

## The Position Of The Right To Residence Of The Indigenous People Of Torsiaje Is Seen From Article 18B Of The 1945 Constitution

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### ABSTRACT

This study aims to find out the position of the right to residence of indigenous peoples torsiaje seen from article 18b of the 1945 Constitution. The methods used in this research are empirical normative research and use a legal approach or statute *approach* and use case approaches as well as data analysis techniques using qualitative approach analysis. The results of this study show that the Position of Rights to The Residence of Indigenous Peoples torsiaje Seen From Article 18b of the 1945 Constitution states that everyone has the right to live a prosperous life born and inward, residing, and getting a good and healthy living environment. In reality, not all communities can enjoy decent housing. This is due to differences in growth and regional development and the small government's attention to low-income communities. So that the state must immediately provide legal protection and guarantees for people who do not have or even want to move home to a more viable place by making agreements and discussions with relevant community groups. The government must be able to accelerate the making of village regulations in which it contains substance related to the division of housing rights for the community and encapsidation to create clarity in doing everything in the community.

## I. INTRODUCTION

### A. Background

The opening of the Constitution of the Republic of Indonesia in 1945 explained that one of them is to create a government that maintains and protects all and all Indonesian people so that in modern times it is an era where humans are required to develop themselves norma develop in society and be flexible and encourage creativity inproviding public services.<sup>1</sup> Tujuan dari sebuah Negara adalah salah satunya agar terlindungi seluruh bangsa Indonesia seperti tertuang didalam konstitusi kita yakni Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Dalam praktek pada kehidupan sehari-hari jika terdapat masyarakat yang lalai atau dengan sengaja kewajibannya tidak dilaksanakan yang berakibat masyarakat umum dirugikan, dapat dikatakan warga tersebut telah melanggar hukum karena tidak lagi melaksanakan kewajibannya untuk tunduk dan patuh terhadap hukum. Keterlibatan Negara yang juga menjadi salah satu karakter dari fenomena konflik.<sup>2</sup> In line with the progress and so rapid science and technology today.<sup>3</sup>

The thing that became one of the concepts created that until now is still a government program, in general, is about development. The concept of development as intended is development in general, both related to the construction of buildings as public facilities to the construction of houses where local people live which of course is legally clear in the article on human rights that discusses the right to life and getting a decent life. Related to this, we need to know that the above discussion can trigger a good problem between the community and the community and even the community and local government. Some government policies are still not in line with the expectations of the community. This case is located in Tororsiaje Village which is in Popayato District of Pohuwato district, Gorontalo Province. Before entering the problem point, we need to know the condition of this Torosiaje Village. Indonesia is one of the countries that put forward the constitution in every aspect of national and state life.<sup>4</sup> The existence of human rights will have no meaning if it is not followed up with the law that regulates the relationship of rights, meaning that the law formalizes human rights into a set of rules to maintain and protect so as not to

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<sup>1</sup> Norma L.P. Wemben. (2010). "Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo." *Jurnal Legalitas* 3 (2), 131

<sup>2</sup> Yudha Chandra Arwana. "Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia." *JALREV* 1 (2) 2019, 216

<sup>3</sup> Lakoro, A., Badu, L. W., Achir N. (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online, *JURNAL LEGALITAS*, Vol 13, No. 01(2020), 32

<sup>4</sup>Fakhris Lutfianto Hapsoro. (July, 2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution. *JALREV* 2 (2), 145

become clashes in the life of society and state.<sup>5</sup> Torosiaje Village is a village with an area of ± 600 Ha, with a male population: 772 women: 783 people total number: 1,555 people with the number of Family Heads: 406 KK consisting of 4 Hamlets namely Dusun Jati, Sitabangan Hamlet, Manunggal Jaya Hamlet, and Bumi Bahari Hamlet.<sup>6</sup> Development is a strategic step to realize these national goals.<sup>7</sup>

