

Lobbyists in Legislative Process (Study Comparative in the USA and Indonesia)

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Abstract- Public has the right to participate in the legislative process, some interest groups attempt to influence their goals in the legislation. In the USA, Lobbyists have increase significantly in the federal and states level because interest groups must hire lobbyists to give them eyes and ears to monitor the process. There are approximately 12,000 federal registered lobbyists and more than 47,000 state registered lobbyists. Indonesia also have “unregister” lobbyists for the legislative process.

Lobbying is important and it is consider as healthy influence within the political system and not “dirty”. They are professionally to represent and influence legislation and policy. Lobbyists inform lawmakers about constituent preferences and interests; They inform legislator about the effects of particular policies and problems that demand government solutions; they inform lawmakers about the preference of other lawmakers so that proponents of policy change can successfully negotiate the veto gates of Congress; and they inform the public about lawmakers’ views and efforts regarding policies

This paper will describe and analyze lobbyists as a professional job in the legislative process system. There are several sub topics in such as the concept of lobbyist in legislation and how it works, the technique of lobbying, the value of lobbies, the criticism of lobbying and how to control the lobbyist.

Keywords-Lobbyists; Legislation; professional.

I. INTRODUCTION

Public participation is “the involvement of people in a problem-solving or decision-making process that may interest or affect them”.¹ Similarly, the Australia South Africa Local Governance Partnership (ASALGP) states that “public participation is a democratic process of engaging people in thinking, deciding, planning, and playing an active part in the development and operation of services that affect their lives.”² Moreover, in his article on local governance, Indonesian law professor Sanjiv Kumar Babooa defines public participation as “a process of involving citizens, workers, individuals, group members, group representatives, interest groups, community groups, voluntary members, religious members, business, trade unions and charity bodies intentionally in goal-directed activity of making and implementing policy in government institutions”³

The rights of public to participate in law making process in Indonesia are protected by law of the republic of Indonesia No. 12 of 2011 concerning making rules. In Article 96 states:

- (1) People have the right to give input orally and/or written in the Making Rules.
- (2) Verbal and/or written input as intended in paragraph (1) can be done through:
 - a. public hearing;
 - b. working visits;
 - c. socialization; and/or
 - d. seminars, workshops, and/or discussion.

(3) People as intended in paragraph (1), is an individual or group of people who have an interest in the substance of the Draft of Regulations.

(4) To facilitate the public to provide input verbally and/or written as intended in paragraph (1), any Draft of Regulations should be easily accessible by the public.

According to the Article 96 states that public have the rights to give input orally and/or written in the making rules paragraph. Who has the rights to participate? In paragraph (3) said that an individual or group of people who have an interest in the substance of the Draft of Regulations. However, the challenge for Indonesia is to establish a framework for responsible public participation or political lobbying in law making proses. A simple framework is needed for guiding public officials and business lobbyists, whether they are professional lobbying companies and individuals, or in-house company lobbyists. The first step in establishing such a framework should be for Indonesia to learn about international experience in the provisions of lobbying rules. Government, Civil society, Parliament and the business community should work together to prove that lobbying can be a legitimate and valuable part of citizens' rights in a democracy.

II. ANALYSIS

Lobbyists are an interesting phenomenon in US Legislative process compared to other countries, especially for people who are from a civil law tradition. American legal systems have grown from English roots and are characterized as “common law”, in contrast with the systems of continental Europe that are derived from Roman law and are called civil law systems.⁴ In general, the biggest distinction between civil law and common law systems is that the civil law system is a codified system, while the common law is not created by means of legislation but is based mainly on case law. The principle is that earlier judicial decisions,

usually of the higher courts, made in a similar case, should be followed in the subsequent cases, (i.e. that precedents should be respected). This principle is known as *stare decisis* and has never been legislated but is regarded as binding by the courts, although these decision can be modify by future cases.⁵

However, the claim that common law is created by case law is only partly true, as the common law is based in large part on statutes, which the judges are supposed to apply and interpret in much the same way as the judges in civil law.⁶ In fact, since the nineteenth century, the increasing complexity of commercial and social life created a growing need for intervention and regulation by government at both the state and federal levels. As a consequence, this phenomenon led to a massive increase in legislative activity, a tendency that has intensified greatly in the twentieth century.⁷ Thus, Legislation has become a prominent process in developing regulation in US legal system.

