

Inter Vivos Transfers Based on Affection for Wealth Distribution Planning in Malaysia

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Abstract

Inter vivos in the context of wealth and estate planning can be generally defined as a transfer that takes place between the livings. Parents are motivated to transfer for altruism and exchange. In this context, this study aims to explore another potential motives of inter vivos, which is 'affection'. Data is collected through semi-structured interviews with inter vivos experts who have published articles in this area. The interview is encoded and thematic analysis is carried out to classify themes and subthemes that exist in the inter vivos transfers. This study discovers four main themes, which indicate that inter vivos transfers based on affection can be enlightened by the relationship between parents and children, responsibility for children, types of inter vivos, and effects to other heirs. Relationship between parents and children can be explained as parents transfer their wealth to the closest children, children who care for them and to family members only. Parents also are responsible to protect their children after they die and assist them who are in need. Types of inter vivos are considered as boundless inter vivos and without any material return. Inter vivos based on affection also aims not to abuse other heirs.

Keywords : Affection, Intergenerational Transfer, Inter Vivos Transfers, Thematic Analysis, Wealth Distribution Planning

JEL Classification Code : D64, K11, K36

1. Introduction

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Inter vivos have been widely debated in the context of financial planning (Mohd Yusof & Ahmad, 2013), risk management tool (Md Razak, Norizan, Ruslan, Mohd Nor, Sakarji, & Ramlan, 2015) and its practices in financial institutions (Nor Muhamad, 2010). Understanding inter vivos transfer is essential to recognize distribution parents' wealth across generation, household saving, children consumption and effect government expenditure (Benton & Keister, 2017; Hamaaki, Hori, & Murata, 2019; Slavík & Wiseman, 2018). From the policy-making point of view, inter vivos could promote child-care that helps to optimize government expenditure in providing healthcare support and elderly care center in which currently Malaysian government provides RM300 monthly as living allowance (Department of Social Welfare, 2019) and approximately RM603 million per year in 2017 ("RM1.7 billion allocated for welfare of children, senior citizens, disabled," 2017). In addition, the increasing trends of unclaimed inheritance estate have been a serious issue when wealth planning is taken into account as it has been reported that unclaimed inheritance estate is approximately RM60 billion (Aziz, 2016). Thus, the practice of inter vivos is stimulated to support the government to address these issues.

Generally, parents are motivated to wealth transfer for altruism and exchange. Altruistic parents consider their children's financial resources which the transfer will affect financial well-being. Parents also provide more transfer to one child because of his/her need and to enhance their economic condition (Benton & Keister, 2017; Haider & McGarry, 2018). In sum, Nivakoski (2019) explained that altruism motive means parents derive consumption from their children's consumption. On the other side, exchange motive predicts that parents transfer to children in order to secure their old age in terms of support. This transfer is to compensate children's cost in providing attention. In other words, exchange motive means parents derive utility from receiving the service (Fu, 2019; Nivakoski, 2019).

Current studies also argue that inter vivos transfers could be influenced by affection (e.g. Hamid, 2017; Nivakoski, 2019; Ralph, Butow, Hanson, Chadban, Chapman, Craig, & Tong, 2017; Said & Saad, 2016). Even though, parents transfer their wealth based on affection, there are a lot of litigation court cases in Malaysia such as *Teh binti Ngah v. Limah binti Ismail and others* [2011] JH 33 Part 2 259, *Rajeswary @ Fatimah binti Baba v. Meah binti Hussain* [2005] 1 JH 164, *Eshah binti Abdullah and others v. Che Aminah binti Abdul Razak and others* [2004] XVIII(I) JH 47, *Salmiah binti Che Mat v. Zakaria bin Hashim* [2001] XIV JH 79, and *Harun bin Muda and others v. Mandak binti Mamat and others* [1999] XIII (I) JH 63. Consequently, these are viewed as not promoting harmony, predominantly among the family members who are involved in the disputes. These cases arise due to the conflicts of some legal heirs towards unequal transfer (Izuhara & Köppe, 2019; Kamarudin & Nor Muhamad, 2018) and status of inter vivos within Malaysian law is still unclear (Kamarudin, Zaman, & Meor Razak, 2019; Nor Muhamad, Kamarudin, Abdullah, Sholehuddin, Abdul Hamid, Muhidin, & Abdul Karim, 2019). It can be said that the disagreement is due to a lack of understanding of the phenomenon of inter vivos transfers based on affection. In order to fill a gap in understanding this phenomenon, this study aims to identify potential affection as inter vivos motives through semi-structured interviews with several inter vivos experts.

