

## **CHAPTER I**

### **INTRODUCTION**

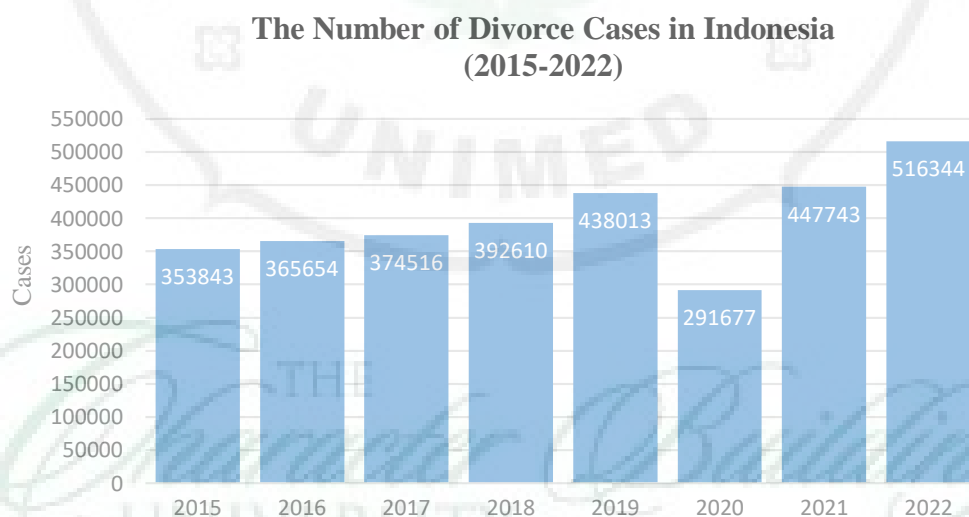
#### **1.1. The Background of the Study**

Language is a meaningful and articulate system of sound symbols (made by utterances) that is arbitrary and customary and is utilized by a group of individuals to form feelings and thoughts (Wibowo, 2001). Language is the most widely used means of communication to form the social connection as an element of our daily lives. It is the process by which a sender and a receiver generate, exchange, and share ideas, opinions, facts, feelings, and experiences. Communication is essential for the survival and prosperity of individuals, organizations, civilizations, and nations. People cannot achieve a communicative aim if their words do not target a certain circumstance or context. It is crucial in assisting people in developing relationships. Language, on the other hand, functions as a killer of human relationships or can harm relationships (Scuka, 2010), because it also can divide individuals from one another. In this case, the end of the marital relationship between husband and wife leads to divorce.

Husband and wife relationships are legally bound by marriage. The purpose of marriage, which is regulated in the social value system, is inseparable from a person's religious value system, which universally in the implementation of marriage, can be said to be the same in all religions and beliefs. Marriage is intended to create a happy and eternal family, for which husband and wife must assist and complement each other in order for each to develop their personality, assist, and achieve spiritual and material well-being (Rofiq, 1998, p. 56). This statement is in line with the opinion of Hosen (Hosen, 1971, p. 77), which states that marriage is prescribed by religion in line with the wisdom of man created by Allah, namely to prosper this world by maintaining the reproduction of mankind, so marriage is required to be able to

organize and as a forum for channeling the potential of humanity, and to ensure this order, it must be followed by submission to the validity and legality of the marriage.