Sehingga hal ini menjadi hak konstitusional setiap warga Negara Indonesia.<sup>8</sup> Because also human rights are part of the implementation of the judiciary within the framework of independent judicial power. The right to life must be protected by the state, especially the state of law.<sup>9,10</sup>

We must know that this village is a long-standing village that is certainly led by certain people in carrying out its governance structure to be able to guarantee all the welfare in the village of Torosiaje. Welfare in question is all things that involve the community in it, both terms of development, economy, and so forth. This is not by what is the local community. There were several complaints and requests from the Torosiaje community involving the village government in it, namely the transfer of residential locations from the land Torosiaje area to the Sea Torosiaje area. Of course, this needs certain management and considerations. One of the considerations is the land where the community builds their residence. Of course, this will attract a little controversy because the community also asks for his rights as a torosiaje village community to be guaranteed the right to have a place to live and get a safe and comfortable environment around where he lives. The government through the law has given the starting point of justice, which is done for the sake of justice based on the Supreme Divinity.<sup>11</sup> Protect basic rights or dignity and dignity, especially for seekers of justice.<sup>12</sup>

The thing that the author's recommendation related to this study is article 18B paragraph (2). The Constitution is recognized and respected the existence of indigenous peoples along with traditional rights. In this case, the traditional rights as a community are one of them is the right to get a place to live or settlement in the area or where he was born and raised. For this reason, this is the

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<sup>5</sup>Tijow, Lusiana. Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Perkawinan Yang Sah. *Jurnal Legalitas* 3 (2), 80

<sup>6</sup> Data Isian Potensi Desa Torosiaje Tahun 2020

<sup>7</sup>Ahmad Rustan Syamsuddin.(July, 2020) Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. *JALREV* 2 (2), 163

<sup>8</sup>Nggilu, N., & Wantu, F. M. (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. *Jurnal Hukum Samudra Keadilan*, 15(1), 128

<sup>9</sup>Nabih Amer. (2020). "Analysis of dissolution of community organizations in the perspective of the State of Law." *Journal of Legality*. 13 (1), 12

<sup>10</sup>Lisnawaty Badu. (2012). Euthanasia Dan Hak Asasi Manusia. *Jurnal Legalitas*. 5 (1), 1

<sup>11</sup> Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim." *Jurnal Gorontalo Law Riview*. 3, (2) Oktober, 184

<sup>12</sup> Dian Ekawaty Ismail. (2009). "Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo." *Jurnal Mimbar Hukum*. 21 (1) Februari, 85

concern and great consideration of the government if certain rights cannot be fulfilled by the government, let alone customary rights that should be given to indigenous peoples as intended. In this study, the indigenous people in question are the residents who live in the land of Torosiaje, the Popayato subdistrict of Pohuwato Regency.

## **B. Problem Statment**

How the Position of Rights to The Residence of Indigenous Peoples torsiaje seen from Article 18B of the 1945 Constitution

## **C. Research Methods**

The type of research used in this research is the dualism of normative and empirical legal research, which will conduct analysis and assessment of implementation and implementation of the provisions of state law, namely Indonesian positive law.<sup>13</sup> Use a legal approach or *statute approach* and use a case approach. This is because the author uses the constitution or legislation as a spear to perform analysis. and data analysis techniques use qualitative approach analysis was writing various kinds of real facts on the ground.<sup>14</sup>

## **II. DISCUSSION**

### **The Position of Rights to The Residence of The Indigenous Peoples of Torsiaje Seen From Article 18b of the 1945 Constitution**

#### **1. Right to Reside Under the Provisions of the Act**

Living is usually often called living. A person can live anywhere while he feels safe and comfortable. Usually, in one place, there are several groups of people who inhabit the place, so from the habit of so that a settlement is born. The dimensions of settlements, literally the pattern of settlements can be interpreted as the arrangement (model) of the residence of an area. The model of understanding settlements includes the arrangement rather than the distribution of settlements. Understanding the pattern of settlements and the distribution of settlements has a very close relationship. The distribution of settlements emphasizes the terms of settlements, and or where there are no settlements in a region. Please note that the Unitary State of the Republic of Indonesia has a mission that is National Development which emphasizes the importance of strengthening economic resilience for the progress of the nation to achieve welfare and social justice for all Indonesian people. One form of welfare can be seen from the seriousness of the government by guaranteeing the rights of the people in living in this Country without exception the rights of residence for

