
**PROTECTION OF HUMAN RIGHTS ON THE RIGHTS OF
INDIGENOUS COMMUNITIES IN SESAR VILLAGE DUE TO
COASTAL RECLAMATION****Lucia Tahamata, Vonda Vidya Hattu**

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Abstract

The right to the environment is a basic right that must be fulfilled by the state because it is a human right, for the community without guarantees. Protection of the right to the environment is the state's obligation in this case the local or district government. This study aims to identify and discuss the protection of human rights for the rights of indigenous peoples due to coastal reclamation and the state's responsibility for the rights of indigenous peoples due to the absence of environmental permits in coastal reclamation activities. This type of juridical empirical research uses a literature review based on theories, doctrines, and legal norms related to the issues discussed. This research is analytical prescriptive by explaining the problems raised based on legal provisions, norms, and theories and then analyzed qualitatively. The results showed that the protection of human rights to indigenous peoples due to the absence of environmental permits would impact the rights of indigenous people,s in this case, the right to survival. Moreover, the land of customary territory has been transferred under companies that exploit natural resources and enrich themselves. This also worsens their right to survival. For that, the active role of the community is also needed when seeing something that is suspicious, which will impact people's rights. For this reason, it is also expected that the community and local governments must build cooperation so that the environment remains managed and utilized, following the principles of development sustainability.

Keywords: protection of human rights; rights of indigenous communities; reclamation of the coast

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INTRODUCTION

In every individual without exception being born independent and having equal rights and entitled to life, freedom and human safety, according to Article 1 of the Universal Declaration of Human Rights (from now on abbreviated as DUHAM) of December 10, 1948, "Everyone without exception is born free and has the same dignity and rights and is entitled to life, freedom and safety as an individual." The first article clause exclusively says that human rights are natural rights that humans have from the womb until

birth with recognition of equal dignity and rights.

Human rights or further abbreviated as human rights, cannot be revoked by individuals, even the State, even because human rights are not a gift of the State but a gift from God. This right is the identity of everyone who is fighting for his life. Thin the third article of the declaration of human rights expiry affirms that "everyone is entitled to an adequate, decent and prosperous level of living and has the freedom to voice opinions on the protection of one's safety and

even the family which is part of the nature that is always inherent in every human being so that his existence cannot be separated from the historical life of human life" (Sujatmoko, 2016).

Along with the understanding of human rights that is universal, there is also a human rights obligation to respect and respect human dignity in the kingdom, Franz M. Suseno, in his writings on human rights, stating that the principle of human rights lies in the realization that society or humanity cannot be held in high esteem except that every human being, individual, without discrimination, Without exception, respected (Suseno, n.d.). Rhoda E. Howard sits the concept of human rights very simply but very factually because it departs from daily human rights observations in all contexts. Therefore he proposed human rights because he is a human being, and only this should not be denied. This concept does not discriminate racial, gender, gender, and religious differences and is no longer politically and legally relevant and demands equal treatment for everyone (Howard, 2000).

According to Law No. 32 of 2009 on Environmental Protection and Management, Article 36 paragraph (1) "Any business and/or activity that must have an Environmental Impact Analysis (AMDAL) or Environmental Management Effort and Environmental Monitoring Effort (UKL-UPL) must have an environmental permit. Paragraph (2) "Environmental permits as referred to in paragraph (1) are issued based on environmental feasibility decisions as referred to in Article 31 or ukl-upl recommendations.

Article 36 paragraphs (1) and (2) indicate that any business or activity shall have an AMDAL or UKL-UPL. UKL-UPL is the management and monitoring of businesses and /or activities that do not have an important impact on the environment that are necessary for the decision-making process about the implementation of business and/or activities and will have a sustainable environmental impact and pay attention to

the rights of indigenous peoples in The Village of Sesar.

Beach reclamation activities were carried out in Bula Subdistrict Sesar Village, Eastern Seram Regency. Their activities are the construction of fuel oil (B.B.M.) places that greatly impact the rights of indigenous peoples, where fishermen look for fish for survival. Before there were beach reclamation activities, many overgrown mangrove trees. When reclamation activities are carried out, mangrove trees are cut down so that it impacts marine biota and has an impact on livelihoods for fishermen in Sesar village.

