

RESEARCH ARTICLE

Descente in Child Custody (Hadhanah)**Muhamad Faudzan^{1*}, Nur Syamsiah²**¹ Religious Court of Wates, Yogyakarta² Religious Court of Bantul, Yogyakarta**Correspondence: e-mail: faudzanmuhamad@gmail.com***Abstract**

Descente or On-site inspection is usually carried out on property cases, such as inheritance cases, joint property, sharia economy and so on, with the aim of avoiding difficulties in the execution of decisions in the future. However, in some decisions, Descente is also found in cases other than property, including in child custody disputes or hadhanah by examining Decision Number 1063/Pdt.G/2022/PA.Tgm, Decision Number 627/Pdt.G/2023/PA.Prw and Decision Number 585/Pdt.G/2020/PA.Ppg. This research is normative legal research or library research with a conceptual approach that examines primary data from several judicial decisions in Indonesia such as the Tanggamus Religious Court, Pringsewu Religious Court and Pasir Pangaraian Religious Court. The results showed that the implementation of Descente of children is the same as Descente of property cases and there are two reasons why the judges conduct Descente in Descente of these cases, namely: To ensure the objective condition of the child and the child's growth and development directly and to ensure the condition of the child's surrounding environment in order to realize the best interests of the child. Descente of the child, in addition to fulfilling the best interests of the child, has also fulfilled the objective of Islamic law in maqāṣid ash-sharīah, namely hifz al-nafs.

Keyword: *Descente, Child Custody, Hadhanah, Best Interest of the Child*

How to cite this article:

Faudzan, M., Syamsiah, N. (2025). Descente in Child Custody (Hadhanah). *Fundamentum: Journal of Legal and Judicial Reform*. 1 (1). 40-50. DOI: <https://doi.org/10.70992/rwq4as73>

Received, 31 Mei 2025; Accepted, 13 Juni 2025; Published, Juni 2025

Copyright: © The Author (s). 2025

Open Access This is an open access article under the (CC BY-SA 4.0) license.

INTRODUCTION

The procedural law has regulated various means of evidence, minimum limits, and their respective evidentiary powers. As in Article 164 HIR/284 R.Bg. and the provisions of Article 1866 of the Civil Code which states that there are 5 (five) valid evidence, namely writing, witnesses, testimony, confession, and oath. In addition to these five evidences, Sudikno added the number of evidences to 7 (seven), namely with the addition of Descente and expert testimony. Sometimes judges to obtain certainty regarding the truth of an event in dispute usually use additional evidence, namely descente (descente, gereclitelijkplaatsopening en bezichtiging) (Sudikno Mertokusumo, 2006).

Descente is usually carried out on property cases, such as inheritance cases, joint property, sharia economy and so on, with the aim of avoiding difficulties in the execution of decisions in the future. Descente is conducted by the Panel of Judges after the examination of the case has reached the evidentiary stage, can be done in the form of a panel or a single judge with the assistance of a substitute clerk. By conducting a Descente session, it is hoped that the object of dispute will have clarity about the location, area, boundaries and other conditions of the object in accordance with SEMA Number 7 of 2001 concerning Descente.

However, in some decisions, Descente are also found in cases other than property, including in child custody disputes or hadhanah . Hadhanah itself means equipping children materially and spiritually, mentally and physically so that children are able to stand alone in facing life and life later when they grow up, so that in this case the child is considered a disputed object for parents or parties who both want to care for and care for them but they do not pay attention to the child's psychological condition. Children have the right to live, grow, develop, and participate in accordance with human dignity, to be protected from violence and discrimination, and most importantly, to have the best interests of the child at heart.

Related to this, there are 2 (two) opinions that have developed among judges, the first group states that the Descente in children's cases will be useless because the child can easily be moved to another place which is not like an object or (immovable object), so that the goal of avoiding difficulties in execution will never be achieved. Meanwhile, the second group of opinions states that the Descente of children's cases is valid to be carried out by the Panel of Judges and does not violate the applicable procedural law, because the purpose of the Descente in children's dispute cases is different from the examination in property cases (Mukti Arto, 2007).

