

SEIZURE OF PACKAGED TEA DUST AND ADMISSIBILITY OF ANALYST'S CERTIFICATE UNDER THE FOOD ACT 1983: A CASE REVIEW LOO SWEE POO & ORS V DATUK BANDAR & ORS [1991]

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ABSTRACT

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Food production systems nowadays have grown more complex, food is generated in larger quantities and often transferred to long supply chains, because of which food cannot be visually monitored for safety and quality purposes. Increasingly modern food production and food distribution systems depend on scientific verification rather than visual monitoring of the product for food safety or quality controlling purposes. The paper looks at the decision of the High Court of Malaya in the matter of Loo Swee Poo & Ors vs Datuk Bandar & Ors 1991 about the seizure of packaged tea powder in accordance with sections 4(1)(f) and 4(1)(g) of the Food Act 1983 for the presence of banned coloring agents. The purpose of this paper is to pinpoint the jurisprudential principles determined in the case and determine its importance in terms of food forensics and halal government. The main issue in dispute was whether the authority could exercise statutory powers without obtaining a valid and up-to-date Analyst's Certificate to prove non-compliance with the Food Act 1983 and the Food Regulations 1985. The court held that the respondent had based his decision on the results of the outdated laboratory analysis and had not formed a reasonable belief in the presence of banned substances as required under the law and ruled that proof of reasonable belief cannot be based merely on suspicions. In this judgment, the court establishes that the science underlying the enforcement practices constitutes an indispensable precondition to lawfully use the powers of enforcement. This paper also connects the decision to the concept of halal tayyiban; consequently, the following arguments are put forward, scientific analysis by competent authorities, systematic documentation are fundamental prerequisites for the enforcement process, consumer protection and rights enforcement of food business operators. To summarize, this case will continue to be a precedent in that all regulations must be backed up by scientific evidence and not on assumption. It also encourages the application of forensic science within Malaysia's food safety and halal governance systems.

Introduction

Food safety has become a priority in the global food industry due to the increasing complexity of food production, processing and distribution processes. As a food product passes through various stages before reaching the consumer, the risk of contamination, food adulteration, and the use of unauthorized ingredients become increasingly difficult to detect through visual observation alone.

In other words, food safety has evolved from just the quality control of products to the application of scientific techniques and controls to safeguard consumers against the risk of any possible harm. The World Health Organization sees food safety as one of the basic elements of public health since contaminated food may lead to many problems for consumers, such as food poisoning and other diseases (WHO, 2026). In Malaysia, this objective is primarily achieved by virtue of the Food Act 1983 and Food Regulations 1985.

The development of forensic science has further strengthened food safety enforcement through the emergence of the field of food forensics. Food forensics refers to the application of scientific principles and laboratory techniques to determine the authenticity, composition and safety of a food product (Saadat et al., 2022). Laboratory analysis, chemical examination and expert findings allow authorities to objectively prove evidence before legal action is initiated. Scientific verification is essential because many forms of food adulteration, contamination or the presence of prohibited substances cannot be identified through physical observation alone. Instead, these matters require proper laboratory examination and can produce reliable analytical results that can subsequently be used as evidence in judicial proceedings.

In terms of Islamic religion, halal tayyiban is associated with the emphasis put on food safety and scientific evidence (Awang, 2021). Allah SWT says in Surah al-Baqarah verse 168: *“O mankind! Eat from what is on earth that is lawful and good, and do not follow the footsteps of Satan; for Satan is to you a clear enemy”*. It is evident that Islam prescribes the halal food not only in the aspect of its legality but also in terms of being tayyib, which means that food should be healthy enough to consume. At present time, there are specific procedures used in the food production process and additives which status can be determined only in the result of scientific examination. Therefore, scientific laboratories play an important role in ensuring the realization of halal tayyiban concept through the compliance with health requirements of food products. The results of scientific research represent the key factor in maintaining consumer confidence in the food industry.

The Loo Swee Poo & Ors v Datuk Bandar & Ors [1991] case is useful to demonstrate how food safety and their enforcement work with forensic evidence. The case was lengthily stayed in court on the question as to whether packages of tea dust could be legally seized by the police under the Food Act 1983, although the central point concerned the legality of the seizure itself, the court insisted that any enforcement action be based on solid scientific evidence such as evidence from an Analyst's Certificate. The case therefore raises the need for and importance of findings from laboratories for ensuring that the actions against food business operators can be undertaken within the confines of the law to uphold the rights of the food business operators and public confidence in the food safety regime in Malaysia.

