



# Implementation of Constitutional Court Decision No. 57/PUU-IX/2011 Regarding Smoking-Prohibited Areas and Smoking Areas: A Siyāsah Qadhaiyyah Perspective

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**Abstract:** This study examines the implementation of Constitutional Court Decision No. 57/PUU-IX/2011, a landmark ruling that reinforces the right to a healthy environment by mandating the establishment of smoke-free areas and the provision of designated smoking rooms in public facilities. Focusing on its application at the Grand Mosque of Medan, the research adopts the perspective of *siyāsah qadhā'iyyah* within Islamic legal thought to assess the extent to which the decision achieves its intended goals. The findings reveal several implementation challenges, including inadequate infrastructure, weak supervision, and limited public awareness regarding the legal obligations related to smoking regulations. Through the lens of *siyāsah qadhā'iyyah*, the study offers both legal and ethical insights into the decision's effectiveness, particularly in upholding substantive justice and enhancing public welfare. Moreover, the decision aligns with the objectives of *maqāṣid al-sharī'ah*, particularly in the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and the environment (*hifz al-bi'ah*). The research concludes that integrating contemporary legal mandates with Islamic values is crucial to building a legal framework that is not only just and enforceable but also sustainable and socially resonant.

**Keywords:** Constitutional Court Decision, Maqāṣid al-Sharī'ah, Public Health, Siyāsah Qadhā'iyyah, Smoke-Free Zones

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## 1. Introduction

Constitutional Court Decision Number 57/PUU-IX/2011 is an important step in enhancing citizens' right to live in a clean and healthy environment, in accordance with Article 28H paragraph (1) of the 1945 Constitution. In that decision, the Court stated that the word "may" written in the Explanation of Article 115 paragraph (1) of Law No. 36 of 2009 concerning Health is contrary to the 1945 Constitution and is legally invalid. The word is considered to be open to various interpretations because it seems to allow certain parties to decide for themselves whether to provide a designated smoking area, even though it is actually mandatory to protect the public from the negative effects of cigarette smoke (Gurning, 2023).

In the context of *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), local socio-cultural issues such as permissiveness toward smoking can serve as a crucial foundation for constructing narratives on the importance of contextual law implementation, as the primary aim of Islamic law is to promote public welfare (*jalb al-maṣlahah*) and prevent harm (*dar' al-maṣadah*). Societal permissiveness toward smoking is not merely an individual habit but has become a socially embedded norm, implicitly legitimized by the

lack of strict regulation and enforcement—even in places that, by both legal and religious standards, should be free from cigarette smoke, such as mosques. This is clearly evident in the case of the Al-Mashun Grand Mosque of Medan, which, despite being a religious landmark and center of Islamic worship in the city, continues to experience violations of the smoke-free zone policy. The Constitutional Court Decision Number 57/PUU-IX/2011 plays a pivotal role in this issue, as it affirms that the provision of smoke-free zones is not optional but a legal obligation aimed at protecting citizens' constitutional rights to clean and healthy air as guaranteed in Article 28H paragraph (1) of the 1945 Constitution. However, the practical implementation of this decision still faces challenges, mainly due to the absence of supportive facilities such as designated smoking areas separated from the main worship spaces. As a result, the prohibition is rendered ineffective and lacks public compliance. Within the framework of *siyāsah shar'iyah* (Islamic political jurisprudence), classical scholars like Imam al-Māwardī, Ibn Taymiyyah, and Abu Ya'la al-Farrā' emphasized that the essential goal of judicial and governmental authority is to uphold justice, eliminate oppression, and preserve public welfare—even if doing so requires flexible approaches, as long as they do not contradict the core principles of Islamic law. Therefore, a contextual and pragmatic legal approach—such as providing smoking areas as a transitional strategy—is not a compromise against Islamic values but rather a manifestation of the principle of *maslahah mursalah*, which advocates for fair and practical solutions to complex social realities. Hence, the implementation of law should not be limited to normative texts but should also engage with collective social awareness, making the law more applicable, widely accepted, and aligned with the Islamic spirit of protecting life, health, and social justice in every policy and decision made. (Dewa Gede Dedy Purnama, 2024).

