

Regulatory Framework on Foreign Direct Investment as a Factor in Determining the Economic Growth in Malaysia Post-Covid-19 Pandemic

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ABSTRACT: *A country's economic growth rate is the percentage change in the value of all goods and services produced during a certain period compared to the previous period. Since the Covid-19 pandemic was announced and hurting all businesses, several companies have depended on foreign direct investment (FDI) investment. Hence, this study aims to pinpoint new trends that Malaysian legal investment decision makers should follow to prepare for FDI attractiveness post-Covid-19. This study applies empirical theoretical methods with a qualitative approach to the relationship between state governments and foreign direct investors. The results of the analysis show that many countries that offer FDI face economic deficits and are more willing to develop themselves than others. It was agreed that FDI had a positive impact on Malaysia's economic growth and this growth was faced with shortcuts due to the negative impact of the Covid-19 pandemic. In addition, Malaysia has long-standing political problems which have impacted the country's FDI attractiveness. His contribution is to help these components adopt laws and regulations that are good for the future as the country has been dramatically impacted economically.*

Tingkat pertumbuhan ekonomi suatu negara adalah persentase perubahan nilai semua barang dan jasa yang diproduksi selama periode tertentu dibandingkan dengan periode sebelumnya. Sejak pandemi Covid-19 diumumkan dan merugikan semua bisnis, beberapa perusahaan bergantung pada investasi penanaman modal asing langsung (FDI). Oleh karena itu, penelitian ini bertujuan untuk menunjukkan tren baru yang harus diikuti oleh pembuat keputusan investasi hukum Malaysia untuk mempersiapkan daya tarik FDI pasca-Covid-19. Studi ini menerapkan metode teoretis empiris dengan pendekatan kualitatif pada hubungan antara pemerintah negara bagian dan investor langsung asing. Hasil analisis menyebutkan banyak negara yang menawarkan FDI menghadapi defisit ekonomi dan lebih ingin

mengembangkan diri daripada yang lain. Disepakati bahwa FDI berdampak positif terhadap pertumbuhan ekonomi Malaysia dan pertumbuhan tersebut dihadapkan pada jalan pintas akibat dampak negatif pandemi Covid-19. Selain itu, Malaysia memiliki masalah politik yang berkepanjangan yang berdampak pada daya tarik FDI negara tersebut. Kontribusinya adalah untuk membantu komponen-komponen ini mengadopsi undang-undang dan peraturan yang baik untuk masa depan karena negara telah terkena dampak ekonomi secara dramatis.

Keywords: *Foreign Direct Investment, Economic Growth, Legal Measure, Economic Policy, Investors Attraction.*

I. INTRODUCTION

The year 2020 has been unforgotten for everyone, whether a physical person or a company in the public and private sector. The year is characterised by the coronavirus disease 2019 (Covid-19), which continues to defray its negative effect on the world without distinguishing between developed and developing countries. Since the Covid-19 pandemic is considered a health crisis and a global shutdown with unprecedented scale and impact on business (Nicola et al., 2020). The effect is mixed and depends on the policy space adopted by countries with international obligations and specific needs. Therefore, the policies applied by many countries like Malaysia have restricted the country's obligation under the world trade organisation (WTO), regional investment agreements (RIAs), and bilateral investment treaties (BITs). The WTO member states must implement any changes to current laws, rules, or administrative directives that may materially influence trade in services covered by separate agreements between them (Wolftrum et al., 2008). Besides, the assess exact development impact of FDI is complicated. FDI impact is generally positive in economic growth, and getting the most out of FDI requires good laws and governance policies. These legal factors' implementation at national levels is more known as the possible effect for FDI attraction than international laws such as WTO law (Dinh Chien et al., 2012). However, the WTO and BITs laws are known for their character protectionist for foreign direct investors. In contrast, the role of the national laws and policies framework must be determinant in the pandemic situation of FDI positive growth (Official Website, 2020).

The Covid-19 impact on FDI is exceptional in Malaysia and in global circumstances. A new study showed that new and continuing investment projects had been postponed due to the epidemic. Most of the international affiliate earnings, of which a sizable portion is often reinvested in host countries, have been made public due to this issue. For instance, the FDI rate dropped at least 54 per cent in Malaysia in 2020 compared to 2019 (Malaysia, the FDI report in 2020). The organisation for Economic Cooperation and Development (2020) has reported that concerning law and policy kindness and their application in the Covid-19 context, FDI should be protected based on the investment importance in economic growth and the dependence of many people through job creation, for example. However, according to the Malaysia FDI report 1970-2022, the pandemic has negatively impacted business and investments in Malaysia, in which the growth is significantly dependent on FDI, with a rate of 2.51 per cent in 2019. In 2020

with covid-19 negative impact on Malaysia's economy, the FDI rate decreased by about 1.28 per cent. Even though the data showed a continually declined in the FDI rate starting in 2016. The drop in the FDI rate has been globally observed because in the middle of 2020, WTO data' has also shown a decline to 49 per cent compared with 2019.

Conversely, FDI inflows to underdeveloped nations fell by only 16 per cent less than anticipated. The only 12 per cent in Asia. Some studies argued that the decline of FDI flow is because of the resilience of China's investment, and others also affirmed the weight of the host country's measures for covid-19 eradication. This Article affirmed that the measure taken by Malaysia highly impacted FDI flow in 2020, even though the country's political instabilities have been more impacted in the last five (5) years. Thus, the success of regulatory measures to lessen the pandemic's economic effects will determine the prospects for FDI inflows.

