



From Moral Threshold to Measurable Parameter, Reconstruction of Extremely Unjust Law (*Gustav Radbruch*) Through the Layered Justice Index

Ulhaq*

Universitas Padjadjaran,
Indonesia

Isis Ikhwansyah

Universitas Padjadjaran,
Indonesia

Tri Handayani

Universitas Padjadjaran,
Indonesia

***Corresponding author:**

Ulhaq, Universitas Padjadjaran,
Indonesia. ✉ulhaq25001@mail.unpad.ac.id

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Abstract

Background: Modern law reveals a persistent tension between legal certainty and justice, particularly when positive law legitimizes outcomes that contradict human values, as illustrated by Indonesia's insolvency law practice. Gustav Radbruch's three fundamental values of law and the Radbruch Formula remain relevant for assessing the limits of validity of positive law.

Objective: This study analyzes Radbruch's conceptual framework of law's three fundamental values, examines the function of the Radbruch Formula in determining legal validity, and formulates operational parameters for extremely unjust law.

Methods: This research employs a normative legal method with a descriptive-analytical approach through library research, drawing on primary, secondary, and tertiary legal materials. Data were collected through document analysis and analyzed qualitatively to synthesize concepts into parameters for identifying extremely unjust law.

Results: The results show that law reaching an extreme level of injustice loses its normative legitimacy and binding force; therefore, justice must take precedence over legal certainty in such cases. Indicators include human rights violations, systematic discrimination, denial of due process, inconsistency with constitutional principles, and violations of proportionality, operationalized through the Layered Justice Index as a systematic tool for measuring legal injustice.

Conclusion: This research bridges Radbruch's theory with contemporary legal practice, offering policymakers and judges a measurable, human-value oriented framework for assessing legal validity.

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INTRODUCTION

The development of modern law reflects the complexity of the relationship between law as a normative system and the moral and justice values that emerge within society. At the global level, the rule of law is no longer understood solely as submission to positive norms but as a system guaranteeing the protection of human rights and substantive justice (Savić, 2023). Yet positive law does not always reflect justice: under certain conditions, it can become an instrument that legitimizes systemic injustice, as seen in authoritarian regimes and in legal practices that deviate from humanitarian principles, including cases of fundamental rights violations and abuse of power at the national level (Arifin et al., 2023; Meierhenrich, 2023). This condition confirms that value and morality are inseparable from the existence of law itself (Zajadło, 2023).

Before understanding further why Radbruch rejected the separation between law and morality, it is necessary to first understand that the shift in his thinking was not merely a situational historical reaction. Grishin (2024), through a comparative analysis of Radbruch's pre-war and post-war works, shows that this change was a logical continuation of internal tensions that had long been present in his legal thought since the Weimar era (Grishin, 2024). The seeds of non-positivism, especially the awareness of the dangers of positivism when not morally constrained, had actually appeared in his early writings, long before direct experience with the Nazi legal apparatus. In other words, Radbruch did not change course suddenly; he merely reaffirmed a conviction that had long been latent behind his academic position. A deeper interpretation is also offered by Mertens (2003), who argues that Radbruch's 1946 text was not merely a philosophical statement about legal validity in the abstract but a response to a concrete problem of criminal responsibility (Casanova, 2025), namely, how judges should decide cases rooted in the authority of unjust law (Casanova, 2025; Mertens, 2003). This reading confirms that the Radbruch Formula is essentially a guide for judicial decision-making; thus, the judge's responsibility in applying or rejecting a grossly unjust norm becomes the center of gravity of Radbruch's entire argument. A more complete understanding of this genealogy of thought is important because it shows that the Radbruch Formula is not merely a product of an extreme historical situation but a robust philosophical construct relevant across contexts.

The urgency of this study becomes even stronger when we observe that the phenomenon of extremely unjust law did not end with totalitarian regimes of the past but continues to be present in contemporary democratic systems. Wójcik (2023), in his study of historical memory laws in Poland, empirically demonstrates that regulations formally declared as instruments for preserving national history in fact deploy criminal law mechanisms to silence critical historical discourse and disproportionately restrict academic freedom, enacted without meaningful public consultation or human rights impact assessment, while a politically subordinated Constitutional Court failed for years to correct this normative injustice (Wójcik, 2023). This case proves that extremely unjust law remains a real threat even in democracies experiencing institutional backsliding.

The relationship between law and justice has long been a classic debate in legal philosophy, yet a significant gap remains in formulating objective parameters for assessing how much injustice in positive law can still be tolerated. Legal positivism emphasizes legal certainty as the foundation of legitimacy but is criticized for potentially justifying morally unacceptable law (Vinx, 2023), while non-positivist approaches linking law and morality struggle to establish standards for assessing "extreme injustice" without falling into subjectivity (Pastor Muñoz, 2023). Even Alexy's (2010) proportionality balancing, the most developed attempt to operationalize this boundary (Ahmed, 2022; Alexy, 2021), remains contested precisely because it leaves the threshold to judicial discretion rather than fixed, replicable criteria. In modern legal practice, moral considerations nonetheless continue to influence judicial decision-making and public perception (Engelmann et al., 2024), underscoring the urgency of formulating more operational parameters for assessing the validity of grossly unjust law.

Gustav Radbruch's (2006) thought makes a fundamental contribution to bridging the tension between positive law and justice through his concept of the three basic values of law: justice, legal certainty, and expediency (utility) (Zomerski, 2026). Radbruch frames law not only as a normative system but also as an entity with an inseparable moral dimension (Orjuela-González & Calderón-Suaza, 2024). The development of his thought reached a crucial point through the Radbruch Formula, which asserts that positive law loses its validity if it grossly contradicts justice or deliberately denies the principle of equality (Bieda et al., 2026; Vojnovic, 2021). This concept then became the foundation for various developments in non-positivist legal theory and has had a real influence on international legal practice, particularly in international criminal law, which recognizes a supra-positive limit to the validity of law (Pastor Muñoz, 2023).