Background Of the Case

The High Court of Malaya, Kuala Lumpur, heard the case in Loo Swee Poo & Ors v. Datuk Bandar & Ors [1991] and delivered the judgment on 24th September 1990, which was presided over by Eusoff Chin J. The problem is that under the provisions of sections 4(1)(f) and (g) of the Food Act 1983 the enforcers from the health authority seized the packaged tea dust. Thereafter, the applicants challenged the act on the ground that the act was not justifiable from the legal and scientific point of view for its enforcement.

Was it necessary for the respondents to first receive the Analyst's Certificate which is giving assurance that the tea dust seized was incapable of satisfying the standards set out in the Food Act 1983 and Food Regulations 1985 before exercising their statutory powers that granted them the authority to act? The decision in this case highlighted the need for scientific evidence when implementing food safety powers.

Facts Of the Case

The dispute in *Loo Swee Poo & Ors v. Datuk Bandar & Ors* [1991] stemmed from an enforcement exercise conducted by an authorized officer under the Food Act 1983 at the applicants' business premises located at No. 3/14, Jalan Udang Siar, Sri Segambut, Kuala Lumpur. On 5 January 1989, the third and fourth respondents inspected the premises, subsequently seizing and sealing a substantial quantity of packaged tea powder sold under the brand name "Cap Senapang". According to the Sealing Notice issued on the same date, the seized items comprised 1,400 tins of 200-gram tea powder and 1,310 packets of 840-gram tea powder together with other packaged goods, all of it were sealed pending further investigation.

This enforcement was made under section 4(1)(f) and section 4(1)(g) of the Food Act 1983, which provides the authority of authorized officer to seize and detain the food items when they have reasonable grounds to believe that there is any contravention of the provisions of that Act. The respondent claimed that the seizure was made to conduct further investigations into the allegation that the applicant had mixed some prohibited coloring matter with their tea powder. During the inspection, samples of the tea powder were taken for analysis in the laboratory to determine whether the product complied with the standards set out under the food law or not.

This inspection was triggered because of a complaint received from the Malayan Tea Producers Association who reported the applicant mixing coloring agents into their tea products. The complaint led the authorities to commit further investigations and initiate new samples to be sent to the lab. However, when new samples were collected, the claims were not confirmed until scientific analysis was conducted.

When the seizure was made, applicants (through their legal counsel) had written to the court requesting the immediate release of all the products seized on the order date 9 January 1989. But no reply to the application was received from the authorities. In accordance, the applicants began proceedings in the High Court claiming that the seizure was invalid as it was not supported by sufficient legal and scientific evidence as required under the Food Act 1983. The applicants stated that the contradictor couldn't establish any basis for those statutory powers to be exercised, but in addition to that he never produced the Analyst's Certificate which confirms that the tea dust seized contained prohibited coloring agents.

During these proceedings, the respondent presented an extensive review of earlier inspections conducted between 1984 and 1988 including an analysis of his sample from the 1984 inspection, which detected the presence of coloring matter to demonstrate compliance with the repealed Act. However, the respondent could not provide the Analyst's Certificate for the samples collected at the inspection on 5 January 1989. This omission was a major concern of the court as the validity of the seizure hinged on whether the authorities could arrive at any scientific finding and be satisfied with such findings to warrant them to use the powers conferred by the Food Act 1983 in respect of the seizure (*Loo Swee Poo & Ors v Datuk Bandar & Ors*, 1991).

Summary Of Judgment

The High Court allowed the applicant's application and ordered the respondent to release the seized tea leaves (*Loo Swee Poo & Ors v. Datuk Bandar & Ors*, 1991). In coming up with this ruling, the court concluded that the respondent did not prove that there existed a reasonable basis on which he exercised his statutory powers as provided in sections 4(1)(f) and 4(1)(g) of the Food Act 1983. It was clear that the actions of the respondent were not based on sufficient scientific information at the time that the actions were undertaken even though he argued that he seized the tea leaves to investigate whether there existed prohibited coloring matter.

The court's ruling on this judgment included a split between suspicion and reasonable belief. The judge indicated that the fact that the statutory power to seize a food product could not be implemented until after the judge was satisfied an offence had been committed was relevant to this situation and was emphasized previously. The need for an authorized officer to have a belief as opposed to a mere suspicion that an offence had been committed was relevant to this situation. This nuance has contributed to the court allowing the application of the applicant, among the main reasons. Eusoff Chin J found that section 4(1)(f) imposes a requirement on the authorized officer that he must form a strong and reasonable belief on the

fact that the provisions of the Food Act 1983 have been violated at the time he is acting under the power of seizure. That belief must be based on objective evidence that demonstrates the product that is being seized does not comply with the requirements of the law.

