with those in other controlled places of Sulawesi or at the Jakarta market</p>  |

## 14. Errors in Police Data

| Prosecutor's Witness  | Defense Witness   |
|---|---|
|  <p>Munawardin: The Witness had never been to Buyat Bay. According to the Witness's testimony, sampling in Buyat Bay was conducted by a team from the Forensic Laboratory along with the investigative team. Based on that sampling, the Witness stated that he has conducted examinations on water samples, sediments (tailings), four types of fish, nails and hair from 12 residents of Buyat Hamlet [Dusun Buyat].</p> <p>With regards to the difference in the number and volume of samples between the table of data in the BAP with the results produced by the Forensic Laboratory, the Witness said he didn't know how that could happen because he did not do the typing.</p> <p>The Witness could not explain the why the police results for Totok Bay were higher than Buyat nor could he explain the high variability between the various samples.</p> <p>He also had no explanation for why the police results for sea water were high and the fish were low to normal.</p> <p>In commenting about the great difference between the results of the Forensics Laboratory and the findings of the KLH 2004 Integrated Team, The North Sulawesi Provincial Government's 2004 Independent Team and results from other accredited research institutions (such as ALS Bogor, CSIRO and WHO-Minamata Institute), the Witness commented that based on his experience that could be due to the fact that the studies by those institutions were conducted in 2004 when PT NMR's operations have stopped, while Police samples were taken in July 2004 when PT NMR was still in operation.</p>   |  <p><b>Sri Bimo Andi Putro:</b> The Expert Witness is a Senior Supervisor at the ALS (Australian Laboratory Service) Laboratory.</p> <p>The Expert Witness confirmed that PT NMR has sent material in the form of liquid, water as well as solids in the form of soil to be analyzed or examined by the ALS laboratory (split samples from the July 2004 police sampling).</p> <p>The Expert Witness stated that as regarding sampling there were guidelines available to conduct good sampling, including guidelines on sealing of bottles containing sampling material that were to be used for analysis, which states that the bottle that were received should be properly closed, since if a seal is broken, then it would be possible that the bottle is opened/spill occurs, and hence a possibility of contamination exists. The Expert Witness stated that PT NMR always delivered bottled samples that were sealed in accordance with ALS' protocol.</p>  <p><b>Dr. Mun'im Idris:</b> The Witness is an Expert in the field of forensic medicine and has experienced in many high profile cases such as the Poso case, the Dilli case, the Pontianak rampage, the Mei riots, the Tommy Suharto case, the Tommy Winata case, and the Marsinah case. The Expert Witness stated that the laboratory (including the Police laboratory) does not have the authority to draw a conclusion from its analysis results</p> <p>The Expert Witness was informed that there existed a difference in the number of samples as compared to the moment the sampling was performed, then the analysis at the forensic laboratory, up to the court proves, and there even occurred a time lag between the time of sampling and the time of laboratory analysis of those samples. The Expert Witness stated that to achieve success in revealing the truth in a case, 4 aspects should be fulfilled. These are (1) Investigation, (2) Authenticity of evidence material, (3) Techniques used, and (4) Examination and Reconstruction.</p> <p>According to the Expert Witness as concerned the change in the number of samples and the existing time lag between the moments the sampling was done until the samples were sealed as evidence material, then the validity of the evidence material used in the criminal reports could be disregarded.</p> |
| <p><b>Conclusions:</b> The prosecutions witness Munawardin from the National Police Laboratory did not add clarity to the case. He did not know why there were more samples received in the laboratory than taken in the field, and he could not explain why the average value for mercury in water was higher for the Totok Bay reference sampling site than in Buyat. Also he could not explain why his fish results were normal when their results showed that metals in water was high. He also could not explain why his water results were different from the split samples and every one else's samplings. The prosecutions witness from the police also testified that he was also part of the Integrated Technical Team which sampled the first part of September 2004 and <u>that the water was fine</u>. When asked to explain why the Police July -2004 samples were high and the Integrated Technical Teams results were normal, the witness offered the following: "I was also with the Integrated Team, and the samples were taken by the Integrated Team in September between the 6th and 12th of September, at the time PTNMR was no longer operational, tailings were no longer released at the time." But this argument is wrong because PT NMR did not stop discharging tailings until October 2004. Clearly the police water results are still unexplainable.</p> <p>The defense witnesses from the certified ALS laboratory testified that they used proper care custody and control procedures, along with replicate and duplicate samples plus certified reference material for rigorous quality control. Mun'im Idris testified the collection and handling of evidence was flawed and should be disregarded as invalid, he said that the laboratory people within the police were not qualified to render an opinion of health or cause and effect, as that should be left to a qualified expert, such as a medical doctor. Defense expert witness Afsah showed that the Police results for mercury when compared to WHO water sample data two week later were off by a factor of <u>two million percent</u>.</p> | <p><b>Shakeb Afsah:</b> The Expert Witness has 15 years of experience in performing environmental data analysis in 12 countries including Indonesia, and has been lecturing in various prestige universities around the world.</p> <p>According to the Expert Witness, the examination of 12 Buyat Pante inhabitants can not be categorized as representing the whole Buyat Pante community, since the examination should actually be done on minimally 30 members of the Buyat Pante community to be statistically confident about the result.</p> <p>The Expert Witness read and performed an analysis of the mercury and arsenic content as stated in various study reports, including the report of the POLRI HEADQUARTERS Criminal Forensic laboratory that was performed in the Buyat Bay. From the statistical viewpoint, the Expert Witness stated that there was strong consensus in the findings of all the studies, however the results from the POLRI HEADQUARTERS Forensic Laboratory produced results that were very different.</p> <p>The Expert Witness explained that based on the RKL/RPL data and the WHO data, the content of mercury in the Buyat Bay is quantitatively 3.66 grams /day, while the data from the Forensic showed that the quantity of mercury is around 77,000.00 grams on the day of Police sampling. The Expert Witness explained that the Police results were not in accordance with the mercury balance principle, and was difficult to explain in a quantitative manner.</p>  |

## 15. Health Issues

### Prosecutor's Witness: Dr. Jane Pangemanan



The Witness stated that the people of Buyat Pantai suffered from neurological disturbances, but she could not come up with a diagnosis because there additional examination was needed cause and effect symptom between the tailings and the people's disease could not be concluded. The Witness did not carry out any laboratory examination. The Witness accompanied the people (at different times) to Jakarta. The person who funded the trip was Aryanti Baramuli. The Witness stated she did not see any relation between the tailings and the disease suffered by the community because there was no research that could come to such conclusion.

### Defense Witness: Dr. Joy Rattu



The Expert Witness worked as Lecturer at the Faculty of Medicine of the Sam Ratulangi University and has performed services and studies in Buyat Pante in 2004

The Expert Witness explained that after the study was performed, the doctors' team issued referrals to have the benign tumours suffered by the inhabitants operated on. But when the surgeons were prepared to do the operations the Buyat Bay community members provided arguments that they did not want the tumours to be operated on, because these were going to be used as evidence at the court. And as such the people who came for treatment were not inhabitants of Buyat Pante but from the Ratotok Village and Buyat Village.

The Expert Witness stated that the diseases found in Buyat Pante were similar to diseases found during other social services they performed such as in the coastal areas of Tuminting, Bori or Amurang.

The Expert Witness stated that the last time he performed a study in Buyat was in the year 2005. The purpose of the study was to see whether the arsenic concentration in general was still under the stipulated standard limit. The result of that study was also presented at an international seminar in the year 2006 in Manado and in Maastricht, the Netherlands.

### Defense Witness: Dr. Winsy Warouw



The Expert Witness is a Professor at the Sam Ratulangi University in the field of Skin and Venereal Diseases and was involved in continuous studies in Buyat Bay since 1991 until to-date. The Expert Witness acknowledges his two working papers titled "Survey of Skin Diseases Among the People of the Villages in the Bay of Ratatotok and the Bay of Buyat" and "Skin Disease Patterns of the Inhabitants around Buyat Bay, East Ratatotok, Minahasa", produced as a report on his research that concluded that skin diseases experienced by those inhabitants are common skin diseases such as dermatitis, scabies and eczema.

The Expert Witness stated that he never encountered any heavy metals poisoning at the people of Buyat Bay, what more the Minamata disease. The Witness also informed the court that he had examined baby Andini and had offered to have her admitted to the hospital for medial treatment for dermatitis and malnutrition. He could tell from his preliminary examination that the baby was alert and happy with bright eyes. But that an NGO recommended to the mother of the baby not to get treated.

### Defense Witness: Dr. Sandra Rotty



The Expert Witness works as a government's doctor and holds the position as Head of the Ratatotok Community Health Centre. In 1999, it was reported to the Expert Witness about a strange skin disease occurring in the Buyat Pante area. However, after performing a field examination, it became clear that this skin disease was scabies locally known as kudis. And after the patients were given treatment all patients were healed.

The Expert Witness stated that she also performed routine health examination and found that the disease most suffered was upper respiratory tract infections, skin diseases and gastro intestinal tract disturbances.

As far as the Expert Witness was aware of, is that the skin disease was caused due to lack of hygiene and public sanitation, as well as an unhealthy life-style.

Witness also testified that patients from Buyat Pante explained to the Expert Witness that they have to obtain approval from the NGO to utilize the facility at the PUSKESMAS.

As with regards to Andini, the Expert Witness explained that in February 2004 Andini was brought by her mother for the first time to the PUSKESMAS with complaints of infection at the navel. The Expert Witness then performed medical actions and the infection was healed.

Then in March 2004 Andini came to the clinic with fungi infection. After prescribing the medicine, the parents of Andini were asked to bring her back if Andini did not recover. However, then the Expert Witness and her staff saw on TV that Andini was brought to Manado by her parents to be taken as part in the demonstrations. After Andini came back from Manado, the Expert Witness asked her staff to take Andini to be examined again, however Andini's family refused to comply. Finally the Expert Witness herself came to Andini's house and performed examination at place from the health examination there the Expert Witness diagnosed Andini of suffering ichtiosis, which is disease causing dry and scaled skin. The Expert Witness advised Andini's mother to return to Manado to obtain further medication, but Andini's mother did not want to because she did not believe the doctors in Manado anymore. After this event, the Expert Witness asked her staff to do a field trip to monitor Andini's health condition.

On the 19th of June 2004, the Expert Witness and her staff performed integrated health post services for immunization at Buyat Beach. At that time immunization was also done on Andini. The Expert Witness explained that immunization was only performed on healthy babies.