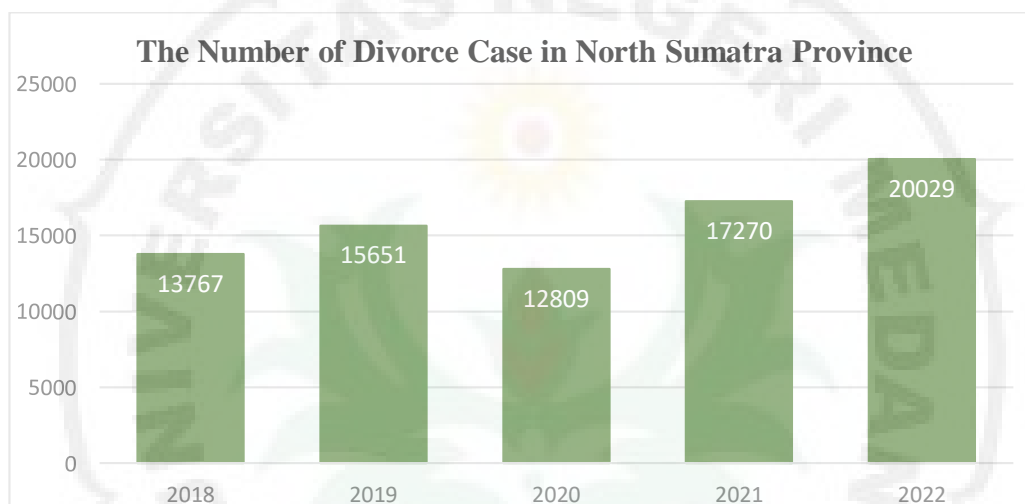
In the meantime, despite the fact that marriage is viewed as a physical and spiritual link between the husband and wife, there is still a significant number of divorce cases. In other words, the divorce rate in Indonesia is increasing every year, which essentially contradicts the meaning and purpose of the marriage itself. Based on data from the Indonesian Central Bureau of Statistics (Badan Pusat Statistik Indonesia, March 2023), divorce cases from 2015 to 2022 have increased by 46%. There were 516.344 divorce cases in Indonesia in 2022 (Figure 1.1). This number increased by 15.3% compared to the previous year's 447.743 cases. It is also noted that in 2020-2022 there were around 1.7 million married couples in Indonesia and around 24.6% of them divorced. This means that every year there are around 418.200 divorced couples.



**Figure 1.1** Divorce Cases in Indonesia (2015-2022)

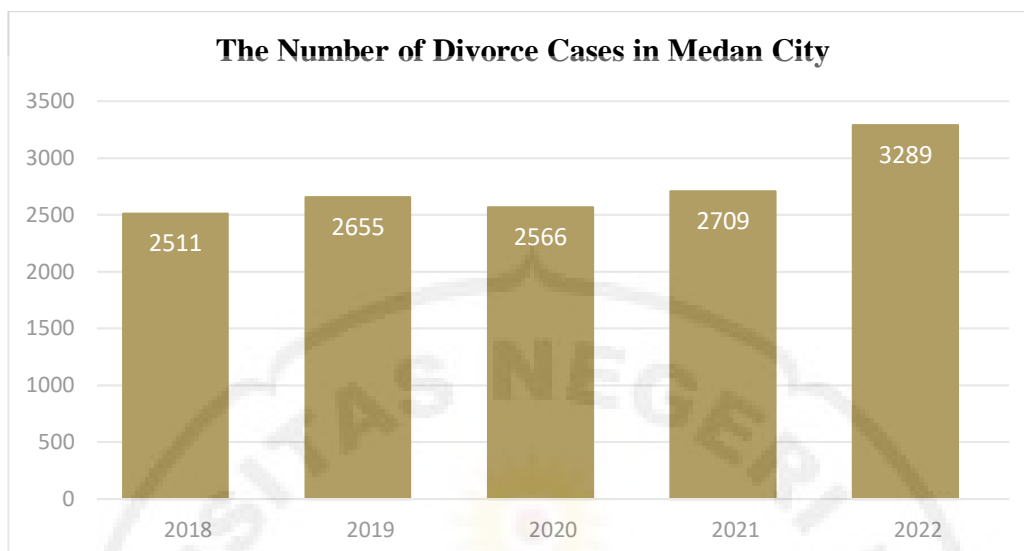
According to information from the Indonesian Central Bureau of Statistics, North Sumatra had the fourth-highest divorce rate in the Indonesian area in 2021, and an increase of

16% in the following year, with a total of 20.029 cases in 2022 (Figure 1.2). Couples who separated experienced a huge spike in 2021 with 17.270 cases, about 34,83% from the previous year (2020 with 12.809 cases). It is known that the number of divorces in 2018 was 13.767 cases, and the number of divorces in 2019 was 15.651 cases, where most of the reasons for divorce were economic problems.



**Figure 1.2** Divorce Cases in North Sumatra Province (2018-2022)

Meanwhile, as the capital of North Sumatra province, the number of divorces that occur in the city of Medan also continues to increase every year, noting that the number of divorced couples in 2022 jumped by 21.4% from the previous year, which was about 3.289 cases. In the year 2022 there was also a spike in divorce cases of about 5.5% from the previous year, which amounted to 2.709 cases, while the increase also occurred in 2019 rose by about 5,7% from the prior year (Figure 1.3).