However, in practice, the implementation of this decision still faces many challenges. In various public places, especially in places of worship such as mosque, violations of the non-smoking area regulations still occur frequently. One real example is the Al-Mashun Grand Mosque or the Great Mosque of Medan City, North Sumatra. Although this mosque is a religious icon and the center of activity for Muslims in Medan, cigarette smoke is still found around the mosque area, both in the courtyard and parking area. This is certainly contrary to the spirit of protecting the health of pilgrims, especially children, the elderly, and women who are more vulnerable to the effects of secondhand smoke (Nasrullah, 2021).

The absence of designated smoking areas within the Grand Mosque of Medan is believed to be one of the factors contributing to the continued violation of the smoke-free zone. This reflects that a mere ban without providing supporting facilities has not yet been able to create the desired behavioral change. Therefore, the implementation of Constitutional Court Decision 57/PUU-IX/2011 should also include concrete steps such as providing a smoking area separate from the main worship area, as a form of compromise between protecting the right to clean air and managing the smoking habit that still exists in society. This approach aligns with the principle of *maslahah* in Islamic jurisprudence, which emphasizes the importance of realistic and just solutions (Umrah S. R., 2021).

In the context of judicial politics, there are several views from classical scholars that can be used as a reference.

Imam al-Mawardi in his book *al-Ahkam al-Sultaniyyah* explains:

القضاء: هو الإخبار عن حكم الشرع على سبيل الإلزام

Al-qadha' is the binding notification of Islamic law.

Al-Mawardi also explained that a judge is obliged to act fairly, decide cases with truth, and protect the rights of the community. This highlights the role of the judge as a guardian of justice in society, which is relevant in the context of multiple interpretations and the implementation of regulations regarding smoking bans and designated smoking areas (al-Sultaniyyah, 2014).

Imam Ibn Taimiyah in his book *al-Siyasah al-Syar'iyah* mentions:

## المقصود من الولاية والحكم تحقيق العدل ورفع الظلم

The main goals of government and the judiciary are to uphold justice and eliminate tyranny.

He emphasized that in order to uphold justice, judges or rulers may use policies consistent with Sharia principles to achieve the welfare of the community. This is an important basis for assessing the implementation of the Constitutional Court's decision regarding smoking bans and designated smoking areas in the field.

Imam Abu Ya'la al-Farra' in his book *al-Ahkam al-Sultaniyyah* mentions:

، والقاضي هو من ينظر في الخصومات، ويفصل فيها ويقوم بالحدود

A Qadhi (judge) is a person who handles disputes, decides them, and enforces punishments.

In this context, judicial policy is not only a normative framework for understanding decisions, but can also serve as an ethical and philosophical guide in assessing the effectiveness of their implementation. Thus, this approach allows for an assessment not only based on legality, but also on the extent to which justice and welfare are truly realized through on-the-ground implementation.

Therefore, this study is highly relevant for evaluating the extent to which the Constitutional Court Decision Number 57/PUU-IX/2011 has been implemented at the Grand Mosque of Medan City, and how Islamic legal perspectives can support its implementation in the local context.

This study is expected to contribute to improving the effectiveness of legal decision-making in places of worship, and to encourage collaboration between existing laws and Islamic values in creating a clean, healthy, and blessed environment.