This paper indicates the importance of regulatory perspective as a factor in boosting FDI attraction which the country may adopt to ensure the post-Covid-19 pandemic. The study affirmed that Malaysia had adopted different regulations for FDI attraction since the 1960s. For example, in 1965, Malaysia established the Federal Industrial Development Authority (FIDA) and Malaysia Industrial Development Authority (MIDA), which gave its name in 1967. Following by the investment incentive Act of 1968. The Malaysia Company Act 2016 (CA 2016) is a principle regulation governing foreign companies' entry and practice into the country. Currently, Malaysia has signed seventy-one (71) BITs since independence while, until now, the fifty-four (54) BITs signed between Malaysia with others countries are in force. Therefore, it has been shown that traditional regulatory factors such as IIAs and the Malaysia Company Act 2016 (AC 2016) are the principal laws governing foreign companies' entry and practice (Hossain, 2022). Besides these regulations and BITs, the country still needs a more operational legal framework for attracting foreign investors. This is because Covid-19 primarily impacts the country's (developed countries) providers of FDI, and there are facing the same economic effect of the pandemic as host countries. Therefore, AC 2016 have only (19) sections that directly deal with foreign company activities in Malaysia from entry to the cessation of business; these sections contain the prohibition and allowing activities (AC 2016, section 561-579).

Malaysia Industrial Coordination Act of 1975 sets several regulations on businesses that seek to be active in the manufacturing industry. The Act governs the manufacturing sector in the country. The compliance demands are put in place to aid in the correct regulation of the manufacturing sector by the appropriate authorities. The MIDA is the primary government agency promoting Malaysia's manufacturing and service sector. It continuously monitors, supports, encourages, and coordinates the development of the manufacturing industry in Malaysia. Therefore, it ensures that businesses only produce goods that support national goals in terms of economic and social policy. The ability of multinational corporations (MNCs) to "slice" their products into international multi-plant operations was made possible by the open FDI regulatory regimes, rising capital mobility, reducing communication costs, and advanced technology. The national law and policy framework is a more critical factor in the location attraction of FDI. While if the law and regulation are effectively implemented and applied by creating vertically integrated

global industrial networks, the FDI plays a more significant role. In short, critical political issues in Malaysia may affect many foreign investors. The FDI is involved in manufacturing activities to be aware of and comply with the relevant laws, rules, and regulations. Thus, offering fresh perspectives and thinking about legal issues and guiding legislatures and policymakers about the legal challenges for boosting the country's FDI in post-Covid-19 is essential.

II. METHOD

This type of research is empirical legal research. The approach used is a qualitative approach. Qualitative data were obtained through interviews with government officials regarding regulation of foreign direct investment in Malaysia, representatives from the business sector and industry associations, and economists. Qualitative data can also be collected from documents related to foreign direct investment policies and regulations in Malaysia.

Collection Techniques Qualitative data will be collected through interviews with relevant respondents. Interviews will be conducted using a structured question guide to ensure uniformity in data collection. **Qualitative Data Analysis:** Qualitative data will be analyzed through content analysis techniques to identify the main themes emerging from the interviews and documents related to foreign direct investment regulations. Qualitative data will be processed to provide an in-depth understanding of the views and experiences of respondents regarding the regulatory framework for foreign investment as a determining factor for Malaysia's economic growth.

Through the use of a qualitative approach, this research is expected to provide a comprehensive understanding of the role of the foreign direct investment regulatory framework in supporting Malaysia's economic growth after the COVID-19 pandemic. The results of this study are expected to provide policy recommendations for the Malaysian government in optimizing the contribution of foreign direct investment in restoring and developing the country's economy.

III. RESULT AND DISCUSSION

Overview of the Foreign Direct Investment Inflows During Covid-19 Pandemic

Receiving FDI inflows is unquestionably a significant source of economic growth for the economy of any nation. This foreign capital uses a specific area of the country's economy, such as manufacturing, service sectors, etc. The developing countries say that FDI is a complementarity factor with domestic resources, including the capital, technology, knowledge expansion, management aptitude, and increased productivity. However, the claim is that once the cost is as low as possible, a country's ability to transition from a planned economy to a market economy depends on speed and a well-defined legal reform plan (Dinh Chien et al., 2012). Moreover, the legal factor is the most potent cause of FDI attraction into the country. The developed and developing countries compete in adoption through different national regulation methods, including WTOs, BITs, RIAs, and

others. These agreements are saying as factor liberalisations for FDI and also be considered for their characters as protectionists of the foreign direct investors. The legal securities guarantee foreign investors in the case of appropriation, and other factors may constitute the cause of dispute between foreign investors and host state governments.

Therefore, the Organisation for Economic Cooperation and Development (OECD) has projected a worst-case global (GDP) growth rate of 1.5 per cent for 2020 in a report due out in March 2020. Reduced demand and increased uncertainty are the main factors contributing to the decline in global growth. The uncertainty is causing the lack of balance in the assessed investment policy, which could be considered a change in policymaking, its implementation, and how the objective was well addressed (Zhan, 2020). The Covid-19 pandemic has badly impacted the supply chains, such as Malaysia's Supply chains and China's industrial industries are closely entwined. The country's tourism industry also gains from the massive influx of Chinese visitors. Apart from China, others have been significantly affected by the Covid-19 outbreak; the US, UK, and European countries are also among Malaysia's most significant trade and investment partners. The outbreak directly affects medium and small businesses in the country. Therefore, Asian countries, including Malaysia, have implemented several measures to relieve market credit using conventional policy tools like open market operations, such as reserve requirement ratios, lending facilities, refinancing, and rediscount policies (ASEAN Policy Brief, 2020).