Because the public has the right to participate in the legislative process in the United States, some interest groups attempt to influence their goals in the legislation. As a result, Lobbyists have increase significantly in the federal and states level because interest groups must hire lobbyists to give them eyes and ears to monitor the process. There are approximately 12,000 federal registered lobbyists and more than 47,000 state registered lobbyists. The number of federal lobbyists per U.S Senator is approximately 120 and number of federal lobbyist per U.S House member is approximately 28.⁸

What is a Lobbyist? Brown describes lobbyists as people who are generally paid to represent a particular point of view for a specific industry or organization, and may also influence the legislative process. Interestingly, the term ‘lobbying’ arose from the practice of people waiting in the legislature’s lobby to intercept legislators to attempt to win them over to a particular position.⁹ Who can become a lobbyist? Not all people can easily become lobbyist because there are some categories for people who want to be the professional

lobbyist. The ideal man for lobbying position should have a variety of qualities. He would have knowledge of and experience with four subject: (1) the legislative and political process; (2) law and the legal process; (3) the subject matter of concern to the organization; and (4) and understanding of public relations techniques. He also would be enthusiastic, optimistic, patient, and imaginative.¹⁰ Furthermore, lobbyists must register with Congress and regularly file reports disclosing the identity of their clients, their issues for which they lobbied, and the amount of money received for all lobbyists' effort.¹¹

What do lobbyists do? Lobbyists often draft bills, present information during hearing, craft amendments, advocate for passage, and argue against passage. These non-legislator players also affect legislation. Just how much of a role lobbyist should have is the subject of some debate. Lobbying is simply providing information to influence a lawmaker's decision. If you have written your congress member to advocate a position, you have lobbied. Lobbyists are paid expert in navigating the hurdles in the legislative process; they are professionally hired to represent industries or companies to influence legislation and policy. "Lobbyists inform lawmakers about constituent preferences and interests; they inform legislator about the effects of particular policies and problems that demand government solutions; they inform lawmakers about the preference of other lawmakers so that proponents of policy change can successfully negotiate the veto gates of Congress; and they inform the public about lawmakers' views and efforts regarding policies".¹²

Why lobbying is important for the legislative process? Lobbying is consider as healthy influence within the political system and not "dirty".¹³ There are several benefits from lobbying process. First of all, the widespread and tangible advantage is providing information. Lobbyists are the potential resources for the members of congress to get information even though they need to evaluate the information with the knowledge that it might be slanted. They should consider the motives and special interest of the organization

in making their judgment. The members of congress use the differing views and facts from opponents on the issue to bring out the truth. "I like to get lobbyist information through hearings and get it on the record. Then people can see the information and put it to the acid test. The opponent is especially important here; he checks the information and challenges it once it is on the record."¹⁴ The members of parliaments especially welcome lobbyist information on issues that they do not know about and they attempt to make full use of the knowledge and skills. The lobbyists might provide experts to the issues and the experts become first-hand knowledge of the practical effects of legislation. Hence, they are natural resources.

Another benefit is providing a variety of services. Lobbyist can write speeches, write reports, draft answers to letters from constituents, and draft bills. The close relationship happens when they collaborate in pushing a piece of legislation. Moreover, a lobbyist also has skill and connections to publicity for decision makers or for an issue that he supports so lobbyists can build public support for the legislation process. Another service from lobbyists that they can be helpful is in keeping track of particular bills and gives the information at an appropriate time to members to take action because the members are too busy to give detail attention on a particular bill.¹⁵

However, lobbying has received considerable criticism over the years. The press underestimates the complexity of lobbying and they report the sensational lobbying scandals which buy favors for politicians to influence their decisions. One criticism is that lobbies have a point of view to sell and unbalanced decisions can result if the other side of the issue is not presented. This can happen quite easily when general public lacks a spokesman, and private interest has the money and organization to express its viewpoint. Another criticism is that most congressmen are more willing to meet lobbyists than individual citizens because they generally represent groups or individuals who control campaign contributions or have a number of voting members because the

congressman might consider important voting support at the next election. In addition, another problem is irresponsibility. Lobbyists are not accountable to the public because a lobby does not run candidates for office so that the public cannot express an opinion on its policies that it is different with a political party. The non-accountability of lobbies along with direct access to legislators causes doubts about the fairness of the democratic process. Furthermore, Lobbying is a powerful force which can be misused for dishonest practices. Examples of dishonest practice include bribery in the form of cash payoffs, gifts and favors.¹⁶

