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ELV POLICY IMPLEMENTATION AS A SOLUTION TO ABANDONED VEHICLES PROBLEMS FACED BY LOCAL AUTHORITY IN MALAYSIA

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Abstract

End of Life Vehicle (ELV) is a vehicle that has reached the end of its service life due to the age or condition of the vehicle itself that is no longer roadworthy. Several countries namely EU countries, Japan, Taiwan and South Korea have their own law and policy being implemented to deal with the disposal of ELV through recycling system management which includes the process to de-register, dismantling, depollution and recycling. However, since Malaysia do not implement such policy, the old and unused vehicles are just being abandoned by the roadsides and also housing area. Eventually, it will become a nuisance and eye sore to the public as well as impacting the environment and quality of life. The objective of this study is to examine the legislations and procedures adopted by the local authorities in dealing with these abandoned vehicles, to identify the challenges and to find solution in solving this abandoned vehicles issues. This research employed a qualitative methodology by analysing available legislations, conducting interviews with the enforcement officers from the selected local authorities. References to other jurisdictions were also made to learn a lessons from their practices. At the end of the research, it was found out that the current procedures being enforced through the limited powers given under existing provisions are unable to solve the increasing number of abandoned vehicles. Therefore, this research proposed law and policy to regulate End-of-Life Vehicles and amending the Street and Drainage Building Act 1974 to give absolute power to Local Authority to deregister the abandoned vehicles.

Keywords: Abandoned vehicles, ELV, Local Authority, Policy

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INTRODUCTION

The roles and function of the local authorities as the third-tier government is to provide and maintain vital services in relation to housing and planning, waste collection, traffic, and community development (Maidin & Mobarak Ali, 2009). This role also covers the cleanliness and peaceful surrounding in the residential area and the roadsides. One of the major problems the public faces are abandoned cars left parked on the roadside or in the residential area for a very long time. This has caused nuisance and is an eye sore to the public for letting the abandoned car be left in derelict condition. Before 2000, the ownership of private vehicles such as cars was still low compared to nowadays, whereby each family owns at least two cars or more. It has become a basic necessity for everyone to move around, as the reliability of public transportation is still low. However, due to the high demand for cars, the production of new cars has been widely increasing, and this caused the increasing numbers of old and abandoned unused cars too. Society tends to keep the old car rather than sell it or dispose of it for various reasons such as sentimental value, not worth for the selling value, or for the sake of just keeping it.

In addition to that, Malaysia is one of the countries that does not implement the policy of End-of Life Vehicle (ELV) as part of the measure to dispose of and recycle old and unused cars or derelict cars due to damage and no longer roadworthiness. Vehicle owners are not obliged to voluntarily de-register their vehicle and send it either to be disposed of or recycled for a proper discard procedure. The absence of legislation on the ELV policy by the government had resulted in old, and end-of-life vehicles were not managed properly. These derelict cars could also give rise to dengue outbreaks when the windows on the vehicles are broken and left open, allowing water to get into the car during the rainy season (The Star,2013).

There is a limitation to the power of the local authorities in taking action against abandoned vehicles. Under the existing law adopted by the local authorities, Section 46 of the Street, Drainage and Building Act 1974 (SDBA 1974) provides that the local authority may remove derelict and abandoned cars that have caused obstruction in public places. On the other hand, Section 48 of the Road Transport Act 1987 provides the right of way to remove vehicles from the road, however, this empowerment given under these two Acts is limited. Currently, the Standard Operating Procedure (SOP) carried out by all the local authorities in Malaysia is just to tow or remove the car, which causes obstruction on the roadside and bring it to the depot. A notice will be sent to the owner of the registered vehicle giving them seven days to claim their car. However, if the vehicles are not claimed by the owners, a second notice will be sent to them, giving another 30 days to collect the vehicles, or the unclaimed cars will be disposed of. However, in reality, the disposal of abandoned cars does not happen,

as the provisions in the Acts do not give the power to de-register or revoke the ownership and vest it under the Mayor of the council before the vehicles can be scrapped or auctioned. Failure to deregister the ownership from the grant and subsequently auction or any other ways to deal with the vehicles is an infringement of fundamental liberty under Article 13 of the Federal Constitution as no person shall be deprived of his property save in accordance with the law.