On the 26th of June 2004, Andini again was brought to the Community Health Centre with complaints of fever, cough and cold. The Expert Witness diagnosed that Andini at that time suffered severe URTI – Upper Respiratory Tract Infection and that she was still under nourished. However, in general Andini's appearance was very good and her skin had improved. After providing treatment, the Expert Witness asked Andini's mother to bring Andini back to the PUSKESMAS should there be no improvement in 2-3 days, if the patient did not return, it was taken that she had recovered.

On the 3rd of July 2004, the Expert Witness received the news that baby Andini passed away. The Expert Witness and her staff made a field visit and came to know that Andini did not take the medicines given by the Expert Witness.

**Conclusions:** Under cross examination Dr. Jane Pangemanan retracted her statement about metal poisoning in Buyat. She agreed that she had not conducted adequate tests or consultations with specialists to conclude that Buyat residents had metal poisoning.

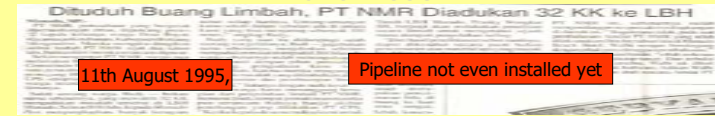
Dr. Sandra informed the court and the whole world that Baby Andini died due to the lack of timely medical attention because several activists from NGOs stopped the baby from receiving proper medicine and health care. Dr. Sandra showed conclusively that the ailments in the community of Buyat Bay were similar to that of any costal village within Indonesia. It became clear that the so called doctors and NGO's operating outside the public health system had been spreading misinformation about the health situation. It was also testified that when professional medical services were offered free of charge to baby Andini, the parents were advised not to have the baby admitted and treated in a hospital in Manado, in addition the medicines prescribed to Baby Andini were never administered. Dr. Joy Rattu stated that the medical condition of the Buyat community is about the same as anywhere else. Actual medical records presented by the doctors confirmed this and were presented to the court. The Defense witnesses confirmed that there was no evidence of strange diseases, that all medical conditions were able to be diagnosed in proper clinical procedures were used, and there was no association between the illnesses suffered and that of mine tailings and mine operations.

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

First allegations of Pollution - Manado Post, 1995  
Except... The mine did not start operations until 1996



Alleged for Waste Disposal, PTNMR is sued by 32 families to LBH Manado, MP.

PTNMR, a gold mining company, was protested by 32 families of Buyat village, Kotabunan, Bolaang Mongondow. They claimed to suffer from loss due to PTNMR waste since two years ago, even they are now threatened for removal.

..... "We used to catch approximately 10,000 nener per day, yet, since the tailings are disposed to the sea, we no longer catch it every day. We are lucky if in a month one of us is able to catch 100 nener," said Rudy.

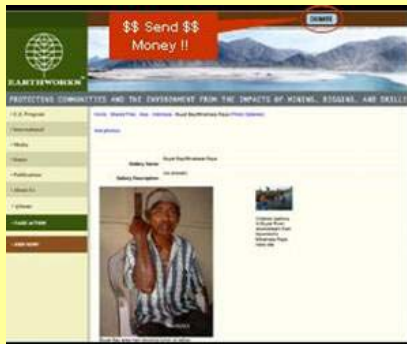
...The report was seriously responded by Executive Secretary of Walhi Sulut, Suwiryo Ismail. He said tailings is toxic, despite it is waste of natural rock, it makes pollution when it enter the sea or river for its concentration and characteristics have changed after physical treatment process.

Operations Started 23 March 1996

pg-50

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Many international "anti-mining" NGO's use environmental or community issues as their banner but their primary goal is to stop the flow of investment.



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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- In 1999, Anwar Stirman, who described himself as a local fisherman, traveled to California along with others, including Chalid Mohamid of JATAM, Yani Saragoa of LOH-Sumbawa, Fuji Halim of LBH from Manado. This trip was facilitated by Kevin Dixon of Project Underground.



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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- With the groundwork laid, events started to unfold in the provincial capital of Manado in 2001. In April 2000 all the major international anti-globalization/anti-mining landed in Indonesia and held an “International Conference on Submarine Tailings Disposal”.
- Supported by the anti-globalization/anti-mining NGOs, it was also at this conference that WALHI and JATAM launched their new campaign booklet, “Minamata to Minahasa”
  - this booklet incorrectly compared the effects of cinnabar to that of methyl mercury (which is a toxic organic compound of mercury that was the cause of Minamata disease).

pg-53

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The 10 year United Nations World Summit on Sustainable Development was scheduled to be hosted in Johannesburg, South Africa in September 2002. The Asia Pacific preparatory meeting or PrepCom-4 was held in Bali on May 27th to June 7th, 2002.
  - This particular group had two objectives - one was to ban the use of cyanide and the other to ban disposal of mine tailings in oceans. The international group with the help of their local puppets, WALHI and JATAM needed an “affected community” to give testimonials and to hand out some of their propaganda literature.

pg-54

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- WALHI, JATAM and the Buyat Panti group were in “business” again for the World Bank Extractive Industries Review consultation for the Asia-Pacific in Bali, Indonesia on March 24-29, 2003.
- In Bali, no one believed the “testimonials” and BoBo science fiction as real scientific evidence. In the end, the anarchist group walked out of the conference.
- In the end, the anti-globalization/anti-mining anarchists were marginalized; the international groups had very little use for their local puppets WALHI and JATAM
- WALHI and JATAM in turn had no need for a community group of actors so it was back to their usual activity of fishing and farming for the actors of Buyat Pante.

pg-55

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- For those who have studied the Police Minutes of Investigation (BAP) it may now be a clearer picture as to why all the villagers who provided testimony to the police and for the Prosecution before the court had exactly (and I mean, word-for-word) the same answers. These villagers had received years of training, practice and experience on how to act and respond to questions. For example, to the question: now far do you have to go out to catch fish? The answer was always: **five miles**.
- This extensive training by the local and international NGOs had to make it easy for the investigative officer who had a standard set of questions when drafting up the Minutes of Investigation for this case. It is disappointing that an experienced police officer did not take note of this significant fact

pg-56

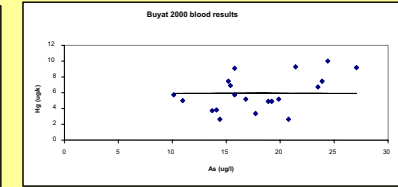
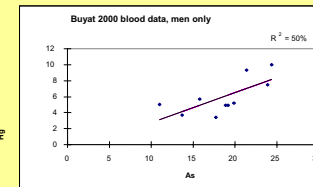
## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- **Manipulations of the Press and the Public 2004 – 2006**
- Basically the Buyat Bay actors were discarded by the international and national NGO's, but in early 2004, Rignolda and "friends", including Raja Sire from WALHI, and a Canadian activist called Evan Edinger, embarked on a new mission.
- Rignolda had just successfully completed his campaign in Arakan by driving out the USAID-funded NGO, NRM (Natural Resource Management and Rignolda's focus then turned to Buyat.
- "Rignolda and friends", including Mer-C, eluded that since the Buyat Bay community has mercury and arsenic in their blood, they **must** be suffering from a consistent exposure to mercury and arsenic.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Rignolda and friends used only 10 of the 20 WALHI blood samples to produce his research and concluded. *"Neurological complaints consistent with mercury poisoning. Blood sampling (2000) showed, elevated blood [As,Hg], [As] positively correlated to [Hg], neither [As] nor [Hg] correlated to age".*
- If all data is used, then there is no correlation at all



pg-58

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Rignolda, Raja and friends distributed a video as part of their 2004 campaign to deceive the community. This film was widely distributed and it showed a woman with breast cancer attributed to tailings, fish with lumps, some people with skin bumps - all baselessly blaming NMR as the cause of these illnesses.
- In conjunction with the release of this video, on the 29th of February 2004, Rignolda and his cohorts conducted a major demonstration in which they paraded a baby named Andini around Manado.



pg-59

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pg-60

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- At the request of Rignolda on June 19th, 2004 Dr Jean Pangemanan and her group travelled to Buyat to examine 100 patients in a single day.
- [In July] baby Andini unfortunately and probably unnecessarily passed away Rignolda issued a press release stating a” **doctor from UNSRAT had also examined almost a 100 patents and found almost all had symptoms of “Minamata Disease”**

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- On July 17<sup>th</sup>.2004 some of people from Buyat Pantai and their lawyer, Sitorus SH filed a **complaint with the Police in Manado against the Provincial and Regional Health Departments**. The “community” accused the Government of being negligent. Dr. Jane Pangemanan added that her research in Buyat Pantai, revealed that 80% of the patients had uncommon health problem.



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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- **Minister of Health & NMR are reported to the Police – the investigation begins**
- On July 19th, totally disregarding the agreed upon action plan of the provincial government and the Provincial Police that they would investigate their complaint, Dr Jane Pangemanan, funded by Aryanti Barramuli, transported 4 “members” of the Buyat Pantai community to Jakarta where they filed a Criminal Complaint with the National Police on July 20<sup>th</sup> against the Minister of Health and NMR.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Interestingly, in the BAP put forth by the Police to this court, the Minister of Health’s name has mysteriously disappeared from the document.

|  |  |   |
|--|--|---|
| LAPORAN - POLISI<br>No Pol. LP/247/VI/04 |  | LAPORAN - POLISI<br>No Pol. LP/247/VI/04                                      |
| LP/247/VI/04                             |  | LP/247/VI/04  |
| PT. NEW MONT MINAHASA RAYA               |  | 1. PT. NEW MONT MINAHASA RAYA (LADANG)<br>2. DEPARTEMEN KESIHATAN RI (LADANG) |
|  |  |   |
| (Dr. JANE M. PANGEMANA M. Kes.)          |  | (Dr. JANE M. PANGEMANA M. Kes.)   |

????  
????

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The media went wild, the Buyat story of Minamata disease rocked the nation...



