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PRESS RELEASE

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**The appeal is against law and baseless
Newmont Files Counter Memorandum against Public Prosecutor's Appeal to the
Supreme Court**

MANADO (June 27, 2007) -- PT Newmont Minahasa Raya (PTNMR) and its President Director, Richard Bruce Ness, today filed its counter memorandum to the Supreme Court via the District Court of Manado to object to the appeal of the Public Prosecutor in the Buyat Bay case.

PTNMR has requested that the Prosecutor's memorandum of appeal be denied and or rejected on all counts based on these grounds:

- The decision of Manado District Court No.284/Pid.B/2005/PN.MDO **can not be appealed by law;**
- The decision of Manado District Court No.284/Pid.B/2005/PN.MDO **has correctly and completely returned a verdict;**
- The decision of Manado District Court No.284/Pid.B/2005/PN.MDO exonerating PTNMR and its President Director resulted in an acquittal; and
- *Judex factie* has reached a verdict based on valid and applicable procedural laws, has tried the case in compliance with applicable laws and regulations and did not exceed their powers of authority.

“The appeal as submitted by the Public Prosecutor does not have a legal basis at all. Apart from the fact that a decision of acquittal cannot be appealed by law, the material provided by the Public Prosecutor clearly contains only a repetition of all the facts presented at the court sessions or requisitors that have all been reviewed and tested. These facts have all been extensively considered and tested before the acquittal ruling was passed,” said Luhut M.P. Pangaribuan, lead counsel for PTNMR.

On 24 April, a panel of five judges exonerated PT Newmont Minahasa Raya and President Director Richard Ness in the Buyat Bay case, finding them innocent of all charges. In its counter memorandum the Public Prosecutor has misinterpreted the considerations taken in the ruling passed by the District Court of Manado. A pure acquittal of the District Court of Manado is an acquittal with complete considerations based on the fact that the Prosecutor's Indictment, namely environmental pollution and destruction by PTNMR, has not been proven.

The Indonesian law is specific in prohibiting an appeal when the defendant is acquitted of all counts and charges, as was the case with PTNMR and Richard Ness. Articles 67 and 244 of

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the Law on Criminal Procedure (KUHAP) have also clearly specified the circumstances in which an appeal is not permitted:

Article 67: A defendant or public prosecutor shall have the right to appeal against a decision of a court of first instance except against a decision of acquittal, a dismissal of all charges related to a matter of inappropriate application of law and a court decision under express proceeding.

Article 244: The defendant or the public prosecutor may file a request for an examination of an appeal to the Supreme Court against a decision on a criminal case rendered at the final instance by a court other than the Supreme Court, except with regard to an acquittal.

In addition, Law No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights (ICCPR), Article 14 paragraph (7) stipulates as follows: No one shall be liable to be tried or punished again for an offence for which he has already been finally **convicted or acquitted** in accordance with the law and penal procedure of each country.

"The Manado District Court had spent 21 months reviewing 207 documentary evidence, hearing more than 62 local and international fact and expert witnesses presented by the Public Prosecutor and the defendants, and found the charges to be totally without merit. I fail to see why the Public Prosecutor would want to present the same material to be reviewed again. The allegations that Buyat Bay is polluted are a sham, and only supported by falsehood and error, and it is a shame that I am still defending myself for an alleged crime that has never occurred," said Rick Ness.

Legal expert, Prof. DR. Indriyanto Seno Adji, a professor of the Post-Graduate Program of Legal Studies in Law Faculty of Universitas Indonesia, in his article titled "*Polemics on the Buyat Case Cassation*," published in the May 23, 2007 *Investor Daily* on page 4, has stated that according to the Indonesian criminal law, there can be no appeal in the case of an acquittal, whatever the reason. This is to uphold legal certainty and the principles of justice for the defendant in criminal law proceedings.

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