The weaknesses of the available law relating to abandoned cars are due to the reason that there is no power given to the local authority to de-register the car. This research contributes to the body of knowledge in the area of public authority law in Malaysia. Most of the time, researcher only focus on the significant and the needs for Malaysia to implement the End-of-Life Vehicles. However, no article or research being conducted to discuss about the legal issues and challenges in eliminating abandoned car. Consequence of non-availability of such law results into more ELV and old unused vehicles being abandoned as there is no regulation to control and monitor this type of vehicles. Furthermore, there has not been much research done in the aspect of the local authorities' power in enforcing the regulations on the street, especially in respect of obstruction due to abandoned being left on the street. Even though the local authorities have been empowered to remove or tow away vehicles that cause obstruction on the street by the amendment of Section 48 Road Transport Act in 2011 and to remove derelict cars under the Street, drainage and building Act 1974, but there has been gap in the law where problems start to arise beginning in the late 2013 and still occurring till to date.

RESEARCH METHODOLOGY

The initial stage of preparing the research framework is done by library- research method to identify the legal issues and challenges in disposing abandoned cars. Primary data for this research were obtained by analysing relevant legislations namely Street, Drainage and Building Act 1974 (SDBA 1973) and Road Transport Act 1987 (RTA 1987). The provisions in these acts were analysed to understand further the local authority's role in disposing abandoned car in the local authority's jurisdiction. Secondary sources including textbooks, scholarly articles in the various journals, magazines, and newspaper reports were also utilized to give better understanding and provide perspective on the current position and situation in Malaysia. As a result, the procedures and legal framework from Japan were referred to. This has helped to recommend the amendment and improve the procedures in disposing abandoned cars. In validating the data and information obtained through literature review and analysis of legislations, interviews were conducted with enforcement officers from selected local authorities (Suaree et al., 2022). The interview was aimed at obtaining feedback on the issues and challenges faced by the local authority at

present. The interview was conducted after receiving the approval letter from the UiTM Law Research Ethics Committee dated 25th May 2022. Among the questions asked are the statistic number of abandoned vehicles removed by the local authority, the current procedures carried out in disposing abandoned vehicles, their opinions on the causes the vehicles being abandoned and their recommendation on how to solve this problem.

ANALYSIS AND DISCUSSION

Laws governing abandoned vehicles in Malaysia

It has been mentioned clearly that Malaysia do not implement ELV policy. The available laws in dealing with abandoned vehicles are the Street Drainage and Building Act 1974 [Act 133] (SDBA 1974) and the Road Transport Act 1987 [Act 333] (RTA 1987). Malaysia is one of the largest South East Asia countries producing its national car but does not have specific regulations on the disposal of derelict vehicles or vehicles that have reached a certain age period, which is called as End- of Life Vehicles (ELV). Malaysia also did not implement the End-of-Life policy like other developed countries, where certain ages of vehicles should be disposed of by the owner and sent for dismantling and recycling. For that reason, the local authorities in Malaysia must use the existing provisions of the law to resolve the issue of vehicles being abandoned on the roadsides or in the parking lots owned by the City Council or on private property such as in residential areas. It should be noted that, any matters or occurrences in a public place such as the street will be governed by SDBA 1974. The local authority being the third-tier government in the country, is often referred to by the public regarding any complaints involving nuisance or matters involving public safety and health.

In carrying out its duty, the local authority is given the power to remove obstruction under section 46(3) of the SDBA 1974. The section provides that: (a) The local authority may cause any such obstruction to be removed or may itself, through its servants remove the same to a suitable place, there to remain at the risk of the owner or person offending and may detain the same until the expenses of removal and detention are paid. (b) The local authority shall certify such expenses to the owner or the person offending, and the certificate of the local authority shall be conclusive proof of the sum due. (c) Such sum shall be recoverable in the manner hereinafter provided. Under this provision of law, subsection (1) (e) and (g) are the most appropriate provisions to solve the problem of abandoned cars in public places. As for Section 46 (1) (e), this provision is more specific because the word "derelict vehicles or any part thereof" indicates that this provision is to remove obsolete or old vehicles parked in public places. This means whichever vehicle is found to have been derelict and it is parked or left in a public place, it is an offence of obstacles under this Act.