## 2. Materials and Method

This study adopts a qualitative empirical approach that aims to analyze the practical implementation of Constitutional Court Decision Number 57/PUU-IX/2011, with a particular focus on the enforcement of smoke-free area (SFA) regulations and the provision of designated smoking areas (DSAs) within public facilities. As highlighted by (Umrah R. A., 2021) this approach integrates sociological, juridical-empirical, and Islamic legal perspectives, grounded in the theoretical framework of *siyāsah qadhā'īyyah*, to assess whether these policies genuinely reflect the principles of substantive justice and public welfare (*maṣlahah*). Positioned within the domain of empirical legal research, this study emphasizes not only the textual interpretation of legal instruments but also their real-world application, particularly as perceived by both the community and officials responsible for policy enforcement (Susanti, 2022). The research is centered at the Grand Mosque of Medan (Masjid Raya Al-Mashun), located on Jalan Pangeran Diponegoro, Madras Hulu Village, Medan Polonia District, Medan City, North Sumatra – chosen due to its symbolic status and observed inconsistencies in SFA regulation enforcement. Data sources include primary data gathered through in-depth interviews with mosque staff and facility users, as well as field observations. Secondary data comprises Constitutional Court Decision Number 57/PUU-IX/2011, Law Number 36 of 2009 concerning Health, regional regulations on smoke-free areas issued by the Medan City Government, Islamic legal literature relevant to *maqāṣid al-sharī'ah* and *siyāsah qadhā'īyyah*, and a wide range of supporting academic publications, journals, and theses. Data collection techniques consist of direct field observation, documentation of legal and regulatory materials, implementation records, and visual evidence. The data is processed through qualitative analysis, involving systematic stages of data reduction, thematic categorization based on theory and fact, interpretative analysis, and final conclusion drawing, in order to provide a comprehensive, context-sensitive evaluation of the policy's effectiveness in advancing public health and aligning with Islamic principles of justice.

### 3. Results and Discussion

#### 3.1 Contents and Legal Considerations of the Constitutional Court Decision No. 57/PUU-IX/2011

Constitutional Court Decision Number 57/PUU-IX/2011 is a response to a request for a material review of the provisions in Article 115 paragraph (1), (2), and (3) and the Explanation of Article 115 paragraph (1) of Law Number 36 of 2009 concerning Health, which regulates Smoke-Free Zones (SFZ) and the provision of designated smoking areas in public places (Asshiddiqie, 2021).

The Applicants in this case believe that the provision, especially the word "may" in the Explanation of Article 115 paragraph (1), has a meaning that can be interpreted differently and gives public venue managers the opportunity to disregard their responsibility to provide smoke-free areas. According to the Petitioners, this situation creates legal uncertainty, contradicts the principle of protecting the right to a healthy environment, and ultimately violates citizens' constitutional rights as stipulated in Article 28H paragraph (1) of the 1945 Constitution (Rahardjo, 2020).

After reviewing the applications and arguments from both parties, the Constitutional Court stated that (Permana, 2024): (a) Health is a constitutional right of every citizen, and the state is obliged to guarantee its fulfillment as stated in Article 28H paragraph (1) of the 1945 Constitution. (b) The provisions of Article 115 paragraphs (1), (2), and (3) of the Health Law are not substantively contrary to the constitution because they aim to restrict smoking activities in public places and provide designated smoking areas as a form of protection for the rights of the general public. (c) However, the phrase "may" in the Explanation of Article 115 paragraph (1), which states that "public places are places that can be designated as smoke-free zones," actually creates ambiguity and doubt in its implementation in the field. (d) This phrase diminishes the imperative nature of the main norm in Article 115, because the word "may" gives the impression that the designation of smoke-free zones is optional or not mandatory. This is not in line with the spirit of protecting the right to a clean and healthy environment. (e) The court emphasized that the provisions in the Explanation of Article 115 paragraph (1) must ensure legal certainty and provide clear direction in the implementation of smoke-free zones in public places.

Based on these considerations, the Constitutional Court granted the Petitioners' request and declared that the phrase "may" in the Explanation of Article 115 paragraph (1) of Law No. 36 of 2009 is contrary to the 1945 Constitution and has no binding legal force.

Thus, this decision affirms that providing smoke-free areas in public places is not an optional authority, but a binding obligation that must be implemented by all relevant parties.

#### 3.2 Implementation Challenges: Weak Structure and Social Awareness

The implementation of Constitutional Court Decision Number 57/PUU-IX/2011 in the area of the Great Mosque of Medan City faces serious challenges in terms of infrastructure and public awareness. One of the main problems found was the lack of designated smoking areas that meet legal and health criteria. In fact, the substance of the Constitutional Court's decision affirms that providing smoking areas is no longer optional, but legally mandatory as a form of protecting the right to clean and healthy air.

