

JUDICIAL REASONING IN THE USE OF ON-SITE INSPECTION (DESCENTE) TO DETERMINE CHILD CUSTODY (A CASE STUDY OF DECISION NO. 677/PDT.G/2024/PA.TGM)



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ABSTRACT

*This study examines the use of local inspection (descente) by judges in child custody disputes at the Religious Court, particularly in Decision Number 677/Pdt.G/2024/PA.Tgm. The research focuses on the legal reasoning behind conducting a direct inspection of a child's living environment and how the results contribute to judicial evidence in ensuring the best interests of the child. Normatively, the authority of the Religious Court in custody cases is regulated under Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, as well as Law Number 7 of 1989 concerning Religious Courts and its amendments. Local inspection (descente) itself is governed by procedural rules such as Article 180 RBg/153 HIR and Supreme Court Circular (SEMA) No. 7 of 2001, primarily aimed at uncovering material truth. Using an empirical legal method with a qualitative approach, data were collected through document analysis and in-depth interviews with judges and related parties. The findings reveal that although descente is traditionally applied to physical objects, its extension to observing a child's condition and environment is a progressive judicial practice. Through this process, judges are able to obtain objective and direct insights into the child's living situation—information that cannot be fully captured through documents or witness testimony alone. From a legal standpoint, the results of the local inspection hold free evidentiary value (*vrij bewijskracht*), which may develop into judicial presumption and strengthen the judge's conviction in making decisions. In conclusion, local inspection (descente) plays a vital role in safeguarding children's rights by ensuring decisions are based on comprehensive and factual considerations. However, more specific technical regulations are needed to standardize its implementation and enhance legal certainty in future custody cases.*

Keywords: *Child Custody; Local Inspection (Descente); Best Interest of the Child*

INTRODUCTION

The family justice system in Indonesia is fundamentally oriented toward safeguarding the best interests of the child (the best interest of the child), particularly in cases concerning child custody following divorce. This principle reflects the recognition that children are legal subjects in a vulnerable phase of physical, psychological, and social development, and that judicial decisions concerning custody arrangements have long-term consequences for their well-being and future development. Accordingly, child custody disputes cannot be resolved solely through formal legal reasoning, but require a substantive assessment of the child's real living conditions and caregiving environment.

The authority of the Religious Courts to adjudicate child custody disputes is regulated under Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and Article 49 of Law Number 7 of 1989 on the Religious Courts, as amended by Law Number 3 of 2006 and Law Number 50 of 2009. In practice, however, judges often encounter limitations in the facts presented during hearings, as documentary evidence and witness testimony are frequently insufficient to fully capture the child's psychological condition and daily caregiving circumstances. This situation requires judges to adopt an active role in uncovering material truth to ensure that judicial decisions genuinely protect the rights and interests of the child.

One legal instrument available to judges in discovering material truth is local inspection (*descente*), as provided under Article 153 HIR and Article 180 RBg, and reinforced by Supreme Court Circular Letter (SEMA) Number 7 of 2001. Normatively, local inspection is primarily intended for physical objects. Nevertheless, in Religious Court Decision Number 677/Pdt.G/2024/PA.Tgm, the judge conducted a local inspection directly on the child in order to assess the child's condition and the suitability of the caregiving environment. This judicial practice represents a significant development in the application of *descente* within child custody cases.

The implementation of local inspection involving the child reflects a shift from a rigid formalistic approach toward a substantive and child-centered judicial paradigm. In this context, the child is no longer treated merely as an object of dispute between parents, but as the central subject whose welfare must be prioritized. Through local inspection, judges are able to obtain objective and firsthand information regarding the child's living environment, emotional stability, and patterns of care—elements that cannot be comprehensively revealed through written evidence or witness testimony alone.

From the perspective of evidentiary law, the results of local inspection possess free evidentiary value (*vrij bewijskracht*), which may subsequently form judicial presumption (*judicial presumption*) in the judge's reasoning process. Although such results are not binding evidence, they play a crucial role in strengthening the judge's conviction when determining which party is most suitable to be granted custody. Consequently, local inspection functions as a complementary evidentiary instrument that enhances judicial accuracy and fairness in child custody decisions.

