TONDANO DISTRICT ATTORNEY OFFICE

“PRO JUSTICE”

REPLY (REPLIK)

PUBLIC PROSECUTOR RESPONSE TO THE DEFENSE OF DEFENDANT I PT NEWMONT MINAHASA RAYA, DEFENDANT II RICHARD BRUCE NESS AND RICHARD BRUCE NESS AS AN INDIVIDUAL.

MANADO 23RD FEBRUARY 2007

TONDANO DISTRICT ATTORNEY OFFICE

"FOR JUSTICE"

REPLY (REPLIK)

PUBLIC PROSECUTOR RESPONSE TO THE DEFENSE OF DEFENDANT I PT NEWMONT MINAHASA RAYA, DEFENDANT II RICHARD BRUCE NESS AND RICHARD BRUCE NESS AS AN INDIVIDUAL.

Honorable Panel of Judges,

Defendants,

Defense Counsel

Honorable Court,

First and foremost let us praise God Almighty for enabling us to meet here today in good health.

Allow me to take this opportunity to express my thanks and appreciation to the Panel of Judges for allowing us to submit our Reply in this Court today. We also extend our thanks and appreciation to the Defendants' Defense Team and to the Defendants themselves for their extensive and detailed Defense.

The first impression after taking a fleeting look at the Defendants' Defense documents, is that we see a very good package, tidily collated, attractively written and presented in full color. This is very different from the Public Prosecution's Charges and also from the Public Prosecution Reply to the Defense which is very modest by comparison. However as Public Prosecutor we appeal to this Court not to be dazzled by the physical appearance only but to consider the substance contained in it. As the proverb says, "Don't judge the book by its cover…!!!".

Having heard, read and studied the whole content of the lengthy and tiring Defense documents submitted by the Defense Teams for Defendant I, PT Newmont Minahasa Raya, Defendant II Richard Bruce Ness and Defendant II Richard Bruce Ness as an individual, it is now our turn as Public Prosecutor to submit our Reply to address all aforementioned Defense documents. It has taken considerable time to read and digest the content of the Defense given the large number of pages and issues raised. However, after an in-depth study and thorough understanding of the Defense content as submitted, we were able to conclude that **the Defense [documents] submitted by the Defendants did not in any way undermine the Charges we submitted, but in fact strengthened our evidence of this case** as we detailed in the Charges we read at a previous hearing.

However, we shall address the Defendants' Defense documents with the intention to further clarify to this Court the crime of the Defendants. The Public Prosecutor's Response addresses concurrently the three Defense documents submitted by the Defense Teams for Defendant I, PT Newmont Minahasa Raya, Defendant II, Richard Bruce Ness and Richard Bruce Ness as an individual that were read and submitted to this Court in a previous hearing. We have done it this way given the many similarities in the content of the Defense of Defendant I, PT Minahasa Raya, Defendant II, Richard Bruce Ness and Defendant II Richard Bruce Ness as an individual.

Honorable Panel of Judges,

Defendants,

Defense Counsel

Honorable Court,

We will take this opportunity to detail the content of the Defendants' Defense documents and will respond to each and every point. To make it easier for the Court we shall use code (Pled I) for the Defense of Defendant I, PT Newmont Minahasa Raya, (Pled II) for the Defense of Defendant II, Richard Bruce Ness and (Pled III) for the personal Defense of Defendant II, Richard Bruce Ness. Our complete elaboration is as follows:

1. That the Charges were not based on the facts of the trial or legal facts because:

   a. Of the 46 witnesses, 28 expert witnesses and 207 items of documentary evidence, the Public Prosecutor only considered the testimonies of 21 witnesses, 9 expert witnesses and 7 items of documentary evidence.

   b. The Public Prosecutor only referred to the testimonies of Dra Masnelyarti Hilman, MSc, Ir Sulistyowati, MM, and Ir Isa Karmisa only. (Pled I page 1-2, Pled II, Pled III).

Public Prosecutor's Response:

1) With the Defense Counsels for the Defendants and Defendant II Richard Bruce Ness asserting that the Public Prosecutor's Charges considered 21 witnesses, 9 expert witnesses and 7 items of documentary evidence, this means that the Defense teams for the Defendants and Defendant II Richard Bruce Ness [as an individual] have recognized that the Charges meet the evidence requirements as stipulated in the Code of Criminal Procedure pursuant to Article 184 of the Code of Criminal Procedure (KUHAP) where paragraph (1) states that legal evidence consists of:

   a. witness testimony

   b. expert witness testimony

   c. documents

   d. guidelines

   e. Defendant testimony

2) Assuming that the claim of the Defense teams for the Defendants that the Charges only refer to the testimonies of 21 witnesses, 9 expert witnesses and 7 items of documentary evidence is correct, then the Public Prosecutor's Charges have already met the formal evidence criteria as stipulated in the KUHAP because the evidence used as the basis for the charges was at the very least consisted of: 1) witness testimonies, 2) expert witness testimonies and 3) documentary evidence.

3) The statement by the Defense teams for the Defendants and by the Defendant himself stating that the Public Prosecutor only referred to the testimonies of Dra Masnelyarti Hilman, MSc, Ir Sulistyowati, MM, and Ir Isa Karmisa only contradicts previous statements that the Public Prosecutor

only referred to the evidence of 21 witnesses, 9 experts and 7 items of documentary evidence in the Charges.

2. That the case was further complicated by the intervention of external interests and by the non-application of the Subsidiary Principle. (Pled I, page 3, Pled II page 11 and 14, Pled III)

Public Prosecutor's Response:

That in this case the Public Prosecutor did not experience any difficulties or even consider the case to have been complicated by external interests because for the Public Prosecutor, all actions taken by parties considered to be the development of external interests are guaranteed by the Constitution, precisely in Article 28 (h) paragraph (1) of the 1945 Constitution Amendment II which states that, *"everyone has the right to physical and spiritual prosperity, to an abode, to a good and healthy environment and to obtain health services"*. Law no 39/1999 on Human Rights states in Article 9 paragraph (3) that *"everyone has the right to a good and healthy environment"*. Additionally, Law 23/1997 on Environmental Management states in Chapter III on the Rights, Obligations and Role of the People, in Article 5, that:

(1) Everyone has equal rights to a good and healthy environment

(2) Everyone has the right to obtain environmental information in relation to the environmental management role

(3) Everyone has the right to play a role in environmental management pursuant to the regulations of applicable laws.

Based on these stipulations, it is obvious that all actions taken by these parties may not be construed as an intervention in this case but that instead [should be viewed as] a form of participation and public reaction in relation to efforts to manage a good and healthy environment.

It is in fact the statements of the Defense teams and the Defendant himself that justify and confirm that this case has, at the very least, raised a strong public/ community reaction based on unrest and that therefore the criteria have been met to justify an exception in the application of the subsidiary principle whose alternative nature states that criminal law may be applied if:

- *administrative and civil sanctions and alternative environmental dispute resolutions are not effective and/or*

- *the perpetrator's crime is sufficiently serious and/or*
- *the consequences of the act are relatively large and/or*
- *the act has caused public unrest.*

(see General Elucidation of Law 23/1999 re: Environmental Management).

That given this exception of an alternative nature, if one of the criteria has been met, then criminal law may be applied. In this case the alternative to apply criminal (law) was because *the perpetrator's guilt level was relatively high and/or because the act caused public unrest* arguing that:

1) it is public knowledge and it requires no further proof that this case is **an environmental pollution case that has attracted the attention of the national and international community.** National and international mass media extensive coverage, the involvement of several parties, be it the community, NGOs, experts, local and central government officials prove this fact. The attendance to this trial of a State Minister for the Environment together with his deputy, the Deputy Attorney General for Generic Crimes and a Director, a senior Police Officer, a judicial Commission, the Governor, the Regional Police Chief, members of the North Sulawesi parliament and several civil and military officials provide further evidence that **this case has received considerable interest from all parties because of the public unrest it has caused.**

2) Based on the Study report from the team for the Handling of Alleged of Pollution and or Environmental Degradation in the Villages of Buyat Pantai and Ratatotok established by the State Minister for the Environment (evidence P-4) and the Minutes of the test results from the Police Forensic Laboratory no: 4171/KTF/2004 of 27th September 2004 facts were obtained that **serious pollution and or environmental degradation resulting from PT Minahasa Raya's mining activities had taken place in Buyat Bay**.

3) **Public unrest in Buyat Pantai related to the environmental conditions of their place of residence as a result of the mining activities of PT Nemwont Minahasa Raya caused the people of Buyat Pantai to be relocated to a different place.**

Seen from a social perspective it is very traumatic for a person to leave the place where the people of Buyat Pantai have resided for a long time. However the relocation had to take place to avoid even further suffering. The unrest was not confined to the

community of Buyat Pantai but also involved other communities, experts and government as well as PT Newmont Minahasa Raya itself. That subsequently PT Newmont Minahasa Raya and the Government of Indonesia entered into a Goodwill Agreement to appease the unrest as stated in the preamble of the Goodwill Agreement with regards to Monitoring and Post-Mine Closure Sustainable Development in line 4 *"that the two parties recognize that there are other parties expressing different views regarding the present environmental impact and the potential for future negative impacts. Therefore both parties agree that further research, monitoring and scientific analysis are required to reach final conclusions"*. The unrest experienced by PT Newmont Minahasa Raya itself was strengthened in Article 4.5 of the Goodwill Agreement by retracting the appeal on the *habeas corpus* ruling in the South Jakarta District Court on the civil suit filed by the Government of Indonesia. [unclear sentence]

That the Defense teams for Defendants I and II also argued the statement made by Bagir Manan, the Head of the Indonesian Supreme Court in a "Mediation and Conflict Resolution in Indonesia" seminar organized by IAIN Walisongo, Semarang, on 3rd August 2006 that the Government did not need to find a suspect in the hot mud leakage case of PT Lapindo in Porong, Sidoarjo, East Java. Even if Bagir Manan statement was correct, his statement cannot legally become an argument to assert that charges should not be brought against Defendant I PT Newmont Minahasa Raya and Defendant II, Richard Bruce Ness.