The court also noted that the respondent "over-relied" on the outcomes of laboratory analysis conducted in 1984 which was a long time before the enforcement action was conducted in January 1989. The judge considered that the results of the analysis obtained both several years ago could not provide a reasonable basis for re-performing a fresh analysis under the Food Act 1983, particularly as the most recent results of an analysis of samples taken at the most recent inspection were not included. Not having an up-to-date Analyst's Certificate undermined the respondent's reason for retaining the tea dust.

One of the key issues tackled in this Judgment was the probative weight of scientific analysis in food safety enforcement. The court agreed that adding coloring wasn't something that can be affirmed by the naked eye. The Act submitting the Analyst's Certificate is one of the critical parts of the argument on whether the seized product is the actual infringing product or not, as regards the Food Act 1983 and the Food Regulations 1985. Hence, the courts decided that the respondent had not got sufficient legal cause to go ahead with the applicant's product being seized.

However, the court has held that the authority might still take further steps to enforce the law in the future if they were to receive a valid Analyst's Certificate indicating that the tea contained added coloring material which is banned from the market. The court's approach in protecting public health while balancing the need for regulatory measures based on sound scientific data is reflected in this observation. The court wanted to ensure that those involved in the business of food or beverages (food business operators) have legal rights to have their products legally protected from the imposition of measures that would require objective scientific evidence before enforcement could take place (*Loo Swee Poo & Ors v. Datuk Bandar & Ors*, 1991).

Means Of Evidence

In food safety investigations, the strength of an enforcement action depends largely on the evidence presented. The court not only assesses whether an offence occurred but also examines whether the powers used by the authorities were exercised in accordance with the requirements of the law. Accordingly, the evidence in this case includes official documents, physical evidence and expert testimony which complement each other in determining the validity of the seizure action under the Food Act 1983.

Documentary Evidence

The course of this case was based on several official documents which included the Notice of Sealing dated 5 January 1989, the affidavit sworn by Dr Zainol, the complaint from Malayan Tea Producers Association, the letters between the applicant's attorneys and the respondent and the relevant provisions in the law cited by the enforcers. These documents assisted the Court in determining the sequence of events and on what grounds the seizure action was carried out. However, the focus of the court was the absence of an Analyst's Certificate as provided for under section 20 of the Food Act 1983. During the inspection on 5 January 1989, no certificate was issued for a tea dust sample from the inspection (*Loo Swee Poo & Ors v. Datuk Bandar & Ors*, 1991). The lack of this document meant the respondent was unable to establish the product had prohibited coloring matter, reducing the strength of the case for the seizure.

Physical Evidence

In this case, the physical evidence was the packaged tea powder seized from the applicant's premises which included tea in cans and packets bearing the name "Cap Senapang", (*Loo Swee Poo & Ors v. Datuk Bandar & Ors*, 1991). It was this product that was investigated to establish its compliance with the requirements of the Food Act 1983 and Food Regulations 1985. The condition of the samples retrieved is important in conducting food forensics tests and determining the accuracy of the results yielded from the food samples. Therefore, the samples should be properly stored to protect them from any form of tampering. The analytical results obtained reflect the actual condition of the product at the time of seizure if there is systematic handling.

Expert Evidence

The issue of expert evidence is a very significant one here as the Analyst's Certificate didn't come into existence as part of these proceedings. Under the Food Act 1983, analysis provided by an authorized food analyst is a form of scientific evidence to determine whether a product complies with the requirements of the law. Such an assessment cannot be replaced by ordinary observation as the presence of coloring matter can only be ascertained through laboratory analysis. This was also acknowledged by the court in its judgment (Loo Swee Poo & Ors v. Datuk Bandar & Ors, 1991).

The non-expert analysis did not enable the respondent to demonstrate compliance with the Food Act 1983 or that the tea dust misappropriated did not. In absence of scientific evidence, the rationale for supporting the seizure action was not as strong. The case is noteworthy because it provides an example of how expert evidence can be the finishing touch between the science results and the evidence presented in court in cases related to food.

