

## **2010- TO TELL OR NOT TO TELL: A CASE STUDY ON FINANCIAL ABUSE OF AGING PARENTS**

**NURFADHILAH CHE AMANI**

Faculty of Syariah and Law  
Universiti Sains Islam Malaysia (USIM)  
fadhilah.amani@usim.edu.my

**ABIDAH BINTI ABDUL GHAFAR**

abidah@usim.edu.my  
Faculty of Syariah and Law  
Universiti Sains Islam Malaysia (USIM)

**FARAH SALWANI MUDA @ ISMAIL**

salwani@usim.edu.my  
Faculty of Syariah and Law  
Universiti Sains Islam Malaysia (USIM)

### **ABSTRACT**

*The aim of this paper is to explore elder financial abuse from the experience of older people within family setting in Malaysia. Based on the definition from World Health Organization, elder financial abuse is defined as 'the illegal or improper use of an older person's cash or other resources'. Malaysia will reach the status of ageing nation by the year 2030. Strong financial standing of older people is a grave concern to support quality of life in facing the global rise of cost of living. Currently, there is no specific law on elder abuse in Malaysia. Elder financial abuse that occurs within family setting is govern under the Domestic Violence Act 1994. This paper discussed the application of available legal protection for older people through a case study to increase understanding and possible solution to solve issues of financial abuse of older people by their own adult children. The study is a part of a qualitative study, via an in-depth interview. The Nvivo 12 analysis software was used to analyse the thematic analysis. The paper concludes that unique family dynamic and rigid legal framework contributes to the underreporting of the occurrences of financial abuse in families. It provides insight on the complexity of the issue and recommendations to encourage reporting of such incidents.*

*Keywords: elder financial abuse, older people, domestic violence, law, empowerment*

### **INTRODUCTION**

In Malaysia, older people are defined as those who have reach the age of 60 and more. In line with the age structure of the Malaysian population, there has been an increase in the number of senior citizens over time. According to United Nations (2006) projections, the country's elderly population will reach 15.0% by 2030. Elder abuse, which involves the financial exploitation of elderly people, is a relatively isolated and hidden problem in Malaysia. Although numerous instances of financial exploitation have been reported in the media, the issue of elder abuse, including financial exploitation of older people, continues to garner little public interest. Malaysia's Department of Social Welfare is responsible for supervising and monitoring domestic violence cases in the country. However, publicly available data highlight only spousal and child abuse, focusing on statistics by type of violence, sex and ethnicity (Department of Social Welfare, 2019). Elder abuse is a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust

which causes harm or distress to an older person” (WHO, 2002). The definition is extended by adopting the definition of financial abuse by WHO as “the illegal or improper exploitation of funds or other resources of older persons” (2002, p.3). Based on the above, a relationship of trust necessarily implies that harm is done by people the older person knows or with whom they have a relationship, such as a spouse, partner or family member, a friend or neighbor, or people that the older person relied on for services, support or help (WHO, 2002).

Few empirical studies have been conducted in Malaysia to determine the prevalence of financial exploitation. According to a recent empirical study conducted in 2017, elder mistreatment is prevalent in the community-dwelling population, with 13% experiencing financial exploitation (Sooryanarayana, 2017). According to a longitudinal study conducted among community dwellers in rural Kuala Pilah, financial abuse is the second most prevalent form of abuse after psychological abuse (Sooryanarayana, 2017). The Royal Police Department of Malaysia reported a 20% increase in domestic violence cases involving older parents in the year 2020 compared to the previous year. This increase was attributed to adult children being severely impacted financially during this period because of restrictions to movement and unstable income, or lack thereof (Abd. Halim, 2020). Additionally, it was reported that most cases involved adult children demanding money from their elderly parents because of sudden unemployment or being physically or socially unable to earn a living (Abd. Halim, 2020; Jayamanogaran, 2020). Although the prevalence of financial exploitation of older adults in Malaysia has been highlighted in the media and empirical studies, the number of reported cases remains surprisingly low (Yunus, Abdullah & Firdaus, 2021).