Because judges in reading the legal provisions of child custody in Articles 105 and 156 KHI must examine the entire context, both the context of the text, the context of the reader and the context of society in Indonesia. For example in Article 105 KHI paragraph (a) states "The maintenance of children who are not yet mumayyiz or not yet 12 years old is the right of the mother" and paragraph (b) states "The maintenance of children who have mumayyiz is left to the child to choose between the father or mother as the holder of the maintenance rights". From paragraph (a) if in practice in the Religious Court children who are not yet mumayyiz do not always follow their mothers there are several considerations of judges determining to the father because of several factors, so this is where the importance of the judge's consideration in deciding the case. Similarly, in paragraph (b) where the child has the right to choose to go with the father or mother, but in practice it is not easy to hear the child's testimony, such as a child who cannot be brought to court, then is it necessary to conduct a Descente? And what if the child is not present when the Descente is conducted? This is where the judge is required to be able to see all the contexts as mentioned above and still have to pay attention to the best interests of the child in child custody cases.

Therefore, from the above problems, which attract the author to examine the Descente (descente) of children in hadhanah cases, the researcher intends to explain how the process of implementing Descente of children in child custody disputes and why Descente need to be carried out in child custody cases against children by analyzing Decision Number 1063/Pdt.G/2022/PA.Tgm, Decision Number 627/Pdt.G/2023/PA.Prw and Decision Number 585/Pdt.G/2020/PA.Ppg. , in a study entitled On-Site Inspection of Children in Child Custody Disputes (Analysis of Judges' Decisions in the Religious Courts in Indonesia).

The purpose of this research is to find out how the process of implementing Descente of children in hadhanah cases and to analyze why Descente needs to be implemented in child custody cases in Decision Number 1063/Pdt.G/2022/PA.Tgm, Decision Number 627/Pdt.G/2023/PA.Prw. and Decision Number 585/Pdt.G/2020/PA.Ppg.

METHODS

This research is normative legal research or library research (Zainuddin Ali, 2011). The nature of the research that the author uses is descriptive or presents the data studied by describing certain symptoms and reviews because in this study, the author utilizes existing theories as explanatory material. This research will provide a detailed and systematic description of the legal value in the decision by looking at the judge's consideration of *hadhanah* cases that conduct Descente.

Therefore, the approach used in this research is conceptual approach (conceptual approach) , which departs from the views and doctrines that develop in legal science. By examining the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issue at hand (Peter Mahmud Marzuki, 2009).

The primary data source in this research is several judicial decisions in Indonesia such as the Tanggamus Religious Court, Pringsewu Religious Court and Pasir Pangaraian Religious Court namely Decision Number 1063/Pdt.G/2022/PA.Tgm., Decision Number 627/Pdt.G/2023/PA.Prw and Decision Number 585/Pdt.G/2020/PA.Ppg. which will be analyzed using inductive reasoning, which is a discussion that departs from general knowledge, then draws conclusions that are specific. Based on the data obtained in this research, the author will compile and analyze the data using descriptive analytical method (Moh. Kasiram, 2010).

FINDINGS AND DISCUSSION

The Concept of Child and *Hadhanah* in the Best Interest of the Child

A child is defined as a person born of a marriage between a woman and a man, without regard to the fact that a person born to a woman, even if she has never been married, is still a child. The better the personality of the child now, the better the future life of the nation. Vice versa, if the child's personality is bad, the future life of the nation will also be dilapidated. In general, people argue that childhood is a long period in the life span (Koesnan, 2005).