3. That the Goodwill Agreement was an administrative resolution (Pled I, page 2, Pled III).

Public Prosecutor's Response:

That the administrative resolutions of environmental disputes are stipulated under Law 23/1997 on Environmental Management and that no reference is made in it to the term *Goodwill Agreement*. That the Goodwill Agreement was an agreement of good intentions between the Government of Indonesia and PT Newmont Minahasa Raya regarding monitoring and post-mine closure sustainable development. However, the existence of such an agreement does not invalidate the criminal element and therefore it may not be used as an argument for apology or justification by the Defendant to be released of criminal charges. Therefore, criminal law will still be upheld as stipulated in Article 30 paragraph (2) of Law 23/1997 on Environmental Management, namely that: *"The out of court resolution of a dispute as intended in paragraph (1) is not applicable to environmental crimes regulated under this legislation".*

Although the Defense team and the Defendant might be correct in arguing that the Goodwill Agreement is an administrative solution, the Goodwill Agreement itself confirms in Article 4.6 (ii) that *"this clause does not make it an obligation for the Government to stop a criminal case already in progress in the Manado District Court (Criminal Case).*

4. The Defense team for Defendant I, PT Newmont Minahasa Raya, in its Defense stated that in a corporate crime the corporation or the legal entity and not the individual is to be found guilty and accountable of the crime charged in a court of law. It also maintained that the parameters to differentiate between an act that, as it has been argued by the Public Prosecutor, is an individual act or the act of a legal entity involving individuals is unclear. Therefore, the claim that PT Newmont Minahasa Raya is guilty and accountable is no more than a mere opinion or perception. Although Defendant I, PT Newmont Minahasa Raya is a legal entity, the investigators unilaterally summoned Richard Bruce Ness who was then declared as a defendant by the Public Prosecutor in his capacity as a representative of PT Newmont Minahasa Raya. At the same time, by virtue of his position as President Director, Richard Bruce Ness was named as Defendant II. This would cause a conflict of interest and the Charges would therefore be in violation of the principle of self-incrimination. Therefore, in legal terms, PT Newmont Minahasa Raya and not the investigator or the Public Prosecutor should have determined who could represent PT Nemwont Minahasa Raya as Defendant in this case. (Pled I pages 3-4, 26-28).

   The Defense teams for Defendant I and Defendant II stated that not all PT Newmont Minahasa Raya's activities were the direct responsibility of the President Director. When Defendant II joined (the company) he only carried out the existing system, starting from his duties and responsibilities as a President Director of PT Newmont Minahasa Raya, to the operational activities of PT Newmont Minahasa Raya (Pled II page 7, Pled III).

Public Prosecutor's Response:

That pursuant to Article 46 of Law 23/1997 the legal subject from whom legal accountability can be demanded is not solely the corporation but also the corporation leadership or the parties giving instructions. The leader or the person giving instructions may be an "individual", however said "individual" is placed in the context of

corporate crime (see article 46 Law 23/1997) and not as an individual in the context of articles 55 and 56 of the Criminal Code (KUHP). Prof. Dr. Muladi SH remarked that, as regulated under Law 23/1997 on Environmental Management, criminal accountability could be demanded of a corporation official as an individual in a leading position and in addition, because the act committed included the element of intent or negligence in a corporate crime and that therefore the corporation could be held criminally liable under the principle of punishment provision. Criminal liability may be sought for both, the corporate official as an individual in a leading position and the corporation. Prof. Muladi's opinion is aligned with the provisions of Article 46 paragraph 1 of Law 23/1997, namely that, *"If a crime as intended in this chapter is perpetrated by or on behalf of a legal entity, limited company, association, foundation or any other organization criminal charges are submitted and criminal sanctions and disciplinary sanctions are applied pursuant to Article 47 to the legal entity, limited company, association, foundation or other organization or to those who instructed to commit the crime or lead in committing the crime, or both of them".* In this specific case criminal accountability is sought from the [individual] giving the instructions and the corporation pursuant to the stipulations of Article 46 of Law 23/1997. In the Public Prosecutor's Charges, pages 145-161 and pages 177-192 under the section of proving the element of "any person who violates the law" and the "element of intent", the criminal liability of PT Nemwont Minahasa Raya as Defendant I and Richard Bruce Ness as Defendant II in his capacity as President Director of PT Newmont Minahasa Raya is clearly detailed. Essentially, Defendant II Richard Bruce Ness as the President Director of PT Newmont Minahasa Raya was named and held accountable in this case in his capacity as the leader or the individual giving instructions based on letters 038/III/rn-kl/NMR/01, 195/V/rn-kw/NMR/2001, 061/IX/kl/NMR/2001, 064/X/kw/NMR/2001, 068/XI/kw/NMR/2001, 069/XI/kw/NMR/2001 all signed by Defendant II himself thus proving that Defendant II acted as a leader responsible in carrying our the interests of Defendant I.

The additional testimony of Defendant II Richard Bruce Ness himself who stated that as the President Director of PT Newmont Minahasa Raya he was the person managing the corporation in line with the Articles of Association of PT Newmont Minahasa Raya and that Defendant II represented the corporation in its relations with the government at national level in the interest of the company, while Defendant I PT Newmont Minahasa Raya was named in this criminal case as the corporation. Defendant II is also the person who knew for sure that the government, in this case the provincial government of North Sulawesi, The Regional office of the department of

Mines often conducted studies on the environmental situation around Buyat bay, which included receiving the RKL/RPL and the Annual Working Plan from PT Newmont Minahasa Raya (see Defense document, Defense team Defendant II page 58). This was further confirmed by the admission that Defendant II Richard Bruce Ness as the President Director of PT Newmont Minahasa Raya was the most competent and most responsible individual and that as the leader whose knowledge was not only limited to relations with national government but also government relations at local level he can be held criminally liable.

5. The Defense Team stated that:

    1) The communities of Buyat and Ratatotok had the right to file charges.

    2) The Defendants and the Defense Teams had the right and saw it necessary to exercise their right to voluntarily assist in proving that no pollution nor environmental degradation had taken place in Buyat Bay or that any law had been violated [by PTNMR] in conducting its mining operations in South Minahasa. Reasons: 1) the [initial] allegations that then became the indictment and the charges from the Public Prosecutor did not make sense; 2) PT Newmont Minahasa Raya conducted its social obligations in favor of the people of Ratatotok and Buyat who were the victims [of what?] and not [to the advantage of] the politicians or anybody else outside Buyat Bay. That [social] responsibility had become the legal commitment of PT Newmont Minahasa Raya for 10 years following mine closure as stated in the Goodwill Agreement (Pled I page 5, Pled III).

Public Prosecutor's Reply:

1) In line with regulations and the Indonesian legal system the Public Prosecutor is legally authorized to represent the legal feelings of a community who has become the injured party as a result of crimes committed by the defendant. Because this case is within the scope of public law under the regulations of Indonesian Law, the Public Prosecutor represents the claims for public justice. The Defense team statement that only the people of Buyat and Ratatotok may file a suit is not in line with [applicable] regulations and the Indonesian legal system. It would be advisable for the Defense Team to go and study in-depth the [applicable] regulations and the Indonesian legal system.

2) Should it be correct that Defendant I PT Newmont Minahasa Raya and Defendant II Richard Bruce Ness planned to show their social responsibility as stated in the Goodwill Agreement, what must be understood is that the indicted crime and the charges against the Defendants refer to crimes already committed and not to desires or plans for future implementation. Therefore desires and plans do not invalidate the crime already committed.

6. The Defendants stated that they had submitted evidence in the form of witnesses, expert witnesses and documentary evidence. In the analysis of expert witness testimonies it is stated that conclusions are based on consistent study results and analysis (Pled I page 5, Pled II pages 7-9).

Public Prosecutor's Response:

Based on Indonesian High Court Jurisprudence no: 1479K/Pid/1989 of 20th March 1993 in the PT Sidomakmur and PT Sidomulyo pollution cases it was confirmed that evidence acceptable in a court of law had to meet the criteria of legal and valid. Legal, meaning that [evidence] is sought and submitted by the investigator through an investigative process pursuant to the KUHAP while valid means that [the evidence] is based on scientific methodology. In this case the Public Prosecutor submitted a piece of evidence, namely, the Minutes of the Report Analysis of Police Forensic Laboratory no: 4171/KTF/2004 of 27th September 2004 which already met the criteria of legal and valid as stipulated in the abovementioned Jurisprudence. Therefore, should the Defendant be in possession of evidence that can refute or disqualify the documentary evidence submitted by the Public Prosecutor in the form of the Minutes of the laboratory Analysis of the Police Forensic Laboratory no: 4171/KTF/2004 of 27th September 2004 then it should be established that the evidence submitted by the Defendant does not meet the legal and valid criteria as determined in the Indonesian High Court Jurisprudence. [unclear sentence]. The Defense teams for Defendant I and Defendant II in this court have stated and submitted evidence that their analysis were always undertaken by accredited laboratories and that they did not recognize the results of the Police Forensic laboratory by arguing that said laboratory was not accredited. However the opinion of the Defense team for Defendant I and Defendant II should be disqualified as irrelevant based on Indonesian High Court Jurisprudence no: 4171/KTF/2004 of 27th September 2004 above. In the criminal legal system if an illegal piece of evidence is found, such evidence shall be immediately disqualified

without considering whether the evidence meets the valid criteria in terms of methodology.

7. The Defense team for Defendant I and Defendant II argued that based on facts, the Defendants never received any written warning regarding the activities they conducted (Pled I page 5, Pled III).