## **OVERVIEW OF AGING POLICIES AND LEGISLATION ON ELDER ABUSE IN MALAYSIA**

The development of policies on aging and older people began in 1995, with the introduction of the first National Policy for the Elderly (Ministry of National and Social Development Malaysia, 1995). Initially, the Ministry of Health placed a greater emphasis on health care aspects, with the initial 1998 *National Plan of Action for Health Care of Older Persons* and 2008 *National Health Policy for Older Persons*. The main policy for older people in Malaysia is the National Policy for Older People 2011 (NPOP), led by the Ministry of Women Family and Community Development (MWFCD), along with seven other subcommittee members representing the Ministry of Health, the Department of Social Welfare, the Ministry of Education, the Ministry of Housing and Local Government, the Economic Planning Unit, the Ministry of Human Resources, and the Ministry of Science, Technology and Innovation.

The NPOP’s objective is to recognise and acknowledge that older adults have a right to a comfortable and respected existence. Its mission statement is that it strives to develop self-sufficient, confident and respected older adults by maximising their individual potential through a five-dimensional aging framework. The framework includes the goal of living a healthy, positive, active, productive and supportive life (Fong et al., 2010). Its plan of action includes strategies for promotion and advocacy, lifelong learning, security and protection, governance and shared responsibilities, participation and generational unity, and research and development (Hamid, 2008). Malaysia has introduced a holistic social support system for older people under this policy that includes home-based community care, institutional care, improving the health system, financial assistance, economic empowerment programmes, lifelong learning training, seminars and public awareness raising. It is notable that one of the

strategies outlined in the plan of action (security and protection) is to improve the availability and accessibility of legal protection for the elderly.

With the policies in place, Malaysia still lacks dedicated legislation that protects older people, unlike children and women. In the context of elder financial abuse, older people may seek legal protection from the *Domestic Violence Act 1994*, *Penal Code*, *Persons with Disabilities Act 2008*, *Islamic Family Law Act (Muslim Marriages) 1984*, *Contracts Act 1950*, *Powers of Attorney Act 1949*, and *Banking and Financial Institutions Act 1989*. Currently, efforts are being made to draught legislation specifically dedicated to protecting the interests of Malaysia's elderly, following strong calls from academics and social activists (Berita Harian, 6 October 2021). A dedicated law for senior citizens may help address the issue of elder abuse and neglect (Yusoff, 2009; Zaharah et al., 2015). However, even if generic legal provisions are available, they may not be sufficient to provide comprehensive protection (Tey et al., 2016). Nonetheless, until a specific law takes effect, older Malaysians may rely on other laws scattered throughout the Malaysian legal framework.

The main objective of *Domestic Violence Act 1994* is to provide legal protection in instances of violence in family institution. Domestic violence is defined as intentionally inflicting injury on spouses, ex-spouses, children, incapacitated adults or any other family member (s. 2). This injury can take the form of physical, emotional or financial abuse, as well as any injury resulting from property damage. However, the definition of an incapacitated adult includes, among other things, a person with a physical or mental disability, illness or advanced age who lives in the same household as the abuser. A disabled elderly adult may be entitled to the same remedies as women and children under this act. The act provides special protection for victims of domestic abuse and authorises officers to issue protection orders in any situation involving abuse in the domestic setting. Though the act is intended to protect women and families, it may provide legal protection for older people (Yusoff, 2009). However, one of its limitations is that it explicitly states in its preamble that any offence involving domestic violence shall be read in conjunction with the *Penal Code*.

Academic critics have noted how the current legal framework is ineffective at providing the best possible legal protection in cases of elder abuse (Yusoff, 2009) The remedies provided by the *Domestic Violence Act 1994* may be insufficient to meet the needs of an elderly person. The necessity for it to be read in conjunction with the Malaysian *Penal Code* demonstrates that domestic violence in Malaysia is considered a criminal offence against the state. The act provides remedies for victims of domestic abuse to apply for protection orders (s. 5). Ironically, except for enforcement officers, any incapacitated adult who is unable to file an application on their own behalf may have a guardian or other person responsible for their care file on their behalf (s. 15). Unfortunately, any elderly person who has been abused and rendered incapable may be unable to seek legal protection if the act of abuse was committed in isolation by one of their family members, most frequently the caregiver. Another criticism levelled at the current legal framework is Malaysia's lack of mandatory reporting for elder abuse, unlike child abuse.

