

## Summary of Pledoi-II

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- Pledoi-II is the response to the charges against Defendant II, Mr. Richard Bruce Ness, President Director of PTNMR.
- The charges against Defendant-II are legally wrong because they exist solely because of his position as the President Director and not because the defendant has taken any action that makes him legally responsible.
- Further the Prosecution has not provided a single legal fact that proves that environmental pollution or degradation happened. Instead the Prosecution has gone around in circles and quibbled about the issue of permit, whether tailing is B-3 waste or not, if the tailings were placed below the thermocline or if the ERA study was accepted or not. The central issue of whether or not pollution occurred was simply not the core aspect of Prosecutions case against the Defendant II.
- Since the Public Prosecutor has failed to prove that pollution occurred, Defendant II can not be criminally charged.
- The prosecution has relied solely on the results of the National Police Central Forensic Laboratory (PUSLABFOR) to prove that the seawater of Buyat Bay exceeded the quality standard. But Police results cannot be used as evidence because:
  1. PUSLABFOR is not accredited as required by the Decree of the Head of BAPEDAL No. 113 of 2000 regarding the General Guidelines for Environmental Laboratories.
  2. PUSLABFOR did not follow the sampling protocols of an accredited laboratory and conducted sampling with the involvement of non-independent parties like Dr. Rignolda Jamaluddin, who is publicly known to be biased against PTNMR and Defendant II.
  3. There is a discrepancy of 10 samples between the number of samples actually taken (24 samples) and the number of samples reported in the Indictment (34 samples). The unexplainable appearance of 10 samples completely renders the PUSLABFOR results invalid.
  4. Further, the results of the PUSLABFOR show that not only Buyat Bay exceeds the water quality standards but Totok Bay, Totok River and Buyat River are also polluted with arsenic and mercury. This is an impossible results because the tailings were never placed in Totok Bay, and Buyat and Totok Bays are separated and don't influence each others water quality. Therefore, it is clear that PUSLABFOR results are wrong and should be rejected by the court.
- From the very beginning, there have been several deviations in the case that give the impression that this case was forced upon the court. Doubts about the quality of this case was confirmed when the facts discussed in the court conclusively showed that

the charge of pollution and environmental degradation in Buyat Bay is nothing but a pure fantasy.

- The effort to manipulate the truth and hide facts did not occur only at the investigation and the pre-indictment stages but continued during the trial too when the Public Prosecutor resisted the determination of the Judges to seek the truth about true water quality in Buyat Bay through additional sampling in July 2006. When the Public Prosecutor disobeys the ruling of the panel Judges that aims to find the truth, it is major blow to Indonesia's justice system.
- The discussion of legal facts in the court decisively proved there is no pollution in Buyat Bay. First, it was proven by expert witnesses and through government studies that tailings are not toxic and hazardous waste (B-3). Second, the seawater quality in Buyat Bay has never exceeded the water quality standard. This was proven through the studies conducted by the government, and various independent national and international research organizations including the WHO and CSIRO. Third, based on the RKL/RPL reports on detoxification it was clear in the court that effluent quality was more than 50% lower than the government standard, and good enough to qualify for a GREEN rating in KLH's PROPER program. Fourth, the joint study of ITB and UGM showed that Buyat River is not polluted with arsenic or mercury. Fifth, the expert witness from ITB proved to the court that tailings were deposited nearly 40 meters below the thermocline. Finally, the marine biota in Buyat Bay remains healthy and the stock of fish remains strong to support the local residents and the economy.
- The existence of this case shows that power of rumors and politics over the legal and scientific facts on Buyat Bay. This case is a deliberate product of many years of NGO campaign and provocation, combined with politics and administrative failures. Certain NGOs and individuals have totally misrepresented and manipulated the true health conditions of Buyat Pante and manufactured this case to fulfill their personal goals.
- There is no evidence of any action taken by Defendant –II that could be considered a criminal act. The duty of the day to day operation of the mine is conducted by the General Manager at the mine site and not by the President Director of PTNMR.
- Defendant-II obtained all the permits and fulfilled the requirements of these permits through out the period of the mine operation.
- Further the Nov-2004 report of the Technical Team on Buyat Bay concocted the results using wrong formula, data and non-existent ASEAN standards to force the conclusion on the Government and the public that Buyat Bay is polluted. However, during the hearing it became clear that the mathematical errors in this report inflated the health risk fish from fish consumption by a factor of more than 4500%.
- Based on the legal analysis above, we conclude that **first**, the indictment and the Requisitor were made by violating applicable principles and based on wrongful investigation. The facts presented by the Prosecution in its Requisitor are based on a

number of unacceptable evidences as regulated under Article 184 of the Code of Criminal Procedure.

- **Second**, the elements of the primary charges under Article 41 paragraph (1) Law No.23/1997, namely: (i) whoever; (ii) unlawful; (iii) premeditation; (iii) committing an act causing environmental pollution and or degradation – not one of them has been proven.
- **Third**, the essence of Article 41 paragraph (1) Law No.23/1997 is the central question of environmental pollution. The legal facts have proven that there was neither pollution nor environmental degradation of Buyat Bay. Furthermore, the elements of “whoever”, “unlawful” and “premeditation” were also not proven. And that therefore it was not proven that Defendant II, Richard Bruce Ness committed an environmental crime as charged by the Prosecution.
- **Fourth**, by failing to prove the elements of the primary charges, then the subsidiary charges under Article 43 paragraph (1) Law No.23/1997, more subsidiary charges, under Article 42 ayat (2) Law No.23/1997 and even more subsidiary charges under Article 44 paragraph (2) Law No.23/1997 do not have to be proven because they have fallen on their own. Even more because the essence of Articles 43 paragraph (1), 42 paragraph (2) and 44 (paragraph 2) Law No.23/1997 are the same as the essence of Article 41 paragraph (1), that is, whether there has been pollution or environmental degradation in Buyat Bay. By having proven that no pollution and or environmental degradation has taken place then the subsidiary, more subsidiary and even more subsidiary charges have not been proven.