

1-30-2022

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### Recommended Citation

Febriani, Sasyabella (2022) "France's Membership in Financial Action Task Force (FATF) and Financing of the Paris Terror Attacks in 2015," *Journal of Strategic and Global Studies*: Vol. 5: No. 1, Article 2.

DOI: 10.7454/jsgs.v5i1.1087

Available at: <https://scholarhub.ui.ac.id/jsgs/vol5/iss1/2>

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# **France's Membership in Financial Action Task Force (FATF) and Financing of the Paris Terror Attacks in 2015**

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## **ABSTRACT**

France is one of founding members FATF with other G-7 countries and FATF's headquarters location. According to FATF and Europol, France is not only known as one of low level risk countries in financing terrorism but also as EU member state with the most terror acts in 2015. This research is attempt to explain why the French counter terrorism financing policy based on FATF standards is not able to prevent the financing terrorism practices of Paris terror attacks in 2015. This research method used qualitative approach and used historical institutionalism approach to see how institutional evolution of FATF, France involvement in FATF decision, and the influence of FATF decision on France relates to countering terrorism financing. The findings and analysis of this research cover certain several things such as the historical aspects in 25 years France membership in FATF, the French characteristics, and the funding Paris terror attacks in 2015. The result of this study indicated that although France has important role in FATF, but historically, France has ignored some important things which encourage the financing activities for terrorist network.

**Keywords** : France, Financial Action Task Force, FATF, Europe, Historical Institutionalism, Financing Terrorism

## **1. Introduction**

The importance of financing terrorism activities in terror acts encourage further measure from UNSC to issue UNSCR 1373 (2001) right after 9/11 acts. This resolution emphasizing the importance of member states to listing and freezing assets without delay of suspected terrorist either individual or entity. This resolution is support enhancing of UNSCR 1267 (1999) which designate to certain terrorist networks. Non-compliance to

this resolution could cause international sanction as consequence to the member state which is considered as not cooperative or not serious in carry out the mandate.

In order to fulfill the mandate, there is inter-governmental institution that contribute to drafting recommendations in fulfill implementation counter financing terrorism measures according to international standard, which is the Financial Action Task Force (FATF). FATF was established in 1989 by G-7 Summit, currently, FATF has 37 member states and 2 regional organizations (European Union and Gulf Cooperation Council). FATF Recommendation which implemented by states is a comprehensive and consistent frameworks in anti money laundering and counter terrorism financing. FATF Recommendation is international standard which universally acknowledged by 180 states.

Based on FATF assessment and Europol data from 2011 to 2016, France is known as one of low level risk country in financing terrorism activities but also an EU member state with the most terror acts in 2015 for particular. The terror acts in 2015 are consist of January and November terror acts in Paris. These acts have killed hundred people. Methods of financing terrorism activities are utilizing bank loan with fake documents (Europol, 2016: 22) and also utilizing prepaid devices and money transfer systems which is difficult to identify since the the small amount of money (Europol, 2016: 12).

There are several things or phenomenas to describe France in combating terrorism funds internationally. First, France is one of founding members FATF with other G-7 countries and France is also the location where FATF established and set as FATF's headquarters as well. Because of those roles, France is one of real model to implement

counter terrorism financing policies based on international standard. Second, although not always on the top 10 of EU states with the lowest level risk in financing terrorism, France still being defined as low level risk country by FATF. In contrast, France also suffered the worst terror attacks over and over again in a year. Therefore, the purpose of this research is to obtain the description of the cause of behind the French counter-terrorism financing policy based on FATF standard is not able to prevent the financing of Paris terror acts in 2015.

## **2. Literature Review**

### *2.1 Historical Institutionalism*

Along with the development of institutions between countries, institutionalism has received criticism from various parties regarding the approach used. Some critics said that the old institutionalism does not pay attention to the impact of regulations on actor (individual or state) behavior, and tends to emphasize only formal norms (Rosamond, 2010: 106). New institutionalism is present by considering the influence of international institutional regulations on the behavior of member states. In general, new institutionalism has an assumption that to see the function of an institution is not only looking at formal norms but also informal norms. Then other assumptions also look at how the relationship has on the effect of the transfer of power, and the effect of the long term on the institution.

The new institutionalism approach is often identified with the study of European Union integration, but it is now understood that this approach can be applied to studies of other international institutions. One form of new institutionalism is historical institutionalism, which emphasizes the

importance of a long period of time in seeing the role of institutions in member countries. Historical institutionalism has an interest in how institutional choices have long-term effects (Rosamond, 2010: 111). According to Pierson, historical institutionalism used social process methods which can be understood as historical phenomena (Pierson, 1994: 10-11). According to Knudsen, who referred to Pierson, that research using the historical institutionalism approach encourages researchers to look back and pay attention to the arguments and justifications for the debates of actors (institutions and member states) in the policy process (Knudsen, 2015: 45). This is done to identify a 'critical point in time' that produces strong patterns in policy making.