<sup>13</sup>Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta, Fakultas Hukum Universitas Muhammadiyah Yogyakarta, 2012), 25

<sup>14</sup>Soerjono Soerkanto, *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 2014), 172.

indigenous peoples. It should be underlined that this goal is a basic principle born from the 1945 Constitution and Pancasila. To achieve the basic mandate of the country, the government carried out various strategies to achieve the prosperity and welfare of the nation. The government in this case is the embodiment of the State which in the sense of moving through its apparatus has the authority to exercise the authority of its people as a protector and guarantor of the welfare of the people. So that the author can conclude that the government is a tool of the law and Pancasila as an embodiment of the implementation of the purpose and ideals of the law itself, in the form of guaranteeing the rights of residence, especially for indigenous peoples. Efforts that can be done on this are to bring the legal decision closer to the sense of justice lived by the community so that the implementation of the law further creates order in the community itself.<sup>15</sup> More important is that it is currently one of the most efficient steps in trying.<sup>16</sup> Quoting as said by Fence M. Wantu in his Journal that the nature of justice is a matter of judgment from one person to others, which is generally seen from those who receive treatment only.<sup>17</sup>

The regulations that play a role in the regulation of settlements and residences as discussed and used in the focus of this substance are something that already has a foundation and guarantee of its existence. The regulation in question is article 18 B of the 1945 Constitution which provides an explanation related to the recognition of the rights of the people or people who live and live in the area. The law also says that:

1. The State gives recognition and respect to every local government (local government) which of course has a special or special nature that has been regulated in Indonesia's positive constitution.
2. The State gives recognition and respect to every indigenous people in the local area for a traditional right that they have as long as they are alive and of course must be by the development of society also upholding the principle of statehood regulated by the provisions of applicable law.

Meanwhile, the government also lowered the 1945 Constitution and Article 28 H paragraph 1 of the 1945 Constitution which states that everyone has the right to live a prosperous life born and inward, residing, and getting a good and healthy living environment. . The fulfillment of the obligation by the state to organize the construction of housing and settlements for its people is to fulfill the civil and political rights and economic, social, and cultural rights of citizens. The fulfillment of proper residence is a government obligation by the provisions of

<sup>15</sup>Ibrahim Ahmad. (2010). "Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan." *Jurnal Legalitas* 3 (2), 21

<sup>16</sup>Mohamad Rivaldi Moha. (July, 2020). Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *JALREV* 2 (2), 115

<sup>17</sup>Fence M. Wantu. (Juni, 2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*. 25 (2), 206

The International Covenant on *Economic, Social, and Cultural Rights* ratified through Law No. 11 of 2005.

In reality, not all communities can enjoy decent housing. This is due to differences in growth and regional development and the small government's attention to low-income communities. The solution to the problem can be done of them by synchronizing the 1945 Constitution, Law No. 1 of 2011, and Law No. 5 of 2005 as a guide in developing and providing homes for the community, especially low-income people through self-help homeownership, public houses, special houses, statehouses, and commercial homes which are extensions of legal

Protection for the community related to the provision of decent homes. States should immediately provide legal protection and guarantees for people who do not have or even want to move home to a more viable place by making agreements or discussions with relevant community groups.

So obviously based on the above explanation it can be concluded that there have been guarantees and protections related to this. Moreover, the person who submits the request is the indigenous people who exist in the area itself. The law certainly respects the customary rights in the area itself, especially within the scope of Torosiaje. So that by doing so, the results will provide benefits for the torsade community where they will get a comfortable place to live and avoid various kinds of unwanted threats.