**Figure 1.3** Divorce Cases in Medan City (2018-2022)

Furthermore, it can be traced that the number of cases of reconciliation in divorce cases is very minimum and even almost impossible to happen. Based on Indonesian Central Bureau Statistics, the number of couples who reconcile after divorce in every province is very small and even tends to be nonexistent. It can be concluded that most divorced couples choose not to repair their relationship or reconcile after the divorce process. Most couples choose to move on with their individual lives.

With the large number of divorces that occur in Indonesia, specifically in Medan city, the process of divorce cases is carried out differently according to the beliefs of the divorcing couple. If the couple is Muslim, the divorce process is carried out by a syari'ah court, where the entire settlement process must refer to the principles of Islamic law. While for non-Muslim couples, if they want to divorce, they must first file a divorce suit with a conventional court where both of them are required to have a marriage certificate issued by the civil registry office beforehand. By separating the divorce process based on religion, it is hoped that it can provide treatment that is more in compliance with the values and principles recognized by each community. It can also help minimize the potential for conflict and ensure that justice is served

in accordance with the norms recognized by the parties involved. Nevertheless, this study is more focused on discussing the schematic structure and the linguistic realization that exist in the process of resolving divorce cases at syari'ah court.

In Islam, the end of the relationships between husband and wife occurs due to the divorce process (*talaq*) that is pronounced by the husband. This refers to the Qur'an, Surah At-Talaq verse 1, and Surah Al-Baqarah verse 236, which state that the right to divorce is in the hands of the husband. Therefore, for some Muslims, when a husband utters the word 'talaq' to his wife, divorce has already occurred. Meanwhile, in Indonesia, which follows a legal system, divorce occurs when the husband declares the *talaq* pledge before a panel of judges. This is in accordance with Article 129 of the Islamic Law Compilation (KHI), which explains that the husband has the right to impose a divorce that is heard and ratified by a syari'ah court, as well as Article 117 KHI which states that *Talaq* is a husband's pledge before a session of the syari'ah court, which is one of the causes of the dissolution of marriage, with the method as intended in articles 129, 130 and 131. This may be determined as a theoretical gap from this study. Moreover, following Law No. 7 of 1989 as amended by Law No. 3 of 2006, the second amendment to Law No. 50 of 2009 concerning Syari'ah Courts, *talaq* divorce can be carried out in addition to *contested divorce*. *Talaq* divorce is also regulated in Article 66 of Law No. 7 of 1989 and *contested divorce* is regulated in Article 83 of Law No. 7 of 1989. The difference in the two laws lies in who appears as the proponent or initiator of the case. A *talaq divorce* is filed by the husband, and a *contested divorce* is filed by the wife. The validity of a *talaq* divorce decree begins when the husband finalizes the pledge of divorce (*talaq vow*) in front of the judges. Thus, it can be said that the conditions for the fall of divorce must be carried out by the husband (*talaq vow*) and will be recognized by state law when pronounced by the husband in the Syari'ah Court. Then, after the divorce petition is presented and agreed to by both parties, it has permanent legal force.

Due to the public's lack of knowledge about the divorce process in syari'ah courts, many couples who want to divorce admit feeling confused. Some of them hire lawyers or attorneys to assist with their divorce proceedings, while others try to face the process on their own despite feeling bewildered. Some of the people who registered their divorces at the syari'ah court were asked about their views on the divorce process at the syari'ah court. Most of them thought that the divorce process took a long time and cost a lot of money, and the repeated mediation hearings without any agreement between the two parties sometimes made them tired of continuing the divorce process yet desperate to get a divorce as soon as possible. They also did not know what to do when facing the courts, which sometimes made them feel unprepared to answer the questions from the judges. Long queues are also one of the reasons why they are hesitant to come to the syari'ah court because sometimes they have to bring witnesses who are very old, such as their parents, uncles, or aunts, who cannot afford to wait long. Additionally, some people who filed for divorce also asked, "What should I do inside the courtroom?", "Will the Judge make it difficult for me because we have been married for a long time but want to get divorced at this old age?", and "Will the Judge scold me inside? This is my first time," "I am tired because this divorce is taking so long and is complicated since my husband's side always does not have the same point of view. I have presented many witnesses, but the Judge considers them not credible." This is due to their lack of information about legal issues, especially divorce case settlement, which are increasingly widespread in recent years in society. All of these assertions represent phenomenon gaps in this investigation.