Policy making cannot be separated from the role of actors in institutions. An interdependent environment is a condition in which feedback effects can produce various consequences (Pierson, 1994: 5). Historical institutionalism theory pays attention to the effect of feedback on institutions, both positive feedback and negative feedback. According to Pierson, positive feedback can be seen from how the institution generates incentives for actors to stay and not leave the institution (Pollack, 2008: 3-4). Positive feedback can be indicated from how a policy has been agreed upon to be able to work or has been strengthened. Then negative feedback can be seen when a program or institutional policy has to delay its implementation (Pollack, 2010: 49). Negative feedback tends to be indicated when policies are postponed, policies are not implemented or actors decide to leave the institution. The effect of this feedback is the response given by member countries to policies or institutional decisions.

When an increase in the benefits of relationships within institutions occurs, it can re-strengthen the structure and function of the institution

so that positive feedback is obtained. The effect of feedback can depend on how people in a country interpret the policies that have been adopted by the country. This, among other things, is re-emphasized by referring to Pierson, that studies related to feedback effects emphasize cognitive effects or interpretive effects on experience-based policies (Bruch and colleagues, 2009: 5). Overall, historical institutionalism tends to be closely related to how lessons are obtained from government experience and responses.

Historical institutionalism tends to reject the idea of neo-functionalism which sees that institutions are designed by political actors for specific efficient functions, because historical institutionalism sees that the institutions created later can shape (behavior / actions / decisions) of actors and limit actors in the future because they are in the position 'locked' ('locked in') (Pollack, 2008: 3). This condition is when institutional decisions taken in the past bind and form chord behavior (Pollack, 2008: 3). In a locked condition, institutions tend to stick with their policies in the long term and tend to refuse to change their policies. This is because the conditions are locked in relation to the efforts of member states that are committed to implementing institutional decisions. Policy changes will require large costs for both institutions and actors.

Historical institutionalism sees the development of a system along with a certain 'locked' pattern (Rixen and Viola, 2009: 8). The locked condition is interpreted by Rosamond that the path dependence logic has been applied to the relationship between institutions and members (Rosamond, 2010: 111). Then Rixen and Viola also stated that the pattern of dependence itself is actually caused by an increase or return of positive feedback (Rixen and Viola, 2009: 13). The first fundamental

attribute of the dependent pattern is the reproduction of outcomes which sees the importance of historical elements in shaping two situations (Rixen and Viola, 2009: 13). First, choices in the past have an impact on present or future choices. Sometimes, choices in the past can be completely unintentionally or intentionally viewed as trivial but have important consequences at a later date. Second, the order in which the events unfold played an important role.

Then the second fundamental attribute factor of the dependency pattern is an effort to change in institutions which tends to come from internal factors and not pressure from external factors. Dependency patterns are very relevant when historical factors determine the development of institutions and organizations (Deeg, 2001: 15). In the pattern of dependence, resistance to change in institutions is considered as a result of unwillingness to change international agreements as institutional consensus, because it has the potential to affect national regulations. This shows that the pattern of dependence on the relationship between institutions and their members requires high costs. Research using historical institutionalism analysis knife will focus on institutional evolution and dependent patterns, where there are undesirable consequences when member states are in an interdependent environment (Jönsson and Tallberg, 2008).

### **3. Research Methodology**

This research used qualitative research method. The technique used literature study and document study. Qualitative research uses various interpretations and study problem of the case (Mulyana, 2007). In this research, researcher uses the analysis and knowledge or information as the data as well. The collecting data method derived from literature

studies such as FATF report and analysis, official FATF documents, Europol annual reports, French financial intelligence unit's annual reports and many more. This research also collected variety of information from confidential resource persons. Broadly speaking, this research examines the development of France's membership in the FATF from 1989 to 2015 when some devastating terror attacks occurred in France.

#### **4. Result and Discussion**

Based on the findings of this research, there are dynamics in the institutional evolution of FATF since 1989 to 2015, and there are France's involvement and France's membership in this historical path as well. In conveying the institutional evolution of FATF and France involvement, hence historical period is divided to four parts according to the number of MER (Mutual Evaluation Review) by FATF from 1989 to 2015. In the first round (1989-1994) and the second round (1995-1999), FATF still tends to focus on anti money laundering. During these rounds, France was involved in some of FATF decisions.