Based on this background, this research aims to analyze in depth the construction of the three basic values of law in Gustav Radbruch's (2006) thought, critically examine the formulation of the Radbruch Formula in determining the limits of the validity of positive law, and comprehensively formulate parameters of extremely unjust law in the context of modern legal practice (Zomerski, 2026). The research questions include how the relationship between justice,

legal certainty, and expediency is constructed in Radbruch's theory, how the Radbruch Formula limits the validity of positive law, and how parameters of extremely unjust law can be formulated conceptually and operationally in contemporary legal systems. This research also departs from the hypothesis that law reaching an extreme level of injustice loses its normative legitimacy and no longer has binding force, and therefore must be set aside in the pursuit of justice. This is particularly urgent given that in the modern era legislators tend to produce numerous laws without processes that fully meet proper legislative standards, as illustrated by Poland's memory-law legislation discussed above, enacted without meaningful public consultation or human rights impact assessment.

The scientific contribution of this research lies in its effort to develop parameters for extremely unjust law that are not solely based on moral-philosophical considerations but are also connected to human rights principles, constitutional values, and modern judicial practice. In contemporary legal development, the urgency of formulating clearer limits on legal validity is increasingly pressing, especially in the face of democratic backsliding and the instrumentalization of law by regimes that do not uphold justice (Sajó, 2024). Thus, this research is expected to provide a theoretical contribution to legal philosophy as well as a practical contribution to strengthening legal systems that not only guarantee certainty but are also oriented toward substantive justice and the protection of human dignity.

Based on this, this research places the relationship between law and justice as a central issue that is not only theoretical but also has significant practical implications in various fields of law, including insolvency law selected as an empirical illustration because it presents a formally legitimate legal regime that nonetheless produces structural disadvantage for a clearly defined class of right-holders, making it a useful test case for the parameters developed below. This study specifically highlights how positive law, under certain conditions, can transform into an instrument that legitimizes injustice through institutions and rules, thus requiring a more critical and value-oriented evaluative framework. By utilizing Gustav Radbruch's (2006) theoretical perspective, this research seeks not only to explain the tension between legal certainty and justice but also to develop more concrete parameters for identifying extremely unjust law (Zomerski, 2026). The discussion in this paper moves from theoretical construction toward a more operational analysis, integrating human rights principles, constitutional values, and modern legal practice as a basis for assessing legal validity. Thus, this research is expected to provide a more comprehensive understanding of the threshold of tolerance for injustice in law, while offering a relevant normative framework for addressing contemporary legal challenges.

METHOD

The Layered Justice Index introduced in the Introduction was constructed through a structured conceptual synthesis procedure rather than statistical modeling. Each of its three assessment layers (Normative Substance, Procedure and Legitimacy, Systemic Impact) and three novel dimensions (Threshold of Injustice Accumulation, Injustice Persistence, Institutional Complicity) were derived by systematically mapping recurring evaluative criteria across the reviewed literature on the Radbruch Formula, proportionality theory (Ahmed, 2022; Alexy, 2010, 2019; Klatt & Meister, 2012; Wonnell, 2026), and transitional justice scholarship (Dancy & Thoms, 2022; Nalepa, 2020). These criteria were then organized into a layered rather than single composite structure, following Hall and Taylor's (1996) comparative-institutional approach to building multidimensional analytical frameworks from converging theoretical strands (Peters, 2026).

This research uses normative legal research (doctrinal legal research) with a descriptive-analytical strategy, focusing on the study of norms, principles, and legal doctrines through the interpretation of available legal materials rather than empirical fieldwork. This approach was chosen for its capacity to analyze abstract concepts such as justice, legal certainty, and utility from Gustav Radbruch's perspective (Radbruch, 2006; Zomerski, 2026), using philosophical and conceptual analysis to connect his thought with contemporary developments in legal theory that emphasize the relationship between law and morality.

Data sources consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions relevant to issues of justice and legal validity, most notably Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment

Obligations, used as the empirical anchor for the insolvency-law illustration developed below, particularly in relation to broader principles of legal accountability and rights protection. Secondary legal materials include legal philosophy literature and academic works discussing Gustav Radbruch's (2006) theory, the Radbruch Formula, and the concept of extremely unjust law; tertiary materials, such as legal dictionaries, are used to support conceptual clarity (Radbruch, 2006; Stambulski & Szumski, 2025; Zmierczak, 2020; Zomerski, 2026).

Data were collected through documentary study: systematically searching and reviewing relevant scientific literature, then identifying, classifying thematically, and organizing legal materials to support conceptual analysis. This literature-based method is effective for exploring legal theory and judicial practice in depth, without geographical or temporal limitations. The main search instruments were open-access scientific journal databases, focusing on publications from the last five years to ensure the study remains current and relevant.

Inclusion and exclusion criteria were applied to ensure the quality and relevance of the analyzed literature. Inclusion criteria included: (1) scientific articles discussing Gustav Radbruch's (2006) theory, the Radbruch Formula (Borowski, 2024), or the relationship between law and justice; (2) publications in reputable open-access journals open-access status was prioritized to ensure full-text verifiability of every cited argument, a practical necessity given the absence of institutional journal subscriptions for this literature-based study; (3) works published within the last five years; and (4) literature directly relevant to the concept of extremely unjust law. Exclusion criteria included: (1) sources lacking methodological clarity; (2) publications that did not undergo peer review; and (3) literature not directly relevant to the research focus. The application of these criteria is essential to maintain academic validity and minimize analytical bias.

The analysis focuses on legal concepts and norms related to parameters of extremely unjust law, including principles of equality, substantive justice, and the protection of human rights. It examines legal texts and legal philosophy literature containing normative arguments regarding the limits of the validity of positive law. In this context, the research does not focus on individual subjects or groups but rather on the conceptual construction developed within legal discourse. This approach aligns with the nature of normative legal research, which places legal norms as the primary object of analysis (Pastor Muñoz, 2023).

