



FACT SHEET:

No Grounds for Appeal in the Buyat Bay Case

On April 24, 2007, after a 21-month trial that included the testimony of dozens of witnesses and the review of numerous independent studies (WHO/ Minimata Institute, CSIRO, Indonesian Ministry of the Environment) the Manado District Court exonerated Rick Ness and PT Newmont Minahasa Raya (PT NMR) of all charges brought against them. Indeed, the Court also held that the allegations against the defendants had no merit, whatsoever, and the case should never have been brought before the Court. In sum, the Manado District Court issued a judgment of acquittal.

Immediately after the verdict, the Manado prosecutors stated they would appeal the exoneration, despite the fact that Indonesian law prohibits appeals of acquittals. Regardless, on May 7, 2007, the prosecutors filed a notice of appeal with the Manado District Court and submitted a supporting memorandum on May 21, 2007.

The Law:

The Indonesian Code of Criminal Procedure (“CCP”) is very specific about when appeals are or are 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.”*

Minister of Justice Decree No.M.01.PW.07.03 of 1982:

“If Article 244 CCP is read in conjunction with Article 67 CCP, then it is clear that with regard to a judgment of an acquittal, irrespective whether the acquittal was correct or incorrect, an appeal or examination in cassation cannot be requested.”

Article 14 paragraph (7) ICCPR as ratified by Law No.12 of 2005:

“No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”



The Charges:

Four key allegations were made by the prosecution against PT NMR (Newmont) and its president director, Richard Ness. Below, each charge is outlined along with the Manado District Court's finding in the 279 page verdict.

- Charge # 1: Newmont did not have the proper permits to operate or dispose of waste rock through Submarine Tailings Placement (STP).
- Court's Finding: *"PT. Newmont Minahasa Raya has secured a complete permit to carry out its mining operations, including the permit to store and manage B3 [waste], especially STP for PT. Newmont Minahasa Raya has been permitted since AMDAL was approved by the Government."* [Page 429]
- Charge # 2: Newmont's operation exceeded permitted mercury and arsenic amounts in its discharges
- Court's Finding: *"Considering that as expressed by Witness/Expert Nabel Makarim, the former Minister of Environment for the period of 2001-2004 in court, who explained in essence that while serving as the Minister of Environment [he] never gave reprimands, either verbally or in writing, to PT Newmont Minahasa Raya mining business because according to the Expert/Witness PT Newmont Minahasa Raya's documents have fulfilled all permit regulations applicable in Indonesia, including management and placement of [its] tailings waste."* [Page 450]
- Charge # 3: Buyat Bay's waters were polluted by Newmont's operations and disposal of tailings on the sea floor
- Court's Finding: *"Similarly, KLH [Indonesian Ministry of the Environment] had also conducted studies on Buyat Bay and never found pollution in excess of environmental quality standards. The results of KLH Integrated Team study published on 14 October 2004 on KLH site, www.klh.go.id concluded that mercury and arsenic levels in Buyat Bay were not in excess of the quality standards established by the Government."* [Page 432]
- "Considering that with the study findings, research by various national and international institutions, in essence [concluding] that in Buyat Bay and surrounding areas the seawater and sediment, marine biota and humans are not contaminated by heavy metals and are still below the quality standard limits established by the government as stipulated in the Decree of the Minister of Environment No.51 of 2004 and No.2/Men-KLH/1988 and Government Regulation No.82 of 2001. This shows that the process of tailings waste processing performed by PT Newmont Minahasa Raya with its detoxification system, which is the process of returning the minerals to their natural state, and stabilizing other compounds, has been conducted well."* [Page 476]



Charge # 4: Area residents suffered adverse health effects including skin conditions resulting from mercury and arsenic from PT NMR's operations

Court's Finding: *"Skin conditions suffered by a number of residents of Buyat Pante are the same as skin conditions in other areas, that is, dermatitis, scabs and eczema. And skin diseases suffered by Buyat Pante residents are not related to heavy metal poisoning."* [Page 434]

"Baby Andini suffered an illness due to lack of nutrition and was examined by a doctor, given medication, but because the parents never went back to the doctor, and apparently because the medication prescribed by the doctor was never taken again, her condition deteriorated, causing her eventual death..." [Page 438]

The Agenda:

After 21 months of observing the prosecution's case, the Manado District Court had this to say about ongoing efforts alleging that PT NMR polluted Buyat Bay:

"Considering that as explained by Expert Witness Nabel Makarim, the former Minister of Environment, that it seems that from the onset PT Newmont Minahasa Raya has been made a target by certain parties who carried the issue of pollution in Buyat Bay, Minahasa. This was evident from the shifting of issues that were brought up. Beginning from the Minamata disease issue, and after it was not proven then it shifted to polluted water, polluted fish, and after all were disproved then the issue of sediments were brought up." [Page 454]

"Considering that the testimony of Expert/Witness, Nabel Makarim, seems to be consistent with the reporting of local media Manado Post of 11 August 1995 reporting that PT Newmont Minahasa Raya has committed pollution in Buyat Bay, whereas PT Newmont Minahasa Raya itself only began its mining operations in 1996. It is impossible that PT Newmont Minahasa Raya would have polluted before it went into operations, that is, in 1995 as reported by Manado Post." [Page 454]

"Considering that according to testimony of witnesses Rasyid Rahmat, Surtini, Nurbaya Pateda, Masna Stirman, Marjan Ismail, Mansur Lombonaung, Yulia Ratumbahe who in essence all stated that their relocation from Buyat Pante to Dominanga was their own will because of the issue of all kinds of strange diseases in Buyat Pante as a result of PT Newmont Minahasa Raya's tailings waste. But due to the civil suit from those witnesses against PT Newmont Minahasa Raya which ended in the Goodwill Agreement where in essence they realized that they were provoked by a group of people or non-governmental organizations who spread the rumour of strange illnesses without accurate data or evidence (see evidence T.I-5, T.I-6 dan T.I-7)." [Page 455]