According to Article 1 point 1 of Law Number 35 of 2014 on the Amendment to Law Number 23 of 2002 on Child Protection emphasizes that: "*A child is someone who is not yet 18 years old, including children still in the womb.*"

In terminology, child custody is also called the word *hadhanah* which comes from the word "*hidhan*", meaning: stomach (Sayyid Sabiq, 1980). *Hadhanah* according to the *fuqaha* is to take care of children who are young men or women or who have grown up but have not yet undergone trials, without his orders to provide something that will make it good, to protect it from something that hurts and destroys it, training physically, mentally and intellectually to face life and assume its responsibilities independently.

Explicitly, QS. At-Tahrim: 6, explains about Allah's command to protect his family from hellfire, by trying to get all members of his family to carry out the commands and stop the prohibitions of Allah SWT, including in the verse are children. In the hadith narrated by Ahmad, Abu Daud and authorized by Hakim which means: "*From Abdullah bin Umar r.a that a woman came to the Prophet SAW then she said: "O Messenger of Allah, this boy is my stomach which is his vessel, my lamb which is his protector and my breasts which is his drink. Suddenly now his father wants to take him away from me, so the Messenger of Allah SAW said, "You are more entitled to him as long as you are not married again". (HR. Abu Daud)*

According to Law Number 1 of 1974, the contents and intentions of which have not been changed by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, regarding parental obligations towards children are contained in Article 45, Article 47, Article 48 and Article 49. In the Compilation of Islamic Law, it is regulated in Article 77 paragraph (3), Article 98, Article 105, Article 149 letter (d) and Article 156. Explained in Article 105 KHI states that in the event of divorce, the maintenance of children who are not yet *mumayyiz* or not yet 12 years old is the right of the mother and children who have *mumayyiz* are left to the child to choose between the father or mother and the maintenance costs are borne by the father.

Child Custody Rights in Judges' Consideration

The judge's consideration is a reflection of various legal concepts as in the facts of the trial. So that the judge in determining who holds the child's *hadhanah* between the father or mother or other family is solely based on consideration of the best interests of the child. If the *hadhanah* holder has been determined by one of the parents, it does not mean that the other parent no longer has the right to meet with their child. Rather, they can still meet because both father and mother have the same rights and obligations towards the child.

Judges in considering which of the father or mother should be entrusted with the responsibility of holding *hadhanah* must be guided by legal principles. So that in examining the case the judge can give a correct, precise and fair decision, in which the judge must explore the facts needed as a basis for deciding the case, the facts referred to are as follows (Analiansyah & Rahmatillah S, 2015): 1) Facts about child protection needs; 2) Facts about the conditions for holding *hadhanah*; 3) Facts about the potential of parents; 4) Facts about which parent is more dominant.

The Best Interest of the Child in Care and Maslahah

The best interests of the child is a fundamental principle in determining the limits of adult authority over children. It is based on the principle that parents may only act and/or make certain decisions in the best interests of the child in an appropriate and proportionate manner.

When parenting a child, parents must consider whether the parenting pattern applied is in line with the interests of the child or not. Therefore, judges must truly identify the best interests of the child in deciding cases with the following criteria (Ahmad Zaenal Fanani, 2015): *First*, the nature of the relationship between parents and children, parents who have been emotionally close to their children better understand the needs of children as well as changes and developments in the nature, attitudes, and behavior of children; *Second*, the level of parental participation in parenting, this is important to be considered by the judge in deciding the case, whether all this time both parents are willing to actively participate in parenting, willing to spend time caring for their children such as feeding, teaching manners, training children to speak, fostering children's confidence, and inviting their children to interact with the outside world; *Third*, the pattern of communication between parents and children; *Fourth*, the capacity of parents to meet needs; and *Fifth*, the personal maturity of parents, children have a strong tendency to imitate parents.

Implementation of Descente in *Hadhanah* Cases

On-site Inspection (*descente*) is an examination of the case, by the judge because of his position, which is carried out outside the building or the seat of the court, so that the judge by seeing for himself obtains a picture or information that gives certainty about the events in dispute.