Issues Involving Halal Forensic

The Loo Swee Poo & Ors v. Datuk Bandar & Ors [1991] was not an issue of the validity of seizure actions under the Food Act 1983 but had deeper implications. The relationship between scientific evidence, protecting consumers and halal governance can be clearly seen from this judgement. From a halal forensic point of view, this case shows that every enforcement action must be supported by verifiable evidence so that the decision made has a sound scientific and legal basis.

Scientific Analysis

In this case, the biggest problem is that the enforcement authorities are depending on information not confirmed by the present scientific analysis. Although the respondent had mentioned that the previous laboratory results and even complaints he had made. According to the court, it was insufficient to form a reasonable belief as provided by the Food Act 1983 (Loo Swee Poo & Ors v. Datuk Bandar & Ors, 1991). The sample taken on 5 January 1989 was not accompanied by an Analyst's Certificate, which was a weakness in the evidence in this case.

This clearly demonstrates that laboratory analysis is not just a technical operation, it's the basis of legal enforcement. As far as food forensics is concerned, the illegal material can't be confirmed by physical examination. On the contrary, it is possible to be assured by a correct analysis (Saadat, 2022). This method not only enhances the precision of the examination, but it minimizes the chances of taking any enforcement action without having sufficient evidence.

Health Implication

This case also brings out the significance of controlling food additives such as food colorings. Even though the court did not determine whether the tea dust contains the banned food colorings, it was an important issue concerning consumer safety. The use of additives that do not comply with standards can affect food safety, especially if used above the permitted limits or in products for which they are not permitted (Amchova et al., 2024). So, there is need for laboratory tests prior to declaring the product illegal. This method will ensure that the measures taken during the process of enforcing laws will have scientific backing; hence the consumers are protected while the rights of food manufacturers who are following the regulations are not violated.

Islamic Jurisprudence

Though not related to the question of halal certification, the decision handed down by the court in this case is consistent with the philosophy of halalan tayyiban. Islam not only demands that food be halal from a legal perspective, but also emphasizes aspects of safety, cleanliness and quality as commanded in Surah al-Baqarah verse 168 (Arif & Sidek, 2015). Scientific analysis plays an important role as a medium to ensure that a product meets the requirements of tayyib.

This verdict on the case also illustrates that the objectives of Maqasid al-Shariah include safeguarding the individual's life (hifz al-nafs). It is clear that the need to present scientific evidence before taking any legal steps will ensure justice for the food traders, as well as the safety of the people against food hazards. This approach coincides with the principle of syariah that prioritizes the prevention of harm (dar' al-mafasid) and the preservation of rights.

Halal Management

This case teaches that a halal management system cannot be separated from the process of documentation and scientific verification. Today, halal compliance is determined not only by the origin of raw materials but also includes an entire chain of control that consists of record keeping, traceability, and laboratory testing (Awang, 2021; Demirci et al., 2016). All of these aspects help to prove the integrity of products in case any questions appear regarding their state or safety.

Also, this issue is confirmed by halal laboratory operating standards that focus on the accuracy of analytical procedures and reliability of the test results obtained (Yuswan et al., 2020). In today's halal market, scientific data has ceased to be just an additional part of the certification procedure but has become the tool to guarantee the integrity of products. The experience in the Loo Swee Poo case shows that full documentation and strong analysis are essential foundations for establishing effective and credible enforcement with transparency and integrity that ultimately earns the trust of consumers.

Conclusion

The case of Loo Swee Poo & Ors v Datuk Bandar & Ors [1991] is highly relevant and reaffirms the requirement that enforcement actions under the provisions of the Food Act 1983 be supported by solid evidence, rather than mere suspicion or bare allegations. In doing so, the court emphasized the need to rely on scientific evidence to ensure the proper application of statutory powers. The halal forensic elements also demonstrate that the use of the laboratory analysis has not only become a means of identification in court but also has become an important measure to preserve and protect the integrity of halal foods and prevent any arbitrary enforcement. It aligns with the concept of “*halalan tayyiban*” which involves that the food must be both lawfully halal and legally meet standards of food safety, quality and hygiene.

The ideals established in this case are consequently very applicable and significant to meet the challenges of the complicated industry of modern foodstuff. As technology and regulations in the field of forensic analysis have improved, the importance of science has become an integral part of the food safety system. Therefore, legal cooperation and interaction, forensic science and halal management must continue to be reinforced to ensure that every enforcement action is not only in compliance with legal requirements but is also able to contribute to consumer confidence in food safety system and halal in Malaysia.

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