In addition to the direct disruptions brought on by travel and mobility restrictions, interruptions in regular business operations, and the decline in demand, government-enacted measures have also resulted in gaps in supply chain connectivity. The measure has caused uncertainty on FDI, negatively impacting the country's economic growth. Therefore, it was comprehensive that governments must assist people in need, especially those without proper social protection coverage, to ensure the success of pandemic policy responses. Whether insurance should be taken by an individual country or the collective (multilateral organisation), such as the measure taken by ASEAN economic ministers on March 10 2020, builds a resilient economy in reaction to the Covid-19 pandemic. The meeting also resolved to take collective action to lessen the effects of the Covid-19 outbreak, including maintaining open markets, strengthening information sharing and coordination, and collaborating closely with industry stakeholders. It also reaffirmed its commitment to maintaining ASEAN's open economic and integration policies (ASEAN Policy Brief, 2020). Even though the early warning for economic resilience, the covid-19 has affected chiefly Asian countries. When the contamination period shortens, policymakers must have the economy ready to relaunch with possible minor productivity loss. Therefore, they must take more steps to lessen the effects of the Covid-19 epidemic while reviving growth, financial stability, and consumer confidence.

On the other hand, a significant and long-lasting economic ramifications could result from it, including potential productivity losses, supply chain disruptions, labour upheaval, and financial strain on people and enterprises. The global economic recession due to covid-19 is, maybe, worse than any past global financial crisis. Such as the 2008/2009 financial crisis, which has also impacted the global financial system. Besides, The Covid-19 pandemic's economic effects are having an unheard-of rapid and severe impact on FDI.

The Covid-19 pandemic has apparent repercussions on supply, including quarantines, travel and movement restrictions, factory closures, and supply chain disruptions (ASEAN Policy Brief, 2020). Most of the covid-19 impact was uncertain in combating the pandemic even though the ramification continued in and after the virus spread. The legacy of the Covid-19 outbreak also lingers for much longer because the measure has provoked a clash in business profits, especially for those facing a short-term investment project. The crisis stems from a need for more understanding of their delay in the execution, which caused the vulnerabilities in their sourcing financing (McKenzie, 2020). Thus, the policy may aid in making the road to recovery various new and innovative measures.

The united nations conference on trade and development (UNCTAD) report (2020) has clearly shown the effect of the pandemic on global FDI flows according to regions. For instance, FDI inflow to Latino American economies was particularly severe during Covid-19; it is expected to experience the most significant decline, with a projected drop in FDI between 40 and 55per cent in 2020, and the impact on investment and its consequences for development has been monitored by UNCTAD's division on investment and enterprise. For instance, this investment issue provides a quick review of this study, given the particular circumstances, notably regarding FDI and investment policy (Zhan, 2020). A partial rebound to a pace of 2.5 per cent to 5.2 per cent in 2021 is predicted after the virus reduces global economic growth to an annualised rate of - 4.5 per cent to - 6.0 per cent in 2020 (Jackson et al., 2021). However, global growth has yet to reach the expectation of 6.0 per cent in 2021, 3.2 per cent in 2022, and 2.7 per cent in 2023 (World economic outlook, 2022). The depth and breadth of the global economic slowdown will determine the growth, according to the same report; some projections indicate that global trade may decline by 9.2% annually, having a particularly negative financial impact on poor and rising nations that heavily rely on trade (Jackson et al., 2021).

In contrast, inflows to developing economies decreased over time by 16%, mainly due to inflows to China. In Asia, the drop said in 2020 due to a shortcake of foreign investment activity. Compared to the same period in 2019, the global movement fell by 15%, 37%, and 25%. Therefore, according to (Jackson et al., 2021). The three basic types of international investment FDI is built on cross-border investments, greenfield investments in new companies, and international project funding. Moreover, it may claim that Covid-19's economic impact depends on both industrialised and developing nations, with the latter having significantly younger populations, much larger informal economies, and lower fiscal capacities than the former (Alon et al., 2020). Businesses must be flexible and prepared to deal with operational, labour, and demand/supply restrictions, revisit strategic and tax planning, and re-evaluate business models post-Covid-19 if they are to benefit from the policy boost (McKenzie, 2020). The health system quality aims to pinpoint the theoretical facets of growth modelling and the economic system's structural flaws. At the same time, it was essential to develop a medium-term economic model that incorporates a financial business cycle model and an epidemic model (Holtemöller, 2020). This flexibility model is based on a clear legal and policy strategy. Implications are still needed for Malaysia's FDI attraction, even though the country BITs agreements support the attraction objective.

Analysis of the Traditional FDI Protection and its Implication for FDI Attraction

Slacuse and Sullivan (2005) affirmed that The IIAs work to encourage FDI by fostering a stable and favourable environment for investment. The most precious application of IIAs is BITs which explicitly protect foreign direct investors from reducing arbitrary and political risks. The protection increases the attraction of investors to host countries. Through bilateral investment treaties (BITs), of which more than 3.000 have been negotiated globally, the home and host nations are taking precautions to protect foreign investors (Brada et al., 2021). Therefore, Malaysia has signed seventy-one (71) BITs since its independence. The 12 are not in force, and only five (5) BITs between Malaysia and other countries are terminated. While until now, the fifty-four (54) BITs signed between Malaysia with other countries are in force. These BITs (the national treatment (NT), fair and equitable treatment (FET), expropriation protections, and free access to arbitrage) are frequently referred to as IIA standards, and their respect has an impact on FDI attraction into the country. However, during the discussion, the IIAs standards primarily protect foreign investors in host states, resting on their impact on FDI attractions.