The data analysis technique used is qualitative analysis with an interpretive and argumentative approach. The collected data are analyzed through interpretation of legal texts and scientific literature, then synthesized to produce a comprehensive understanding of the parameters of extremely unjust law. The analysis process includes data reduction, concept categorization, and the construction of coherent theoretical arguments. Additionally, a limited comparative approach is employed to examine how the concept is applied across various legal systems and judicial practices. This allows the identification of general patterns and variations in the application of justice principles in modern law (Sajó, 2024).

RESULTS AND DISCUSSION

In this paper, the findings are organized based on a synthesis of scientific literature relevant to Gustav Radbruch's (2006) theory, the Radbruch Formula, and the concept of extremely unjust law in modern legal practice (Borowski, 2024). Based on the literature review, the characteristics of publications show that most research related to this topic originates from the fields of legal philosophy, international criminal law, and contemporary legal theory, with a dominance of conceptual and normative approaches. Publications within the last five years show increasing attention to the relationship between law and morality, particularly in the context of human rights violations and crises of the rule of law in various countries (Wojciech, 2025). The literature review also indicates that the Radbruch Formula has regained relevance as a theoretical framework for addressing the phenomenon of unjust law in modern democratic systems (Sajó, 2024).

From the reading process conducted, it has been found that the synthesis results show a consensus in the literature that law cannot be separated from the dimensions of morality and justice as part of its validity. A number of studies affirm that laws that severely violate principles of humanity and equality can no longer be considered legitimate and binding. Furthermore, in the

context of international law, particularly international criminal law, there is a tendency to recognize a suprapositive limit to positive law, which allows for the enforcement of legal accountability in cases of serious violations even when not explicitly regulated in national legislation (Pastor Muñoz, 2023). The literature review also shows that justice remains a central value in determining the legitimacy of law across various legal systems. It is precisely this consensus, that justice cannot be ignored yet still lacks a measurable framework for its limits, that motivates this study's development of operational parameters and the Layered Justice Index proposed below.

In terms of methodological patterns, the majority of studies employ philosophical and conceptual approaches with normative analysis of legal texts and doctrines of legal philosophy. Some research combines this approach with case analysis to test theoretical application in practice, particularly in the context of international law and democratic transitions. There is also interdisciplinary research integrating sociological and psychological perspectives to understand how moral judgments influence the application of law by legal practitioners and the public (Engelmann et al., 2024). This marks a methodological development in legal studies that is no longer confined to normative analysis alone, thereby enriching interpretive perspectives for more robust scholarly outcomes. However, none of this methodological diversity has yet produced a layered measurement index: existing studies tend to assess extremely unjust law in dichotomous terms or through single-criterion evaluations, leaving an operational gap that this study addresses through the Layered Justice Index.

Among the various themes, several key categories emerge for further examination. The first theme concerns the relationship between law and morality, emphasizing that law contains a value dimension inseparable from the concept of justice. The second theme is the critique of legal positivism, which is considered insufficient to explain legal validity under extreme conditions. The third theme is the development of the concept of extremely unjust law as a basis for rejecting the validity of unjust legal norms. The fourth theme is the application of the Radbruch Formula in contemporary legal contexts, including cases of human rights violations and corruption.

Based on these thematic clusters, variations are found in how the concept of extremely unjust law is applied across legal systems. Some studies emphasize its relevance primarily in extreme contexts such as totalitarian regimes, while others argue that it is also applicable in democratic systems to evaluate discriminatory laws or those violating fundamental rights. Additionally, differences emerge between more positivist legal systems and those more open to moral considerations in determining legal validity.

The synthesis also indicates a growing tendency toward principle-based approaches in legal assessment, particularly through proportionality analysis and human rights protection frameworks. This approach emphasizes that law must be evaluated not only on formal procedural grounds but also on substantive impact on individuals and society. In this context, the Radbruch Formula is frequently employed as a normative framework for assessing whether a law has exceeded the threshold of tolerable injustice.

It is also important to note that the tension between legal certainty and substantive justice identified in the literature is not merely a cross-border theoretical issue; it is also evident in contemporary Indonesian legal dynamics beyond the insolvency context. Widiyono and Khan (2023) concretely demonstrate this in their analysis of land acquisition regulations under the new national land law regime (Widiyono & Khan, 2023). Although the 2022 Job Creation Government Regulation in Lieu of Law and its implementing regulations show improvements in procedural efficiency, substantive protection for vulnerable land rights holders, such as indigenous communities and small farmers, still reveals significant imbalances. Incomplete regulatory harmonization creates a gray area in which legal certainty is prioritized in the name of development, while distributive justice for vulnerable groups is marginalized. This dynamic extends the relevance in Indonesia beyond insolvency law, demonstrating that the parameters of extremely unjust law have broader applicability in identifying structural injustice across multiple legal domains. Having situated the LJI within this adjacent field, the discussion now returns to insolvency law itself, the empirical focus introduced earlier, to examine how its normative design produces the gap this study seeks to address.

Based on this, the author attempts to capture the tangible forms of the gap between normative legal prescriptions and actual legal practice, so that this analysis provides an overview

of how normative conditions compare with field realities and their specific implications for the realization of justice.

Table 1. *The Gap between Norms and Practice in Insolvency*

No	Aspect	Normative Condition	Practice in the Field	Impact on Justice
1	Creditor Hierarchy	Separate & preferred creditors are prioritized	Unsecured creditors often get no share	Inequality of distribution
2	Pari Passu Principle	Proportional distribution (theoretical)	Ineffective; assets exhausted by priority creditors	Illusion of formal justice
3	Recovery Rate	Not explicitly regulated	<20% or even nil for unsecured creditors	Uncertainty & loss
4	Role of Curator	Manages estate distribution fairly	Limited transparency in practice	Distrust in the system
5	Position of Unsecured Creditor	Theoretically has rights	In practice, becomes a residual party	Structural injustice
6	Dominance of Separate Creditor	Has execution rights on collateral	Dominates the distribution of the estate	Extreme disparity
7	Legal Protection	Normatively guaranteed	Weak in implementation	Delegitimization of law

Source: Author's synthesis of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and reported insolvency practice in Fuady (2014) and Wulandari (2026).