This paper initiates with reviewing the relevant discussion on affection and its potential to motivate parents' transfer. Next, this paper outline data collection method and data analysis. Following section, reports results and discuss

2. Literature Review

Affection can be defined as feelings of lovingness and the positive bond between parents and children. It can appear either in the form of verbal or non-verbal

communication (Guan & Fuligni, 2016; Horan & Booth-Butterfield, 2010). Inter vivos transfer, in the form of non-verbal communication, is found to be one of the mechanisms to express affectionate feelings. For example, psychologists explain that an inter vivos is a significant symbol of communication and affection to another person (Cheal, 1987). Other studies also discuss how parents show their affection to children in various forms. Some parents show their affection to children by providing them with moral or financial support (Amato, Rezac, & Booth, 1995; Atzil & Feinerman, 2014; Kalmijn, 2013). Szydluk, (2004) also argues that inter vivos in either financial or non-financial forms from parents is a key indicator for determining parents' affection to their children. This argument is also supported by Olivera, (2017) who indicates that altruistic parents consider wealth transfers as one of the affection indications.

A close relationship between parents and children also motivates parents to transfer their wealth (Alma'amun, Kamarudin, & Asutay, 2016; Jiang, Li, & Feldman, 2015; Taniguchi & Kaufman, 2017). In this case, parents' affection is associated with the children's residence as children who live closer to their parents can provide support and assistance easier to the parents. This support is critical sources for unhealthy parents (Cong & Silverstein, 2014; Cox, 1987; Cox & Rank, 1992; Erixson & Ohlsson, 2019; Fu, 2019; Jiménez-Martín & Prieto, 2015). At the same time, frequent contacts between parents and children rise parents' love for their children. It can be showed as a point on positive feelings among household (Lawton, Silverstein, & Bengtson, 1994; Parrott & Bengtson, 1999; Sanchez, Lopez, & Gonzalez, 2019).

In addition, children perceptions towards parents' affection directly affect parents' priorities in transferring their wealth to them (Bernheim & Severinov, 2003; Severinov, 2006). Children with a strong affection to parents will receive more support from them. At the same time, children marital status also influences parents' affection in which married couples often need parents to show compassion through the provision of moral and financial support (Hayhoe & Stevenson, 2007; Polenick, Zarit, Birditt, Bangerter, Seidel & Fingerman, 2017). Due to this, some parents also deliver more support and appreciation to their more successful children rather than children with more personal problems. More successful children are determined by their actual achievement (Assor & Tal, 2012; Fingerman, Miller, Birditt, & Zarit, 2009).

The affectionate feelings to some extent can be perceived as the parents' willingness to offer support to their needy children (Fingerman, Pitzer, Chan, Birditt, Franks & Zarit, 2010; Porpino, Wansink, & Parente, 2016). The willingness can arise without any compulsion from either the parents themselves or the children (Guan &

Fulgini, 2016). Parents save part of their income to ensure that their children will be able to start a better life than themselves (Menchik & David, 1983). Through inter vivos, children will utilize the wealth transferred to them to accommodate their necessities and lives.

Nevertheless, affection can also cause conflicts to parents, especially when it involves a transfer in the form of goods (Mains, 2013). This is because their affection is hard-pressed to be recompensed in the material forms. Moreover, there is a need among parents to ensure that affection would satisfy everyone whether it is for the children or their spouses. Children often compete for attention and assistance from parents and when they have many siblings, they would have lesser chances of getting assistance and support (Brandt & Deindl, 2013; Izuhara & Köppe, 2019; Kamarudin & Nor Muhamad, 2018; Kamarudin & Nor Muhammad, 2017). As a result, parents transfer equally among children as an indication of equal affection notwithstanding of underlying differences (Haider & McGarry, 2018; Slavik & Wiseman, 2018).