National Treatment Standards

Using the NT standard in IIAs necessitates comparing how host nations treat domestic and foreign investors (Collins, 2013). Most authors believe that the standard's interpretation could be more precise because it needs to be clarified if it mandates that foreign and local investors be engaged in the same business or only the same sector or industry. Therefore, Article 34 of the Vienna Convention on the Laws of Treaties is applied to interpret the requirements as governmental obligations toward foreign investors provided by a third party other than a state. Malaysia, like the majority of other nations, has limitations on entry for FDI that are governed by government directives, such as limitations on granting licenses and permits in some specific sectors. Even though Malaysia's sector-specific restrictions on FDI are not addressed in the CA 2016, they exist particularly under sector-specific legislation. The foreign involvement in distributive trade services guidelines, which set restrictions on ownership involvement, were published in 2020 by Malaysia's Ministry of Domestic Trade and Consumer Affairs (MDTCA). Foreigners may participate depending on the distribution model; however, there are limitations on applying to investments or changes in ownership control.

In addition, the general agreements on tariffs and trades (GATT) Article III-1 stipulated that the NT stipule the general principle that Members of WTO must not apply internal taxes or other internal charges, laws, regulations, and requirements affecting imported or domestic products to afford protection to domestic production. Furthermore, the NTs intent to maintain in the host country whether the country adopts the degree or specific policy in need of current and future regulation for public interests on investments (Reports, 2021). However, most BITs signed by Malaysia with other countries refer to these standards, so applying the obligations became compulsory for the country.

Fair and Equitable Treatment

FET has been described as the stipulation for equal treatment between national and foreign investors in accessing the host countries' institutions through domestic law by IIA.

FET is present in most of Malaysia's BITs, and it is considered a superior standard of FDI protection in investment arbitration disputes. However, the scope and obligation of foreign investors need to be clarified based on FET norms that do not prevent states from implementing effective regulatory measures to further reasonable policy goals (Reports, 2021). Tribunals use different approaches to examine the violation of the FET standard because some prefer to elaborate on particular concepts like an investor's legitimate expectations and the arbitrariness of State behaviour.

In contrast, others prefer to concentrate on a factual investigation based on unfairness and equity (Rajah & Asia, 2021). In addition, among other things, the denial of justice, the absence of due process, the lack of due diligence, and other elements are likely to fall below the minimum standard of FET. These factors are primarily State-related and detrimental to the claimant if they are arbitrary, outrageously unfair, unjust, or peculiar, discriminating and subject the claimant to racial or sectional prejudice, or if they lack due process and lead to a ruling that is improper for a court of law (NAFTA, 2020). Thus, FET is considered a robust standard for FDI attraction based on the equal treatment between domestic and foreign before host State institutions.

Expropriation

The IIAs protected foreign investment from the government takeover of the asset without compensation, whether direct or indirect expropriation. Therefore, most bilateral and multinational investment treaties and trade agreements indicate an investor's right to be compensated for an expropriation (Reports, 2021). However, this standard has been mentioned under most Malaysian BITs with other countries. For example, Article 5 of the BITs between Malaysia and China mentioned three (3) conditions of appropriation, the first (1) measures are taken for a public purpose and under the legal procedure of each Contracting Party taking the expropriatory measures; the second (2) measures are non-discriminatory, and provisions for payment of fair and reasonable compensation accompany third, (3) measures. The condition of the appropriation under most of Malaysia's BITs with other countries requested the justification by a public purpose. While according to Article 4 of the agreement between the governments of the UK and Malaysia for the promotion and protection of investments, a fair judicial procedure in the territory of the contracting party where the investment was expropriated should be used to determine the amount of compensation (Ireland, 2002).

Even though, Article 579 of CA 2016 allows the foreign company to hold any immovable property in Malaysia. Therefore, land acquisition, for example, is required under the National Land Code of 1965, which the appropriate state authorities may approve. Companies incorporated in Malaysia with at least 50% of their voting rights held by foreign or non-citizen entities are subject to the requirement. In addition, according to Malaysia's Economic Planning Unit's Purchase of Properties Guidelines, "Foreign interests" are not permitted to purchase specific circumstances. Consequently, Malaysia has yet to develop a general FDI system. Foreign equity limitations and FDI thresholds vary by industry according to the relevant laws, regulations, regulatory Authority, and

obligations under the many free trade agreements (FTAs) that Malaysia has signed. The code is necessary for foreign or non-citizen companies to purchase and lease land.

Most-Favoured Nation Clause

This IIAs MFN standard requires the parties to give their products the clearest customs and regulatory treatment when importing or exporting "similar products to another member party. The MFN requests a previous agreement which is applied to the current agreement. Therefore, Article (I):(1) of the General Agreement on Tariffs and Trade (GATT) provides for WTO Members to extend MFN treatment to like products of other WTO Members regarding tariffs, regulations on exports and imports, internal taxes and charges, and internal regulations. In other words, "like" products from all WTO Members must be given the same treatment as the most favourable treatment accorded to the products of any state. As a WTO member, Malaysia must apply this treatment to other member countries. The MFN is used accordingly in Malaysia's BITs with other countries; for example, the BITs between Malaysia and China have started in Article 3(1) that investors from either contracting party cannot have their interests treated less favourably on the territory of the other Contracting Party than investors from any other State.