#### **a. Torosiaje and its government**

The state certainly has the goal to create a decent life for every people including indigenous people including the Torosiaje area, where the torosiaje area itself is a place where researchers conduct research. Torosiaje is an exotic village that is guarded by its self and is now one of the leading destinations of Gorontalo Province, uniquely in this village inhabited by indigenous peoples whose residence consists of land and sea. As for the structure of government to villages that have served in the area of torosiaje that researchers encountered in the field as follows:



**Table 1.**  
**History of torosiaje Village Government<sup>18</sup>**

No.	Name of the village chief	Era	Long-Serving
1	Patta Sompah	1901-1908	7 years
2	Batter	1908-1913	5 Years
3	Jeddah Darice	1913-1944	31 years
4	Gute Sompah	1944-1950	6 years
5	Mey Pasandre	1950-1952	2 years
6	Ruhing Pasandre	1952-1955	3 years
7	Mey Pasandre	1955-1957	2 years
8	Nahasing Sairullah	1957-1960	3 years
9	Ibrahim Tahutu Pakaya	1960-1982	22 years
10	Makmur Pakaya	1982-1983	1 Year
11	Amin Pakaya	1983-1992	9 years
12	Seko Sompah	1992-1993	1 Year
13	Rashid Sompah	1993-2002	9 years
14	Hope Joseph	2002-2005	3 years
15	Jootje Repi	2005-2011	5 Years
16	Sudiro Pakaya	2011-2013	2 years

From the data presented in the table above, we can see that this village is a long-standing village that is certainly led by certain people in exploring the structure of government to be able to guarantee all welfare in the village of Torosiaje. Welfare in question is all things that involve the community in it, both terms of

<sup>18</sup> Abubakar Sidik Katili, Strategi Pengelolaan Dan Pemanfaatan Ekosistem Mangrove Sebagai Kawasan Ekowisata Berbasis Masyarakat Di Desa Torosiaje Kabupaten Pohuwato. Laporan Akhir Kuliah Kerja Nyata (Kkn) Tematik Universitas Negeri Gorontalo Tahun 2020., 22

development, economy, and so forth. Based on the existing table researchers can see that 16 people have led the village of Torosiaje with a fairly long position in leadership and also some are calculated quickly in their leadership. Indirectly researchers can also understand that in the structure of government that runs a different leadership strategy, both in terms of village management to related demographics or residents in torosiaje village. But in the past few years, there is one village government policy that invites complaints amid the community, including the policy for settlement or residence that is fully regulated by the village government. So with this policy will have an impact on community distaste for the leadership of the village government which seems unselfish to a decent life for its people. The results of policies issued by the Government are solely derived from the wishes of the community.<sup>19</sup> It's just for social welfare.<sup>20</sup> This pressure is slightly more causing a significant reaction to the existence of society, so the government is careful in solving a problem that has to do with society.<sup>21</sup> Such a case example that the researcher will describe in the form of a table as follows:

**Table 2.**  
**Data of people who have reported moving residences**

No.	Name (Initials)	Problems	Year
1	BC	The house is not certified because it was built on heaped land, making it want to move to the Torosiaje Laut area.	2017
2	AN	For access to education, want the family to ask for permission to live in the Torosiaje Laut area.	2018
3	MDI	Working as a fisherman, making MDI interested in moving residence but did not get permission from the village.	2019
4	AD, BMS	Almost all families live in the Torosiaje area of the sea and seek approval and permission from the government to be able to get a place to live in the local area. The	2020

<sup>19</sup> Putri Handayani Nurdin. (2019). Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik. JALREV 1 (2) Juli, 146

<sup>20</sup> Ariefulloh. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. JALREV 1 (2), 199

<sup>21</sup> Fitriyadi, Ahmad Adi. (2020). Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement. JALREV 2 (2), 127



		next reason is that it follows the wife's family (marital factor).	
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**Source: Secretary of Torosiaje Village, Mr. Reza Restu Weiratama**

