16 Years of e-Justice in Brazil: A literature review

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Abstract

Since 2006, with the enactment of the "Law of Electronic Judicial Proceeding", Brazil has been consistently transforming its Justice System by migrating from paper to a digital-based process. Currently, 97% of lawsuits are digital. This study performs a literature review of 29 papers addressing the Brazilian Electronic Judicial Process (EJP). First, we point out the steps taken during EJP deployment. Then we classify the studies based on Delone and MacLean's Information System Success Model, contributing to systematically organising the knowledge. The research demonstrates the importance of the normative framework enabling the EJP and the National Council of Justice's essential role in driving the digital transformation of the Justice System in Brazil. Papers related to the assessment of the EJP are fragmented, of different natures, and address a wide range of aspects, not allowing consistent conclusions about the overall success of EJP.

Keywords

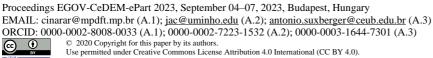
e-Justice, e-Court, Electronic Judicial Process, Cyberjustice, Brazil

1. Introduction

Since the beginning of the century, many countries have started to use information (IT) in their judicial reforms, mainly aiming to improve the court's efficiency. They expect that digital technology helps to address issues like high costs, delays, and a huge backlog of cases configuring the judicial landscape [7, 9, 42, 43]. To date, some countries have not yet been able to conduct their judicial processes fully digitally. Data from the Council of Europe demonstrates that most members focus on disseminating basic applications such as Court/Case Management Systems and Court Decision Support Systems, Lastly, communication between courts and users is the least invested, with a scoring average of technological diffusion of 5.2 in a total of 10 [10].

Brazil is a particular case concerning the actual use of IT in the justice world scenario. Since 2006, the country has consistently implemented the Electronic Judicial Process (EJP). At the end of 2021, 97% of all new criminal, civil, or administrative cases were digitally submitted. The systems embrace similar functionalities, such as receiving digital cases, supporting the exchange of legal documents between parties and different judicial organisations, paying fees, and providing judicial notifications. However, they vary from region to region, EJP embraces all judicial phases until the cases are filed.

Many studies written in Portuguese address different aspects of the EJP process of deployment, assessment, and results. There are also a few international studies about e-Justice in Brazil. However, none of them reviews the existing literature on the topic. This paper reports our systematic review of the 16 years of experience in the Brazilian Electronic Judicial Process (EJP). Our main purpose is to gather studies referring to EJP in general in an attempt to summarise the knowledge produced. We intend to investigate how the success of EJP deployment has been measured and what has been measured. We based our review on Delone and McLean's Information System Success Model, the most



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recognised IS success model [12–14]. The Brazilian experience can teach important lessons about how a country with expressive dimensions and high diversity can digitalise its justice process.

The following Section presents the theoretical background. Section 3 describes the methodology. Section 4 briefly describes the normative bases of EJP and the deployment process. Section 5 discusses the research results. Section 6 shows the conclusion and points out some future research directions.

2. Information System Success

At the end of the last century, DeLone and McLean [13] reviewed the research addressing Information System Success. They synthesised the body of knowledge and postulated a comprehensive and multidimensional model with six dimensions: system quality, information quality, use, user satisfaction, individual impact, and organisational impact. In the next decade, many papers tested and validated the model, leading the authors to review the constructs and the relationship between them [14]. Figure 1 presents the updated Delone McLean's IS Success Model:

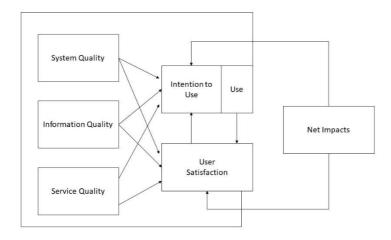


Figure 1. Updated DeLone and McLean 2003 IS Success Model [12].

The model has been used in a different context and is the most referred IS success model. The "Net Benefits" construct is particularly difficult to measure in e-Government initiatives as the desired outcomes are related to social values.

3. Method

We conduct a literature review in three phases: identification, screening, and inclusion of papers. In the identification phase, we used four databases. Three of them are prominent in the international landscape: Scopus, Web of Science, and IEEExplore. The fourth database refers to CAPES Periódicos. CAPES is one of Brazil's largest virtual scientific collections, which gathers and makes available nationally-produced content and others by international publishers. The inclusion of this database allowed an increase in the number of studies, especially those from reputable journals, but generally excluded because they were written in Portuguese. The details of the search are shown in Table 1.