Despite its importance, the implementation of local inspection involving children faces several challenges, particularly the absence of specific technical regulations governing its procedures, scope, and limitations. This regulatory gap may lead to inconsistencies in judicial practice and raise concerns regarding legal certainty and the protection of children's rights. Therefore, clearer procedural guidelines are necessary to ensure that local inspection in child custody cases is conducted uniformly, professionally, and in accordance with child

protection principles.

This study aims to analyze judicial considerations in applying local inspection (*descente*) in child custody cases and to examine the legal status and influence of local inspection results within the evidentiary process to guarantee the best interests of the child. By doing so, this research seeks to contribute to the development of a more responsive, progressive, and child-oriented family justice system in Indonesia.

LITERATURE REVIEW

Studies on judicial authority and the discovery of material truth in civil proceedings have been widely discussed in Indonesian legal scholarship, particularly in relation to the role of judges in family law disputes. Ali (2010) explains that judicial reasoning is not merely a mechanical application of legal norms, but a process of legal interpretation that integrates logic, morality, and social reality. This view emphasizes that judges must actively interpret facts and law to achieve substantive justice, especially in cases involving vulnerable legal subjects such as children.

Judicial Authority and Legal Discovery

Judicial authority constitutes the foundation of judicial discretion in adjudicating cases, including child custody disputes. According to Ali (2010), judges are not merely law appliers but legal discoverers who are obligated to interpret and apply legal norms to achieve substantive justice. This authority allows judges to actively seek material truth when formal evidence presented by the parties is insufficient.

Suadi (2023) explains that legal discovery by judges involves a hermeneutical process, in which interpretation is carried out by considering legal texts, social realities, and moral values. In child custody cases, this approach is crucial because the interests at stake involve the child's physical, psychological, and social development. Therefore, judicial authority legitimizes the use of procedural measures beyond conventional evidentiary tools, including local inspection (*descente*), to obtain a comprehensive understanding of factual conditions.

Active Judge in Civil Procedure

The theory of the active judge emphasizes that judges in civil proceedings are not passive arbiters but play an active role in uncovering facts and ensuring justice. Sunarto (2019) asserts that judges have a duty to explore, follow, and understand the values of justice living within society. This role is particularly relevant in cases involving children, where formal procedural limitations may hinder the discovery of material truth.

Manan (2016) and Harahap (2017) argue that civil procedural law grants judges discretionary authority to utilize procedural instruments, such as *descente*, to clarify disputed facts. The application of this theory supports judicial initiatives to directly observe factual circumstances related to child custody, including the caregiving environment and the child's condition, when such facts cannot be adequately revealed through documentary or testimonial evidence.

Evidence and Free Evidentiary Value (*Vrij Bewijskracht*)

In the law of evidence, not all forms of proof possess binding evidentiary force. According to Lubis (2021) and Harahap (2017), certain evidentiary tools, including local inspection

(*descente*), carry free evidentiary value (*vrij bewijskracht*). This means that the assessment of such evidence depends on the judge's conviction and reasoning.

Within this framework, the results of *descente* do not stand independently as decisive proof but function as supporting evidence that strengthens judicial conviction when aligned with other evidence. In child custody cases, *descente* results may transform into judicial presumption (*persangkaan hakim*) that assists judges in evaluating the suitability of caregiving arrangements in accordance with the child's best interests.

Child Protection and the Best Interest of the Child

The principle of the best interest of the child serves as a central theory in resolving child custody disputes. Teguh (2018) and Supeno (2010) emphasize that children are legal subjects who require special protection due to their vulnerability. Consequently, all judicial decisions affecting children must prioritize their welfare, development, and dignity.

This theory is reinforced by statutory provisions, including Law Number 35 of 2014 on Child Protection and Law Number 1 of 1974 on Marriage. In the context of Religious Courts, the Compilation of Islamic Law further mandates that custody decisions (*hadhanah*) must ensure the child's physical care, emotional stability, and moral development. The application of *descente* on a child is therefore theoretically justified as a mechanism to directly assess conditions relevant to the child's best interests.