Without infrastructure support, the smoking ban in places of worship is merely normative and tends to be ineffective at the implementation level (Fariz Kahendra, 2023).

The absence of structural oversight from the mosque authorities or management also contributes to the weak enforcement of the rules. Based on the observation results, there were no prominent "no smoking zone" warning signs, supervisory officers, or administrative sanctions for violators. In fact, Medan City Regional Regulation Number 3 of 2014 concerning Smoke-Free Zones explicitly states that places of worship are required to provide facilities and supervision for compliance with smoke-free zones. The lack of intervention from the local government, both through the Health Department and the Civil Service Police, is preventing this regulation from functioning as intended (Martini, 2021).

Besides structural constraints, legal awareness and social culture within the community are also significant obstacles. Some congregants who smoke on mosque grounds are unaware that their actions violate positive law and harm other congregants. This low awareness can be attributed to the minimal socialization of the smoke-free zone policy in places of worship. One of the most influential factors affecting the effectiveness of implementing smoke-free zone policies is the weak public awareness campaigns conducted by government institutions and facility managers (Juanita, 2020).

In addition, there is also the factor of local cultural permissiveness, where smoking in public spaces is still considered commonplace and not disruptive. In some communities, smokers are even given greater tolerance than non-smokers, including in places of worship. This condition indicates that changes in social behavior have not kept pace with changes in regulations. The success of legal policies heavily depends on changes in societal values and social structures, particularly regarding health norms and human rights protection (Indonesia, 2012).

The combination of inadequate facilities, weak supervision, and low legal and cultural awareness among the public indicates that the implementation of this Constitutional Court decision faces multidimensional challenges. To address this, a strategy is needed that is not only legalistic but also touches on public education and institutional reform at the local level. Without such a holistic approach, smoke-free policies in places of worship will continue to be "paper rules" that are powerless against conflicting social practices.

### ***3.3 The Concept of *Siyasah Qadhaiyyah* in Islamic Law***

In the Islamic system of government, judicial policy (*siyāsah qaḍā'iyyah*) is an integral part of Islamic law policy (*siyāsah syar'iyyah*), which is public policy formulated based on the principles of Islamic law. Specifically, *siyāsah qaḍā'iyyah* refers to the judicial policies implemented by the judiciary (*qāḍī*) in resolving disputes, upholding justice, and safeguarding the welfare of the community. The role of the qadi in Islam is not merely legal and formal, but also emphasizes the realization of substantive justice (*al-'adl al-haqiqi*) and considers the public interest (*maslahah 'ammah*). (SARI, 2022)

In carrying out their duties, a qadi has the authority to perform *ijtihad* as long as it does not contradict definitive (certain and absolute) texts. This allows for legal adjustments to dynamic social contexts, especially in public matters (*masā'il ijthādiyyah*)

such as health, economics, and the environment. Therefore, judicial policy becomes an important instrument in ensuring legal order and social justice in Islamic society. (Masykur, 2023)

The concept of judicial policy also includes the authority of the courts to adjudicate cases involving state officials, including rulers, as a form of control over power. This demonstrates the connection between the principles of Islamic law and modern state practices. For example, the authority of the Constitutional Court of the Republic of Indonesia in examining and deciding presidential impeachment cases reflects similar values in the realm of Islamic constitutional law (SARI, 2022).

Within the framework of Islamic legal scholarship, *siyāsah*, *shari'ah*, and *fiqh* are three main elements that complement each other (Masykur, 2023). They each have different but synergistic characteristics and functions in shaping Islamic legal and political thought. Therefore, teaching *fiqh siyāsah* in educational institutions, especially madrasas and Islamic schools, becomes extremely crucial (Adinda Dwi Putri, 2024). The aim is to instill a comprehensive understanding of the principles of governance in Islam, as well as their application in community and state life. (Masykur, 2023)