Public Prosecutor's Response:

That all arguments submitted by the Defense team for Defendant I and Defendant II that demand that a warning letter should be issued before a crime is committed [?] are not pursuant to the exception of the Subsidiary Principle that they [the defendants] have recognized it because from the beginning the Defense teams for Defendants I and II have admitted there had been public unrest and that it represented an exception to the [applicability?] of the Subsidiary Principle (see General Elucidation of Law 23/1997 on Environmental management) as detailed under point (2) above.

8. The Defense team for Defendant I argued that the Minamata disease was fictitious (Pled I page 5)

Public Prosecutor's Response:

That this argument is completely irrelevant for submission in this criminal case because the Minamata disease was never mentioned or discussed in the Indictment, evidence presented in this court or in the Charges of the Public Prosecutor. On the contrary, this argument already proves that the statement on Minamata disease was made up by the Defendant/s.

9. The Defense teams for Defendants I and II stated that no pollution or environmental degradation had taken place in Buyat Bay based on public knowledge stating that:

    1) Together we had seen the conditions in Buyat Bay

    2) Together we had heard and examined evidence and recorded all explanations originating from it (Pled I page 7, Pled II, Pled III).

Public Prosecutor's Response:

This argument is based on a very narrow and confusing conceptual pattern when looking at pollution and or environmental degradation. In an environmental case it is not possible to just base [claims?] on perfunctory observations unsupported by legal and valid laboratory analysis results which is what the Public Prosecutor did in the form of the Minutes of the analysis conducted by the Police Headquarter Forensic laboratory no: 4171/KTF/2004 of 27th September 2004 and the report of the study undertaken by the team for the Handling of Alleged Case of Pollution and or Environmental Degradation in the Villages of Buyat Pantai and Ratatotok established by the State Minister for the Environment (evidence P-4) and validated by the Research and Applied Technology Board (BPPT) whose results form part of the Charges and where it can be proven clearly, legally and beyond reasonable doubt that the Defendant/s caused pollution and or environmental degradation and that in turn it caused the pollution and or environmental degradation of Buyat Bay. If what the Defense team means with the words, "together we have seen the conditions of Buyat Bay" then what we question is who do they mean by "we"? Because if what is being argued by the Defense Teams of Defendants I and II is that we have reviewed the location together in this criminal case then [this statement?] may not be accepted as part of the process of proof because it was done without basing it on applicable legal procedure, that is, not through a determination before an open court or through a written determination by the Panel of Judges of the Manado District Court examining this case.

10. If the PROPER methodology from the Ministry of the Environment had been applied [to PTNMR] then PT Nemwont Minahasa Raya would have obtained a green rating, meaning that its activities were in compliance with environmental law. (Pled I, page 7, Pled II, Pled III).

Public Prosecutor's Response:

That the Defendants attempted to create an unsubstantiated opinion by relating the activities of PT Newmont Minahasa Raya to the PROPER method because to this point in time PT Newmont Minahasa Raya has never been involved in the PROPER program and that therefore this [argument] should be disqualified. The argument that had the PROPER method been applied it could have become the basis for PT Newmont Minahasa Raya [to maintain that] it had not violated the law through its activities [in not valid] because:

1) the application of the PROPER method demands specific criteria and is not only limited to supervision and evaluation and is also not limited to data submitted by the Defendant.

2) if, for the sake of argument, it was correct that by applying the PROPER method PT Newmont Minahasa Raya would have obtained a green rating pursuant to the stipulations of Article 6 paragraph (1) of the Minister of the Environment Decree no:127/2002 regarding the PROPER program that stipulates that *"green rating for businesses or activities that have strived to control pollution and or environmental degradation and have obtained better results than the determined criteria as regulated in the applicable laws and regulations"* [the fact still remains that], according to the facts, to this point in time PT Newmont Minahasa Raya has never participated in the Ministry of the Environment's PROPER program and it has never obtained a green rating. [unclear sentence]. In fact the Public Prosecutor challenges the Defendant to produce evidence in this court that the Defendant did obtain a green rating in the PROPER program implemented by the Ministry of the Environment.

3) the Defendants stated that PT Newmont Minahasa Raya always did its best to manage the environment in relation to its activities however, it appears that this truth still needs to be questioned because it seems that the Defendants have chosen to "enjoy" the fiction of obtaining the PROPER green rating rather than showing their good intentions by actually participating in the PROPER program by voluntarily submitting to a performance evaluation of the business or activities through the Ministry of the Environment as determined in Article 4 of the State Minister for the Environment Decree no 127/2002 on the PROPER program that states, *"any officer responsible for a business or activity may make a voluntary submission to the State Minister for the Environment to conduct a performance evaluation of a business or activity".*

11 That the General Prosecutor's refusal to look and observe the exhibit in Teluk Buyat shows that Teluk Buyat is not polluted. That particular statement is supported by the article in the National Geographic magazine, August 2006 edition as well as the daily newspaper, Kompas dated 18 December 2006. *(Pled. I page 7-10, Pled. II page 7-8, Pled III)*

The General Prosecutor's response:

This statement is inconsistent with the previous statement where forwarding an argument has to be accompanied with solid evidence and not merely based on assumptions. Whereas what is stated by the defendant is in fact only based on assumptions because:

1) The refusal by the General Prosecutor for not inspecting the location and not taking samples from the location at Teluk Buyat is in fact a form of consistent effort by the General Prosecutor to follow the court's procedures and should not be taken to mean that Teluk Buyat is not contaminated as assumed by the defendant. The reacquiring of samples is no longer necessary keeping in mind the disposal of tailing into the sea and PTNMR activities is completed since 2004. The physical and chemical condition of the water is completely dissimilar. General Prosecutor continues to be consistent in using the exhibit which is legal and valid in the form of "Criminal Examination Event Laboratory Report by the Centre for Forensic Laboratories POLRI Headquarters, Number: 4171/KTF/2004 date: 27 September 2004" and the report: Suspected Contamination and/or Destruction of the Environment in Buyat and Ratatotok Villages conducted by research teams which was formed by Ministry of Environment (exhibit P-4), and that also has been validated by the Department of Technical Research and Development (Badan Pengkajian dan Penerapan (BPPT). It must be understood by the honorable court that the refusal by the General Prosecutor to survey and take samples from the location as stipulated by the Panel of Judges of the Manado court and legally contest the decision was based on sound reasons and as a result the Panel of Judges released a new ruling and withdrew the need to inspect and take samples from the location. Therefore, such non-action by the General Prosecutor is not intended to neglect the Judge's ruling but more due to the reasons mentioned above.

2) It would be impossible to use the magazine, National Geographic Indonesia and the newspaper, as a form of exhibits to prove the non-occurrence of contamination and/or destruction of the environment in Teluk Buyat this is because the two mentioned tools of evidence are not valid and legal as stipulated in the Indonesia Supreme Court Jurisdiction Number: 1479/Pid/1969 date 18 December 2006. Offering materials of evidence in the form of Kompas newspaper dated 18 December 2006

should be dismissed and should never have been used to support the case.

12. That the investigation carried out by Mabes POLRI has violated the Court of Criminal Law. The investigation into this case has disregarded the Working Contract which respects to the *due process of law* and moreover the deviation from Combined Decree (SKB) of the KLH Minister, the Police Chief and Attorney General with the Subsidiary principles. *(Pled. I page 10, 17, Pled. II page 12, 14, Pled. III).*

The General Prosecutor's response:

The argument should be dismissed and therefore is not relevantly used for the decision has been made by the Supreme Court of Indonesia number 190K/Pid/2005 date 15 March 2005 as per the appeal of the defendant II to the habeas corpus writ, which essentially states that *"the investigation performed by the National Police Officer is authorized; hence, as according to Article 7 clause (1) KUHAP the officer is permitted to seize (Article 7 clause (1) letter d), the extension of detention (Article 21 clause (1) KUHAP) or even perform other actions in compliance with the related law (Article 7 clause (1) letter j KUHAP) such as ordering the Defendant to the mandatory registering of presence (wajib lapor)"* or the Officer reserves the authority to perform an investigation as per the *a quo* case. And that the *due process law* has been carried out by Mabes POLRI as is approved by Appeal to the Supreme Court of Indonesia in the case of Habeas Corpus writ as proposed by the Defendant against Mabes Polri. So therefore with Supreme Court's decision mentioned that the argument put forward by Defense Counsel of the Defendant and Defendant II in relation to the SKB and the Subsidiary principle should be dismissed and no longer relevant.

That in Article 2 clause (4) Working Contract determines *"…an Organization in any condition must observe the relevant Laws and regulations to protect the Living Environment of Indonesia"* and with that the organization must, from time to time, respect the environmental law enforced including in this particular court's process.

13. The Appeal concerning the Prejudicial Decision is in conflict with the Law Number 4 Year 2004 *(Pled. II page 13-16)*

The General Prosecutor's response:

The argument regarding the Appeal concerning the Decision on the request of the Habeas Corpus writ as forwarded by Defense Counsel team for the Defendant and Defendant II is absolutely not relevant with the case's investigation because this particular criminal court case is not a Habeas Corpus writ investigation forum as intended by Defense Counsel team for Defendant and Defendant II.