The results of the interview with Abdul Mahu as the village secretary said at first the village of Sesar, many marine biota-biota more specifically looper (shrimp) and fish, but when felling mangrove trees, fishermen have difficulty getting fish. Where the community settlement is in the development of mangrove trees, the settlement place is in the form of a banging house. When the water wave season rises to the place of community settlements

The coastal reclamation project carried out by the rulers, in this case, the oil company, was carried out without coordinating with the relevant parties in Bula regency to obtain a location permit and reclamation implementation permits. And also without the role of society. Beach reclamation activities were held in May 2020. At the beginning of 2021, there was an action from the Marine and Fisheries Service of the Eastern Seram four (4) group to stop reclamation activities because it did not have a permit.

The right to a decent livelihood for indigenous peoples as a fundamental and primary right cannot be ignored. Similar to the right to live on the right to the environment, the right to a decent livelihood is a right that cannot be transferred under any circumstances (non-derogable right), Neglect of the environmental rights of indigenous people's related to the right to a decent livelihood will certainly lead to hunger, malnutrition and endurance that is unable to

resist various attacks of disease. In the end, it will be directed to the fragility of the growth and development of humankind. It also creates a condition that does not positively impact the vulnerable, namely indigenous peoples, whose land and territory are controlled by companies that only attach importance to their profits. So that the rights of the people are ignored and inversely proportional to the constitutional order to improve the welfare of the people. Based on the problems faced by the community, it takes responsibility for regional Governments of human rights protection for indigenous peoples. The formulation of the problem is "How to protect human rights to the rights of indigenous communities of Sesar village due to coastal reclamation".

METHOD

The research method used in this research is empirical research by collecting data from various parties that have competence. However, it uses literature studies based on theories, doctrines and legal norms related to the issues discussed. Primary data is obtained from communities, village governments, indigenous leaders and related institutions. The data can be obtained by interviews with relevant parties who have competence for the problem.

RESULTS AND DISCUSSION

A. Review of the law of the rights of indigenous peoples as a form of human rights

Article 28I paragraph (3), the 1945 Constitution affirms that traditional people's cultural identity and rights are respected following the times and regulations. Law No. 39 of 1999 on Human Rights also affirms the same substance, in Article 6 reads "In the framework of human rights enforcement, differences and needs in indigenous law communities must be considered and protected by law, society and government Government cultural identity

of indigenous peoples, including the right to protected Ulayat land, is in harmony with the times. This affirmation shows that indigenous peoples in Indonesia are recognized for their existence constitutionally. This constitutional support strengthens understanding and awareness to respect and protect the rights of indigenous peoples.

The right to housing, a decent livelihood and the right to the environment will be positively correlated with human rights. The right to the environment, including fundamental rights, was originally enshrined in a set of instruments of international law called the International Bill of Human Rights contained in them: Universal Declaration of Human Rights (DUHAM), International Covenant on Civil and Political Right (ICCPR), International Covenant on Economic, social and cultural rights (ICESCR) (Sanny, Pieris, & Foekh, 2021).

The instruments of human rights law that are fought to emphasize respect, protection and fulfillment of dignity and dignity, are not merely extracted from western value systems and norms but have a solid foundation of the entire culture and religion (Muhtaj, 2013). Therefore Eko Riyadi emphasizes that human rights crystallizes various value systems and philosophies and all aspects of his life (Riyadi & Manusia, 2018). It is also based on the world view of human rights, a persimmon for the existence and protection of human life and dignity (Muhtaj, 2013). It says that this universal view and conception of human rights lays the moral foundations of human rights that are not separated by space, time, place and owned by all human beings.

Thus, learning from the historical course of human rights of humankind which fought for the rights of individuals, but in development, collective rights gain

recognition and protection through various instruments of international law. The protection of indigenous peoples can be seen through various normative frameworks and international standards governing the rights of indigenous peoples. And elaborating on several studies, one of which is Ahmad Syofan's research, it can put forward several instruments of international law governing the rights of indigenous peoples, the right to a decent life, the right to the environment, culture, identity and others.

