

EVALUATING THE CONTROL OF VEHICLES CONFISCATION AND  
FORFEITURE BY ROYAL MALAYSIAN CUSTOMS, JOHOR BAHRU.

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## **DEDICATION**

To my beloved family, honourable Royal Malaysian Customs, Johor Bahru and my  
passionate Supervisor

:

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## **ABSTRACT**

Malaysia is a country that is actively running business both in local and international despite the uncertain economic situation. For the local businesses level, the use of land transport vehicles is a very high proportion because of the geographical factor, transportation cost and most convenient method of delivery. The levels use of land transport vehicles are directly contributing to the problems relating to the laws and regulations. Breach of the laws will result in the vehicle seized, stored, and auctioned if the case proved to be true in violation of laws that have been established. When business became more active, the higher rate of use of land transport vehicles will be involved and more violation of the provisions laws specified. This problem poses a dilemma to the level of storage reliability control seizures and forfeitures of vehicles Customs Department, Johor Bahru (RMCD). This vehicle is seen as evidence of a case that involved without any regulatory maximum emphasis on the vehicle, the suitability of storage space, efficient storage method, the proper storage location, and the safety of the storage of vehicles seized and forfeiture. The effectiveness of the control of the storage of vehicles seized and forfeiture if given the appropriate attention it can give a good return of capital to the government directly but also indirectly create a conducive work environment in addition to the delivery and presentation to the client department in the extremely exciting. Therefore, this study was conducted for giving a significant impact and how important to control the storage of vehicle confiscation and forfeiture be considered balanced.

## ABSTRAK

Malaysia merupakan sebuah Negara yang amat aktif menjalankan urusan perniagaan baik dalam Negara mahupun luar Negara walaupun dalam keadaan ekonomi yang tidak menentu. Bagi perniagaan di dalam Negara tahap penggunaan kenderaan darat adalah pada kadar yang amat tinggi atas faktor geografi, kos, dan kaedah penghantaran yang paling mudah. Tahap keaktifan penggunaan kenderaan darat ini secara langsung menyumbang juga kepada permasalahan yang berkaitan dengan undang – undang dan peraturan. Perlanggaran undang – undang tersebut bakal mengakibatkan kenderaan dirampas, disimpan, dan dilelong sekiranya kes dibuktikan sebagai benar melanggar undang – undang yang telah ditetapkan. Semakin tinggi urusan perniagaan, semakin tinggi kadar penggunaan kenderaan darat dan semakin banyak juga pihak yang melanggar peruntukkan undang – undang yang ditetapkan. Permasalahan ini menimbulkan dilema kepada tahap kebolehan kawalan stor penyimpanan kenderaan rampasan dan lucut hak Jabatan Kastam Diraja, Johor Bahru (JKDM). Kenderaan – kenderaan ini hanya dilihat sebagai bahan bukti bagi sesuatu kes yang terlibat tanpa ada penekanan kawal selia maksimum terhadap kenderaan terbabit, kesesuaian ruang penyimpanan, kaedah penyimpanan yang berkesan, lokasi penyimpanan yang sepatutnya, dan tahap keselamatan tempat penyimpanan kenderaan rampasan dan lucut hak. Keberkesanan terhadap pengawalan kawasan stor penyimpanan kenderaan rampasan dan lucut hak ini jika diberi perhatian yang bersesuaian ia boleh memberi pulangan modal kepada kerajaan secara langsung malahan secara tidak langsung mewujudkan persekitaran kerja yang kondusif disamping penyampaian dan persembahan kepada pelanggan jabatan dalam keadaan yang amat mengujakan. Oleh yang demikian kajian ini dilakukan bagi memberi impak dan ruang agar peranan kawalan terhadap stor kenderaan rampasan dan lucut hak ini diberi perhatian yang seimbang.