14 The placement of tailing is based on permission. That PT. Newmont Minahasa Raya has the authorization to dump into the sea and rejects suggests that the company is allowed/not instructed to halt dumping operation into the sea. The authorization as well as the agreement to place tailing in Teluk Buyat:

a. Is based on the Director General of Public Mining's (Dirjen Pertambangan Umum) decision No. 502.K/29/DDJP1998, exploration permit.

b. Based on Dirjen Pertambangan Umum decision No. 18.K/20/DDJP/1993, permit to perform the feasibility study.

c. Based on Dirjen Pertambangan Umum decision No. 83.K/29/24/M.PE/1997, the production permit.

d. Dirjen Pertambangan Umum letter No. 1451/28/DJP/1999, the Messel project heap leach permit.

e. Letter from AMDAL-Department of Mining and Energy's f commission' chairman No. 478/0115/KPA/1993

f. Letter from the Ministry of Environmental /Head of BAPEDAL Number: B-1456

g. Exhibit letter T.I.78 from conference between BAPEDAL, and Department of Mining and Energy dating 11 April 2000. Exhibit Letter T.I.78 is to explain that it is not the Defendant only who assumes that the STP is approved but BAPEDAL, Department of Mining and Department Fisheries and Sea Exploration as well.

(Pled. I page 18, Pled. II page 40-41, 63, Pled III)

The General Prosecutor's response:

That the argument of the Defendant in regards to the permission and agreement to perform tailing allocation system in Teluk Buyat has in fact reinforced that PTNMR has no authority to place the tailings. Letter:

1. Is based on the Director General of Public Mining's decision No. 502.K/29/DDJP1998, the authority to explore.
2. Based on Dirjen Pertambangan Umum decision No. 18.K/20/DDJP/1993, feasibility study phase permit.
3. Based on Dirjen Pertambangan Umum decision No. 83.K/29/24/M.PE/1997, production permit.
4. Dirjen Pertambangan Umum letter No. 1451/28/DJP/1999, Messel project heap leach permit
5. Letter from AMDAL-Department of Mining and Energy's commission head No. 478/0115/KPA/1993

The court should be aware that the above institutions do not have the power to grant authority to place/dispose tailings; this is based on Law Number 23 Year 1997 as well as Government Regulation Number 19 Year 1999 pertaining to Contamination and Destruction of Sea Management. And the aforementioned authorizations have no relations whatsoever with the permission to lay/dispose tailings.

That the letters of findings from the conference between BAPEDAL and Department of Mining and Energy and Department of Mining and Energy dating 11 April 2000 is not a form of permission. The documents in fact states that *"disposal of tailings becomes a controversial issue because the absence of a clause which specifically states the disposal into the sea. Furthermore in the AMDAL document mentioned, no special conditions were pointed out which needs to be met in order for the disposal of tailings into the sea operation to be considered a failure."*

That the Defendant assumes STP has been approved, and assumes BAPEDAL, Department of Mining and Department of Marine Exploration and Fisheries are assumptions with no basis. Exhibit T.I-78 is a document which revises PT Newmont Minahasa Raya's disposal of tailings. And that exhibit T.I.78, supported with statement made by Kadar Wiryanto, which has already been appended to the exhibit letter after being put forward and checked during the courts session, and also the argument from the Defendant themselves, which confirms that *"disposal of tailings becomes a controversial issue because the absence of a clause which specifically states the disposal into the sea. Furthermore in AMDAL document mentioned, no special conditions were pointed out which needs to be met in order for the disposal of tailings into the sea operation to be considered a failure".*

Exhibit T.I-78 is a proof of evidence that PT Newmont Minahasa Raya in fact has no specific plan and no clear specific plan regarding the disposal of tailings into the sea.

That even if the Minister of Environment/ Head of BAPEDAL Number B-1456 becomes a form of permission intended by the Defendant –quad non- this would in fact becomes in disagreement with the information put forward by the Defendant II on behalf of Defendant I PT Newmont Minahasa Raya through the exhibit letter number 038/III/m-kl/NMR/01 dated 16 April 2001 which firmly states "*we hope to immediately receive the permanent authority, since the delay that occurred has really affected how we operate and invest*".

That the letter used as an argument by the Defendant as a form of authority or permission, which is the Minister of Environment's letter Number: B-1456/BAPEDAL/07/2000 dated 11 July 2000 about the disposal of tailings in Teluk Buyat during the court's procession had been verified by the General Prosecutor as lawful and convincing based on the explanation expounded by the expert: Dr. Asep Warian Yusuf, SH., MH, witness Sonny A. Keraf, Isa Karmisa Ardiputra, Masnellyarti Hilman, and firmly approved in exhibit letter (P-15) itself, which is PT Newmont Minahasa Raya's letter signed by the Defendant II Number: 038/III/rn-ki/NMR/01 dating 16 April 2001 which demonstrates that PT Newmont Minahasa Raya believes has not yet possessed the authority to dispose the tailings in Teluk Buyat with the result that PT Newmont Minahasa Raya hopes to receive a permanent permission to dispose tailings in Teluk Buyat as soon as possible. The specialist Asep Warlan Yusuf asserts the non-issuance of letter giving permit by the Minister of Environment/ Head of BAPEDAL in regards to the disposal of tailings into Teluk Buyat to PT Newmont Minahasa Raya after 6 (six) months as per instructions by the letter stated in the letter of the Minister of Environment/ Head of BAPEDAL Number: B-1456/BAPEDAL/07/2000 date 11 July 2000 about tailings disposal into Teluk Buyat can be taken to mean that the Minister of Environment/ Head of BAPEDAL has rejected PT Newmont Minahasa Raya's request to dispose tailings into Teluk Buyat.

With the failure to receive the permit to release tailing waste by PT Newmont Minahasa Raya which contains the t B-3 pollutants from the Minister of Environment/ Head of BAPEDAL, therefore PT Newmont Minahasa Raya has conducted transgression against the laws in effect, which are:

a. Without a decreed permit, every individual is prohibited to dispose waste to a medium environment, transgressing Article 20 clause (1) of Law Number 23 of Year 1997

b. To carry-out dumping into the sea without permit, transgressing stipulation Article 18 clause (1) of the Government Regulation Number 19 Year 1999 regarding Contamination and Destruction of Sea Management.

c. Unauthorized processing waste material B-3, transgressing Article 21 clause (1) article of Government Regulation Number 19 Year 1994 in connection with National Regulation Number 12 Year 1995.

d. Unauthorized processing waste material B-3, transgressing Article 40 clause (1) letter a National Regulation Number 18 Year 1999 in connection with National Regulation Number 85 Year 1999.

e. Failure to properly execute the responsibility to process the waste material B-3 as laid down in Article 9 clause (1) National Regulation Number 18 Year 1999 in connection with National Regulation Number 85 Year 1999 because as a result of the evaluation findings conducted by the Ministry of National Environmental Living several cases of transgressions were found in regards to the standards permitted in disposing waste material into Teluk Buyat based on the provision letter release by the Ministry of National Environmental Living / Head of BAPEDAL Number : B-1456/BAPEDAL/07/2000

15 Defense Counsel Team and Defendant II argue that tailing cannot be classed as B-3 *(Pled. I page 18, Pled. II page 71-75, Pled. III)*

The General Prosecutor's response:

That the argument should be dismissed because the matter has been objected by the Defendant themselves as stated in AMDAL and RKL/RPL documents of PT Newmont Minahasa Raya's which illustrates that tailing waste released as a result from processing gold ore produced by PT Newmont Minahasa Raya which contains several chemical substances classified as heavy metals such as Mercury (Hg), Iron (Fe), Copper (Cu), Silver (Ag), Lead (Pb), Arsenic (As), Antimony (Sb) and the compound Cyanide (CN) with details in Government Regulation Number 19 Year 1994 as attached and in connection with Government Regulation Number 12 Year 1995 and

also as stated in the mining activity's B-3 waste materials list. Argument of the defendant is also in conflict with the facts disclosed in the court, where the General Prosecutor has proven in a convincing and lawful manner based on the information given by the Expert Witness Sulistyowati which basically firmly asserts that PT Newmont Minahasa Raya has disposed 33 (thirty-three) tons of Mercury in the time span of 4.5 years. Of the 33 tons of Mercury mentioned, 17 (seventeen) tons expelled to the air in gas form and the other remaining 16 (sixteen) tons are disposed through the pipe to the bottom of the Buyat Bay.

With the categorization of tailing waste produced by PT Newmont Minahasa Raya as B-3 due its chemical metal contents and hence classified as heavy metals and is listed in the Government Regulation Number 19 Year 1994 as attached and in connection with Government Regulation Number 12 Year 1995 also stated in the mining activity's B-3 waste material list, therefore PT Newmont Minahasa Raya has conducted transgressions against the laws in effect, which are:

a. Unauthorized processing waste material B-3, transgressing article 21 clause (1) point [a] of Government Regulation Number 19 Year 1994 in connection with Government Regulation Number 12 Year 1995.

b. Unauthorized processing waste material B-3, transgressing article 40 clause (1) point [a] of Government Regulation Number 18 Year 1999 in connection with Government Regulation Number 85 Year 1999.

c. Failure to properly execute the responsibility to process the waste material B-3 as laid down in article 9 clause (1) of Government Regulation Number 18 Year 1999 in connection with Government Regulation Number 85 Year 1999 because as a result of the evaluation findings conducted by the Ministry of Environment several cases of transgressions were found in regards to the standards permitted in disposing waste material into Teluk Buyat based on the provision letter release by the Minister of Environment / Head of BAPEDAL Number : B-1456/BAPEDAL/07/2000.

16 Defense counsel team and Defendant II argued that ERA is not a newly formed obligatory law (kewajiban hukum baru) and has already been enacted by PT Newmont Minahasa Raya and there was no rejection against ERA as expressed by PT. Newmont Minahasa Raya. (Pled. I page 18, Pled. II page 34, Pled. III).

The General Prosecutor's response:

Study ERA is a new progress in Indonesia, performing environmental research adopted from Canada. The expert witness Prof. Muladi's in explanation, stated that in this case there had been an agreement between the Ministry of Environment and PT Newmont Minahasa Raya to conduct a research based on International standards, namely Study ERA, and the matter can be used as a reference. However, in his explanation, the expert witness Asep Yusuf Warlan, firmly stated that the Study ERA ordered to carry out upon PT Newmont Minahasa Raya is the *discretion* or *free authority/ freis ermessen* of the Ministry of Environment/ Head of BAPEDAL.

