

## Summary of Pledoi-1

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### Key points

- Pledoi-1 presents PT. Newmont Minahasa Raya's (PTNMR) response to the allegations by the prosecutor that it has been proven to have committed a crime of environmental pollution and destruction.
- The Indonesian Environmental Criminal Procedure Code stipulates that the burden of proof lies with the Public Prosecution Team. But based on the facts presented in the court, the prosecutor failed to prove that environmental crime was committed by PTNMR. The Requisitor provides no explanation as to why 25 witnesses, 19 experts and 200 pieces of documentary evidence presented over several months of testimony were not mentioned or considered in the final analysis of facts by the prosecution.
- All the competent scientific experts reached a consistent conclusion that people are normal, the fish are safe to eat, the seawater is clean and the whole Buyat environment is healthy.
- This case was flawed from the beginning because the investigation by the National Police headquarters committed the following five major violations of the Environmental Criminal Procedure Code:
  - First, as per the Contract of Work (CoW-agreement between Govt. of Indonesia and PTNMR) it is a requirement under the *due process of law* that Govt. of Indonesia serve a written notification to PTNMR about any wrong doing or negligence. If any wrong doing were found, then PTNMR had an obligation to rectify it. However, PTNMR never received any such notification from the Government of Indonesia related to any negligence about the CoW substance.
  - Second in the event of an environmental dispute, the law requires a sequential process of resolution starting with administrative measures, alternative dispute resolution, civil suit, and only when all these measures fail that a criminal process should be initiated. However, in this case the National Police Headquarters immediately proceeded to investigate this issue as a criminal act. This is a clear violation of the criminal procedural law.
  - Third, the National Police violated the procedural law provisions in the UULH *jo* Joint Decree of the MoE-POLRI-AG *jo* Gazette of the Deputy AG B-60/E/Ejp/01/2002 *jo* KUHAP (**Annex 2**). Thus the National Police violated the legal provisions they created themselves.
  - Fourth, the National Police violated the provisions of *Deputy AG's Gazette B-/E/Ejp/01/2002 regarding the Technical Juridical Guidelines for Cases of Environmental Crimes* (**Annex 4**).

- Finally, the National Police failed to follow the law governing the preparation of the Dossier of Investigation (BAP). The Police started the investigation based on the allegations by Dr. Jane Pangemannan. However, Dr. Jane Pangemannan retracted her Police Report (“LP”) but the Police continued to cite this Police report in the BAP.

The Police also disregarded the rights of the defendant to present their witnesses during the investigation process. Therefore the views of the witnesses and experts included in the BAP are only one-sided. The fact that there was no “preliminary evidence” and that witnesses and experts brought by Defendant-I were not interviewed for the BAP shows that the National Police violated the most basic laws governing the preparation of the BAP.

- Pre-trial was not conducted according to the law and the Letter of Indictment was issued by the Prosecutor at the North Sulawesi District Attorney’s office even though the National Police had not fulfilled the requirements of the Prosecutor’s guiding letters (P-19) that instructed the Police to examine further witnesses and evidence. Therefore, this case proceeded even though the legally binding investigation was incomplete. This is clearly a significant violation of Indonesia’s laws.
- Defendant-1 is charged under Law No.5/1994 that does not apply to an industry but is a law about the Ratification of the United Nations Conventions on Biological Diversity.
- The charges are based on wrong water quality standards (Kepmen 51/1995) and they do not apply to Defendant-1.
- The indictment and the charges have wrongly quoted the data from RKL/RPL reports and have misrepresented normal variability as exceedances of water quality standards. In reality, the last three years data of detox plant shows that the average parameter value was lower than 50% of the standard and therefore it would have qualified for a Green rating in KLH’s PROPER program.
- The evidence presented by the Prosecution through witness testimonies, witness evidence, documentary evidence, and other evidence fail to satisfy the established criteria for valid legal evidence. As a result, the Prosecution has simply failed to prove the charges.
- The facts of the trial based on the witnesses presented by the prosecutors and the defense clearly prove that no crime was committed and that there never was any pollution or degradation of the environment in Buyat Bay.
- It became clear during the course of the hearings that Defendant-1 had the necessary permits, tailings are not B-3 waste, fish are fit for human consumption, tailings were deposited well below the thermocline, and detoxification plant operated in full compliance with regulations.

- In conclusion the Prosecution failed to legally and convincingly prove that Defendant-1 committed any act that caused environmental pollution or degradation in Buyat Bay.