However, Article 3(2) has indicated the exception of the principle of MFN standards in their agreement because it mentioned that the contracting party for the investment in the territory of the other might suffer the loss of ownership due to war or armed conflict in other. The exact cause of loss may also extend to investors a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Contracting Party accords to investors of any third State" the most of countries like Malaysia's BITs have maintained an MFN flexibility on a certain level. Exclude certain regions and critical economic sectors to comply with regulatory or public policy requirements. Malaysia signed the first BITs agreement with Germany in 1960, considered the first generation of BITs. The commonly read Articles 2 & 3 of BITs between Malaysia and Germany can understand that both agreed not to be subject to less treatment by admission other than a third party in the contracting State.

Free Transfer of Investment-Related Funds

The free transfer standards are primarily mentioned in BITs between Malaysia and other countries, and it has been described as a repatriation of investment. Article 5 of BITs between Malaysia, the UK, and Germany has mentioned that each contracting party shall, in respect of investments, allow nationals or companies of the other contracting party free transfer of their capital and its returns. However, Article 6 of BITs between Malaysia and China conditioned the repatriation to the respect of laws and regulations of both parties. In the same logic, the BITs with Swiss have conditioned the monetary transfer from investments to the application of the laws and regulations of both countries. In addition, Malaysia and UK indicated the exceptional circumstances for repatriation in which each contracting party shall have the right to restrict based on the balance of the payments required. The balance of the transfer of such proceeds in a way

that is consistent with its rights and duties in the IMF member in which Malaysia has been a member since 1958. It is known that the Financial Services Act 2013, Islamic Financial Services Act 2013, and Foreign Exchange Policy Notifications published on June 1 2022, are the main rules managing exchange control in Malaysia. The Central Bank of Malaysia administers the Act. In brief, it can understand that the free transfer standard has been accepted in all Malaysia BITs agreements with other countries developed or developing even though some have indicated the minor condition of the transfer for the contracting party based on the investments such as the UK, France, and other countries that have BITs with Malaysia.

Access to Arbitration

Malaysia BITs are provided free access to arbitration mechanisms, whether it is an international centre for settlements of investment disputes or others at the national level. Even though some BITs have conditioned the access of the disputes, such as the BITs between Malaysia and China, indicating the dispute conditions that the parties must seek arbitration (Article 7). While Article 8 of the same BITs has mentioned the possible diplomatic settlement channels in the first place, followed by a tribunal arbitral in six (6) months in case of diplomatic settlement failure. There is no need to be an actionable breach of an IIA just because governmental action has harmed an FDI. Nevertheless, the nations are bound by domestic and international legal duties (including those imposed by investment treaties), which set guidelines against host state actions that may judge. The current debate on the new trends of IIAs is based on the need for reform in consideration, particularly in light of Investor-State Dispute Settlement (ISDS) cases. Because only foreign investors may use the ISDS process to take action against State in international arbitration for violations of IIA commitments. The Covid-19 pandemic has led to unprecedented state engagement as countries worldwide make difficult decisions regarding the virus's spread. The problematic action Malaysia took during covid-19, further by the degree of political instabilities, has negatively impacted FDI operations. This impact may open an actionable breach of Malaysia's BITs obligation in which most foreign investors believed the power of country FDI attraction. Malaysia is attempting to lessen short- and long-term societal and economic harm due to Covid-19 and political instabilities.

The Effect of FDI Protection on Economic Growth During the Covid-19 Pandemic

The Covid-19 pandemic has put the current economic globalisation model and international governance to a significant test. This is because containing the virus outbreak has had negative consequences for the global community, such as increased xenophobia and fear of outsiders. The people retreat into narrower identities in these times of crisis and economic uncertainty (IHRB, 2020). However, employment constituted one of the factors of economic growth; Malaysia's employment is acceptable to be impacted by Covid-19 pandemic measures, with an unemployment rate of 5.3 per cent in May 2020. These situations created more uncertainty among workers because their employers failed, leaving millions of employees without jobs. This uncertainty is due to contradictory instructions from governments and agencies in many countries. Also, some companies act independently, despite not knowing when the crisis will end; companies

are taking measures to protect their workers and, occasionally, their supply lines. Thus, the critical macroeconomic tools to combat the situation are limited. However, when cash-strapped businesses are closing and FDI inflows are badly disrupted, fiscal policy alone cannot stimulate production (IHRB, 2020). The legislative perspective fostering a stable and welcoming environment for FDI is primarily seen as a rule against national security for halting the spread of Covid-19 throughout the nation.

While an epidemic policy of countries that slows down the international spread of the virus has high benefits in terms of lower fatalities and economic welfare gains, these policies and measures must slow down the pandemic's criticality. Lower output losses and avoiding additional healthcare costs are expected to favour saving lives and well-being. However, there is no doubt that specific anti-pandemic policy measures have contributed to the economic trade-off, mainly impacting the FDI. For example, Malaysia and most countries have continually declared a state emergency rule. It can argue that the measure has not directly targeted the FDI but is saying so (Hagemann, 2021). Countries with high Covid-19 infection rates and death tolls have experienced particularly negative production shocks, especially given that there has been an infection-related decline in output. The practical labour supply has decreased, or strict regulatory lockdowns and shutdowns have been imposed by the Government, which were intended to fight the epidemic but had the unintended consequence of an unfavourable supply shock and an unfavourable (aggregate) demand shock (Bretschger et al., 2020). In the early stages of the epidemic, most decision-makers prioritised short-term economic concerns like debt buildup over longer-term considerations like the effectiveness of interventions. However, policymakers were urged to consider implementing extra fiscal or monetary measures because the pandemic still influenced the nation's economy. This was because these measures could further complicate how the policies would affect the economy after the resilience of the pandemic (Jackson et al., 2021).