Descente is regulated in Article 153 HIR, Article 180 RBg. and Article 211 Rv. Descente aims to make the judge obtain certainty about the events in dispute (Mukti Arto, 2017).

Based on Article 153 HIR, 180 RBg Descente can be held based on the judge because of his position, *ex officio* can determine or order a Descente and at the request of the parties to the panel of judges. Meanwhile, in the provisions of SEMA Number 7 of 2001 concerning Descente, it is explained that the purpose of conducting a Descente is to anticipate the object of dispute that cannot be executed in the future (*non-executable*).

The requirements for Descente as stated in Article 153 HIR, Article 180 RBg and Article 211 Rv can be detailed as follows (Rosalina, 2018): a) attended by the parties or their legal representatives; b) come to the object of the lawsuit or dispute; c) the clerk makes minutes; and d) the judge makes an opinion containing an assessment of the results of the inspection carried out.

Descente in *hadhanah* cases in court is something new in terms of procedural law, because in the previous explanation Descente was carried out on objects or objects while the *hadhanah* case was carried out on a child created by the Creator who has a mind, heart and feelings but is being disputed by his parents because they are divorced. So that the judge really has to pay attention from a psychological point of view and the best interests of the child, because the Descente is carried out to see the condition of the child who is being fostered by one of the parents, both father and mother, who cannot be questioned by the judge at trial or because the testimony of witnesses is still insufficient, so a Descente is carried out.

In addition, there are several circumstances and conditions for the holding of Descente on children in child custody cases in court, namely: the child whose custody is disputed cannot be presented to the court (M. Rum Nessa, et.al, 2016) and the judge has not felt enlightened about the case before him (the object of the dispute) (Mukti Arto, 2007).

Regarding the procedure for conducting Descente in *hadhanah* cases, Descente is a trial examination process that should be carried out in the courtroom of the courthouse but is moved elsewhere, namely in the location of the disputed object of goods.

The Descente process can be conducted in several ways. First, the process is first opened in court, then moved to the location of the subject of the dispute, then ends again in the courtroom or can also be closed at the location of the subject of the dispute. Second, the trial is opened directly from the location of the object of research and is closed immediately upon completion. Third, the trial is opened at the village / kelurahan office, then we go to the place of dispute and then end at the village / kelurahan office or at the place of dispute (Rosalina M, 2018).

Basically, the process of Descente and ordinary trial are the same, both are part of a series of trials. Therefore, the principles of procedural law must still be guided at the location of the Descente. For the number of judges participating in the Descente, the Chairman may appoint one or two commissioners from the Panel with the assistance of a Registrar. The duty of the Registrar or Substitute Registrar is to make a report which is set out in the form of minutes of the Descente. This is as stipulated in Article 153 paragraph (2) HIR / Article 180 RBg, and Article 212 Rv which explains that "the Registrar *makes minutes of all things that occur at the place of examination*". If the place where the object of the dispute to be examined is located outside the jurisdiction of the court, then the Chairman can ask the court in charge of the object to conduct a Descente and send a report on its implementation as outlined in the minutes of the Descente.

Regarding the cost of the Descente, as regulated in Article 214 Rv. which explains that if a party wants a Descente or requests that a Descente be conducted, the cost of the Descente is charged

to the requesting party (Hermawan, 2007). This is as stated in Article 214 paragraph (1) as follows: *"The cost of the road shall be borne by the party requesting the local observation or witnessing, overpaid, and submitted to the clerk."*

Therefore, if the burdened party does not want to pay, the Descente cannot be carried out. And each party will be disadvantaged because the local inspection process cannot be carried out.