The data above provides an overview of the truth of the existence of cases or events that are the target of the substance of this study. There are many cases about settlements in this area which are certainly accompanied by certain reasons. From the first data contained in the table above we can say that the reason given when the concerned wants to move residential areas is caused by houses that are not certified because they are built on heaped land, making them want to move to the Torosiaje Laut area. This case took place in 2017.<sup>22</sup>

Then the following year, in 2018, we can see that another case related to this residence is access to education, which makes this an excuse and wants families to ask for permission to live in the Torosiaje Laut area. In addition, another reason that arises related to the case that occurred in 2019 is because of a profession as a fisherman, making MDI interested in moving residence but did not get permission from the village. Unlike the previous year, in 2020 there were 2 cases regarding the movement of this residential area, namely for the following reasons. First, almost all families live in the Torosiaje area of the sea and seek approval and permission from the government to be able to get settlements in the local area. The second is because it follows the wife's family (marital factor).<sup>23</sup>

From some indigenous peoples, torosiaje who have applied to the village government to move places either from land to sea or from sea to land in full must be based on permission from the local village government. If the researcher sees the policy reviewed from article 18 B of the 1945 Constitution paragraph 2 which reads: "The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and by the development of the people and principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law."

It is certainly very clear that the law gives the indigenous people of Torosiaje the right to live by their local customs as long as it does not oppose the Law. Moving from the sea to the land or vice versa from land to sea according to researchers is something that is usually done by indigenous peoples since long ago, if it is thought logically the residence of the indigenous people of torosiaje is divided into sea and land so it is only natural when there is one of the residents choose to move place as long as he is still in the customary environment. In research conducted by researchers on the ground, researchers found some reasons are still fairly reasonable and reasonable for indigenous peoples if they choose to move places. In this case, the traditional rights as a community are one of them is the

<sup>22</sup> Interview With Mr. Reza Restu Weiratama as Secretary of Torosiaje Village

<sup>23</sup> Interview With Mr. Reza Restu Weiratama as Secretary of Torosiaje Village

right to get a place to live or settlement in the area or where he was born and raised. For this reason, this is the concern and great consideration of the government if certain rights cannot be fulfilled by the government, let alone customary rights that should be given to indigenous peoples as intended.

As for the problem that attracted the attention of researchers about the reason for the move of torosiaje residents from seashore because they live on land that is a pile that is not certified as the researchers have listed in the table above, according to researchers this should be of special concern to the government.

#### **b. Right to Stay in Torosiaje**

The National Development Mission emphasizes the importance of strengthening economic resilience for the nation's progress aimed at achieving prosperity and social justice for all Indonesian people. This goal is a basic principle that has been regulated in the 1945 Constitution and Pancasila. To achieve the basic mandate of the State, the government carried out various strategies to achieve the prosperity and welfare of the nation. As introduced in the legal theory of the concept of a state of health. This theory emphasizes that the State is not merely seen as a security guard only or as a night watchman, but also plays an active role in ensuring the improvement of the health of its people both in the field of clothing, boards, and the fulfillment of other living needs. This theory emphasizes that the State in addition to ensuring the achievement of welfare is also obliged to protect the basic rights of its citizens in addition to the protection of the security, ensuring the economic welfare of its people, including protection of the availability of decent housing and free from all forms of interference and threats. This can happen if the village government realizes the inherited conditions are internalized into the development program(*endogenous development*).<sup>24</sup>

Various legal instruments have been issued to protect these fundamental rights, including the fulfillment of the need for a decent place of residence, including regulated in national and international legal instruments, one of which is the regulation of the Land Procurement Law for the benefit of General, this Law has indeed firmly stipulated that the State is given the authority and protected to take various actions in the framework of land procurement for the public interest for development, but on the other hand in the framework of land procurement for such development the State or the government must not violate other regulations be it regulations that are sourced to the constitution and other equivalent laws such as laws that protect and respect human rights principles, namely Law No. 39 of 1999 on human rights. Based on this, the government should seek the rights of the indigenous peoples of Torosiaje. But researchers found that it turns out that things related to the right to live, especially in the village of Torosiaje itself,