In addition, Section 46(1) (g) of the SDBA 1974 provides that “a vehicle parked on a footway is also an obstacle.” Although this provision is more general and not specific to obsolete, old or abandoned vehicles, but this provision can also be used if the owner only leaves their vehicle that is no longer used on the footway, which indirectly obstructs public access on the footway. For both of these provisions, any vehicle found to be obstruction at public place is an offence that the local authority can enforce under this Act. If any person is found guilty under these provisions, he can be arrested or prosecuted in court and if found guilty, may be imposed a fine of not exceeding RM500 and in case of repeated offences, may be imposed a fine not exceeding one thousand ringgit. However, bringing the case to court and fine alone will not solve the problem of the vehicles being abandoned in the public place if there is no owner to claim responsibility for the act of abandoning the vehicle in public places. Therefore, this provision also empowers the local authority to remove the obstacles of abandoned, derelict vehicles parked or left on any public place to a more appropriate and suitable location. Despite that, this provision only ceases to that extent and there is no provision detailing of how the removed abandoned cars should be disposed of if the owner does not claim it after the stipulated time. Therefore, reference will be made to section 116 of the same Act concerning action that local authorities can take regarding vehicles that have been removed or towed away as consequences of causing an obstruction. Section 116 of the SDBA 1974 is a provision used by the local authority to carry out the process of disposing of abandoned vehicles that have been left in public places and have been removed or towed away by the local authority, but the main issue is the owner does not reclaim the vehicle after notice has been served.

In another aspect, any vehicle that needs to be disposed of must go through the process of deregistration first with the road transport department to remove the ownership of the previous owner and be vested under the new owner, that is, the local authority. Otherwise, it is considered as violation of a person's liberty under Article 13 of the Federal Constitution. Under article 13 of the Federal Constitution, no person shall be deprived of property saved in accordance with the law. The process of disposing of a vehicle without de-registering the name of the previous registered owner on the grant would leave the numbers in the Road Transport Department's record to continue to increase. Therefore, the implementation of de-registration should be carried out first before the abandoned vehicle can be disposed of.

In summary, the enforcement action will be carried out by removing or towing away the abandoned vehicle through the record of complaints received from the general public. An investigation will be made with the police as to determine whether that particular vehicle has any criminal records. The vehicle will be handed over to the police if there is any. The local authority also needs to

check with the Chemistry Department on the engine identification by an expert in the Chemistry Department. Then, the local authority has to serve an administrative notice to the owner of the abandoned vehicle to claim the vehicle within 14 days. If no claim is made, the local authority may obtain an order from the Asset Disposal Committee Meeting either to sell through public auction or dispose of within seven days. The local authority also needs to obtain consent to prosecute from the Deputy Public Prosecutor's office and order from the Court to remove the ownership of the registered owner. After obtaining the order, the local authority must apply from the Road Transport Department to transfer ownership and vehicle registration rights.

One of the issues faced by local authorities regarding abandoned vehicles that are not claimed and wanted to be disposed of is the de-register procedures. For countries with specific legislation on the disposal of these ELV vehicles, owners voluntarily transfer their ownership before the vehicles are disposed of. This will remove the previous owner's name from the record of together with the skeleton of the car will be discarded altogether. However, since there is no such regulation in Malaysia to require vehicle owners to dispose of their vehicles voluntarily, such as the ELV policy and there is no action towards owners who refuse to reclaim their vehicles which the local authority has removed, this makes it difficult for the local authority to dispose of the vehicles without de-register the ownership of the vehicles. In spite of the fact that it is stated in the guidelines that deregistration can be made through a court order, but in reality, the process of removing the name of the owner is not easy and local authorities are not carrying out the procedure in Malaysia for various factors. Based on respondent feedback among local council enforcers, the factors include the complexity of preparing a complete investigation paper, the missing of the engine or chassis number and the time consuming of obtaining the court order. The complex process to de-register the ownership also received attention from the Minister of Transportation, where all local authorities throughout Malaysia faced the same problem of removing the name of the vehicle owner and to the vested under the local authority before it can be disposed of. Acknowledging the major problems faced by all local authorities in Malaysia (Nawi et al., 2020), an amendment was made by the Ministry of Transportation in 2018 under Section 66(nn) of the RTA 1987 [Act 333] to facilitate local authorities to remove the name of the vehicle owner. Prior to the amendment, Section 66(nn) states that "the Minister may make rules to regulate the deregistration of motor vehicles that are not roadworthy of repair due to serious accidents, old age or other causes". However, after the amendment in the year 2018, Section 66 (nn) states that, "The Minister may make rules to regulate the de-registration of motor vehicles". This amendment is made to empower the transport minister to set a specific and detailed procedure in regards to the cancellation of the registration of abandoned