1. Universal Declaration of Human Rights 1948 (UDHR) 1948
2. International Covenant on Economic, Social and Cultural Rights 1966
3. I.L.O. Convention No. 169 of 1989 on Indigenous People
4. Declaration on the Right of Indigenous People, 2007

As a basis, the sources of international law mentioned above do not indicate that such rights are truly enforceable. By itself, countries cannot violate this right. But the assumption is wrong based on the recognition that based on the inseparableness and dependence of all human rights and through state practices that successfully fulfill the rights of The Economic, social and culture and it can be said that the effective implementation of human rights depends heavily on the goodwill of the State that upholds the responsibility and obligation to protect its people. Its responsibilities and obligations should not be dualism. Still, the recognition, protection, respect, promotion, and protection of human rights should align with international standards set out in human rights norms (Triyana & Aminoto, 2009).

Concerning the above description, the rights for indigenous peoples related to decent living as part of human rights

are recognized in the ICESCR in article 11 which regulates and recognizes the right to a decent livelihood. It does not require that the right to a decent livelihood be free from the State but rather submits that the State must respect the right of access, protect its citizens from the interests of private companies that take over the land.

By listening to the right of indigenous peoples to the environment which is a livelihood for a decent life stipulated in Article 11 of the ICESCR provides recognition and protection to all individuals or communities to be able to access the right to a decent livelihood this is a right that cannot be transferred under any circumstances (non-derogable rights).

According to Law No. 39 of 1999 on Human Rights, Article 6 affirms that:

In the framework of human rights enforcement, differences and needs in indigenous law communities must be considered and protected by law, society and government cultural identity of indigenous peoples, including the right to protected Ulayat land harmony with the times.

This affirmation shows that indigenous peoples in Indonesia are recognized for their existence constitutionally. This constitutional support strengthens understanding and awareness for respect and protection. By itself, the constitutional guarantee also confirms a national policy that positions the existence of indigenous peoples as part of national and State life.

Jeremy Bentham with the Utilitarian method emphasized that the law should provide benefit and happiness for as many people as possible, the greatest happiness of the greatest number (Latipulhayat, 2015). For them, the measure of happiness for indigenous peoples cannot use the size of most people. So that is the standard

the measure of happiness for indigenous peoples, who are categorized as minorities, vulnerable, enough they are not disturbed, enough they are appreciated and respected along with the order of life. So the act of harassing, marginalizing, removing them from the universe in the form of homeland, territory and all that is attached to it means that the name has deprived their happiness of the interests of certain groups of people. For the indigenous peoples of happiness can maintain their life balance with the universe, the value system, and the norm with the creator in their views and beliefs.

In such a context, it is necessary to lay down the law and its purpose based on the values and norms of customary law. In general, the purpose of the law that is acceptable in every space, time place and everyone is a law that creates good, order and well-being. Well-being will always be a contra with freedom from want. This means that if the right to prosperity is not guaranteed, it will impact the emergence of poverty and life deterioration. To achieve the happiness of individuals and society, the law must achieve four goals, namely providing a living (subsistence), abundance, security and equality (Latipulhayat, 2015). It is closely related to the right of indigenous peoples to live, inequality and not discrimination, to be granted the right to participate, the right to agree to things when it comes to the rights of indigenous peoples, the right to enjoy the universe with all that the Almighty and the creator have provided.

B. Geographical contextual of Fault Village and the consequences of coastal reclamation

Seram Regency east is one of the districts located in the eastern part and Seram island of Maluku province. Where geophysically it is at 128 -130 BT and 02'50 – 04'40 L.S. The area of Eastern

Seram regency reaches 15,887.92 km² which covers a land area of 3,952.08 km and an ocean area, 11935.84 km. Seram Regency in the East consists of 15 subdistricts. Sesar village is in Bula subdistrict with a population of 131,707, and most people with fishermen's livelihoods.

The results of the interview with the head of the marine section of the Marine and Fisheries Service branch of the East Seram 4th Seram group Mr. Zachler Papilaya, In the framework of monitoring marine resources and fisheries in the duty area and authority of the Branch of the Marine and Fisheries Service, Maluku province Island IV group found there was coastal reclamation at the site has been carried out half the development in the form of beach hoarding and wall fences made as fuel warehouse bases.

Following the above conditions, a field review of reclamation activities that do not have an activity permit is carried out. The steps that have been taken are to verbally conduct the location manager to the branch office of KP cluster IV to be socialized, but until now has not faced. The next step is to take measurements of the area that has been buried and that has not been stockpiled but has been pegged. Then accompany the reclamation activity stop letter informing Mr.Hengki (who has a B.B.M. business) Because of this activity without permission.