Dealing with this problem, people need to anticipate the awareness to understand the schematic structure of the divorce trial process because acts in legal discourse appear to follow a predetermined sequence. In other words, the schematic structure consists of a succession of rhetorical moves and communication strategy stages utilized to attain certain communicative aims, as well as lexico-grammatical elements.

Although there has been no research on schematic structure in the context of resolving divorce cases in syari'ah courts, research on the topic of schematic structure has been conducted by Saragih, Batubara, and Khairina (2021) in virtual English language lectures and their linguistic realizations based on the social context of the Covid-19 pandemic. Resulting in a schematic structure consisting of Greeting ^ ([{Class Checking}]n) ^ (Orientation) ^ [[Presentation]]p/h ^ ([[Group Work]]p) ^ [[Discussion]]p ^ Consolidation ^ Evaluation ^ Reflection ^ Closure. This schematic structure was investigated with the aim of enhancing the effectiveness of virtual English language learning during the ongoing Covid-19 pandemic in 2021. In the meantime, the current study that discusses the schematic structure of divorce case settlements produces different types of schematic structures in each trial for different divorce case settlements. In the talaq divorce case, examination produces four different types of schematic structures from four types of trials (Reconciliation Attempt, Proof, Verdict and Talaq Vow), namely T-1, T-2, T-3 and T-4. Likewise, the contested divorce case proceedings produced three different types of schematic structures from three types of trials (Reconciliation Attempt, Proof and Verdict), namely C-1, C-2 and C-3. The difference in the results obtained from the previous investigation can be considered a research gap for this study.

The study on the schematic structure of divorce case examination in syari'ah courtrooms is a significant topic of research in relation to applied linguistics that aims to understand the role of language in the process of divorce case settlement, because many people do not know or understand what actually happens in the process of resolving cases at the courtroom, specifically the settlement of divorce cases in syari'ah court. The high rate of divorce cases in Muslim societies including Indonesia, which requires a better understanding of the process of divorce case examination in syari'ah court, as well as the lack of awareness of the importance in understanding the schematic structure of divorce cases linguistically among the general public. The different stages and moves in a divorce case trial, such as



mediation, reading of the plaintiff's lawsuit, the defendant's response, the plaintiff's replication, and the pledge of divorce (*talaq vow*), are realized in configurations of register variables that are realized in patterns of choices in language (Pramoolsook & DaliMunte, 2020).

The following script is an example of schematic structure from the third trial of the talaq divorce case examination (Table 1.1), namely the Judge's Verdict Trial in the syari'ah courtroom as a preliminary data:

**Table 1.1** The Interactive Text of the Third Trial Talaq Divorce Case Examination

<b>The Judge's Verdict</b>	
1 Chief Judge	<p>"Putusan nomor 2769 / PDT.G / 2023 / PA Medan. Bismillahirrahmanirrahim. Demi keadilan, berdasarkan Ketuhanan Yang Maha Esa, Mahkamah Pengadilan yang mengadili dan memeriksa perkara tertentu. Mengadili:</p> <ol style="list-style-type: none"> <li>1. Menyatakan Termohon telah dipanggil secara resmi dan patut untuk menghadap ke persidangan, tidak hadir.</li> <li>2. Mengabulkan permohonan Pemohon dengan Verstek.</li> <li>3. Menjatuhkan Talak-1 Raj'i Pemohon S Bin J terhadap Termohon NA Binti D.</li> <li>4. Membebaskan biaya perkara kepada Pemohon." </li></ol>
(Chief Judge knocks on gavel one time)	
<b>Closing the Trial</b>	
2 Chief Judge	"Sidang ditutup."
(Chief Judge knocks on gavel three times)	
3 Attorney	"Terima kasih, Majelis."
4 Chief Judge	"Ya."
(The Litigants leaved the courtroom)	

From the conversation in the process of the pledge of divorce hearing above, it can be concluded that the schematic structure of the pledge of divorce hearing is as follows:

