

VERITAS

The Pursuit of Truth and Justice in BUYAT BAY

Response to Charges (Pledoi)

Case Number: PDM / TDANO / 05 / 2005

by: **Richard B. Ness**

Defendant II

13. CONCLUSIONS

Your Honorable Panel of Judges:

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**.

The primary elements of the Indictment and the Charges, namely: (a) **the existence of an unlawful act**, is untrue and incorrect. The evidence demonstrates beyond reasonable doubt that I have adhered to and have performed each and every applicable Indonesian Law and Regulation and that fact remains that Buyat Bay is not polluted. Buyat Bay never was, is not today, and never will be polluted by mine tails from NMR’s mining operations, (b) **that there is negligence on my part in performing my duties** is also untrue and has never been proven, because it is clearly established during the proceeding of this Criminal Case and in this Pledoi that I and NMR have fulfilled all obligations under the Indonesian Laws and Regulations, AMDAL, RKL and RPL, and obtained a valid and in force license to carry out mining activities and operations in Mesel, South Minahasa, including the license for the disposal of NMR Tailings to the Buyat Bay seabed in accordance with AMDAL and Permit

issued from the Environmental Ministry; (c) that it is also completely untrue **that NMR does not possess any license or permit to dispose NMR Tailings to the Buyat Bay Seabed** because NMR has obtained AMDAL and a Permit from the Minister of Environment which clearly permit and allow the disposal of NMR Tailings to the Buyat Bay seabed as the most environmentally safe method of disposal; indeed, based on the evidence presented -- the Government issued AMDAL for tailings disposal; the Government issued Permit dated 11 July 2000; the Government knowledge of ongoing tailings disposal as shown by, for example, Isa Karnisa's March 2002 letter; the Government acceptance of quarterly RKL/RPL reports on the quality of the tailings discharge; and, among other evidence, the testimony of former Minister of the Environment Nabel Makarim that NMR had a permit to dispose of tailings -- it is an act of stupidity for the Public Prosecution Team, whose duty is to seek and present the truth, to continue to assert that NMR disposed of tailings without a permit (d) **the act of not preventing toxic tailing disposal** is also completely untrue and unsubstantiated because it clearly has been established during the proceedings of this criminal case and in this Pledoi that tailing from NMR are basically an inert substance which will not harm the environment and all testing conducted by both the Government of North Sulawesi and NMR confirm that the tailings are not a B-3 waste (e) it is also wrong that the statements in the Indictment and the Charges state that **"even that I already knew NMR did not have a permit to dispose tailing to the sea, however I did allow /did not give any instruction to stop the disposal of tailings to the sea by NMR"**. I always knew that NMR had obtained the permit or license to dispose of NMR Tailings to the Buyat Bay seabed from the fact that NMR obtained the AMDAL, Operating License from the Department of Mines, and was in receipt of a valid Permit issued by the Ministry of Environment, and as such the disposal of NMR tailings to the Buyat Bay seabed had always been authorized or permitted by the Indonesian Government. The disposal of NMR tailings to the Buyat Bay seabed since the early stage of NMR operations in 1996 was legally and administratively permitted and authorized by the NMR's AMDAL and the monitoring of the environment was actively reported to the Government in NMR's RKL/RPL

Reports - even to this day, and the disposal of NMR tailings to the Buyat Bay seabed after the promulgation of the Environmental Law was legally and administratively permitted and authorized by the Ministry of Environment's Permit.

Moreover, if such disposal was conducted without permit, the Indonesian Government based on the Contract of Work, the Mining Law, and the Environmental Law would have issued a warning to NMR to obtain the permit, or even stop operations pending the obtaining of the required permit. The Indonesian Government has never issued such a warning, and has never instructed myself or NMR to stop its mining operations or to stop disposing NMR's tailings to the Buyat Bay seabed. The Charge ***"even that I already knew NMR did not have a permit to dispose tailing to the sea"*** is preposterous, I knew just the opposite.

The fundamental fact remains, **BUYAT BAY IS NOT POLLUTED**. Without pollution there is no crime, and the charges, the consequent request by the Prosecution for a 3 year prison term for maintaining a perfectly clean bay is a disgraceful act!

It has also been proven, by the Defense Team, beyond any reasonable doubt that I am not the one who broke the law but that there were violations of the laws and regulations by those that investigated, testified and vigorously prosecuted this case. These violations of the laws and regulations are a clear breach of my human rights as set forth by any standard, whether under Indonesian laws or any international convention on human rights.