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## GLOSSARY OF TERMS

RMCD	-	Royal Malaysian Customs Department
ED	-	Enforcement Department
MSSD	-	Marine and Support Services Department
CFSA	-	Confiscation/seized and Forfeiture Storage Area
OVA	-	Ohio Vehicles Action Laws
CBSA	-	Canada Border Services Agency
ICT	-	Information and Communications Technology
AFID	-	Asset Forfeiture and Investigation Details
LAPD	-	Los Angeles Police Department
EG	-	Electronic Government
ERM	-	Electronic Record Management
KHT	-	Keyed Hash Trees
eFAS	-	Electronic Federal Assets Sales Program
ESC	-	e FAS Executive Steering Committee
FRE	-	Federal Rules of Evidence
NHTSA	-	National Highway Transport Security Agency

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## **CHAPTER 1**

### **INTRODUCTION**

#### **1.0 Introduction**

In the era of global economy, the increasing complexity of trade increasing both international and local. The automobile is the primary mode of transportation in Malaysia and while it offer a benefits of convenience and quickly mobility. That scenario is crucial due to the geographical suitability in Malaysia besides the increasing of the cost factor.

The important role played by land vehicles, such as cars, vans, trucks and so on sometimes will involve the issue of violation of law that may cause the vehicle seized or confiscated either from the individual or company users. Seized and forfeiture items can include cash, building, land, motor vehicles, and airplanes (Stahl, 1992). Forfeiture laws can pertain to assets that facilitate criminal for example cars use in smuggling, houses used to store contraband and those that are the proceeds of crime (Abadinsky, 2003).

Improvement in symptoms has resulted in the seizure of a vehicle dumping most at the storage area of enforcement agencies such as police, road transport department, including the Royal Malaysian Customs Department (RMCD). These situations occur until the case was solved an inquiry which involved, some of the cases will take a long time. Storage and maintenance can be profitable but can also

be costly. The disposal too may be difficult as no buyer may be found for the certain item. The US Marshal's service has over 200 employees assigned to handling assets seized by federal agencies and the US Customs Service has more than 100 full-time paralegals to manage seized property (Albanese, 1996).

## **1.1 Study Area Profile**

Enforcement Division (ED), RMCD is responsible for combating all forms of trafficking and abuse to ensure that all applicable laws and regulations administered by RMCD fully met. Thus, the nation and the interests of society are safeguarded and protected without compromising legitimate commercial transactions. The Customs Confiscation and Forfeiture Vehicles Storage are under MSSD which is under jurisdiction of ED, RMCD.

This section will describe the focusing location of the study area. Only 4 storage areas are selected in this study although The Customs Director General of Johor is responsibility for 9 storage area around state of Johor which is 6 was not include in this study was Enforcement Storage Batu Pahat, Enforcement Store Gelang Patah, Enforcement Store Maharani Muar, Enforcement Store Kluang, and Enforcement Store Mersing. The 4 storage involve are vehicles confiscation and forfeiture storage at Enforcement Store Menara Kastam Johor Bahru at Larkin, Intelligent Enforcement Store at Kampung Kastam Larkin, Enforcement Store A at Kampung Kastam Larkin, and Enforcement Store Bandar Baru Uda.

The total vehicles store under Johor Bahru RMCD territory was about 662 vehicles. Enforcement Store at Menara Kastam Larkin (open storage area) currently is occupied for 200 vehicles with a various type of vehicles including car, truck, prime mover, prime mover container, lorry, and boat. Some of the car was parking at the sideway. For Intelligent Enforcement Store and Enforcement Store A at Kampung Kastam Larkin (covered parking) are occupied for 150 vehicles including car and van only. A new storage area at Bandar Baru Uda (mixed concept, open

parking and covered parking space) is loaded with 312 vehicles with different type of vehicles. All the data are updates until April 2015.

The existence of the storage store control which allows Customs achieved a result of the seizure of the vehicle auction bidding prices higher. The value of successful auctions of vehicles generated in a period of 3 years from 2009 to 2011 was RM 75.63 million. The conservative role of the storage control functions at an early stage is just a place where vehicles are impounded until the case is completed, however if this studied with effective, it is really be able to give value add not only to the department but to the State. **Table 1.1** showing the value and tax involved for a period of 2009 until 2011.

