

KAKAMPI MO ANG BATAS

BY Atty. BATAS MAURICIO

LIFE'S INSPIRATIONS: "... Your rulers are rebels, partners with thieves; they all love bribes and chase after gifts. They do not defend the cause of the fatherless; the widow's case does not come before them..." (Isaiah 1:26, the Holy Bible).

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DUTERTE'S TIRADE AGAINST MORALES HAS BASIS: Does President Duterte have any basis for his tirade against his own "balae", Ombudsman Conchita Carpio Morales, on the failure or refusal of the Office of the Ombudsman to sue and cause the incarceration likewise of the members of the Liberal Party who proposed, authored, and implemented the so-called "disbursement acceleration program" (DAP) of the Aquino government?

This question is prompted by what Duterte said last week during an interview at a PTV 4 program, to the effect that it was not fair for Morales as Ombudsman to be investigating Duterte and his family on charges that they have billions of pesos in various bank deposits, while she is sitting still and not doing anything to investigate members of the Liberal Party who were involved in the DAP controversy.

Duterte explained that his rift with the Ombudsman started when he learned that there is as yet no member of the Liberal Party that had been investigated by Morales and the graft body on the issue of DAP, even if the Supreme Court, in 2014 yet, already ruled that the disbursement of billions in government funds by the then Aquino government under the DAP scheme was totally illegal (and could even amount to plunder).

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SC HAS LONG ORDERED A PROBE ON THE DAP SCAM OF PNOY: And, yes, what did the Supreme Court exactly say about the DAP, through its decision in the case of “Araulo, et. al. vs. Benigno Aquino III, et. al.”, G.R. No. 209287, July 01, 2014, and in all the other cases where different persons and groups opposed and contested the DAP scheme of then President Noynoy Aquino?

Let's read what the Court, through Associate Justice Lucas P. Bersamin, wrote: “Nonetheless, as Justice Brion has pointed out... the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

“In that context, as Justice Brion has clarified, the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities...”

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WHY IS MORALES NOT PROBING PNOY, ABAD, ON DAP SCAM? What the Supreme Court upheld in that decision should be clear to anyone, including a freshman in any College of Law in the country: The principle of law known as “doctrine of operative facts” can be used only for projects funded by the DAP which have already been fully implemented and completed.

Since the projects were already completed, even if it could be proved later that they were funded through illegal schemes, they could no longer be set aside, or undone. In other words, the completed projects that were funded by DAP which was declared illegal by the Court, will no longer be destroyed in any way, precisely they were already completed.

But, on the other hand, those who proposed, authored, or implemented or benefitted from the

DAP should be held liable in every way, now that the DAP has been declared illegal by the Supreme Court. Clearly to be included in this are former President Noynoy Aquino and former Budget Secretary Florencio Abad. The question, however, is this: why is Morales refusing to even investigate them for this DAP scam? Why is she disobeying the Supreme Court?

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