#### **The Judge's Verdict ^ Closing of the Trial**



The schematic structure of divorce case examination at Medan Syari'ah Courtroom is closely related to Systemic Functional Linguistics (SFL) and the social context of the courtroom. SFL is a theoretical method that studies the interaction between social settings and language features, and it can be applied to legal genres such as divorce case examination (Pramoolsook & DaliMunte, 2020). The fundamental notions of SFL are language as functional and language as meaning-making; it emphasizes the significance of comprehending how language is utilized in context and how it is organized for usage. Also, the relational notion of combining the context of a situation with language choices is termed register. It has three features: Field, Tenor, and Mode, which are connected to the ideational, interpersonal, and textual metafunctions (Halliday & Matthiessen, 2014). Therefore, analyzing the schematic structure of divorce case examination using Systemic Functional Linguistics approach can provide insights into the linguistic features and communicative purposes of each stage and move, as well as the roles and relationships of the participants involved in the process.

In relation to applied linguistics study, much research on the legal discourse of divorce cases has been conducted. Kressel (1980) conducted language studies to identify four patterns of divorce decision-making based on ambivalence, communication, and conflict through audio recording of mediation sessions and post-divorce interviews aimed at identifying key themes in the resolution of interpersonal conflict. Pal and Campbell (1995) focused on the language used in legal documents of divorce cases related to asset division in terms of linguistic style by developing a knowledge-based system to determine the disposition of the marital home in English divorce cases. Hopper (2001) showed that the symbolic structure and language used in divorce cases can generate conflict by examining the linguistic features, such as lexical choices, intonation, and turn-taking, to convey attitudes and beliefs. Blank and Ney (2006) managed a linguistic analysis by using Foucauldian theories of discourse to identify the ways in which language is used to construct gender roles and power dynamics in divorce litigation.

Heisterkamp (2006) conducted a study that examines conversational interaction in order to describe the conversational features, such as self-labeling, unbiased paraphrasing, perspective display, footing, and responses to disputant information-seeking attempts of mediator neutrality in a court-based community mediation of a divorce case. Olekalns, Brett, and Donohue (2010) used Relational Order Theory to investigate how terms linked with affiliation (liking) influence the result of child custody mediations in divorce cases by using the Linguistic Word Count program. Donohue and Liang (2011) also used the Linguistic Word Count program to investigate the impact of transformative mediation (TM) language indicators of empowerment and recognition on mediation in divorce proceedings.

Research case was conducted by Wang (2013) through a critical discourse analysis drawing on Foucault's works with transcriptions and the linguistic mechanism employed by mediators of court-ordered divorce mediation in China. Saarela and Finnas (2018) conducted quantitative research examining the role of language convergence and discordance in divorce cases among exogamous couples in Finland (Finnish speakers and Swedish speakers). Wirajayadi (2018) reported a description of the modality system in divorce claim text and its relevance toward discourse learning at higher education in strengthening the idea, view, and opinion to convince the judge's decision in a divorce case. Setiawan and Sukri (2019) attempted a discourse study by using Systemic Functional Linguistic theory of Halliday through the text on media in Nusa Tenggara Barat (NTB) to describe the representation of gender violence by male domination toward women in divorce cases.

Furthermore, the most recent research was conducted by Alhussaini, Abed, and Abbas (2021) focused on studying whether or not the divorce act is one of the performative speech acts in English and Arabic cultures by adopting Austin's interpretation of speech act theory and the idea of Felicity Conditions (FCs). Saarela, Kolk, and Uggla (2022) attempted a study on how discordance between language usage and ethnolinguistic affiliation relates to divorce of

exogamous couples by adopting the spouse's language, which may exacerbate the divorce risk of intermarried couples. Sportel (2022) analyzed the language used to construct and negotiate in divorce case narratives based on a study of transnational divorce among Dutch-Moroccan and Dutch-Egyptian households, which focused on the linguistic features such as pronouns, tenses, and modality.