Meanwhile, the process of conducting Descente in *hadhanah* cases is not specifically regulated in the laws and regulations. Thus, its implementation refers to Article 153 HIR / Article 180 RBg, and Article 211 Rv, the essence of which is to increase the information of the panel of judges so that the sitting of the case examined is clearer, in order to determine the fairest possible decision for the parties. However, if we look at the practice relating to the examination of guardianship cases, we can see that the process of conducting a Descente is mandatory if the applicant for guardianship is unable to bring the child/person under guardianship to court. This can be seen in Article 439 of the Civil Code (Ramdani Wahyu Sururie and Fahaddil Amin Al Hasan, 2022).

Therefore, based on the explanation above, it indicates that Descente is not only related to property disputes, but can also be carried out in the examination process of other civil disputes, as long as the Descente process is deemed necessary by the panel of judges.

The practice of conducting Descente of children in the Religious Courts can be sequenced in stages and guided by the following:

1. The judge commissioner (panel of judges) and the court clerk go to the place where the child is located;
2. The chairperson of the panel opens the hearing, the Descente hearing is opened at the local village hall/ kelurahan office, the chairperson of the panel explains to both parties about the Descente hearing. The explanation includes the purpose and objectives of the Descente itself. The hope is that when the parties know the purpose of the Descente hearing, it will be in the best interests of the child.
3. The Descente is conducted in a hearing that is open to the public in the presence of the litigants. This means that when the panel of judges is about to open the hearing, it must state "the hearing is open to the public". So that everyone is allowed to witness the proceedings (Descente session), even though he is not a litigant or in the capacity of a legal representative. This is as stipulated in Article 13 paragraph (1) of Law No. 48/2009 on Judicial Power. The consequence of not complying with this provision can result in the verdict later being null and void.
4. Then proceed to the location of the residence that will be checked for future use as a child's residence;
5. The Chairperson of the Tribunal assisted by a substitute clerk and/or village head conducts a local inspection, which activities include:
 - a. Because the object is not property, the panel of judges asked both parties about the condition of the surrounding residence, from school places, places of worship, the majority of religions and house access to the highway and the comfort or feasibility of the residence, this can also be asked to the village head or local village officials;
 - b. **Ask the child for information;** That the implementation of the Descente still asks for information about the child while living in one of the parents' residences, if they are *mumayyiz*, they are more comfortable living with their father or mother, but if they are not *mumayyiz*, the child is more asked about the behavior of their parents, whether they are

abusive and how the surrounding people who live in the same house with the child and their peers behave, and while living in one of the parents' houses, whether the parents interact more with the child or the child is entrusted to someone else.

- c. The Registrar records all valid data obtained during the local inspection in the minutes of the local inspection.

Descente (On-site Inspection) in Decision Number 1063/Pdt.G/2022/PA.Tgm, Decision Number 627/Pdt.G/2023/PA.Prw and Decision Number 585/Pdt.G/2020/PA.Ppg.

When conducting a Descente where the object is a child, the best interests of the child principle must be prioritized, which is a fundamental principle in determining the limits of adult authority over children. This principle is based on the fact that parents may only act and/or make certain decisions in the best interests of the child in a proper and proportional manner. This also applies to cases of child custody disputes or *hadhanah* where for some cases such as those that occurred in cases in the Tanggamus Religious Court, Pringsewu Religious Court and Pasir Pangaraian Religious Court, judges need to see the condition of the child directly to ensure that the child is in good condition, healthy, taken care of and feels safe living in one of his parents.

Based on the three decisions, namely: Decision No. 1063/Pdt.G/2022/PA.Tgm, Decision No. 627/Pdt.G/2023/PA.Prw and Decision No. 585/Pdt.G/2020/PA.Ppg, have conducted Descente of children who are not yet *mumayyiz*. The Descente of children was carried out based on the *ex officio* of the panel of judges with at least two reasons why the panel of judges conducted a Descente in the Descente of these cases, namely: 1) to ascertain the objective condition of the child and the child's growth and development directly; 2) to ascertain the condition of the child's surrounding environment in order to realize the best interests of the child.