Table 1Keywords used for the process of finding relevant literature

Databases	Keywords	Number of Records
SCOPUS	TITLE-ABS-KEY (("processo judicial eletrônico" OR "electronic judicial process" OR ("Electronic justice" W/3 Brazil) OR (e-court AND Brazil) OR (e-justice AND Brazil), OR ("electronic process" AND Brazil)))	21
WoS	(("processo judicial eletrônico" OR "electronic judicial process" OR ("Electronic justice" W/3 brazil) OR (e-court AND brazil) OR (e-justice AND brazil) , OR ("electronic process" AND Brazil))) (topico)	21
Capes Periódicos	(título contem "processo judicial eletrônico)	37
IEEExplore	(("electronic judicial process") OR (e-justice AND Brazil) OR (e-court AND Brazil) OR (cyberjustice AND Brazil) OR ("electronic justice" AND Brazil) OR ("Information Technology" AND Brazil AND jUSTICE))	1
Total		80

We reviewed the title and abstract in the screening stage to identify whether each record should be included. The articles describing EJP history, deployment process and evaluation were selected. All the papers were written in English or Portuguese. From 80 registers, 53 were removed for the following reasons: 24 did not fit the research criteria, 20 were duplicated, three were unavailable, two were related to other e-Justice applications, two were written in a language unknown to the researchers, and 2 were not academic articles. Two records were added from citation searching. A total of 29 papers were included for review. All papers were first classified into two groups—those focusing on EJP history or deployment process and those focusing on other EJP-related subjects.

Then, from the last, we identified the evaluation subject in each paper and grouped it considering the Delone and McLean model. In doing so, we intend to know what has been measured to identify success in implementing electronic justice in Brazil.

It is important to stress that the model was sometimes used as categories for classifying the papers. Some law studies did not intend to measure the success of IS. Nevertheless, they were included as the body of knowledge is in the early stages, and our objective is to have a comprehensive view of the EJP.

4. EJP History

The digital transformation of the Brazilian Judiciary started from the recognition that "the slowness of judicial processes and the low efficiency of its decisions slow down national development, discourage investments, favour indebtedness, generate impunity and undermine citizens' belief in the democratic system" [5].

In 2004 Constitutional Amendment N° 45 guaranteed the principle of reasonable process duration. Subsequently, the "Law of Electronic Judicial Process" (Law n° 11.419/06) changed the paradigm by setting the electronic process as the national standard. From this point, the judicial proceedings could be assessed 24 hours a day. In addition, summonses and subpoenas started to occur electronically, and official electronic journals were created to disclose administrative and judicial acts. Important to

highlight that the EJP applies indistinctly to civil, criminal, and labour proceedings, as well as to special courts at any level of jurisdiction.

It is important to stress the role of the National Council of Justice (NCJ), created in 2005, responsible for judicial policy, normative acts and recommendations, establishing targets and strategic plans, and controlling statistical data on the courts [28]. NCJ is granted the regulation of electronic judicial proceedings.

In practice, the development of the EJP was a long process that started with decentralised and isolated state initiatives. Over time, the process came to be coordinated by the NCJ, first by the taxonomic and terminological standardisation of judicial acts throughout the country and then by setting the minimum requirements for the various existing systems adopted in the electronic process was settled [3, 39].

Later, NCJ launched a national platform for the Brazilian Judiciary aiming at the adoption of a unified electronic process. The solution for procedural handling was freely distributed, and courts highly modified it considering their different context. To solve this issue, NCJ idealised the EJP to be developed by the internal IT professional based on an existing system of the Federal Regional Court of the 5th Region (North-eastern Region of Brazil). The EJP should be a unified system and, at the same time, considers the particularities of Brazilian courts [4, 22]. The system developed and deployed in many courts allows action, such as filing, distribution, hearings, subpoenas, payments, calculations, issuance of certificates, the definition of procedural flows, creation of new documents by attorneys and parties and integration with outside institutions. The last version allowed access to mobile phones [29].

Although the initial obligation to conduct judicial cases using EJP, different platforms have still been used among State Courts, Labour Courts, and Federal Courts. In 20202, under pressure from some state courts, using other systems was permitted since they could comply with the interoperability platform, collaborative development and availability of system modules and evolution. EJP remained the priority system for Brazilian courts [8, 32].