## **METHODOLOGY**

For this study, purposive and snowball sampling were chosen as the method for selecting participants to gather rich and detailed information. Morse (1994) concurred that a good informant possesses the necessary knowledge and experience, and is reflective, articulate and

willing to participate in the study. Purposive sampling, according to Patton (2002), is used to elicit accurate and detailed information about specific research questions. The primary method of recruitment includes distributing research flyers to each selected organization, institution and at community events. This strategy was to ensure success in terms of victim's participations as well as gaining entry to the research site. The sensitive nature of the research as well as the negative stigma and taboo has made it difficult for effort to reach out participants. Additionally, participants were recruited through snowball sampling. According to Bradway (2005), the snowball technique is appropriate when the researcher is unable to identify useful information about participants, when participants are difficult to reach or when anonymity is a concern (Holloway & Wheeler, 2002). This research enrolled a very small number of participants meeting the selection criteria. This reflects health problems, cognitive impairment and cultural sensitivity, particularly among Asians. The interview was conducted with a total of eight participants ranging in age from 61 to 86 years. Five females and three males participated and of different religions and races. After reaching the age of 60 years, all eight participants encountered financial exploitation by family members. To protect their identities, all participants were given pseudonyms.

#### **CASE STUDY: AN EXAMPLE OF ELDER FINANCIAL ABUSE**

Hawa is a 61 years Malay female. She is a divorce and lived with her daughter, son-in-law and two grandchildren. She had four children from her first marriage and an additional two from her second marriage. She worked as a cleaner, earning RM1,200 per month. She described her health status as not healthy as she has been diagnosed with diabetes and high blood pressure.

Hawa is experiencing financial exploitation by her adult children. She had been requested by her eldest daughter to pay a debt owed by her ex-husband; been asked to withdrawal of her money in the amount of RM10,00 from a saving scheme, asked to finance her daughter's wedding. She added that it was normal and consistent for her adult sons to request money from her for their own spending. She expressed that her adult children would ask to borrow money from her; though the amounts may not be large, but continuously and as a result, she could not enjoy her own money. She emphasised that most of the time, her son forgot to repay her money. She said that she enjoyed working but was disappointed that she could not use her money to treat herself. She also confessed that she was asked to pawned her jewellery to provide money for her children in reliance to a promise that one day the children would redeem it back but to no avail. She said that if her sons asked her for money, she would generally give them whatever money she had. When asked why she continued giving her adult children money, she defended their actions by saying that she understood that both her sons were looking for new jobs and she was helping them out. When asked whether she wanted to keep working, she answered that she knew her children were not able to be financially independent and she feared if she retired, who will support her financially (daily cost of living and health medication) and added that no one will help her children.

Upon reflection of her life events involving the above situations, Hawa believed it was unacceptable conduct for children to use their parents' money against their will. She also wished that children would understand that mothers, even in old age, still might value money to live, to support their health care and—more importantly—for after their death. Money is required for burial services, *fidyah* (a penalty for not carrying out certain religious duty) and other requirements imposed by religion as part of 'deeds after death'. She also wished that

she and the rest of the older population could educate and advise their children on the value of money to older people. It is important to make them understand that old people have needs that their own children may not be able to provide for them. She was disappointed that most of her children chose to ignore this. She also believed that in extreme cases (where adult children started to injure the parents), parents should report incidents to the authorities. She added that if children do not take pity on their parents, why should their parents pity them. She admitted that reporting incidents would jeopardise the parent–child relationship but believed that doing so could serve as a lesson and punishment for children. She knew that in many cases children took advantage of their aged parents’ money for their own benefit. She ended the conversation by emphasising that whatever happened, even though she only had a little money, she would keep on giving it to her children if they asked for it. Although she believed in empowering older population, personally, she will never seek help from authorities or her community as she felt that this is a personal family problem and should stay in the family.