In Malaysian context, inter vivos based on affection have also been identified in previous studies. Inter vivos can be a signal of affection between parents (donor) and children (recipients) that results in the parents will no longer own their wealth, not due to personal advantage (Ali, 2015) but to promote harmonious environment among family members (Baharudin & Mohamed Said, 2017; Othman, Mohamed Said, Muda, & Nor Muhamad, 2017). It gives a sense of joy to the parents as the inter vivos gift can support their loved ones (Buang, 2009). Inter vivos to some extent is made based on affection with the purpose to equalize the inheritance estate distribution between daughter and son (Shafiee, 2015). It has also been found that assistance and support offered by children will be rewarded by parents through inter vivos gift (Abdul Rashid & Ahmad, 2013).

The element of affection in inter vivos transfers is also identified when taking into account the definition of inter vivos in the Contract Act 1950. Inter vivos contract is defined as a contract without any consideration for a reward. This is an exception to the general rules of an agreement

that requires a reward. It is clearly mentioned in Section 26, a non-consideration agreement is permitted as the agreement shall be disclosed in writing, registered, and based on natural affection between contracting parties (Mujani, Wan Hussain, Yaakub, & Abdul Rashid, 2011). Furthermore, parents will gain tax exemption under Real Property Gain Tax when he/she transfers the wealth to his/her children (Sarip, Adnan, & Jusoh, 2017). However, it can be argued that the definition is not really clear since it is challenging to measure affection. It depends on the parents themselves and on how the children interpret parents' affection (Fingerman et al., 2010).

3. Research Methods and Materials

Data were collected between March to July 2019 via semi-structured interviews that take approximately 30 minutes, recorded using two mobile devices to avoid any dropout information. The key question in this interview is "How to identify inter vivos transfers based on affection?". Interviews are conducted in the Malay Language and transcribed by two researchers independently. Then, the transcribed data is translated into English and checked by two language experts. Six interviewees are interviewed. They are academia from various universities in Malaysia, who are considered experts in the inter vivos area of study. They have published at least two articles related to inter vivos within the Malaysian context and having a law background.

Table 1 presents details of information regarding the interviewees. The transcribed data is analyzed using Atlas.ti version 7. In order to conduct thematic analysis, data is encoded with three other researchers and analyzed to develop themes (Braun & Clarke, 2006; Vaismoradi, Jones, Turunen, & Snelgrove, 2016; Wilson, Rosenman, White, Tilse, & Feeney, 2016). Upon encoding, discussions between researchers are conducted to ensure that there is no information left and the data has been encoded correctly (Campbell, Quincy, Osserman, & Pedersen, 2013).

Table 1: Profile of Interviewees

Expert	Gender	Designation	Institution	Areas of specialization
Expert 1	Female	Senior Lecturer	Universiti Teknologi Mara (Perlis)	Inter vivos law
Expert 2	Male	Associate Professor	Universiti Sains Malaysia	Inheritance and inter vivos law
Expert 3	Male	Associate Professor	Universiti Utara Malaysia	Commercialization of inter vivos
Expert 4	Female	Lecturer	Multi Media University (Malacca)	Inter vivos law
Expert 5	Male	Senior Lecturer	Universiti Teknologi Mara (Penang)	Inheritance and land law
Expert 6	Male	Senior Lecturer	Universiti Sultan Zainal Abidin	Inter vivos and inheritance law

4. Results and Discussion

This study discovers eight subthemes that form four major themes which explain inter vivos based on affection. All the subthemes and themes are summarized in Table 2.