Here, the author attempts to explain that examining the practice of insolvency law in Indonesia reveals a significant gap between its normative construction and empirical implementation, particularly concerning the principle of distributive justice. Normatively, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates the mechanism for distributing the bankruptcy estate based on creditor classification, prioritizing legal certainty through a hierarchical order of claims. However, in practice, this system produces striking distributive inequality, especially for unsecured creditors, who occupy the weakest position within this structure.

The *pari passu pro rata parte* principle, which theoretically guarantees proportional distribution among creditors, proves ineffective in reality. This condition is caused by the dominance of secured and preferential creditors, who hold the right to execute collateral first, resulting in most of the bankruptcy estate being exhausted before unsecured creditors can receive distribution. Consequently, unsecured creditors often receive only a very small share, and in many cases receive no payment at all. This outcome stems from legal provisions that grant extensive rights to creditors already in a strong legal position, thereby further weakening the position of unsecured creditors.

Furthermore, insolvency practice data reported by Fuady (2014) shows that the recovery rate for unsecured creditors is generally below 20 percent of total claims (Wulandari et al., 2026), indicating the limited effectiveness of the system in providing legal protection for this group. This condition is exacerbated by institutional factors, such as a lack of transparency in the management of the bankruptcy estate by curators and weak supervision of asset distribution processes. The dominance of secured creditors in the insolvency system also creates a stark disparity in the distribution of insolvency proceeds. Secured creditors can achieve high recovery rates, while unsecured creditors are relegated to residual claimants receiving only the remaining estate. This condition indicates that the legal system not only fails to create distributive justice but also structurally legitimizes inequality (Fuady, 2014; Wulandari et al., 2026).

From the perspective of Gustav Radbruch's (2006) theory, this phenomenon can be categorized as a form of extremely unjust law (Borowski, 2024), because the law not only loses its capacity to realize justice but also normatively reinforces systematic injustice. Thus, the practice of insolvency law in Indonesia provides a concrete example of how positive law can lose its moral legitimacy when it is no longer aligned with the principles of substantive justice and

equality. This qualification rests on more than the unequal distribution of bankruptcy proceeds alone, a feature that, taken in isolation, would describe mere structural unfairness. What elevates the case to extremely unjust law is the cumulative violation across multiple layers simultaneously: a normative design that structurally disadvantages a defined class of right-holders (Layer I), a persistent failure to correct this structure over time (the injustice persistence dimension), and continued judicial enforcement of the same distributive scheme despite its known effects (institutional complicity). It is this combination, not distributive inequality alone, that the LJI framework treats as crossing the threshold from ordinary unfairness into extremely unjust law.

This finding indicates that the injustice experienced by unsecured creditors is not merely a result of economic conditions or the debtor's financial position, but a direct consequence of the legal system's design, which structurally privileges certain creditor groups. In Radbruch's (2006) perspective, this condition can be qualified as a form of extremely unjust law, because the law not only fails to realize distributive justice but also normatively legitimizes systemic and recurring inequality (Zomerski, 2026). Thus, insolvency law practice, which places unsecured creditors as residual claimants without adequate protection, reflects a serious deviation from the principles of equality and substantive justice, thereby confirming that in certain contexts positive law can lose its moral legitimacy, as articulated in the Radbruch Formula (Radbruch, 2006; Zomerski, 2026).

Discussion

The results of this research affirm that the concept of extremely unjust law is a critical point in determining the limits of the validity of positive law, which is directly related to the problem formulations regarding the construction of the three basic values of law, the formulation of the Radbruch Formula (2006), and its operational parameters in modern legal practice (Zomerski, 2026). The literature synthesis shows that justice remains the most dominant value when in extreme conflict with legal certainty and utility, thus supporting the hypothesis that a law that exceeds the threshold of injustice will lose its normative legitimacy. These findings also show that in modern legal practice, parameters of injustice are no longer solely philosophical in nature but have developed towards more concrete indicators, especially through the integration of human rights principles and constitutional values.

Within the theoretical framework, the results of this research strengthen the relevance of Gustav Radbruch's (2006) theory as a bridge between legal positivism and natural law (Borowski, 2024). To deepen the analysis of the validity limits of extremely unjust law, it is important to compare Gustav Radbruch's (2006) thought with the legal positivism represented by Hans Kelsen (Kelsen, 1967; Radbruch, 2006; Zomerski, 2026). In Pure Theory of Law, Kelsen asserts that the validity of law is solely determined by its conformity with higher norms in the legal hierarchy (*Stufenbau*), without considering morality or substantive justice (Jablonek, 2026; Kelsen, 1967). Radbruch instead rejects this absolute separation in extreme conditions, holding that law manifestly contradicting justice must be set aside (Radbruch, 2006; Zomerski, 2026): where Kelsen prioritizes legal certainty, Radbruch places justice as the ultimate limit of legal validity. Thus, in the context of extremely unjust law, Radbruch's approach provides a stronger normative justification for rejecting unjust law compared to Kelsen's legal positivism, which tends to be formalistic (Jablonek, 2026; Kelsen, 1967; Radbruch, 2006). The Indonesian insolvency case substantiates this conclusion empirically: the norm distributing bankruptcy proceeds satisfies Kelsen's *Stufenbau* test of procedural validity, yet the Layered Justice Index shows that procedural validity alone cannot shield a norm from extremely unjust status once injustice accumulates across multiple layers, confirming Radbruch's position over Kelsen's in precisely the case this article examines (Jablonek, 2026; Kelsen, 1967).