Legal Effectiveness

Soekanto (2018) explains that the effectiveness of law depends on legal substance, law enforcement, facilities, community factors, and legal culture. In child custody cases, the effectiveness of judicial decisions is closely linked to the judge's ability to base rulings on accurate and comprehensive factual findings.

The use of *descente* reflects an effort to enhance legal effectiveness by reducing the gap between normative legal provisions and empirical reality. Through direct observation, judges are able to render decisions that are not only legally valid but also socially responsive and protective of children's rights.

METHOD

This study employs a descriptive and analytical legal research approach to examine the judge's considerations in applying local inspection (*descente*) for determining child custody in Religious Court proceedings. The approach is used to analyze judicial reasoning, procedural application of *descente*, and the evidentiary value of local inspection results in ensuring the best interest of the child within civil procedure law.

The research was conducted at the Tanggamus Religious Court as an institution authorized to adjudicate child custody disputes following divorce. The selection of this research location was based on the existence of Decision Number 677/Pdt.G/2024/PA.Tgm, in which the judge implemented *descente* directly on the child to assess the caregiving environment. This case provides a concrete example of judicial discretion in extending the application of local inspection beyond physical objects.

Data were obtained from primary and secondary sources. Primary data were collected through in-depth interviews with judges of the Religious Court and relevant court officials to explore the legal considerations, objectives, and practical implementation of *descente* in child custody cases. These interviews aimed to capture the judicial perspective

on the necessity of local inspection to obtain material truth that cannot be fully revealed through documentary evidence or witness testimony.

Secondary data were derived from statutory regulations, court decisions, and legal documents related to civil procedural law and child protection. These included the Civil Procedure Code (HIR and RBg), Supreme Court Circular Letter (SEMA) Number 7 of 2001 on Local Inspection, Law Number 1 of 1974 on Marriage, Law Number 35 of 2014 on Child Protection, the Compilation of Islamic Law, and the Tanggamus Religious Court Decision Number 677/Pdt.G/2024/PA.Tgm. Academic literature relevant to judicial authority, evidence law, and child protection was also utilized to support the analysis.

Data collection was carried out through document study and interviews. The collected data were analyzed qualitatively using descriptive-analytical methods by systematically organizing legal materials, interpreting judicial considerations, and evaluating the legal status and evidentiary strength of descente results. This method enables a comprehensive understanding of how local inspection functions as a judicial instrument to achieve material truth and safeguard the best interest of the child in custody determinations.

RESULTS AND DISCUSSION

Judicial Considerations in Deciding to Conduct a Local Inspection (*Descente*) in Child Custody Cases

Judicial consideration in deciding to conduct a local inspection (*descente*) in child custody cases is fundamentally rooted in the judge's duty to uncover material truth and to ensure that the decision reflects substantive justice. In Decision Number 677/Pdt.G/2024/PA.Tgm, the implementation of *descente* was not merely procedural but represented an active judicial effort to examine factual conditions that could not be fully revealed through documentary evidence and witness testimony alone.

From the perspective of legal theory, this consideration aligns with Achmad Ali's view that judges are not passive law applicators but legal actors who must interpret and discover law (*rechtsvinding*) to achieve justice. In custody disputes, evidentiary limitations often arise because each party presents subjective narratives regarding their parenting capacity. Therefore, the judge's decision to conduct *descente* reflects an exercise of judicial discretion aimed at overcoming evidentiary uncertainty and preventing decisions based solely on formal proof.

The consideration to conduct *descente* is closely related to the principle of the best interest of the child, which constitutes the core norm in child protection law. The judge must evaluate not only juridical entitlement but also the child's actual living environment, emotional security, and daily care patterns. This approach demonstrates the application of sociological and philosophical dimensions of law, as emphasized by Soerjono Soekanto, where legal decisions must be responsive to social realities rather than abstract legal norms alone.