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<sup>24</sup> Zamroni, S. (2016). *Desa Membangun Tanpa Meninggalkan Kelompok Pinggiran*. Institute for Research and Empowerment (IRE), 2, 6

have not been arranged in the village. So it is not surprising that many indigenous peoples of Torosiaje themselves or from outside torosiaje want to move to marine settlements because the only reason is the absence of a binding land certificate if they live above the sea compared to their previous residences. Legal protection has the meaning of protection by using legal means of protection provided by law, shown against certain interests, namely by making the interests that need to be protected into a legal right.<sup>25</sup>

Based on the author's interview with Mr. Jackson Sompah as a traditional figure and former village head in Torosiaje last gave birth to information that related to the right to obtain a place to live it can be fought as long as it is motivated by strong reasons, considering that in the Torosiaje area of the sea itself there are about 335 houses that are not Certified, but still safe to this day. For this reason, the village government should also be able to accommodate other communities to be able to get the place to live as they want, rather than the location being only dominated by the government which is not the torosiaje community itself. He also added that in terms of the determination of residence, as for the procedures that must be carried out by the community that has been established as policies by the village government, the following procedure is intended by the author:<sup>26</sup>

1. Village Submission,  
The process of fulfilling the right to get a place to live in The Village of Torosiaje itself is to provide submissions to the village government.
2. Administrative management,  
Residents who will apply to move residence in Torosiaje Village must meet the administrative requirements of extinguishing generally the requirements such as rt / RW cover letter, Family Card, and ID card.
3. Waiting Period, Decision accepted/rejected, Decision Determination, Village Deliberation  
Furthermore, the party who provides the submission must certainly pass the waiting period during the request is processing. In this case, the village government will certainly consult for a decision and determination related to the request of the residents. If everything is by the procedure and meets the requirements, then the request will be granted.

The author understands that there is a division of territory in the torosiaje area, none other than the division of the area is in the form of land and territorial waters (sea). Of course, the village government plays a very important role in regulating and managing the torosiaje region itself. But in managing the torosiaje area itself is not as easy as what is expected by the village government, it can be

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<sup>25</sup> Condro S.Riyadi, Mutia CH. Thalib, (2017), Jaminan Perlindungan Hukum Terhadap Kesehatan Dan Keselamatan Kerja Kepada Tenaga Kerja Konstruksi. 13 (2), 80

<sup>26</sup> Hasil Wawancara Bersama wawancara penulis dengan bapak Jekson Sompah selaku tokoh adat sekaligus mantan kepala desa di Torosiaje laut

seen by researchers from field conditions, namely with still complaints from indigenous peoples about the right to live in the area of Persiaran. It is very closely related to the power of decision-making.<sup>27</sup> like a researcher's interview with one of the citizens of the torosiaje community who has a complaint against the torosiaje government, the following interviews are intended:<sup>28</sup>

"The village government has tried hard to issue policies that will not harm us indigenous peoples, but for cases such as moving houses that for example, I from the plains want to move to the waters, it requires direct permission from the government, even though if you look at previous communities who asked for permission in addition to a long time there is also no certainty for us. The reason for moving we felt was strong enough. Especially me, who wants to move because I avoid living in a place that is not certified. If the authorities want the place where we want to move, then give us a guarantee if we live on land."