Some sufficient significant France involvements are, first, France is not only as a meeting location where FATF was formed but also as headquarters location (in Paris). Second, France took part in several important decisions to strengthen FATF institutions. Such as, the formulation of FATF Recommendation (1990) for the first time, strengthening international cooperation, international recognition to FATF, drafting measures for non-cooperative countries, planning MER and assessment to non member countries and review the trends of money laundering. Third, encouraging an evaluation process or ME and offer itself successively to be one of the first countries to be evaluated



on first and second rounds of ME. Based on ME results, France is considered to have a nimble effort with comprehensive system to prevent money laundering since have a set of actions and policies have been implemented as a reflection of the determination of the French Government to meet FATF standards (FATF, 1992: 8-9). For the FATF, the French initiative to become the first country willing to be evaluated shows that France has created a real model in the anti money laundering (FATF, 1992: 9). Based on the findings during first and second rounds of ME in general, France had more influential to FATF than otherwise, also, France tended to give positive feedback effect on FATF decision. The most influential FATF decision for France is to meet the FATF Recommendation standard (1990).

On the third round of ME (2000-2001), FATF started to develop its recommendation focus on counter terrorist financing after 9/11 attacks and terror acts in London and Madrid. Some of France involvements in this round is tend to be more complex along with widespread of FATF focus and the return of France as President of FATF. Some sufficient significant France involvements are France involvement in deciding third round of ME process which based on international standard to anti money laundering and counter terrorist financing through developing, interpreting, and the best practice guidance of FATF Recommendation (2004). Second France involvement is set the member state evaluation schedule on its presidency. In early rounds, France was always willing to be the first country, evaluated but in this round, France will be the last country evaluated. By set the schedule, France has opportunity to utilize long span of time to prepare compliance to FATF standards. Especially, standards that have expanded the focus on counter terrorism financing.

Based on all the findings above, FATF tends to produce significant

decision on French policy changes. First, France strengthening human resources and coordination between government institution in counter terrorism and counter terrorism financing. Second, France formulating the policy of criminalising terrorism financing based on FATF Recommendation (2002-2004). Third, updating other French counter terrorism financing policies which tend to be more technical in order to get compliant status in third round of ME. Based on result of third ME, FATF considering France has low level risk in money laundering and financing terrorism activities, yet there are two things to pay attention as France deficiency (FATF, 2011: 9). First, France allows financial institution to reduce the level of detail of due diligence to customer and France assess it as low risk products. Second, in relation to customers and low risk products in the law, it is incompatible with the FATF standards so the simplified due diligence is considered as inappropriate.

On the fourth round of ME (2012-2015), institutional evolution of FATF has deepened its focus on counter terrorism financing through various forms of study and appeals. Especially due to the increase of the terror acts in many countries along with the heating up of conflict in the Middle East. In this round, study to institutional evolution of FATF and France involvement were limited to 2015 when several terror attacks happened in Paris. On this round, France was still involved in some of FATF decisions, such as, first, FATF decision to member states to prepare follow-up report or biennial report after the third round of ME process (FATF, 2012: 21). This decision becomes the agreement of member states to submit series of progress from the latest evaluation. Second, FATF re-revised the FATF Recommendation before the fourth round of ME officially began. Third, FATF released some appeals and studies concerning the rise of financing terrorism threat which utilizing technological developments and cross border financing terrorism

activities.

In contrast to earlier ME rounds, FATF decision resulted some impacts to France. Various impacts to France shown by no follow up report right after third evaluation as other member states done. France is one of member states which didn't get reporting timeline after evaluation, so France didn't even make follow up report. This is how France gives a negative feedback to FATF decision because didn't do institutional decision as other member states. On the other hand, this is a 'benefit' for France because it seems 'allowed' by FATF to not be repeatedly assessed even though in fact, France has deficiency. This also makes France don't get some compliance commitments monitoring by FATF and it could lead to unexpected consequences.

In this discussion, there is analysis related to what matters is causing the unavoidable of financing Paris terror attacks in 2015. Related to Paris terror attacks in January 2015, there are some unexpected consequences associated to FATF decision which adapted by France. There are funding sources used to support terror acts in January, first, profit from counterfeit trafficking. This activity is tend to be defined as money laundering offence. Based on Tracfin data, this offence doesn't happen a lot. At least, Tracfin only gives not more than five cases to prosecute in every year (Tracfin, 2011, 2012, 2014). FATF standard as a reference to French Government policies in criminalize money laundering activity is written on Recommendation 3 FATF (2012). This recommendation emphasizes the importance of determining the designated categories of offences. Based on interpretative note of Recommendation 3 FATF (2012), each country needs to include several other offences in related to money laundering activity, one of these is counterfeit trafficking (FATF, 2012: 12 and 116).