That the argument by the Defendant maintains that no rejection has been made against ERA and is absolutely at odds with the courts' facts (fakta persidangan) where the General Prosecutor lawfully and convincingly proven that ERA PT Newmont Minahasa Raya has never been approved by the Ministry of Environment based on elucidations by the witnesses Sonny A. Keraf, Isa Karmisa Ardiputra and Masnelyati Hilman. This fact is further strengthened using letters of exhibit provided by the General Prosecutor, namely:

- Dated 15 January 2001, letter No. 015/I/ENV/01 PT Newmont Minahasa Raya to BAPEDAL with regards to ERA document. The letter containing discussions regarding ERA, TOR and the attached meeting minutes containing information on the Agreement, the discussion's outcome from Study ERA signed by Dra. Masnellyarti (BAPEDAL) and Kadar Wiryanto (PT Newmont Minahasa Raya)
- Dated 30 January 2001, letter No. 007A/I/ki/NMR/2001 PT Newmont Minahasa Raya to BAPEDAL concerning the meeting postponement which was scheduled on 1 February to March 2001.
- Dated 21 February 2001, letter No. 018/II/m-ki/NMR/2001 PT Newmont Minahasa Raya to the Deputy at Department of Environmental Contamination Management BAPEDAL, regarding ERA document presentation. The letter notifies that PT Newmont Minahasa Raya postpones ERA presentation to 30 March 2001 because the head of the investigation team at ERA as well as the consultant for PT Newmont Minahasa Raya cannot attend the meeting.
- Dated 23 February 2001, letter No. 019A/II/m-ki/NMR/2001 PT Newmont Minahasa Raya to the deputy at Department of Environmental Contamination Management BAPEDAL, in regards to ERA presentation

document. The letter notifies that PT Newmont Minahasa Raya still cannot present the ERA document.

- Dated 22 March 2001, letter No. B-714/IV/03/2001 BAPEDAL to the President Director of PT Newmont Minahasa Raya regarding the response to Study ERA. The letter contains BAPEDAL's response to Study ERA and meeting minutes. (The meeting minutes contains: response from 9 (nine) institutions and experts for ERA PT Newmont Minahasa Raya, setting the date on which PT Newmont Minahasa Raya will meet with BAPEDAL where PT Newmont Minahasa Raya shall provide answer/ response to BAPEDAL).

- Dated 28 March 2001, BAPEDAL's letter No. B.751/IV/03/2001 from BAPEDAL to Study ERA team PT Newmont Minahasa Raya. In regards to reviewing Study ERA PT Newmont Minahasa Raya to be conducted on 29-30 March 2001.

- Dated 30 March 2001, meeting minutes was provided as a result from Study ERA PT Newmont Minahasa Raya meeting conducted on 29-30 March 2001, signed by Johny P. Kusumo (BAPEDAL) and Khrisna Ismaputra (PT Newmont Minahasa Raya).

- Dated 4 April 2001, Letter No. B818/II/04/2001 from BAPEDAL to President Director of PT Newmont Minahasa Raya, regarding the submission of the Study ERA report which was conducted on 29-30 March 2001.

- Dated 16 April 2001, Letter No. 038/III/rn-ki/NMR/01 PT Newmont Minahasa Raya to the deputy at Department of Environmental Contamination Management. In regards to Study ERA meeting. The letter contains: *Firstly*, that PT Newmont Minahasa Raya shall provide a written response which shall be communicated during a Study ERA assessment session. *Secondly*: PT Newmont Minahasa Raya's views based on the report for the ERA PT Newmont Minahasa Raya meeting, **where PT Newmont Minahasa Raya understood that BAPEDAL requests PT Newmont Minahasa Raya to repeat the ERA process**, and that PT Newmont Minahasa Raya has no objection in increasing the number of *joint sampling*. In the letter, furthermore, PT Newmont Minahasa Raya shall meet the agreements stated in the meeting minutes dated 29 March 2001. The letter mentioned that **PT Newmont Minahasa Raya expects to immediately receive the permanent permit**, because such delay would

result in greatly affecting the way in which PT Newmont Minahasa Raya operates and invests.

- Dated 4 May 2001, letter No. 190/V/RN/NMR/2001 PT Newmont Minahasa Raya to the deputy at Department of Environmental Contamination Management. This is in regards to the statistic analysis result and a plan for an ERA meeting.
- Dated 9 May 2001, letter No. B-1123/IV/05/2001 BAPEDAL to the President Director of PT Newmont Minahasa Raya. Concerning the outcome from continued Study ERA meeting containing an invitation to a meeting conducted on 16 May 2001 on the topic, evaluation of the PT NMR's ERA study.
- Dated 10 May 2001, Letter No. 195/V/m-kw/NMR/01 from PT Newmont Minahasa Raya to the Deputy for Environmental Law Administration. Concerning the outcome from continued Study ERA meeting. Letter contains reasons why PT Newmont Minahasa Raya cannot meet BAPEDAL's request to conduct a further ERA study evaluation dated 16 May 2001.
- Dated 8 June 2001, letter No. B-1397/IV/06/2001 BAPEDAL to the President Director at PT Newmont Minahasa Raya concerning a follow up on ERA study case. Letter contains an invitation for a meeting on 21 June 2001 with the agenda to review ERA Study in relation to parameter determination, time, location and sample extraction methodology.
- Dated 21-22 June 2001, Official Report regarding Discussions on ERA Study Joint Sampling signed by Kadar Wiryanto (PT Newmont Minahasa Raya) and Sudarsono SH (BAPEDAL).
- Dated 13 July 2001, letter No. B-1706/IV/07/2001 BAPEDAL in regards to joint sampling preparation ERA Study PT Newmont Minahasa Raya dated on 17 July 2001.
- Dated 26 July 2001, Letter No. B-1839/IV/07/2001 BAPEDAL to PT Newmont Minahasa Raya, in regards to joint sampling which is to be conducted on 30 July 2001 with the following agenda: SOP assessment, equipment/ materials for sampling and analysis purposes, OA/OC, schedule activities, personnel involved.

- Dated 10 September 2001, letter No. 061/IX/ki/NMR/2001 PT Newmont Minahasa Raya to the Deputy for Environmental Law Administration. In relation to bathymetri survey. Letter contains actions to follow up on regarding bathymetry survey which was agreed upon on 2 July 2001 and 30 July 2001 and informing the delay to conduct survey as a result of unprepared equipment collection.
- Dated 27 September 2001, Letter No. 2556/IV/09/2001 BAPEDAL to President Director of PT Newmont Minahasa Raya concerning bathymetry survey. Letter contains that the survey implementation should refer to the deal reached by the technical teams at BAPEDAL and PT Newmont Minahasa Raya, and it is desirable that PT. Newmont Minahasa Raya provide several stakeholder which has been agreed upon.
- Dated 3 October 2001, Letter No. 064/X/kw/NMR/2001 PT Newmont Minahasa Raya to the Deputy for Environmental Law Administration. Regarding the postponement of the bathymetry survey. The letter contains postponement in carrying-out the survey because the consultant to PT Newmont Minahasa Raya was received travel warnings.
- Dated 7 November 2001, Letter No. 068/XI/kw/NMR/2001 PT Newmont Minahasa Raya to the Deputy for Environmental Law Administration. Regarding bathymetry survey. Letter contains details to the re-planning in completing the bathymetry survey. Survey will be implemented on 21 November 2001 until completion.
- Dated 20 November 2001, Letter No. B-3219/IV/11/2001 BAPEDAL, signed by the Deputy for Environmental Law Administration, Masnellyarti Hilman, to the President Director of PT Newmont Minahasa Raya. Concerning bathymetry survey. Letter containing information about the nonparticipation of BAPEDAL during the survey because survey activity during the month of November was felt not fitting for bathymetry survey as the survey involved the extraction off the sea for data such as physical, chemical and biological information which represents Eastern Seasonal weather conditions (June to August), additionally, the bathymetry survey expert, who should have been present, was unable to attend.
- Dated 21 November 2001, Letter No. 069/XI/kw/NMR/2001 PT. Newmont Minahasa Raya to the Deputy for Environmental Law Administration. Concerning bathymetri survey. The letter informs PT Newmont Minahasa

Raya will carry out the survey without BAPEDAL, and will immediately convey the results of the survey to BAPEDAL. And expects further discussion regarding the matter with the Ministry of Environment/ Head of Bapedal.

Based on the aforementioned facts it is evidently clear that the ERA Study carried-out by PT Newmont Minahasa Raya has never received approval by the Ministry of Environment, and the matter is indeed known by Defendant II and the defendant is in fact the person most often deals on both forums: meetings and letters of correspondence, representing PT Newmont Minahasa Raya and the Ministry of Environment involving ERA.