It should be clarified here that the Radbruch Formula does not merely mean an abstract philosophical statement about legal validity. Mertens (2003) argues that Radbruch's 1946 text is more appropriately understood as a response to the concrete problem of criminal responsibility for actions taken relying on the authority of Nazi law (Casanova, 2025), a practical problem of how judges should decide cases. This reading confirms that the Radbruch Formula is essentially a guide for judicial decision-making, and thus the judge's responsibility in applying or rejecting a grossly unjust norm becomes the center of gravity of Radbruch's entire argument. A judge who chooses to continue applying such a norm is not merely carrying out their formal duty but also

shares the moral burden for its consequences, an implication directly related to the concept of institutional complicity that will be elaborated later.

Furthermore, comparison with the legal theory of Robert Alexy shows a more moderate position between Radbruch and positivism ([Ahmed, 2022](#); [Alexy, 2010](#)). Alexy developed a non-positivist legal theory that integrates law and morality through the concept of principles and balancing. In his view, Alexy argues that law consists not only of rules but also of principles that have a moral dimension and must be weighed through a proportionality test ([Ahmed, 2022](#); [Alexy, 2010](#)). Unlike Radbruch, who sets a firm limit that grossly unjust law loses its validity, Alexy views the conflict between law and justice as a matter of degree to be resolved through rational argumentation and value balancing. Thus, if Radbruch provides a more absolute approach in extreme conditions, Alexy offers a more flexible methodological mechanism for assessing the justice of law in practice. This comparison shows that the concept of extremely unjust law can be understood not only as a firm normative limit but also as a spectrum that requires proportionality analysis in its application.

Furthermore, the Radbruch Formula shows that law cannot be separated from morality, especially in conditions where law substantively violates the principles of equality and humanity. Law is understood as a normative system that has a supra-positive limit, requiring every legal norm to meet a minimum standard of justice to remain valid. This interpretation aligns with the view that law has an inherent moral dimension that cannot be ignored in the law enforcement process. Thus, the findings of this research place justice as the primary parameter in assessing the validity of law, without entirely negating the role of legal certainty.

When compared with previous studies, the findings of this research show consistency with literature affirming the importance of the Radbruch Formula in assessing unjust law, particularly in the context of human rights violations and international criminal law. However, this research goes further by constructing parameters of extremely unjust law more operationally, which in previous philosophical studies still tended to be abstract. On the other hand, there are also differences with several more skeptical views regarding the application of the Radbruch Formula in modern legal systems, which assess that the use of this concept has the potential to disrupt legal stability ([Sajó, 2024](#)). This research shows that this risk can be minimized through the formulation of parameters based on objective principles such as human rights and proportionality.

The main scientific contribution of this research lies in the development of a conceptual framework integrating Radbruch's theory with contemporary approaches based on human rights and constitutional principles. Concretely, what is new is not the observation that law and morality are linked, a point long established in non-positivist scholarship, but the Layered Justice Index's three novel dimensions detailed below: a threshold of injustice accumulation requiring violations across at least two layers, an injustice persistence dimension treating duration as an aggravating factor, and an institutional complicity dimension attributing responsibility to enforcing institutions rather than the norm's text alone. Thus, this research not only strengthens the theoretical dimension of the Radbruch Formula but also provides an operational foundation for its application in modern legal practice. This contribution is relevant in facing the increasing challenges to the rule of law in various countries, where law is often used as a tool to legitimize unjust power. Furthermore, this research expands the discourse on the relationship between law and morality by placing parameters of justice as an integral part of legal validity.

Nevertheless, with all that has been presented, this research has several limitations that need to be proportionally acknowledged. First, as literature-based research, the analysis conducted is highly dependent on the interpretation of secondary sources, thus it does not include empirical verification through case studies or field data; the insolvency recovery-rate figures used to illustrate the Systemic Impact layer, for instance, are drawn from a single secondary source ([Fuady, 2014](#); [Wulandari et al., 2026](#)) rather than from independently collected sample data with a specified year range. Second, the limited availability of literature specifically discussing the operational parameters of extremely unjust law means that some aspects of the analysis remain conceptual. Third, differences in legal systems and socio-political contexts in various countries can also affect the application of this concept, so generalization of research findings needs to be done with caution.

The main implication of this research indicates that developing parameters for extremely unjust law has important relevance for policymakers, legal practitioners, and academics. For policymakers, the results of this research can serve as a basis for formulating regulations that not only fulfill formal aspects but also guarantee substantive justice. For legal practitioners, especially judges, these parameters can be used as guidelines for assessing whether a legal norm deserves to be applied or must be set aside for the sake of justice. Furthermore, further research is needed to test the proposed parameters through empirical studies and concrete case analysis, to strengthen their validity and application in various legal systems. An interdisciplinary approach combining legal, philosophical, and social science perspectives is also important to enrich understanding of the relationship between law and justice in contemporary contexts ([Engelmann et al., 2024](#)).

As a further development of the theoretical synthesis described, formulating parameters for extremely unjust law requires indicators that are not only abstract but also operational and usable concretely in law enforcement practice. These indicators must be capable of serving as normative tests to assess whether a legal norm remains within the tolerance limit of injustice or has exceeded the threshold causing loss of legal legitimacy.

In the Indonesian context, this fourth indicator (incompatibility with constitutional principles, listed among the six indicators below) acquires a more specific dimension. Endratno (2022) examines the challenges faced in building a synthesis of authentic ideas of justice within the context of Indonesian legal philosophy, arguing that assessing legal validity in Indonesia cannot fully adopt Western standards without considering Pancasila values, which constitutionally are the source of all sources of law ([Endratno, 2022](#)). Pancasila, especially the fifth principle concerning social justice for all Indonesian people, provides local normative parameters that must be the primary reference in assessing whether a legal norm has exceeded the threshold of tolerance for injustice. In this perspective, the fourth indicator of LJI must be operationalized in the Indonesian context by incorporating Pancasila values as part of constitutional standards, alongside universal human rights principles.