The interview results also with a fishing group chaired by Mr. Yusuf. When the felling of mangrove trees carried out beach reclamation activities, it was difficult for community sedimentation to get fish. Especially in conditions of rain and waves, the fishermen do not go to sea.

People do not just pay attention to the problem of waste, but the problems of regulation that are missed also need

to be controlled together. Frankly, the city government does not have enough personnel to monitor therefore the public must help supervise and report suspected activities (de Rooy, Salmon, & Nendissa, 2021).

In implementing local governments based on the Law, the regional govern Government must improve the welfare of the people and services to the people in the region. So the governed Government is actively and efficiently authorized to open and take care of the area following the aspirations and interests of the community as long as it does not conflict with national law and Upholds the culture of local wisdom (Muliati, 2016).

Article 34 paragraph (1) of Law No. 1 of 2014, is "Local communities are groups of people who carry out daily living arrangements based on habits that have been accepted as generally accepted values but are not entirely dependent on coastal resources". Looking at article 34 paragraph (1) of Law No. 1 of 2014, actually, the reclamation of the beach or bay is not prohibited as long as it is done to increase the benefits and/or added value of coastal areas and small islands in terms of technical, environmental, and socioeconomic aspects (Hulandari & Laturette, 2021). Likewise with paragraph (2) of this Law states that: The Implementation of Reclamation as referred to in paragraph (1) shall maintain and pay attention:

- a. Sustainability of people's lives and livelihoods;
- b. The balance between the interests of utilization and the preservation of coastal environmental functions and small islands; and
- c. Technical requirements of retrieval, dredging and stockpiling of materials.

Article 34 paragraph (1) of Law No. 1 of 2014 paragraph (1) and (2) to increase the benefits and/or added value of Coastal Areas and Small Islands in terms of technical, environmental, and socioeconomic aspects, problems that will arise in the future when reclamation of Sesar village beaches are causing new problems (Hulandari & Laturette, 2021).

The purpose of reclamation is to make watery areas that are damaged or have not been utilized into a new area that is better and useful. The new land area can be used for residential, industrial, business and shopping areas, airports, cities, agriculture, alternative transportation lines, roadside freshwater reservoirs, integrated waste and environmental management areas, and as an old land protection barrier from the threat of abrasion and to become an integrated tourist area.

The positive impact of the implementation of reclamation is to help the country or city provide land for various purposes, regional arrangements, tourism development, and community efforts, especially for fishermen. In contrast, the negative impact due to reclamation activities can disrupt the balance of ecosystems. Ecoconsistent changes include changes in current patterns, erosion, and coastal sediments to increase flood hazards, and potentially environmental disruptions. Therefore, an in-depth study of coastal reclamation is needed by involving interested parties and competent with the knowledge possessed.

The rights and obligations of the community with the reclamation that has been regulated in Law No. 1 of 2014. Community rights include: 1) Gain access to coastal parts that have been given location permits and management permits 2) Propose traditional ikian capture areas.

Communities in addition to having rights there are also the following obligations: 1) providing information pleasing to the management of coastal areas 2) maintaining protecting and maintaining sustainability 3) delivering reports of the dangers of watering or environmental damage in the region 4) monitoring the implementation of management plans 5) implementing an agreed coastal area management program at the village level

In the utilization of coastal water space that is not following the location permit, it will be given administrative sanctions in the form of 1) Written warning 2) temporary termination of activities 3) closure of location 4) revocation of permit 5) cancellation of permit 6) administrative fines contained in Law No. 1 of 2014.

C. State Responsibility For The Rights of Indigenous Peoples Due to No Coastal Reclamation Permit

The Constitution of the Unitary State of the Republic of Indonesia has clearly and firmly formulated and accommodated Indonesia's human rights, as stipulated from Article 27 to Article 34 of the 1945 Constitution. The right to a decent livelihood for indigenous peoples is a constitutional obligation of the State. This is as formulated in Article 28I paragraph (4): protection, promotion, suppression and fulfillment of human rights is the responsibility of the State, especially the government in this constitution should affirm the purpose of the establishment of the Republic of Indonesia which was promoted in the Opening of the 1945 Constitution in the fourth paragraph, protect all Indonesian blood, promote the general welfare to educate the life of the nation and participate in implementing world order based on

independence, peace and social justice. The purpose of this state life will be implemented through its obligation to fulfill every member's civil, political, socio-economic, and cultural rights.