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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The National Police acted quickly. They flew to Manado and then further on to Buyat/ Ratatotok to conduct sampling.
- Samples (including split samples for independent analysis) were collected over a 4 day period.
- Two days later a separate team created by the Governor of North Sulawesi arrived and conducted sampling.
- The National Department of Health sent in a team from WHO - Minamata Institute that arrived in Buyat the following week.
- Four days later along came the CSIRO team and at the end of the month the Ministry of Environment teams also arrived and collected samples.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- As far as I was concerned I welcomed the various teams who wished to take samples from Buyat Bay, since I had no fear that anyone would find any problems with seawater, fish or health impacts from mine tailings.
- So I was obviously shocked when on August 13th, General Suyitno Landung made a statement that the police laboratory results indicated that Buyat Bay was polluted. How could this be? Levels of mercury in the seawater of Buyat Bay should have been the same as they had always been, that is below the detection limits of the laboratory equipment.
- We had the results of the split sample taken with the police and they had turned out to indicate normal clean seawater. The Governor of North Sulawesi results were also normal and below all standards set by the government.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- On September 3rd, the Minister of Environment made his position clear on the subject. The press release stated that *"It is important to note that the study conducted from July to August 2004 shows the same conclusion as that conducted by the Ministry of Environment and BPPT, namely the quality of water in Buyat Bay is still below the quality standard threshold (not contaminated).*
- The World Health Organization's final report on Buyat and Totok Bay concluded that the environment in Buyat and Totok Bays were not contaminated with mercury, that the people were not suffering from mercury contamination and that all metals measures, which included arsenic in local residents were at normal levels.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- In spite of all this, the Police questioning of NMR Staff and Management started on September 6th and concluded with the arrest and detention of 5 innocent individuals in late September.
- I was questioned, detained, and subsequently released due to health reasons and placed on bi-weekly reporting.
- In early October CSIRO released the findings of their August sampling survey which found the sea and fish in Buyat Bay to be clean and conforming to normal standards.
- The Minister of Environment on October 14, 2004, released his report, the results were again similar to the Ministry of Environment's 2003 sample results, and deemed Buyat Bay to be clean and not polluted.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The police sent the Case Dossiers (on October 5) to the Manado Prosecutors. The Prosecutors in Manado were not very impressed with the Police investigation.
- The Prosecutors reviewed the BAP and sent it straight back to Jakarta with the following recommendations and questions:
  - *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.*

pg-70

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- *From the Prosecutors perspective, 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.*
- *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*
- *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 favor 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 summon and examine the witnesses.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The Police re-sent the BAP to the Prosecution in Manado once again on November 22, 2004. The Prosecution was still not happy as little had been done to improve the document or to grant the suspects the right to have witnesses and evidence in our favor to be heard, the Prosecution issued another P-19 rejection notice....
  - *Based on the evaluation, the crime in this case is classified as an environmental corporate crime. To classify Buyat as a corporate crime, the police need to interview a member of the board of directors to represent the entity as a suspect.*
  - *Reminds the Police that the suspects' rights to have witnesses and evidence presented have not been fulfilled.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- But the Police were indeed a very determined group; they sent the file back again to the Prosecutor on 6th of December 2004.
  - The Prosecution noticed that they still had not examined a member of the directors of the company
  - The Police had also not followed the other recommendations such as granting the rights to the suspects to have witnesses and evidence presented that would support the suspects' position.
  - The case file was once again returned to the Police with yet another P-19 rejection note.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- These irregularities continued despite our repeated requests to have some real experts be called as witnesses and to have real evidence such as the Minister of Environment's, 2004 report, CSIRO and WHO reports.
- By this time it was obvious that our rights to call witnesses and have evidence presented on our behalf was just something written in laws books and something not practiced or respected by the Police investigators - in Jakarta Police Headquarters, it is the law of those that rule and not the rule of law.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- It was obvious that we needed to uphold our rights by other means and thus on December 8, as individuals we filed a Petition of a Writ of Habeas Corpus in the South Jakarta District Court against the national Police.
- On December 23, 2004, my colleagues and I won the Habeas Corpus appeal and the Jakarta District Court ruled and declared the arrest, arrest extension and city arrest and mandatory reporting as illegal.
- ...we had been naïve and believed in the law and had overlooked a simple but important fact - that being that the Police would refuse to follow the Habeas Corpus decision.

pg-75

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- December 23rd, the Prosecution accepted the results of the Police investigation report as complete with all the original deficiencies in the police investigation report which were included in the Prosecutors' prior rejection notices still existed in the documents.
- I did find it strange however that a General in the National Police, would continually be the courier for such an incomplete document. **Maybe the less-than-complete files require a high ranking delivery service!**

pg-76

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pg-78

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- On December 24th, I received a police summon to appear before Polda North Sulawesi to be delivered to the Prosecutor. This was another strange action, considering that the investigation had been declared to be illegal by the South Jakarta District Court. Clearly the law enforcement agencies were not communicating with each other.
- On January 7, I received second summons to appear before Polda in Manado on December 10th, 2005. Clearly, the Police were ignoring or could not care any less about the decision handed down by the South Jakarta District Court.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- On January 4, 2005 under letter number B-14/MENLH/01/2005 classified as "Very Urgent", the Minister of Environment made a Request for Legal Consideration to the Chairman of the Supreme Court for the Republic of Indonesia. In other words, he requested the Supreme Court to review and overturn the decision in the writ of Habeas Corpus rendered by the South Jakarta District Court
- On 17 January 2005 The National Police filed an appeal to the writ of Habeas Corpus to the Chief of the Supreme Court of the Republic of Indonesia.
- This highly unusual action was taken in complete disregard of the fact that a ruling in such a writ of Habeas Corpus, (which declared the investigation illegal) is FINAL and BINDING on both parties and is legally considered non-appealable.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- The laws governing the Supreme Court prohibit that court from hearing an appeal against a Habeas Corpus decision.
- On January 24th, I received the distressing news that my only grandchild had died suddenly and I urgently needed to travel back to the United States for the funeral and to lend support to my son and his family.
- Indonesian immigration authorities would not allow me to leave the country
- Well, enough was enough. On January 31st, 2005, I myself, along with the others who were being denied our basic rights filed a law suit against the Director General of Immigration and the Minister of Justice at the State Administrative Court in Jakarta

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Ironically I had to resort to filing a law suit against the Ministry of Justice in order to attempt to have justice prevail.
- On 3 February 2005, Dr.Jane Pengemanan sent a letter to General Suyino Landung revoking the Police Report that she had originally made.
- On MARCH 15 the Supreme Court reviewed and overturned the Habeas Corpus decision despite Indonesian law barring its appeal. The Supreme Court Chief Justice said: *"Sometimes when handing down judgments we must refer only to the law. However, at other times we must evaluate the law based on social interests,"* ????????

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- As if being declared a suspect in a criminal proceeding was not enough, the Indonesian Ministry of Environment (on March 9th 2005) also filed what amounted to a \$133 million civil suit against the company and me, as an individual.
- On March 22nd of 2005, the rule of law finally prevailed and the Panel of Judges of the State Administrative Court had the courage to approve and sustain the lawsuit filed by the Plaintiffs in its entirety. They declared all the decisions and actions of the Ministry of Justice and the Director General of Immigration regarding Overseas Travel Ban against us as individuals to be illegal.

pg-87

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- However, I received another summons to appear before the North Sulawesi Police on Tuesday, March 29th, 2005 at 10:00 AM. The consequence of this was that one type of mandatory reporting was replaced by another.

pg-88

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- **Handover of the “suspects’ to the Prosecution**
- Lawyers advised that they had received information that Public Prosecutor in Manado planed to detain all the suspects, unless:
  1. An immediate request was made to the High Prosecutor of North Sulawesi not to make the detention;
  2. A letter of guarantee was furnished by the U.S. Embassy (in respect of Rick Ness and Bill Long), and another by the Australian Embassy (in respect of Phil Turner);
  3. Bail in the amount of US \$1,000,000 was set; and
  4. Photocopies of the passports of all the suspects were submitted to them.

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Defense filed on March 24th, 2005 filed a Deed of application for Judicial Review against the judgment of the Supreme Court with the following of our objections:
  - (1) confusion and (2)error as stipulated in Article 263 paragraph (2) letter c of the LCP which read “if the judgment clearly shows Judge’s confusion or obvious error”

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Lawyers presented a request to the Head of High Prosecutor of North Sulawesi On April 5th, 2005 to reconsider the examination of witness(s) who would be beneficial to the Accused and the termination of prosecution in respect of the individual suspects in the alleged environmental pollution crime at Buyat Bay.
  - The answer unequivocally – NO !!! This response raised a few eyebrows since all P-19’s chastised the National Police for not granting me my basic right afforded under law. So much for consistency in the application of the law!
- Not everything was going wrong; the Ministry of Health had conducted a detailed and comprehensive testing of Buyat Pantai villagers. The results released on May 6, 2005 that concluded there was no evidence of health problems caused by heavy metals in the Buyat area.

pg-91

## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- May 9-10, 2005, prominent scientists of national and international eminence presented research findings at the “International Seminar on Mining, Environment and Sustainable Development” in Manado.
  - Attended by more then 300 participants, including, government, parliament, mining executives, rNGOs, academics and scientists from top universities and research institutes.
  - Thirty four scientific papers were presented and debated

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Manado 9 - 10 May 2005
- 1. *The status of the Buyat Bay Ecosystem shows:*
- *There has never been any scientific evidence showing that environmental pollution has occurred.*
- *The quality/condition of seawater in Buyat Bays, when linked with the contents of heavy metals, does not show any indication/level that harms marine biota.*
- *Coral reefs in Buyat Bay waters have grown normally.*
- *Concentrations of heavy metals (Hg and As) in fish in Buyat Bay waters are below the WHO standard guidelines, which means that the fish are safe to be consumed by the community.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Manado 9 - 10 May 2005
- 2. *With regard to impacts of contaminants on public/community health*
- a) *That average concentrations of all heavy metals examined in the bodies of the residents of Ratatotok, Buyat Pante, Buyat and Belang are well below the tolerable concentration values/ limits (WHO-IPCS).*
- b) *There is no statistically significant correlation between the concentrations of heavy metals in residents and diseases suffer, particularly lumps and skin diseases.*
- 3. *Direct correlation between arsenic content in ground water in Buyat and mining is not scientifically proven.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- Dr. Zakiyah (MER-C), Chalid Muhammad (WALHI), Siti Maimunah (JATAM), Jull Takaliuang (YSN) and Raja Siregar (WALHI) brought Buyat case to DPR- com IX on December 5, 2005.
- With misinformation being circulated, Head of Buyat Village expelled Dr. Harry Iskanar (Mer-C) from Buyat on May 19, 2005.
  - Majelis Mujahideen Indonesia (MMI) offered protection to fellow crusaders. **What is going on with all these medical experts? Are they trying to create issues or solve them?**

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- I requested the State Minister of the Environment to conduct an internal review of the 9 November 2004 Technical Team's Report on Buyat Bay.
  - *Report concludes the sediment quality in Buyat Bay is polluted because it exceeds the ASEAN Standards for Water Quality-2004. We contacted the ASEAN office to obtain this standard cited in the Technical Team's report, but we were informed that ASEAN Water Quality Standard of 2004 does not contain any standard for marine sediment*
  - *It is clear that the Technical Team has used a non-existent reference and has characterized it as ASEAN Water Quality Standard to give false legitimacy to their conclusions.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- *“Second, the formula used to calculate Average Daily Intake (ADI) is correct; however, the units of measure which are the underlying foundation of the formula are incorrectly applied. “*
  - *The formula’s mutation, deliberate or unintentional, combined with misapplication of inappropriate concentrations, quantities and even basic mathematical mistakes creates errors in the risk calculation ranging in excess of 4,500%.*
  - *[this report] documents the first case of arsenic exposure risk from fish IN THE WORLD.*
  - *All that we seek is fairness.*

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## 6. CHRONOLOGY OF EVENTS & BACKGROUND OF WHY THE BUYAT BAY CASE STARTED

- My public statements from the first allegations that Buyat Bay was polluted have not varied – I am 100% confident that Buyat Bay is clean.
- This case from the beginning has been driven by misinformation and politics and is not about facts or science,
- I am here to be judged on the facts and not on the political agendas of certain individuals, who appear to be the main drivers in this case.

