

**FOOD SAFETY AND TOYYIBAN CONCEPT: EVALUATING SCIENTIFIC EVIDENCE IN
FOOD CRIME - A CASE REVIEW OF PEK WOEI YI & ANOR V PUBLIC PROSECUTOR
[2022] MLJU 419**

^{i,*} Muhammad Shazwan Sufian

ⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai, 71800, Nilai, Negeri Sembilan

*(Corresponding author) e-mail: shampian99@raudah.usim.edu.my

Article history:

Submission date: 1 September 2019
Received in revised form: 30 October 2019
Acceptance date: 7 November 2019
Available online: 10 December 2019

Keywords:

sulphate, chloride, Halal, contamination, evidence

Funding:

This research did not receive any specific grant from funding agencies in the public, commercial, or non-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Sufian, M. S. (2019). Food safety and toyyiban concept: Evaluating scientific evidence in food crime - A case review of Pek Woei Yi & Anor v Public Prosecutor [2022] MLJU 419. *INSLA E-Proceedings*, 2(1), 1-6.



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ABSTRACT

This research paper deals with Pek Woei Yi & Anor v Public Prosecutor, one of the most famous Malaysian cases in terms of food law, wherein the defendants are accused of selling mineral water that contains sulphate and chloride in accordance with the Food Act 1983 and Food Regulations 1985. The accused were convicted on the ground that they are guilty of the crime of adulteration of food in pursuance of Section 13B(1) and 13(2)(d) of the Food Act 1983 because the minerals found in the water were listed in Twenty-Sixth Schedule of the Act as those which are not allowed to be contained in any food product. However, it has become evident after the clarification by Food Safety and Quality Division of Ministry of Health that sulphate and chloride occur naturally in mineral water and the chemical standard mentioned above was aimed at regulating the content of heavy metals. This paper aims at discussing the possibility of the wrong conviction of the accused due to mechanical interpretation of a statutory provision.

Introduction

Due to the large quantities consumed of the packaged natural mineral water, it has become necessary to control the contents of this beverage. Ensuring the safety of our daily food and beverages is one of the most critical challenges the industry nowadays faces. The food industry is subject to strict regulation under laws such as the Food Act 1983 to prevent the sale of adulterated food that could give health risks to the public. It is therefore necessary to develop a clear standards that can preserve the well-being of the people.

Misinterpreting food safety requirements and the chemical composition of food products is a major concern. Such misunderstandings can expose manufacturers to serious legal and financial consequences. The law pertaining to food safety is designed to protect consumers by establishing standard limits for added substances. However, misinterpretation of these law such as confusing naturally occurring minerals with restricted chemicals can lead to wrongful accusations that a product is adulterated and contains prohibited substances. Manufacturers often face complex compliance issues when regulatory provisions appear to conflict. For instance, the law may require naturally occurring minerals to be declared on product labels even though those same minerals are not listed in the schedules of permitted chemicals. This overlap creates significant compliance friction and labeling confusion (Setiawan et al., 2023).

Such regulation conflict played an important role in the case of *Pek Woei Yi & Anor v Public Prosecutor*. In this case, the accused is charged with a very serious crime according to the Food Act 1983 for supplying a beverage containing minerals that were not included in the list of permitted minerals in accordance with Food Regulations 1985. In general, *Pek Woei Yi & Anor v Public Prosecutor* serves as a landmark case that highlights the issue of interpreting food safety standards accurately and the necessity for clear legal frameworks.

Food Crime

Food crime involves serious cases of fraud and crime involving the food chains, which includes activities that affecting drink and animal feed (Food Standards Agency, 2024). According to the Food Standards Agency (UK) this refers to the deliberate selling of food and drinks which are not ‘what it says on the label’ and/or are not suitable for human consumption (Food Standards Scotland, n.d.).

Some of the major cases of food crime include stealing of cattle or goods. Other than that, the act of unlawful processing such as doing the slaughtering without a valid license, adulteration, and fraud documents involving certification claims or false traceability (HACCP Mentor, 2024). Food crime is frequently referred to as “food fraud”, encompasses a wide range of deceptive practices, from isolated acts of dishonesty by individuals to organised criminal activities. These offences can cause significant harm to consumers, businesses, and the integrity of the food sector.

Fact of the Case

On April 11, 2018, at about 10:55 in the morning, an officer who was lawfully empowered under the Food Act 1983, namely Mohd Faizal bin Rasidi (PW1), bought three bottles of mineral water from a 7-Eleven store in Kampar, Perak, which will be analyzed. PW1 adhered to the the legal procedures regarding the taking and labeling of samples as per Regulation 4 and Regulation 6 of the Food Regulations 1985.