Reclamation, however thoroughly planned, will still change coastal conditions and ecosystems, and also artificial ecosystems that are new will certainly not be as good as natural. Coastal reclamation has an impact, among others: First, coastal reclamation to obtain more land is the worst activity that changes the original landscape of the coast and coastal areas. This change in landscape will also result in changes in hydro-oceanography, especially ocean currents and waves, which will certainly be a major threat to some city's coastal areas. Second, the loss of potential coastal biological resources, especially some marine biota that has been utilized by fishing communities, and the next impact is the possibility of reduced fishermen's catch. In general, ecosystems such as seagrass meadows, coral reefs, and others have a very important ecological function. Therefore, if this coastal ecosystem is damaged, the above functions will be lost, let alone activities such as the transfer of functions of a coastal area, where physically will be able to experience enormous pressure and the impact will be more widespread and complex. Third, there will most likely be changes and transfer of sediment supplies previously accommodated in reclamation areas and also hoarding in the process of coastal reclamation can cause changes in surrounding ocean currents that will further change sedimentation patterns. Fourth, reclamation has an impact on the destruction of mangrove ecosystems and also coral reefs.

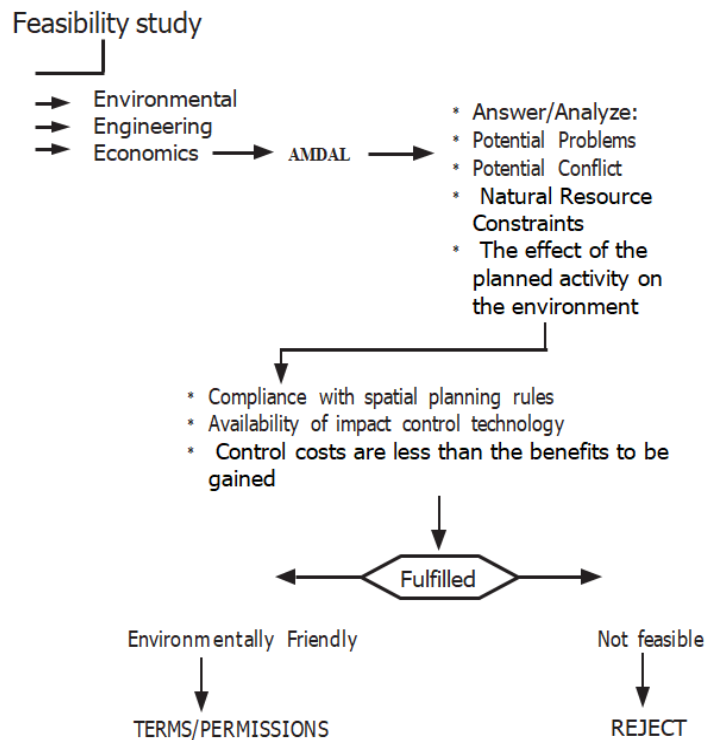


Chart 1 Analysis of AMDAL

Feasibility studies include feasibility from technical aspects, economic-financial aspects, and also Environmental Impact Analysis. This will further result in a decrease in the environmental quality of fish resources and coastal erosion (Huda, 2013).

Environmental management in reclamation area spatial planning must consider environmental aspects, especially energy use, natural resource use, land clearing, waste handling. It aims to minimize the impact on the environment.

The main reference in environmental management in Indonesia is Law No. 32 of 2009 on Environmental Management, which regulates the policy in Indonesia. Here it is explained that the management of life is organized with the principle of state responsibility, sustainability and benefits principles that aim to realize sustainable development that is environmentally sound in the framework of full human development. This law ensures that in the implementation of development, there is an alignment of

relations between humans and humans, humans with the environment and other environmental components, and can meet the present and maintain environmental sustainability in the future.

The utilization of resources is carried out wisely by considering ecological principles and environmental insights so as not to cause natural degradation or even environmental damage. In addition to regulating rights, the rules in the Environmental Management Act also require everyone to maintain the sustainability of the function of the environment, prevent and overcome pollution and environmental destruction and provide correct and accurate information about environmental management. Authority must be considered coherence between stakeholders in environmental management, regulating the relationship between government agencies, private, community, and other components so that it can go hand in hand to create a good living environment. To ensure the preservation of environmental

functions, any business plan that can have a major impact must analyze the environmental impact as a condition for obtaining a business license.