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## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- Sensational allegations were made by Rignolda to the international media, such as: *“I found data in the village that four people already died with indications like feeling very hot in their body before they were dying. And, also skin disease that’s very common in the village. Other health problems in the village are they have a very bad headache and some of the people have no feeling, they lose control over part of their bodies.”*
- [Journalists] should have asked questions such as:
  1. **The Minamata Disease Institute Web Site states that Minamata disease is a neurological disorder, what does this have to do with lumps and skin rash?**
  2. **Why is this now coming to light after the mine is closed?**
  3. **Why file a civil suit and criminal complaint against the Minister of Health, ...something to do with the elections?**

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## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- ....where was objective journalism when it was needed most. If the allegations were wrong about Minamata, then maybe they are wrong about mercury or arsenic contamination. How many times do Dr. Rignolda and Dr. Jane Pangemanan have to be caught telling lies before the media question their actions and motivations?
- Most of the local and national press in Indonesia tried to provide a relatively balanced perspective.... without question, most media covered the story to the best of their ability with the limited resources available to them.

## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- [What] perpetrated the Buyat Bay hoax and the most **serious misinformation** was Jane Perlez of the NEW YORK TIMES. September 8, 2004 **“Spurred by Illness, Indonesians Lash Out at U.S. Mining Giant”**.
  - This story opened with: *“First the fish began to disappear. Then villagers began developing strange rashes and bumps. Finally in January, Masha Stirman, aided by a \$1.50 wet nurse, gave birth to a tiny, shriveled girl with small lumps and wrinkled skin. “The nurse said: ‘Ma’am, the baby has deformities,’ ” Mrs. Stirman, 39, recalled in an interview. Unable to get any meaningful medical help in this remote fishing village of about 300 people, she watched as her fourth child suffered for months and then died in July”*
  - Did this one-sided story have an impact on the actions of a newly-elected Government? It is safe to assume that they most certainly did.

## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- The September 8th Times article when on to state, *“About 120 villagers were waiting to be examined in June in the ad hoc clinic set up in three local homes. Thirty of the villagers had tumor-like growths, said one of the doctors, Jane Pangemanan. “I was shocked by what I saw,” she said in an interview. Of the 60 people she examined, about 80 percent showed symptoms of poisoning by mercury and arsenic, she said.”*
- When Dr Jane Pangemanan was asked by the Defense before this court on October 7, 2004 if she had stated this to Jane Perlez of the New York Times, she stated under sworn testimony that **“I did not say that.”** Either Dr. Jane Pangemanan lied on the stand or Jane Perlez fabricated this quote to support her one-sided story. **Either way, someone needs to answer for their actions.**

## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- The truth will always win at the end.... Wall Street Journal, **“Welcome to Indonesia”** by Stephen Moore and Jonathon Burns .. *“Yet overnight, it became a pariah; and publication of the claims in the New York Times appears to have been a major factor in instigating the criminal proceedings.”*
- *“Press coverage has reported Newmont’s denials mostly as an afterthought, if it has reported them at all. A review of the evidence raises serious questions about the case and the fairness of the legal proceedings -- as well as the potential impact of this dispute on the economic future of the world’s fourth-most populous country.”*

## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- WSJ...*“The conduct of Indonesia's legal system during the case has also been disturbing. During the police investigation, for example, Mr. Ness and Newmont were denied their legal right to present evidence. In December 2004, a Jakarta district court ruled in favor of Newmont's habeas corpus appeal and declared the police investigation to be illegal. The police appealed the habeas corpus decision and the Supreme Court accepted the appeal, in spite of a law which clearly states that habeas corpus decisions cannot be appealed.”*
- *New York Times is at least partly responsible for misleading the public ... which in turn created public pressure to detain 5 of my colleagues without any real legal basis.*
- ....this type of reporting put pressure on the legal system to accept a one-sided BAP and resulted in a Supreme Court ruling to overturn a Writ of Habeas Corpus,

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## 7. DISREPUTABLE REACTIONS OF CERTAIN NATIONAL & INTERNATIONAL MEDIA

- The Code of Ethics adopted by the Society of Professional Journalists, states that journalists should “Seek Truth and Report It”..... “Test the accuracy of information from all sources and exercise care to avoid inadvertent error.”
- This significant journalistic failure by Jane Perlez of the New York Times greatly contributed to the perpetration of the Buyat hoax and my presence before this court today.
- As one noted observe stated, *“I have never seen media coverage on a case as exhaustive as the Buyat case in the history of Indonesian judiciary.”* ..... Thankfully, most media coverage, is balanced and questioning the real motives behind such a controversial trial or even why this case is in court.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

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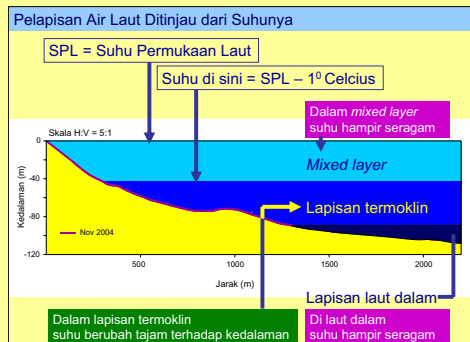
## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Thermocline**
- The Prosecution witness, Dr. Abdul Gani Ilahude, had never been to Buyat Bay, had not conducted research in Buyat Bay and was guessing about the presence of the thermocline based on 35 year old research some distance away from Buyat Bay (he could not remember).
- Dr. Andoyo Wurjanto analyzed over 11,000 temperature data points of the water column in Buyat Bay itself to identify the depth of the thermocline. In court he stated the following findings:
  - *“Based on my analysis, the thermocline is found on average at a depth of 43 meters*

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

Dr. Wurjanto also provided the slide below to visually summarize his conclusions. This slide shows the tailings of PTNMR below the mixed layer and the top of the thermocline layer.



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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Issue of Detoxification and Alleged Exceedances**
- In reality if the compliance analysis is conducted **honestly** and **truthfully**, PTNMR would receive a **GREEN** rating in KLH's PROPER program—a color symbol for “excellent” Hard data show that PTNMR’s detoxification plant would have easily qualified as one of the best performing treatment systems in the world.
- The irony of the situation is unexplainable—instead of receiving a reward for exemplary environmental performance, the prosecution has dragged me to the court and wants to sentence me to three years of imprisonment. This is grossly unfair and a blatant mockery of responsible environmental behavior.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- First, the Prosecution has applied an incorrect regulation to evaluate the effluent quality of the tailings.
- Second, the Prosecution has applied a wrong methodology to evaluate the incidence of exceedances. According to established KLH's methodology, a **monthly average** is the correct basis for measuring exceedances and not the daily values as has been used in the indictment.

PROPER: TECHNICAL DOCUMENTATION Page 11 of 19

| Key Questions   | Information Needs  | Nature of Information  |
|---|--|--|
| 1. Does the plant meet the effluent standards as specified in Appendix I to IV of the regulation (KEP/MEN/03/1991)? | 1. What is pollution per unit output of the plant?<br>2. What is the standard applicable to the plant? | 1. Average monthly pollution concentration<br>1. Average monthly flow rate<br>1. Monthly output in units specified in KEP-03/MEN/KLH/II/1991<br>1. KEP-03/MEN/KLH/II/1991 standard |

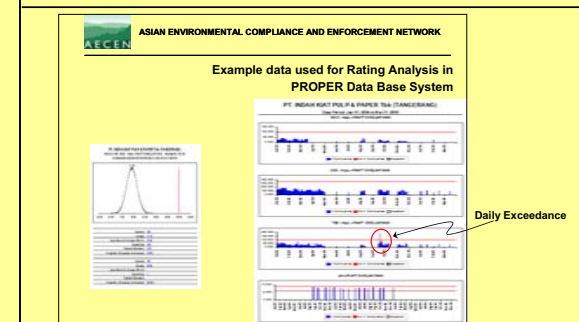
[http://www.worldbank.org/nipr/work\\_paper/propwhat/index.htm](http://www.worldbank.org/nipr/work_paper/propwhat/index.htm)

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- For more than ten years KLH has consistently used monthly averages as the basis for evaluating exceedances of various companies.

### KLH's PROPER Presentation in Beijing on 6-7 Apr 2006



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# 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- PTNMR was not required to report the daily data on effluent quality. But PTNMR voluntarily chose to report the daily values to ensure full transparency in the calculations of the monthly averages
- Further, KLH had been receiving these RKL/RPL reports since 1996... It is preposterous for KLH to suddenly claim that exceedances are evaluated on the basis of daily values, when for eight years they accepted the use of monthly averages in the RKL/RPL reports. If anything, it is the regulators who should be scrutinized for their discriminatory and unfair behavior.
- Mr. Makarim, the former Minister of Environment testified on 14 July 2005 that KLH uses monthly averages to evaluate exceedance of environmental parameters.