France actually has a law to combat counterfeit trafficking in accordance to FATF Recommendation, the laws are Article 324-1 of Regulation No. 2000-916 on 19 September 2000. This article covers the standards of the Recommendation 3 since emphasizing to money laundering that hide the results of the direct or indirect of predicate crime. According to French Government, this article may be used in the prosecution of terrorism financing crime ([www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr), 3 February 2018). Yet, France still has private profit perspective on anti counterfeit trafficking law, No. 2014-315 on 12 March 2014. This perspective is reinforcing the interpretation to counterfeit trafficking as one of designated offences of money laundering only. Paris terror attacks in January 2015 was negligence to financing terrorism crime wrapped by petty crime. According to Unifab referring to L'Express survey results mentioned that French police officer stopped monitoring of Kouachi brothers permanently as they allegedly transferred their activity from terrorism to pirate goods as 'petty crime' right after the police have not detected any signs of harm (Unifab, 2016: 16). Then after seven months later, France suffered one of the worst terror attacks. France decision to ignore 'not so great things' had the opposite effect. This is a form of abandonment by France without considering any possibilities where the funds will flow, whether for private profit or even for terror operational needs.

The second method of financing terror attacks in January is credit loan fraud to obtain about €60.200 by fake documents. It reminds to how FATF appeals to France policy about reducing details level of customer due diligence is inappropriate. Characteristics of French Government over the freedom of protection of privacy data under the legislation led to conflicting French Government policy. For the characteristics of the French Government, the provision of due diligence becomes a kind of

less powerful law because it considered against the 'direction' of social change (Siedentop, 2012: 19) that having more respect to privacy and data protection. Yet, the unavoidable of financing terror activity has shown that France still need enhancing policy or alternative measure to strengthen due diligence obligation and emphasize the obligation to financial institution and non-financial institutions. This situation also relates to some other characteristics of French about freedom (*liberté*) which is legitimized through Article 9 of the Civil Code Law No. 70-643 on 17 Juli 1970. When French people are used to data protection and freedom rights to have personal lives, hence the due diligence obligation tend to be irrelevant in social flows that had been formed.

In related to analysis of financing terror activity on November 2015, there was utilization of funds transfer services with fake identity from Belgium to a terrorist in Paris. It brings back several encouraging factors, such as there was no FATF follow up report at least to enhance the implementation of France due diligence or this transaction was undetected in monitoring. Since the money transfer service is one of the emphasized methods reference to FATF to financing terrorism activities, hence there is recommendation to set threshold of money transfer, such as €1.000. Each countries are recommended to ask for complete data of the sender and the receiver then record it well as due diligence provisions. It would be better if France could exploit the exchange information with Belgium because in this case, beside the terrorist transferred fund from Belgium to France, Belgium is one of the French frontier country that much exchange information with France.

Unlike January terror acts preparation, the terrorists in November 2015 did not only use their own funds but also obtained a flow of funds from the network. There was a transfer of funds from a money transfer

service using a fake identity from Belgium to another terrorists in November. Apart from receiving the flow of funds from Belgium, the perpetrators also received transfers of funds from Syria amounting to € 2,000 to € 3,000 per person. Information exchange between France with Middle Eastern countries tends to be minimal, even only about 10% of the entire information exchange process related to anti-money laundering and countering terrorism financing.

If after the January terror, the French Government appealed to financial transaction institutions that individuals or entities from outside France need to check their identities when transactions reach € 10,000 and above, then there are several things that need to be underlined. First, after the January terror, the French government tended to pay attention to suspicious transactions from France to foreign countries rather than the other way around. Just if French Government expanded prevention terror perspective, hence it should be aware of cross border funds from abroad since the international terrorist network nowadays also has its own funding sources. This is also justify Oftedal's statement, that terrorist in France has the most receive support from other terrorists (about 50%) compared to UK and Scandinavia (2014: 20). Second, there is pattern of funds transfer built from Syria to the terrorist and it would be better if similar patterns could be suspected as suspicious and monitored transaction. It would be different to criminalization due to monitoring is common thing in financial intelligent unit. Third, French Government need to develop funds transfer threshold policy from abroad.

Other than that, France need to look at the threat of international terrorist network which based in other countries. French citizen is the most second Europe citizen after Russia and the most European Union

citizen who leave to Iraq or Syria to join an international terrorist network as foreign terrorist fighters (FTFs). On April 2014, there was about more than 700 French estimated join in Iraq or Syria and there was 275 French still in Syria (Barrett, 2014: 13). This is tend to be ironic, remembering France as FATF member and drafting FATF financing terrorism studies even before Paris terror attacks 2015 happened.

## **5. Conclusion**

Based on the result of research and analysis, it concluded that activity or method of financing Paris terror attack has exploited some of the gaps arising from the historical abandonment. In summary, this neglect is also accumulation in years between institutional evolution of FATF and French membership in the FATF. The gaps are the policy gap and actor characteristics gap. The policy gap is how the France ignoring the increased due diligence measures, the lack of policy interpretation of counterfeit trafficking, exploiting of international exchange information, unoptimized in using mapping of financing terrorism risks. The next gap is some of France characteristics could be obstacles to optimize the implementation of counter terrorism financing policy. Such as, disputes between the collection personal data of the financial account and the protection of personal data.

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