

Summary of Pledoi-III

- Pledois I and II focused on legal and technical facts that unambiguously established that the charges against PTNMR (Defendant I) and Mr. Richard Ness (Defendant II) are unfounded and can not be supported by any evidence at all. Pledoi-III highlights the human side of the Buyat case and shows that the failure of the rule of law and incompetent use of science has subjected an innocent man, Mr. Richard Ness, to an extremely unfair process.
- In opening remarks Mr. Ness requests the court to search for truth and separate facts from illusions. He emphasizes that the allegations of pollution are a sham. The Buyat case is a travesty because Mr. Ness is defending himself against a crime that never happened.
- Pledoi-3 complements the two previous pledois by keeping the focus firmly on the central question of whether or not PTNMR polluted Buyat Bay. And there is only one clear answer –Buyat Bay is clean.
- Indonesia’s law is very human and UUD 1945 guarantees that “every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law”. Unfortunately this principle was not followed by the Police and environmental regulators.
- PTNMR never broke any law but the custodians of law broke at least ten laws during the investigation, pre-trial and the trial phases of the Buyat case. These include:
 1. Wrongful allegation based on dr. Jane Pangemanan report.
 2. Wrongful detention of employees
 3. Wrongful investigative process
 4. Police breach of subsidiary principles
 5. Denial of right of suspect to present evidence and witness in their defense.
 6. Police removal of favorable evidence and testimony.
 7. Imposition of an illegal travel ban.
 8. Prosecution continued with full knowledge of police investigative violations.
 9. 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.
 10. Manado District Court’s ordered the prosecution to resample Buyat Bay – however the prosecution illegally challenged and did follow the Courts instruction.
- Judging from the nature of the above ten violations, it is clear that Buyat case exemplifies wrongful application of law, unprofessional conduct and unethical behavior on the part of several individuals.
- This case should not have continued to this stage but due to wrong perception, fiction, rumors, and distorted and misleading facts a normal situation was amplified into a

prominent national controversy. NGOs spread sensational accusations to the general public without any scientific and valid research evidence. These sensational accusations were eagerly embraced by the mass media, including the New York Times. Finally the Police Forensic Laboratory transformed such rumors into an actual court case by using samples that are not authentic. Bad situation got worse when certain high-ranking government officials added to the chaotic mess.

- Indonesia's history would remember this case for the violation of the Constitution, Indonesian Laws and Regulations and Human Rights. For instance 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. Further the process and execution of detention violated the procedures and requirements of detention as stipulated in the Criminal Procedural Law
- Buyat case was manufactured by denying the suspects their right to propose witnesses and evidence during the investigation. Human Rights Law clearly states that "every person without any discrimination is entitled to justice by the right to submit proposal, complaint and claim". This requirement is so basic that the denial to have evidence and witnesses could not be an oversight by investigators and the Police Headquarters. It is obvious that such actions are deliberate and intentional act to violate Mr. Ness's basic legal rights.
- Further the Police imposed an unlawful and inhuman travel ban on Mr. Ness. The Police disregarded the Habeas Corpus Writ and continued to detain and imposed a travel ban. Even after suspects filed and won an administrative suit against the Director General of Immigration in the Administrative Court, travel ban was not completely lifted. As a result of such illegal denial and refusal, Mr. Ness could not attend the funeral of his twenty months old only grandchild in the United States. The Buyat case has clearly left an irreversible personal pain for Mr. Ness.
- Buyat case also stands out for several unusual procedures and attitude of the law enforcers. These include the following:
 - Prosecution based on a one sided police dossier because the police did not complete 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.
- Pledoi-3 also applies a multi-media dimension to the pledoi presentation by showing the actual video clips of hearings to highlight that witnesses after witnesses from both prosecution and defense sides stated to the court that PTNMR had all the permits, tailings were deposited well below the thermocline, tailings are not B-3 waste, fish from Buyat Bay are safe for human consumption, there is no incidence of any arsenic or mercury poisoning in the Buyat Bay community and most fundamentally Buyat Bay is clean.

- In Mr. Ness's words, "The intent of 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, and that during the proceeding the Public Prosecutor's Team has failed to establish the truthfulness and validity of the Indictments and the Charges. It is important to emphasize that it was the Prosecutor's obligation, or burden, to prove each and every allegation in the indictment by presenting evidence that proved those allegations beyond a reasonable doubt. Neither I nor NMR had an obligation to present any evidence. Because the Prosecution failed to carry its burden of proof, there is no evidence sufficient to support a finding that a crime was committed. Moreover, 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.
- Mr. Ness ends his pledoi on an emotional note by invoking the memories and visions of the founders of Indonesia who gave up their lives for freedom and justice. By accepting an incomplete Police dossier, the prosecution has acted in a cowardly manner and has insulted the principles of fairness and equality envisioned by the founders and writers of Indonesia's Consitution. Mr. Ness accuses the prosecution of acting as the instrument of politicians and special interest groups and equates their behavior to mere "Wayangs" in a play called "Buyat Bay"?
- In conclusion Mr. Ness states that I have made every effort to abide by all laws and regulations of Indonesia in my personal as well as my professional life during my 20 years in this country. The accusation that I have knowingly and willingly participated in an act of pollution is abhorrent to me beyond words, and I will not stop until my name as well as those of my colleagues is fully cleared and the truth of the Buyat Bay hoax is exposed for all to see. I believe that I have proved beyond any reasonable doubt that **BUYAT BAY IS NOT POLLUTED!**