17 The Defense Counsel for Defendants and Defendant II argued that the tailings were placed under the thermocline layer *(Pled. I page 18, Pled. II pages 4, 5, Pled. III).*

The General Prosecutor's response:

This argument is very contradictory to the facts disclosed at the court based on the statements of expert witness Abdul Gani Illahude who was of the opinion that tailing wastes resulting from the activities of PT Newmont Minahasa Raya's activities were not placed under the thermocline layer since the thermocline layer in the Buyat Bay waters and the Maluku Sea, or in general in Indonesian waters can be found at depths between 100 – 300 meters under the sea surface. Indonesia as a tropical regions possesses specific sea characteristics where at depths of 100 – 300 meters under the sea surface the thermocline would exists that would be capable of keeping the movements of matter on the bottom on the sea, however this is not functioning since the strong current (Indonesian passage current) and as such the bottom of the sea could still be agitated and brought up to the surface. If the Defendants mention that the sediments which consist of very fine particles would be stable on the bottom of the Buyat Bay at depths of 50 – 82 meters, then we would like to invite this court read again the actual news article on the black box of the Adam Air plane in the waters of Majene, West Sulawesi detected by the USNS Mery Sears at a depth of 2000 (two thousand) meters under the sea surface. This black box itself has a weight of about 6 (six) kilograms and all experts, whether Indonesian as well as those experts from the Mery Sears vessel suggested to have the black box immediately taken out of the water, since there are worries that it might move due to sea water currents. It should be known that those worries about movement of Adam Air's black box at a depth of

2000 (two thousand) meters due to this sea water current, are never disputed by any expert. This then reinforces the opinion of Expert Witness Abdul Gani Illahude that in the Indonesian waters (the thermocline) in general would found at depths between 100 – 350 meters under the sea surface. Indonesia as a tropical region possesses specific sea characteristics where in general at depths of 100 – 350 meters under the sea surface, it could be said, the thermocline would exist that would keep the movements of matter on the sea bottom is not functioning due to strong currents (Indonesian passage currents) and as such the bottom of the sea would still be agitated and brought up to the surface. Learning from this issue, we can take a comparison of the fact that if a article with a weight of 6 (six) kilograms at a depth of 2000 (two thousand) meters under the sea surface can easily moved by sea currents, then what more fine sediment particles that only sit at depths of 50 – 82 meters.

It is due to reasons of such currents, that experts such as Abdul Gani Illahude, Rahmansyah, Rignolda Djamaluding, and Yayat Dhahiyat are of the opinion that heavy metals contained in the tailings can be distributed vertically as well as horizontally and hence causing an impact on marine biota that further could reach humans through the food chain.

18 The Defense Counsel for Defendants and Defendant II argued that it was not proven that the tailings deteriorated the sea water quality *(Pled. I, pages 18, Pled. II page 75, Pled. III)*

The General Prosecutor's response:

This argument is not relevant to be considered as it is very contradictory to the facts disclosed at the court which validly and convincingly showed that a degradation in the quality of the Buyat Bay waters occurred due to the placement of tailings, as was mentioned by Witnesses Masna Stirman, Ahyani Lombonaung, Herson Bawole, Sul Manoppo, Nurbaya Pateda, Marjan Ismail, Surtini Paputungan who all stated that due to the impact of tailings that were place in the Buyat Bay, the Buyat Bay waters became turbid, the fishes moved farther away, and even died in large numbers. This fact was also supported by Expert Witnesses Rahmansyah, Rignolda, Budiawan and expert witness Munawardin who essentially were of the opinion that the heavy metal content in the Buyat Bay waters exceeded the standards, and facts were encountered that fishes died and migrated since their environment were disturbed and also the fact that coral reefs as well as sea-weeds were damaged. It is obvious from the exhibit letter in the form of the Report by the Team handling the Environment Contamination

and/or Damaging at the Buyat Pante and Ratatotok Villages, which team was established by the Ministry of Environment (exhibit P-4) and the BAP of the POLRI Forensic Laboratory Number: 4171/KTF/2004 dated 27 September 2004 that the quality of the Buyat Bay waters degraded due to the placement of PT Newmont Minahasa Raya's tailings in the Buyat Bay. S uch was also acknowledged by the AMDAL document that essentially explained that tailings have the potential to degrade the quality of the Buyat Bay waters.

19 The Defense Counsel for Defendants and Defendant II argued that it was proven that *sludge* and *sediment pond* did not degrade the quality of the Buyat River water *(Pled. I).*

The General Prosecutor's response:

This argument is not relevant to be considered because it is very contradictory to the facts disclosed at the court. Based on the statement of Yudi Prabangkara who was of the opinion that mining possesses the highest potential of producing dissolved heavy metals that taken-up by surface water flows could flow into the wells of population and discharging into the Buyat Bay. This opinion is also supported by the Exhibit Letter of the Mabes Polri Criminology Laboratory Report Number: 4171/KTF/2004 dated 27 September 2004. Hence, based on these facts it was validly and convincingly proven that the quality of the Buyat River water has been degraded, and that this was caused by sludge and the sediment pond.

20 The Defense Counsel for Defendants and Defendant II argued that the marine biota samples and the Buyat Pante Village inhabitants were not contaminated by heavy metals originating from PT Newmont Minahasa Raya's tailings. *(Pled. I, Pled. II 4.3, Pled. III).).*

The General Prosecutor's response:

This argument is not relevant to be considered because it is very contradictory to the facts disclosed at the court. Based on the statements of Witnesses Masna Stirman, Ahyani Lombonaung, Herson Bawole, Sul Manoppo, Nurbaya Pateda, Marjan Ismail, Surtini Paputungan who all stated that due to the tailings that were placed in the Buyat Bay, the waters of the Buyat Bay became turbid, the fishes moved further away, and even large number of fishes died, and they stated that they often caught fishes with lumps, as well as that they suffered health problems such as lumps, itchiness and

cramps, witness Masnellyarti Hilman, expert witness Rahmansyah, Rignolda Djamaludin, and Budiawan who were supported by the Report on the Study performed by the Team for the Evaluation of Contamination and/or Damages on the Environment of Buyat Pante and Ratatotok villages, which team was established by the Ministry of Environment (exhibit P-4) and the BAP of the Mabes POLRI Forensic Laboratory Number: 41 71/KTF/2004 dated 27 September 2004, that validly and convincingly at the court provided proof that many fishes died, had lumps, and migrated due to environmental disturbance, that damages occurred at the coral reefs and sea-weed, that a high concentration of arsenic and mercury existed in fish organs and marine biota that exceeded the international/ WHO standards, as well as a high concentration of heavy metals in human bodies, and that the total mercury concentration in pelagic and demersal fishes in the Buyat Bay were between 15.80 – 1,260.89 ppb and that in some fishes, the maximum limit was exceeded (500 ppb maximum permitted concentration, NPC and Australia New Zealand Food Authority, ANZPA).

21 The Legal Counsel Team for Defendant I argued that tailings are legally solid waste, but what the Public Prosecutor used in the indictment is Decree of the Minister of Environment No.51/1995 regarding quality standards for liquid waste for industrial activities. *(Pledoi I pp. 29-30)*

Response of the Public Prosecutor:

Basically tailings are solids liquefied by water, so its form is no longer solid waste but liquid waste. Therefore, the applicable quality standard for tailings are based on the Decree of the Minister of Environment No.51/1995 regarding the Quality Standard for Liquid Waste in Annex C, that is, parameters for specific industrial liquid waste that are not listed in Annexes A and B of Ministerial Decree No.51/1995.

22 The Legal Counsel Team for Defendant I argued that the requisitor did not clearly and convincingly elaborate the elements of the articles being indicted. The elements of Article 41 did not have the legal foundation to explain several elements, such as "... did not function according to its designation. In this regard, it should have been based on: Law 10/2003 regarding the Formation of South Minahasa Regency *juncto* Law 24/1992 regarding Spatial Planning *juncto* PP 41/1997 regarding National Spatial Planning (concretely speaking, should have based it on the management of Buyat Bay allocation). The stipulations in Article 41 of the UUPLH and the implementing PP's should have been proven first. And

then in PP 19/1999 regarding Control of Pollution and/or Destruction of the Sea, it must be measured based on the "quality standards and/or its functions" and the parameter for marine destruction can be seen from one of the marine biota, that is, coral reefs, which is further stipulated in KepMenLH No. 04/2001 *juncto* Kep.Bapedal 47/2001. The element of Article 43(1): That article does not stipulate about pollution and/or destruction in the depths of the sea. What the article stipulates are pollution and/or destruction of surface waters. The arguments for the elements of article 42 (1) are the same with the arguments for article 41 (1) and the arguments of article 44 (1) is the same with the arguments for article 43 (1). *(Pledoi I page 32-41)*

Response of the Public Prosecutor:

Court facts have proven, based on the testimony of Witness Masnellyarti [Hilman] and Expert Rahmansyah, that if a region has not been specifically designated vis-à-vis its allocation, then the general designation shall apply. Generally, it is recognized that the designation and the function of Buyat Bay is as a place for fish or sea grass aquaculture and a place for Buyat Bay community to catch fish. Pollution and/or destruction taking place in "surface waters" refer to waters that are in direct contact with air. Therefore, in this regard, seawater can also fall under the definition of surface water.

The definition of *environmental destruction is an act that gives rise to direct or indirect changes to the physical and/or biological characteristics that causes the environment to cease functioning in supporting sustainable development* (article 1 number 14 of Law No 23/1997). The disposal of tailings into Buyat Bay by PTNMR had caused damage to the ecosystem (especially benthos) in Buyat Bay, so the environment can no longer function in supporting sustainable development. Based on the testimony of Witnesses Masnellyarti Hilman, Rignolda Jamaludin, Rahmansyah, and supported by documentary evidence in the form of a Research Report of the Team for the Management of the Alleged Pollution Case formed by the State Ministry of Environment (evidence P-4) and the Dossier of Criminal Laboratory Examination of the Forensic Laboratory Center of MABES POLRI Number: 4171/KTF/2004 dated 27 September 2004, then the damage to benthos due to damaged/polluted marine environment has led to the decline in benthic diversity index to levels categorized as heavily polluted.

The non-application of the State Minister of Environment's Decree Number 4 of 2001 regarding Quality Standards for Coral Reef Destruction [was] because the damage or

pollution that occurred in Buyat Bay was not damage to coral reefs, but damage or pollution to marine environment that has led to heavy pollution of benthos.

23 The Legal Counsel for the Defendants and Defendant II argued that the facts elaborated in the indictment only referred to RKL/RPL, therefore it is rather strange [sic] because:

1) If there were crimes in the RKL/RPL, they would have been covered up because that report is a routine report by PTNMR to authorized institutions.