Regarding the proportionality indicator (the fifth of the six indicators), Klatt and Meister (2012) provide strong theoretical justification ([Wonnell, 2026](#)). Among the various instruments available in legal theory for assessing conflicts between norms and values, proportionality occupies the most operational yet most controversial position. Klatt and Meister (2012) defend the argument that, despite various criticisms leveled against it, proportionality remains the most rational and most accountable mechanism for resolving conflicts between competing rights ([Klatt & Meister, 2012](#); [Wonnell, 2026](#)). The alternative often put forward by its critics namely assessment based on rigid categorization without a balancing process actually carries a greater risk because it leaves the determination of priority between values to hidden and publicly untestable assumptions. Equally important, the relevance of proportionality does not even disappear in emergency conditions. Vyhnánek and colleagues, through a study of the practice of European courts during the pandemic, show that courts actually developed a precautionary variant of proportionality an approach that acknowledges situational uncertainty but still requires every rights restriction to pass a justifiable threshold ([Ondřejek & Horák, 2024](#)). The implication is very significant: there is no context in which the standard of substantive justice is entirely suspended; a law that excessively restricts rights, even on emergency grounds, can still be qualified as extremely unjust law.

By integrating these six indicators, criteria can be formulated for a law to be categorized as extremely unjust law. The application of these indicators in modern legal practice can be understood more concretely through the analysis of various cases showing how law loses its moral legitimacy. First, in the context of human rights violations, laws used to legitimize repressive state actions, such as in the apartheid regime in South Africa, show how legal norms can systematically violate citizens' fundamental rights ([Radbruch, 2006](#); [Zomerski, 2026](#)). Second, systematic discrimination can be seen in regulations that differentiate legal treatment based on race or social status, as reflected in the Nuremberg Laws in Nazi Germany which explicitly eliminated the civil rights of certain groups. Third, the denial of the principle of due process of law can be found in judicial practices that do not provide adequate defense rights, such as in political courts in authoritarian regimes that ignore judicial independence and the principle of a fair trial ([Dyzenhaus, 1989](#); [Solum, 2025](#)).

Fourth, incompatibility with constitutional principles is evident in legal norms that contradict the protection of fundamental rights in the constitution, for example in disproportionate restrictions on freedom of expression in some modern legal systems. Fifth, violations of the proportionality principle can be observed in the application of disproportionate sanctions, such as excessive punishment for minor offenses that is not aligned with legitimate legal objectives (Barak, 2012; Imparato, 2026). Sixth, legal objectives contrary to humanitarian values can be seen in regulations deliberately used to maintain power through oppression, rather than to protect society. In all these examples, it is clear that the law not only fails to achieve justice but actually becomes a tool for legitimizing systematic injustice. Therefore, these indicators are not merely theoretical but have strong empirical relevance in assessing the limits of legal validity in practice, while also affirming that the concept of extremely unjust law is an important instrument for keeping law oriented towards substantive justice. These parameters are not absolutely cumulative but contextual, so their assessment must consider the intensity and impact of the injustice caused. Thus, these indicators provide an operational framework that can be used by judges, academics, and policymakers in assessing legal validity more objectively and measurably. Furthermore, the formulation of these parameters also strengthens the position of the Radbruch Formula as a normative instrument that is not only theoretically relevant but also applicable in facing increasingly complex modern legal challenges.

As an original conceptual contribution never before formulated by other authors in legal theory discourse, this research proposes a new parameter called the Layered Justice Index. Unlike existing approaches that assess extremely unjust law dichotomously (that is, law is either just or unjust) the Layered Justice Index introduces a layered approach that recognizes that normative injustice in a legal product is gradual, multidimensional, and can be measured based on the accumulation of violations across various normative layers simultaneously. This idea departs from the empirical reality that no legal theory instrument to date has offered an integrated assessment mechanism capable of measuring the extent to which a legal norm has qualitatively and structurally exceeded the threshold of tolerance for injustice. This claim of novelty rests on the literature reviewed above: Radbruch's own formula leaves the threshold to moral intuition without layered criteria, Kelsen's (1967) positivism excludes substantive assessment altogether (Jablonek, 2026), and Alexy's proportionality balancing, while more operational, evaluates competing principles individually rather than aggregating violations across normative, procedural, and systemic layers simultaneously. No source identified in this review combines these three layers into a single cumulative-threshold instrument, which is the specific gap the Layered Justice Index fills.

The gradual, non-dichotomous epistemic position of LJI has strong philosophical roots. As outlined in the literature review, Campos (2014) shows that Aquinas himself did not understand *lex iniusta non est lex* as an automatic denial of formal validity, but rather as a denial of the moral obligation to obey an unjust norm (Lukina, 2026). In line with this, LJI does not operate as a mechanism to automatically declare a norm invalid once the injustice threshold is exceeded, an approach that would create destructive legal uncertainty. Instead, LJI works as an evaluative framework that assesses the degree of loss of a norm's moral legitimacy, which in turn opens space for judges to use their judicial discretion in a structured manner to set aside that norm for the sake of substantive justice.

The Layered Justice Index is built upon three mutually supporting assessment layers. The first layer is the Normative Substance Layer, which evaluates whether the content of the norm directly violates human rights, the principle of equality, and constitutional values. The second layer is the Procedure and Legitimacy Layer, which assesses whether the law-making process meets the standards of legislative due process, meaningful public participation, and transparency. The third layer is the Systemic Impact Layer, which measures whether the application of the norm actually produces recurring inequality, paralyzes access to justice, or creates structurally disadvantaged groups. These three layers are not assessed separately but cumulatively-contextually: the more layers violated with high intensity, the stronger the basis for qualifying a norm as extremely unjust law that has lost its normative binding force. Thus, the Layered Justice Index offers an approach that is not merely philosophical-abstract but can also be operationalized by judges, legislators, and supervisory institutions in assessing the validity of a legal product more

structurally, measurably, and justly.