The implementation of Descente is carried out on the basis of the objective condition of the child that is not yet known with certainty by the panel of judges, so the object of examination is not only related to the child, but there are other objects that must be examined. If we look at Decision Number 1063/Pdt.G/2022/PA.Tgm, Decision Number 627/Pdt.G/2023/PA.Prw and Decision Number 585/Pdt.G/2020/PA.Ppg, there are several things that are examined, including: a) the disputed child (whether in good health, distressed, and exploring the child's opinion); b) the environment around the plaintiff's residence. The environment around the residence of the plaintiff/applicant (to see the child's access to places to play, study, the presence or absence of peers with the child, and other aspects that support the child's growth and development); and c) The environment around the residence of the respondent (to see the child's access to places to play, study, the presence or absence of peers with the child, and other aspects that support the child's growth and development);

In Decision No. 627/Pdt.G/2023/PA.Prw, based on the results of the local inspection, it was found that the children lived with the plaintiff and were aged 9 years and 3 years respectively (not yet *mumayyiz*), the first child went to an elementary school near the plaintiff's house. In addition, the condition of the plaintiff's younger sibling, as stated by the defendant and the defendant's witnesses, was that he was mentally ill and could not communicate, but in fact the younger sibling was healthy and could communicate casually and did not look like a person with a mental illness. On the other hand, the home environment was also good, the neighbors were predominantly Muslim, and the child was happy to live with the plaintiff and the family of the plaintiff and his uncle who the respondent thought was mentally ill but was not. However, when the trial judge went to the residence of the respondent's parents, it was found that the neighbors on the right and left

were of different religions and the school was far away, although the children were still happy to live there, but the first child said that he preferred to live with the plaintiff as his biological mother and the second child was closer to his mother.

The conditions found in the *Descente* are evidence that through the *Descente* the panel of judges can obtain a variety of other objective information that is more comprehensive related to the child's condition, including the panel of judges can also hear the child's opinion directly as part of the protection of the child's right to express opinions and be heard. All information obtained can be used by the judge to formulate a legal consideration in making a decision that has a child protection perspective. In this case, the panel of judges will formulate a decision that considers all facts related to children, especially the facts obtained through *Descente* in order to create a fair decision for the parties, both the plaintiff and the defendant, especially for the growth and development of children in the future.

From the three decisions of the religious courts, which in examining the subject matter of the case have carried out *Descente* of children, according to the author, it is not wrong if the institution of *Descente*. Associated with the theory of utilitarianism, this practice is right on target. Where this theory says the purpose of law is to provide as much benefit and happiness as possible to the citizens of society based on social philosophy which reveals that every citizen craves happiness, and law is one of the tools.

In the terminology of *ushul fiqh*, the benefit aspect is closely related to the theory of *mashlahah* or better known as *maqāṣid ash-sharīah*. al-Ghazali in his book *al-Mustaṣfa* said that *maqāṣid ash-sharīah* or the purpose of the shari'ah of creatures is summarized in five things: namely protecting religion, self, mind, offspring, and property (or better known as *ad-ḍarūriyyah al-khamsah*). Anything that protects these five things is called '*maṣlahah*', while anything that damages them is called '*mafsadah*' (Imam Ghazali, 1993).

The provision of *Descente* has a legal '*illat*' to be able to obtain truth and clarity regarding the object requested to be determined as the holder of *hadhanah* for the disputed child is an effort to protect *ḍarūriyyah al-khamsah*, namely *hifz al-nafs*, namely as a preventive measure from the occurrence of children who are not yet *mumayyiz* need maintenance so that their growth and development is guaranteed and maintained. So this provision can be said to be an effort to close the way (*sad aẓ-ẓarāi'*) to destructive things, in line with the *fikhiyyah* rule that says:

درء المفساد مقدم على جلب المصالح

If the *mafhum mukhalafah* is drawn, the implementation of *Descente* can avoid obscurity of the object and to avoid any agreement between the parties in case settlement.