There are still many criticisms of the EJP by the courts and the Bar Association. However, even with much to evolve, the EJP brought many benefits to the justice system. We can mention the Brazilian Judiciary Database (DATAJUD), which centralises and stores procedural data and metadata related to all Brazilian courts, enabling the construction of judicial indicators and a better administration of justice [11].

After this overview of the EJP process of deployment, in the next Section, we summarise the studies and analyse the results of the assessment of the EJP.

5. Analysis and Findings

Studies tended to focus on the history and deployment process of EJP. The other studies are fragmented and address different aspects of EJP. Papers in periodicals and scientific journals in Law predominate. They are descriptive and based on justice principles and regulations. Second, there are technology and information systems papers; finally, others are multidisciplinary. Only 7 of the 29 records are empirically based. Eight papers address the history and process of EJP deployment [4, 17, 21, 23, 26, 27, 29, 40].

Table 02 summarises the results of categorising the reviewed publication considering Delone and McLean IS Success Model constructs. No study addresses Service Quality, so it does not appear in the analysis analyses below.

Table 2Categorisation of the publications according to IS Success Model Constructs

IS Success Model Constructs	Subjects of Evaluation	Sources
System Quality	Interoperability; Archivists issues; Access for Disable Person	[2, 30, 32, 35]
Information Quality	Reliability and authenticity	[22]
Service Quality	-	-
Intention to Use/Use	Acceptance	[16, 24]
User Satisfaction	System quality	[34, 38]
Net Impacts	Access; Efficiency; Length of proceeding; Process redesign; Publicity; Telework; Transparency; Equality; Due process; Security; Environment preservation; Productivity; Standardisation; System Availability; Equality	[1, 6, 15, 18–20, 25, 31, 36, 37, 41, 44]

5.1. System Quality

System quality refers to an information system's desirable characteristics [12]. Concerning this construct, interoperability remains an issue that leads to inefficiency. There are problems between different justice platforms and communicating with some external institutions like Revenue Office and Federal Police [32]. Authors argue that more important than a need to unify systems nationally, such as the EJP project, is the need for communication between them. [35] proposed following recommendations of existing Brazilian interoperability e-Government standards to increase the interoperability level of the Brazilian Judiciary platform.

Trustworthiness of the documents, digital certification, preservation of the original documents in physical support, and the protocol of receipt endowed with information pertinent to the recipient were analysed under the archive standards [30]. The authors found a lack of pattern definition for electronic process transit between judicial bodies.

The absence of features allowing a disabled person to access the EJP is addressed by [2]. The technical limitations would result in the limitation of the work of lawyers, judges, judicial clerks, and other disabled people, leading to a breach of a legal duty.

5.2. Information Quality

Information Quality concerns the desirable characteristics of the system outputs. There is only one study addressing this construct. [22] stresses that the EJP requirements model is more than a guiding document for developing digital court systems but also establishes a judicial information policy. The article limits to highlights the controversy about the legal digital evidence information evolving authenticity and reliability issues. It informs about the strong resistance against digital evidence to a lack of regulation in the country.

5.3. Intention to Use/ Use

Intention to Use/Use refers to the degree and manner in which employees and customers utilise the capabilities of an IS [12]. Research addressing the adoption and diffusion of the EJP in the regional labour court of the city of Belem in the State of Pará seeks to define the process for assessing the factors influencing its adoption and diffusion. Based on the Diffusion of Innovation Theory, they evaluate the users' perception regarding the acceptance system. They found that most interviewees considered the EJP better than the previous system. Users have become faithful to the tool as it improves the quality of their tasks. Individuals who have had a chance to experience innovative technology have been able to adopt it more quickly. Reducing the time to accomplish their tasks and increasing efficiency influenced their behaviour towards adopting it [24]. Based on the Unified Theory of Acceptance and Use of Technology (UTAUT), [16] empirically evaluated the acceptance of EJP at the labour court of Espírito Santo State. The analysis model sought to evaluate the psychosocial variables preceding the intention to use to clarify which of them were determinant. They found that anxiety, performance expectancy, attitude, and social influence influenced the intention to use the EJP.

5.4. User Satisfaction

User Satisfaction refers to the user's level of satisfaction with the system. It is highly related to system, information and service quality [33]. Interviewing lawyers in the State of Minas Gerais[34] found that 77% of users reported technical issues with the EJP. Older lawyers seem to refer to more difficulties with the system. 80% of the lawyers believe celerity is a gain of the application. Another research in the State of Paraíba explores the lawyer's perception of EJP in other to identify their needs. Users' complaints include frequent system unavailability, absence of proof of system's unavailability, the need to contact the court to solve problems, insufficient training, and other usability-related issues. [38].