The novelty of the Layered Justice Index lies in three fundamental aspects that distinguish it from all previously existing analytical frameworks. First, the Layered Justice Index introduces the concept of a threshold of injustice accumulation, namely a threshold of accumulated injustice that is reached only when violations occur simultaneously in at least two of the three assessment layers of the Layered Justice Index with significant intensity. This is fundamentally different from Radbruch's approach, which leaves the threshold assessment to the moral intuition of the judge. Second, the Layered Justice Index integrates the dimension of time as an assessment variable through the concept of injustice persistence, namely how long a normative injustice is allowed to persist without correction by the legal system. The longer the persistence of injustice without corrective response, the stronger the legitimacy for qualifying that norm as extremely unjust. Third, the Layered Justice Index introduces the dimension of institutional complicity, namely the extent to which law enforcement institutions (including courts, legislatures, and the executive) actively participate in maintaining the validity of an unjust norm instead of correcting it. Institutional involvement in perpetuating injustice makes a law not only "extremely unjust" but also a form of betrayal of the function of law itself as a protector of human dignity. These three novel dimensions make the Layered Justice Index a qualitatively different and more comprehensive framework compared to parameters previously formulated in legal theory literature.

Empirical evidence for the concept of injustice persistence is found in cross-country studies of transitional justice. Nalepa (2020), through an analysis of the Polish case, shows that the selective and inconsistent application of transitional justice creates institutional loopholes systematically exploited by political actors to erode democratic foundations (Dancy & Thoms, 2022; Nalepa, 2020). When legal norms containing injustice are allowed to persist without adequate correction, the resulting accumulation of legitimacy deficits grows until it reaches a point where public trust in the entire legal system collapses. This finding provides strong empirical evidence to support the concept of injustice persistence in LJI: the longer a normative injustice is left without corrective response, the greater its cumulative impact and the more urgent the need for comprehensive intervention. Dancy and Thoms (2022) reinforce this finding through a study of the effectiveness of truth commissions in various countries, finding that positive contributions to democratic quality are highly dependent on the completeness of investigations and the strength of recommendation implementation mechanisms (Dancy & Thoms, 2022). Commissions with limited mandates or whose recommendations are not followed by concrete institutional action produce only symbolic recognition without substantive change. This finding strengthens the LJI argument that merely identifying extremely unjust law is insufficient; what is required is an institutional response that is structured and has real restorative capacity.

Empirical evidence for the institutional complicity dimension is available from two directions: from studies of democratic backsliding and from analyses of legal system reconstruction. The Polish case studied by Wójcik (2023) provides a concrete illustration of how all three layers in LJI can be violated simultaneously: substantive violation of freedom of expression (Layer I), procedural legitimacy deficits in law formation (Layer II), and active involvement of the judiciary in perpetuating that injustice (Layer III, institutional complicity). Meanwhile, Haggard and Tiede, through a comparative analysis of the experiences of countries in Latin America and Eastern Europe, affirm that effective reconstruction of the rule of law cannot be reduced to merely updating regulatory texts (Tiede, 2025). The key to success lies in restoring the capacity and independence of law enforcement institutions. This finding reinforces the LJI argument that responsibility for extremely unjust law cannot be solely attributed to the legislature; every institution that actively maintains an unjust norm contributes to the perpetuation of that injustice.

Table 2. *Layered Justice Index as a Parameter for Extremely Unjust Law*

No	Layered Justice Index Layer	Measurement Indicator	Layered Justice Index Novelty Dimension	Concrete Example	Implication for Legal Legitimacy
1	Layer I: Normative Substance	Human rights violation, structural discrimination,	<i>Threshold of Injustice Accumulation:</i>	Insolvency law that structurally degrades	Norm loses substantive legitimacy; has

No	Layered Justice Index Layer	Measurement Indicator	Layered Justice Index Novelty Dimension	Concrete Example	Implication for Legal Legitimacy
		incompatibility with constitutional values, and absence of substantive proportionality	simultaneous violation in at least 2 layers produces <i>extremely unjust</i> qualification	unsecured creditors into residual parties without adequate protection	no moral basis to bind legal subjects
2	Layer II: Procedure and Legitimacy	Legislative process closing meaningful public participation, absence of human rights impact assessment, and dominance of certain group interests in norm formation	<i>Injustice Persistence</i> : the longer a procedural deficit is left without correction, the higher the degree of its normativity	Law passed without comprehensive academic draft and without adequate public consultation for the most affected groups	Norm loses procedural legitimacy; defects of origin that cannot be cured by application
3	Layer III: Systemic Impact	Recurring and structured distributive inequality, delegitimization of public trust in the legal system, and emergence of permanent structural victim groups	<i>Institutional Complicity</i> : legal institutions actively maintaining an unjust norm act as aggravating factors for <i>extremely unjust</i> qualification	Unsecured creditor recovery rate below 20% persisting for years without regulatory change, while courts continue applying the same norm	Norm loses empirical legitimacy; the reality of application proves injustice that cannot be recovered within the existing system
4	Threshold of Injustice Accumulation	Significant violation in at least 2 of the 3 <i>Layered Justice Index</i> layers simultaneously; not a one-dimensional assessment but a multi-layer aggregation	Replaces Radbruch's intuitive-moral approach with a more objective and accountable structural mechanism	Insolvency law violating distributive justice (L-I) and formed without meaningful public participation (L-II) meets the <i>Layered Justice Index</i> threshold	Judges have a stronger normative basis to set aside the norm and seek a fairer interpretation
5	Injustice Persistence	Duration of injustice persisting without systemic correction; the longer it lasts, the higher the burden of proof that the norm can still be maintained	Temporal dimension as an assessment variable never explicitly included in parameters of <i>extremely unjust law</i> by any previous author	Inequality for unsecured creditors allowed to persist for two decades since the enactment of Law No. 37/2004 without substantive revision	Temporal persistence aggravates <i>extremely unjust</i> qualification and strengthens urgency for judicial or legislative intervention
6	Institutional Complicity	Active involvement of legal institutions (courts, legislature, executive) in maintaining an unjust norm; not mere passive failure but active defense of	Aggravating factor that explicitly places responsibility on legal institutions, not merely on the text of the norm a dimension never	Commercial courts consistently rejecting unsecured creditor restructuring lawsuits on mere	Institutional complicity changes the qualification from mere "bad law" to an "actively anti-justice legal

No	Layered Justice Index Layer	Measurement Indicator	Layered Index Novelty Dimension	Concrete Example	Implication for Legal Legitimacy
		injustice	conceptualized in previous Radbruch literature	procedural formality grounds	system"

Source: Author's construction based on original development from Radbruch Formula ([Radbruch, 2006](#); [Zomerski, 2026](#)), Alexy's Proportionality Theory ([Alexy, 2019](#)), and Systemic Impact Theory in Law ([Dyzenhaus, 1989](#); [Solum, 2025](#)).