2) It has been proven that the RKL/RPL has been submitted regularly to all the institutions, including the KLH, every 3 months and always on time. The testimony of witness Isa Karmisa as quoted by the Public Prosecutor, as though KLH no longer received RKL/RPL since 2002 is not true.

3) It is the KLH that should have been responsible, because KLH did not carry out its legal obligation [as stipulated] in Article 10 of UUPLH, whereas RKL/RPL has been submitted regularly and on time. If there had been crimes in the RKL/RPL, why didn't KLH take any action to order the business or the activity to conduct an environmental audit in order to learn if there had indeed been a non-compliance of the law [?] *(Pledoi I, PLedoi II pages 7-8, Pledoi III)*

Response of the Public Prosecutor:

1) That the arguments of the Legal Counsel regarding the assumption of a covered up crime in the RKL/RPL document is very compelling proof to this court about the mental stance [*mens rea*] and the behavior of the defendants to commit a crime.

2) The facts in court have proven based on the testimony of Isa Karmisa Ardiputra that since 2002 KLH as an institution authorized to receive RKL/RPL apparently never received RKL/RPL reports from PTNMR.

3) That based on article 32 (2) of PP 27/1999 regarding AMDAL, KLH is responsible to conduct monitoring on the implementation of RKL/RPL to be conveyed to the institution that granted the permit. That in the course of the trial it has been proven that KLH has carried out its responsibility to conduct monitoring on the implementation of the RKL/RPL and has conveyed the results to the institution that granted the permit, in this case the Department of ESDM, with the letter Number: B-2227/IV/10/2000 of 5 October 2000. Furthermore, Law No.23/1997 regarding Environmental

Management articles 28 and 29 stipulates about mandatory and voluntary environmental audits. If PTNMR had the goodwill, then PTNMR would not have relied on orders to conduct mandatory audits from the Minister of Environment, but would have done it voluntarily as stipulated above. That, as such, the arguments must be disqualified because the court facts and by Defendant's own admission, especially about public unrest, has legally and convincingly proven that in this case must be exempt from the application of the subsidiarity principle. As such, this criminal charge needs no prerequisite of administrative legal enforcement, as argued by the Legal Counsel for the Defendants and Defendant II.

24 The Legal Counsel for the Defendants and Defendant II argued that they reject the testimonies of witnesses from the community because: 1) the witnesses went to Jakarta to seek treatment but then went on a demonstration at the Hotel Indonesia roundabout and were interviewed by mass media; 2) witness testimonies were uniform; 3) witnesses have filed a civil suit and then settled and retracted their suit; 4) all witnesses are related by family ties, as such their objectivity is questionable; 5) there is a witness who is not related to others (Salim Modeong) listed in the BAP but was never presented in court; 6) witnesses had been talking about pollution in Buyat Bay from PTNMR tailings [even] before PTNMR carried out tailings placement or STP in Buyat Bay. *(Pledoi I pages 42-44, Pledoi II page 16, Pledoi III)*

Response of the Public Prosecutor:

That even if the arguments expressed by the Legal Counsel for the Defendants and the Defendant II regarding witnesses were accurate, as stipulated in the defense above, then the abovementioned arguments cannot legally disqualify the legitimacy of the witnesses as laid down in the provisions regarding the qualifications for witnesses as stipulated in Article 185 of KUHAP.

25 Legal Counsel for the Defendants and Defendant II argued that the testimony of witness Masnellyarti shall be rejected because the witness never reappeared [in court] to be confirmed/ confronted about the accuracy of her statements even though [she] has been officially summoned. *(Pledoi I page 44)*

Response of the Public Prosecutor :

1) That the authority to reject and grant requests to bring witnesses is the authority of the Panel of Judges.

2) That the non-granting of the request to summon the witness to reappear as filed by the legal counsel cannot be used as the reason to reject the witness' testimony which have been given legally in court based on article 185 of KUHAP.

3) Court facts prove that the Panel of Judges had never issued any ruling ordering the Public Prosecutors to present Witness Masnellyarti Hilman in court.

26 Experts' testimonies must be rejected because they do not reflect specific expertise necessary to clarify this case. 1) Expert Sulistyowati who was declared an expert in permits/licenses apparently did not have any legal education background; 2) Expert Muladi never finished his testimony to conclusion of the hearing, so the legal counsel, including the Defendants, never had the chance to ask questions and respond to the expert's testimony; 3) Rignolda talked about many things, while his academic background was mangrove forestry, as stated by the Dean of Fisheries and Oceanography Faculty of Sam Ratulangi University. *(Pledoi I pages 44-46)*

Response of the Public Prosecutor:

That the statement of the legal counsel is contrary to the court facts which has expressly accepted and validated the experts Sulistyowati, Muladi, and Rignolda as experts to be examined before the court. The Legal Counsel was also wrong in arguing about the expertise of expert Sulistyowati because this expert was presented to provide testimony regarding B3 and not regarding permits as argued by the Legal Counsel. Therefore, the arguments of the Legal Counsel must be disqualified because they contradict court facts. That Rignolda has been accepted by the Panel of Judges to provide testimony before the court as Expert. That one's expertise is not determined only by the formal academic background, but also experience. That therefore, the arguments of the Legal Counsel about their objections to Rignolda must be disqualified because they are not based on stipulations that can disqualify expert testimony.

27 The Forensic Report of the Criminal Laboratory of National Police Headquarters must be disqualified because: 1) there is a discrepancy in the number of seawater and river water samples as written in the dossier of sampling and dossier of results of Puslabfor analysis; the Dossier of Sampling stating 24 samples but the Dossier of Puslabfor analysis results state 34 samples; 2) the retrieval of evidence samples from Buyat Bay was carried out on 28-30 July 2004, whereas the sealing was carried out on 31 July 2004. Before being sealed the evidence samples were placed in a room in the Sectoral Police office without protection; 3) the person accepting the samples from the divers was Rignolda who had stated all long before the hearings that there is Minamata disease in Buyat Bay and his testimony was at the same time [used as] evidence in court; 4) the report of Puslabfor examination results had gone beyond its authority because it concluded who the "perpetrator" was and there is a statement of "have degraded the quality of the seawater/ river water whereas the seawater quality is not determined only by the amount of chemicals contained in the tailings but also other factors, such as specific gravity, pH, etc; 5) apparently what was elaborated in the letter contrasted the results of the split sampling [analysis] conducted by an accredited laboratory, ALS, in Bogor; 6) Mabes Polri forensic laboratory that issued the letter was apparently not accredited as required in P-19 and pursuant to KepMenLH No.113/2000 *jo* Explanation to Article 16-17 of PP 82/2000; 7). The Investigator did not obtain a confiscation order from Tondano District Court, that has jurisdiction over the location of where the samples were taken, such as the evidence of water and sediment around the area of Buyat River tributaries; 8) pursuant to the ruling of Tondano District Court 334/Pen.Pid/2004/PN.TDO on page 2 where it is stated that the ruling pertained to water of the tributaries [sic] and sediment. But when the case files are examined, the dossier of confiscation dated 28 July 2004 only pertained to hair and nails, and nothing about water from tributaries [sic] and the sediment. Moreover, when examined further, the dossier of confiscation of tributary [sic] water and sediment, the dossier dated 30 July 2004, which is the same with number 7 page 4 of the Dossier of Puslabfor results which states that the sampling of the tributary water and sediment around the tributary area and PTNMR's sediment pond was conducted on 30 July 2004, contrary to the court ruling stating that the confiscation was conducted on 28 July 2004; 9) every evidence (sample) according to criminal procedure law can be considered valid if they meet one of the requirements, and that being, that the suspect or those suspected as perpetrators of the pollution must be present during sample retrieval. Sampling of the water of Buyat River tributary and

sediment as mentioned in the dossier of confiscation on 30 July 2004, was apparently not requested or escorted by the suspect. This does not agree with the Annex to the Letter of Deputy Attorney General for Generic Crimes Regarding the Technical Judicial Guidelines for the Handling of Environmental Criminal Cases No. B-60/E/Ejp/01/2002. *(Pledoi I page 49, Pledoi II pages 7-8, Pledoi III)*

Response of the Public Prosecutor

The statement that evidence samples were not yet sealed [and] only placed in a room in the Polsek office without any security is just a conclusion of the Defendants which has actually been addressed with the phrase *"placed in one of the rooms at the Polsek"* itself. By being placed in one of the rooms, moreover the room being part of a Police office, then it should prove that the evidence was very much secure. The rebuttal that the report of Puslabfor examination has exceeded the authority for having concluded who the "perpetrator" was and the statement "have degraded the quality of the seawater/ river whereas the quality of seawater is not determined only by the amount of chemicals contained in the tailing but also other factors such as specific gravity, pH, and so forth" is only based on subjective conclusions of the Defendants and the Legal Counsel, because expert Munawardin who personally conducted the analysis of the evidence stated that the analysis and the Dossier of Criminal Laboratory Examination, Forensic Laboratory Center of Mabes POLRI Number: 4171/KTF/2004 dated 27 September 2004 was made based on scientific methods as well as applicable Standard Operating Procedures.

If all the arguments posed by the Defendants were true then they cannot be used as arguments to refute the validity and legality of Puslabfor Analysis Results as elaborated in the Dossier of Criminal Laboratory Examination of Center of Forensic Laboratories of Mabes POLRI Number: 4171/KTF/2004 dated 27 September 2004 as evidence, because:

1) It cannot be proven legally and convincingly that the above is contrary to methodological validity.
2) Documentary evidence has been made under office oath and reinforced by the oath as referred to in article 187 of KUHAP, therefore it has to be declared as valid evidence.
3) Existence of a Supreme Court of RI Jurisprudence Number: 1479K/Pid/1989 dated 20 March 1993.