vehicles for a reasonable purpose. The Transport Minister, Anthony Loke Siew Fook reportedly said that the amendment to the Act would enable local councils to remove abandoned vehicles within their jurisdiction. However, regrettably, no such rules are made by the Transport Ministry or the Road Transport Department until the present day. This bureaucratic process of deregistering the ownership of the abandoned vehicles will cause difficulties to the local authority to dispose of the abandoned vehicles promptly. In this regards, the RTA 1987, is another legislation which give power to authorities to take action against the abandoned vehicles. Amendment was made in 2008 whereby the provisions under Section 48 were amended to include subsection (2) to subsection (8) to the existing provision. This amendment includes enforcement actions that can be taken against motor vehicles that remain at rest on any road that causes danger, obstruction or undue inconvenience to other road users and traffic. Actions that can be taken include clamping or removing the vehicle to an appropriate location. This empowerment is also extended to other authorities, including to local authorities as provided under subsection (8).

There are two enforcement actions that can be taken against motor vehicle which is left abandoned on any road and caused cause danger, obstruction or undue inconvenience to other road users or to traffic by the appropriate authorities. The appropriate authorities here is defined under Section 67 of the RTA 1987, and it includes police officer, road transport officer or any appropriate authority, including local authorities. These appropriate authorities may clamp the wheel of the motor vehicle or remove or cause to be removed the motor vehicle to any other road or some other location. The implementation of these actions will depend on whether the obstacle caused by the vehicle is a temporary obstacle or a permanent obstacle. If the vehicle is left at the roadsides only temporarily and it does not cause traffic jams, then the enforcer may use the option to clamp the vehicle. However, if the vehicle left on the roadsides causes obstruction and severe traffic congestion, or danger to other road users, then the enforcer may tow or remove away the vehicle to s suitable location. The same rules apply to vehicles that have been clamped for more than four hours from the time of notice that the car has been clamped, if the owner fails to appear and request the release of the vehicle, and if no claim is received within that period, then the motor vehicle may be moved to the appropriate location by the authorities. As mentioned earlier, section 48 of the RTA 1987 only authorises the forfeiture of the ownership to be vested under the name of Director General of Road Transport Department. This provision does not authorise the conversion or forfeiture of the ownership of the vehicle to be vested into the name of the Mayor of the respective local authority. The missing gap here is that the Road Transport Department does not have a mechanism to accept vehicles towed by the local authority and the ownership can only be forfeited to the Director General of the

Ministry of Transport Malaysia. This provision also does not have a complete process on how the removed vehicles are to be discarded. This section is silent on the process of discarding the motor vehicle after the ownership of the vehicle has been vested under the Director General’s name. Although the motor vehicle can be auctioned to the public, but if the vehicle is under the category of obsolete and can no longer be used due to the condition of the vehicle or the high age of the vehicle, the vehicle still needs to go through the automotive waste disposal process in accordance with the standards set by the Ministry of Environment. However, the reality now is that all vehicles removed under section 48 of the RTA 1987 have never been referred to the Road Transport Department due to the lack of SOP and as a result, the numbers of abandoned cars dumped at the depot keep increasing as they are no solutions on the disposal of these vehicles removed under this provision. Table 1 and Table 2 highlight the numbers of unclaimed vehicles which contributed to the massive number of abandoned vehicles in Pulau Pinang and Kuala Lumpur respectively. If these vehicles are not de-register, dismantle or recycle, it will give adverse impact to the environment. Therefore, ELV policy should be implemented in Malaysia following the practices in another jurisdictions.