Based on the evidence, this honorable Panel of Judges can conclude with absolute confidence that **I am innocent of all Charges that have been brought against me.**

Before I make my request to The Honorable Panel of Judges concluding this Pledoi, there is a broader conclusion that I have drawn during the drafting of this document that I would like to express. Even though I am not a citizen of this Nation, I am very familiar with its people, I try to understand its wide and

diverse culture, I have looked at the nations history and how it evolved from a colonial state to the third largest democracy in the world. In such a nation, one must ask how did this case even evolve to be in a criminal court? Us all sitting here today debating a two and a half year old hoax is preposterous. Buyat Bay is not polluted, its people are not impacted by heavy metals from mine tailings, Buyat Bay waters are pristine with abundant fish and aquatic life. Anti-mining and anti-development NGOs have made noise before and even tried to perpetrate the Minamata Hoax and nothing happened, so what is different this time? Are it the people involved and their supporters that make the primary difference?

I would like every one at the prosecutions table to consider the following; Your fathers and grandfathers were men with principles, courage and integrity, they held a belief and had a dream. That dream was a free and independent Nation, governed under law. This nation they dreamed of was Indonesia and the Law they drafted and ratified was your Constitution, known a UUD 1945. **IN YOUR OWN CONSITIUTION** in the **FIRST** article it states that ***“the State of Indonesia is a state based on law”***. A state based on the rule of law was not included as an afterthought; it is primary in the first article. This is what your fathers and forefathers fought and died for against the Japanese occupation, and this is under what principle and dream they fought and died for when fighting the Dutch for Independence. Your red and white flag is their symbol of that belief. Following and assuring that ***“every person shall have the right to receive recognition, security, protection and legal certainty based on fair and equal treatment before the law”*** is what they fought for. What part of this do people investigating and prosecuting this case have a problem understanding and abiding by? This is the primary difference between what happened when the anti-development NGOs made unfounded allegations in 2001 and what happened in 2004. Relating to the Buyat hoax, from 2004 until today no one has followed the rules, the rules of investigation, or the rules of human rights. The Prosecution with assistance and maybe pressure accepted a one-sided case file that they knew was defective and had not been properly investigated; they indicated such in their first P-19's when they returned the case back to the police. One does not need a law degree to see that

procedures had not been followed and human rights denied. In the simplest terms, it is clear that the investigation of PTNMR and myself has been unfair, and if it is unfair it is unreasonable, and if it is unreasonable, it is unlawful.

I believe your fathers and forefathers would have to agree, as they also declared in their constitution that ***“Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right”***

I for one do not think that I have been afforded such rights through the investigative or prosecution stage and this has been proven before this court. So far, this case has been a sham and a mockery of the legal process dreamed of by your fathers and forefathers.

Your forefathers were also people who believed in not only the law but in God. If one does not believe in its nations constitution and laws, believe in those sent down by God. If you are Muslim; the Holy Koran states in S.4-135: ***“O ye who believe! Stand out firmly for justice, as witnesses* to Allah, even as against yourselves, or your parents, or your kin, and whether it be against rich or poor. For Allah can best protect both”*** – (*This means something higher than formal justice or human law – we are to act as in the presence of Allah, to whom all things acts and motives are known.) If you are Christian, the Bible in Mathew 23:23 states ***“Woe to you, experts in the law and you Pharisees, hypocrites! you neglect what is more important in the law – justice, mercy, and faithfulness! You should have done these things without neglecting the others.”***

Has the investigators, certain government regulators and the Prosecution of this case been in accordance with both the rules of God and Man? Ask yourselves, are you prosecuting this case based on what your fathers and forefathers fought and died for, are you upholding their dream of the Republic of Indonesia as a ***state of law***? Are you upholding your own personal beliefs as one who believes and follows the rules of your God? Or are you allowing yourselves to be the instrument of politicians and special interest groups and are mere “Wayangs” in a play called “Buyat Bay”?

If you can answer to yourself that you are doing something that would make your fathers proud of, if you honestly believe that your are following the laws of this Nation and your God, so be it, go home in peace tonight and think about drafting your counter arguments to my Pledoi. If I am correct, and you honestly do not believe that you have followed and are enforcing the law, then state so when you make your counter-motion and stop what I believe is a sham and a mockery of your judicial system, fight for the truth, ***Stand out firmly for justice.....even as against yourselves.***

I believe I have shown in this Pledoi that science has been manipulated by unscrupulous individuals to paint a picture of health problems and pollution, when it is clear to anyone who spends one hour in Buyat Bay and the surrounding communities that the area enjoys an environment and health status that would be the envy of the majority of the people living in the world.

I believe I have show that certain politicians, NGO members and member of KLH have rewritten NMR's history to support their political agendas or their prejudices against the company and myself and to support the prosecution of this case.

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!