Ibn Ashur further argues that the general aspect of *maqāṣid ash-sharīah* is that it is flexible and tolerant (*samaḥah*). The meaning of tolerant in sharia is fair, not falling on the extreme left (*ifrath*) or extreme right (*tafrith*), or in other words not making things easy or difficult. This is the meaning of the verse of the Qur'an that calls the people of the prophet Muhammad as a mediating people (Q.S. Al-Baqarah: 143). The role as a people of mediation is then emphasized in a famous hadith: *khair al-umur awṣathuha* or the best thing is the most middle (Muhammad ath-Thahir bin al-Ashur, 2001).

If analogous to the institution of *Descente* which is still debated regarding its implementation due to its position which is not part of formal law, but some judges are guided by the order of SEMA Number 7 of 2001 which requires judges to carry out *Descente*. In this case, the

judge should still be obliged to order the parties to conduct a Descente, but this cannot be used as an excuse for the judge to reject the case if the Descente cannot be conducted.

Seeing the benefits and fairness of the provision on the implementation of local inspection orders is essentially in accordance with the principles of *maqāṣid ash-sharīah*, namely for the achievement of the public good, which includes aspects of upholding justice as well as aspects of attracting benefits and rejecting damage. Al-Ghazali's definition of *maslahah* in etymology:

المصلحة : فهي عبارة - في الأصل - عن : جلب منفعة ودفع مضرة

Then in terms of the meaning of the social context or '*urfīyyah 'ammah*' that the Descente of children as applied and implemented in religious courts shows a practice of judges that has been considered good based on customs that are adjusted for the common good, or is something that has been considered good by the majority of certain communities (residents of the Tanggamus Religious Court, Pringsewu Religious Court and Pasir Pangaraian Religious Court, especially specifically the judges examining cases and justice seekers) (Muhammad Tahir Ibn Asyur, 2001).

According to the author, the provision of Descente as part of the evidentiary system in child custody cases in order to increase the judge's confidence, so that it can be said as an effort to close the way or means to destructive things (*sad az-ẓarī'ah*). Where even though it has been proven in court with the testimony of witnesses, a Descente still needs to be carried out in order to see the child's environment and the child's condition and to facilitate the trial process.

In addition, according to the author, the reason why the Religious Court judge conducted a Descente of the child was because the panel of judges was still unsure of the condition of the child of the disputed parties. So that the panel of judges in their consideration needs to do a Descente even though the child is not yet *mumayyiz*.

So that in order to realize the benefits in the world and the hereafter, there are at least five main things that must be protected and realized, namely protecting religion, life, mind, offspring and property. The purpose of this sharia, and what has been determined by KHI, is to give custody of a child who is not yet *mumayyiz* to his mother in accordance with *darūriyyah al-khamsah*, especially *hifz al-naḥs*. Because someone who is categorized as a child should be under the care of parents, especially the mother if the parents are divorced, unless there are other things that cause the child not to be in his custody as regulated by law and still see the condition of the child for the growth and development of *the child* and the best *interest of the child*.

CONCLUSIONS AND SUGGESTIONS

Based on the results of the above research, it can be concluded that the process of Descente of children in hadhanah cases is not specifically regulated in the legislation. So, its implementation refers to Article 153 HIR / Article 180 RBg, and Article 211 Rv which basically is to add information to the panel of judges so that the case being examined is clearer. So that the process is the same as the examination of property, First of all, the process is first opened in court, then moved to the location of the subject of dispute, then ends again in the courtroom or can also be closed at the location of the subject of dispute. Second, the trial is opened directly from the location of the object of research and is closed immediately upon completion. Third, the trial is opened at the village office, then we go to the place of dispute and then end at the village office or at the place of dispute by prioritizing the principle of the best interests of the child.