The largest theme is 'Relationship between parents and children', which consists of three subthemes. The three subthemes are 'Transfer to the closest children', 'Transfer to children who care for parents', and 'Transfer to family members only'. Meanwhile, 'Parental responsibility for children' theme has two subthemes, which are 'Protecting children after the death of parents' and 'Assisting children who are in need'. 'Assisting children who are in need' is the most agreed subthemes by the interviewees. For Results, provide sufficient detail to allow the results to be meaningful and informative. For Discussion, this should explore the significance of the results of the work, not repeat them. A combined Results and Discussion section is often appropriate. Avoid extensive citations and discussion of published literature.

Table 2 : Themes, subthemes and interviewees distribution

Theme(s)	Subthemes	E1	E2	E3	E4	E5	E6
Relationship between parents and children	Transfer to the closest children	/		/			
	Transfer to children who care for parents	/	/	/		/	
	Transfer to family members only						/
Parental responsibility for children	Protecting children after the death of parents	/		/			/
	Assisting children who are in need	/	/	/	/	/	
Types of inter vivos	Boundless inter vivos		/	/	/		/
	Inter vivos without any material return	/	/	/	/		/
Effects to others	Not abusing other heirs			/		/	/

4.1. Theme 1: Relationship between Parents and Children

In 'Relationship between parents and children', 'Transfer to children who care for parents' is the highest subthemes specified by four interviewees. Expert 1 believes that inter vivos based on affection is preferred for daughters because there are some parents who feel that their daughters spend time often with them compared to other siblings. In addition, inter vivos based on affection will be given to children who take care of their parents, predominantly when the parents have poor health conditions and need supports from their children. Thus, parent's transfer is considered as rewards for their children's services.

"Because sometimes, parents only have a daughter, the others are sons. Parents would love their daughter who always stays with them all the time (care for their parents)." (Expert 1)

"Affectionate feelings are more to those who have concern for their parents. For those who take care of them." (Expert 2)

"For me, inter vivos is given when parents are unhealthy. At that time, parents need attention and care from their children. Then they give some (wealth) to their children as a token of appreciation or reward for those who have concern for them." (Expert 3)

"Parents make inter vivos of some wealth to reward their children (who take care of them)." (Expert 5)

Findings concerning inter vivos made to children with the intention to repay the children's services who have taken care of them, especially when they are sick and need care and attention such inter vivos transfers are motivated by exchange motives. Children, especially daughters, provide more care to their parents than sons. Thus, parents have the right to give additional incentives to those children to reward their services. For instance, Hanizah binti Sulaiman v Abdul Kadir bin Sulaiman & Ors [2018] MLJU 467 is a case related to inter vivos transfer made by the parent to the child as a reward because the child provides informal care. Plaintiff had taken care of her foster mother named Zaharah binti Jaafar during her lifetime including taking care of the deceased in the hospital. While other defendants who were the children of the deceased did not care about the deceased. Thus, the deceased had transferred to the plaintiff a quarter of her real estate based on affection.

Whereas, 'Transfer to the closest children' is explained by the extent to which the children are closed to their parents. The closer the relationship between them, the more likely parents transfers to the children. This demonstrates the element of affection.

"If she is the youngest (among siblings), it is not precisely the reason (to acquire parents' transfer). Parents give to the youngest because she is more affectionate, closer to the parents (compared to her siblings)..." (Expert 1)

In addition, the 'close relationship' is also associated with the distance of the children's residence. The nearer the location of children's residence, the easier the children to offer more attention to their parents.

"For example, when the children live closer to their parents (than their siblings), the children provide more care

compared to other siblings who live far away from parents.” (Expert 3)

In regard to the subtheme ‘Transfer to family members only’, most of the parents give to specific recipients who have a family relationship such as transfer from parents to children, elder brother to younger brother, or grandparents to grandchildren. Moreover, transfer to close family is to strengthen the relationship. In Malaysia, transfer to close family has been practiced since the 1950s as indicated in the case of *Kiah v Som* [1953] 9 MLJ 82 and many other cases such as *Tengku Jaafar v State of Pahang* [1987] 2 MLJ 74 and *Muhammad Awang & Ors v Awang Deraman & Ors* [2004] CLJ (Sy) 139.