5.5. Net Impacts

Net Impacts refer to the extent to which IS contributes (or does not) to the success of individuals, groups, organisations, industries, and nations. This construct is highly dependent on context and closely related to the system's purpose [12]. A study carried out from 2003 to 2013 of labour courts assessed the relationship between resources, innovation, and performance in labour courts in Brazil [37]. They found that the use index of electronic processes and IT investments did not help reduce the court's inefficiency. [1] performed a bibliographic and jurisprudential analysis to verify the relation between the computerisation of judicial proceedings and the reasonable length of the proceedings. The study concludes that digitising and changing legal disputes to electronic media is insufficient to guarantee a reasonable duration of lawsuits.

The experiences of the electronic justice in Brazil were evaluated and compared to the Swiss e-Justice system [36]. The descriptive qualitative research was based on interviews with judges, IT managers, and judicial managers. The author found that Brazilian actors perceive speed, the redesign process and the institutionalisation of telework as the major impacts of e-Justice. Interviewees rated quality and safety poorly.

[44] emphasises that the EJP is based on the constitutional foundations of celerity and economic efficiency, aggregating convenience for users and judicial workers, transparency of data, and broadening access to justice. They warn, however, of the necessity to unify the systems to promote effective judicial protection and guarantee security for the proceedings. Finally, they alert to the lack of digital skills of lawyers, judges and clerks. [15] argues that the EJP compromises the transparency and publicity of procedural processes, which is aggravated by the digital divide in Brazil. [20] also stresses the digital exclusion and the indispensability of an internet connection as a factor which may jeopardise the guaranteed access to justice.

The impact of EJP on law professionals' routines was empirically analysed by [19]. They found an increase in productivity, broad access and quantity of information, security, transparency, cost savings, celerity, environment preservation, and better workplace distribution as positive impacts of the EPJ. Some negative impacts are the absence of standardisation, system unavailability, and high dependence on internal and external infrastructure. Analysing the experience of the State of Tocantins [6] affirms that the EJP brought more benefits than harm to the courts as the principles of equality, due legal process, adversarial procedure and full defence, publicity, access to justice, celerity, orality, immediacy, instrumentality, economy and good faith are present in the digital proceedings. [25] states that the digital process is an instrument that can speed up the judicial process while ensuring data security and the information contained therein. Another study from Tocantins analysed the impact of EJP on the transformation of Law curricula in graduate courses [18].

Using a systemic and deductive approach, [31] performs an analytical framework of the EJP, interrelating the analogue, digital processes, and systemic variables. The framework takes five dimensions to discuss what the author named the "connectivity principle". By describing each dimension, the research sets up the changes between the variables by adopting EJP. [41] proposed a methodology to assess efficiency in Judicial Systems by using comparative indicators. The model presents IT as an intervening variable to the performance indicator dependent variable.

6. Final Considerations

This study aimed to review the existing literature about the 16 years of experience of the Brazilian EJP by organising and systematically documenting the existing knowledge. We analysed 29 papers published in Brazil and internationally. First, we presented the process of EJP deployment in Brazil and its normative framework. The beginning of Brazilian justice digitalisation was characterised by decentralisation. The role of NJC in coordinating the EJP development and deployment is remarkable.

The review demonstrates that descriptive and normative aspects of EJP are more addressed than IS-related aspects. We found little empirical research to assess to which extent EJP achieves the desired outcomes of a more fast, affordable and accessible justice in Brazil. Considering the identification of what has been measured to evaluate the success of EJP, we found that those related to "Net Impacts" were predominant. Important subjects directly related to the objective of EJP were addressed, such as access, efficiency, length of proceeding, transparency, due process, security and productivity. We conclude that studies are fragmented, of different natures, and address a wide range of aspects on which the use of EJP can reach and influence. Except for the interoperability issues, which were highly mentioned as a problem, the studies do not allow drawing consistent conclusions about the general use of EJP.

The study has the limitation of putting together studies from different domains and approaches, even though this was necessary given the scarcity of researchers in the same or similar domains. Law and Technology are highly distinct domains; the challenge is to aggregate them to understand better the complexity of EJP use.

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