Although Descente in hadhanah cases can be carried out, not all hadhanah cases can be subject to Descente. Because there are several conditions for the implementation of Descente on

children in hadhanah cases, such as decision No.1063/Pdt.G/2022/PA.Tgm. No.627/Pdt.G/2023/PA.Prw and No.585/Pdt.G/2020/PA.Ppg. According to the author's analysis in these decisions there are several considerations of the judge, why it is necessary to hold a Descente of the child, namely: (1) the plaintiff and defendant were unable to present the disputed child; and (2) the panel of judges was not sure of the objective condition of the child, so the panel wanted to see the child's condition as a whole, such as seeing firsthand the environment of the plaintiff's and defendant's residence, and ensuring whether or not the child had access to a place to play, study, worship, and other things and still pay attention to the best interests of the child.

In relation to the results of this study, there are several suggestions that the author needs to put forward as a follow-up, namely to the judges, it is hoped that if they want to conduct a Descente, they must be precise and thorough in the incoming child custody case. This is so that in the future there will be no further reports to the court with unfinished child custody disputes. Descente of children must be able to prove legal events, namely proving that the child is in an inappropriate condition from the environment of residence, and the child's growth and development is threatened both in terms of religion, morally and materially. As well as this research is expected to illustrate that the implementation of Descente can affect the judge's consideration in his decision, the judge must be able to maintain the existence of a very strong and important role in directing the parties to carry out Descente in the case proof system to be able to obtain certainty and information about the condition of children in child custody cases.

REFERENCE LIST

- Al-Ghazali, Imam. *Al-Mustasfa min 'Ilm Al-Uşūl*. Beirut: Dar al-Kutub al-'Ilmiyah, 1993.
- Ali, Zainuddin. *Legal Research Methods*. Jakarta: Sinar Grafika, 2011.
- Analiansyah & Rahmatillah, S. "Protection of Children in Conflict with the Law (A Study of the Indonesian Juvenile Justice Law and Acehese Customary Courts)." In *Gender Equality: International Journal of Child and Gender Studies*. 1(1). 2015.
- Arto, Mukti. *Civil Case Practice in Religious Courts*. Yogyakarta: Student Library, 2007.
- Ath-Thahir, Muhammad bin al-Ashur, *Maqashid ash-Syariah al-Islamiyyah*, Second Edition, Jordan: Dar an-Nafais, 2001.
- Fanani, Ahmad Zaenal. *Legal Reform of Child Custody Disputes in Indonesia*. Yogyakarta: UII Press, 2015.
- Hermawan, M. *Basics of evidentiary law*. Surabaya: UM Surabaya, 2007.
- Kasiram, Moh. *Research Methodology, Reflections on the Development of Understanding, and Mastery of Research Methodology*. Malang: UIN Maliki Press, 2010.
- Koesnan, R.A. *Criminal Structure in the Indonesian Socialist State*. Jakarta: Sumur Bandung, 2005.
- Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana, 2009.
- Mertokusumo, Sudikno. *Indonesian Civil Procedure Law*. Yogyakarta: Liberty, 2006.
- Nessa, M. Rum. et.al. *Grounding the Procedural Law of Religious Courts in Indonesia*, Yogyakarta: UII Press, 2016.
- Rosalina, M. "Implementation of Supreme Court Circular Letter No. 7/2001 on Descente in Resolving Land Disputes at the Stabat District Court." In *Doktrina: Journal of Law*. 2018 . 1(2).
- Sabiq, Sayyid. *Fiqh Al-Sunnah*. Translation. Muhammad Talib. *Fikih Sunnah*. Bandung: Al-Maarif, 1980.

Sururie, Ramdani Wahyu and Fahadil Amin Al Hasan. "Implementation of Descente (Descente) in Child Custody Cases Review of Decision Number 585/Pdt.G/2020/PA.Ppg." In *Judicial Journal*. Vol. 15 No. 2, August 2022.