**Table 1.1:** Value and tax of goods seized by the enforcement division.

VALUE AND TAX OF GOODS SEIZED BY THE ENFORCEMENT DIVISION FOR THE YEARS 2009 TO 2011								
Commodity Types	2009		2010		2011		Total	
	Value (RM mil)	Tax (RM mil)	Value (RM mil)	Tax (RM mil)	Value (RMmil)	Tax (RM mil)	Value (RM mil)	Tax (RM mil)
Tile	1.58	0.88	116.39	86.95	1.25	0.64	119.22	88.47
Cigarette	70.90	250.58	86.90	310.75	61.93	359.65	219.73	920.98
Drug	62.49	-	44.44	-	183.78	-	290.71	-
<b>Vehicles</b>	<b>23.73</b>	<b>22.25</b>	<b>31.58</b>	<b>32.58</b>	<b>31.74</b>	<b>20.80</b>	<b>87.05</b>	<b>75.63</b>
Electrical Goods	2.62	0.45	17.30	4.58	3.18	0.85	23.10	5.88
Communications Equip	14.31	2.82	12.63	2.24	4.02	0.22	30.95	5.28
Wine & Alcohol Drink	7.06	17.50	12.48	30.39	9.41	23.62	28.95	71.51
Firecrackers & Fireworks	5.61	3.68	11.12	7.22	7.81	5.07	24.54	15.97
Textiles	3.49	0.69	3.91	0.93	56.56	8.47	63.96	10.09
Tires	2.42	1.14	2.25	1.17	7.03	3.65	11.70	5.96
Rice	0.41	0.03	1.74	0.03	0.85	0.27	3.00	0.33
Multi-Media Disc	0.08	0.01	0.14	0.02	0.21	0.04	0.43	0.77
Other	137.86	29.72	166.6	38.29	157.13	48.17	461.79	116.18
<b>TOTAL</b>	<b>332.56</b>	<b>329.75</b>	<b>507.68</b>	<b>515.15</b>	<b>524.90</b>	<b>471.45</b>	<b>1365.14</b>	<b>1316.35</b>

Many aspects of records management impact on storage, for example, classification, indexing, appraisal and disposal. Therefore good storage control should be focused on ensuring safe central role not only as the location of vehicles piled up on the booty alone. Goods seized and forfeited as a result of enforcement action should be taken immediately to ensure the disposal of a maximum yield.

**Table 1.2** showing the revenue of collection:

**Table 1.2:** Enforcement Department collection

<b>COLLECTION ENFORCEMENT DIVISION FOR THE PERIOD 2009 TO 2011</b>				
<b>Types of Revenue</b>	<b>2009 (RM mil)</b>	<b>2010 (RM mil)</b>	<b>2011 (RM mil)</b>	<b>Total</b>
Fine Compound	7.40	2.84	4.80	15.40
Tax Collection for Less Collection Tax Cases	9.55	13.75	24.69	47.99
Forfeiture Vehicles Sales Revenue	1.45	1.58	11.02	14.05
Forfeiture Goods Sales Revenue	1.70	0.47	4.38	6.55
<b>TOTAL</b>	<b>20.10</b>	<b>18.64</b>	<b>44.89</b>	<b>83.63</b>

## **1.2 Background of Problem**

The control of vehicles confiscation and forfeiture facing a big challenge since it involve a rules and regulation, limited storage area, maintaining the vehicle condition, a time frame to solve the case and also involve other agencies contributions. That situation make the problem became more critical. However the respective department should not take it for granted in term of not to take care of the seized vehicles. Once vehicle are seized, they must be appraised and then stored and maintained, while ownership and third party claim are heard in court.