Table 1: Enforcement on abandoned vehicles: Pulau Pinang City Council

Month (2021)	Number of cars (Towed)	Number of cars (Claimed by owner)	Number of cars (Claimed by RMP)	Number of cars (Unclaimed)
Jan	47	25	-	22
Feb	39	20	-	19
Mac	37	16	-	21
April	21	6	-	15
May	16	9	-	7
June	18	5	-	13
July	12	7	-	5
August	19	9	1	9
September	29	17	-	12
October	30	10	-	20
November	14	8	-	6
December	12	6	-	6
Total	294	138	1	155

Source: Enforcement Department, Pulau Pinang City Council

Table 2: Enforcement on abandoned vehicles: Kuala Lumpur City Council

Month (2021)	Numbers of cars towed	Numbers of claimed vehicles (owner)	Numbers of claimed vehicles (police case)	Numbers of unclaimed vehicles
Jan	118	19	1	98
Feb	62	13	1	48
Mac	107	23	1	83
April	154	28	3	123
May	102	16	1	85
June	97	3	0	94
July	68	10	0	58
August	100	23	2	75
September	73	23	4	46
October	60	25	4	31
November	29	15	6	8
December	50	16	0	34
Total	1020	214	23	783

Source: Enforcement Department, Kuala Lumpur City Council

Laws in another jurisdiction

In order to reduce waste originating from the automotive industries mainly from the ELVs, as well as to solve other problems such as abandoned cars by owners, illegal dumping of scrap metal cars and lack of final disposal site, there are countries which have taken a bold action to introduce laws, policies, directives and guidelines to regulate the management activities of vehicles that have reached the age of ELV or are no longer used by vehicle owners. As these countries also have their laws to manage these ELV vehicles, abandoned car is no longer a problem and does not arise in these countries as when a vehicle has reached a certain age and limit or can no longer be used, owners or manufacturers are obliged to be disposed of under the introduced law. Therefore, laws and directives used by other countries to manage ELV vehicles and how these laws can solve the problem of obsolete and abandoned vehicles and also to manage automotive waste disposal according to procedures that are in accordance with environmental sustainability and also economically feasible should be referred to. In this regard, a reference is made to law in Japan.

In Japan, the law that governs the ELV is the Law on Recycling of End-of-Life Vehicles or ELV Recycling Law. It was first promoted to the Japanese on 12 July 2002 and gradually enforced beginning of January 2003. The law fully came into force on 2005 with an estimated value of 5 million number of ELVs to be collected and recycled under this law (Ahmad et. al., 2014). The provisions of the law and the obligations is presented in Table 3.