28 Legal Counsel for the Defendants and Defendant II argued that the list of evidence in the BAP listed 129 items of evidence. But in the dossier of file handover from the Public Prosecutor to Manado District Court dated 11 July 2005 was apparently not the same. Therefore, the evidence presented by the Public Prosecutor does not guarantee the accuracy and the authenticity of the evidences. *(Pledoi I page 51, Pledoi II)*

Response of the Public Prosecutor:

1) The argument about the dissimilarity in the number of evidence items is very vague because it does not explain what the legal counsel refers to as "dissimilarity," as such this has to be disqualified.

2) That the Public Prosecutor in this case has submitted and exhibited evidence as such before the court. Therefore, by law this has to be declared valid.

29 Legal Counsel for the Defendants and Defendant II argued that PT Newmont Minahasa Raya did not commit pollution in Buyat Bay based on the report of the KLH Integrated Team published by Nabiel Makarim. *(Pledoi II page 9, Pledoi III)*

Response of the Public Prosecutor:

That the argument regarding this statement must be disqualified because based on the testimony of Nabiel Makarim himself in court, facts were obtained legally and convincingly that when Nabiel Makarim as the [then] State Minister for Environment published the Integrated Team report, the Team has not yet concluded the study and the analysis, even until Nabiel Makarim was replaced by another official the results of the Integrated Team has not been completed and the final report of the Integrated Team based on the testimony of Masnellyarti Hilman as the Head of the Integrated Team was that the final report of the Integrated Team formed by the State Ministry of Environment in the form of a Research Report on the Handling of the Case of Alleged Pollution and/or Destruction of the Environment in Buyat Pantai Village and Ratatotok Village formed by the State Ministry of Environment (evidence P-4) which was only completed when the State Minister of Environment was Rachmat Witoelar who concluded to the contrary that there is serious pollution in Buyat Bay due to placement of tailings by PT Newmont Minahasa Raya.

30 Legal Counsel for the Defendants and Defendant II argued that Buyat Pantai community members have changed their position and dr. Jane Pangemanan retracted her grievance. *(Pledoi I, PLedoi II, pages 11, 14, 16, Pledoi III)*

Response of the Public Prosecutor:

That this statement is irrelevant and must be disqualified because pollution and/or destruction of the environment is not a grievance delict, the legal process is not dependent upon a report or filing of a complaint.

31 Legal Counsel for the Defendants and Defendant II argued that PTNMR did not commit pollution in Buyat Bay based on the results of studies by Minamata Institute, CSIRO, and WHO. *(Pledoi I, Pledoi II, Pledoi III)*

Response of the Public Prosecutor:

Once again it must be stressed that based on facts in court based on the testimonies of Witnesses, Experts and documentary evidence in the form of a Research Report of the Integrated Team for the Handling of Alleged Case of Pollution and/or Destruction of the Environment in Buyat Pantai Village and Ratatotok Village formed by the State Ministry of Environment (evidence P-4) and the Dossier of Criminal Laboratory Examination of the Center for Criminal Laboratory of Mabes POLRI Number: 4171/KTF/2004 dated 27 September 2004, the Public Prosecutor has succeeded in proving accurately and convincingly that there has been pollution and/or destruction of the environment in Buyat Bay caused by the acts of the Defendants of placing tailings waste in Buyat Bay. If the above argument is still used by the Defendants to say that there is no pollution in Buyat Bay, then it is imperative in this court that the Public Prosecutor provides a comparative description of results of studies conducted by Minamata Institute, CSIRO, WHO and the Research report by the Team for the Handling of Alleged Case of Pollution and/or Destruction of Environment in Buyat Pantai Village and Ratatotok Village formed by the KLH (evidence P-4), which is illustrated completely in the following table :

Aspect	CSIRO Report	WHO/ Minamata	Integrated Team Report
Chemical (levels of heavy metals in the water	Levels of arsenic and mercury in the seawater in Buyat Bay and Rata Totok	Levels of mercury in the seawater in the mouth of Buyat River and Ratatotok River	Levels of arsenic and mercury in the seawater in Buyat Bay and Ratatotok Bay are still below quality standard.

and sediment, pH, DO)	Bay are still below the quality standards. High levels of arsenic in the sediment in Buyat Bay is affected by the accumulation of Newmont tailings.	(4 samples) are still below the quality standards.	Levels of arsenic in the sediment around Newmont tailings mound in Buyat Bay is very high and is higher that the highest range for “polluted sediment” according to ASEAN Marine Water Quality Guideline (2004) At depth of 110 meters (deeper that Newmont’s pipe end) there is still DO (Dissolved Oxygen) indicating that at that depth there is still marine organisms.
Physical (current patterns, thermocline, bathymetry, etc)	Was not conducted	Was not conducted	Current pattern data indicate that in BUyat Bay there is dynamis seawater movement which can cause the seawater to contain heavy metals. No thermocline layer was found above 82 meters of depth (the location of tailings pipe) as claimed by Newmont in the AMDAL (1994). PTNMR assumed that this layer will provent tailings from spreading to the surface.
Biology Organism diversity Levels of metals in marine organisms (fish, benthos and plankton)	Study on organism diversity as an indicator of water health was not conducted	Study on organism diversity as indicator of water health was not conducted	Health of certain body of water can be indicated trhough a diversity index ([bio] diversity) or organisms especially in the sea (planktons, benthos, fish). A high diversity index indicates healthy waters. This index indicates the impacts of heavy metal contamination that is continually experienced by marine organisms. From the low diversity index for

			planktons (Simpson index) in Buyat Bay it was known that there is a perturbation [sic]. In Ratatotok Bay the plankton condition is better as indicated by the higher diversity index. The diversity index for benthos (animals of the seabed, including crabs and shrimp) in Buyat Bay is very low and is categorized as being heavily polluted according to Shanon-Wieber index. In the meantime the diversity index in Ratatotok Bay is higher and is still in the category of light to medium pollution. The levels of mercury in benthos in Buyat Bay is higher than [it is] in Totok Bay. Even though the sediment in Ratatotok Bay has higher levels of mercury, the levels of mercury in its benthos is lower.
Calculation of risk on humans consuming the fish containing heavy metals (mercury and arsenic)	Was not conducted	Was not conducted	Risk assessment on the community who continuously consume fish containing heavy metals was conducted using a Tolerable Daily Intake (TDI) for mercury and Acceptable Daily Intake (ADI) for arsenic. The total Hazard Index (HI) exceeded 1, which means that it falls under the category of having high risk to human health.
Test on	Was not conducted	Test for methyl	It was recommended to the

human biomarkers (heavy metal content measured in blood, hair, nails and urine) depending on the metal being measured		mercury in hair	Department of Health to conduct further studies on the nails and urine to see arsenic exposure in the community. This was a recommendation based on findings of mercury pollution and symptoms that resemble arsenic contamination according to literature.
Drinking water	It is said that quality of drinking water in Buyat Village was still below the quality standards. (in reality: two out of 3 samples of well water in Buyat Village contained arsenic exceeding the quality standard of 0.01 mg/L (PERMENKES quality standard for drinking water)	Was not conducted	The water supplied in Buyat Pante Hamlet since January 2004 was stated to contain Manganese in exceeding the PERMENKES quality standard. Four of six wells in Buyat Village had arsenic levels higher than the quality standards for drinking water prescribed by the PERMENKES
Test on tailings	Was not conducted	Was not conducted	Samples of tailings before being discharged in the sea (after detoxification) show levels of As, Cu, Fe, Mn and CN that are relatively high.

Based on the above table it can be seen that not all aspects were studied by WHO, Minamata Institute, or even CSIRO. Because the aspects studied were very limited, then it is very weak if the conclusion about whether there is pollution or not in Buyat Bay is only based on results of WHO, Minamata Institute or CSIRO studies. And the very wide-ranging aspects carried out by the Integrated Team as presented in the Research Report of the Team for the Handling of the Case of Alleged Pollution and/or

Destruction of the Environment (evidence P-4) stating that there has been serious pollution and/or destruction of the environment in Buyat Bay due to the disposal of tailings in Buyat Bay committed by PTNMR. The Defendants in their defense never discussed anything about the environmental destruction caused by the accumulation of tailing sediments which based on the testimony of David Sompie reached 700 (seven hundred) meters in length by 400 (four hundred) meters in width and the height of 11 (eleven) meters and a report by Kompas daily on 24 December 2004 stating that PTNMR has disposed 33 (thirty three) tons of mercury in 4.5 years of operation. Of the 33 tons of mercury disposed, 17 (seventeen) tons was discharged into the atmosphere as gasses and the other 16 (sixteen) tons discharged through a pipe into the bottom of Buyat Bay.

Honorable Panel of Judges,

Defendants,

Legal Counsel for the Defendants,

As well as Honorable Court,

Thus, it has become clearer to this honorable court to judge based on the evidence presented by the Public Prosecutor that the Defendant has been proven legally and convincingly of having committed a crime of pollution and/or destruction of the environment as indicted and criminally charged by the Public Prosecutor and [we] ask the Panel of Judges of Manado District Court examining and adjudicating this case to rule as requested by the Public Prosecutor in the Requisitor submitted and read before this court in the earlier hearing. And with regard to the Defense material that is irrelevant to the Requisitor of the Public Prosecutor, there is no need for us to respond to that.

Thus, we have read this *Replik* (response of the Public Prosecutor to the Defense of the Legal Counsel for Defendant I PTNMR, Legal Counsel for Defendant II Richard Bruce Ness, and Defendant II personally, Richard Bruce Ness) and we submit it in this hearing today, Friday 23 February 2007.

PUBLIC PROSECUTOR,

[signed]

PURWANTA SUDARMAJI, SH

JUNIOR PROSECUTOR NIP.230 026 518