The Layered Justice Index presented in table 1 can be concretely explained through the following three layers. The first layer (Normative Substance) relates directly to the content of the legal norm itself: does the norm directly legitimize rights violations, create discrimination, or contradict constitutional principles? In the context of Indonesian insolvency law, the norm that places unsecured creditors as residual parties without minimum protection mechanisms is proven to violate this layer because it substantively institutionalizes disproportionate inequality as a legally recognized condition. The second layer (Procedure and Legitimacy) tests whether the norm emerged from a fair, open process involving meaningful participation of affected groups. A law enacted without an impact assessment on the most vulnerable groups, or whose legislative process is dominated by the interests of powerful creditors, experiences a procedural legitimacy deficit that cannot be remedied by formal compliance alone. The third layer (Systemic Impact) goes beyond the text of the norm and evaluates the real effects of its long-term application: does it create persistent structural victims, delegitimize public trust, or exacerbate existing inequalities? Empirical data reported in Fuady (2014), showing a recovery rate below 20% that persists without corrective response from the legal system ([Wulandari et al., 2026](#)), constitutes concrete evidence that the third layer has been seriously and repeatedly violated.

The most significant novelty dimension of the Layered Justice Index is the concept of institutional complicity, which has not been explicitly conceptualized in previous extreme injustice legal literature. Radbruch, Alexy, nor Kelsen (1967) ever specifically positioned the active involvement of legal institutions as a factor that aggravates the classification of a norm's injustice ([Jablonek, 2026](#)). The Layered Justice Index fills this gap by affirming that a legal system that not only contains an unjust norm but also actively maintains that norm through judicial decisions, regulatory policies, and legislative inertia has exceeded the status of mere "bad law" and has transformed into an institutionally anti-justice system. In such conditions, the moral legitimacy of the entire system, not only a single norm, is called into question, and the need for more fundamental corrective intervention, whether through judicial review, legislative reform, or constitutional reinterpretation, becomes increasingly urgent and cannot be delayed. Thus, the Layered Justice Index not only offers a new parameter for assessing extreme injustice in law but also expands the conception of responsibility for normative injustice, not only resting on the legislature but also on every institution that consciously chooses to maintain an unjust legal structure instead of correcting it.

CONCLUSION

This research shows that the construction of the three basic values of law in Gustav Radbruch's thought (justice, legal certainty, and expediency) is not always in a harmonious relationship but is dynamic and potentially conflictual, especially in extreme conditions. In situations where positive law manifestly violates the principles of justice and equality, the Radbruch Formula provides a normative foundation for prioritizing justice as the value that must take precedence, even by setting aside positive law. The findings of this research also affirm that the concept of extremely unjust law can no longer be understood merely as an abstract philosophical category but can be formulated more concretely through indicators such as human rights violations, denial of the principle of due process of law, systematic discrimination, and inconsistency with constitutional values and the principle of proportionality in modern legal practice.

The main contribution of this research lies in the development of a conceptual framework that integrates Radbruch's thought with contemporary legal developments, particularly in the

context of human rights protection and strengthening the rule of law principle. This research expands the understanding of the limits of legal validity by affirming that legal legitimacy is determined not only by formal aspects but also by its conformity with the values of substantive justice and humanity. Practically, the results of this research provide an argumentative foundation for law enforcement officials, especially judges, in assessing and responding to potentially unjust legal norms, as well as for policymakers in formulating regulations more oriented toward justice. For researchers, the Layered Justice Index offers a replicable instrument for coding and comparing injustice across legal systems, illustrated in this article through Indonesia's insolvency law, where the persistent sub-20% recovery rate for unsecured creditors gives concrete shape to what would otherwise remain an abstract normative argument.

In general, the Layered Justice Index framework, applied to Indonesia's insolvency law, confirms that all three layers were violated at once: a norm that accommodates injustice, a formation process that was less inclusive, and real long-term detrimental impacts. The main novelty of the Layered Justice Index lies in the concept of institutional complicity, which highlights that injustice does not only originate from the legal rules themselves but also from the active involvement of legal institutions in maintaining them. Therefore, when a legal system collectively allows or even reinforces injustice, the problem has become systemic, thus requiring fundamental and comprehensive corrective measures, while also expanding responsibility to all institutions involved in maintaining that condition. Further implications of this research indicate the need for developing empirical and comparative studies to test the application of extremely unjust law parameters in various legal systems and different socio-political contexts. Future research can also more specifically examine the role of the judiciary in internalizing substantive justice values in legal decisions, as well as explore interdisciplinary approaches combining legal, philosophical, and social science perspectives to enrich the understanding of the relationship between law, morality, and justice in contemporary legal dynamics.

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AUTHOR CONTRIBUTION STATEMENT

Ulhaq conceived the research idea, developed the conceptual framework, conducted the literature review, performed the legal analysis, and drafted the manuscript. Isis Ikhwansyah contributed to the research design, theoretical validation, critical interpretation of the findings, and manuscript revision. Tri Handayani supervised the overall research process, reviewed the legal arguments, refined the manuscript, and approved the final version for publication. All authors read and approved the final manuscript and accept responsibility for its academic integrity.

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