Confiscation of illegally obtained proceeds of crimes a key strategy for disrupting criminal activity, especially serious and organised crime. Confiscation of

this nature serves a number of purposes. First, it seeks to deter crime by reducing its profitability, as well as diminishing offenders' ability to finance further criminal activity. In addition, compensation schemes aim to redress imbalances by compensating society for the adverse impacts of criminal activity and reimbursing the state for the costs of incurred in fighting crime. Finally, there is public utility in demonstrating to the community that crime 'does not pay' (Bartels, L., 2010).

Customs Act 1967 empowers the officer to seize any goods suspected of violating the Customs Act. Goods will be seized booty and customs enforcement kept in stores under the care of Marine and Support Service Department (MSSD) under Enforcement Division (ED). Customs forfeiture of goods are all kinds of goods seized and forfeited to the government based on a court order (section 127 of the Customs Act 1967) or items not collected within one month from the date of seizure (section 128 of the Customs Act 1967) or after an appeal to the Finance Minister rejected (section 129 of the Customs Act 1967).

The audit conducted by National Audit Department of Malaysia conducted in 2012 had submitted a few weaknesses in controlling the seized cases including a delay of investigation process that could affect the depreciation on the vehicle, the weakness of the level of inefficiency maintenance registers/records, untidy storage area, store security enforcement and monitoring less effective.

Based on Customs Prevention Order 2001, an area for placing vehicles seized, among others to be on the site of the hard surface and made an orderly parcel, covered and fenced all around. If the seizure of the vehicle storage is not enough, state customs director can use his discretion to determine the place and the appropriate storage method. Audit review found that the enforcement of vehicle seized in stores visited is stored in a covered area and orderly. However, due to limited space vehicle hijacking had kept in unsuitable. Situation has affected the quality of internal and external paint vehicles as shabby, rusty and broken windscreen.

No comprehensive, systematic evaluation of the forfeiture strategy has been undertaken. A Department of Justice Canada (2003), report indicates that, “adequate information on resource utilization and costs, as well as long-term impacts on organized crime was not available”. The evidence that is available, however suggests that proceeds of crime prosecutions tend to be complex and time consuming. For example, reports on two cases in 1994 that took four years to develop (Gibbon, 1994).

### **1.3 Problem Statement**

Starting from the issue of limited space of storage, the high vehicles depreciation, the critical cases solution and also the negative impact for communities such as healthy issue involve, the researcher felt to create and evaluate the suitable approach to deal with that matter. In this study, researcher will be able to answer many questions related to standard of procedure, management and controlling systems for customs department regarding vehicles confiscation and forfeiture.

Researcher are also trying to gauge the extent to which findings, recommendation and suggestion can be implementing at the RMCD, Johor Bahru to help department to get more revenue collection through sale of forfeiture of vehicles.

### **1.4 Research Question**

- i. How does the controlling system for handling vehicles confiscation and forfeiture contribute to reduce the vehicles quantity at storage area?
- ii. How long normally for one vehicles will be at storage area?
- iii. What is the major factor that effected the time to forfeiture a vehicles?
- iv. What are the difficulties while handling vehicles seized/confiscation?
- v. Is there any suggestion to make an improvement when handling vehicles confiscation while waiting the cases to completed?

## 1.5 Research Objectives

Through the observation and questionnaires conducted on the operation of vehicles seized by the RMCD, researcher have found several indicators that influence the situation that is very difficult to deal with, especially as a lot of laws involved, it led to a long period of time, involve a high level of supervision staff, a big storage area and the high vehicle depreciation when the vehicles was forfeiture.

Researcher found through the report of the auditor general, all measures have been suggested by them has been implemented. However, the problem of dumping confiscated vehicles still unresolved. It seems to have hit a dead end to see their recommendations to reduce the situations. The latest approach is noteworthy that it is a starting point to begin for the customs department to find other solutions not through mere report notes only, although the process will involve many other procedures and other government agencies.