# 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- In addition to the methodological errors in the indictment, there is a major scientific mistake which stands out as a fatal flaw in the Prosecutors' case. This mistake relates to the absence of the pollution load analysis in the indictment and charges

|    | Parameters (Dissolved values in the effluent) | Maximum Allowable Load in the Permit Period (kg) | Actual Load Discharged into Buyat Bay (kg) | % of the Permitted Load | PROPER Rating Level |
|----|---|--|--|-------------------------|---------------------|
| 1. | Mercury                                       | 61.36 kg   | 5.42 kg                                    | 8.83%                   | GREEN               |
| 2. | Arsenic                                       | 3,835.00 kg                                      | 244.39 kg                                  | 6.37%                   | GREEN               |
| 3. | Copper  | 7,670.00 kg                                      | 1,004.75 kg                                | 13.10%                  | GREEN               |
| 4. | Iron  | 23,010.00 kg                                     | 3,205.51 kg                                | 17.76%                  | GREEN               |
| 5. | Cyanide-Free                                  | 3,835.00 kg                                      | 552.02 kg                                  | 13.93%                  | GREEN               |
| 6. | Cyanide-WAD                                   | 3,835.00 kg                                      | 1,064.38 kg                                | 27.75%                  | GREEN               |

GREEN = Less than 50 % of the standard

# 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

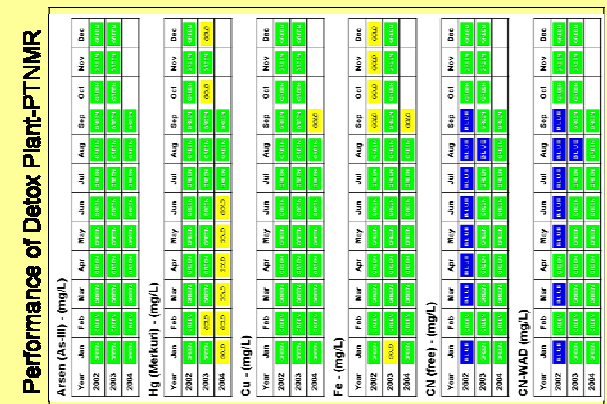
- A quick look at the seawater quality data from the RKL/RPL reports confirms that there is no increasing trend and the water quality never exceeded the quality standard

|    | Environmental Parameters | Effluent Quality Level | Seawater Quality in Buyat Bay | Seawater Quality Trend |
|----|--------------------------|------------------------|-------------------------------|------------------------|
| 1. | Mercury                  | No Exceedance          | Below Detection               | No Trend               |
| 2. | Arsenic                  | No Exceedance          | < 2 ppb/ Std. 10 ppb          | No Trend               |
| 3. | Copper                   | No Exceedance          | Below Detection               | No Trend               |
| 4. | Iron                     | No Exceedance          | Below Detection               | No Trend               |
| 5. | Cyanide                  | No Exceedance          | Below Detection               | No Trend               |

Data Source: RKL/RPL reports

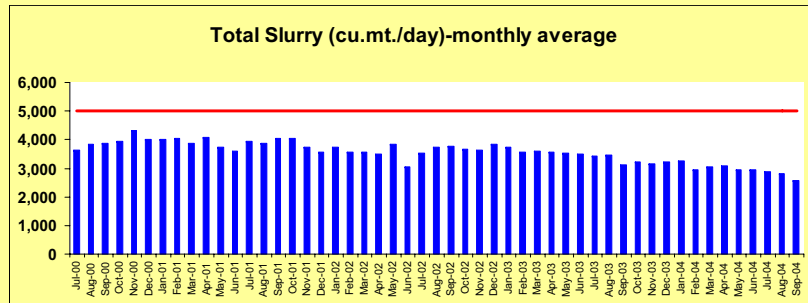
# 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- If the Prosecution had analyzed the RKL/RPL data accurately, it would have found that there was no exceedance for any environmental parameter included in the permit.



## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- If the concentration of the six environmental parameters and the volume of the slurry were always in compliance, then it automatically implies that PTNMR never exceeded the standards.



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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- The truth is that as far as PTNMR's operations are concerned, no environmental parameters show any violation of any standard. What has violated the standard is the unethical and unprofessional conduct of regulators who have falsely accused me of a fictitious environmental crime

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **STP Permit**
- Your Honor the truth is that PTNMR fulfilled every aspect of the discharge permit issued by Minister Sonny Keraf on 11-July-01.
- Compliance with the permit was also complete and thorough. In fact, the detoxification plant performed at a rate 50% better than the requirements of the permit.
- Before KLH issued a permit, it reviewed the findings of various scientific studies including those that showed that the tailings are not B-3 wastes.
- Additionally, PTNMR completed the ERA study in accordance with the TOR agreed upon by KLH within a period of six months, as was specified in the permit. The ERA was conducted by experts of international repute

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- First, I show that PTNMR acted proactively to obtain the discharge permit well ahead of the deadline of 2002.
- Second, PTNMR complied with the all requirements of the permit during its operations.
- Third, even after complying with the ERA requirement of submitting the study within six months,
- The idea that PTNMR did not have a permit is pure fantasy.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- PTNMR's tailings discharge was operated under the combined approvals of the Feasibility Study, Amdal, RKL-RPL and the Operating Permit that was granted by the Department of Mines and Energy.
- [with] issuance of Law 23/ 97 in conjunction with PP-19/99, PTNMR applied for and received a separate tailings discharge permit from the Minister of Environment
- At no time was the company ever advised by any government agency that the tailings discharge permit was temporary or that they had revoked it.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- The National Police showed an amazing level of environmental activism regarding the Buyat case
- Where is the Police's environmental activism in the case of Lapindo? Everything seems to be back to business-as-usual there. And it is this contradictory behavior that provides us with important insight into the mysterious police sampling that showed that Buyat Bay is polluted
- A sensational public announcement that Buyat Bay is polluted during an intense pre-election period created considerable media attention
- Doubts about the accuracy of the Police seawater results became evident immediately

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- The Police data came under heavy scrutiny because a series of five studies including the WHO, CSIRO, KLH and other government agencies which sampled the water of Buyat Bay within thirty days of the Police sampling, unanimously found that Buyat Bay was clean.
- Split samples to not correlate..

| Dissolved Arsenic<br>Standard: 12 ppb           | Average | Monitoring Points |       |      |       |       |       |      |       |        |         |
|---|---------|-------------------|-------|------|-------|-------|-------|------|-------|--------|---------|
|   |         | I                 | II    | IIIA | IVA-B | IXA-B | IXC-D | V    | VIA-B | VIIA-B | VIIIA-B |
| 1.1 Police Samples and Results                  | 16.62   | 12.43             | 10.18 | 6.92 | 8.26  | 20.56 | 24.67 | 7.01 | 5.78  | 19.68  | 50.70   |
| 1.2 Split of Police Samples Tested by ALS Bogor | 2.47    | 1.40              | 1.30  | 1.90 | 1.60  | 3.80  | 2.30  | 1.10 | 1.40  | 1.50   | 8.40    |
| How high is the Police Sample for Arsenic       | 673%    | 888%              | 783%  | 364% | 516%  | 541%  | 1073% | 637% | 413%  | 1312%  | 604%    |

| Dissolved Mercury<br>Standard: 1 ppb            | Average | Monitoring Points |       |      |       |       |       |       |       |        |         |
|---|---------|-------------------|-------|------|-------|-------|-------|-------|-------|--------|---------|
|   |         | I                 | II    | IIIA | IVA-B | IXA-B | IXC-D | V     | VIA-B | VIIA-B | VIIIA-B |
| 2.1 Police Samples and Results                  | 4.89    | 3.31              | 9.80  | 3.83 | 3.06  | 6.14  | 4.11  | 2.03  | 7.45  | 3.60   | 5.56    |
| 2.2 Split of Police Samples Tested by ALS Bogor | <0.05   | <0.05             | <0.05 | 0.05 | <0.05 | <0.05 | <0.05 | <0.05 | <0.05 | <0.05  | <0.05   |

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- [police] results on average were **673% higher** compared to the split samples tested by ALS in Bogor. Honorable Panel of Judges, 673% is not an insignificant error! This margin of error is comparable to the renowned Adam Air flight which departed Bali for Makasar and instead landed in East Nusa Tenggara— **this is not a minor mistake.**
- .... the split samples are perfectly consistent with the results of PTNMR monitoring of 29-June-04

| Data Source  | Average Values | Monitoring Points |        |       |        |       |        |       |        |        |         |
|--|----------------|-------------------|--------|-------|--------|-------|--------|-------|--------|--------|---------|
| Split of Police Samples Tested by ALS Bogor                | 2.5            | I                 | II     | IIIA  | IVA-B  | IXA-B | IXC-D  | V     | VIA-B  | VIIA-B | VIIIA-B |
|  |                | 1.4               | 1.3    | 1.9   | 1.6    | 3.8   | 2.3    | 1.1   | 1.4    | 1.5    | 8.4     |
| 29-Jun-04 RKL/RPL data (30 days before the Police samples) | 2.1            | A-2 m             | A-50 m | B-2 m | B-50 m | C-2 m | C-50 m | D-2 m | D-50 m |        |         |
|  |                | 1.5               | 2.3    | 1.3   | 6.5    | 1.5   | 2.1    | 0.1   | 1.2    |        |         |

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- ...after the Police finished sampling the seawater of Buyat Bay on 29-July-2004, there were four independent studies that were conducted within a period of thirty days.
- First, the North Sulawesi Governor's team.. just two days later on the 1st of August 2004.
- Nine days later, the WHO/ Minamata Institute team on 9-August-04.
- ....11-12 Aug-04, CSIRO from Australia
- .... the Integrated Technical Team of the Government of Indonesia on 28-Aug-04.
- ....it became amply clear that the Police data was wrong because it didn't match with any ... studies—not even one and not even close!

## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- the Police samples showed that the level of dissolved mercury on average is nearly five times the standard. Comparing the Police results on dissolved mercury to the results of the WHO's sample that was collected eleven days later, we find that Police laboratory has an....
- **ERROR of more than TWENTY THREE MILLION PERCENT!**

## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- In spite of these obvious errors in the Police results, the Police and Prosecution continue "full steam" ahead without even a moment's pause to question what is really wrong with this picture.
- In most cases the above analysis would be sufficient to reject the Police data. But in this case, the 32 day jailing of my colleagues, the existence of the indictment, being charged with a crime and my attending this court for over 45 sessions have **convinced me that lies could easily triumph over the truth.**

## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- Police laboratory results of the seawater quality are the only tests that are not in agreement with the findings of all the other studies

| Study                   | SeaWater     |               | Fish            |                                 | Human               |                      |                        |
|-------------------------|--------------|---------------|-----------------|---------------------------------|---------------------|----------------------|------------------------|
|                         | Hg<br>1 ug/L | As<br>12 ug/L | Hg<br>0.5 mg/kg | Inorganic<br>Arsenic<br>2 mg/kg | Hg-Blood<br>50 ug/g | As-Blood<br>100 ug/g | Hg-<br>Hair<br>50 ug/g |
| 1. KLH 03               | ND           | 0.975         | 0.05            |                                 |                     |                      |                        |
| 2. POLRI 04             | 4.89         | 16.62         | 0.007           | 0.04                            | 6.329               | 6.026                | 1.097                  |
| 3. POLRI<br>(SPLIT-ALS) | ND           | 2.47          |                 |                                 |                     |                      |                        |
| 4.UNSRAT                | ND           | 2.52          | 0.117           | 0.053                           |                     |                      |                        |
| 5.WHO                   | ND           |               | 0.243           |                                 |                     |                      | 3.071                  |
| 6. DEPKES               |              |               |                 |                                 | 13.14               |                      | 4.006                  |
| 7. CSIRO                | ND           | 2.33          | 0.103           | 0.0176                          |                     |                      |                        |
| 8. KLH 04               | ND           | 1.51          | 0.169           | 0.176                           |                     |                      |                        |
| 9. ALS 06               | ND           | 1.33          |                 |                                 |                     |                      |                        |

## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- The differences between the Police field sample records signed off by the third-party-witness and the receipt of 10 additional samples at the police laboratory alone are **clear evidence of someone playing with the samples**. It is not possible for sealed water samples to **multiply, reproduce or duplicate during shipment** from Ratatotok to Jakarta.
- If the Prosecution wishes to take exception to the above statement and use the Police laboratory results as evidence against me, then I need to have some one prove beyond a reasonable doubt, where the extra 10 samples that arrived from the laboratory came from -

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- ...while there were 24 samples collected in the field, 34 arrived in the laboratory and 29 are presented as evidence before the court. This is worth repeating once again, some one added 10 sample bottles between Ratatotok and the Police laboratory and then lost 5 of them between the Police Laboratory and the Prosecutor's office.
- The **prosecution** in my opinion **has not proved pollution, ...the Prosecution has proved beyond reasonable doubt that the investigative unit can not keep track of samples**. I have now spent roughly 5 % of my life defending against the charge when actually the Bay is perfectly clean and the evidence they have used only goes to show that that someone cannot even ship and receive the same number of sample bottles between two points.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Police results failed to follow the legally binding forensic procedures**
- In addition to potential sample tampering and the wrong laboratory results, there was clear failure to follow the established forensic procedures. From the initial acceptance of complaint by the Police and the public statements that people have been contaminated by heavy metals by a so-called medical doctor who never even conducted a complete medical examination, to the chain of custody and control of samples at the beginning of the investigative process, to laboratory technicians making medical, clinical and environmental science determinations outside their area of expertise, the whole investigative process has been fundamentally flawed.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Conclusions...**Your Honor, the irregularity in the Police data is self-obvious. The question is how could the Prosecutors accept such evidence and even have the audacity to use it in the charges against me. I want to look in the eyes of the Prosecutors and ask them: Is this the evidence you want to use to put me in jail? Do you believe in this evidence yourself? This whole situation, Your Honor is extremely sad and I would not like it to be repeated to anyone. But someone who perpetrated this hoax needs to sit in this very chair.

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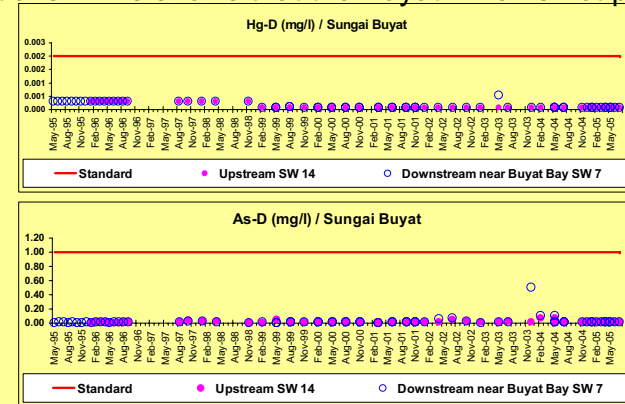
## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Sediment Pond Decreased Quality of Buyat River Water....????**
- The Indictment and the Charges state that the “Sludge from the sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.”
- While the Prosecution makes this accusation they have failed to elaborate on it. Therefore, this charge is both unfounded and vague at the same time.
- I believe this accusation was based on a misunderstanding regarding the sediment pond by the POLRI Investigators.
- This structure traps natural soils that get washed from the mine site by rainfall.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

... the graph shows that arsenic and mercury concentrations were always below environmental standards at both the stations. This shows that the Buyat River is not polluted.



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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- not only are the POLRI data highly dubious, but even if one believes the data, it does not support the charge that the sediment pond is the source of arsenic or mercury to Buyat Bay.
- Collectively, all the facts that I just highlighted and the lack of any evidence or expert witnesses provided by the Prosecution to support this accusation, clearly shows that the sediment pond does not, nor ever has reduced seawater quality in Buyat Bay, as alleged in the Indictment.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- Marine Biota ... All the results of mercury and arsenic in fish tissue taken in all the studies conducted in Buyat Bay (NMR's RKL/RPL data, CSIRO, WHO/ Minamata Institute, North Sulawesi Independent Team, KLH Integrated Team, POLRI and Ministry of Marine and Fisheries) show that that fish in Buyat Bay have normal levels of arsenic and mercury and are safe for human consumption.
- POLRI and the Prosecution have relied on testimony by three supposed-experts who have misapplied standards and had no knowledge of normal levels of arsenic and mercury occurring naturally in fish in the world's oceans.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- If they were true experts, in reviewing the data, they would have come to the same conclusion Buyat Bay fish are at normal levels and no different from fish of other oceans in the world.
- **To summarize, all studies conducted to-date show arsenic and mercury levels in fish to be below all applicable standards, the same as anywhere else in unpolluted coastal areas and safe for human consumption.**

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **Human Contamination and Itchiness...** The accusation that people in Buyat Bay were intoxicated on mercury and arsenic resulting in illnesses is the issue that first started this criminal case.
- The allegations in the Indictment by Dr. Jane Pangemanan are consistent with several statements she had made to the media in which she had connected illnesses reported by some individuals to mercury and arsenic in tailings of NMR. However, in her court testimony on October 7, 2005, **Dr. Jane Pangemanan recanted her above statement** regarding NMR and further stated that she had revoked her criminal complaint to the POLRI. **She stated that she did not do any research into the cause of the illnesses and therefore she did not have a diagnosis.**

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- During cross-examination by the Defense Counsel, she [Dr. Jane] also denied that she had said to Jane Perlez of the New York Times that: ***“...of the 60 people I examined about 80% showed symptoms of poisoning by mercury and arsenic.”*** Since this exact quote did appear in the New York Times, I must conclude that either **Dr. Jane Pangemanan perjured herself in court or that Jane Perlez fabricated the quote.**
- It is obvious that Dr. Pangemanan was not involved in the Buyat case as a medical doctor, but as a member of a group of activist that were working with certain community members and who wanted to bypass the local medical authorities and to take this case to the media in Jakarta.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- The accusations of health impacts ....Three Buyat Bay residents were interviewed by POLRI during their trip to Jakarta. The Minutes of Examination...gives me real concern about the POLRI investigation. This is because the questions and answers by these 3 individuals are essentially identical. The following are examples of some of their answers.
- In answer to Question 8, all three gave word-for-word the same response:
  - *“As far as I recall and undergo, there have never been such types of disease prior to the disposal of tailings by PT. Newmont Minahasa Raya or prior to the year 1996 in Buyat Pantai hamlet.”*
- |

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- In answer to Question 9, all three gave word-for-word the same response:
  - *“Yes, it has. It once conducted a public health examination; however, they always said that the result was that the disease suffered by the community members was only common skin disease, not a dangerous one.”*
- In answer to Question 10, yet again, all three gave word-for-word the same response:
  - *“As far as I know, yes, there is. Since PT. Newmont Minahasa Raya dumped its tailings to Buyat Bay, the fish living in Buyat Bay waters were affected by the tailings. We then ate the relevant fish. Consequently, we also consumed toxic and hazardous substances contained in the fish so as to suffer from this type of medical complaints.”*

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- I would imagine that an experienced POLRI investigator would question the three witnesses that used exactly the same words and sentences to answer their questions. Clearly if three people use exactly the same words to answer questions, it indicates a high level collusion. **However, this did not seem to concern the Investigator.....**
- Several medical doctors testified in court regarding their involvement and medical diagnosis of their work as well as results of their research on the residents of Buyat Pantai. These were Dr. Sandra Rotty, Dr. Joy Rattu and Professor Dr. Winsy Warouw.

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- Summarizing all of the various health and toxicological studies, Dr. Bentley stated:
  - *“But the truth of the matter is that this levels are just typical of moderate fish eating community. It doesn’t matter where in the world you do your studies. These results are typical of non-impacted groups.. All of the data including that of the police are of no health significance whatsoever.”*

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## 8. SCIENTIFIC AND TECHNICAL ARGUMENTS

- **This – Your Honorable Panel of Judges, concludes my technical and scientific arguments of the case. I believe I have shown that science has been manipulated by unscrupulous individuals to paint a picture of health problems and pollution, when the facts clearly show otherwise. One can only conclude that my accusers must be politically or otherwise motivated and are operating in complete defiance of scientific or objective facts.**

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## 9.BUYAT CASE IN THE CONTEXT OF THE INDONESIAN MINING SECTOR

- [This section of the Pledoi (and its attachments) is included as a reference to assist the Honorable Panel of Judges to place the Buyat case in perspective in relation to the mining industry both nationally and globally.]
- The Indonesian mining industry continues to be an important part of economic development and growth in Indonesia. In addition to the substantial direct impact of development and growth in a region, there is an even larger indirect flow of benefits.
- Some of the most significant benefits of mining are that it brings development to areas where development would not normally have occurred, it trains and develops people, it creates infrastructure and with mining come better educated and healthier communities.

## 9.BUYAT CASE IN THE CONTEXT OF THE INDONESIAN MINING SECTOR

- Central to modern mining practices is the principal of Sustainable Development. This principal provides for continued community development subsequent to mine closure so that the financial and social benefits of mining can be enjoyed by local communities long after a mine shuts down.
- ...the mining industry creates employment for just under a half million people in this country, and contributes between 2.5-5% of GDP of the nation. But, in the case of specific Regions that are blessed with natural resources, mining can contribute up to 58% of that Regional GDP
- The mining industry in Indonesia is at a critical juncture because the future for new mines being developed seems relatively bleak.... Indonesia is rich in mineral resources and ranks number 6 in the world for mineral potential but receives less then one half percent of global exploration

## 9.BUYAT CASE IN THE CONTEXT OF THE INDONESIAN MINING SECTOR

- Indonesia is rich in mineral resources and ranks number 6 in the world for mineral potential but receives less then one half percent of global exploration.
- The Fraser Institute of Canada conducts worldwide annual surveys and ranks countries based on a combination of their potential and investment conditions. Sadly, out of 64 nations that have mining potential, Indonesia ranks third from the bottom and only slightly ahead of the Democratic Republic of the Congo and Zimbabwe in investment conditions. Ranking just below Australia and Canada in mineral wealth potential and only slightly ahead of the Congo and Zimbabwe on investment climate is not a desirable position.