Countries like Malaysia, which is experiencing the challenges of uneven growth and political instabilities, and Malaysia should be capable of attracting more FDI to lead as an emerging economy country in the ASEAN region. Since Government actions to combat the Covid-19 epidemic and its economic repercussions also impact foreign investors' operations, the IIAs can be relevant to the Government's policy responses in this regard (Jackson et al., 2021). Therefore, the Covid-19 pandemic has significantly hurt Malaysia's economy, especially the demand for Malaysian exports abroad (Cheng, C., 2020, pp. 1). The contribution of FDI to GDP growth, net exports, employment, (gross) capital formation, net capital inflows, government revenue, the extent of forging linkages with domestic SMEs, technology transfer and absorption, competition, and infrastructure development. In addition, Malaysia should be on track to reach high-income status within this decade, according to the UK government report Oversea Business Risk-Malaysia 2020 (Guidance, 2020). This depends on how the country recovers from the effects of the Covid-19 outbreak and undertakes more structural economic reform. Malaysia's economy is robust and diversified, transitioning from agriculture and commodities to manufacturing and services since the 1970s. The report also found that the country is seen as one of the world's most open economies, with strong international trade and investment ties and a growing trade surplus, while at the same time striving to reform

the IIA in the post-pandemic era. It starts with the efforts of each country to gain momentum. It aims to preserve strong FDI protection while preserving the capacity to regulate the public interest.

In addition, the IIAs give foreign investors legal security and predictability in host state. As a result, they impact the regulatory Authority of the contractual parties to advance public interests. There is no way to tell precisely what the economic damage from the global Covid-19 pandemic was and continues to be because economists have a widespread agreement that the covid-19 has caused several negative impacts on the worldwide economy (Mishra, 2020). All leaders and citizens prioritised stopping the virus from spreading further by implementing social distancing measures. However, once the covid-19 pandemic is under control, to boost investor confidence, world leaders must revisit trade agreements and foreign direct investment (FDI) restrictions (Hishan, 2021). Some countries have started the move to attract FDI, which is known for its role in state economic growth.

Moreover, the prediction must be more important for the State, and that should the virus become a global pandemic, most major economies have loosed at least 2.4 per cent of the value of their GDP over 2020. For instance, the world bank has predicted global economic growth of 3.00% in 2020. In the same year, Malaysia went through a severe recession that resulted in rising unemployment and a significant loss of FDI. As the pandemic has disrupted global FDI attraction and international trade, the Government must now look at legal and policy frameworks to reassure FDI in the country. Thus, the imperative urgently needed and bold policy measures to contain the pandemic, save lives, protect the most vulnerable in our societies from economic ruin, and sustain economic growth and financial stability (Mishra, 2020).

While many policymakers felt constrained in their ability to respond to the crisis due to the limited flexibility for monetary and fiscal support within conventional standards and the broadly synchronised slowdown in global economic growth, especially in manufacturing and trade that had developed before the viral outbreak. Before addressing macroeconomic and financial market difficulties through monetary, fiscal, and other policies, the Malaysian Government initially focused on a health crisis. However, restrictions on social interaction and border closures are among the steps used by the Government to fight the effects of COVID-19. Whereas, for encouraging private investment, the legitimacy of the Government, the predictability of its rules and policies, and the regularity with which they are implemented might be just as crucial as the regulations' actual content. Investors may view existing legal systems that depart from the ideal paradigm as having adequate certainty and efficiency. Understanding the relationship between the public and private sectors with a more open mind than the ideal paradigm suggests leads to the ability to see such benefits (Perry, 2000). Reevaluation of national development plans and strategies, including concerning the function of IIAs and the achievement of Sustainable Development Goals, is anticipated to follow Covid-19 and its mitigation measures.

The Legal and Policies Implication for FDI Attraction Post-Covid-19, the Way Forwards

There is no doubt that Covid-19 has negatively impacted FDI activities in all countries, with no exception between developed and developing countries. Many nations now recognise the value of regulatory flexibility to successfully address emergencies in light of the ongoing Covid-19 pandemic (Aidonna, J., A & Charissa, L., Z., December 20 2020). Thus, it is essential that Governments may seek to put regulations in place to entice more investment and restart harmed enterprises when a considerable disruption of this magnitude happens. The long-term reaction to Covid-19 should advance us toward a consensus regarding virtual goods and services that might draw FDI. The regulations should devise measures to ensure that these are produced under international norms for human rights and should be protected by the environment. It is also affirmed that if workers performing the duties are paid fairly and given excellent working conditions, their economies may have more resilient (IHRB, 2020).

Moreover, with some exceptions, rich cultures in the industrial and northern parts of the world have been impacted by the initial shock of Covid-19. Still, it is wise to anticipate what might occur when poorer countries experience a crisis. That is why the post of Covid-19 pandemic is decisive for developing countries, like Malaysia, to make various support for trade and investment as the country has done during the pandemic. Take the protection of workers and businesses—especially micro, small, and medium-sized- as an example (MSMEs). These are thought to be the industries most impacted by Covid-19 regulations (IHRB, 2020).