The objectives of this study are:

- i. Explain to the shareholder of RMCD that department can reduce of storage for keeping confiscation vehicles.
- ii. To find a suitable solution or method to be implement for managing a confiscation vehicles.
- iii. To describe the factors that cause dumping cars seized in store.
- iv. To be a starting point in the management of seized vehicles for more effective and efficient.
- v. Generate more revenue collection through the sale of forfeiture of vehicles.

## **1.6 Scope of Research**

The scope of the research defines the boundary of the study. The scopes in this research are:

1. This research only focusing in a vehicles confiscation and forfeiture, excluding other confiscation and forfeiture items.
2. All the studies are not involving any barrier of enforcement laws, regulations, rulings and SOP.
3. This study will be conducted mainly in the RMCD Johor Bahru storage area.
4. This study will be targeting respondents among the staff of the storage area, management level of RMCD Marine and Support Services Department (MSSD), stockholders, banker, car dealer and publics.
5. The historical data will be obtained through secondary sources as provided by the authorised party of RMCD, Johor.

## **1.7 Research Assumptions**

In this study, several assumptions have been made. The assumptions are as below:

1. All the cases involve vehicles are included in this study although vehicles are not the main subject.
2. All the seized vehicles report is recorded and takes to account.

3. The report systems for the seized vehicles at using same format for all state.
4. RMCD Johor is following the entire SOP for storing the seized vehicles accordingly.

## **1.8 Limitations of Research**

This study involves several limitations. The limitations in this study are:

1. The study conducted only at RMCD storage area around state of Johor.
2. The data collected will only cover certain period of time and only for the storage that cater a vehicles confiscation and forfeiture.
3. The interpretation of law and regulations will not going to briefly discuss in details.

## **1.9 Expected Contributions**

1. It is expected that the findings of this research will give advantages for the RMCD to get an idea to minimise the problem occur while storing the confiscation and forfeiture vehicles and maximise the government profit basic on vehicles tender.
2. Provide a stepping stone for RMCD to control the evidence with a safety environment and help facilitate the quick settlement of cases, especially those involving many other agencies.
3. The e-government systems though other government agency allowed other enforcement agencies can gather all the information to make investigation purpose more effective and efficient.

4. From this research, it will help other researcher to study more deeply on the findings and hopefully could come out with another possible improvement.

### **1.10 Significance of Research**

This research is important to identify the gap between the current and the ideal situation of confiscation and forfeiture vehicles control. This procedure and findings can be used and referred by future researchers to specify the accuracy of the outcome for the similar research subject.

### **1.11 Research Design**

This research was focusing on the process improvement of the current control of confiscation and forfeiture vehicles. This involves the evaluation on current situation of control the confiscation and forfeiture vehicles provided in RMCD Johor storage area and the impact on the user's satisfaction level. It is focused mainly on the basis issues that will influence on the user's perception and satisfaction level.

This study can be done by getting the opinions and perspective from the users from Marine and Support Services Department (MSSD) for the upgrading on currents issues and problems which identified on this study.

### **1.12 Thesis Outlines**

This report of five chapters. The outlines of the chapter are as below:

Chapter 1: The purpose is to provide the brief introduction towards various issues such as the background of the problems, goals,

and objectives of the research, scope and limitations, assumption, expected contributions and significant of the research and finally the research design.

Chapter 2: The purpose of this chapter is to discuss the theoretical foundation to be implemented in this study by outlining the important concepts theories and framework that contribute to design and implementation of the research.

Chapter 3: This chapter will discuss the research design and methodology of this study.

Chapter 4: This chapter will discuss on analysis, findings and result that the researcher gains from the data.

Chapter 5: This last chapter will provide the recommendation and conclusion of the research.

### **1.13 Chapter Summary**

This chapter has shown the overall picture of this study. It provides the brief introduction towards various issues such as the background of the problems, goal, and objectives of the research, scope, limitations, assumptions, theoretical framework of the research, expected contributions and significant of the research and finally the research design. The next chapter will give the theoretical foundations for the study to be implemented by outlining the important concepts, theories and the framework that contribute to the implementation of the research.

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