## 9.BUYAT CASE IN THE CONTEXT OF THE INDONESIAN MINING SECTOR

- ...Why is Indonesia at the bottom of the list? The Institute report cites the following reasons: "Regulatory duplication and inconsistencies" and "uncertainty concerning the administration, interpretation and enforcement of existing regulations".
- One could use those exact words to explain, at least in part, why we are all sitting here today. To me and to probably the rest of the world, these words sound systemic to "the Buyat Bay case". Investors and financial institutions are still watching the developments of this case. They are all sitting back and "scratching their heads" wondering how a company and an individual can be criminally charged in a pollution case when world renowned institutions such as WHO, Minamata Institute, CSIRO in conjunction with Indonesia's own leading scientific experts and institution say that the Bay and its communities are normal. What's really going on here?

## 10.HISTORY OF NMR AND THE ROLE OF RICHARD BRUCE NESS

- [For the benefit of the Court and the Honorable Panel of Judges] In this section of this pleadoi I intend to provide a historical perspective in order to help the court understand the evolution and development of NMR's Mesel Mine in North Sulawesi and its relationship with context to this case.
- [This section includes];
  - An overview of the company
  - Description of the geology of the mine area
  - Overview of mine operations including; waste rock and top soil management, ore processing and recovery, tailings detoxification, submarine tailings placement system, chronology of the company and permits, [continued...]

## 10.HISTORY OF NMR AND THE ROLE OF RICHARD BRUCE NESS

- [continued...], corporate structure, financial contributions, mine closure, community development activities, [including] education, infrastructure, health improvements, vocational training and business development, agricultural and fisheries programs, Minahasa marine habitat enhancement programs, Yayasan Minahasa, "Good Will Agreement", and efforts to preserve the environment.
- [ **Seventeen pages in total of detailed information for the Courts reference.**]

## 11. SCIENTIFIC AND MEDICAL STUDIES AT BUYAT BAY

- Your Honorable Panel of Judges:
- There are over 30 independent scientific and medical studies done to date at Buyat Bay and in the local communities that have irrefutably proven that Buyat Bay is not polluted, PTNMR's tailings are not hazardous or toxic waste and have not adversely impacted the marine environment and the health of local residents has not been negatively impacted by PTNMR's operations. These study finding are consistent with PTNMR's own environmental monitoring data that has been reported to Government every 3 months. For the benefit of the court, I have selected 15 of these studies and summarized their conclusions to assist the Honorable Panel of Judges in their review of written evidence which has already been submitted before this court.

## 11. SCIENTIFIC AND MEDICAL STUDIES AT BUYAT BAY

- **North Sulawesi Team (2000)**
- **UNSRAT Dermatology Study (2001)**
- **WHO/ Minamata Institute Report (2004)**
- **North Sulawesi Independent Team (2004)**
- **Tailings Toxicology Study (2005)**
- **Commonwealth Scientific and Industrial Research Organization (CSIRO, 2004)**
- **Ministry of Health – Public Health Audit (2004)**
- **Ministry of Environment Buyat Bay Report (October 14, 2004)**
- **State University of Manado Social Study (2004)**

## 11. SCIENTIFIC AND MEDICAL STUDIES AT BUYAT BAY

- **State University of Manado Physical Environment Study (2004)**
- **UNSRAT Arsenic in Humans Study (2005)**
- **ITB/UGM Buyat River and Hydrogeology Study (2005)**
- **UNSRAT Coral Reef Research (1996-2005)**
- **UNSRAT International Seminar (2005)**
- **National Geographic Magazine (2006)**

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## 12. RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

- As has been stated several times during this court trial, the Revised Report of the Technical Team issued on November 8, is a political re-write of the KLH October 14 report by NGO and some members of KLH. This report used the same data of the KLH report, which concluded that Buyat bay was not polluted, and uses questionable scientific analysis and interpretation to draw unfounded conclusions.
- Dissenting opinions which have been entered into evidence include those from personnel from the Ministry of Energy and Mineral Resources, UNSRAT, PERHAPI/ITB and members from the North Sulawesi Government.

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## 12. RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

- I have personally written a letter to the Minister of the Environment outlining the technical shortcomings of this revised report in a letter dated September 19, 2006 (Evidence..). The last 3 paragraphs of my letter states:
  - *“Minister Witoelar, I respectfully request that your Ministry review the validity of this report. I am well aware this Technical Team was concocting this report prior to your taking office. That report is an embarrassment to the scientific community of Indonesia, your Ministry and the Government as a whole.*

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## 12. RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

- *PTNMR and I have no problem defending ourselves, our actions, our operational performance, and care for the Environment before the court. Both have no problem addressing allegations, and if necessary, embarrassing some of the NGO's and individuals who perpetrated this pollution hoax before this nation and the international community. However, neither PTNMR nor I will take any pleasure in having to discredit a report developed by specific individuals under the name of your Ministry.*
- *All that we seek is fairness. I view it in both our interests to uphold the credibility of this administrations institution. Should you need further clarification on the numerous errors contained within the Technical Teams Report, I am more then willing to provide that clarification.”*
- I have not received a response from the Minister to date.

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## 12.RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

- The actual data in this report show that seawater quality and arsenic and mercury in fish tissue are at normal levels and below applicable standards. However for several parameters for which there are no environmental standards, certain members of the team use erroneous and unscientific methods to arrive at what is clearly their predetermined conclusion that of Buyat Bay is polluted.
- The Revised Integrated Team report references the “ASEAN Marine Water Quality Criteria 2004” to conclude that the sediments in the tailing discharge area are “polluted,”
- **..there is no ASEAN standard for sediments**

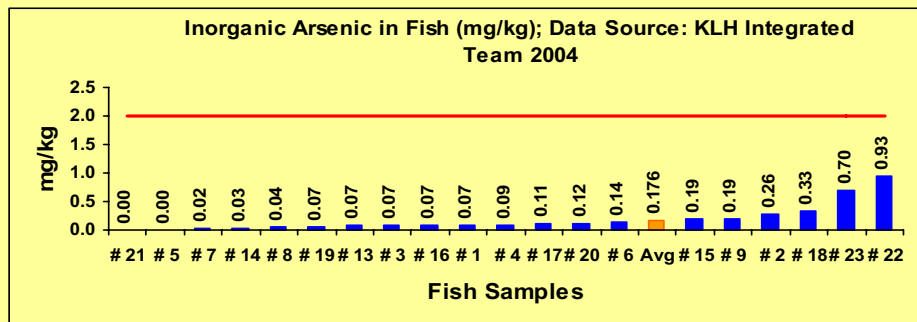
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## 12.RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

- ...I personally contacted the ASEAN Environmental office and requested any sediment standards that they may have. ASEAN Environmental Division confirmed that they only have water quality standards and **no sediment standards..**
- The Buyat case has generated many odd and unexplainable scientific conclusions, but the one that stands out most prominently is the hazard index calculation by some members of the Technical Team on Buyat Bay. **The calculation error for the hazard index from fish consumption is so outlandish that it has led to overestimating the health risk by more than 4500 %.** On the contrary, if the hazard index is calculated correctly, it shows that the fish from Buyat Bay are perfectly safe for human consumption.

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## 12.RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004



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## 12.RESPONSES TO THE REVISED REPORT OF THE INTEGRATED TEAM ISSUED ON NOVEMBER 8, 2004

Chulaborn University, Risk Assessment Guidelines; pg-29

Table 11 : Estimating Intake from Ingestion of Contaminated Fish and Shellfish

RESIDENTIAL EXPOSURE : FOOD PATHWAY  
INGESTION OF CONTAMINATED FISH AND SHELLFISH

$$\text{Intake (mg/kg-day)} = \frac{\text{CF} \times \text{IR} \times \text{FI} \times \text{EF} \times \text{ED}}{\text{BW} \times \text{AT}}$$

Where :

- CF = Chemical Concentration in Fish (mg/kg fish)
- IR = Ingestion Rate (kg fish/meal)
- FI = Fraction Ingested from Contaminated Area (0 to 1.0)
- EF = Exposure Frequency (meals/year)
- ED = Exposure Duration (years)
- BW = Average Body Weight (kg)
- AT = Averaging Time (period over which exposure averaged in days)

Variable Values :

- CF = Site specific measured or modeled value
- IR = Specific values for age, sex, ethnicity, region
- FI = Pathway specific value (consider local patterns)
- EF = Population specific value (from 12 meals/year to 360 meals/year or greater)
- ED = 70 years (lifetime, by conversion)  
30 years (US national upper-bound (90<sup>th</sup> percentile) time at one residence)  
9 years (US national median time at one residence)
- BW = 70 kg (adult average, US EPA)  
15 kg (child age 1 to 6)
- AT = Pathway specific for non-carcinogenic effects = **ED x 365 d/yr.**  
Lifetime for carcinogenic effects  
Carcinogens = 70 yr x 365 d/yr