## **DISCUSSION**

The participant in the study expressed her experience with elder financial exploitation by her family members and consequently resulted in financial loss. When asked what the participant considered as a case of financial exploitation by family members, the participant described her experience by showing examples of wrongful conduct or violation of rights. In line with the literature and the definition of financial abuse by WHO, she defined it as an act of theft, misappropriation, deception to use money or property for their own benefit and one participant described it as deceived for repayment of borrowings. This wrongful conduct was deliberate behaviour and knowingly has been committed against her by family in a trust relationship. Hawa expressed how she must live with her adult sons that kept on asking her money and how her daughter and son in law deceit her to pay their debts.

Hawa described her experience by acknowledging that if she continued to give money to her adult children, she would have no retirement savings. Hawa not only contributed to the household, but also occasionally assisted in the rearing of the grandchildren. Apart from that, she continued to give money to her sons and was also legally obligated to repay her former son-in-law’s debts. She advised other parents to seek help from legal authorities if the situation can be considered as life threatening. However, she also admitted that the decision to report your own children is very hard and many older parents are facing a dilemma. Other than financial loss, Hawa also suffered some emotional trauma and a great deal of mixed emotion, this was consistent with previous research. The emotional impact may manifest as embarrassment, stigma or psychological trauma (Dessin, 2003; Rabiner, 2005).

From a legal standpoint, Malaysia currently lacks specific legislation addressing elder abuse. The Domestic Violence Act 1994 will apply to all forms of elder abuse, and any incident involving the financial exploitation of a family member must be read in conjunction with the Penal Code, which may result in criminal charges. When an offence is criminal in nature, it constitutes an act against the state, and the burden of proof is higher than when trying a civil offence. Additionally, the punishment is intended to punish the offender rather than compensate the victim. The standard penalty under the law is imprisonment, a fine or both.

In the current study, participants' refusal to disclose their exploitation to the authorities was interpreted as a desire to avoid incarcerating their family members. This explains the familial bond, as well as the guilt and fear of judgment from others. Further, one of the participants mentioned that reporting the incident to the authorities would not result in the recovery of the money lost. The state bears all costs associated with establishing an offence has occurred, but because this is a criminal offence, the burden of proof must be established beyond reasonable doubt. The victim must be able to present compelling evidence in court for the offender to be convicted. According to one participant, it was difficult to prove or provide evidence for financial exploitation incidents involving family members because they occurred in a private setting, and who would believe an elderly man's words given the circumstances.

Alternatively, in Malaysia, financial exploitation may be prosecuted as a civil offence, such as a violation of tort law or breach of law in land matters. Unlike in criminal cases, the objective is to compensate the victim. The cost of establishing the offence would be borne by the aggrieved party—the elderly victim. The burden of proof is less onerous for victims than in criminal cases, where the burden of proof is only on the balance of probabilities. However, the cost of filing the case in court will impose an additional burden on the elderly victim. Similarly, the taxing process of a legal suit and the time required will prolong the issue and increase the victim's emotional and financial burden. This study concludes that a lack of legal realism in cases involving family or domestic violence, particularly financial exploitation of older adults, defeats the purpose of legal protection in the first place. Legal realism is defined by its emphasis on the law as it exists in practice rather than on how it exists in theory. It is critical for legislators and judges to have a working knowledge of social sciences to comprehend the policy implications of legal remedies as well as the human behaviour and relationships affected by the legal outcome. It is recommended that legislators or judges develop legal remedies that are family friendly in relation to any decision involving family violence.

## **CONCLUSION**

Recognising the difficulties inherent in investigating and proving exploitation incidents that frequently occur in private settings, the most effective way to address the issue is through prevention strategies. In terms of education, the study participants recognised the critical role of advocacy in the field of elder abuse. Almost every participant's reflection included a section on empowering older adults. This was expressed by a few participants who expressed a desire for other older adults to be financially self-sufficient. It is critical for families and older adults to be fully informed of the consequences of reporting any financial exploitation experiences. Seniors should be encouraged to report and should not be subjected to social stigma. Ongoing public awareness campaigns emphasising the nature, extent and impact of elder financial abuse must be conducted. It is critical to have prevention programmes that emphasise information dissemination, outreach, education and training, as well as the importance of money management.

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