It is known that Malaysia started to formulate a regulatory framework to attract FDI in the 1960s. Since there are several legislations and policies have been established. For example, in 1965, the Federal Industrial Development Authority (FIDA) gave the name to Malaysia Industrial Development Authority (MIDA) 2 years later (1967). Malaysia's investment incentive Act was established in 1968, the Industrial Coordination Act in 1975, and the Companies Act 2016 (CA 2016) is Malaysia's latest Act for FDI attraction. The MIDA's primary function is to attract FDI in Malaysia and provide a supervision role to foreign investors in the service and manufacturing sectors in the country. Therefore, the Malaysian Government has enacted sector-specific regulations and policies to govern FDI. Foreign investors can currently hold up to 100% of the stock in all investments in new projects in a specific sector, and there are currently few limits on FDIs in Malaysia. Instead of taking a fragmented approach, es must carry out the nation's recovery activities systematically and coordinatedly. A comprehensive framework must direct them for recovery, including a defined vision, strategies, and action plan. Even though retaining the country's right to review and approve all investments for the economic goals and potential impact on the local economy. The requirement should be obtainable based on the different incentives in specific regions and sectors. In contrast, an application should be made by foreign investors to the governmental Authority before investing in acquiring permission or approval. In a host country, screening of the FDI is a system of scrutiny and is usually used to control foreign companies entry into the country (Hossain, 2022).

However, Malaysia's investment policies during covid-19 were foremost maintaining companies' liquidity, encouraging investment in Covid-19 related industries, giving businesses the maximum amount of administrative support in their day-to-day

operations, maintaining supply chains, and, if necessary, defending nations' national security concerning core domestic industries (Embargo, 2020). Therefore, to boost economic growth significantly, Malaysia must be cautious while subsidising FDI influx into all industries. For example, implementing prohibited and restricted sectors policies under section 561 of CA 2016. Because the Government must take several strategies and revise the implementation strategies to make it easier and streamline the pre-entry restrictions and procedures for FDI, it is argued that Malaysia's government strategy of subsidising FDI inflows did not increase economic growth through the exports sector, and this should be carefully revised for the benefit of both parties in the investment (Mustafa et al., 2021). Lower trade barriers and encouraging global trade by the Government can positively impact FDI attraction. A new framework for the cost and benefit analysis of inward and outward investments, as well as a reevaluation of the national investment policy, are necessary moving forward. Thus, to get the Malaysian economy back on the road toward sustainable development, the Government must figure out the optimal way to deploy an investment policy.

Even though the role of BITs in attracting FDI into the country is still debatable, the BITs are mainly responsible for clarifying the terms between FDI partners and assisting in securing investment deals (Faku, 2022). The issue of whether a particular form of investment treaty's conclusion will impact how IIAs affect investment inflows is equally crucial. A better understanding can help prepare the ground for a more effective systemic Malaysia regulatory perspective that gives IIAs their proper place in an overall strategy of attracting FDI and making it work for development. Furthermore, participating in IIAs can help developing nations like Malaysia become more appealing to FDI and increase the country's chances of receiving more FDI. It is important to underline this point to conclude that IIAs must be incorporated into more comprehensive FDI policies that address all host nation determinants of FDI. IIAs need help to do the task. Thought might be given to further enhance the function of IIAs as a tool for promoting FDI. IIAs do not include promises from capital-exporting nations other than general wording about promoting investments. They often only indirectly encourage FDI through the provision of investment protection. However, authorities would want to create IIAs with practical investment promotion rules to draw in high-quality FDI and maximise the concomitant development contributions.

The FDI post-covid-19 will be helpful for a new global vision and regulatory framework which can help all interested parties, most notably large companies, and consider FDI in the field (Kalotay et al., 2022). The future of FDI inflow will also be based on geopolitical interests due to the current conflict between the most powerful economic countries (US and China). Therefore, countries with ambitious and well-regulatory perspectives may become greener in intensifying innovation in boardroom thinking to attract FDI. With the current Covid-19 and political impact on the Malaysian economy, the country should be ready based on a regulatory perspective to attract more FDI in all sectors for the benefit of the people. The recent Covid-19 and the political turbulences in Malaysia have and continue to impact the country's economy more. In addition, the FDI attraction is appeared to exacerbate the existing risk of economic growth. It has an uncertain future for FDI, negatively reflected in Malaysia's FDI flow. Thus, a positive achievement of the

growth goal in maximising the development effect to all aspects of policies through coordination with different policies concerning FDI. For example, the measure related to the promotion and facilitation of FDI. Malaysia, Ministry of International trade and industry, Tengku Zafrul Aziz on 04/12/2022, has mediately mentioned the keys principles of Malaysia's economic growth in coming years:

“As I had previously highlighted, my top three priorities as the Minister of International Trade & Industry (MITI) are to ensure that trade remains a robust key growth driver to sustain our economic growth momentum. Secondly, we must restore investor confidence and increase FDI, which has long been a key building block of economic resilience, providing us with one of the largest sources of foreign exchange. Thirdly, we need to look at the various bilateral and multilateral trade agreements to ensure that their formulation and implementation will be of real value and advantage to participants in the Malaysian supply chain, particularly the micro and small SMEs.”

Therefore, when examining the effect of Covid-19 and political instability on Malaysian economic growth, Malaysia must have a new perspective for attraction FDI and a regulatory perspective in addition to the fact that all existing growth determinates have proof of substantial growth.

Furthermore, IIAs are only one "sub-element" of the overall host nation determinants of FDI attraction because it is a component of the policy framework for FDI. The IIAs are not the only factor in determining whether FDI occurs. Other aspects, such as a host country's economic attractiveness, the size of its market, the quality of its labour force, or the presence of its natural resources, may be far more significant. However, political stability is the main factor affecting the political risk of investing in Malaysia. Beyond just the legal side of things, economic phenomena are also influenced by the factors of legal integration. IIAs provide legal institutions that serve as crucial signals and inducements for potential investors, which increases FDI flows (Tocar, 2018). Most emerging or developed nations implement concessional economic concepts through production-sharing agreements, which create a formalised legal framework for interactions between the Government and private investors (Krishtal & Lisovskaya, 2015).