From an ecological perspective, all activity plans that are suspected to have a large and important impact must have an analysis of AMDAL, but on a practical level, the criteria for determining what types of activity plans can be categorized as having a major impact and also important need to approach in the perspective of AMDAL regulation

(<http://www.suaramerdeka.com/harian/0506/09/opi4.htm>). The most important factor in implementing this reclamation is the impact caused by the implementation of the reclamation. So, it is important to monitor the fulfillment of eligibility standards before planning coastal reclamation.

The eligibility standard includes the feasibility of technical aspects, economic-financial aspects, and AMDAL, while the results AMDAL should refer to applicable laws and regulations. This AMDAL is an absolute requirement for reclamation because the study of AMDAL will look at the extent of the benefits and impacts of the project. Suppose the results of the AMDAL study show the possibility of negative impacts from the implementation of reclamation activities. In that case, it is appropriate that reclamation planning cannot be done. But in practice, often these AMDAL studies become numbered or even ignored by interested parties. Many occur, reclamation planning submissions in an area have received approval and permission from the local government the AMDAL study of the submission of the reclamation plan. Often, the government since in checking E.I.A. as the main condition of filing the reclamation plan eventually causes bad effects on the community, especially when there is no location permit and management permit.

Against the problems that occur in communities like this, then the State's response, in this case, the regional

Government be taken to solve it is the aggrieved or victimized communities of beach reclamation activities can file a lawsuit together class action. The city government also has the right to sue the developer for damages caused. While administratively, legal steps taken by the government reclamation activities that do not get AMDAL is to order the cessation of reclamation activities until there is AMDAL against these activities.

Feasibility studies include feasibility from technical aspects, economic-financial aspects and E.I.A., the results of AMDAL environmental feasibility studies must refer to applicable laws and regulations. This AMDAL is an absolute requirement of the implementation of reclamation or not because this study will be able to see the extent of the benefits and impacts caused by the project.

Concerning protection directed at the rights of indigenous peoples to reclaimed land. Protection is also directed at people's right to coastal and marine access and the right to enjoy natural resources, including people's right to land resulting from reclamation processes. Even more so if the land is pleasing to traditional people. Rizani Puspawidjaya describes the importance of land and kampong yard for indigenous peoples with the words that indigenous peoples, land and yard campong are economic objects and a comprehensive part of their lives. If the land and camping yard are disturbed let alone alienated by the State or third parties, that will be threatened not only the economic life of the traditional community but also the entire existence of the indigenous people itself.

Legal protection of people's rights, namely the right to natural resources, land and the environment where the understanding of this community includes both coastal communities themselves and the wider community can be seen from the function of the law as guarantors of legal certainty, guarantors of social justice and protectors.

The Government personification of the State in carrying out its obligations is inseparable from the principles of human rights, namely respect (to respect), protect (to protect) and fulfill (to fulfill). In the implementation of human rights on the rights of indigenous peoples, the obligation of the State in implementing when the step is related to each other, guided by the concept of hernandi Affandi's thought that said when the step is a process from upstream to downstream. This means that the first will impact the second, then the second rare will affect the third step (Wattimena & Hattu, 2021).

The State in this case the local government possible for empowering the lives of its people, not least indigenous peoples who base their lives on their land and natural resources. The problem is the arrangement of customary territories in the concept defined by nagara is only connoted as authority to utilize even though customary areas better known as Ulayat rights include the authority to regulate and control. The authority to regulate and control by the State is arbitrarily or unintentionally eliminated. The State also provides a difficulty for financiers to dredge and strengthen the rights of indigenous peoples so that only environmental damage, disobedience and loss of livelihoods.

So the State in this case the local government be careful to include rulers or companies to manage the natural resources and land of indigenous peoples because this condition ranges with economic instability that impacts national stability. The failure of local governments to carry out their responsibilities or obligations in protecting human rights over the rights of indigenous peoples will result in instates violations.

CONCLUSION

The rights of the people in Sesar village, related to the right to life, healthy and clean environment must be protected following the basic principles of human rights, namely protection, respect and fulfillment. So

that the Government's is needed in this case agencies that have a response must be proactive in looking at the problem of unlicensed coastal reclamation, if violated or issued, then it is a violation.

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