“Most people (parents) transfer of their wealth to the person (recipient) who is related to them (family).” (Expert 1)

“If we give our wealth for the sake of a personal relationship, such as affection – it is a common practice between parents and children.” (Expert 6)

The close relationship between parents and children will lead the children to gain assistance from parents. The distance of living area affects children’s decision in providing support to their parents. Children who lives closer to the parents has lesser cost of providing attention than his or her siblings who live further.

4.2. Theme 2: Parental Responsibility for Children

For the subthemes of ‘Assisting children who are in need’ under the ‘Parental responsibility for children’ theme, parents’ transfer is depending on the needs of their children. In this case, the less able or less well-off children get more transfer. This is because the parents care about the well-being of the children.

“Parents look at other children (siblings), if most of them have their own wealth, good job and there is one of their children is in poor economic condition, having many kids, they will give (wealth) to the poor one. They will not give anything to the others.” (Expert 1)

“.....parents will consider the economic status and the needs of their children. They will take these into account. This is because the purpose of inter vivos is to assist children’s economic condition and well-being, which we say is ‘inadequate’.” (Expert 3)

“Children’s economic condition will influence the parents to transfer their wealth. Parents see they have bleak

financial future, their economic condition will not improve as much as the other children (siblings).” (Expert 4)

Parents are also taking into consideration the children’s occupation. Some children may not have a good job compared to the other siblings. As suggested by Afroz, Muhibbullah and Morshed, (2019) parents support their children in order to acquire greater job opportunities. Hence, parental assistance to the children who have the poor economic condition is a good deed.

“Poor children, jobless or probably their spouse is in poor economic condition. If the children are single, parents probably see that other children have a better life, therefore, they transfers (wealth) to these children (who have a poor economic condition).” (Expert 2)

“If the parents give their wealth to poorer children, for me that deed is sacred.” (Expert 5)

In addition, the purpose of inter vivos is to purchase their additional medical equipment. Children who have some disabilities or health problems need more assistance and care after the death of their parents compared to other siblings.

“Of course, any parents who have unhealthy, disabled children, if anything happens to them, when they are in their old age, they will worry (to their disabled children). Who will take the responsibility to take care of this child (after they die)?” (Expert 1)

“When the children are in the category of disabled persons, means that they have some disabilities which make it difficult for them to manage themselves (after the parents die). Thus, parents take an alternative (making inter vivos) to ensure that the children (disabled children) will receive more or probably the whole wealth.” (Expert 3)

“If parents transfer of more wealth to their disabled children, there is not much advantage. Probably the children will use it to purchase the medicine.” (Expert 6)

Inter vivos transfers are to assist children who less fortunate and need special assistance such as having a critical illness, pursuing study, facing bankruptcy and wanting to get married. Children always need support from their parents to gain better education (Mago, 2014) and to achieve work-life balance and career advancement (Mustapa, Noor, & Abdul Mutalib, 2018). These show evidences that parents are either altruistically motivated or motivated by the exchange. However, this study promotes affection, as an evaluative aspect of the relationship that

also affects support in the form of inter vivos. Thus it should be taken into account when measuring the motives of inter vivos and this approach has been missing in the previous studies. In regard to parents who transfer their wealth to safeguard their children's welfare after they die, particularly for those children with disabilities, means that parents are concerned about their disabled children. Their main argument revolves around who will take care of these children after they die because disabled children could not manage themselves properly.

4.3. Theme 3: Types of Inter Vivos

'Type of inter vivos' theme contains two subthemes that are 'Boundless inter vivos' and 'Inter vivos without any material return'. Inter vivos without any consideration can be referred as a contract in Section 26 of the Contract Act 1950, which provides a provision that inter vivos based on affection must be done without any consideration. This is because if such inter vivos has some considerations or material exchanges, the contract will change to sales and purchase transaction that requires financial or material consideration.