The judge's consideration is influenced by the principle of active judicial role (*peran aktif hakim*) in civil proceedings, as articulated by Sunarto. Through *descente*, the judge actively verifies factual circumstances that are materially relevant to the case, thereby reducing the risk of error in custody determination. This confirms that *descente* functions as an instrument to balance procedural law with substantive justice, especially in cases involving vulnerable subjects such as children.

The consideration to conduct *descente* in Decision Number 677/Pdt.G/2024/PA.Tgm reflects a convergence of procedural law, child protection principles, and progressive judicial reasoning aimed at safeguarding the child's welfare.

The Legal Standing and Evidentiary Strength of Local Inspection (Descente) Results as a Basis for Judicial Consideration in Decision Number 677/Pdt.G/2024/PA.Tgm

The results of a local inspection (*descente*) occupy a significant legal position as part of the evidentiary framework in civil proceedings, including child custody cases. Although *descente* is not classified as an independent means of proof under civil procedural law, its findings constitute factual information obtained directly by the judge and may be used to strengthen judicial conviction (*keyakinan hakim*) in rendering a decision.

According to Harahap, *descente* serves as a supplementary evidentiary instrument that assists judges in clarifying disputed facts. In the context of child custody disputes, the legal standing of *descente* becomes particularly important because many relevant aspects such as caregiving quality, environmental safety, and emotional interaction cannot be adequately proven through written evidence or witness testimony. Therefore, the findings of *descente* function as empirical data that reinforce the coherence of judicial reasoning.

From the standpoint of legal certainty and judicial authority, the use of *descente* results as a basis for consideration is consistent with the principle of judicial independence as regulated under Law Number 48 of 2009 on Judicial Power. Judges are granted the authority to assess and evaluate all facts revealed during the trial process, including those obtained through direct observation. As such, the incorporation of *descente* findings into judicial reasoning does not violate procedural law but rather strengthens the rational foundation of the judgment.

The evidentiary strength of *descente* lies in its objective nature. Unlike party-submitted evidence, *descente* findings are obtained directly by the judge, reducing the risk of manipulation or bias. This reinforces the credibility of the decision, particularly in child custody cases where the consequences of judicial error may have long-term psychological and social impacts on the child.

The study also indicates that the absence of explicit normative regulation governing the evidentiary value of *descente* results creates interpretative flexibility. While this flexibility allows judges to adapt to case-specific circumstances, it also requires a high level of judicial professionalism to ensure that *descente* findings are interpreted proportionally and contextually.

The results of *descente* in Decision Number 677/Pdt.G/2024/PA.Tgm hold strong juridical relevance and evidentiary value as part of judicial consideration. When used carefully and systematically, *descente* enhances the substantive quality of child custody decisions and reinforces the protective function of family law adjudication.

CONCLUSIONS AND SUGGESTIONS

The findings of this study indicate that the implementation of a local inspection (*descente*) in child custody cases is a crucial judicial instrument for uncovering material facts that cannot be fully revealed through documentary evidence and witness testimony alone. In Decision Number 677/Pdt.G/2024/PA.Tgm of the Religious Court of Tanggamus, the judge's consideration to conduct *descente* reflects an active judicial role aimed at achieving substantive justice by directly assessing the child's living conditions and caregiving

environment in order to determine the best interests of the child. The results of the local inspection hold an important legal position as part of judicial consideration, possessing free evidentiary value (*vrij bewijskracht*) that strengthens the judge's conviction and functions as a basis for judicial presumption in decision-making. However, the absence of explicit statutory regulation governing the procedural standards and evidentiary status of *descente* creates legal uncertainty and potential inconsistencies in its application.

Therefore, this study recommends the development of clearer and more detailed normative guidelines particularly through Supreme Court regulations to ensure procedural uniformity and legal certainty, alongside strengthening judges' understanding of child protection principles and encouraging coordination with relevant social institutions, so that the use of *descente* can optimally support child custody decisions that are not only legally valid but also substantively just and oriented toward the protection of children's rights..

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