On the same day, PW1 submitted one of the bottles to an assigned analyst, Rose Heldawati binti Che Rose (PW2). The findings of the analysis revealed that there was 33 mg/L of sulpahte and 13.4 mg/L of chloride in the sample of mineral water. In the process of the trial, the prosecutor called another winess, Dr. Husna Maizura binti Ahmad Mahir (PW3), who declared that the presence of sulphate and chloride was not allowed in Malaysia.

The accused, Pew Woei Yi, was charged in his personal capacity as the owner of Malee Mineral Water Sdn. Bhd. The prosecution alleged that the presence of sulphate and chloride in the mineral water did not comply with the standards set out in the Twenty-Sixth Schedule pursuant to Sub-regulation 360A(7) of the Food Regulations 1985. Therefore, the accused was charged with committing an offense under Section 13B(1) read together with Section 13B(2)(d) of the Food Act 1983 (punishable under Section 13B(4)) for sale of food which contained substance that are not allowed under the Act or its subsidiary regulations.

The outcome of the case was that the accused was found guilty and fined with a sum of RM9000, or one year's imprisonment in default of payment of the fine.

Dissatisfied with the decision, the accused filed an appeal against the conviction and sentence, while the prosecution also filed a cross-appeal against the sentence imposed. In the appeal, the accused argued that the mineral contents stated in the charge were actually permitted and not appropriately regulated under the Food Regulations 1985. Following the court's suggestion that additional evidence be submitted, the accused sought clarification from the Ministry of Health Malaysia. The Food Safety and Quality Division issued a letter dated March 11, 2021, which was subsequently successfully admitted as additional evidence in the appeal despite an objection by the prosecution. The letter provided crucial clarification that sulphate and chloride are natural mineral contents that are indeed expected to be present in natural mineral water, and that the Twenty-Sixth Schedule of the Food Regulations 1985 actually sets chemical standards fundamentally intended to control heavy metal content, rather than prohibiting the presence of natural minerals such as sulphate and chloride.

Means of Evidence

Documentary Evidence

Documentary evidence consists of written documents, reports, and records submitted to the court to establish facts. In the *Pek Woei Yi* case, this included:

- i. **Exhibit P15 (Chemist/Analyst Report):** The analysis report prepared by the appointed analyst which confirmed that the sample of mineral water contained 33 mg/L of sulphate and 13.4 mg/L of chloride.
- ii. **Exhibit D38 / Table A (Comparison Table):** A table submitted by the defense comparing the package labels of various other prominent mineral water brands (such as Spritzer, Cactus, and Dasani) to show that their labels also clearly indicated the presence of sulphate and chloride.
- iii. **Ministry of Health Letter (dated 11 March 2021):** A highly crucial document admitted as additional evidence during the appeal. Provided by the Food Safety and Quality Division, it officially clarified that sulphate and chloride are naturally occurring mineral contents in natural mineral water, and that the Chemical Standard in the Twenty-Sixth Schedule is primarily aimed at regulating heavy metals.

Physical Evidence

In the case of *Pek Woei Yi & Anor v Public Prosecutor*, the physical evidence consisted of three bottles of natural mineral water that is being purchased by the authorised officer (SP1) from a 7-Eleven store in Kampar, Perak, for chemical analysis along with their corresponding product packaging and labels.

During the proceedings, the defense utilized these physical labels to demonstrate that the mineral contents were expressly declared on the packaging as required by law, a point further supported when the investigating officer admitted that these specific labels had already been approved by the Food Quality Division in Putrajaya.

Expert Witnesses

- i. **The Analyst (SP2 – Rose Heldawati bt Che Rose):** An analyst appointed under the Food Act 1983 who conducted the actual testing on the physical water sample and verified the exact milligram per liter levels of sulphate and chloride.
- ii. **The Prosecution Expert (SP3 – Dr. Husna Maizura bt Ahmad Mahir):** A prosecution witness who testified that sulphate and chloride were not permissible in Malaysia at all.
- iii. **The Authorised Officer (SP1 – Mohd Faizal bin Rasidi):** The officer who physically procured the samples, executed the legal procedures for taking samples under the Food Regulations 1985, and handed them over to the analyst.

- iv. **The Investigating Officer (SP4 – Muhammad Hanis bin Sharuddin):** He testified regarding the investigation and critically admitted during cross-examination that the mineral water's package label had been officially approved by the Food Quality Division.

Issues Involving Halal Forensic

Islamic Jurisprudence

Islam emphasizes honesty and integrity in every transaction as a high ethical value, and warns against deceptive trading practices and false trade descriptions (Alwi et al., 2021; Nazari et al., 2023). In the *Pek Woei Yi* case, the manufacturer demonstrated commercial integrity by accurately declaring the mineral contents (sulphate and chloride) on the product label, exactly as required by law. Furthermore, the court found that the product labels had received official approval from the Food Quality Division, thereby reflecting business that are honest, transparent, and grounded in integrity.