"If we refer back to Section 26, Contract Act, there is a provision which states the inter vivos based on affection. According to that section, the inter vivos based on affection is done without any consideration." (Expert 1)

"Inter vivos is something given without any consideration." (Expert 2)

"If a inter vivos is made based on affection, he/she will give it (wealth) without expecting any return from the receiving party." (Expert 3)

"One of which characterizes affection is transferring a title deed without money involved (in return)." (Expert 4)

"...The general principle of this inter vivos (based on affection), it relates to several situations. One of them is inter vivos with no consideration. There is no monetary exchange happens." (Expert 6)

Then, 'Boundless inter vivos' means that parents have the right to give anyone what they wish without any restriction.

"For me, inter vivos based on affection is boundless." (Expert 2)

"Inter vivos is unlimited (unlimited recipients and amount)." (Expert 3)

"But this transfer is actually estate management. It means that the inter vivos is based on affection to just anyone." (Expert 4)

"Even when an individual wants to transfer to his/her good friends, it is permissible. Inter vivos is unconditional." (Expert 5)

Therefore, parents may transfer their whole wealth in the form of inter vivos. Inter vivos can also be given to close friends. Hence, inter vivos is not subjected to a particular person and can include legal heirs or non-legal heirs, for instance, adopted children or friends.

4.4. Theme 4: Effects to Others

'Effects to others' theme consists only ones that is 'Do not abuse other heirs'. This subtheme implies that inter vivos based on affection should not be detrimental to other heirs.

"However, in the concept of inter vivos (based on affection), we should bear in mind that the transfer will not be a gross injustice to anyone (who do not receive transfer)." (Expert 3)

"He/she must be detailed (the reason for inter vivos) so that he/she does not abuse the rights of other children." (Expert 6)

However, inter vivos based on affection will lead to favoritism among parents and this should not happen. Thus, inter vivos should be made in consensus to avoid conflict that parents are unjust to other siblings. At the same time, parents should avoid discriminated and favored treatment of their children.

"Affection will lead to favoritism. This should not be happening. Their children are still their children. If we want to give (inter vivos), we need to be in consensus" (Expert 5)

Impact of inter vivos to violate other heirs, there are a lot of cases regarding to disputes and conflicts such as Hamdan bin Jaafar and Ors v Osman bin Mohammed and Ors [2012] MLJU 1296, Hanis bin Rambly @ Ramlee and Anor v Norrihan Bt Surin [2012] MLJU 820, Zulkarnaini bin Mohd Kusasir v Muhammad Nor bin Saliman [2012] MLJU 825, Abd Razak bin Abd Ghani v Abd Rahim bin Othman [2013] 4 SHLR 14, Muhammad Awang and Ors v Awang Deraman and Ors [2001] 14 JH 165 and Kalsom binti Che Lah and Anror Che Ama Bte Hj Abdullah V Ismail B. Md Noor and Anor Norma Bt. Md Noor [2010] MLJU 0319.

5. Conclusions

This study was devoted to explore inter vivos based on affection. This was performed through semi-structured interviews with inter vivos experts. Referred to thematic analysis, it discovers four main themes in inter vivos based on affection. First theme was demonstrated by parents' transfer to the closest children, to children who provide attention or care for parents and to family members only. Second theme was showed as parents' transfer is to protect children after the death of parents and aim to assist children who have special needs. While types inter vivos was referred to transfer without any limitation and without any material return. Lastly, inter vivos should not abusing other heirs in order to promote justice among siblings.

This study recommends that inter vivos based on affection could promote child-care that benefits to minimize government expenditure in providing healthcare support and elderly care center. In addition, inter vivos aims to protect children after the death of the breadwinner and help children in need who may decrease their dependence on the government and ensure they have a strong financial position. Boundless inter vivos can contribute to the reduction of the increasing trend of unclaimed inheritance estate in which almost RM60 billion estate left unclaimed. At the same time, the regulation concerning inter vivos should be amended to avoid any potential abuse to other heirs such as violate their rights and unfair wealth distribution. Further studies should be carried out to develop a broader conceptual framework that covers parental economic condition, knowledge and external factors such as tax and experience in estate inheritance problem.

For Conclusions, the main conclusions of the study may be presented in a short Conclusions section, which may stand alone.

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