### ***3.4 The Purpose of Judicial Policy: Preserving the Objectives of Islamic Law***

The Constitutional Court's decision supporting designated smoking areas in public places aligns with the principles of *maqāṣid al-shari'ah*, which are the core objectives in Islamic law aimed at safeguarding the welfare of humanity and preventing harm (*mafsadah*). Specifically, this policy represents three main aspects of *maqāṣid al-shari'ah*: (a) *Ḥifẓ al-nafs* (preservation of life): The ban on smoking in public places directly aims to protect individuals from the dangers of cigarette smoke, for both active and passive smokers. This aligns with the Sharia's goal of preserving the safety and health of human life. (b) *Ḥifẓ al-'aql* (protection of the mind): Medical evidence shows that smoking can contribute to cognitive decline and mental health disorders in the long term. Therefore, this ban also contributes to preserving the integrity of the mind as part of the *maqāṣid al-shari'ah*. (c) *Ḥifẓ al-bi'ah* (environmental protection): Cigarette smoke and cigarette butt waste contribute to air pollution and environmental contamination. This policy supports environmental conservation efforts as part of the social and spiritual responsibility of Muslims.

Overall, the Constitutional Court's decision can be understood within the framework of *siyāsah qaḍā'iyyah*, which is judicial policy that functions to uphold the public good (*maṣlaḥah 'āmmah*) and prevent social and ecological damage. This confirms that the state's legal instruments can synergize with the principles of Islamic law in regulating contemporary societal life.

The concept of *maqāṣid al-shari'ah* itself is an important dimension in *fiqh* that emphasizes that every Islamic legal provision has a substantive goal oriented towards realizing mercy and well-being for humanity (Iffatin Nur, 2020). In the contemporary context, the *maqāṣid* approach is highly relevant in the process of *istinbāt al-aḥkām* (deriving laws) for modern issues not explicitly discussed in primary texts (Asa'ari Asa'ari, 2021). This approach allows legal scholars not to be trapped in purely textual

understanding, but rather encourages a more contextual, solution-oriented, and transformative interpretation of Islamic law (Jalili, 2021).

Thus, the application of *maqāṣid al-sharī'ah* in positive legal policies, as reflected in the Constitutional Court's decision regarding the ban on smoking in public places, serves as concrete evidence that Islamic law can be implemented within the framework of a modern state without losing its spiritual and humanitarian values.

### ***3.5 Analogy of the Role of Judges in Islam and Constitutional Judges***

In the Islamic legal system, a *qadhi* (judge) is responsible for interpreting and applying the law based on the primary sources, namely the Quran, the Sunnah, and contextual *ijtihad* that aligns with the social needs of the community. In the context of modern statehood, the role of the Constitutional Court (MK) of the Republic of Indonesia can be likened to a contemporary *qadhi* whose duty is to uphold justice, enforce the constitution, and ensure balance within the framework of a state of law (Wahyudi, 2024).

Constitutional Court Decision Number 57/PUU-IX/2011 can be categorized as a form of *ijtihad siyasah qadhaiyyah*, which is *ijtihad* in the realm of state law, substantively reflecting the principles of justice and public interest. This is evident in several aspects, including: (a) The decision is based on the principles of justice and the protection of the collective rights of society. (b) Efforts to protect the rights of smokers and non-smokers. (c) And it reflects the active role of the state in realizing *tahqiq al-maslahah* (the realization of public welfare) through regulation and supervision of behaviors that have a broad impact on the public.

The importance of judicial independence in the perspective of Islamic law, emphasizing that judges should decide cases based on the principles of Sharia. The code of ethics for judges in Islam emphasizes the need for noble moral and ethical values in judicial practice (Rabiatul Hidayah, 2021). Reconstruction of judicial reasoning in civil disputes is also recommended to refer to the principles of Pancasila and the values of substantive justice that are alive in society. (Dewanto, 2020)

The development of constitutional morality within the Constitutional Court environment is crucial to ensure the independence, impartiality, and accountability of judges in carrying out their constitutional duties. In this regard, the strengthening of constitutional morality needs to be instilled through a recruitment process that prioritizes faith, integrity, and noble character as the main requirements for a constitutional judge. (Lailam, 2020)

Thus, the approach taken by the Constitutional Court in Decision No. 57/PUU-IX/2011 can be interpreted not only in a legal-formal sense but also as a reflection of ethical principles and Islamic values that emphasize substantive justice and the common good. This shows that the integration between positive legal norms and Islamic moral values remains relevant in the discourse of constitutional justice in Indonesia.