Most of the challenge is the Covid-19 damage to the host country had a negatively lagged impact on M&A and FDI in the manufacturing and service sectors but not on greenfield FDI. During Covid-19, it can seem that some of the FDI in host states have withdrawn or are late in realising the investment. Therefore, FDI flows have been significantly impacted by the Covid-19 damage (Camino-Mogro & Armijos, 2022). That's why the regulatory framework is essential to ensure FDI contributes to the growth and will coordinate between FDI policies and other policy areas. For example, the coordination between trade, industrial/SME development, environment, and society. Even though some investors are more resistant to the host country's regulatory obstacles, precise regulation can encourage them to invest in the nation.

Furthermore, the need for a fresh approach in applying CA 2016 must be essential or the adaption of a new legal framework for thinking about post-Covid-19 FDI attraction. Therefore, only the industrial and service sectors are allowed FDI under the MIDA; it does

not contain any explicit language that would allow the Authority to prohibit or restrict any FDI proposal at the entry level (Hossain, 2022). The non-specificity of Malaysia legislation, regulations, or guidelines that regulate all FDIs as foreign investments in Malaysia because the Government is regulated based on the sector-specific regulations issued (Alghorbany et al., 2022). Thus, the benefits of regulatory harmonisation are more excellent in nations with more permissive FDI regulations. At the same time, Malaysia is at an intriguing crossroads; historically, the policymakers have focused more on FDI.

Along with domestic initiatives, effective international collaboration will be essential, especially for the economic recovery of emerging nations, notably European and least-developed countries (Embargo, 2020). These countries' regulations for FDI are most structured for maintaining the security and protection of all parties. The divergence of Malaysia's regulation on FDI can see as a negative on FDI activity. However, in nations with more diverse regulatory regimes, FDI is less likely to engage in mergers and acquisitions (M&As) or launch greenfield projects. The suggestion is that a lack of regulatory cooperation between sectors is a significant barrier to FDI (Brewer, T. L., 1993, 44). Greenfield ventures frequently have a market access motivation and rely on comparative investor advantage, which might lessen the significance of various non-regulatory entry barriers (Brouthers et al., 2022). It can also argue that FDI decisions may be affected differently by regulatory costs depending on the reason for entering, the type of FDI, and the characteristics of the investors.

Interestingly, Brewer (1993) has affirmed that the barriers to regulatory transparency positively correlate with both forms of FDI probability. The uncertainty in regulation can stifle competition and entrench well-established companies' domestic or international market shares. It does not differentiate between domestic and foreign investors. Therefore, regulations have varying effects on FDI depending on the type of investment and the qualities of the investor, while regulatory consistency has the potential to increase FDI flows.

IV. CONCLUSION

The factor of determining Malaysia's economic growth post-Covid-19 pandemic has been scholarly discussed, and the discussions are based on the economy, market size, and other growth factors for FDI attraction. This study affirmed the importance of regulatory framework as a factor of FDI attraction post-Covid-19. With others study, there agreed that Covid-19 has negatively impacted all businesses in Malaysia, not only the foreign and local investors but also other businesses. There is no way to tell precisely what the economic damage from the Covid-19 pandemic was and continues to be because the economists have a widespread agreement. Therefore, since the Malaysia government's actions to combat the Covid-19 epidemic and its economic repercussions also have an impact on the operations of foreign investors, the IIAs can be relevant to the policy responses adopted by governments in this regard (Jackson et al., 2021). The problematic action Malaysia took during Covid-19, further by the degree of political instabilities, has negatively impacted FDI attraction. Following the Covid-19 epidemic is decisive for developing countries, like Malaysia, to make various support for trade and investment as

the country has done during the pandemic. The Covid-19 pandemic's economic effects have had an unheard-of rapid and severe impact on FDI because the measure has caused uncertainty on FDI, positively impacting the country's economic growth. A proper legal perspective creating a stable and favourable environment for FDI is an attractive method for Malaysia's economic growth.

Undoubtedly, receiving FDI inflows is essential to Malaysia's economic growth. The national law and policy framework are critical for attracting FDI into the country. Therefore, Malaysia's current regulation on FDI attraction is based on sector-specific regulations issued and the actions taken by the Government to address the effects of COVID-19, including quarantines, border closures, and limits on social interaction. AC 2016 have only (19) sections that directly deal with foreign company activities in Malaysia from entry to the cessation of business; these sections contain the prohibition and allowing activities. The IIAs standards are primarily for protecting foreign investors in host states during the discussion, rest on their impact on FDI attractions. Many studies have found that the country which is seen as one of the world's most open economies, with strong international trade and investment ties and a growing trade surplus, while at the same time striving to reform the IIA in the post-pandemic era. The effect of Covid-19 and political instability on Malaysian economic growth have opened the gap for FDI attraction. Thus, Malaysia must have a new legal perspective for attracting FDI.

However, the Malaysian Government must focus on the crucial factors that affect FDI in Malaysia since they may be vital to maximising FDI inflows and profits, which can spur economic growth. There is a need to promote better corrupt-free politics in Malaysia to strengthen national regulations and promote better development and living standards for the people. However, it would be interesting to put more effort into primary data collection to provide a better understanding of the behavioural factors in FDI decision-making processes and to consider how the development trajectories of multinational companies differ depending on the choice made. It is crucial that each of Malaysia's sectorial policies needs to connect FDI attraction efforts with their improvement perspective based on institutional qualities to make the most of FDI in terms of economic growth. The Malaysian Government should separate political will from FDI activities in adopting policies relative to FDI. Thus, adopting the regulatory framework on FDI which can harmonise sectorial regulations and policies on FDI in Malaysia will be important for attracting FDI into Country.

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