Table 3: The Law on Recycling of End-of-Life Vehicles

Article	Responsible party	Obligations
Article 3	Obligations of Vehicle Manufacturers	<p>(1) Vehicles Manufacturers, etc., shall promote long-term use of Vehicles, facilitate the Recycling, etc. of End-of-Life Vehicles and endeavour to reduce the expenses required for the Recycling, etc. of End-of-Life Vehicles by devising the design of Vehicles and parts thereof or types of raw materials.</p> <p>(2) Vehicle Manufacturers, etc. shall take into account the importance of the role they play in the implementation of the Recycling, etc. of End-of-Life Vehicles to provide the implementation appropriately and smoothly, and adequately provide information regarding the structure of Vehicles they Manufacture, etc. as well as parts and raw materials used to Related Business Operators, and endeavour to cooperate as necessary to implement Recycling, etc. of End-of Life Vehicles</p>
Article 4	Obligations of Related Business Operators)	<p>(1) The Related Business Operators shall endeavour to improve their knowledge and competence relating to the Recycling of End-of-Life Vehicles to properly dispose of the waste pertaining to the End-of-Life Vehicles and to ensure that the resources are used effectively by implementing Recycling of End-of-Life Vehicles properly and smoothly.</p> <p>(2) Collection Operators shall work in concert with the Vehicle Manufacturers, etc. to ensure that the Vehicle owners are thoroughly familiar with the fees for Recycling, etc. of Vehicles and other matters and shall endeavour such that the delivery of the End-of-Life Vehicles by the owners of the Vehicles is carried out smoothly.</p>
Article 5	Obligations of Vehicle Owners	Vehicle owners shall endeavour so as to prevent vehicles from becoming End-of-Live Vehicles by using the vehicle for as long a period as possible, and endeavour to promote Recycling, etc. of End-of-Life Vehicles by selecting a Vehicle manufactured taking into account the implementation of Recycling, etc. when they purchase a vehicle and using goods obtained from Recycling of End-of-Life Vehicles or goods using them
Article 6	Obligations of the State	<p>(1) The State shall endeavour to promote research and development relating to Recycling, etc., of End-of-Life Vehicles, disseminate the results, and take other necessary measures.</p> <p>(2) The State shall endeavour to appropriately provide expenses required for Recycling, etc. of End-of-Life Vehicles, to provide resources in an amount which can be effectively utilised in Recycling, and other information required for Recycling, etc. End-of-Life Vehicles to promote the delivery of End-of-Life Vehicles by the</p>

Article	Responsible party	Obligations
		Vehicle owners as well as implement Recycling by Related Business Operators in a proper and smooth manner. (3) The State shall, through educational and publicity activities, endeavour to increase the public understanding of the Recycling, etc. of End-of-Life Vehicles and to ask for public cooperation to implement such activities.
Article 7	Obligations of Local Governments	Local governments shall endeavour to take the measures required to promote Recycling, etc. of End-of-Life Vehicles according to local circumstances
Article 8	Obligation to Deliver End-of-Life Vehicles	When a vehicle has become an End-of-Life Vehicle, the vehicle owner shall deliver the End-of-Life Vehicle to a Collection Operator.

Source: Act on Recycling, etc. of End-of-Life Vehicles (Act No. 87 of July 12, 2002)

Accordingly, Article 5 provides the obligations towards the vehicle owner to ensure that they prevent their vehicle from being ELV and not abandoned but instead send the end-of-life vehicles for recycling. Apart from stating the obligation of the economic operators and vehicle owners, this law also imposed the responsibilities of the States and Local Government to promote recycling and to provide the necessities in order to implement the recycling of end-of-life vehicles.

CONCLUSION

The main problem causing obsolete and old unused vehicles left abandoned because there is no regulation or law governing the vehicles that have reached the age limit or that can no longer be used due to damage or are no longer desired by the owner and also known as end-of-life vehicles. The lack of a law that compels certain parties such as the vehicle owner himself, to be responsible for disposing of their end-of-life vehicles resulted in them being taken for granted or less accountable for their own vehicles. Besides that, without any legislation governing these end-of-life vehicles, the government also has no control over how these vehicles are discarded and disposed of. Although the local authority is currently taking action in removing the abandoned vehicles with their existing standard operating procedure (SOP), their process is limited until they dispose of the vehicles as scrap metals to scrap dealers and operators. There is no regulation on how these operators dismantle, discard and dispose of the scrap metals. Without intervention or regulation governing how these vehicles are being disposed of, it may cause automotive waste not to be discarded in an environmentally friendly manner. Scrap dealers and operators are only interested in taking parts and components with economic value, and other parts hazardous to the environment may not be disposed of properly. Apparently, this will contribute to environmental pollution in the long term if there is a measure to

control and regulate these activities. Therefore, it is suggested that the ELV policy be implemented. The government can impose obligations and responsibilities to parties that need to dispose of the vehicle. The model provision in Japan can be as sample of reference by the government in introducing the law suitable to Malaysia. In doing so, few amendments can be made to the relevant provisions.

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Siti Sarah Sulaiman, Noorazrein Noorazlan Ong, S. Sarifah Radiah Shariff
ELV Policy Implementation as a Solution to Abandoned Vehicles Problems Faced by Local Planning Authority in Malaysia

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