This is consistent with the teaching of Prophet Muhammad (peace be upon him), who condemned any form of deception in trade when he said, "*He who deceives is not of me*" (Sahih Muslim, Hadith No 102). In this case, the manufacturer did not conceal or misrepresent the composition of the product, instead, the mineral contents were openly disclosed in accordance with legal requirements. Therefore, the manufacturer's conduct reflects the Islamic principles of *sidq* (truthfulness), *amanah* (trustworthiness), and transparency in commercial transactions.

Halal Standard and Regulation

The case of *Pek Woei Yi & Anor v Public Prosecutor* was decided entirely under the Food Act 1983 and Food Regulations 1985, and the judgement does not mention any Halal certification standard or Halal law directly. The dispute was about whether sulphate and chloride found in bottled mineral water broke the rules on food safety, not about whether the product was Halal or haram. However, the way this case was decided can still be connected to Malaysia's Halal regulation system, because both systems are built using a similar method of controlling food.

In Malaysia, Halal food is controlled mainly through the Trade Descriptions Act 2011 (TDA), the Trade Descriptions (Certification and Marking of Halal) Order 2011, and MS 1500:2019, which explains how Halal food must be produced, handled, and stored (Zhang et al., 2026). This system works almost the same way as the rules used in this case. Under regulation 360A (7) of the Food Regulation, mineral water must follow a chemical standard, and under regulation 360A (11), the company must clearly write the mineral content on the product label so buyers can check it (Azlan et al., 2012). In the same way, MS 1500:2019 sets the standard for what counts as Halal, and the Halal logo under the Halal Order 2011 lets buyer see and trust that the product meets the standard. Both systems use the same basic idea which is make a standard, then force seller to show proof of that standard to the public.

The offence in this case can also be compared to a Halal-related offence. Section 13B (1) of the Food Act 1983 makes it a crime to sell food that has been adulterated, meaning it contains something that is not allowed. The closest match in Halal law is section 5 of the TDA 2011 and the Halal Order 2011, which make it a crime to use a false Halal description or wrongly use the Halal logo on food that does not actually meet the requirements of MS 1500:2019. Although one law is about chemical safety and the other is about religious compliance, both laws are punishing the same kind of wrongdoing which is lying to the buyer about what the food really is.

Laboratory Analysis

The case relies heavily on a laboratory analysis process to prove that the mineral water sold by the accused contained substances not permitted under the law. This process began when SP1, an authorised officer purchased three bottles of mineral water from a 7-Eleven outlet as samples for testing. After the sample was collected, he handed one bottle to SP2, who is an analyst. Then SP2 carried out the chemical testing and confirmed that the sample contained 33 mg/L of sulphate and 13.4 mg/L of chloride. This result became the main scientific evidence used by the prosecution to argue that the mineral water had been adulterated.

Health Implication

A central part of this case involved examining the actual health risk posed by sulphate and chloride in mineral water. Since this scientific question directly affected whether the substances should be treated as harmful adulterants or as ordinary, naturally occurring minerals.

The court referred to background documents prepared for the World Health Organization's Guidelines for Drinking-water Quality. On sulphate, the WHO document explained that existing scientific data do not show any level of sulphate in drinking water that is likely to cause harmful effects on human health. The only practical concern noted was that water may start to taste noticeably different once sulphate concentration goes above 500 mg/L, which is a matter of taste rather than safety (Mitchell & Frisbie, 2023).

On chloride, the WHO document explained that it occurs naturally and widely in the human diet. The human body itself normally contains a substantial amount of chloride as part of its regular function (Younes et al., 2019). Toxicity from chloride has not been observed in healthy individuals under normal conditions, except in rare medical situations such as impaired chloride metabolism linked to conditions like congestive heart failure.

The court then compared this scientific background to Malaysia's own regulatory threshold, noting that the National Standard for Drinking Water Quality issued by the Ministry of Health permits sulphate and chloride up to 250 mg/L. This becomes clear that the amount found in the analysed mineral water were far below any level associated with health risk or even taste complaints. This comparison was important evidence supporting the conclusion that the mineral water in question posed no real danger to consumers.

Conclusion

In the end, the case of *Pek Woei Yi & Anor v Public Prosecutor* clearly shows that the application of strict liability in relation to the Food Act 1983 cannot be applied mechanically without proper scientific and regulatory context. As such, the fact that sulphate and chloride are naturally occurring minerals and not prohibited adulterants must be considered. From the Halal forensic point of view, the manufacturer's transparent labeling can be viewed as the implementation of the Islamic principles which are *sidq* and *amanah*. In summary, the case should be seen as an example that proper enforcement of food safety laws must always be based on scientific facts, regardless of the law being applied.

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