To minimize the potential of abuse of power in lobbying process, regulation is needed. However, the problem occurs on how to regulate lobbying in a democratic system without stifling the right of citizens to petition their government. Total regulation is an unattainable goal. The best result would require a mixture of regulation and active encouragement of the “silent political interests to participate. The public interest is difficult to protect without active participation by citizens educated in the political process.¹⁷

There are several basic rules of the game for lobbies in the legislative process. First of all, the lobbyist has to be truthful. Lobbying is the political management of information. A lobbyist is only as good as his or her word. The words are bonds upon which all subsequent judgment are premised. Liars are discerned quickly and are never trusted seriously again.¹⁸ Trust is the sine qua non for the lobbyist-legislator relationship. The legislative system operates in such a manner that no one individual has absolute power, knowledge, or independence so legislators are vulnerable to their colleagues, the press, and the voters. All the actors must depend to a certain extent upon others, and this dependency is manifested in the rules inherent in a system of trust.¹⁹

The second rule is lobbyist must not employ threats. The use of threats is resisted by legislators and can often prove dysfunctional to the interest group. Threats were not considered legitimate in the legislators’ frame of reference

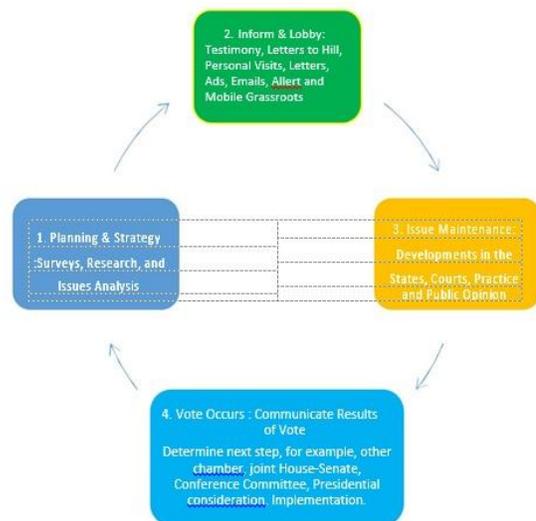
because legislators have a strong sense of their own importance and integrity.

Third, bribery must be made an ineffective lobbying tactic. Bribery must be rejected by lobbyists and congressmen alike as being ineffective as well as inappropriate because it is the riskiest tactic which can rebound to the great disadvantage of the user.²⁰ Bribery is all the more hazardous tactic that can destroy the system.

Fourth, the “Social Lobby” is permissible such as for lobbyists to wine, dine, and entertain legislators. However, this tactics are judged by both lobbyists and national legislators as probably the least effective of them all. Some congressmen regard that social lobbying as a bore and inconvenience, even though others consider the entertainment helping to keep open communications between themselves and legislators.²¹

What is the best strategy in lobbyist in Congress? Deanna R Gelak draws a picture about the life cycle of lobbying that might be considered general steps in lobbying process.

The Life Cycle of Lobbying



The first step is planning and strategy. The lobbies should do surveys, research, and issues analysis to know the position on issues, they should know the players and the committee and how to prepare data for the material. After preparing the planning and the strategy, the next step is to implement the strategy by lobbying to the members of the congress especially to the members who support lobbyist position in certain issues. There are several options which can be used such as testimony, letters to hill, personal visits, letters, adds, emails and mobile grassroots. The lobbyists might consider the effective methodologies to achieve their goal. The next step is issue maintenance. The

Processes of drafting, debating, and approving legislation are the dynamic process. As a result, the lobbyist should be able to maintenance the issue because the situation might change quickly.²³ This process should involve and improve public opinion to create supporting on the issues. Finally, the last step is the votes occur. After doing some strategies, the lobbyist might wait for the final decision in the congress to achieve their goal. Their goal might be fully success or just partially and it will become evaluation resources to develop the next strategy.

III. CONCLUSION

The lobbyist is a professional and important job in Legislative process because they give some advantages to the members of Parliaments to perform their duties. The Lobbyists are the potential resources for the members of Parliaments to get a variety information. Moreover, the lobbyist also might provide a variety of services to the members such as write speeches, write reports, draft answers to letters from constituents, draft bills. However, some criticism the function of lobbyist because the complexity of lobbying and some of the sensational lobbying scandals which buy favors for politicians to influence their decisions. Thus, controlling the potential of abuse of power in lobbying process by created appropriate regulation is important.

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