Based on the preceding studies on divorce cases examination, very few research was based on linguistic study about schematic structure specifically using Systemic Functional Linguistic approach through divorce case in the syari'ah courtroom by the parties involved in the trial. However, there are some studies about schematic structure that are relevant using the Systemic Functional Linguistic theory to discuss about codes, signs, and words in different fields. For instance, Valipour, Assadi, and Asl (2017) discussed the generic structure in English academic research papers. Liu and Buckingham (2018) focused on the schematic structure of discussion section in the distribution of metadiscourse markers. El-Sakran, Nunn, and Adamson (2019) focused on genre analysis of reviewers' report for publication journals. Motlagh and Pourchangi (2019) discussed about schematic structure of literature review in research articles. Zein, Sinar, Nurlela, and Yusuf (2019) attempted the study on schematic structure of narrative text. Kuswoyo, Sujatna, Indrayani, and Rido (2020) employed a study on schematic structure of aerospace engineering English lectures. Melefa, Matthew, Maryjoy, and Adike (2020a) examined the generic structure of classroom interaction. Bakhtiari (2021) conducted a study on schematic structure in writing business negotiation letters. Khan, Pervaiz, and Abbas (2021) presented a study to explore schematic structure in narratives. Saragih, Batubara, and Khairina (2021) conducted a study on schematic structure on virtual English language lectures.

It is hoped that, with this study in order to investigate and explore the schematic structure of divorce case examination with orientation to Systemic Functional Linguistic theory

by Halliday, the public can find out what the process of resolving divorce cases in syari'ah court is like and become more understanding of the legal process, the roles of the stakeholders in the syari'ah court, and the language used in the syari'ah courtroom, where there is still little research done in this regard, as well as people can understand how sacred a marriage is so that it requires careful thought in making a decision to marry once in a lifetime. In addition, this research is also expected to contribute to the development of science and technology in the field of forensic linguistics as part of applied linguistics study, especially with the use of Systemic Functional Linguistic theory, particularly in the settlement of divorce cases at the Medan Syari'ah Courtroom.

### **1.2. The Problems of the Study**

In view of the fact that this study offers a fresh look at how judges evaluate their cases in the Medan Syari'ah Courtroom, it is vital to investigate not only the schematic structure but also the lexico-grammatical aspects employed to realize it. This study aims to address the following questions:

1. What are the schematic structures of the divorce case examination at the syari'ah courtroom?
2. How are the schematic structures linguistically realized in experiential and interpersonal functions at the syari'ah courtroom?
3. Why are the schematic structures, experiential and interpersonal functions of the divorce case examination at syari'ah courtroom realized in the way they are?

### **1.3. The Objectives of the Study**

In line with the background of the study and the statement of the problems above, it can be concluded that the objectives of this study are as follows:

1. To investigate what are the schematic structures of the divorce case examination at the syari'ah courtroom.
2. To describe how the schematic structures are linguistically realized in experiential and interpersonal functions at the syari'ah courtroom.
3. To explain why the schematic structures, experiential and interpersonal functions of divorce case examination at the syari'ah courtroom are realized in the way they are.

#### **1.4. The Scope of the Study**

The scope of the study is involved in the trial of the divorce cases settlement at Medan Syari'ah Court Class 1A, North Sumatra, as a researcher. It will be focusing on the spoken discourse analysis of examination divorce cases within the Medan Syari'ah courtroom. This research will address the schematic structures, experiential and interpersonal functions of the divorce cases examination, their linguistic realizations, and the reasons for the existence of the schematic structures. Experiential and interpersonal functions are linguistically realized with the orientation of Systemic Functional Linguistic theory by Halliday.

#### **1.5. The Significance of the Study**

The research findings were supposed to be useful and beneficial to education, either directly or indirectly, for theoretical and practical development. They are as follows:

##### **1. Theoretical benefits**

Theoretically, the results of this study are expected to be useful for:

- Contribute to curricular change at the institution to meet societal demands and student development needs by expanding the theoretical repertoire of Systemic Functional Linguistics.

- Enhancing university students' knowledge through scientific contributions, especially those who learn Forensic Linguistics in relation to applied linguistics study, because the language used in the court related to this research is different from the language used in everyday life.
- Provides a foundation for additional research on divorce case settlements, boosting readers' understanding and providing material for future study.

## 2. Practical benefits

Practically, this research can be valuable in the following ways:

- For the writer, they can add insight and direct experience on how to be involved in divorce case settlements at Syari'ah Court through observations and interviews, as well as enhance the knowledge concerning Forensic Linguistics in relation to applied linguistics study.
- For educators, academics, and linguists, it has practical value for legal development and provides opportunities for further research on applied linguistics study by using Systemic Functional Linguistics theory.
- For communities, it can help people in dealing with divorce cases and increase their knowledge of how the process of resolving divorce cases in syari'ah court works.