### ***3.5 Relevance and Social Implications***

Strengthening and Expanding Special Smoking Area Facilities as a Solution for Implementing the Constitutional Court's Decision, including: (a) Increasing and improving special smoking area facilities to accommodate the rights of smokers without

infringing on the public's right to clean air, there is a need for the addition of separate and adequate special smoking areas in various public places, such as office areas, stations, terminals, and shopping centers. This facility must be designed to avoid polluting the surrounding environment and meet health standards. (b) Clear and integrated zoning regulations: Local governments need to establish clear zoning regarding smoke-free areas and designated smoking areas. This zoning must be integrated with local regulations so that it is easy to monitor and enforce. With adequate designated smoking areas, violations of smoke-free zones can be reduced. (c) Socialization and education for the community. In addition to adding facilities, education regarding the importance of respecting smoke-free zones and the use of designated smoking areas needs to be improved. This education also aims to change the culture and habits of smoking in public spaces to be more orderly and respectful of others. (d) Cross-sectoral collaboration for monitoring and enforcement. The active role of legislative, executive, and judicial bodies, religious leaders, and the community is very important in overseeing and enforcing the rules regarding smoke-free zones and designated smoking areas. With this synergy, existing facilities can be utilized optimally and community compliance will increase.

#### 4. Conclusion

Based on the implementation of Constitutional Court Decision Number 57/PUU-IX/2011 can serve as a critical precedent for the development of progressive law grounded in *maqāṣid al-sharī'ah*, particularly within the domain of public health governance. This decision not only affirms the constitutional right to a healthy environment as outlined in Article 28H paragraph (1) of the 1945 Constitution, but also redefines the legal obligation of the state by transforming the discretionary language in Article 115 paragraph (1) of Law No. 36 of 2009 changing the word "can" to a legal imperative. This change removes interpretive ambiguity and strengthens the enforceability of smoke-free zone (SFA) policies. However, the gap between legal norms and their implementation, especially in sensitive and symbolic locations like the Grand Mosque of Medan, illustrates that progressive law cannot rely solely on textual mandates. It must be accompanied by structural readiness, public education, consistent enforcement, and adequate facilities such as designated smoking areas (DSAs), which are often absent in practice.

From an Islamic legal perspective, the decision exemplifies what can be seen as judicial *ijtihād siyāsī*—a political-legal reasoning by the judiciary—that aligns with the objectives of *maqāṣid al-sharī'ah*, specifically in upholding *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-'aql* (protection of intellect), and *ḥifẓ al-bi'ah* (protection of the environment). Through the lens of *siyāsah qadhā'iyyah*, the role of the judge (*qāḍī*) extends beyond formalistic interpretation to ensuring substantive justice and public welfare (*maṣlahah 'āmmah*). This mirrors the Constitutional Court's modern role as a guardian of citizens' rights and a progressive legal institution capable of influencing behavioral change through binding decisions. Consequently, the implementation of Decision 57/PUU-IX/2011 does not only carry legal significance but also embodies the ethical and spiritual dimensions of Islamic governance that seek to nurture healthier, more conscious communities.

Hence, the decision stands as a strategic point of convergence between positive law and Islamic legal principles, offering a model for how law can evolve contextually and holistically to meet societal needs. To transform this ruling into a meaningful precedent, it must inspire collaborative governance, where state institutions, religious authorities, and civil society organizations work together to integrate legal mandates with culturally resonant values. This includes enforcing SFAs in religious spaces, raising awareness about smoking's harms, and installing proper infrastructure to support the law's goals. In doing so, the law becomes not only a formal instrument but a tool of social transfor-

mation grounded in justice, ethics, and communal well-being. Ultimately, this approach represents a blueprint for progressive, maqāsid-oriented legal development in Indonesia—one that not only preserves public health but also reinforces constitutional morality and Islamic values in the pursuit of a cleaner, safer, and spiritually aligned society.

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