So based on the interview, researchers can conclude that the optimal task of the torosiaje government is in terms of regulating in managing the region. The author notices that there is a vagueness regarding regulations or policies on the determination of territory for indigenous peoples. If the researcher juxtaposes the results of an interview with one of the residents and the regional secretary of Torosiaje in plain sight it can be concluded that there is a gap between indigenous peoples and torosiaje pedes. This is reinforced by the assumption that living amid society is that the government prioritizes things that are "profitable" rather than the interests of the indigenous peoples of Torosiaje itself. But the reality that occurred in the field of the torosiaje village government itself found difficulties in terms of administration which consequently became an obstacle in the determination and division of residency rights for indigenous peoples. But according to researchers, the village government should have reinforced what the policies of the government through *perdes*. Do not still be in the status of design but it has been very strictly applied amid society. If the regulation is real, there is, and living amid society will certainly be more certain for indigenous peoples torosiaj itself, especially regarding things like this. For researchers in cases like this the need for cooperation between the village government and indigenous peoples to find the right solution and of course without the sediment of traditional rights that have been recognized constitutionally by the indigenous peoples of Torosiaje and filthier respective work environments.<sup>29</sup>

However, the Torosiaje village government itself should have a special foundation related to the arrangement of territory, boundaries, and related population in the village of Torosiaje. A small example that will later become a reference of every action of both the government and the community is the

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<sup>27</sup>Seno Aji, *Hukum-Hukum Pidana*. (Jakarta: Erlangga, 1984), 8

<sup>28</sup> Interview Results with the people of Torosiaje

<sup>29</sup>Iriyanto Tiranda. (July, 2019). *Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan*. JALREV 1 (2), 132

Torosiaje Village Regulation which will discuss related items that have been mentioned earlier. In this case, it turns out that the policy on the determination of population rights and residence in the village of Torosiaje does not have written rules so it can be concluded that all decisions are only based on the policies and decisions of the village head himself with requirements that certainly have become commonplace for every community because it is known that it is the policy of the village government. Based on interviews with the secretary of Torosiaje Sea Village, it turns out that temporary village regulations are designed to be used as a reference for behavior and actions in community life. If this is no longer a draft (it has been inaugurated into a rule), then all policies that have been set so far are automatically certain. The interview also scored the village government's reasons for the restrictions. It turns out that this restriction was carried out because of concerns from the village government itself that there would be a population dissing. This reason arises because it looks at the situation of the village of Torosiaje sea in which there are houses of residents and some *cottages* owned by the government that are quite dense so that mobilization is also rather difficult. The thing or policy is taken by the government is something that is in line with the category of construction of control items mentioned in Article 6 of Law No. 1 of 2011 on Housing and Residential Areas.

The right to the culture of indigenous peoples must be protected by the government as implementing the constitutional mandate to side with indigenous peoples. Based on several things like this, efforts or efforts that can be done by certain parties, one of which is the government, namely by continuing to behead or spur the existence of applicable laws to continue to play a role in its part. The law in question is all provisions that contain related recognition and protection to indigenous peoples so that it can be used as a shield or paying certainty in behaving in the community and also can be a foundation for local governments related to the protection of rights of indigenous peoples as intended.<sup>30</sup>

### III. Conclusion

The position of the right to live in the indigenous people of Torsiaje is seen from Article 18b of the 1945 Constitution mentions that everyone has the right to live a prosperous life born and inward, residing, and getting a good and healthy living environment. In reality, not all communities can enjoy decent housing. This is due to differences in growth and regional development and the small government's attention to low-income communities. So that the state must immediately provide legal protection and guarantees for people who do not have or even want to move home to a more viable place by making agreements and discussions with relevant community groups.

### IV. Suggestion

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<sup>30</sup>Badan Penelitian dan Pengembangan Hukum dan HAM. 2015. *Perlindungan hak Berkebudayaan Bagi Masyarakat Adat*. Kementerian Hukum dan HAM RI. Hal 14

If Article 18B of the 1945 Constitution discussed the recognition of layout rights for indigenous peoples, then it is indisputable at all and must be clear its implementation. Related to this issue, the village government should move regulations related to the case in question so as not to cause controversy. No law regulates, then the case will be in the status of confusion and obviously, this situation will be used by certain individuals.

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