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Analysis of Errors in TABLE 3.7 of Technical Team Report: The Case of Fish Consumption of a 15 kg Child

|        | Col-1   | Col-2   | Col-3   | Col-4   | Col-5   | Col-6   |
|--------|---|---|---|---|---|---|
|        | PARA-METER  | Penjelasan Parameter Berdasar Literatur   | Penjelasan Parameter Berdasar Laporan KLH 8 Nov 2004, halaman 21  | Parameter Tercantum Pada Tabel 3.7 Laporan KLH Nov 2004, halaman 33   | Contoh: Data Yang Digunakan untuk contoh anak (yang pertama) pada baris ke 4 pada Laporan 8 Nov                 | Perhitungan contoh yang sama, dengan masukan yang benar.  |
| Row-1  | CF  | Chemical concentration in fish (mg/kg fish)   | Konsentrasi Kontaminan Dalam Ikan (mg/kg)   | Konsentrasi As anorganik (mg/kg)  | 0.934 (nilai maksimum yaitu pada lokasi sampling: Buyat Bay 33).  | 0.176 (nilai rata-rata).  |
| Row-2  | IR  | Ingestion Rate (kg fish/meal)   | Jumlah Ikan yang Dikonsumsi (kg/konsumsi)   | Rata-rata meal (kg/hari)  | 0.2   | 0.2/3 = 0.067 (kg/konsumsi, bukan per hari)   |
| Row-3  | FI  | Fraction Ingested from Contaminated Area (0 to 1.0)                                 | Fraksi Injeksi dari Sumber yang terkontaminasi (tanpa satuan)   | Fraksi Injeksi  | 0.9   | 0.9   |
| Row-4  | EF  | Exposure Frequency (meal/year)  | Frekuensi Paparan (konsumsi/tahun)  | Frekuensi Paparan (hari)  | 365   | 3 x 365   |
| Row-5  | ED  | Exposure Duration (years)   | Lamanya Paparan (tahun)   | Lamanya Paparan (meal/tahun)  | 10  | 10  |
| Row-6  | BW  | Average Body Weight (kg)  | Berat Badan (kg)  | Berat Badan (kg)  | 15  | 15  |
| Row-7  | AT  | Averaging Time (period over which exposure averaged in days)                        | Waktu rata-rata terpapar (hari)   | Rata-rata Paparan (hari)  | 365   | 365 x 10  |
| Row-8  | Average Daily Intake                                      | Intake (mg/kg-day) = $CF \times IR \times FI \times EF \times ED \div BW \times AT$ | Intake (mg/kg-hari) = $CF \times IR \times FI \times EF \times ED \div BW \times AT$                                    | Intake (mg/kg-day) = $CF \times IR \times FI \times EF \times ED \div BW \times AT$                                     | Intake (mg/kg-day) = $\frac{0.934 \times 0.2 \times 0.9 \times 365 \times 10}{15 \times 365 \times 10} = 0.112$ | Intake (mg/kg-day) = $\frac{0.176 \times 0.067 \times 0.9 \times 3 \times 365 \times 10}{15 \times 10 \times 365} = 0.0021$ |
| Row-9  | Hazard Index (HI)   | HQ Interpretation: HQ < 1 means fish are "Safe"; HQ > 1 means fish are "Unsafe"     | Hazard Index (HI) = $\frac{\text{Intake (mg/kg-day)}}{\text{Reference Dose (mg/kg-day)}}$<br>Ref. Dose = 0.02 mg/kg-day | Hazard Index (HI) = $\frac{\text{Intake (mg/kg-day)}}{\text{Reference Dose (mg/kg-day)}}$<br>Ref. Dose = 0.02 mg/kg-day | Hazard Index (HI) = $\frac{0.112 \text{ mg/kg-day}}{0.02 \text{ mg/kg-day}} = 5.6 > 1$                          | Hazard Index (HI) = $\frac{0.0021 \text{ mg/kg-day}}{0.02 \text{ mg/kg-day}} = 0.11 < 1$                                    |
| Row-10 | Comparison of the CONCLUSION of the Hazard Index Analysis |   |   |   | UNSAFE to Eat Fish  | SAFE to Eat Fish  |

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## 13. CONCLUSIONS



- Your Honorable Panel of Judges
- The intent of my writing my own Pledoi was to convey the "**Truth**" in a way that is easy to understand, thereby leaving no room for doubt that **Buyat Bay is not polluted**. I am confident that I have proved, without any doubt, that that Indictment and Charges against both me and NMR are baseless and a sham.
- I would like to repeat once again and expressly state that all elements in the Indictment and the Charges are untrue, ....
- in this trial, not only did the Prosecution fail to carry its burden of proof, but the Defense Team presented evidence that proved beyond any reasonable doubt that **the Prosecution's allegations are wrong**.

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## 13. CONCLUSIONS



- (a) **the existence of an unlawful act, is untrue and incorrect.**
- (b) **that there is negligence on my part in performing my duties** is also untrue
- (c) that it is also completely untrue **that NMR does not posses any license or permit to dispose NMR Tailings to the Buyat Bay Seabed**
- (d) **the act of not preventing toxic tailing disposal** is also completely untrue and unsubstantiated
- (e) it is also wrong that the statements in the Indictment and the Charges state that "**even that I already knew NMR did not have a permit to dispose tailing to the sea, however I did allow /did not give any instruction to stop the disposal of tailings to the sea by NMR**"

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## 13. CONCLUSIONS



- The fundamental fact remains, **BUYAT BAY IS NOT POLLUTED**. Without pollution there is no crime, and the charges, the consequent request by the Prosecution for a 3 year prison term for maintaining a perfectly clean bay by the Prosecution is a disgraceful act!

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## 13. CONCLUSIONS



- Based on the evidence, this honorable Panel of Judges can conclude with absolute confidence that **I am innocent of all Charges that have been brought against me.**

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## 13. CONCLUSIONS



- Before I try and make my my request to The Honorable Panel of Judges concluding this Pledoi, there is a broader conclusion that I have drawn during the drafting of this document that I would like to express....
- Buyat Bay is not polluted, its people are not impacted by heavy metals from mine tailings, Buyat Bay waters are pristine with abundant fish and aquatic life.
- I would like every one at the prosecutions table to consider the following;
  - Your fathers and grandfathers were men with principles, courage and integrity,

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## 13. CONCLUSIONS



- [your fathers] they held a belief and had a dream.
- That dream was a free and independent Nation, governed under law.
- This nation they dreamed of was Indonesia and the Law they drafted and ratified was your Constitution,
- **IN YOUR OWN CONSITIUTION** in the **FIRST** article it states that ***“the State of Indonesia is a state based on law”***.
- Your red and white flag is their symbol of that belief.

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## 13. CONCLUSIONS



- ***“every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law”*** is what they fought for.
- **What part of this do people investigating and prosecuting this case have a problem understanding and abiding by?**
- The Prosecution with assistance and maybe pressure accepted a one-sided case file that they knew was defective and had not been properly investigated;

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## 13. CONCLUSIONS



- ***“Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right”***
- *If one does not believe in its nations constitution and laws, believe in those sent down by God. If you are Muslim; the Holy Koran states in S.4-135: **“O ye who believe! Stand out firmly for justice, as witnesses\* to Allah, even as against yourselves, or your parents, or your kin, and whether it be against rich or poor. For Allah can best protect both.”***

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## 13. CONCLUSIONS



- If you are Christian, the Bible in Mathew 23:23 states ***“Woe to you, experts in the law and you Pharisees, hypocrites! ..... you neglect what is more important in the law – justice, mercy, and faithfulness! You should have done these things without neglecting the others.”***
- ***Has the investigators, certain government regulators and the Prosecution of this case been in accordance with both the rules of God and Man. [??????]***

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## 13. CONCLUSIONS



- ..... , are you prosecuting this case based on what you fathers and forefathers fought and died for, are you upholding their dream of the Republic of Indonesia as a ***state of law***?
- Or are you allowing yourselves to be the instrument of politicians and special interest groups and are mere ***“Wayangs”*** in a play called “Buyat Bay”?
- If I am correct, and you honestly do not believe that you have followed and are enforcing the law, then state so when you make your counter-motion and stop what I believe is a sham and a mockery of your judicial system, **fight for the truth,**

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## 13. CONCLUSIONS



- I believe I have shown in this Pledoi that science has been manipulated by unscrupulous individuals to paint a picture of health problems and pollution,
- I believe I have show that certain politicians, NGO members and member of KLH have rewritten NMR’s history to support their political agendas or their prejudices against the company and myself and to support the prosecution of this case
- I believe that I have proved beyond any reasonable doubt that;
- **BUYAT BAY IS NOT POLLUTED!**

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## 14. REQUEST OF DEFENDANT II

- There have been several criminal acts associated with the “Buyat Controversy”, “Buyat Hoax” or what ever name you wish to give this travesty and miscarriage of justice. However, criminal acts of *change of function* or pollution of a bay, communities being impacted from heavy metals from mine tailings, or criminal disposal of a toxic substance into the environment are not among those crimes that have been uncovered by this court.
- The prosecution failed miserably to prove any wrong doing by PT NMR that pollution or damage of the environment even occurred.

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## 14. REQUEST OF DEFENDANT II

- Similarly, the prosecution wretchedly blotched all attempts to prove that PT NMR or myself have even transgressed the administrative law such as exceeding the standards that are set for detoxified tailings and those set for sea-water quality and marine biota quality much less have committed a criminal act under Law 23 of 1997
- Since there are no facts of legal transgression regarding pollution and or damaging of the environment that caused losses to humans or the living environment that could be alleged as a criminal illegal act, then there is no environmental crime.

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## 14. REQUEST OF DEFENDANT II

- Therefore I respectfully request that in accordance with stipulations of Article 191, clause (1) of the Code of Criminal Procedures, which state: *“If from the results of the examination, the allegations charged are not legally and convincingly proven, then the defendant should be released.* Therefore I respectfully request the Honourable Panel of Judges to sentence me free from all guilt and free from all legal demands and **release me from the charges.**

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## 14. REQUEST OF DEFENDANT II

- I personally feel that **justice will not be served by only an “innocent” verdict in favor** of the company and myself. An “innocent” verdict only addresses the wicked allegation that the company under my leadership poisoned people polluted the environment. **An “innocent” verdict does not address those criminals that perpetrated a crime of immense proportion which virtually crippled some institutions of a national government,** misinformed the public in such a reckless manner that caused the break up of families, the relocation of people, distorted a local economy which disrupted the income and livelihoods of a community.

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## 14. REQUEST OF DEFENDANT II

- Nor does a “innocent” verdict correct the wrongful detention of innocent individuals, nor rectify the injustice of depriving them of their basic human and legal rights by the very institutions which were established to protect those basic right of each citizen and resident of this nation. **Justice will only be served when those that violated the law or aided and contributed in the perpetration of this “Buyat Hoax” are investigated, charged, tried and sentenced under the laws of this land.**

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## 14. REQUEST OF DEFENDANT II

- Specifically, I respectfully request to have included in the courts final ruling an order to investigate, and if sufficient evidence is established, for the prosecution of those suspected of their illegal actions. Those individuals include;
  - **1. Rignolda Jamaludin, Jane Pangemanan and Raja Siregar for the perpetration of the Buyat Hoax.**
  - **2. Those members of the Ministry of Environments “Technical Team”** under the guidance of Nelly who willfully and knowingly manipulated data and referenced non existing regulations to deceive the public by creating the image that a village needed to be relocated because of pollution when in fact no pollution existed.

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## 14. REQUEST OF DEFENDANT II

- In closing, I would like for the record, to thank and express my gratitude to the various Government and academic institutions who have maintained their professional integrity and academic independence. These institutions are the real backbone of society and the foundation of a great nation. And finally, to thank this Honorable Panel for the opportunity for me to present our evidence in this case, and the fairness and consideration shown to me as a defendant before this Court.

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## 14. REQUEST OF DEFENDANT II

**THANK YOU!!!  
YOUR HONORABLE PANEL OF  
JUDGES**

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